WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2002

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ENROLLED
COMMITTEE SUBSTITUTE
FOR
House Bill No. 4005

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)
(By Request of the Executive)

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Passed March 9, 2002

In Effect from Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 4005

(BY MR. SPEAKER, MR. KISS, AND DELEGATE TRUMP)
[BY REQUEST OF THE EXECUTIVE]

[Passed March 9, 2002; in effect from passage.]

AN ACT to repeal article thirteen-h, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section twenty-four, article twenty-three and section twenty-two, article twenty-four, all of said chapter; to repeal section five, article thirteen, chapter twenty-one of said code; to amend article one, chapter five-e, by adding thereto a new section, designated section twenty-two; to amend chapter eight of said code by adding thereto a new article, designated article thirteen-b; to amend and reenact section five-s, article ten, chapter eleven of this code; to amend article ten of said chapter by adding thereto a new section, designated section eleven-a; to amend article thirteen-c of said chapter by adding thereto a new section, designated section sixteen; to amend article thirteen-d of said chapter by adding thereto a new section, designated section ten; to amend and reenact section four, article thirteen-n of said
chapter; to further amend said chapter by adding thereto three new articles, designated articles thirteen-q, thirteen-r and thirteen-s; to amend article fifteen of said chapter by adding thereto to three new sections, designated sections nine-b, nine-c and nine-f; to amend article twenty-one of said chapter by adding thereto a new section, designated section eight-h; to amend and reenact sections seven and twenty-four-a, article twenty-three of said chapter; to amend and reenact section twenty-two-a, article twenty-four of said chapter; to amend and reenact section nine-e, article six, chapter twelve of said code; and to amend and reenact sections eighteen and eighteen-a, article twenty-two, chapter twenty-nine of said code, all relating generally to economic development for public purposes; repealing the business and occupation tax credit for increased generation of electricity; repealing the business franchise tax credit and the corporation net income tax credit for coal coking facilities; repealing the tax credit for convenience store owners to meet certain requirements of the convenience food stores safety act; terminating new steel manufacturing operations tax credit; terminating the credit for producing value-added products from raw agricultural products; terminating the business investment and jobs investment tax credit; terminating the small business tax credit; terminating corporate headquarters relocation tax credit; preserving certain tax credits for eligible activity occurring prior to termination date; specifying transition rules; establishing economic opportunity tax credit specifying short titles; specifying legislative findings and purpose for new credits; defining terms; specifying activity that qualifies for credits, how amount of allowable credits are determined, how credits may be applied and against what tax liabilities credits may be applied; providing for forfeiture of unused tax credits, redetermination of credits and recapture of credits under certain circumstances; imposing recapture tax, interest and civil money penalty and specifying circumstance when they apply; allowing transfer of qualified investment to successors; requiring identification of investment credit property;
requiring persons claiming credit to keep records and to provide information to tax commissioner; providing rules for interpretation, construction, severability and burden of proof; requiring filing of application for credit as condition precedent to claiming credit and imposing consequences for failure to make timely application; specifying business activity eligible for economic opportunity credit; requiring periodic review of tax credit and performance reports to governor and Legislature; providing internal effective dates and making technical corrections; specifying termination of credits provided in article thirteen-d, chapter eleven, specifying exception for electricity producers; preservation of entitlements; establishing tax credit for manufacturing investment; specifying short title, legislative findings and purpose; setting forth definitions; specifying amount of credit allowed for manufacturing investment; specifying procedures for determining qualified manufacturing investment; requiring certain forfeiture of unused tax credits; redetermination of credit allowed; specifying treatment for transfer of property purchased for manufacturing investment to successors, requiring identification of investment credit property; specifying treatment for failure to keep records of property purchased for manufacturing investment; requiring tax credit review and accountability; establishing tax credit for qualified research and development credit; specifying short title, legislative findings and purpose; definitions, specifying annual combined qualified research and development expenditure; qualified research and development expenses; amount of credit allowed; application of credit; requiring certain forfeiture of unused tax credits; redetermination of credit allowed; specifying treatment for transfer of qualified research and development investment to successors; requiring identification of research and development credit property; specifying treatment for failure to keep records of property purchased for research and development investment; requiring tax credit review and accountability; adding new exemption to consumers sales and service tax for purchases of tangible personal property and services for direct use in
research and development, purchased after the thirtieth day of June, two thousand-two; defining certain terms; exempting from the business franchise tax persons and organizations to the extent they provide venture capital to West Virginia businesses; defining terms; specifying effective date of exemption; providing for the decertification of qualified capital companies that are not small business investment companies; specifying effective date therefor; providing an exemption from the consumers sales tax and the use tax for services providing technical evaluations for compliance with federal and state environmental standards provided by environmental and industrial consultants who have formal certification through the department of environmental protection or the bureau for public health; requiring disclosure of certain taxpayer information relating to economic opportunity tax credit, strategic research and development tax credit and manufacturing investment tax credit; authorizing municipalities to create special downtown redevelopment districts; describing redevelopment expenditures; providing for treatment of redevelopment expenditures by licensed race tracks; providing for notice and hearing; providing for approval by committee; establishing a downtown redevelopment fund; providing for the Legislature’s authorization of establishment of a district; describing ordinance to create district; establishing a board to oversee operations; authorizing special district excise tax; modifications to district boundaries; procedures for abolition and dissolution of district; authorizing issuance of municipal revenue obligations; providing for administration of special district excise tax by tax commissioner; exempting certain sales and services in district from consumers sales and service tax; authorizing bond issuance for improvement projects; authorizing transfer or assignment of qualified rehabilitated building investment tax credit; authorizing nonrecourse loan from the consolidated fund; and making technical corrections.

Be it enacted by the Legislature of West Virginia:
That article thirteen-h, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections twenty-four, article twenty-three and section twenty-two, article twenty-four, all of said chapter be repealed; that section five, article thirteen, chapter twenty-one of said code be repealed; that article one, chapter five-e, be amended by adding thereto a new section, designated section twenty-two; that chapter eight of said code be amended by adding thereto a new article, designated article thirteen-b; that section five-s, article ten, chapter eleven of this code be amended and reenacted; that article ten of said chapter be amended by adding thereto a new section, designated section eleven-a; that article thirteen-c of said chapter be amended by adding thereto a new section, designated section sixteen; that article thirteen-d of said chapter be amended by adding thereto a new section, designated section ten; that section four, article thirteen-n of said chapter be amended and reenacted; that said chapter be further amended by adding thereto three new articles, designated articles thirteen-q, thirteen-r and thirteen-s; that article fifteen of said chapter be amended by adding thereto three new sections, designated sections nine-b, nine-c and nine-f; that article twenty-one of said chapter be amended by adding thereto a new section, designated section eight-h; that sections seven and twenty-four-a, article twenty-three of said chapter be amended and reenacted; that section twenty-two-a, article twenty-four of said chapter be amended and reenacted; that section nine-e, article six, chapter twelve of said code be amended and reenacted; and that sections eighteen and eighteen-a, article twenty-two, chapter twenty-nine of this code be amended and reenacted, all to read as follows:

CHAPTER 5E. VENTURE CAPITAL COMPANY.

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

§5E-1-22. Decertification of qualified capital companies other than small business investment companies.
Notwithstanding any provision in this article to the contrary, the authority may not hereafter allocate credit to any applicant other than a small business investment company. Every qualified capital company that is not a small business investment company may no longer be considered a qualified capital company and shall, without any further action, be decertified. Each company that has been decertified in accordance with the provisions of this section is no longer subject to the provisions of this article. Nothing herein may be construed to limit an investor in a qualified capital company from applying credits previously allocated by the authority including unused credits carried forward pursuant to section eight of this article.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13B. DOWNTOWN REDEVELOPMENT DISTRICTS.

§8-13B-1. Short title.

This article is known and may be cited as the “Downtown Redevelopment District Act.”

§8-13B-2. Legislative findings and declaration of purpose.

The Legislature finds that many downtown business districts within the municipalities of this state are economically depressed. This adversely affects the economic and general well-being of the citizens of those municipalities. Establishment of downtown redevelopment districts within municipalities of the state, in accordance with the purpose and powers set forth in this article, will serve a public purpose, and promote the health, safety, prosperity, security and general welfare of all citizens in the state. It will also promote the vitality of retail business areas within municipalities, while serving as an effective means for restoring and promoting retail and other business activity within the downtown redevelopment districts.
created herein. This will be of special benefit to the tax base of the downtown municipalities within which any downtown redevelopment district is created under this article and will stimulate economic growth and job creation.

§8-13B-3. Definitions.

For purposes of this article, the term:

1. “Committee” or “Council” means the committee established in subdivision (3), subsection (d), section eighteen-a, article twenty-two, chapter twenty nine of this code;

2. “District” means a downtown redevelopment district created pursuant to this article;

3. “District board” means a district board created pursuant to section ten of this article;

4. “Downtown property” means any taxable or exempt real property which is classified for ad valorem real property tax purposes as Class IV;

5. “Gross annual district tax revenue amount” means the total amount of consumers sales and service tax actually remitted to the tax commissioner by vendors maintaining places of business within the district with respect to sales made and services rendered by such vendors from a location within the district for the twelve full calendar months immediately preceding the filing of an application pursuant to section seven of this article;

6. “Municipality” means a municipal corporation recognized as such in chapter eight of this code; and

7. “Redevelopment expenditures” means payments for governmental functions, programs, activities, facility construc-

The governing body of any municipality may, in accordance with the procedures and subject to the limitations set forth in this article, create one or more downtown redevelopment districts within the municipality. The municipality may, in accordance with the procedures and subject to the limitations set forth in this article, provide for the administration and financing of redevelopment expenditures within the districts and for the administration and financing of a continuing program of redevelopment expenditures within the districts.

§8-13B-5. Redevelopment expenditures.

Any municipality that has established a downtown redevelopment district under this article may make, or authorize to be made by a district board and other public or private parties, such redevelopment expenditures as will restore or promote the economic vitality of the district and the general welfare of the municipality, including, but not limited to, expenditures for the following purposes:

(a) Beautification of the district, by means such as landscaping and construction and erection of fountains, shelters, benches, sculptures, signs, lighting, decorations and similar amenities;

(b) Provision of special or additional public services, such as sanitation, security for persons and property and the construction and maintenance of public facilities, including sidewalks and other public areas;
(c) Making payments for principal, interest, issuance costs, any of the costs described in section eighteen of this article and appropriate reserves for bonds and other instruments and arrangements issued or entered into by the municipality for financing the expenditures of the district described in this section and to otherwise implement the purposes of this article;

(d) Providing financial support for public transportation and vehicle parking facilities open to the general public, whether or not physically situate within the district’s boundaries;

(e) Acquiring, demolishing, razing, constructing, repairing, reconstructing, refurbishing, renovating, rehabilitating, expanding, altering, otherwise developing, operating and maintaining real property generally, parking facilities, commercial structures and other capital improvements to real property, fixtures and tangible personal property, whether or not physically situate within the district’s boundaries;

(f) Developing plans for the architectural design of the district and portions thereof, and developing plans and programs for the future development of the district;

(g) Developing, promoting and supporting community events and activities open to the general public;

(h) Providing the administrative costs for a district management program;

(i) Providing for the usual and customary maintenance and upkeep of all improvements and amenities in the district as may be commercially reasonable and necessary to sustain its economic viability on a permanent basis;

(j) Providing any other services which the municipality or district board is authorized to perform and which the municipal-

45 ity does not also perform to the same extent on a municipality-
46 wide basis;

47 (k) Making grants to the owners or tenants of downtown
48 property for the purposes described in this section;

49 (l) Acquiring an interest in any entity or entities that own
50 any portion of the real property situate in the district and
51 contributing capital to any such entity or entities; and

52 (m) To do any and all things necessary, desirable or
53 appropriate to carry out and accomplish the purposes of this
54 article: Provided, That notwithstanding anything in this code to
55 the contrary, any redevelopment expenditure made by a
56 licensed race track, as defined in section three, article twenty-
57 two-a, chapter twenty-nine of this code, within thirty days after
58 such redevelopment expenditure shall have been requested in
59 writing by the district board, shall entitle such licensed race
60 track to receive the same recoupment from its capital reinvest-
61 ment fund account as any other capital improvement expendi-
62 ture described in subsection (b), section ten-c, article twenty-
63 two-a, chapter twenty-nine of this code.

§8-13B-6. Notice; hearing.

1 The governing body of a municipality desiring to create a
downtown redevelopment district shall conduct a public
hearing. A notice of the public hearing shall be published as a
Class I-0 legal advertisement in compliance with article three,
chapter fifty-nine of this code at least twenty days prior to the
scheduled hearing. In addition to the time and place of the
hearing, the notice must also state:

8 (a) The purpose of the hearing;

9 (b) The name of the proposed district;
(c) The general purpose of the proposed district; 

(d) The property proposed to be included in the district; and 

(e) The proposed method of financing any costs involved, including the base and rate of special district excise tax that may be imposed upon any businesses operating and properties situated within the proposed district.

At the time and place set forth in the notice, the governing body shall afford the opportunity to be heard to any owner of real property situated in the proposed district and any residents of the municipality.

If the governing body of the municipality, following the public hearing, determines it advisable and in the public interest to establish a downtown redevelopment district, it shall apply to the committee for approval of a downtown redevelopment district project pursuant to the procedures provided in section seven of this article.

§8-13B-7. Application to committee for approval of a downtown redevelopment district project.

(a) The committee shall receive and act on applications filed with it by municipalities pursuant to section six of this article. Each such application must contain a copy of the notice described in section six of this article; a general description of the capital improvements, additional or extended services and other proposed redevelopment expenditures to be made in the district; a description of the proposed method of financing such redevelopment expenditures, together with a description of such reserves to be established for financing on-going redevelopment expenditures necessary to permanently maintain the optimum economic viability of the district following its inception: Provided, That the amounts of such reserves shall not exceed the amounts that would be required by ordinary commercial
capital market considerations; a description of the sources and
anticipated amounts of all such financing, including, but not
limited to, proceeds from the issuance of any bonds, or other
instruments, revenues from the special district excise tax and
enhanced revenues from municipal business and occupation
taxes, property taxes and fees; a description of the financial
contribution of the municipality to the funding of redevelop-
ment expenditures, which contribution may include, but not be
necessarily limited to, incremental business and occupation
taxes generated from district; a description of the financial
contribution to the funding of redevelopment expenditures by
the county commission of the county in which the district is
situate; identification of any entities which the municipality
expects to relocate their business locations from the district to
another place in the state in connection with the establishment
of district: Provided, That for purposes of this article, any such
entities shall be designated “relocated entities”; a good faith
estimate of the aggregate amount of consumers sales and
service tax that was actually remitted to the tax commissioner
by all relocated entities with respect to their sales made and
services rendered from their business locations in the district for
the twelve full calendar months next preceding the date of the
application: Provided, That for purposes of this article, such
aggregate amount shall be designated as “the relocated tax
revenue amount”; a good faith estimate of the gross annual
district tax revenue amount; and the proposed application of
any surplus from all funding sources to further the objectives of
this article: Provided, That the amount of all redevelopment
expenditures proposed to be made in the first twenty-four
months following the creation of the district shall be not less
than fifty million dollars. The committee may establish other
criteria for approving such applications: Provided, That the
committee shall act to approve or not approve any such
application within thirty days following the receipt of the
application: Provided, however, That the committee may not
approve more than one application in the absence of further authorization of the Legislature.

(b) If the committee approves a municipality's downtown redevelopment district project application, it shall issue to the municipality a written certificate evidencing such approval: Provided, That such certificate shall expressly state a base tax revenue amount which, for purposes of this article shall be the difference between the gross annual district tax revenue amount and the relocated tax revenue amount all of which the council shall have determined with respect to such district's application based on such investigation as it may deem reasonable and necessary, including but not limited to any relevant information the council shall request from the tax commissioner and the tax commissioner shall provide to the council: Provided, however, That, in determining the base tax revenue amount, in lieu of confirmation from the tax commissioner of the gross annual district tax revenue amount, the council shall use the estimate of the gross annual district tax revenue amount provided by the municipality pursuant to subsection (a) of this section.

c) The council may promulgate rules to implement the downtown redevelopment district project application approval process and to describe the criteria and procedures it has established in connection therewith. These rules are not subject to the provisions of chapter twenty-nine-a of this code, but shall be filed with the secretary of state.

§8-13B-8. Establishment of the downtown redevelopment district fund; Legislature's authorization of establishment of district.

(a) There is hereby created a special revenue account in the state treasury, designated the "downtown redevelopment district fund," which shall be an interest-bearing account and shall be invested in the manner described in section nine-c, article six,
chapter twelve of the code, with the interest income a proper credit of the Fund. A separate and segregated sub-account within the account shall be established for each municipality’s downtown redevelopment district, which has been approved by the council and authorized by the Legislature pursuant to subsection (b) of this section. Funds paid into the account for the credit of any such sub-account may also be derived from the following sources:

(1) All interest or return on the investment accruing to the sub-account;

(2) Any gifts, grants, bequests, transfers, appropriations or donations which may be received from any governmental entity or unit or any person, firm, foundation, or corporation; and

(3) Any appropriations by the Legislature which may be made for this purpose.

(b) The Legislature may authorize the establishment of a downtown redevelopment district if the district has been approved by the council pursuant to section seven of this article. Once the establishment of the district has been authorized by the Legislature, the auditor shall thereafter, upon receipt of a monthly requisition from the district board, issue his warrant on the state treasurer for the funds requested from the district’s sub-account as provided in section eleven-a, article ten, chapter eleven of this code, to be applied for the purposes described in section five of this article, and the state treasurer shall pay the warrant out of the sub-account.

§8-13B-9. Ordinance to create district as approved by council and authorized by the Legislature.

(a) If a downtown redevelopment district project has been approved by the council, and the establishment of such a district has been authorized by the Legislature, all in accordance with
this article, the governing body of the municipality may create
the district by ordinance as provided for in article eleven of this
chapter: Provided, That the governing body may not amend,
alter or change in any manner the boundaries of the downtown
redevelopment district as approved by the council. In addition
to all other requirements, the ordinance shall contain the
following:

(1) The name of the district and a description of its bound-
aries;

(2) A summary of any proposed services to be provided and
capital improvements to be made within the district and a
reasonable estimate of any attendant costs;

(3) The base and rate of any special district excise tax that
may be imposed upon the businesses for the privilege of
operating within the district, which tax shall be passed on to and
paid by the consumer, and the manner in which the taxes will
be imposed, administered and collected, all of which shall be in
conformity with the requirements of this article; and

(4) The district board members' terms, their method of
appointment and a general description of the district board's
powers and duties: Provided, That such powers may include the
authority to (A) make and adopt all necessary bylaws and rules
for its organization and operations not inconsistent with any
applicable laws; (B) to elect its own officers, to appoint
committees and to employ and fix compensation for personnel
necessary for its operations; (C) to enter into contracts with any
person, agency, government entity, agency or instrumentality,
firm, partnership, limited partnership, limited liability company
or corporation, including both public and private corporations,
and for-profit and not-for-profit organizations, and generally to
do any and all things necessary or convenient for the purpose of
promoting, developing and advancing the purposes described in
section two of this article; (D) to amend or supplement any contracts or leases or to enter into new, additional or further contracts or leases upon such terms and conditions, for such consideration and for such term of duration, with or without option of renewal, as may be agreed upon by the district board and such person, agency, government entity, agency or instrumentality, firm, partnership, limited partnership, limited liability company or corporation; (E) unless otherwise provided for in, and subject to the provisions of, such contracts, or leases, to operate, repair, manage, and maintain such buildings and structures and provide adequate insurance of all types, and in connection with the primary use thereof and incidental thereto to provide such services, such as retail stores, and restaurants, and to effectuate such incidental purposes, grant leases, permits, concessions or other authorizations to any person or persons, upon such terms and conditions, for such consideration and for such term of duration as may be agreed upon by the district board and such person, agency, governmental department, firm or corporation; (F) to delegate any authority given to it by law to any of its officers, committees, agents or employees; (G) to apply for, receive and use grants-in-aid, donations and contributions from any source or sources, and to accept and use bequests, devises, gifts and donations from any person, firm or corporation; (H) to acquire real property by gift, purchase, or construction, or in any other lawful manner, and hold title thereto in its own name and to sell, lease or otherwise dispose of all or part of such real property which it may own, either by contract or at public auction, upon the approval by the district board; (I) to purchase or otherwise acquire, own, hold, sell, lease and dispose of all or part of any personal property which it may own, either by contract or at public auction; (J) pursuant to a determination by the district board that there exists a continuing need for redevelopment expenditures, and that moneys or funds of the district are necessary therefor, to borrow money and execute and deliver the district's negotiable notes
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and other evidences of indebtedness therefor, on such terms as the district shall determine, and give such security therefor as shall be requisite, including, without limitation, a pledge of the district’s rights in its sub-account of the downtown district redevelopment fund; (K) to acquire (either directly or on behalf of the municipality) an interest in any entity or entities that own any real property situate in the district, to contribute capital to such entity or entities and to exercise the rights of an owner with respect thereto; and (L) to expend its funds in the execution of the powers and authority herein given, which expenditures, by the means authorized herein, are hereby determined and declared as a matter of legislative finding to be for a public purpose and use, in the public interest, and for the general welfare of the people of West Virginia, to alleviate and prevent economic deterioration and to relieve the existing critical condition of unemployment existing within the state.

(b) The ordinance shall also state the general intention of the municipality to redevelop and increase services and to make capital improvements within the district.

§8-13B-10. District board; duties.

(a) The governing body of any municipality that has been authorized by the Legislature to establish a downtown redevelopment district, in accordance with this article, shall provide by ordinance for the appointment of a district board to oversee the operations of the district: Provided, That the governing body may, by ordinance in lieu of appointing a separate district board, designate itself to act as the district board. If a separate district board is to be appointed, it shall be made up of at least seven members, two of which shall be owners, or representatives of owners, of downtown property situated in the district, and the other five shall be residents of the county within which the municipality is located.
(b) The district board, in addition to the duties prescribed by the ordinance creating the improvement district, shall submit an annual report to the governing body and the council containing:

1. An itemized statement of its receipts and disbursements for the preceding fiscal year;
2. A description of its activities for the preceding fiscal year;
3. A recommended program of services to be performed and capital improvements to be made within the district for the coming fiscal year; and
4. A proposed budget to accomplish its objectives.

(c) Nothing in this article prohibits any member of the district board from also serving on the board of directors of a nonprofit corporation with which the municipality may contract to provide specified services within the district.

(d) Each member of the district board may receive reasonable compensation for services on the board, determined by the governing body of the municipality.

§8-13B-11. Special district excise tax authorized.

(a) The governing body of a municipality, authorized by the Legislature to establish a downtown redevelopment district, may, by ordinance, impose a special district excise tax on the privilege of selling tangible personal property and rendering selected services in the district in accordance with this section.

(h) The base of a special district excise tax imposed pursuant to this section shall be identical to the base of the consumers sales and service tax imposed pursuant to article
fifteen, chapter eleven of this code on sales made and services rendered within the boundaries of the district: Provided, That, except for the exemption provided in section nine-f of article fifteen, chapter eleven of this code, all exemptions and exceptions from the consumers sales and service tax shall also apply to the special district excise tax.

(c) The rate of a special district excise tax imposed pursuant to this section shall be provided in an ordinance adopted by the governing body of the municipality and shall be six cents on the dollar of sales and services subject to the tax.

d) The ordinance of a municipality imposing a special district excise tax shall provide procedures for the administration, assessment, collection and enforcement of the tax in conformity with similar provisions and requirements set forth in articles ten and fifteen, chapter eleven of this code, and to those procedures in article ten, chapter eleven of this code, and shall conform with such provisions as they relate to waiver of penalties and additions to tax: Provided, That the governing body of the municipality shall, in any such ordinance, also provide that the state tax commissioner shall administer, assess, collect and enforce a special district excise tax on behalf of and as the agent for the municipality as provided in section eleven-a, article ten, chapter eleven of this code.

e) The ordinance of a municipality imposing a special district excise tax shall provide that the tax commissioner shall deposit the net amount of tax collected in the special downtown redevelopment district fund to the credit of the municipality’s sub-account therein, and may only be used to pay for development expenditures provided under this article: Provided, That the state treasurer shall withhold from the municipality’s sub-account in the downtown redevelopment district fund, and shall deposit in the general revenue fund of this State, on or before the fifteenth day of each calendar month next following the
effect date of a special district excise tax, a sum equal to one-twelfth of the base tax revenue amount last certified by the council pursuant to section seven of this article.

(f) Any taxes imposed pursuant to the authority of this section shall be effective on the first day of the calendar month that begins on or after the date of adoption of an ordinance imposing such tax, or at such later date expressly designated in the ordinance that begins on the first day of a calendar month.

§8-13B-12. Modification of included area; notice; hearing.

(a) The ordinance creating a downtown redevelopment district may be amended to include additional downtown property only after such amendment has been approved by the council in the same manner as an application to approve the establishment of the district is acted upon under section seven of this article.

Additional property may not be included in the district unless it is situated within the boundaries of the municipality.

(b) The governing body of any municipality desiring to so amend its ordinance shall designate a time and place for a public hearing upon the proposal to include additional property. The notice shall meet the requirements set forth in section six of this article.

(c) At the time and place set forth in the notice, the governing body shall afford the opportunity to be heard to any owners of downtown property either currently included in or proposed to be added to the existing district and to any other residents of the municipality.

(d) Following such hearing, the governing body may, by resolution, apply to the council to approve inclusion of such additional property in the district.
(e) If the council shall approve inclusion of such additional property in the district, the governing body of the municipality may then amend its ordinance accordingly.

(f) All businesses and additional property included in a district shall thereafter be subject to all special district excise taxes whether currently existing or thereafter levied.

§8-13B-13. Abolishment and dissolution of district; notice; hearing.

(a) Except upon the express written consent of the council and of all the holders or obligees of any indebtedness or other instruments the proceeds of which were applied to any redevelopment expenditures or any indebtedness the payment of which is secured by revenues payable into the fund provided under section eight of this article or by any public property, a district may only be abolished by the governing body of the municipality when there is no outstanding indebtedness the proceeds of which were applied to any redevelopment expenditures or the payment of which is secured by revenues payable into the fund provided under section eight of this article, or by any public property, and following a public hearing upon the proposed abolishment. Notice of such hearing must be provided by first class mail to all owners of downtown property within the district and shall be published as a Class I-0 legal advertisement in compliance with article three, chapter fifty-nine of this code at least twenty days prior to the public hearing. Upon the abolishment of any downtown redevelopment district, any funds or other assets, contractual rights or obligations, claims against holders of indebtedness or other financial benefits, liabilities or obligations, existing after full payment has been made on all existing contracts, bonds, notes or other obligations of the district, shall be transferred to and assumed by the municipality. Any funds or other assets so transferred shall be
used for the benefit of the area included in the district being abolished.

(b) Following abolishment of a district pursuant to this section, its reinstatement shall require compliance with all requirements and procedures set forth in this article for the initial development, approval, establishment and creation of a district. Upon the dissolution of any downtown redevelopment district, any funds or other assets, contractual rights or obligations, claims against holders of indebtedness, or other financial benefits, liabilities or obligations of the district, existing after full payment has been made on all obligations of the district, shall be transferred and assumed by the municipality. Any funds or other assets so transferred shall be used for the benefit of the area included in the district being dissolved.

§8-13B-14. Bonds issued to finance downtown redevelopment district projects.

The governing body of a municipality may issue bonds or notes for the purpose of financing redevelopment expenditures, as described in section five of this article, with respect to one or more downtown redevelopment district projects within the municipality. All bonds issued by a municipality under the authority of this article shall be limited obligations of the municipality. No municipality may issue notes, bonds or other instruments for funding district projects or improvements that exceed a repayment schedule of forty years. The principal and interest on such bonds shall be payable out of the funds on deposit in the sub-account established for the downtown redevelopment district pursuant to section eight of this article, including without limitation any funds derived from the special district excise tax imposed by section eleven of this article, or other revenues derived from the downtown redevelopment project to the extent pledged for such purpose by the governing body of the municipality in the resolution authorizing the
bonds. To the extent that the average daily amount on deposit in the sub-account established for a district pursuant to section eight of this article exceeds, for more than six consecutive calendar months, the sum of (1) one hundred thousand dollars, plus (2) the amount required to be kept on deposit pursuant to the documents authorizing, securing or otherwise relating to the bonds or notes issued under this section, then such excess shall be used by the district either to redeem the bonds or notes previously issued or shall be remitted to the general fund of this state. The bonds and any interest coupons issued under the authority of this article shall never constitute an indebtedness of the municipality issuing the same within the meaning of any constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the municipality issuing the same. Neither shall such bond nor interest thereon be a charge against the general credit or taxing powers of the municipality and such fact shall be plainly stated on the face of each such bond. Such bonds may be executed, issued and delivered at any time and from time to time; may be in such form and denomination; may be of such tenor, must be negotiable but may be registered as to the principal thereof or as to the principal and interest thereof; may be payable in such amounts and at such time or times; may be payable at such place or places; may bear interest at such rate or rates payable at such place or places and evidenced in such manner; and may contain such provisions therein not inconsistent herewith, all as shall be provided in the proceedings of the governing body of the municipality whereunder the bonds shall be authorized to be issued. Said bonds may be sold by the governing body of the municipality at public or private sale at, above or below par, as the governing body of the municipality shall authorize.

The bonds issued pursuant to this article shall be signed by the mayor or other chief officer thereof and attested by the clerk, recorder or other official custodian of the records of said municipality and under the seal of the municipality. Any
coupons attached thereto shall bear the facsimile signature of
the mayor or other chief officer of the municipality. In case any
of the officials whose signatures appear on the bonds or
coupons shall cease to be such officers before the delivery of
such bonds, such signatures shall, nevertheless, be valid and
sufficient for all purposes to the same extent as if they had
remained in office until such delivery.

If the proceeds of such bonds, by error of calculation or
otherwise, shall be less than the cost of the downtown redevelop-
ment district project, or if additional real or personal property
is to be added to the downtown redevelopment district project
or if it is determined that financing is needed for additional
redevelopment expenditures, additional bonds may in like
manner be issued to provide the amount of the deficiency, or to
defray the cost of acquiring or financing such additional real or
personal property or such redevelopment expenditures, and
unless otherwise provided for in the trust agreement, mortgage
or deed of trust, shall be deemed to be of the same issue, and
shall be entitled to payment from the same fund, without
preference or priority, and shall be of equal priority as to any
security.


Unless the governing body of the municipality shall
otherwise determine in the resolution authorizing the issuance
of the revenue bonds under the authority of this article, there is
hereby created a statutory lien upon the sub-account created
pursuant to section eight of this article and all special district
excise tax revenues collected for the benefit of the district
pursuant to section eleven-a, article ten, chapter eleven of this
code, for the purpose of securing the principal of said bonds and
the interest thereon. The principal of and interest on any bonds
issued under the authority of this article shall be secured by a
pledge of the special district excise tax revenues derived from
the downtown redevelopment district project by the governing body of the municipality issuing such bonds to the extent provided in the resolution adopted by the governing body of the municipality authorizing the issuance of the bonds. In the discretion and at the option of the municipality, such revenue bonds may also be secured by a trust indenture by and between the municipality and a corporate trustee, which may be a trust company or bank having trust powers, within or without the State of West Virginia. The governing body may authorize the issuance of such revenue bonds by resolution. The resolution authorizing the revenue bonds and fixing the details thereof may provide that such trust indenture may contain such provisions for the protection and enforcing the rights and remedies of the bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the municipality in relation to the construction, acquisition or financing of a downtown redevelopment district project, or part thereof, or an addition thereto, and the improvement, repair, maintenance and insurance thereof, and for the custody, safeguarding and application of all moneys, and may provide that the downtown redevelopment district project shall be constructed and paid for under the supervision and approval of the consulting engineers or architects employed and designated by the governing body or, if directed by the governing body in the resolution, by the district board, and satisfactory to the purchasers of the bonds, their successors, assigns or nominees, who may require the security given by any contractor or any depository of the proceeds of the bonds or the revenues received from the downtown redevelopment district project be satisfactory to such purchasers, their successors, assigns or nominees. Such indenture may set forth the rights and remedies of the bondholders, the municipality or such trustee, and said indenture may provide for accelerating the maturity of the revenue bonds, at the option of the bondholders or the governmental body issuing the same, upon default in the payment of
the amounts due under the bonds. The governing body may also provide by resolution and in such trust indenture for the payment of the proceeds of the sale of the bonds and the revenues from the downtown redevelopment district project to such depository as it may determine, for the custody and investment thereof and for the method of distribution thereof, with such safeguards and restrictions as it may determine to be necessary or advisable for the protection thereof and upon the filing of a certified copy of such resolution or of the indenture for record in the office of the clerk of the county commission of the county in which a downtown redevelopment district project is located, the same shall have the same effect, as to notice, as the recordation of a deed of trust or other recordable instrument. In the event that more than one such certified resolution or indenture is so recorded, the security interest granted by the first such recorded resolution or indenture shall have priority in the same manner as an earlier filed deed of trust except to the extent such earlier recorded resolution or indenture provides otherwise.

In addition to or in lieu of the indenture provided for hereinabove the principal of and interest on said bonds may, but need not, be secured by a mortgage or deed of trust covering all or any part of the downtown redevelopment district project from which the revenues so pledged may be derived, and the same may be secured by an assignment or pledge of the income received from the downtown redevelopment district project. The proceedings under which such bonds are authorized to be issued, when secured by a mortgage or deed of trust, may contain the same terms, conditions and provisions provided for herein when an indenture is entered into between the governing body and a trustee and any such mortgage or deed of trust may contain any agreements and provisions customarily contained in instruments securing bonds, including, without limiting the generality of the foregoing, provisions respecting the fixing and collection of revenues from the downtown redevelopment
district project covered by such proceedings or mortgage, the
terms to be incorporated in any lease, sale or financing agree-
ment with respect to such downtown redevelopment district
project, the improvement, repair, maintenance and insurance of
such downtown redevelopment district project, the creation and
maintenance of special funds from the revenues received from
the downtown redevelopment district project and the rights and
remedies available in event of default to the bondholders, the
governing body, or to the trustee under an agreement, indenture,
mortgage or deed of trust, all as the governing body shall deem
advisable and as shall not be in conflict with the provisions of
this article or any existing law: Provided, That in making any
such agreements or provisions a municipality shall not have the
power to incur original indebtedness by indenture, ordinance,
resolution, mortgage or deed of trust, except with respect to the
downtown redevelopment district project and the application of
the revenues therefrom, and shall not have the power to incur a
pecuniary liability or a charge upon its general credit or against
its taxing powers unless approved by the voters in accordance
with article one, chapter thirteen of this code, or as otherwise
permitted by the Constitution of this State. The proceedings
authorizing any bonds hereunder and any indenture, mortgage
or deed of trust securing such bonds may provide that, in the
event of default in payment of the principal of or the interest on
such bonds or in the performance of any agreement contained
in such proceedings, indenture, mortgage or deed of trust, such
payment and performance may be enforced by the appointment
of a receiver in equity with power to charge and collect rents or
other amounts and to apply the revenues from the downtown
redevelopment district project in accordance with such proceed-
ings or the provisions of such agreement, indenture, mortgage
or deed of trust. Any such agreement, indenture, mortgage or
deed of trust may provide also that, in the event of default in
such payment or the violation of any agreement contained in the
mortgage or deed of trust, the agreement, indenture, mortgage
or deed of trust may be foreclosed either by sale at public
outcry or by proceedings in equity and may provide that the
holder or holders of any of the bonds secured thereby may
become the purchaser at any foreclosure sale, if the highest
bidder therefor. No breach of any such agreement, indenture,
mortgage or deed of trust shall impose any pecuniary liability
upon a municipality or any charge upon its general credit or
against its taxing powers.


The revenue bonds issued pursuant to this article may
contain a provision therein to the effect that they, or any of
them, may be called for redemption at any time prior to
maturity by the municipality, and at such redemption prices, or
premiums, which terms shall be stated in the bond.

§8-13B-17. Refunding bonds.

Any bonds issued hereunder and at any time outstanding
may at any time and from time to time be refunded by a
municipality by the issuance of its refunding bonds in such
amount as the governing body may deem necessary to refund
the principal of the bonds so to be refunded, together with any
unpaid interest thereon; to make any improvements or alter-
ations in the downtown redevelopment district project; and any
premiums and commissions necessary to be paid in connection
therewith. Any such refunding may be effected whether the
bonds to be refunded shall have then matured or shall thereafter
mature, either by sale of the refunding bonds and the applica-
tion of the proceeds thereof for the redemption of the bonds to
be refunded thereby, or by exchange of the refunding bonds for
the bonds to be refunded thereby: Provided, That the holders of
any bonds so to be refunded shall not be compelled without
their consent to surrender their bonds for payment or exchange
prior to the date on which they are payable or, if they are called
for redemption, prior to the date on which they are by their terms subject to redemption. Any refunding bonds issued under the authority of this article shall be subject to the provisions contained in section fourteen of this article and shall be secured in accordance with the provisions of section fifteen of this article.

§8-13B-18. Use of proceeds from sale of bonds.

The proceeds from the sale of any bonds issued under authority of this article shall be applied only for the purpose for which the bonds were issued: Provided, That any accrued interest received in any such sale shall be applied to the payment of the interest on the bonds sold: Provided, however, That if for any reason any portion of such proceeds may not be needed for the purpose for which the bonds were issued, then such unneeded portion of said proceeds may be applied to the purchase of bonds for cancellation or payment of the principal of or the interest on said bonds, or held in reserve for the payment thereof. The costs that may be paid with the proceeds of the bonds include all redevelopment costs described in section five of this article and may also include but not be limited to the following: The cost of acquiring any real estate deemed necessary, the actual cost of the construction of any part of a downtown redevelopment district project which may be constructed, including architects’, engineers’, financial or other consultants’ and legal fees, the purchase price or rental of any part of a downtown redevelopment district project that may be acquired by purchase or lease, all expense incurred in connection with the authorization, sale and issuance of the bonds to finance such acquisition, and the interest on such bonds for a reasonable time prior to construction, during construction, and for not exceeding twelve months after completion of construction and any other costs and expenses reasonably necessary in the establishment and acquisition of
27 such downtown redevelopment district project and the financing thereof.


1 Bonds issued under the provisions of this article shall be legal investments for banks, building and loan associations, and insurance companies organized under the laws of this State and for a business development corporation organized pursuant to chapter thirty-one, article fourteen of this code.

§8-13B-20. Exemption from taxation.

1 The revenue bonds issued pursuant to this article and the income therefrom shall be exempt from taxation except inheritance, estate and transfer taxes; and the real and personal property which a municipality or district board may acquire pursuant to the provisions of this article, shall be exempt from taxation by the State, or any county, municipality, or other levying body, as public property, so long as the same is owned by such municipality or district board.

CHAPTER 11. TAXATION.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-5s. Disclosure of certain taxpayer information.

1 (a) Purpose. - The Legislature hereby recognizes the importance of confidentiality of taxpayer information as a protection of taxpayers' privacy rights and to enhance voluntary compliance with the tax law. The Legislature also recognizes the citizens' right to accountable and efficient state government. To accomplish these ends, the Legislature hereby creates certain exceptions to the general principle of confidentiality of taxpayer information.

9 (b) Exceptions to confidentiality.
(1) Notwithstanding any provision in this code to the contrary, the tax commissioner shall publish in the state register the name and address of every taxpayer, and the amount, by category, of any credit asserted on a tax return under articles thirteen-c, thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-q, thirteen-r and thirteen-s of this chapter and article one, chapter five-e of this code. The categories by dollar amount of credit received shall be as follows:

(A) More than $1.00, but not more than $50,000;
(B) More than $50,000, but not more than $100,000;
(C) More than $100,000, but not more than $250,000;
(D) More than $250,000, but not more than $500,000;
(E) More than $500,000, but not more than $1,000,000; and
(F) More than $1,000,000.

(2) Notwithstanding any provision in this code to the contrary, the tax commissioner shall publish in the state register the following information regarding any compromise of a pending civil tax case that occurs on or after the effective date of this section in which the tax commissioner is required to seek the written recommendation of the attorney general and the attorney general has not recommended acceptance of the compromise or when the tax commissioner compromises any civil tax case for an amount that is more than two hundred fifty thousand dollars less than the assessment of tax owed made by the tax commissioner:

(A) The names and addresses of taxpayers that are parties to the compromise;

(B) A summary of the compromise;
(C) Any written advice or recommendation rendered by the attorney general regarding the compromise; and

(D) Any written advice or recommendation rendered by the tax commissioner's staff.

Under no circumstances may the tax return of the taxpayer or any other information which would otherwise be confidential under any other provisions of law be disclosed pursuant to the provisions of this subsection.

(3) Notwithstanding any provision in this code to the contrary, the tax commissioner may disclose any relevant return information to the prosecuting attorney for the county in which venue lies for a criminal tax offense when there is reasonable cause, based upon and substantiated by the return information, to believe that a criminal tax law has been or is being violated.

(4) Notwithstanding any provision in this code to the contrary, the tax commissioner may enter into written exchange of information agreements with the commissioners of labor, employment security and workers' compensation to disclose and receive return information: Provided, That the tax commissioner may promulgate rules pursuant to chapter twenty-nine-a of this code regarding further agencies with which written exchange of information agreements may be sought: Provided, however, That the tax commissioner may not promulgate emergency rules regarding further agencies with which written exchange of information agreements may be sought. The agreements shall be published in the state register and shall only be for the purpose of facilitating premium collection, tax collection and facilitating licensure requirements directly enforced, administered or collected by the respective agencies. The provisions of this subsection shall not be construed to preclude or limit disclosure of tax information authorized by other provisions of this code. Any confidential return informa-
tion so disclosed shall remain confidential in the hands of the
other division to the extent provided by section five-d of this
article and by other applicable federal or state laws.

(5) Notwithstanding any provision of this code to the
contrary, the tax commissioner may enter into a written
agreement with the state treasurer to disclose to the state
treasurer the following business registration information:

A

The names, addresses and federal employer identifica-
tion numbers of businesses which have registered to do
business in West Virginia; and

B

The type of business activity and organization of those
businesses. Disclosure of this information shall begin as soon
as practicable after the effective date of this subsection and may
be used only for the purpose of recovery and disposition of
unclaimed property in accordance with the provisions of article
eight, chapter thirty-six of this code. The provisions of this
subsection shall not be construed to preclude or limit disclosure
of tax information authorized by other provisions of this code.
Any confidential return information disclosed hereunder or
thereunder shall otherwise remain confidential to the extent
provided by section five-d of this article and by other applicable
federal or state laws.

(c) Tax expenditure reports. - Beginning on the fifteenth
day of January, one thousand nine hundred ninety-two and
every fifteenth day of January thereafter, the governor shall
submit to the president of the Senate and the speaker of the
House of Delegates a tax expenditure report. This report shall
expressly identify all tax expenditures. Within three-year
cycles, the reports shall be considered together to analyze all
tax expenditures by describing the annual revenue loss and
benefits of the tax expenditure based upon information avail-
able to the tax commissioner. For purposes of this section, the
term “tax expenditure” shall mean a provision in the tax laws administered under this article, including, but not limited to, exclusions, deductions, tax preferences, credits and deferrals designed to encourage certain kinds of activities or to aid taxpayers in special circumstances: Provided, That the tax commissioner shall promulgate rules setting forth the procedure by which he or she will compile the reports and setting forth a priority for the order in which the reports will be compiled according to type of tax expenditure.

(d) Federal and state return information confidential. Notwithstanding any other provisions of this section or of this code, no return information made available to the tax commissioner by the Internal Revenue Service or department or agency of any other state may be disclosed to another person in any manner inconsistent with the provisions of Section 6103 of the Internal Revenue Code of 1986, as amended, or of the other states’ confidentiality laws.

§11-10-11a. Administration of special district excise tax; commission authorized.

(a) Any municipality which, pursuant to section eleven, article thirteen-b, chapter eight of this code, imposes a special district excise tax, shall, by express provision in the ordinance imposing that tax, authorize the state tax commissioner to administer, assess, collect and enforce that tax on behalf of and as its agent. The municipality shall make such authorization by the adoption of a provision in its special district excise tax ordinance stating its purpose and referring to this section, and providing that such ordinance shall be effective on the first day of a month at least sixty days after its adoption. A certified copy of such ordinance shall be forwarded to the tax commissioner so that it will be received within five days after its adoption.
(b) Any special district excise tax administered under this section shall be administered and collected by the tax commission- er in the same manner and subject to the same interest, additions to tax and penalties as provided for the tax imposed in article fifteen of this chapter.

(c) All special district excise tax moneys collected by the tax commissioner under this section shall be paid into the state treasury to the credit of each municipality's sub-account in the downtown redevelopment district fund created pursuant to section eight, article thirteen-b, chapter eight of this code. Such special district excise tax moneys shall be credited to the sub-account of each particular municipality levying a special district excise tax being administered under this section. The credit shall be made to the sub-account of the municipality in which the taxable sales were made and services rendered as shown by the records of the tax commissioner and certified by him or her monthly to the state treasurer, namely, the location of each place of business of every vendor collecting and paying the tax to the tax commissioner without regard to the place of possible use by the purchaser.

(d) As soon as practicable after the special district excise tax moneys have been paid into the state treasury in any month for the preceding reporting period, the district board may issue a requisition to the auditor requesting issuance of a state warrant for the proper amount in favor of each municipality entitled to the monthly remittance of its special district excise tax moneys. Upon receipt of the requisition, the auditor shall issue his warrant on the state treasurer for the funds requested, and the state treasurer shall pay the warrant out of the sub-account. If errors are made in any such payment, or adjustments are otherwise necessary, whether attributable to refunds to taxpayers, or to some other fact, the errors shall be corrected and adjustments made in the payments for the next six months as follows: one-sixth of the total adjustment shall be included
in the payments for the next six months. In addition, the payment shall include a refund of amounts erroneously not paid to the municipality and not previously remitted during the three years preceding the discovery of the error. A correction and adjustment in payments described in this subsection due to the misallocation of funds by the vendor shall be made within three years of the date of the payment error.

(e) Notwithstanding any other provision of this code to the contrary, the tax commissioner shall deduct, and retain for the benefit of his office for expenditure pursuant to appropriation of the Legislature, from each payment into the state treasury as provided in subsection (c) of this section, one percent thereof as a commission to compensate his or her office for the discharge of the duties described in this section.

ARTICLE 13C. BUSINESS INVESTMENT AND JOBS EXPANSION TAX CREDIT.

§11-13C-16. Termination of credit; effective date.

(a) Notwithstanding any other provision of this article to the contrary, no entitlement to any tax credit under this article may result from, and no credit is available to any taxpayer for, investment placed in service or use after the thirty-first day of December, two thousand two.

(b) Notwithstanding the provisions of subsection (a) of this section, the provisions of sections one through fifteen of this article continue to apply to taxpayers that have gained entitlement to the credit pursuant to the placement of qualified investment into service or use prior to the first day of January, two thousand three.

(c) Transition rules. — The general rule stated in subsection (a) of this section does not apply:
(1) To qualified investment property placed in service or use prior to the first day of January, two thousand three.

(2) To property purchased or leased for business expansion that is placed in service or use on or after the first day of January, two thousand three, if at least one of the following clauses applies to the property:

(A) The new or expanded business facility was constructed, reconstructed or erected, pursuant to a written construction contract executed prior to the first day of January, two thousand three, as limited to the provisions of the contract as of that date then binding on the taxpayer, but only to the extent the new or expanded business facility is placed in service or use prior to the first day of January, two thousand four;

(B) The new or expanded business facility that is part of a project described in subdivision (1), subsection (a), section four-b of this article, was constructed, reconstructed or erected, pursuant to a written construction contract executed prior to the first day of January, two thousand three, as limited to the provisions of the contract as of that date then binding on the taxpayer: Provided, That only that portion of the contract price attributable to that percentage of the construction contract completed prior to the first day of January, two thousand four, (determined under principles set forth in section 460(b) of the Internal Revenue Code of 1986, as in effect before the first day of January, two thousand three), which is placed in service or use prior to the first day of January, two thousand four, may be treated as property purchased for business expansion under section six of this article;

(C) The new or expanded business facility was purchased or leased pursuant to a written contract executed prior to the first day of January, two thousand three, as limited to the provisions then binding on the taxpayer as of that date, but only
to the extent the new or expanded business facility is placed in
service or use prior to the first day of January, two thousand
four; or

(D) The machinery or equipment or other tangible personal
property purchased or leased for business expansion at a new or
expanded business facility was purchased or leased by the
taxpayer pursuant to a written contract to purchase or lease
identifiable tangible personal property executed before the first
day of January, two thousand three, as limited to the provisions
of the written contract then binding on the taxpayer, but only to
the extent the tangible personal property purchased or leased
under the contract is placed in service or use before the first day
of January, two thousand four.

(d) Notice of election required. — Any person intending to
claim credit under one or more of the transition rules provided
in subsection (c) of this section shall file written notice of his or
her intention with the tax commissioner on or before the thirty-
first day of December, two thousand two. In the case of a
multiparticipant project, this notice may be filed by the manag-
ing project participant on behalf of all participants in the
project. Notice is to be in a form prescribed by the tax commis-
sioner and all information required by the form is to be pro-
vided.

(e) Failure to file notice. — If any person fails to timely file
the notice required by subsection (d) of this section, that person
is precluded from claiming credit under article thirteen-c for
investment property placed in service or use after the thirty-first
day of December, two thousand two, and may claim credit
under article thirteen-q of this chapter to the extent credit is
allowable under that article.

ARTICLE 13D. TAX CREDITS FOR INDUSTRIAL EXPANSION AND
REVITALIZATION, RESEARCH AND DEVELOPMENT
PROJECTS, CERTAIN HOUSING DEVELOPMENT
§11-13D-10. Termination of credit, exception for electricity producers, preservation of entitlements.

(a) Except for persons taxable under section two-o, article thirteen of this chapter as described in subsection (b) of this section and persons described in subsection (c) of this section, no credit is available to any taxpayer under this article after the thirty-first day of December, two thousand two.

(b) Persons taxable under section two-o, article thirteen of this chapter that make eligible investment that qualifies for credit in accordance with the provisions of subdivision (e), section three of this article in property used in the business activity taxable under section two-o, article thirteen of this chapter, are entitled to the credit determined under subdivision (e), section three of this article, in accordance with the requirements and limitations of this article, without regard to whether such investment is made or credit claimed after the thirty-first day of December, two thousand two.

(c) Taxpayers who gained entitlement to any tax credit pursuant to the terms of this article prior to the first day of January, two thousand three, retain that entitlement, and may apply the credit in due course pursuant to the requirements and limitations of this article until the original ten-year entitlement has been exhausted or otherwise terminated.

ARTICLE 13N. TAX CREDIT FOR NEW STEEL MANUFACTURING OPERATIONS AFTER JULY 1, 1998.

§11-13N-4. Amount of credit allowed; expiration of the credit.
Credit allowable. — The amount of annual credit allowable under this article to an eligible taxpayer is two hundred fifty dollars for each new job at a new value-added steel product manufacturing facility located in this state, or at a new value-added steel product line of an existing manufacturing facility located in this state, that is filled by a full-time employee of the eligible taxpayer during the taxable year, subject to the following:

(1) When the new value-added steel product manufacturing facility, or the new steel product line of an existing value-added steel product manufacturing facility, is in operation for less than twelve months of the taxable year in which it is placed in service, the credit allowed by subsection (a) of this section shall be prorated by the ratio that the number of months in the taxpayer’s taxable year during which the new value-added steel products facility, or the new products line of an existing value-added steel product manufacturing facility, was in service bears to twelve.

(2) When the eligible taxpayer stops manufacturing value-added steel products at the new value-added steel product manufacturing facility, or at the new steel product line of an existing value-added steel product manufacturing facility, during the taxable year, the credit allowed by subsection (a) of this section shall be prorated by the ratio that the number of months in the taxpayer’s taxable year during which the new value-added steel products facility, or the new products line of an existing value-added steel product manufacturing facility, was in operation manufacturing value-added steel product bears to twelve.

(3) When determining the number of full-time employees who fill new jobs at the new value-added steel product manufacturing facility located in this state, or who fill new jobs at a new value-added steel product line of an existing manufacturing
facility located in this state, the eligible taxpayer may not include any position occupied by any employee of the eligible taxpayer, or of a related person, which existed in this state as of the first day of the second calendar month preceding the calendar month in which the new value-added steel product manufacturing facility, or a new value-added steel product line at an existing value-added steel products manufacturing facility first becomes operational, whether the positions are filled by permanent, seasonal, temporary or part-time employees.

(4) The amount of credit allowable each taxable year is calculated annually based upon the number of new jobs filled by full-time employees during the taxable year: Provided, That the credit provided for in this article may only be taken one time for each new job created, and once claimed in a tax year for a new job the credit may not be claimed in a subsequent year for that position.

(b) Expiration of credit. — This credit expires on the first day of July, two thousand two. When the first day of July in the year two thousand two falls during the taxable year of the eligible taxpayer, the amount of credit allowable for that taxable year shall be limited to that portion of the amount of credit that would have been allowable had the credit not expired multiplied by the ratio of the number of months during taxpayers taxable year ending before the first day of July, two thousand two, bears to twelve.

ARTICLE 13Q. ECONOMIC OPPORTUNITY TAX CREDIT.

§11-13Q-1. Short title.

This article may be cited as the “West Virginia Economic Opportunity Tax Credit Act.”

§11-13Q-2. Legislative finding and purpose.
The Legislature finds that the encouragement of economic opportunity in this state is in the public interest and promotes the general welfare of the people of this state. In order to encourage greater capital investment in businesses in this state and thereby increase economic opportunity in this state, there is hereby enacted the economic opportunity tax credit.

§11-13Q-3. Definitions.

(a) General. — When used in this article, or in the administration of this article, terms defined in subsection (b) have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition, in this article.

(b) Terms defined.

(1) Business. — The term "business" means any activity which is engaged in by any person in this state which is taxable under article thirteen, twenty-one, twenty-three or twenty-four of this chapter (or any combination of those articles of this chapter).

(2) Business expansion. — The term "business expansion" means capital investment in a new or expanded business facility in this state.

(3) Business facility. — The term "business facility" means any factory, mill, plant, refinery, warehouse, building or complex of buildings located within this state, including the land on which it is located, and all machinery, equipment and other real and personal property located at or within the facility, used in connection with the operation of the facility, in a business that is taxable in this state, and all site preparation and start-up costs of the taxpayer for the business facility which it capitalizes for federal income tax purposes.
(4) **Commissioner or tax commissioner.** — The terms “commissioner” and “tax commissioner” are used interchangeably herein and mean the tax commissioner of the state of West Virginia, or his or her designee.

(5) **Compensation.** — The term “compensation” means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(6) **Controlled group.** — The term “controlled group” means one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least fifty percent of the voting power of all classes of stock of each of the corporations is owned directly or indirectly by one or more of the corporations; and the common parent owns directly stock possessing at least fifty percent of the voting power of all classes of stock of at least one of the other corporations.

(7) **Corporation.** — The term “corporation” means any corporation, joint-stock company or association, and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument.

(8) **Designee.** — The term “designee” in the phrase “or his designee,” when used in reference to the commissioner, means any officer or employee of the state tax department duly authorized by the commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article.

(9) **Eligible taxpayer.** — The term “eligible taxpayer” means any person who makes qualified investment in a new or expanded business facility located in this state and creates at least the required number of new jobs and who is subject to any
of the taxes imposed by articles thirteen, twenty-one, twenty-three and twenty-four of this chapter (or any combination of those articles). "Eligible taxpayer" shall also include an affiliated group of taxpayers if the group elects to file a consolidated corporation net income tax return under article twenty-four of this chapter.

(10) **Expanded facility.** -- The term "expanded facility" means any business facility (other than a new or replacement business facility) resulting from the acquisition, construction, reconstruction, installation or erection of improvements or additions to existing property if the improvements or additions are purchased on or after the first day of January, two thousand three, but only to the extent of the taxpayer's qualified investment in the improvements or additions.

(11) **Includes and including.** -- The terms "includes" and "including," when used in a definition contained in this article, shall not be considered to exclude other things otherwise within the meaning of the term defined.

(12) **Leased property.** -- The term "leased property" does not include property which the taxpayer is required to show on its books and records as an asset under generally accepted principles of financial accounting. If the taxpayer is prohibited from expensing the lease payments for federal income tax purposes, the property shall be treated as purchased property under this section.

(13) **New business facility.** -- The term "new business facility" means a business facility which satisfies all the requirements of paragraphs (A), (B), (C) and (D) of this subdivision.

(A) The facility is employed by the taxpayer in the conduct of a business the net income of which is or would be taxable
under article twenty-one or twenty-four of this chapter. The
facility is not considered a new business facility in the hands of
the taxpayer if the taxpayer's only activity with respect to the
facility is to lease it to another person or persons.

(B) The facility is purchased by, or leased to, the taxpayer
on or after the first day of January, two thousand three.

(C) The facility was not purchased or leased by the taxpayer
from a related person. The commissioner may waive this
requirement if the facility was acquired from a related party for
its fair market value and the acquisition was not tax motivated.

(D) The facility was not in service or use during the ninety
days immediately prior to transfer of the title to the facility, or
prior to the commencement of the term of the lease of the
facility: Provided, That this ninety-day period may be waived
by the commissioner if the commissioner determines that
persons employed at the facility may be treated as “new
employees” as that term is defined in this subsection.

(14) New employee. –

(A) The term “new employee” means a person residing and
domiciled in this state, hired by the taxpayer to fill a position or
a job in this state which previously did not exist in the tax-
payer’s business enterprise in this state prior to the date on
which the taxpayer’s qualified investment is placed in service
or use in this state. In no case may the number of new employ-
ees directly attributable to the investment for purposes of this
credit exceed the total net increase in the taxpayer’s employ-
ment in this state: Provided, That the commissioner may
require that the net increase in the taxpayer’s employment in
this state be determined and certified for the taxpayer’s con-
trolled group: Provided, however, That persons filling jobs
saved as a direct result of taxpayer’s qualified investment in
property purchased or leased for business expansion may be treated as new employees filling new jobs if the taxpayer certifies the material facts to the commissioner and the commissioner expressly finds that:

(i) But for the new employer purchasing the assets of a business in bankruptcy under chapter seven or eleven of the United States bankruptcy code and the new employer making qualified investment in property purchased or leased for business expansion, the assets would have been sold by the United States bankruptcy court in a liquidation sale and the jobs saved would have been lost; or

(ii) But for the taxpayer's qualified investment in property purchased or leased for business expansion in this state, the taxpayer would have closed its business facility in this state and the employees of the taxpayer located at the facility would have lost their jobs: Provided, That the commissioner may not make this certification unless the commissioner finds that the taxpayer is insolvent as defined in 11 U.S.C. §101(32) or that the taxpayer's business facility was destroyed, in whole or in significant part, by fire, flood or other act of God.

(B) A person is considered to be a “new employee” only if the person’s duties in connection with the operation of the business facility are on:

(i) A regular, full-time and permanent basis:

(I) “Full-time employment” means employment for at least one hundred forty hours per month at a wage not less than the prevailing state or federal minimum wage, depending on which minimum wage provision is applicable to the business;

(II) “Permanent employment” does not include employment that is temporary or seasonal and therefore the wages, salaries and other compensation paid to the temporary or seasonal
employees will not be considered for purposes of sections five and seven of this article; or

(ii) A regular, part-time and permanent basis: Provided, that the person is customarily performing the duties at least twenty hours per week for at least six months during the taxable year.

(15) New job. — The term “new job” means a job which did not exist in the business of the taxpayer in this state prior to the taxpayer’s qualified investment being made, and which is filled by a new employee.

(16) New property. — The term “new property” means:

(A) Property, the construction, reconstruction or erection of which is completed on or after the first day of January, two thousand three, and placed in service or use after that date; and

(B) Property leased or acquired by the taxpayer that is placed in service or use in this state on or after the first day of January, two thousand three, if the original use of the property commences with the taxpayer and commences after that date.

(17) Original use. — The term “original use” means the first use to which the property is put, whether or not the use corresponds to the use of the property by the taxpayer.

(18) Partnership and partner. — The term “partnership” includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, financial operation or venture is carried on, and which is not a trust or estate, a corporation or a sole proprietorship. The term “partner” includes a member in such a syndicate, group, pool, joint venture or other organization.
(19) *Person.* — The term "person" includes any natural
person, corporation or partnership.

(20) *Property purchased or leased for business expansion.*

(A) *Included property.* — Except as provided in paragraph
(B), the term "property purchased or leased for business
expansion" means real property and improvements thereto, and
tangible personal property, but only if the real or personal
property was constructed, purchased, or leased and placed in
service or use by the taxpayer, for use as a component part of a
new or expanded business facility as defined in this section,
which is located within the state of West Virginia. This term
includes only:

(1) Real property and improvements thereto having a useful
life of four or more years, placed in service or use on or after
the first day of January, two thousand three, by the taxpayer.

(2) Real property and improvements thereto, acquired by
written lease having a primary term of ten or more years and
placed in service or use by the taxpayer on or after the first day
of January, two thousand three.

(3) Tangible personal property placed in service or use by
the taxpayer on or after the first day of January, two thousand
three, with respect to which depreciation, or amortization in lieu
of depreciation, is allowable in determining the personal or
corporation net income tax liability of the business taxpayer
under article twenty-one or twenty-four of this chapter, and
which has a useful life, at the time the property is placed in
service or use in the state, of four or more years.

(4) Tangible personal property acquired by written lease
having a primary term of four years or longer, that commenced
and was executed by the parties thereto on or after the first day
of January, two thousand three, if used as a component part of
a new or expanded business facility, shall be included within this definition.

(5) Tangible personal property owned or leased, and used by the taxpayer at a business location outside the state which is moved into the state of West Virginia on or after the first day of January, two thousand three, for use as a component part of a new or expanded business facility located in the state: Provided, That if the property is owned, it must be depreciable or amortizable personal property for income tax purposes, and have a useful life of four or more years remaining at the time it is placed in service or use in the state, and if the property is leased, the primary term of the lease remaining at the time the leased property is placed in service or use in the state, must be four or more years.

(B) Excluded property. — The term “property purchased or leased for business expansion” does not include:

(i) Property owned or leased by the taxpayer and for which the taxpayer was previously allowed tax credit under article thirteen-c, thirteen-d or thirteen-e of this chapter, or the tax credits allowed by this article.

(ii) Property owned or leased by the taxpayer and for which the seller, lessor, or other transferor, was previously allowed tax credit under article thirteen-c, thirteen-d or thirteen-e of this chapter, or the tax credits allowed by this article.

(iii) Repair costs, including materials used in the repair, unless for federal income tax purposes the cost of the repair must be capitalized and not expensed.

(iv) Airplanes.

(v) Property which is primarily used outside the state, with use being determined based upon the amount of time the property is actually used both within and outside the state.

(vi) Property which is acquired incident to the purchase of the stock or assets of the seller, unless for good cause shown, the commissioner consents to waiving this requirement.

(vii) Natural resources in place.

(viii) Purchased or leased property, the cost or consideration for which cannot be quantified with any reasonable degree of accuracy at the time the property is placed in service or use: Provided, That when the contract of purchase or lease specifies a minimum purchase price or minimum annual rent the amount thereof shall be used to determine the qualified investment in the property under section eight of this article if the property otherwise qualifies as property purchased or leased for business expansion.

(21) Purchase. — The term "purchase" means any acquisition of property, but only if:

(A) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under section 267 or 707 (b) of the United States Internal Revenue Code of 1986, as amended, and in effect on the first day of January, two thousand three.

(B) The property is not acquired by one component member of a controlled group from another component member of the same controlled group. The commissioner can waive this requirement if the property was acquired from a related party for its then fair market value; and
(C) The basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined:

(i) In whole or in part by reference to the federal adjusted basis of the property in the hands of the person from whom it was acquired; or

(ii) Under Section 1014(e) of the United States Internal Revenue Code of 1986, as amended, and in effect on the first day of January, two thousand two.

(22) Qualified activity. — The term "qualified activity" means any business or other activity subject to any of the taxes imposed by article thirteen, twenty-one, twenty-three or twenty-four of this chapter (or any combination of those articles of this chapter), but does not include the activity of severance or production of natural resources.

(23) Related person. — The term "related person" means:

(A) A corporation, partnership, association or trust controlled by the taxpayer;

(B) An individual, corporation, partnership, association or trust that is in control of the taxpayer;

(C) A corporation, partnership, association or trust controlled by an individual, corporation, partnership, association or trust that is in control of the taxpayer; or

(D) A member of the same controlled group as the taxpayer.

For purposes of this section, "control," with respect to a corporation, means ownership, directly or indirectly, of stock possessing fifty percent or more of the total combined voting power of all classes of the stock of the corporation entitled to
vote. "Control," with respect to a trust, means ownership, directly or indirectly, of fifty percent or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust is determined in accordance with the rules for constructive ownership of stock provided in section 267 (c) of the United States Internal Revenue Code of 1986, as amended, other than paragraph (3) of that section.

(24) Replacement facility. — The term "replacement facility" means any property (other than an expanded facility) that replaces or supersedes any other property located within this state that:

(A) The taxpayer or a related person used in or in connection with any activity for more than two years during the period of five consecutive years ending on the date the replacement or superseding property is placed in service by the taxpayer; or

(B) Is not used by the taxpayer or a related person in or in connection with any qualified activity for a continuous period of one year or more commencing with the date the replacement or superseding property is placed in service by the taxpayer.

(25) Research and development. — The term "research and development" means systematic scientific, engineering or technological study and investigation in a field of knowledge in the physical, computer or software sciences, often involving the formulation of hypotheses and experimentation, for the purpose of revealing new facts, theories or principles, or increasing scientific knowledge, which may reveal the basis for new or enhanced products, equipment or manufacturing processes.

(A) Research and development includes, but is not limited to, design, refinement and testing of prototypes of new or
improved products, or design, refinement and testing of manufacturing processes before commercial sales relating thereto have begun. For purposes of this section, commercial sales includes, but is not limited to, sales of prototypes or sales for market testing.

(B) Research and development does not include:

(i) Market research;

(ii) Sales research;

(iii) Efficiency surveys;

(iv) Consumer surveys;

(v) Product market testing;

(vi) Product testing by product consumers or through consumer surveys for evaluation of consumer product performance or consumer product usability;

(vii) The ordinary testing or inspection of materials or products for quality control (quality control testing);

(viii) Management studies;

(ix) Advertising;

(x) Promotions;

(xi) The acquisition of another's patent, model, production or process or investigation or evaluation of the value or investment potential related thereto;

(xii) Research in connection with literary, historical, or similar activities;
(xiii) Research in the social sciences, economics, humanities or psychology and other nontechnical activities; and

(xiv) The providing of sales services or any other service, whether technical service or nontechnical service.

(26) Taxpayer. — The term “taxpayer” means any person subject to any of the taxes imposed by article thirteen, twenty-one, twenty-three or twenty-four of this chapter (or any combination of those articles of this chapter).

(27) This code. — The term “this code” means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(28) This state. — The term “this state” means the state of West Virginia.

(29) Used property. — The term “used property” means property acquired after the thirty-first day of December, two thousand two, that is not “new property.”

§11-13Q-4. Amount of credit allowed.

(a) Credit allowed. — Eligible taxpayers are allowed a credit against the portion of taxes imposed by this state that are attributable to and the consequence of the taxpayer’s qualified investment in a new or expanded business in this state, which results in the creation of new jobs. The amount of this credit is determined and applied as provided in this article.

(b) Amount of credit. — The amount of credit allowable is determined by multiplying the amount of the taxpayer’s “qualified investment” (determined under section five or eight, or both) in “property purchased or leased for business expansion” (as defined in section three) by the taxpayer’s new jobs percentage (determined under section nine). The product of this
calculation establishes the maximum amount of credit allowable under this article due to the qualified investment.

(c) Application of credit over ten years. — The amount of credit allowable must be taken over a ten-year period, at the rate of one tenth of the amount thereof per taxable year, beginning with the taxable year in which the taxpayer places the qualified investment in service or use in this state, unless the taxpayer elected to delay the beginning of the ten-year period until the next succeeding taxable year. This election shall be made in the annual income tax return filed under this chapter for the taxable year in which qualified investment is first placed into service or use by the taxpayer. Once made, the election cannot be revoked. The annual credit allowance is taken in the manner prescribed in section seven of this article.

(d) Placed in service or use. — For purposes of the credit allowed by this section, property is considered placed in service or use in the earlier of the following taxable years:

(1) The taxable year in which, under the taxpayer’s depreciation practice, the period for depreciation with respect to the property begins; or

(2) The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.

§11-13Q-5. Credit allowed for locating corporate headquarters in this state.

(a) Credit allowed. — A corporation that presently has its corporate headquarters located outside this state that relocates its corporate headquarters in this state and employs, on a full-time basis, at its new corporate headquarters location, at least fifteen people, who are domiciled in this state, is allowed credit under this article, the amount of which is determined as
provided in subsection (b) of this section. The restrictions set forth in subsection (a), section nineteen of this article do not apply to the credit for corporate headquarters relocations allowed under this section.

(b) Determination of credit. — The amount of credit allowed by subsection (a) is determined, at the election of the taxpayer:

(1) By multiplying the taxpayer's adjusted qualified investment by its new jobs percentage (as determined under section nine of this article); or

(2) By multiplying the taxpayer's adjusted qualified investment by ten percent.

(c) Corporate headquarters relocations after December 31, 2002. — For purposes of corporate headquarters relocations occurring on or after the first day of January, two thousand three, and notwithstanding any other provision of this article to the contrary:

(1) New jobs created in this state by relocation of a corporate headquarters may include jobs created in this state within twelve months before or after the month in which the qualified investment in the corporate headquarters relocation is placed into service or use in this state by:

(A) Relocation or transfer of employees of the corporation or employees of a related corporation or related person from an out-of-state location to the relocated corporate headquarters in this state, who: (i) Are or become employees of the corporation within twelve months before or after the month in which the qualified investment in the corporate headquarters is placed into service or use in this state; and (ii) whose regular place of work is in the corporate headquarters; or
(B) New employees of the corporation whose regular place of work is in the corporate headquarters.

(2) Multiple year projects certified under section six of this article may be allowed for corporate headquarters relocations under this section.

(d) Application of credit. — The credit allowed by this section is applied in the manner prescribed in section seven of this article: Provided, That the amount of corporation net income taxes against which the credit allowed by this section may be applied is the sum of the corporation net income tax due on adjusted federal taxable income allocated to this state under section seven, article twenty-four of this chapter, plus that portion of the corporation net income tax due on adjusted federal taxable income apportioned to this state under section seven, article twenty-four of this chapter, that is further apportioned to the qualified investment using the payroll factor provided in subdivision (1), subsection (h), section seven of this article or an alternative means of apportionment as prescribed by the commissioner under section seven of this article. For all other purposes, the credit allowed by this section is treated as credit allowed by section four of this article.

(e) Definitions. — For purposes of this section:

(1) Adjusted qualified investment. — The term “adjusted qualified investment” means the taxpayer’s qualified investment in the corporate headquarters as determined under section eight of this article and rules of the commissioner, plus the cost of the reasonable and necessary expenses it incurred to relocate its corporate headquarters at a location in this state from its prior location outside this state.

(2) Corporate headquarters. — The term “corporate headquarters” means the place at which the corporation has its
(3) *Reasonable and necessary expenses incurred to relocate corporate headquarters.* — The phrase "reasonable and necessary expenses incurred to relocate corporate headquarters" means only those expenses incurred and paid by the corporation, to unrelated third parties, to move its corporate headquarters and its corporate headquarters employees to this state that are, upon application by the corporation, determined by the commissioner to have been both reasonable and necessary to effectuate the move.

(4) *The corporation.* — For purposes of this section, the term "the corporation" means the corporation for which the corporate headquarters is relocated.

§11-13Q-6. Credit allowable for certified projects.

(a) *In general.* — A multiple year project certified by the commissioner is eligible for the credit allowable by this article. A project eligible for certification under this section is one where the qualified investment under this article creates at least the required minimum number of new jobs but the qualified investment is placed in service or use over a period of up to three successive tax years: *Provided,* That the qualified investment is made pursuant to a written business facility development plan of the taxpayer providing for an integrated project for investment at one or more new or expanded business facilities, a copy of which must be attached to the taxpayer's application for project certification and approved by the commissioner, and the qualified investment placed in service or use during the first tax year would not have been made without the expectation of making the qualified investment placed in service or use during the next two succeeding tax years;
(b) Application for certification. — The application for certification of a project under this section shall be filed with and approved by the commissioner prior to any credit being claimed or allowed for the project’s qualified investment and new jobs created as a direct result of the qualified investment. This application shall be approved in writing and contain the information as the commissioner may require to determine whether the project should be certified as eligible for credit under this article.

(c) Taking of credit. — The participant or participants claiming the credit for qualified investments in a certified project shall annually file with their income tax returns filed under this chapter:

(A) Certification that the participant’s qualified investment property continues to be used in the project and if disposed of during the tax year, was not disposed of prior to expiration of its useful life;

(B) Certification that the new jobs created by the project’s qualified investment continue to exist and are filled by persons who are residents of this state; and

(C) Any other information the commissioner requires to determine continuing eligibility to claim the annual credit allowance for the project’s qualified investment.

§11-13Q-7. Application of annual credit allowance.

(a) In general. — The aggregate annual credit allowance for the current taxable year is an amount equal to the sum of the following:

(1) The one-tenth part allowed under section four of this article for qualified investment placed into service or use during a prior taxable year; plus
(2) The one-tenth part allowed under section four of this article for qualified investment placed into service or use during the current taxable year; plus

(3) The one-tenth part allowed under section five of this article for locating corporate headquarters in this state; or the amount allowed under section ten of this article of the taxable year.

(b) Application of current year annual credit allowance. --

The amount determined under subsection (a) of this section is allowed as a credit against eighty percent of that portion of the taxpayer’s state tax liability which is attributable to and the direct result of the taxpayer’s qualified investment, and applied as provided in subsections (c) through (f), both inclusive, of this section, and in that order: Provided, That if the median salary of the new jobs is higher than the statewide average nonfarm payroll wage, as determined annually by the West Virginia bureau of employment programs, the amount determined under subsection (a) of this section is allowed as a credit against one hundred percent of that portion of the taxpayers state tax liability which is attributable to and the direct result of the taxpayer’s qualified investment, and shall be applied, as provided in subsections (c) through (f), both inclusive, of this section, and in that order.

(c) Business and occupation taxes. -- That portion of the allowable credit attributable to qualified investment in a business or other activity subject to the taxes imposed by article thirteen of this chapter under section two-o of article thirteen must first be applied to reduce the taxes imposed or payable under section two-o, article thirteen of this chapter, for the taxable year (determined before application of allowable credits against tax and the annual exemption). In no case may the credit allowed under this article be applied to reduce any tax imposed
or payable under section two-f, or under any other section of
article thirteen of this chapter except section two-o.

(1) If the taxes due under section two-o, article thirteen of
this chapter are not solely attributable to and the direct result of
the taxpayer's qualified investment in a business or other
activity taxable under section two-o, article thirteen of this
chapter, the amount of those taxes that are attributable is
determined by multiplying the amount of taxes due under
section two-o, article thirteen of this chapter, for the taxable
year (determined before application of any allowable credits
against tax and the annual exemption), by a fraction, the
numerator of which is all wages, salaries and other compensa-
tion paid during the taxable year to all employees of the
taxpayer employed in this state, whose positions are directly
attributable to the qualified investment in a business or other
activity taxable under section two-o, article thirteen of this
chapter. The denominator of the fraction shall be the wages,
salaries and other compensation paid during the taxable year to
all employees of the taxpayer employed in this state, whose
positions are directly attributable to the business or other
activity of the taxpayer that is taxable under article thirteen of
this chapter.

(2) The annual exemption allowed by section three, article
thirteen of this chapter, plus any credits allowable under articles
thirteen-d, thirteen-e, thirteen-r and thirteen-s of this chapter,
shall be applied against and reduce only the portion of article
thirteen taxes not apportioned to the qualified investment under
this article: Provided, That any excess exemption or credits may
be applied against the amount of article thirteen taxes appor-
tioned to the qualified investment under this article, that is not
offset by the amount of annual credit against the taxes allowed
under this article for the taxable year, unless their application
is otherwise prohibited by this chapter.
(d) Business franchise tax. --

(1) After application of subsection (c) of this section, any unused allowable credit is next applied to reduce the taxes imposed by article twenty-three of this chapter for the taxable year (determined after application of the credits against tax provided in section seventeen of article twenty-three of this chapter, but before application of any other allowable credits against tax).

(2) If the taxes due under article twenty-three of this chapter are not solely attributable to and the direct result of the taxpayer's qualified investment in a business or other activity taxable under article twenty-three of this chapter for the taxable year, the amount of the taxes which are so attributable are determined by multiplying the amount of taxes due (determined after application of the credits against tax as provided in section seventeen of article twenty-three of this chapter, but before application of any other allowable credits), by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to the qualified investment in a business or other activity taxable under article twenty-three of this chapter. The denominator of the fraction is wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to the business or other activity of the taxpayer that is taxable under article twenty-three of this chapter.

(3) Any credits allowable under articles thirteen-d, thirteen-e, thirteen-r and thirteen-s of this chapter are applied against and reduce only the portion of article twenty-three taxes not apportioned to the qualified investment under this article: Provided, That any excess exemption or credits may be applied against the amount of article twenty-three taxes apportioned to
the qualified investment under this article that is not offset by the amount of annual credit against those taxes allowed under this article for the taxable year, unless their application is otherwise prohibited by this chapter.

(e) Corporation net income taxes. —

(1) After application of subsections (c) and (d) of this section, any unused credit is next applied to reduce the taxes imposed by article twenty-four of this chapter for the taxable year (determined before application of allowable credits against tax).

(2) If the taxes due under article twenty-four of this chapter (determined before application of allowable credits against tax) are not solely attributable to and the direct result of the taxpayer’s qualified investment, the amount of the taxes that is attributable are determined by multiplying the amount of taxes due under article twenty-four of this chapter for the taxable year (determined before application of allowable credits against tax), by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state whose positions are directly attributable to the qualified investment. The denominator of the fraction is the wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state.

(3) Any credits allowable under article twenty-four of this chapter are applied against and reduce only the amount of article twenty-four taxes not apportioned to the qualified investment under this article: Provided, That any excess credits may be applied against the amount of article twenty-four taxes apportioned to the qualified investment under this article that is not offset by the amount of annual credit against such taxes.
allowed under this article for the taxable year, unless their application is otherwise prohibited by this chapter.

(f) Personal income taxes. —

(1) If the person making the qualified investment is an electing small business corporation (as defined in section 1361 of the United States Internal Revenue Code of 1986, as amended), a partnership, a limited liability company that is treated as a partnership for federal income tax purposes or a sole proprietorship, then any unused credit (after application of subsections (c), (d) and (e) of this section) is allowed as a credit against the taxes imposed by article twenty-one of this chapter on the income from business or other activity subject to tax under article thirteen or twenty-three of this chapter or on income of a sole proprietor attributable to the business.

(2) Electing small business corporations, limited liability companies, partnerships and other unincorporated organizations shall allocate the credit allowed by this article among its members in the same manner as profits and losses are allocated for the taxable year.

(3) If the amount of taxes due under article twenty-one of this chapter (determined before application of allowable credits against tax) that is attributable to business, is not solely attributable to and the direct result of the qualified investment of the electing small business corporation, limited liability company, partnership, other unincorporated organization or sole proprietorship, the amount of the taxes that are so attributable are determined by multiplying the amount of taxes due under article twenty-one of this chapter (determined before application of allowable credits against tax), that is attributable to business by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the electing small business corporation,
limited liability company, partnership, other unincorporated
organization or sole proprietorship employed in this state,
whose positions are directly attributable to the qualified
investment. The denominator of the fraction is the wages,
salaries and other compensation paid during the taxable year to
all employees of the taxpayer.

(4) No credit is allowed under this section against any
employer withholding taxes imposed by article twenty-one of
this chapter.

(g) If the wages, salaries and other compensation fraction
formula provisions of subsections (c) through (f) of this section,
inclusive, do not fairly represent the taxes solely attributable to
and the direct result of qualified investment of the taxpayer the
commissioner may require, in respect to all or any part of the
taxpayer’s businesses or activities, if reasonable:

(1) Separate accounting or identification;

(2) Adjustment to the wages, salaries and other compensa-
tion fraction formula to reflect all components of the tax
liability;

(3) The inclusion of one or more additional factors that will
fairly represent the taxes solely attributable to and the direct
result of the qualified investment of the taxpayer and all other
project participants in the businesses or other activities subject
to tax; or

(4) The employment of any other method to effectuate an
equitable attribution of the taxes.

In order to effectuate the purposes of this subsection, the
commissioner may propose for promulgation rules, including
emergency rules, in accordance with article three, chapter
twenty-nine-a of this code.
(h) Unused credit. — If any credit remains after application of subsection (b) of this section, the amount thereof is carried forward to each ensuing tax year until used or until the expiration of the third taxable year subsequent to the end of the initial ten year credit application period. If any unused credit remains after the thirteenth year, the amount thereof is forfeited. No carryback to a prior taxable year is allowed for the amount of any unused portion of any annual credit allowance.

§11-13Q-8. Qualified investment.

(a) General. — The qualified investment in property purchased or leased for business expansion is the applicable percentage of the cost of each property purchased or leased for the purpose of business expansion which is placed in service or use in this state by the taxpayer during the taxable year.

(b) Applicable percentage. — For the purpose of subsection (a), the applicable percentage of any property is determined under the following table:

<table>
<thead>
<tr>
<th>If useful life is:</th>
<th>The applicable percentage is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 4 years</td>
<td>0%</td>
</tr>
<tr>
<td>4 years or more but less than 6 years</td>
<td>33 1/3%</td>
</tr>
<tr>
<td>6 years or more but less than 8 years</td>
<td>66 2/3%</td>
</tr>
<tr>
<td>8 years or more</td>
<td>100%</td>
</tr>
</tbody>
</table>

The useful life of any property, for purposes of this section, is determined as of the date the property is first placed in service or use in this state by the taxpayer, determined in accordance with such rules and requirements the tax commissioner may prescribe.

(c) Cost. — For purposes of subsection (a), the cost of each property purchased for business expansion is determined under the following rules:
(1) Trade-ins. — Cost does not include the value of property given in trade or exchange for the property purchased for business expansion.

(2) Damaged, destroyed or stolen property. — If property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, then the cost of replacement property does not include any insurance proceeds received in compensation for the loss.

(3) Rental property. —

(A) The cost of real property acquired by written lease for a primary term of ten years or longer is one hundred percent of the rent reserved for the primary term of the lease, not to exceed twenty years.

(B) The cost of tangible personal property acquired by written lease for a primary term of:

(i) Four years, or longer, is one third of the rent reserved for the primary term of the lease;

(ii) Six years, or longer, is two thirds of the rent reserved for the primary term of the lease; or

(iii) Eight years, or longer, is one hundred percent of the rent reserved for the primary term of the lease, not to exceed twenty years: Provided, That in no event may rent reserved include rent for any year subsequent to expiration of the book life of the equipment, determined using the straight-line method of depreciation.

(4) Self-constructed property. — In the case of self-constructed property, the cost thereof is the amount properly charged to the capital account for depreciation in accordance with federal income tax law.
(5) Transferred property. — The cost of property used by the taxpayer out-of-state and then brought into this state, is determined based on the remaining useful life of the property at the time it is placed in service or use in this state, and the cost is the original cost of the property to the taxpayer less straight line depreciation allowable for the tax years or portions thereof the taxpayer used the property outside this state. In the case of leased tangible personal property, cost is based on the period remaining in the primary term of the lease after the property is brought into this state for use in a new or expanded business facility of the taxpayer, and is the rent reserved for the remaining period of the primary term of the lease, not to exceed twenty years, or the remaining useful life of the property (determined as aforesaid), whichever is less.


(a) In general. — The new jobs percentage is based on the number of new jobs created in this state directly attributable to the qualified investment of the taxpayer.

(b) When a job is attributable. — An employee’s position is directly attributable to the qualified investment if:

(1) The employee’s service is performed or his or her base of operations is at the new or expanded business facility;

(2) The position did not exist prior to the construction, renovation, expansion or acquisition of the business facility and the making of the qualified investment; and

(3) But for the qualified investment, the position would not have existed.

(c) Applicable percentage. —
14  For the purpose of subsection (a) of this section, the applicable new jobs percentage is determined under the following table:

<table>
<thead>
<tr>
<th>The applicable percentage is:</th>
<th>If number of new jobs is at least:</th>
</tr>
</thead>
<tbody>
<tr>
<td>20%</td>
<td>20</td>
</tr>
<tr>
<td>25%</td>
<td>280</td>
</tr>
<tr>
<td>30%</td>
<td>520</td>
</tr>
</tbody>
</table>

17  (d) Certification of new jobs. — With the annual return for the applicable taxes filed for the taxable year in which the qualified investment is first placed in service or use in this state, the taxpayer shall estimate and certify the number of new jobs reasonably projected to be created by it in this state within the period prescribed in subsection (f), that are, or will be, directly attributable to the qualified investment of the taxpayer. For purposes of this section, "applicable taxes" means the taxes imposed by articles thirteen, twenty-one, twenty-three and twenty-four of this chapter against which this credit is applied.

18  (e) Equivalency of permanent employees. — The hours of part-time employees shall be aggregated to determine the number of equivalent full-time employees for the purpose of this section.

19  (f) Redetermination of new jobs percentage. — With the annual return for the applicable taxes imposed, filed for the third taxable year in which the qualified investment is in service or use, the taxpayer shall certify the actual number of new jobs created by it in this state, that are directly attributable to the qualified investment of the taxpayer.

20  (1) If the actual number of jobs created would result in a higher new jobs percentage, the credit allowed under this article
shall be redetermined and amended returns filed for the first and second taxable years that the qualified investment was in service or use in this state.

(2) If the actual number of jobs created would result in a lower new jobs percentage, the credit previously allowed under this article shall be redetermined and amended returns filed for the first and second taxable years. In applying the amount of redetermined credit allowable for the two preceding taxable years, the redetermined credit shall first be applied to the extent it was originally applied in the prior two years to personal income taxes, then to corporation net income taxes, then to business franchise taxes, and lastly to business and occupation taxes. Any additional taxes due under this chapter shall be remitted with the amended returns filed with the commissioner, along with interest, as provided in section seventeen, article ten of this chapter, and a ten percent penalty determined on the amount of taxes due with the amended return, which may be waived by the commissioner if the taxpayer shows that the overclaimed amount of the new jobs percentage was due to reasonable cause and not due to willful neglect.

§11-13Q-10. Credit for small business.

(a) Small business defined. — For purposes of this section, the term “small business” means a business which has annual gross receipts of not more than seven million dollars (including the gross receipts of any affiliates in its controlled group): Provided, That beginning the first day of January, two thousand four, and on the first day of January of each year thereafter, the commissioner shall prescribe an amount that shall apply in lieu of the seven million dollar amount during that calendar year. This amount is prescribed by increasing the seven million dollar amount by the cost-of-living adjustment for that calendar year. The requirements for annual gross receipts, once met by a given taxpayer in that taxable year when qualified investment is first
placed in service or use, may not again be applied to that same
taxpayer in subsequent years to defeat the small business credit
to which the taxpayer gained entitlement in that year.

(1) Cost-of-living adjustment. — For purposes of subsection
(a), the cost-of-living adjustment for any calendar year is the
percentage (if any) by which the consumer price index for the
preceding calendar year exceeds the consumer price index for
the calendar year two thousand two.

(2) Consumer price index for any calendar year. — For
purposes of subdivision (1) of this subsection, the consumer
price index for any calendar year is the average of the federal
consumer price index as of the close of the twelve-month period
ending on the thirty-first day of August of that calendar year.

(3) Consumer price index. — For purposes of subdivision
(2) above, the term “Federal Consumer Price Index” means the
most recent consumer price index for all urban consumers
published by the United States department of labor.

(4) Rounding. — If any increase under subdivision (1)
above is not a multiple of fifty dollars, the increase shall be
rounded to the next lowest multiple of fifty dollars.

(b) Amount of credit allowed.

(1) Credit allowed. — An eligible small business taxpayer
is allowed a credit against the portion of taxes imposed by this
state that are attributable to and the direct consequence of the
eligible small business taxpayer’s qualified investment in a new
or expanded business in this state which results in the creation
of at least ten new jobs within twelve months after placing
qualified investment into service. The amount of this credit is
determined as provided in subdivision (2) of this subsection.
(2) Amount of credit. — The annual amount of credit allowable under this subsection is determined by dividing the amount of the eligible small business taxpayer’s “qualified investment” (determined under section eight of this article) in “property purchased for business expansion” (as defined in section three of this article) by ten. The amount of qualified investment so apportioned to each year of the ten-year credit period is the annual measure against which taxpayer’s annual new jobs percentage (determined under subsection (d) of this section,) is applied. The product of this calculation establishes the maximum amount of credit allowable each year for ten consecutive years under this section due to the qualified investment.

(3) Application of credit. — The annual credit allowance must be taken beginning with the taxable year in which the taxpayer places the qualified investment into service or use in this state, unless the taxpayer elects to delay the beginning of the ten-year credit period until the next succeeding taxable year. This election is made in the annual income tax return filed under this chapter by the taxpayer for the taxable year in which the qualified investment is first placed in service or use. Once made, this election cannot be revoked. The annual credit allowance shall be taken and applied in the manner prescribed in section seven of this article.

(c) New jobs. — The term “new jobs” has the meaning ascribed to it in section three of this article.

(1) The term “new employee” has the meaning ascribed to it in section three of this article: Provided, That this term does not include employees filling new jobs who:

(A) Are related individuals, as defined in subsection (i), section 51 of the Internal Revenue Code of 1986, or a person who owns ten percent or more of the business with such
ownership interest to be determined under rules set forth in
subsection (b), section 267 of said Internal Revenue Code; or

(B) Worked for the taxpayer during the six-month period
ending on the date the taxpayer's qualified investment is placed
in service or use and is rehired by the taxpayer during the
six-month period beginning on the date taxpayer's qualified
investment is placed in service or use.

(2) When a job is attributable. — An employee’s position
is directly attributable to the qualified investment if:

(A) The employee’s service is performed or his or her base
of operations is at the new or expanded business facility;

(B) The position did not exist prior to the construction,
renovation, expansion or acquisition of the business facility and
the making of the qualified investment; and

(C) But for the qualified investment, the position would not
have existed.

(d) New jobs percentage. — The annual new jobs percent-
age is based on the number of new jobs created in this state by
the taxpayer directly attributable to taxpayer’s qualified
investment.

(1) If at least ten new jobs are created and filled during the
taxable year in which the qualified investment is placed in
service or use, the applicable new jobs percentage is ten
percent.

(2) During each of the remaining nine years of the ten-year
credit period, the annual new jobs percentage is based on the
average number of new jobs filled during that taxable year:
Provided, That for purposes of estimating the new jobs percent-
age that will be applicable for each subsequent credit year, the
taxpayer shall use the new jobs percentage allowable for the taxable year immediately prior thereto, and in the annual income tax return filed under this chapter for the then current tax year, the taxpayer shall redetermine his or her allowable new jobs percentage for that year based on the average number of new employees employed in new jobs during that year (determined on a monthly basis) created as the direct result of the taxpayer's qualified investment.

(e) Certification of new jobs. — With the annual income tax return filed under this chapter for each taxable year during the ten-year credit period, the taxpayer shall certify:

(1) The new jobs percentage for that taxable year;

(2) The amount of the credit allowance for that year;

(3) If the business is a partnership, limited liability company or electing small business corporation, the amount of credit allocated to the partners, members or shareholders, as the case may be for that year;

(4) That qualified investment property continue to be used in the business, or if any of it was disposed of during the year the date of disposition and that the property was not disposed of prior to expiration of its useful life, as determined under section eight of this article; and

(5) That the new jobs created by the qualified investment continue to exist and are filled by persons who meet the definition of new employee (as defined in this section).

(f) Small business project. — A small business may apply to the commissioner under section six of this article for certification as a project if that project will create at least ten new jobs.
(g) Rules. — The commissioner may prescribe such rules as he or she determines necessary in order to determine the amount of credit allowed under this section to a taxpayer; to verify a taxpayer’s continued entitlement to claim the credit; and to verify proper application of the credit allowed.

(h) The commissioner may require a taxpayer intending to claim credit under this section to file with the commissioner a notice of intent to claim this credit, before the taxpayer begins reducing his or her monthly or quarterly installment payments of estimated tax for the credit provided in this section.

§11-13Q-11. Forfeiture of unused tax credits; redetermination of credit allowed.

(a) Disposition of property or cessation of use. — If during any taxable year, property with respect to which a tax credit has been allowed under this article:

1. Is disposed of prior to the end of its useful life, as determined under section eight of this article; or

2. Ceases to be used in an eligible business of the taxpayer in this state prior to the end of its useful life, as determined under section eight of this article, then the unused portion of the credit allowed for the property is forfeited for the taxable year and all ensuing years. Additionally, except when the property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, the taxpayer shall redetermine the amount of credit allowed in all earlier years by reducing the applicable percentage of cost of the property allowed under section eight of this article, to correspond with the percentage of cost allowable for the period of time that the property was actually used in this state in the new or expanded business of the taxpayer. The taxpayer shall then file a reconciliation statement for the year in which the forfeiture occurs and pay any additional taxes.
owed due to reduction of the amount of credit allowable for the earlier years, plus interest and any applicable penalties. The reconciliation statement shall be filed with the annual return for the primary tax for which the taxpayer is liable under articles thirteen and twenty-three of this chapter.

(b) Cessation of operation of business facility. — If during any taxable year the taxpayer ceases operation of a business facility in this state for which credit was allowed under this article, before expiration of the useful life of property with respect to which tax credit has been allowed under this article, then the unused portion of the allowed credit is forfeited for the taxable year and for all ensuing years. Additionally, except when the cessation is due to fire, flood, storm or other casualty, the taxpayer shall redetermine the amount of credit allowed in earlier years by reducing the applicable percentage of cost of the property allowed under section eight of this article, to correspond with the percentage of cost allowable for the period of time that the property was actually used in this state in a business of the taxpayer that is taxable under article thirteen, twenty-three or twenty-four of this chapter, or in the case of a sole proprietorship, article twenty-one of this chapter. The taxpayer shall then file a reconciliation statement with the annual return for the primary tax for which the taxpayer is liable under articles thirteen, twenty-one or twenty-three of this chapter, for the year in which the forfeiture occurs, and pay any additional taxes owed due to the reduction of the amount of credit allowable for the earlier years, plus interest and any applicable penalties.

(c) Reduction in number of employees. — If during any taxable year subsequent to the taxable year in which the new jobs percentage is redetermined as provided in section nine of this article, the average number of employees of the taxpayer, for the then current taxable year, employed in positions created because of and directly attributable to the qualified investment
falls below the minimum number of new jobs created upon
which the taxpayer’s annual credit allowance is based, the
taxpayer shall calculate what his or her annual credit allowance
would have been had his or her new jobs percentage been
determined based upon the average number of employees, for
the then current taxable year, employed in positions created
because of and directly attributable to the qualified investment.
The difference between the result of this calculation and the
taxpayer’s annual credit allowance for the qualified investment
as determined under section four of this article, is forfeited for
the then current taxable year, and for each succeeding taxable
year unless for a succeeding taxable year the taxpayer’s average
employment in positions directly attributable to the qualified
investment once again meets the level required to enable the
taxpayer to utilize its full annual credit allowance for that
taxable year.

§11-13Q-12. Recapture of credit; recapture tax imposed.

(a) When recapture tax applies. —

(1) Any person who places qualified investment property in
service or use and who fails to use the qualified investment
property for at least the period of its useful life (determined as
of the time the property was placed in service or use), or the
period of time over which tax credits allowed under this article
with respect to the property are applied under this article,
whichever period is less, and who reduces the number of its
employees filling new jobs in its business in this state, which
were created and are directly attributable to the qualified
investment property, after the third taxable year in which the
qualified investment property was placed in service or use, or
fails to continue to employ individuals in all the new jobs
created as a direct result of the qualified investment property
and used to qualify for the credit allowed by this article, prior
to the end of the tenth taxable year after the qualified invest-
ment property was placed in service or use, the person shall pay
the recapture tax imposed by subsection (b) of this section.

(2) This section does not apply when section thirteen of this
article applies. However, the successor, or the successors, and
the person, or persons, who previously claimed credit under this
article with respect to the qualified investment property and the
new jobs attributable thereto, are jointly and severally liable for
payment of any recapture tax subsequently imposed under this
section with respect to the qualified investment property and
new jobs.

(b) **Recapture tax imposed.** —

The recapture tax imposed by this subsection is the amount
determined as follows:

(1) **Full recapture.** — If the taxpayer prematurely removes
qualified investment property placed in service (when consid-
ered as a class) from economic service in the taxpayer's
qualified investment business activity in this state, and the
number of employees filling the new jobs created by the person
falls below the number of new jobs required to be created in
order to qualify for the amount of credit being claimed, the
taxpayer shall recapture the amount of credit claimed under
section seven of this article for the taxable year, and all preced-
ing taxable years, on qualified investment property which has
been prematurely removed from service. The amount of tax due
under this subdivision is an amount equal to the amount of
credit that is recaptured under this subdivision.

(2) **Partial recapture.** — If the taxpayer prematurely
removes qualified investment property from economic service
in the taxpayer’s qualified investment business activity in this
state, and the number of employees filling the new jobs created
by the person remains twenty or more, but falls below the
number necessary to sustain continued application of credit
determined by use of the new job percentage upon which the
taxpayer’s one-tenth annual credit allowance was determined
under section four or section ten of this article, taxpayer shall
recapture an amount of credit equal to the difference between:
(A) The amount of credit claimed under section seven of this
article for the taxable year, and all preceding taxable years; and
(B) the amount of credit that would have been claimed in those
years if the amount of credit allowable under section four or ten
of this article had been determined based on the qualified
investment property which remains in service using the average
number of new jobs filled by employees in the taxable year for
which recapture occurs. The amount of tax due under this
subdivision is an amount equal to the amount of credit that is
recaptured under this subdivision.

(3) Additional recapture. — If after a partial recapture
under subdivision (2) of this subsection, the taxpayer further
reduces the number of employees filling new jobs, the taxpayer
shall recapture an additional amount determined as provided
under subdivision (1) of this subsection. The amount of tax due
under this subdivision is an amount equal to the amount of
credit that is recaptured under this subdivision.

(c) Recapture of credit allowed for projects. — The
commissioner may file in the West Virginia register an emer-
ygency legislative rule explaining how the provisions of this
section are applied in the case of projects certified under section
six of this article.

(d) Payment of recapture tax. — The amount of tax
recaptured under this section is due and payable on the day the
person’s annual return is due for the taxable year in which this
section applies, under article twenty-one or twenty-four of this
chapter. When the employer is a partnership, limited liability
company or S corporation for federal income tax purposes, the
recapture tax shall be paid by those persons who are partners in
the partnership, members in the company, or shareholders in the
S corporation, in the taxable year in which recapture occurs
under this section.

(e) Rules. — The commissioner may promulgate such rules
as may be useful or necessary to carry out the purpose of this
section and to implement the intent of the Legislature. Rules
shall be promulgated in accordance with the provisions of
article three, chapter twenty-nine-a of this code.

§11-13Q-13. Transfer of qualified investment to successors.

(a) Mere change in form of business. — Property may not
be treated as disposed of under section eleven of this article, by
reason of a mere change in the form of conducting the business
as long as the property is retained in the successor business in
this state, and the transferor business retains a controlling
interest in the successor business. In this event, the successor
business is allowed to claim the amount of credit still available
with respect to the business facility or facilities transferred, and
the transferor business may not be required to redetermine the
amount of credit allowed in earlier years.

(b) Transfer or sale to successor. — Property is not treated
as disposed of under section eleven of this article by reason of
any transfer or sale to a successor business which continues to
operate the business facility in this state. Upon transfer or sale,
the successor shall acquire the amount of credit that remains
available under this article for each subsequent taxable year and
the transferor business is not required to redetermine the
amount of credit allowed in earlier years.

Every taxpayer who claims credit under this article shall maintain sufficient records to establish the following facts for each item of qualified property:

(1) Its identity;

(2) Its actual or reasonably determined cost;

(3) Its straight-line depreciation life;

(4) The month and taxable year in which it was placed in service;

(5) The amount of credit taken; and

(6) The date it was disposed of or otherwise ceased to be qualified property.

§11-13Q-15. Failure to keep records of investment credit property.

A taxpayer who does not keep the records required for identification of investment credit property is subject to the following rules:

(1) A taxpayer is treated as having disposed of, during the taxable year, any investment credit property which the taxpayer cannot establish was still on hand, in this state, at the end of that year.

(2) If a taxpayer cannot establish when investment credit property reported for purposes of claiming this credit returned during the taxable year was placed in service, the taxpayer is treated as having placed it in service in the most recent prior year in which similar property was placed in service, unless the taxpayer can establish that the property placed in service in the most recent year is still on hand. In that event, the taxpayer will
be treated as having placed the returned property in service in the next most recent year.

§11-13Q-16. Interpretation and construction.

(a) No inference, implication or presumption of legislative construction or intent may be drawn or made by reason of the location or grouping of any particular section, provision or portion of this article; and no legal effect may be given to any descriptive matter or heading relating to any section, subsection or paragraph of this article.

(b) The provisions of this article shall be reasonably construed in order to effectuate the legislative intent recited in section two of this article.

§11-13Q-17. Severability.

(a) If any provision of this article or the application thereof is for any reason adjudged by any court of competent jurisdiction to be invalid, the judgment may not affect, impair or invalidate the remainder of the article, but shall be confined in its operation to the provision thereof directly involved in the controversy in which the judgment shall have been rendered, and the applicability of the provision to other persons or circumstances may not be affected thereby.

(b) If any provision of this article or the application thereof is made invalid or inapplicable by reason of the repeal or any other invalidation of any statute therein addressed or referred to, such invalidation or inapplicability may not affect, impair or invalidate the remainder of the article, but shall be confined in its operation to the provision thereof directly involved with, pertaining to, addressing or referring to the statute, and the application of the provision with regard to other statutes or in other instances not affected by any such repealed or invalid statute may not be abrogated or diminished in any way.
§11-13Q-18. Burden of proof; application required; failure to make timely application.

(a) The burden of proof is on the taxpayer to establish by clear and convincing evidence that the taxpayer is entitled to the benefits allowed by this article.

(b) Application for credit required.

(1) Application required.—Notwithstanding any provision of this article to the contrary, no credit is allowed or applied under this article for any qualified investment property placed in service or use until the person asserting a claim for the allowance of credit under this article makes written application to the commissioner for allowance of credit as provided in this subsection. An application for credit shall be filed no later than the last day of the due date for filing the tax returns required under article twenty-one or twenty-four of this chapter for the taxable year in which the property to which the credit relates is placed in service or use and all information required by the form is provided.

(2) Failure to make timely application.—The failure to timely apply for the credit results in the forfeiture of fifty percent of the annual credit allowance otherwise allowable under this article. This penalty applies annually until the application is filed.


(a) Notwithstanding any other provision of this article to the contrary, except as provided in section five of this article, no entitlement to the economic opportunity tax credit may result from, and no credit is available to any taxpayer for, investment placed in service or use except for taxpayers engaged in the following industries or business activities:
(1) Manufacturing, including, but not limited to, chemical processing and chemical manufacturing, manufacture of wood products and forestry products, manufacture of aluminum, manufacture of paper, paper processing, recyclable paper processing, food processing, commercial hydroponic growing of food crops, manufacture of aircraft or aircraft parts, manufacture of automobiles or automobile parts, and all other manufacturing activities, but not timbering or timber severance or timber hauling, or mineral severance, hauling, processing or preparation, or coal severance, hauling, processing or preparation or synthetic fuel manufacturing taxable under section two-f, article thirteen of this chapter;

(2) Information processing, including, but not limited to, telemarketing, information processing, systems engineering, back office operations and software development;

(3) The activity of warehousing, including, but not limited to, commercial warehousing and the operation of regional distribution centers by manufacturers, wholesalers or retailers;

(4) The activity of goods distribution (exclusive of retail trade);

(5) Destination-oriented recreation and tourism; and

(6) Research and development, as defined in section three of this article.

(b) Notwithstanding the fact that a company, entity or taxpayer is engaged in an industry or business activity enumerated in subsection (a) of this section, the company, entity or taxpayer must qualify for the economic opportunity tax credit by fulfilling the qualified investment, jobs creation and other credit entitlement requirements of this article in order to obtain entitlement to any credit under this article. Failure to fulfill the
§11-13Q-20. Tax credit review and accountability.

(a) Beginning on the first day of February, two thousand six and every third year thereafter, the commissioner shall submit to the governor, the president of the Senate and the speaker of the House of Delegates a tax credit review and accountability report evaluating the cost effectiveness of the economic opportunity credit during the most recent three-year period for which information is available. The criteria to be evaluated shall include, but not be limited to, for each year of the three-year period:

(1) The numbers of taxpayers claiming the credit;

(2) The net number of new jobs created by all taxpayers claiming the credit;

(3) The cost of the credit;

(4) The cost of the credit per new job created; and

(5) Comparison of employment trends for an industry and for taxpayers within the industry that claim the credit.

(b) Taxpayers claiming the credit shall provide any information the tax commissioner may require to prepare the report: Provided, That the information provided is subject to the confidentiality and disclosure provisions of sections five-d and five-s, article ten of this chapter.

§11-13Q-21. Effective date; election; notice of claim or election under transition rules.

(a) The credit allowed by this article is allowed for qualified investment placed in service or use on or after the first day

(b) Election. — Notwithstanding the general rule stated in subsection (a), the taxpayer may elect to apply the credit allowed under article thirteen-c of this chapter in lieu of the credit allowed by this article to property purchased or leased for business expansion that is placed in service or use on or after the first day of January, two thousand three, if at least one of the following subdivisions applies to the property:

1. The new or expanded business facility was constructed, reconstructed or erected, pursuant to a written construction contract executed prior to the first day of January, two thousand three, as limited to the provisions of the contract as of that date then binding on the taxpayer, but only to the extent the new or expanded business facility is placed in service or use prior to the first day of January, two thousand four;

2. The new or expanded business facility that is part of a project described in subsection (a), section six of this article, was constructed, reconstructed or erected, pursuant to a written construction contract executed prior to the first day of January, two thousand three, as limited to the provisions of such contract as of such date then binding on the taxpayer;

3. The new or expanded business facility was purchased or leased pursuant to a written contract executed prior to the first day of January, two thousand three, as limited to the provisions then binding on the taxpayer as of that date, but only to the extent the new or expanded business facility is placed in service or use prior to the first day of January, two thousand four; or

4. The machinery or equipment or other tangible personal property purchased or leased for business expansion at a new or expanded business facility was purchased or leased by the
taxpayer pursuant to a written contract to purchase or lease identifiable tangible personal property executed before the first day of January, two thousand three, as limited to the provisions of the written contract then binding on the taxpayer, but only to the extent the tangible personal property purchased or leased under the contract is placed in service or use before the first day of January, two thousand four.

(c) Notice of election required. — Any person intending to make the election allowed in subsection (b) of this section shall file written notice of his or her intention with the tax commissioner on or before the thirty-first day of December, two thousand two. In the case of a multiparticipant project, this notice may be filed by the managing project participant on behalf of all participants in the project. The notice shall be in a form prescribed by the tax commissioner and all information required by the form shall be provided.

(d) Failure to file notice. — If any person fails to timely file the notice required by subsection (c) of this section, that person is precluded from claiming credit under article thirteen-c of this chapter for property placed in service or use after the thirty-first day of December, two thousand two, and may claim credit under this article to the extent the credit is allowable under this article.

ARTICLE 13R. STRATEGIC RESEARCH AND DEVELOPMENT TAX CREDIT.

§11-13R-1. Short title.

This article may be cited as the “West Virginia Strategic Research and Development Tax Credit Act.”

§11-13R-2. Legislative finding and purpose.
The Legislature finds that the encouragement of research and development in this state is in the public interest and promotes economic growth and development and the general welfare of the people of this state. In order to encourage research and development in this state and thereby increase employment and economic development, there is hereby provided a strategic research and development tax credit.


(a) General. — When used in this article, or in the administration of this article, terms defined in subsection (b) of this section have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition, in this article.

(b) Terms defined.

(1) “Base amount” means

(A) The average annual combined qualified research and development expenditure for the three taxable years immediately preceding the taxable year for which a credit is claimed under this article;

(B) For a taxpayer that has filed a tax return under article twenty-three of this chapter for fewer than three but at least one prior taxable year, determined on the basis of all filings by the taxpayer’s controlled group, the base amount is the average annual combined qualified research and development expenditure for the number of immediately preceding taxable years, other than short taxable years, during which the taxpayer has filed a tax return under article twenty-three of this chapter; or

(C) For a taxpayer that has not filed a tax return under article twenty-three of this chapter for at least one taxable year,
determined on the basis of all filings by the taxpayer's controlled group, the base amount is zero.

(2) "Commissioner" and "tax commissioner" are used interchangeably herein and mean the tax commissioner of the state of West Virginia, or his or her delegate.

(3) "Controlled group" means a controlled group as defined by section 1563 of the Internal Revenue Code of 1986, as amended.

(4) "Corporation" means any corporation, limited liability company, joint-stock company or association, and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument.

(5) "Delegate" in the phrase "or his or her delegate," when used in reference to the tax commissioner, means any officer or employee of the state tax division of the department of tax and revenue duly authorized by the tax commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article.

(6) "Eligible taxpayer" means any person that is subject to the tax imposed by article twenty-three or article twenty-four of this chapter that is engaged in qualified research and development that has paid or incurred investment in qualified research and development credit property or that has paid or incurred qualified research and development expenses as defined in section four of this article. In the case of a sole proprietorship subject to neither the tax imposed by article twenty-three nor the tax imposed by article twenty-four, the term "eligible taxpayer" means any sole proprietor who is subject to the tax imposed by article twenty-one of this chapter and who is engaged in qualified research and development that has paid or

incurred investment in qualified research and development
credit property or that has paid or incurred qualified research
and development expenses as defined in section four of this
article.

(7) “Partnership” includes a syndicate, group, pool, joint
venture or other unincorporated organization through or by
means of which any business, financial operation or venture is
carried on, and which is not a trust or estate, a corporation or a
sole proprietorship. The term “partner” includes a member in
such a syndicate, group, pool, joint venture or other organiza-
tion.

(8) “Person” includes any natural person, corporation,
limited liability company or partnership.

(9) “Qualified research and development credit property”
means depreciable property purchased for the conduct of
qualified research and development.

(10) “Research and development” means systematic
scientific, engineering or technological study and investigation
in a field of knowledge in the physical, computer or software
sciences, often involving the formulation of hypotheses and
experimentation, for the purpose of revealing new facts,
theories or principles, or increasing scientific knowledge, which
may reveal the basis for new or enhanced products, equipment
or manufacturing processes.

(A) Research and development includes, but is not limited
to, design, refinement and testing of prototypes of new or
improved products, or design, refinement and testing of
manufacturing processes before commercial sales relating
thereto have begun. For purposes of this section, commercial
sales includes, but is not limited to, sales of prototypes or sales
for market testing.
(B) Research and development does not include:

(i) Market research;

(ii) Sales research;

(iii) Efficiency surveys;

(iv) Consumer surveys;

(v) Product market testing;

(vi) Product testing by product consumers or through consumer surveys for evaluation of consumer product performance or consumer product usability;

(vii) The ordinary testing or inspection of materials or products for quality control (quality control testing);

(viii) Management studies;

(ix) Advertising;

(x) Promotions;

(xi) The acquisition of another's patent, model, production or process or investigation or evaluation of the value or investment potential related thereto;

(xii) Research in connection with literary, historical or similar activities;

(xiii) Research in the social sciences, economics, humanities or psychology and other non-technical activities; and

(xiv) The providing of sales services or any other service, whether technical service or non-technical service.
(11) "Related person" means:

(A) A corporation, limited liability company, partnership, association or trust controlled by the taxpayer;

(B) An individual, corporation, limited liability company, partnership, association or trust that is in control of the taxpayer;

(C) A corporation, limited liability company, partnership, association or trust controlled by an individual, corporation, partnership, association or trust that is in control of the taxpayer; or

(D) A member of the same controlled group as the taxpayer.

For purposes of this article, "control," with respect to a corporation, means ownership, directly or indirectly, of stock possessing fifty percent or more of the total combined voting power of all classes of the stock of the corporation entitled to vote. "Control," with respect to a trust, means ownership, directly or indirectly, of fifty percent or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust is determined in accordance with the rules for constructive ownership of stock provided in section 267(c) of the United States Internal Revenue Code of 1986, as amended, other than paragraph (3) of that section.

(12) "Taxpayer" means any person subject to the tax imposed by article twenty-three or twenty-four of this chapter or both. In the case of a sole proprietorship subject to neither the tax imposed by article twenty-three nor the tax imposed by article twenty-four, the term "taxpayer" means any sole
§ 11-13R-4. Annual combined qualified research and development expenditure, qualified research and development expenses.

(a) General. — The annual combined qualified research and development expenditure is the sum of the applicable percentage of the cost of depreciable property purchased for the conduct of a qualified research and development activity, which is placed in service or use in this state during the taxable year, plus the amount of qualified research and development expenses (as defined in this section) deducted by the eligible taxpayer, for federal income tax purposes for the taxable year.

(b) Applicable percentage of the cost of depreciable property. — For the purpose of subsection (a), the applicable percentage of the cost of depreciable property is determined under the following table:

<table>
<thead>
<tr>
<th>If useful life is:</th>
<th>The applicable percentage is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 4 years</td>
<td>33 1/3</td>
</tr>
<tr>
<td>4 years or more but less than 6 years</td>
<td>66 2/3</td>
</tr>
<tr>
<td>6 years or more</td>
<td>100</td>
</tr>
</tbody>
</table>

The useful life of any property for purposes of this section is determined by those methods as the tax commissioner may require as of the date the property is first placed in service or use in this state by the taxpayer.
(c) Placed in service or use. — For purposes of the credit allowed by this article, property is considered placed in service or use in the earlier of the following taxable years:

1. The taxable year in which, under the taxpayer’s depreciation practice, the period for depreciation with respect to the property begins; or

2. The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.

(d) Cost of property. — For purposes of subsection (a) of this section, the cost of each property purchased for the conduct of a qualified research and development activity is determined under the following rules:

1. Trade-ins. — Cost does not include the value of property given in trade or exchange for the property purchased for conduct of the research and development activity.

2. Damaged, destroyed or stolen property. — If property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, then the cost of replacement property does not include any insurance proceeds received in compensation for the loss.

3. Rental property. — The cost of property acquired by lease for a term of ten years or longer shall be one hundred percent of the rent reserved for the primary term of the lease, not to exceed twenty years.

4. Property purchased for multiple use. — The cost of property purchased for multiple business use, including direct use in the conduct of a qualified research and development activity, together with some other business or activity not eligible under this section, shall be apportioned between such
activities. The amount apportioned to the conduct of the qualified research and development activity is considered to be eligible investment subject to the conditions and limitations of this section.

(5) **Self-constructed property.** — In the case of self-constructed property, the cost thereof is the amount properly charged to the capital account for depreciation in accordance with federal income tax law.

(e) **Qualified research and development expenses.** — For purposes of this section:

1. "Qualified research and development expenses" means the sum of in-house and contract research and development expenses for qualified research and development allocated to this state, which are paid or incurred by the eligible taxpayer during the taxable year. In no event does "qualified research and development expenses" include:

   (A) Any expense that must be capitalized and depreciated for federal income tax purposes, or any expenditure paid or incurred for the purpose of ascertaining the existence, location, extent or quality of any deposit of coal, limestone or other natural resource, including oil and natural gas; or

   (B) Any wage or salary expense for wages or salary reported on form W-2 for federal income tax purposes on which the personal income tax is imposed under article twenty-one of this chapter, and against which tax the credit allowed under this article is applied.

2. "In-house research and development expenses" means:

   (A) Wages paid or incurred to an employee for qualified services performed in this state by the employee;
(B) Amounts paid or incurred for supplies used in the conduct of qualified research and development in this state; or

(C) Amounts paid or incurred to another person for the right to use personal property in the conduct of qualified research and development in this state.

(3) "Qualified services" means services consisting of:

(A) Engaging in qualified research and development;

(B) Engaging in the direct supervision or direct support of qualified research and development; or

(C) If substantially all of the services performed by an individual for the taxpayer during the taxable year consist of services meeting the requirements of paragraph (A) or (B) of this subdivision, the term "qualified services" means all services performed by the individual for the taxable year.

(4) "Supplies" means any tangible property other than:

(A) Land or improvements to land; or

(B) Property of a character subject to depreciation for federal income tax purposes.

(5) "Wages" has the meaning given to that term by section 3401(a) of the Internal Revenue Code of 1986, as amended. In the case of self-employed individuals and owner-employees (within the meaning of section 401(c)(1) of the Internal Revenue Code), the term "wages" includes the earned income (as defined in section 401(c)(2) of the Internal Revenue Code) of the employee. The term "wages" shall not include any amount taken into account in determining the federal targeted jobs credit under section 51(a) of the Internal Revenue Code.

(6) "Contract research and development expenses" means:
(A) In general, sixty-five percent of any amount paid or incurred by the taxpayer to any person (other than an employee of the taxpayer) for qualified research and development; and

(B) If any contract research and development expenses paid or incurred during any taxable year are attributable to qualified research and development to be conducted after the close of the taxable year, that amount is treated as paid or incurred during the taxable year during which the qualified research and development is conducted.

(7) "Qualified research and development" means research and development that occurs in West Virginia.

(8) Excluded property. — Any property owned or leased by the taxpayer, the cost of which was the basis of a credit against tax taken under any other article of this chapter, does not qualify as property purchased for the conduct of a qualified research and development activity for purposes of this article.

(9) Excluded expense. — Any expense paid or incurred by the taxpayer, which was the basis of a credit against tax taken under any other article of this chapter, does not qualify as a qualified research and development expense for purposes of this article.

(f) Research and development by colleges, universities and certain research and development organizations. — In general, sixty-five percent of the amount paid or incurred by a taxpayer to a research institution as defined in this section for research and development to be performed by the research institution is treated as contract research and development expenses. The preceding sentence applies only if the amount is paid or incurred pursuant to a written research and development agreement between the taxpayer and the research institution.
138 For purposes of this section, the term “research institution”
139 means any nonprofit educational organization which is an
140 institution of higher education (as defined in section 3304(f) of
141 the Internal Revenue Code of 1986, as amended), a West
142 Virginia institution of higher education subject to the jurisdic-
143 tion of a board described in article two-a, chapter eighteen-b of
144 this code, or any other nonprofit organization exempt from
145 federal income taxes which is organized and operated primarily
146 to conduct scientific research and is not a private foundation for
147 federal income tax purposes.

148 (g) Standards for determining qualified research and
149 development expenses. — In prescribing standards for deter-
150 mining which research and development expenses are consid-
151 ered to be qualified research and development expenses for
152 purposes of this section, the tax commissioner may consider:
153 (1) The place where the services are performed; (2) the resi-
154 dence or business location of the person or persons performing
155 the services; (3) the place where research and development
156 supplies are consumed; and (4) other factors that the tax
157 commissioner believes relevant in determining whether or not
158 the research and development expenses were made for qualified
159 research and development, and depreciable property was
160 purchased and used for qualified research and development,
161 during the taxable year

162 (h) Depreciable property. — Purchases of depreciable
163 property for the conduct of qualified research qualify as part of
164 the annual combined qualified research and development
165 expenditure for purposes of this article only if:

166 (1) The property is not acquired from a person whose
167 relationship to the person acquiring it would result in the
168 disallowance of deductions under section 267 or 707(b) of the
169 United States Internal Revenue Code of 1986, as amended:
(2) The property is not acquired from a related person or by one component member of a controlled group from another component member of the same controlled group. The tax commissioner may waive this requirement if the property was acquired from a related party for its then fair market value; and

(3) The basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined:

(A) In whole or in part by reference to the federal adjusted basis of such property in the hands of the person from whom it was acquired; or

(B) Under section 1014(e) of the United States Internal Revenue Code of 1986, as amended.

§11-13R-5. Amount of credit allowed.

The allowable credit is the greater of:

(1) Three percent of the annual combined qualified research and development expenditure, or

(2) Ten percent of the excess of the annual combined qualified research and development expenditure over the base amount.

§11-13R-6. Application of credit.

(a) Credit allowed. — Beginning in the year that the annual combined qualified research and development expenditure is paid or incurred, eligible taxpayers and owners of eligible taxpayers described in subsections (d) and (f) of this section are allowed a credit against the taxes imposed by articles twenty-three, twenty-four and twenty-one of this chapter, in that order, as specified in this section.
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(b) Business franchise tax. — The credit is first applied to reduce the taxes imposed by article twenty-three of this chapter for the taxable year (determined after application of the credits against tax provided in section seventeen of said article, but before application of any other allowable credits against tax).

(c) Corporation net income taxes. — After application of subsection (b) of this section, any unused credit is next applied to reduce the taxes imposed by article twenty-four of this chapter for the taxable year (determined before application of allowable credits against tax).

(d) If the eligible taxpayer is a limited liability company, small business corporation, or a partnership, then any unused credit (after application of subsections (b) and (c) of this section) is allowed as a credit against the taxes imposed by article twenty-four of this chapter on owners of the eligible taxpayer on the conduit income directly derived from the eligible taxpayer by its owners. Only those portions of the tax imposed by article twenty-four of this chapter that are imposed on income directly derived by the owner from the eligible taxpayer are subject to offset by this credit.

(1) Small business corporations, limited liability companies, partnerships and other unincorporated organizations shall allocate the credit allowed by this article among their members in the same manner as profits and losses are allocated for the taxable year.

(2) No credit is allowed under this article against any withholding tax imposed by, or payable under, article twenty-one of this chapter.

(e) Personal income tax taxes. — After application of subsections (b), (c) and (d) of this section, any unused credit is next applied to reduce the taxes imposed by article twenty-one
of this chapter for the taxable year (determined before applica-
tion of allowable credits against tax) of the eligible taxpayer.

(f) If the eligible taxpayer is a limited liability company,
small business corporation, or a partnership, then any unused
credit (after application of subsections (b), (c), (d) and (e) of
this section) is allowed as a credit against the taxes imposed by
article twenty-one of this chapter on owners of the eligible
taxpayer on the conduit income directly derived from the
eligible taxpayer by its owners. Only those portions of the tax
imposed by article twenty-one of this chapter that are imposed
on income directly derived by the owner from the eligible
taxpayer are subject to offset by this credit.

(1) Small business corporations, limited liability compa-
nies, partnerships and other unincorporated organizations shall
allocate the credit allowed by this article among their members
in the same manner as profits and losses are allocated for the
taxable year.

(2) No credit is allowed under this article against any
withholding tax imposed by, or payable under, article twenty-
one of this chapter.

(g) The total amount of tax credit that may be used in any
taxable year by any eligible taxpayer in combination with the
owners of the eligible taxpayer under subsections (d) and (f) of
this section may not exceed two million dollars.

(h) Unused credit carry forward. — If the credit allowed
under this article in any taxable year exceeds the sum of the
taxes enumerated in subsections (b), (c), (d), (e) and (f) of this
section for that taxable year, the eligible taxpayer and owners
of eligible taxpayers described in subsections (d) and (f) of this
section may apply the excess as a credit against those taxes, in
the order and manner stated in this section, for succeeding taxable years until the earlier of the following:

1. The full amount of the excess credit is used; or
2. The expiration of the tenth taxable year after the taxable year in which the annual combined qualified research and development expenditure was paid or incurred. Credit remaining thereafter is forfeited.

(i) Application for certification. — No credit is allowed or may be applied under this article until the person seeking to claim the credit has filed a written application for certification of the proposed research and development program or project with the tax commissioner, and has received certification of the research and development program or project from the tax commissioner pursuant to that written application. The certification of the program or project must be received by the eligible taxpayer from the tax commissioner prior to any credit being claimed or allowed for any annual combined qualified research and development expenditure for any research activity or project.

1. In the case of owners of eligible taxpayers described in subsections (d) or (f) of this section, the application for certification filed under this section by the limited liability company, small business corporation or partnership owned by the person is considered to be filed on behalf of the owner, and no separate filing of the application is required of the owner.

2. Form of application. — The application for certification must be filed in the form as the tax commissioner may prescribe, and shall contain the information as the tax commissioner may require, to determine whether the project should be certified as eligible for credit under this article.
(3) **Time period covered by certification.** — The application may request certification of the research and development program for one taxable year or multiple taxable years, as applicable, based on the nature and character of the program or project plan for the particular research and development project or activity.

(4) **Requirements for application.** — The application shall specifically set forth a written research and development program plan generally describing the nature of the research and development to be undertaken, the projected time period over which the research and development shall be carried out, the period of time for which the applicant seeks certification of the program or project, and such other information as the tax commissioner may require.

(5) **Certification.** — The tax commissioner may issue certification of a research and development program or project if it appears to the tax commissioner that the applicant intends to engage in a bona fide research and development activity, as described in this article, and will otherwise comply with the requirements of this article and all rules and requirements applicable thereto.

(6) **Time period covered by certification.** — The tax commissioner may issue certification for the period of time for which the eligible taxpayer seeks certification, or a different period of time, within the discretion of the tax commissioner. In his or her discretion, the tax commissioner may require that a separate application be filed for each tax year in which qualified research and development activity is to be undertaken or in which qualified research and development property is to be placed in service or use.

(7) **Failure to file.** — The failure to timely file the application for certification of a research and development program or

... project under this section results in forfeiture of one hundred percent of the annual credit otherwise allowable under this article. This penalty applies annually until such application is filed.

(8) Research and development undertaken without certification. — If a person has filed an application for certification of a research and development program or project, and has failed to receive certification of the plan or program from the tax commissioner, no credit is allowed under this article for the research and development activity or investment relating thereto.

(9) Failure to comply with terms of certification. — If a person has filed an application for certification of a research and development program or project, and has received certification of the plan or program from the tax commissioner, but fails to conform to the terms of the certification, no credit is allowed under this article for the research and development activity or investment in the research and development activity by the eligible taxpayer. This restriction may be waived by the tax commissioner upon a finding that the research and development undertaken was within the requirements of this article, and that there was no intent to defraud the state or willful neglect in the applicant’s failure to conform to the terms of the certification.

(10) Failure to comply with certification time restrictions. — If a person has filed an application for certification of a research and development program or project, and has received certification of the plan or program from the tax commissioner, but fails to conform to the time periods specified therein for the certified research and development program or project, or fails to renew the certification so as to cover ongoing or subsequent research and development activity, the research and development activity is out of compliance with the terms of the certification, and no credit is allowed under this article for, or
relating to, the research and development activity by any person
or taxpayer. This restriction may be waived by the tax commis-
sioner upon a finding that the research and development thus
undertaken was within the requirements of this article, and that
there was no intent to defraud the state or willful neglect in the
applicant’s failure to conform to the terms of the certification.

§11-13R-7. Forfeiture of unused tax credits; redetermination of
credit allowed.

(a) Disposition of property or cessation of use. — If during
any taxable year, property with respect to which a tax credit has
been allowed under this article:

(1) Is disposed of prior to the end of its useful life, as
determined under section four of this article; or

(2) Ceases to be used in a qualified research and develop-
ment activity of the taxpayer in this state prior to the end of its
useful life, as determined under section four of this article, then
the unused portion of the credit allowed for such property is
forfeited for the taxable year and all ensuing years. Except
when the property is damaged or destroyed by fire, flood, storm
or other casualty, or is stolen, the taxpayer shall redetermine the
amount of credit allowed in all earlier years by reducing the
applicable percentage of cost of such property allowed under
section four of this article, to correspond with the percentage of
cost allowable for the period of time that the property was
actually used in the qualified research and development activity
of the taxpayer. The taxpayer shall then file a reconciliation
statement with its annual return filed under article twenty-three
of this chapter, for the year in which the forfeiture occurs and
pay any additional taxes owed due to reduction of the amount
of credit allowable for such earlier years, plus interest and any
applicable penalties.
§11-13R-8. Transfer of qualified research and development investment to successors.

(a) *Mere change in form of business.* — Property may not be treated as disposed of under section seven of this article, by reason of a mere change in the form of conducting the business as long as the property is retained in a business in this state for use in qualified research and development, and the taxpayer retains a controlling interest in the successor business. In this event, the successor business is allowed to claim the amount of credit still available with respect to the property transferred, and the taxpayer (transferor) may not be required to redetermine the amount of credit allowed in earlier years.

(b) *Transfer or sale to successor.* — Property may not be treated as disposed of under section seven of this article by reason of any transfer or sale to a successor business which continues to use the property in qualified research and development. Upon transfer or sale, the successor shall acquire the amount of credit that remains available under this article for each subsequent taxable year, and the taxpayer (transferor) may not be required to redetermine the amount of credit allowed in earlier years.


Every taxpayer who claims credit under this article shall maintain sufficient records to establish the following facts for each item of qualified research and development property:

1. Its identity;
2. Its actual or reasonably determined cost;
3. Its straight-line depreciation life;
(4) The month and taxable year in which it was placed in service;

(5) The amount of credit taken; and

(6) The date it was disposed of or otherwise ceased to be qualified research and development property.

§11-13R-10. Failure to keep records of qualified research and development credit property.

A taxpayer who does not keep the records required for identification of qualified research and development credit property, is subject to the following rules:

(1) A taxpayer is treated as having disposed of, during the taxable year, any qualified research and development credit property which the taxpayer cannot establish was still on hand and used in qualified research and development activity at the end of that year.

(2) If a taxpayer cannot establish when qualified research and development credit property reported for purposes of claiming this credit returned during the taxable year was placed in service, the taxpayer is treated as having placed it in service in the most recent prior year in which similar property was placed in service, unless the taxpayer can establish that the property placed in service in the most recent year is still on hand and used in qualified research and development activity at the end of that year. In that event, the taxpayer will be treated as having placed the returned property in service in the next most recent year.

§11-13R-11. Tax credit review and accountability.

(a) Beginning on the first day of February, two thousand six and on the first day of February every third year thereafter, the
3 commissioner shall submit to the governor, the president of the Senate and the speaker of the House of Delegates a tax credit review and accountability report evaluating the cost effectiveness of the credit allowed under this article during the most recent three-year period for which information is available. The criteria to be evaluated includes, but is not limited to, for each year of the three-year period:

(1) The numbers of taxpayers claiming the credit;

(2) The net number of new jobs created by all taxpayers claiming the credit;

(3) The cost of the credit;

(4) The cost of the credit per new job created; and

(5) Comparison of employment trends for the industry and for taxpayers within the industry that claim the credit.

(b) Taxpayers claiming the credit shall provide such information as the tax commissioner may require to prepare the report: Provided, That such information shall be subject to the confidentiality and disclosure provisions of sections five-d and five-s, article ten of this chapter of this code.

§11-13R-12. Effective date.

The provisions of this article become effective on the first day of January, two thousand three, and apply only to qualified investment made on or after that date.

ARTICLE 13S. MANUFACTURING INVESTMENT TAX CREDIT.

§11-13S-1. Short title.

This article may be cited as the "West Virginia Manufacturing Investment Tax Credit Act."
§11-13S-2. Legislative findings and purpose.

The Legislature finds that the encouragement of the location of new industry in this state, and the expansion, growth and revitalization of existing industrial facilities in this state is in the public interest and promotes the general welfare of the people of this state.


(a) Any term used in this article has the meaning ascribed by this section, unless a different meaning is clearly required by the context of its use or by definition in this article.

(b) For purpose of this article, the term:

(1) “Eligible taxpayer” means an industrial taxpayer who purchases new property for the purpose of industrial expansion, or for the purpose of industrial revitalization of an existing industrial facility in this state.

(2) “Industrial expansion” means capital investment in a new or expanded industrial facility in this state.

(3) “Industrial facility” means any factory, mill, plant, refinery, warehouse, building or complex of buildings located within this state, including the land on which it is located, and all machinery, equipment and other real and tangible personal property located at or within the facility primarily used in connection with the operation of the manufacturing business.

(4) “Industrial revitalization” or “revitalization” means capital investment in an industrial facility located in this state to replace or modernize buildings, equipment, machinery and other tangible personal property used in connection with the operation of the facility in an industrial business of the tax-
purchaser, including the acquisition of any real property necessary
to the industrial revitalization.

(5) "Industrial taxpayer" means any taxpayer who is
primarily engaged in a manufacturing business.

(6) "Manufacturing" means any business activity classified
as having a sector identifier, consisting of the first two digits of
the six-digit North American Industry Classification System
code number, of thirty-one, thirty-two or thirty-three.

(7) "Property purchased for manufacturing investment"
means real property, and improvements thereto, and tangible
personal property, but only if the property was constructed, or
purchased, on or after the first day of January, two thousand
three, for use as a component part of a new, expanded or
revitalized industrial facility. This term includes only that
tangible personal property with respect to which depreciation,
or amortization in lieu of depreciation, is allowable in determin-
ing the federal income tax liability of the industrial taxpayer,
that has a useful life, at the time the property is placed in
service or use in this state, of four years or more. Property
acquired by written lease, for a primary term of ten years or
longer, if used as a component part of a new or expanded
industrial facility, is included within this definition.

(A) "Property purchased for manufacturing investment"
does not include:

(i) Repair costs including materials used in the repair,
unless for federal income tax purposes, the cost of the repair
must be capitalized and not expensed;

(ii) Motor vehicles licensed by the department of motor
vehicles;

(iii) Airplanes;
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(iv) Off-premises transportation equipment;

(v) Property which is primarily used outside this state; and

(vi) Property which is acquired incident to the purchase of the stock or assets of an industrial taxpayer, which property was or had been used by the seller in his or her industrial business in this state, or in which investment was previously the basis of a credit against tax taken under any other article of this chapter.

(B) Purchases or acquisitions of land or depreciable property qualify as purchases of property purchased for manufacturing investment for purposes of this article only if:

(i) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under section 267 or 707(b) of the United States Internal Revenue Code of 1986, as amended;

(ii) The property is not acquired from a related person or by one component member of a controlled group from another component member of the same controlled group. The tax commissioner may waive this requirement if the property was acquired from a related party for its then fair market value; and

(iii) The basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined, in whole or in part, by reference to the federal adjusted basis of the property in the hands of the person from whom it was acquired; or under Section 1014(e) of the United States Internal Revenue Code of 1986, as amended.

(9) "Qualified manufacturing investment" means that amount determined under section five of this article as qualified manufacturing investment.
(10) "Taxpayer" means any person subject to any of the taxes imposed by article thirteen-a, twenty-three or twenty-four of this chapter (or any combination of those articles of this chapter).


(a) Credit allowed. — There is allowed to eligible taxpayers and to persons described in subdivision (5), subsection (b) of this section, a credit against the taxes imposed by articles thirteen-a, twenty-three and twenty-four of this chapter. The amount of credit shall be determined as hereinafter provided in this section.

(b) Amount of credit allowable. — The amount of allowable credit under this article is equal to five percent of the qualified manufacturing investment (as determined in section five of this article), and shall reduce the severance tax, imposed under article thirteen-a of this chapter, the business franchise tax imposed under article twenty-three of this chapter and the corporation net income tax imposed under article twenty-four of this chapter, in that order, subject to the following conditions and limitations:

(1) The amount of credit allowable is applied over a ten-year period, at the rate of one-tenth thereof per taxable year, beginning with the taxable year in which the property purchased for manufacturing investment is first placed in service or use in this state;

(2) Severance tax. — The credit is applied to reduce the severance tax, imposed under article thirteen-a of this chapter (determined before application of the credit allowed by section three, article twelve-b of this chapter and before any other allowable credits against tax and before application of the
annual exemption allowed by section ten, article thirteen-a of 
this chapter). The amount of annual credit allowed may not 
reduce the severance tax, imposed under article thirteen-a of 
this chapter, below fifty percent of the amount which would be 
imposed for such taxable year in the absence of this credit 
against tax. When in any taxable year the taxpayer is entitled to 
claim credit under this article and article thirteen-d of this 
chapter, the total amount of all credits allowable for the taxable 
year may not reduce the amount of the severance tax, imposed 
under article thirteen-a of this chapter, below fifty percent of 
the amount which would be imposed for such taxable year 
determined before application of the credit allowed by section 
three, article twelve-b of this chapter and before any other 
allowable credits against tax and before application of the 
annual exemption allowed by section ten, article thirteen-a of 
this chapter);

(3) Business franchise tax. — After application of subdivi-
sion (2) of this subsection, any unused credit is next applied to 
reduce the business franchise tax, imposed under article twenty-
three of this chapter (determined after application of the credits 
against tax provided in section seventeen of article twenty-three 
of this chapter, but before application of any other allowable 
credits against tax). The amount of annual credit allowed will 
not reduce the business franchise tax imposed under article 
twenty-three of this chapter, below fifty percent of the amount 
which would be imposed for such taxable year in the absence 
of this credit against tax. When in any taxable year the taxpayer 
is entitled to claim credit under this article and article thirteen-d 
of this chapter, the total amount of all credits allowable for the 
taxable year will not reduce the amount of the business fran-
chise tax, imposed under article twenty-three of this chapter, 
below fifty percent of the amount which would be imposed for 
the taxable year (determined after application of the credits 
against tax provided in section seventeen of article twenty-three
of this chapter, but before application of any other allowable credits against tax);

(4) Corporation net income tax. — After application of subdivision (3) of this subsection, any unused credit is next applied to reduce the corporation net income tax, imposed under article twenty-four of this chapter (determined before application of any other allowable credits against tax). The amount of annual credit allowed will not reduce corporation net income tax imposed under article twenty-four of this chapter, below fifty percent of the amount which would be imposed for such taxable year in the absence of this credit against tax. When in any taxable year the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year may not reduce the amount of the corporation net income tax, imposed under article twenty-four of this chapter, below fifty percent of the amount which would be imposed for the taxable year (determined before application of any other allowable credits against tax);

(5) Pass-through entities. —

(A) If the eligible taxpayer is a limited liability company, small business corporation, or a partnership, then any unused credit (after application of subdivisions (2), (3) and (4) of this subsection) is allowed as a credit against the taxes imposed by article twenty-four of this chapter on owners of the eligible taxpayer on the conduit income directly derived from the eligible taxpayer by its owners. Only those portions of the tax imposed by article twenty-four of this chapter that are imposed on income directly derived by the owner from the eligible taxpayer are subject to offset by this credit.

(B) The amount of annual credit allowed will not reduce corporation net income tax imposed under article twenty-four
of this chapter, below fifty percent of the amount which would be imposed on the conduit income directly derived from the eligible taxpayer by each owner for such taxable year in the absence of this credit against the taxes (determined before application of any other allowable credits against tax).

(C) When in any taxable year the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year will not reduce the corporation net income tax imposed on the conduit income directly derived from the eligible taxpayer by each owner, below fifty percent of the amount that would be imposed for such taxable year on the conduit income (determined before application of any other allowable credits against tax);

(6) Small business corporations, limited liability companies, partnerships and other unincorporated organizations shall allocate any unused credit (after application of subdivisions (2), (3) and (4) of this subsection) among their members in the same manner as profits and losses are allocated for the taxable year; and

(7) No credit is allowed under this article against any tax imposed by article twenty-one of this chapter.

(c) No carryover to a subsequent taxable year or carryback to a prior taxable year is allowed for the amount of any unused portion of any annual credit allowance. Such unused credit is forfeited.

(d) Application for credit required. — (1) Application required. - No credit is allowed or applied under this article for any manufacturing investment until the eligible taxpayer makes written application to the tax commissioner for allowance of credit as provided in this section. An application for credit shall
be filed, in the form as the tax commissioner shall prescribe,
prior to the first date when qualified investment property is first
placed in service or use. All information required by the form
is provided. A separate application shall be filed for each tax
year in which property purchased for manufacturing investment
is placed in service or use.

(2) Failure to file. — The failure to timely apply the
application for credit under this section results in forfeiture of
fifty percent of the annual credit allowance otherwise allowable
under this article. This penalty applies annually until such
application is filed.

§11-13S-5. Qualified manufacturing investment.

(a) General. — The qualified manufacturing investment is
the applicable percentage of the cost of property purchased for
manufacturing investment, which is placed in service or use in
this state, by the eligible taxpayer during the taxable year.

(b) Applicable percentage. — For the purposes of subsection (a) of this section, the applicable percentage for any
property is determined under the following table:

<table>
<thead>
<tr>
<th>If useful life is:</th>
<th>The applicable percentage is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 years or more but less than 6 years</td>
<td>33 1/3</td>
</tr>
<tr>
<td>6 years or more but less than 8 years</td>
<td>66 2/3</td>
</tr>
<tr>
<td>8 years or more</td>
<td>100</td>
</tr>
</tbody>
</table>

The useful life of any property for purposes of this section
is determined pursuant to the methods as the tax commissioner
may require as of the date the property is first placed in service
or use in this state by the taxpayer, determined as the tax
commissioner may require.
(c) Placed in service or use. — For purposes of the credit allowed by this article, property is considered placed in service or use in the earlier of the following taxable years:

1. The taxable year in which, under the taxpayer's depreciation practice, the period for depreciation with respect to the property begins; or

2. The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.

(d) Cost. — For purposes of this section, the cost of property purchased for manufacturing investment, is determined under the following rules:

1. Trade-ins. — Cost will not include the value of property given in trade or exchange for property purchased for manufacturing investment;

2. Damaged, destroyed or stolen property. — If property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, then the cost of replacement property will not include any insurance proceeds received in compensation for the loss;

3. Rental property. — The cost of property acquired by lease for a term of ten years or longer is one hundred percent of the rent reserved for the primary term of the lease, not to exceed twenty years;

4. Property purchased for multiple use. — The cost of property purchased for multiple business use including use as a component part of a new or expanded or revitalized industrial facility, together with some other business or activity not eligible for credit under this article, is apportioned between the businesses and occupations. The amount apportioned to the new
47 or expanded or revitalized industrial facility is considered as a
48 qualified investment, subject to the conditions and limitations
49 of this section; and

50 (5) Self-constructed property. — In the case of
51 self-constructed property, the cost thereof shall be the amount
52 properly charged to the capital account for purposes of depreci-
53 ation.

§11-13S-6. Forfeiture of unused tax credits; redetermination of
credit allowed.

1 (a) Disposition of property or cessation of use. — If during
2 any taxable year, property with respect to which a tax credit has
3 been allowed under this article:

4 (1) Is disposed of prior to the end of its useful life, as
determined under section five of this article; or

6 (2) Ceases to be used in an industrial facility of the taxpayer
in this state prior to the end of its useful life, as determined
under section five of this article, then the unused portion of the
credit allowed for such property is forfeited for the taxable year
and all ensuing years. Except when the property is damaged or
destroyed by fire, flood, storm or other casualty, or is stolen, the
taxpayer shall redetermine the amount of credit allowed in all
earlier years by reducing the applicable percentage of cost of
the property allowed under section five of this article, to
 correspond with the percentage of cost allowable for the period
of time that the property was actually used in manufacturing
activity as part of an industrial facility of the taxpayer. The
taxpayer must then file a reconciliation statement with its
annual return filed under article twenty-three of this chapter, for
the year in which the forfeiture occurs and pay any additional
taxes owed due to reduction of the amount of credit allowable
for the earlier years, plus interest and any applicable penalties.

(a) Mere change in form of business. — Property may not be treated as disposed of under section six of this article, by reason of a mere change in the form of conducting the business as long as the property is retained in a business in this state for use in the activity of manufacturing in an industrial facility in West Virginia, and the taxpayer retains a controlling interest in the successor business. In this event, the successor business is allowed to claim the amount of credit still available with respect to the property or industrial facility transferred, and the taxpayer (transferor) may not be required to redetermine the amount of credit allowed in earlier years.

(b) Transfer or sale to successor. — Property will not be treated as disposed of under section six of this article by reason of any transfer or sale to a successor business which continues to use the property in manufacturing in an industrial facility in West Virginia. Upon transfer or sale, the successor shall acquire the amount of credit that remains available under this article for each subsequent taxable year, and the taxpayer (transferor) shall not be required to redetermine the amount of credit allowed in earlier years.

§11-13S-8. Identification of investment credit property.

Every taxpayer who claims credit under this article shall maintain sufficient records to establish the following facts for each item of property purchased for manufacturing investment:

1. Its identity;
2. Its actual or reasonably determined cost;
3. Its straight-line depreciation life;
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7 (4) The month and taxable year in which it was placed in
8 service;
9 (5) The amount of credit taken; and
10 (6) The date it was disposed of or otherwise ceased to be
11 property purchased for manufacturing investment.

§11-13S-9. Failure to keep records of property purchased for
manufacturing investment.

1 A taxpayer who does not keep the records required for
2 property purchased for manufacturing investment, is subject to
3 the following rules:

4 (1) A taxpayer is treated as having disposed of, during the
5 taxable year, any property purchased for manufacturing
6 investment which the taxpayer cannot establish was still on
7 hand and used in manufacturing activity in this state at the end
8 of that year; and

9 (2) If a taxpayer cannot establish when property purchased
10 for manufacturing investment reported for purposes of claiming
11 this credit returned during the taxable year was placed in
12 service, the taxpayer is treated as having placed it in service in
13 the most recent prior year in which similar property was placed
14 in service, unless the taxpayer can establish that the property
15 placed in service in the most recent year is still on hand and
16 used in manufacturing activity at the end of that year. In that
17 event, the taxpayer will be treated as having placed the returned
18 property in service in the next most recent year.

§11-13S-10. Tax credit review and accountability.

1 Beginning on the first day of February, two thousand six,
2 and on the first day of February every third year thereafter, the
3 commissioner shall submit to the governor, the president of the
Senate and the speaker of the House of Delegates a tax credit review and accountability report evaluating the cost effectiveness of the credit allowed under this article during the most recent three-year period for which information is available. The criteria to be evaluated includes, but is not limited to, for each year of the three-year period:

1. The numbers of taxpayers claiming the credit;
2. The net number of new jobs created by all taxpayers claiming the credit;
3. The cost of the credit;
4. The cost of the credit per new job created; and
5. Comparison of employment trends for the industry and for taxpayers within the industry that claim the credit.

(b) Taxpayers claiming the credit shall provide the information as the tax commissioner may require to prepare the report: 
Provided, That the information is subject to the confidentiality and disclosure provisions of sections five-d and five-s, article ten of this chapter of the code.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9b. Exemption for purchases of tangible personal property and services for direct use in research and development.

(a) Sales of tangible personal property and services after the thirtieth day of June, two thousand two, directly used or consumed in the activity of research and development are exempt from tax imposed by this article. Any person having a right or claim to the exemption set forth in this section shall first pay to the vendor the tax imposed by this article and then apply to the tax commissioner for a refund or credit or give to
the vendor the person’s West Virginia direct pay permit number
in accordance with the provisions of section nine-d of this
article.

(b) For purposes of this article:

(1) “Directly used or consumed in the activity of research
and development” means used or consumed in those activities
or operations which constitute an integral and essential part of
research and development, as contrasted with and distinguished
from those activities or operations which are simply incidental,
convenient or remote to research and development.

(A) Uses of property or consumption of services which
constitute direct use or consumption in the activity of research
and development include only:

(i) In the case of tangible personal property, physical
incorporation of property into tangible personal property that is
the subject of, or directly used in, research and development;

(ii) Causing a direct physical, chemical or other change
upon property that is the subject of, or directly used in, research
and development;

(iii) Transporting or storing property that is the subject of,
or directly used in, research and development;

(iv) Measuring or verifying a change in property that is the
subject of, or directly used in, research and development;

(v) Physically controlling or directing the physical move-
ment or operation of property that is the subject of, or directly
used in, research and development;
(vi) Directly and physically recording the flow of property that is the subject of, or directly used in, research and development;

(vii) Producing energy for property that is the subject of, or directly used in, research and development;

(viii) Controlling or otherwise regulating atmospheric or other environmental conditions required for research and development;

(ix) Serving as an operating supply for property that is the subject of, or directly used in, research and development;

(x) Maintenance or repair of property, including maintenance equipment, that is directly used in research and development;

(xi) Storage, removal or transportation of economic or other waste resulting from the activity of research and development;

(xii) Pollution control or environmental quality or environmental protection activity directly relating to the activity of research and development, and personnel, plant, property or community safety or security activity directly relating to the activity of research and development; or

(xiii) Otherwise being used as an integral and essential part of research and development.

(B) Uses of property or services which do not constitute direct use or consumption in the activity of research and development include, but are not limited to:

(i) Heating and illumination of office buildings;

(ii) Janitorial or general cleaning activities;

(iii) Personal comfort of personnel;
(iv) Planning or scheduling of work or inventory control;
(v) Marketing, general management, supervision, finance, training, accounting and administration; or
(vi) An activity or function incidental or convenient to research and development, rather than an integral and essential part of these activities.

(2) "Research and development" means systematic scientific, engineering or technological study and investigation in a field of knowledge in the physical, computer or software sciences, often involving the formulation of hypotheses and experimentation, for the purpose of revealing new facts, theories or principles, or increasing scientific knowledge, which may reveal the basis for new or enhanced products, equipment or manufacturing processes. Research and development includes, but is not limited to, design, refinement and testing of prototypes of new or improved products, or design, refinement and testing of manufacturing processes before commercial sales relating thereto have begun. For purposes of this section commercial sales include, but are not limited to, sales of prototypes or sales for market testing.

(A) Research and development does not include:
(i) Market research;
(ii) Sales research;
(iii) Efficiency surveys;
(iv) Consumer surveys;
(v) Product market testing;
(vi) Product testing by product consumers or through consumer surveys for evaluation of consumer product performance or consumer product usability;

(vii) The ordinary testing or inspection of materials or products for quality control (quality control testing);

(viii) Management studies;

(ix) Advertising;

(x) Promotions;

(xi) The acquisition of another’s patent, model, production or process or investigation or evaluation of the value or investment potential related thereto;

(xii) Research in connection with literary, historical or similar projects;

(xiii) Research in the social sciences, economics, humanities or psychology and other nontechnical activities; and

(xiv) The providing of sales services or any other service, whether technical service or nontechnical service.

(c) No provision of this section may be interpreted to alter, abrogate or impede application of the exemption for sales of primary opinion research services set forth in section nine of this article.

§11-15-9c. Exemption for services and materials regarding technical evaluation for compliance to federal and state environmental standards provided by environmental and industrial consultants.

The service of providing technical evaluations for compliance with federal and state environmental standards provided
by environmental and industrial consultants who have formal
certification through the West Virginia department of environ-
mental protection or the West Virginia bureau for public health
or both is exempt from the tax imposed by this article. For
purposes of this exemption, the service of providing technical
evaluations for compliance with federal and state environmental
standards includes those costs of tangible personal property
directly used in providing the services that are separately billed
to the purchaser of the services, and on which the tax imposed
by this article has previously been paid by the service provider.

§11-15-9f. Exemption for sales and services subject to special
district excise tax.

Notwithstanding any provision of this article to the con-
trary, any sale or service upon which a special district excise tax
is paid, pursuant to the provisions of section eleven, article
thirteen-b, chapter eight of this code, shall be exempt from the
tax imposed by this article.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-8h. Distribution, sale, transfer or assignment of qualified
rehabilitated building investment tax credit.

(a) Any person eligible for credit under section eight-a or
eight-g of this article may transfer, sell or assign any unused
credits. Any person that transfers, sells or assigns any unused
portion of a tax credit shall obtain a certificate of approval from
the division of culture and history to transfer, sell or assign the
stated amount of unused tax credit. The division of culture and
history shall, by the last day of January each year provide in an
electronic medium acceptable to the tax commissioner, a report
listing the name of the transferor, the transferor's tax identifica-
tion number, the name of the transferee, the transferee's tax
identification number, the amount of credit transferred, sold or
assigned and the date of the transfer, sale or assignment for
each transfer, sale or assignment approved by the division of
culture and history during the preceding calendar year.

(b) Credits granted to or acquired by a pass-through entity
created or recognized under West Virginia law, or by multiple
owners of property, if not transferred, sold or assigned, may be
divided among the partners, members, shareholders or owners
either according to the distributive shares of income of the
entity or pursuant to an executed agreement among the partners,
members, shareholders or owners if the agreement documents
an alternate method of distribution, as provided in section eight-
e of this article.

(c) Any transferee, purchaser or assignee of tax credits
under this section may use the acquired credits to offset the tax
imposed by this article or article twenty-four of this chapter
upon the transferee, purchaser or assignee. To claim the tax
credit, the transferee, purchaser or assignee shall attach the
certificate obtained by the transferor, seller or assignor in
accordance with subsection (a) of this section to the tax return
against which the credit is claimed when the tax return is filed
with the tax commissioner.

(d) If the credit allowed under this section exceeds the
transferee’s, purchaser’s or assignee’s tax due for the current
tax year, the transferee, purchaser or assignee of the tax credit
may carry forward the excess in accordance with section eight-e
of this article, or section twenty-three-e, article twenty-four of
this chapter when the transferee, purchaser or assignee is
subject to the tax imposed by that article.

(e) The tax commissioner may promulgate procedural rules
in accordance with article three, chapter twenty-nine-a of this
code, necessary to provide procedures for the distribution,
transfer, or assignment and the claiming of the credit allowed
by sections eight-a and eight-g of this article.
ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-7. Persons and other organizations exempt from tax.

The following organizations and persons are exempt from the tax imposed by this article to the extent provided in this section:

(a) Natural persons doing business in this state that are not doing business in the form of a partnership (as defined in section three of this article) or in the form of a corporation (as defined in section three of this article). Natural persons include persons doing business as sole proprietors, sole practitioners and other self-employed persons;

(b) Corporations and organizations which by reason of their purposes or activities are exempt from federal income tax: Provided, That this exemption does not apply to that portion of their capital (as defined in section three of this article) which is used, directly or indirectly, in the generation of unrelated business income (as defined in the Internal Revenue Code) of any corporation or organization if the unrelated business income is subject to federal income tax;

(c) Insurance companies which pay this state a tax upon premiums;

(d) Production credit associations organized under the provisions of the federal “Farm Credit Act of 1933”: Provided, That this exemption does not apply to corporations or associations organized under the provisions of article four, chapter nineteen of this code;

(e) Any trust established pursuant to section one hundred eighty-six, chapter seven, title twenty-nine of the code of the laws of the United States (enacted as section three hundred two (c) of the labor management relations act, one thousand nine
(f) Any credit union organized under the provisions of chapter thirty-one, or any other chapter of this code: Provided, That this exemption does not apply to corporations or cooperative associations organized under the provisions of article four, chapter nineteen of this code;

(g) Any corporation organized under this code which is a political subdivision of the state of West Virginia, or is an instrumentality of a political subdivision of this state, and was created pursuant to this code;

(h) Any corporation or partnership engaged in the activity of agriculture and farming, as defined in subdivision (8), subsection (b), section three of this article: Provided, That if a corporation or partnership is not exclusively engaged in that activity, its tax base under this article is apportioned, in accordance with regulations promulgated by the tax commissioner, among its several activities and only that portion attributable to the activity of agriculture and farming is exempt from tax under this article;

(i) Any corporation or partnership licensed under article twenty-three, chapter nineteen of this code, to conduct horse or dog racing meetings or a pari-mutuel system of wagering: Provided, That if the corporation or partnership is not exclusively engaged in this activity, its tax base under this article is apportioned, in accordance with regulations promulgated by the tax commissioner, among its several activities and only that portion attributable to the activity of conducting a horse or dog racing meeting or a pari-mutuel system of wagering is exempt from tax under this article;

(j) For those tax years beginning after the thirtieth day of June, one thousand nine hundred ninety-eight, any corporation
or partnership operating as a hunting club: Provided, That the
corporation or partnership distributes no income or dividends
to its owners or stockholders. For the purposes of this subsec-
tion, a hunting club is a group of persons owning land which is
used principally for hunting purposes by the members of the
club and guests, and where any charges made for hunting are
principally for the purpose of defraying the costs of operating
and maintaining the club and club properties or establishing a
reasonable reserve to meet the operating and maintenance costs
of the club. The tax commissioner shall by legislative rule
promulgated in accordance with article three of chapter
twenty-nine of this code further prescribe the definition of a
hunting club and the manner and method in which this credit
may be claimed; and

(k) For tax years beginning after the thirty-first day of
December, two thousand two, any person or other organization
engaged in the activity of providing venture capital to West
Virginia businesses: Provided, That if the person or organiza-
tion is not exclusively engaged in that activity, only that portion
of its tax base under this article that is attributable to the
providing of venture capital to West Virginia businesses is
exempt from tax under this article, and its tax liability under
this article is determined by multiplying its pre-credit tax
liability by a fraction equal to one minus a fraction, the numer-
ator of which is its gross receipts attributable to its venture
capital activities in this state and the denominator of which is
its total gross receipts from all of its business activities in this
state. For purposes of this exemption, a "person or organization
engaged in the activity of providing venture capital to West
Virginia business" means a certified West Virginia capital
company as defined in section four, article one, chapter five-e
of this code.
§11-23-24a. Tax credit for value-added products from raw agricultural products; regulations; termination of credit.

(a) Effective for taxable years beginning the first day of July, one thousand nine hundred ninety-seven, notwithstanding any provisions of this code to the contrary, any person, newly and solely engaged in the production of value-added products from raw agricultural products are allowed a credit, in the amount of one thousand dollars for each taxable year against the tax imposed by this article, for a period of five years from the date the person becomes subject to this article. The credit is allowed only against the tax imposed on that capital which is attributable to the value-added production activity in this state.

(b) For purposes of this section, “value-added product” means the following products derived from processing a raw agricultural product, whether for human consumption or for other use. The following enterprises qualify as processing raw agricultural products into value-added products: (1) The conversion of lumber into furniture, toys, collectibles and home furnishings; (2) the conversion of fruit into wine; (3) the conversion of honey into wine; (4) the conversion of wool into fabric; (5) the conversion of raw hides into semifinished or finished leather products; (6) the conversion of milk into cheese; (7) the conversion of fruits or vegetables into a dried, canned or frozen product; (8) the conversion of feeder cattle into commonly acceptable marketable retail portions; (9) the conversion of aquatic animals into a dried, canned, cooked or frozen product; and (10) the conversion of poultry into a dried, canned, cooked or frozen product.

(c) The tax commissioner may propose rules for promulgation in accordance with article three, chapter twenty-nine-a as necessary to effectuate the purposes of this section.
(d) No credit is available to any taxpayer under this section after the first day of July, two thousand two: Provided, That taxpayers which have gained entitlement to the credit pursuant to the terms of this section prior to the first day of July, two thousand two, shall retain that entitlement and apply the credit in due course pursuant to the requirements and limitations of this section until the original five-year credit entitlement has been exhausted or otherwise terminated.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-22a. Tax credit for value-added products from raw agricultural products; regulations; termination of credit.

(a) Effective for taxable years beginning the first day of July, one thousand nine hundred ninety-seven, notwithstanding any provisions of this code to the contrary, any new corporation engaged solely in the production of value-added products from raw agricultural products are allowed a credit, in the amount of one thousand dollars for each taxable year against the tax imposed by this article, for a period of five years from the date the person becomes subject to this article. The credit is allowed only against the tax on taxable income which is attributable to the production of value-added products.

(b) Effective for taxable years beginning the first day of July, one thousand nine hundred ninety-seven, any new corporation engaged solely in the production of value-added products in West Virginia is allowed a tax credit, according to the schedule herein, for every one hour spent by a new permanent, full-time employee training to learn a skill specific to the production of value-added products as defined in article twenty-one, chapter thirty-one of this code. The tax credit is allowed for a maximum of sixty hours, per company, per year.
(c) For purposes of this section, tax credits for hours spent by a new permanent, full-time employee in training is allowed as follows:

1. Corporations which employ up to five new employees is allowed a tax credit of two dollars for every one hour spent by a new employee in training as specified herein;

2. Corporations which employ between six and twenty-five new employees are allowed a tax credit of one dollar and fifty cents for every one hour spent by a new employee in training as specified herein;

3. Corporations which employ between twenty-six and seventy-five new employees are allowed a tax credit of one dollar and twenty-five cents for every one hour spent by a new employee in training as specified herein;

4. Corporations which employ between seventy-six and one hundred and twenty-five new employees are allowed a tax credit of one dollar for every one hour spent by a new employee in training as specified herein; and

5. Corporations which employ more than one hundred twenty-five new employees are allowed a tax credit of seventy-five cents for every one hour spent by a new employee in training as specified herein.

(d) For purposes of this section, “value-added product” means the following products derived from processing a raw agricultural product, whether for human consumption or for other use. The following enterprises qualify as processing raw agricultural products into value-added products: (1) The conversion of lumber into furniture, toys, collectibles and home furnishings; (2) the conversion of fruit into wine; (3) the conversion of honey into wine; (4) the conversion of wool into fabric; (5) the conversion of raw hides into semifinished or
finished leather products; (6) the conversion of milk into cheese; (7) the conversion of fruits or vegetables into a dried, canned or frozen product; (8) the conversion of feeder cattle into commonly acceptable marketable retail portions; (9) the conversion of aquatic animals into a dried, canned, cooked or frozen product; and (10) the conversion of poultry into a dried, canned, cooked or frozen product.

(e) The tax commissioner may propose rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code as necessary to effectuate the purposes of this article.

(f) No credit is available to any taxpayer under this section subsequent to the first day of July, two thousand two: Provided, That taxpayers which have gained entitlement to the credit pursuant to the terms of this section prior to the first day of July, two thousand two, shall retain that entitlement and apply the credit in due course pursuant to the requirements and limitations of this section until the original five-year credit entitlement has been exhausted or otherwise terminated.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§12-6-9e. Legislative findings; loans for industrial development; availability of funds and interest rates.

(a) The Legislature hereby finds and declares that the citizens of the state benefit from the creation of jobs and businesses within the state; that a business and industrial development loan program provides for economic growth and stimulation within the state; that loans from pools established in the consolidated fund will assist in providing the needed capital to assist business and industrial development; and that time constraints relating to business and industrial development
projects prohibit duplicative review by both the board and the

West Virginia economic development authority board. The

Legislature further finds and declares that an investment in the

West Virginia Enterprise Capital Fund, LLC of moneys in the

consolidated fund as hereinafter provided will assist in creating

jobs and businesses within the state and providing the needed

risk capital to assist business and industrial development. This

section is enacted in view of these findings.

(b) The board shall make available, subject to cash avail-

ability, in the form of a revolving loan, up to one hundred fifty

million dollars from the consolidated fund to loan the West

Virginia economic development authority for business or

industrial development projects authorized by section seven,

article fifteen, chapter thirty-one of this code and to consolidate

existing loans authorized to be made to the West Virginia

economic development authority pursuant to this section and

pursuant to section twenty, article fifteen, chapter thirty-one of

this code which authorizes a one hundred fifty million dollar

revolving loan and article eighteen-b, chapter thirty-one of this

code which authorizes a fifty million dollar investment pool:

Provided, That the West Virginia economic development

authority may not loan more than fifteen million dollars for any

one business or industrial development project. The revolving

loan authorized by this subsection shall be secured by one note

at a variable interest rate equal to the twelve-month average of

the board’s yield on its cash liquidity pool. The rate shall be set

on the first day of July and the rate shall be adjusted annually

on the same date. The maximum annual adjustment may not

exceed one percent. Monthly payments made by the West

Virginia economic development authority to the board shall be

calculated on a one hundred twenty-month amortization. The

revolving loan shall be secured by a security interest that

pledges and assigns the cash proceeds of collateral from all

loans under this revolving loan pool. The West Virginia

economic development authority may also pledge as collateral
certain revenue streams from other revolving loan pools which
source of funds does not originate from federal sources or from
the board.

The outstanding principal balance of the revolving loan
from the board to the West Virginia economic development
authority may at no time exceed one hundred three percent of
the aggregate outstanding principal balance of the business and
industrial loans from the West Virginia economic development
authority to economic development projects funded from this
reversing loan pool. This provision shall be certified annually
by an independent audit of the West Virginia economic
development authority financial records.

(c) The interest rates and maturity dates on the loans made
by the West Virginia economic development authority for
business and industrial development projects authorized by
section seven, article fifteen, chapter thirty-one of this code
shall be at competitive rates and maturities as determined by the
West Virginia economic development authority board.

(d) Any and all outstanding loans made by the board, or any
predecessor entity, to the West Virginia economic development
authority shall be refunded by proceeds of the revolving loan
contained in this section and no loans may be made hereafter by
the board to the West Virginia economic development authority
pursuant to section twenty, article fifteen, chapter thirty-one of
this code or article eighteen-b of said chapter.

(e) The trustees of the board shall bear no fiduciary
responsibility as provided in section eleven [§ 12-6-11] of this
article with specific regard to the revolving loan contemplated
in this section.

(f) Subject to cash availability, the board shall make
available to the West Virginia economic development authority
from the consolidated fund a non-recourse loan in an amount up
to twenty-five million dollars, for the purpose of the West Virginia economic development authority making a loan or loans from time to time to the West Virginia enterprise advancement corporation, an affiliated nonprofit corporation of the West Virginia economic development authority. The respective loans authorized by this subsection by the board to the West Virginia economic development authority and by the West Virginia economic development authority to the West Virginia enterprise advancement corporation shall each be evidenced by one note and shall each bear interest at the rate of three percent per annum. The proceeds of any and all loans made by the West Virginia economic development authority to the West Virginia enterprise advancement corporation pursuant to this subsection shall be invested by the West Virginia enterprise corporation in the West Virginia enterprise capital fund, LLC, the manager of which is the West Virginia enterprise advancement corporation. The loan to West Virginia economic development authority authorized by this subsection shall be non-revolving, and advances thereunder shall be made at times and in amounts as may be requested or directed by the West Virginia economic development authority, upon reasonable notice to the board, the loan authorized by this subsection is not subject to or included in the limitations set forth in subsection (b) of this section with respect to the fifteen million dollar limitation for any one business or industrial development project and limitation of one hundred three percent of outstanding loans, and may not be included in the revolving fund loan principal balance for purposes of calculating the loan amortization in subsection (b) of this section. The loan authorized by this subsection to the West Virginia economic development authority shall be classified by the board as a long-term, fixed income investment, shall bear interest on the outstanding principal balance thereof at the rate of three percent per annum payable annually on or before the thirtieth day of June of each year, and the principal of which shall be repaid no later than the
thirtieth day of June, two thousand twenty-two in annual installments due on or before the thirtieth day of June of each year, which annual installments shall commence no later than the thirtieth day of June, two thousand and three, in annual principal amounts as may be agreed upon between the board and the West Virginia economic development authority, and which annual installments need not be equal. The loan authorized by this subsection shall be non-recourse and shall be payable by the West Virginia economic development authority solely from amounts or returns received by the West Virginia economic development authority in respect of the loan authorized by this subsection to the West Virginia enterprise advancement corporation, whether in the form of interest, dividends, realized capital gains, return of capital or otherwise, in all of which the board shall have a security interest to secure repayment of the loan to the West Virginia economic development authority authorized by this subsection. Any and all loans from the West Virginia economic development authority to the West Virginia enterprise advancement corporation made pursuant to this subsection shall also bear interest on the outstanding principal balance thereof at the rate of three percent per annum payable annually on or before the thirtieth day of June of each year, shall be non-recourse and shall be payable by the West Virginia enterprise advancement corporation solely from amounts of returns received by the West Virginia enterprise advancement corporation in respect of its investment in the West Virginia enterprise capital fund, LLC, whether in the form of interest, dividends, realized capital gains, return of capital or otherwise, in all of which the board shall have a security interest to secure repayment of the loan to the West Virginia economic development authority authorized by this subsection. In the event the amounts or returns received by the West Virginia enterprise corporation in respect of its investment in the West Virginia enterprise capital fund, LLC, are not adequate to pay when due the principal or interest installments,
or both, with respect to the loan from the West Virginia economic development authority and, as a result thereof, the West Virginia economic development authority is unable to pay the principal or interest installments, or both, with respect to the loan authorized by this subsection by the board to the West Virginia economic development authority, the principal or interest, or both, as the case may be due on the loan made to the West Virginia economic development authority pursuant to this subsection shall be deferred, and any and all such past-due principal and interest payments shall promptly be paid to the fullest extent possible upon receipt by the West Virginia enterprise advancement corporation of moneys in respect of investments in the West Virginia enterprise capital fund, LLC. The trustees or the board shall bear no fiduciary responsibility as provided in section eleven, article six, chapter twelve of this code with regard to the loan authorized by this subsection.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18. State lottery fund; appropriations and deposits; not part of general revenue; no transfer of state funds after initial appropriation; use and repayment of initial appropriation; allocation of fund for prizes, net profit and expenses; surplus; state lottery education fund; state lottery senior citizens fund; allocation and appropriation of net profits.

(a) There is hereby continued a special revenue fund in the state treasury which shall be designated and known as the "state lottery fund". The fund consists of all appropriations to the fund and all interest earned from investment of the fund and any gifts, grants or contributions received by the fund. All revenues received from the sale of lottery tickets, materials and games shall be deposited with the state treasurer and placed into the
“state lottery fund”. The revenue shall be disbursed in the manner provided in this section for the purposes stated in this section and shall not be treated by the auditor and treasurer as part of the general revenue of the state.

(b) No appropriation, loan or other transfer of state funds may be made to the commission or lottery fund after the initial appropriation.

(c) A minimum annual average of forty-five percent of the gross amount received from each lottery shall be allocated and disbursed as prizes.

(d) Not more than fifteen percent of the gross amount received from each lottery may be allocated to and may be disbursed as necessary for fund operation and administration expenses: Provided, That for the period beginning the first day of January, two thousand two, through the thirtieth day of June, two thousand three, not more than seventeen percent of the gross amount received from each lottery shall be allocated to and may be disbursed as necessary for fund operation and administration expenses.

(e) The excess of the aggregate of the gross amount received from all lotteries over the sum of the amounts allocated by subsections (c) and (d) of this section shall be allocated as net profit. In the event that the percentage allotted for operations and administration generates a surplus, the surplus shall be allowed to accumulate to an amount not to exceed two hundred fifty thousand dollars. On a monthly basis, the director shall report to the joint committee on government and finance of the Legislature any surplus in excess of two hundred fifty thousand dollars and remit to the state treasurer the entire amount of those surplus funds in excess of two hundred fifty thousand dollars which shall be allocated as net profit.
(f) After first satisfying the requirements for funds dedicated to the school building debt service fund in subsection (h) of this section to retire the bonds authorized to be issued pursuant to section eight, article nine-d, chapter eighteen of this code, and then satisfying the requirements for funds dedicated to the education, arts, sciences and tourism debt service fund in subsection (i) of this section to retire the bonds authorized to be issued pursuant to section eleven-a, article six, chapter five of this code, any and all remaining funds in the state lottery fund shall be made available to pay debt service in connection with any revenue bonds issued pursuant to section eighteen-a of this article, if and to the extent needed for such purpose from time to time. The Legislature shall annually appropriate all of the remaining amounts allocated as net profits in subsection (e) of this section, in such proportions as it considers beneficial to the citizens of this state, to: (1) The lottery education fund created in subsection (g) of this section; (2) the school construction fund created in section six, article nine-d, chapter eighteen of this code; (3) the lottery senior citizens fund created in subsection (j) of this section; and (4) the division of natural resources created in section three, article one, chapter twenty of this code and the West Virginia development office as created in section one, article two, chapter five-b of this code, in accordance with subsection (k) of this section. No transfer to any account other than the school building debt service account, the education, arts, sciences and tourism debt service fund, the economic development project fund created under section eighteen-article twenty-two, chapter twenty-nine of this code, or any fund from which debt service is paid under subsection (c), section eighteen-a of this article, may be made in any period of time in which a default exists in respect to debt service on bonds issued by the school building authority, the state building commission, the economic development authority or which are otherwise secured by lottery proceeds. No additional transfer may be made to any account other than the school building debt service
account and the education, arts, sciences and tourism debt
service fund when net profits for the preceding twelve months
are not at least equal to one hundred fifty percent of debt
service on bonds issued by the school building authority and the
state building commission which are secured by net profits.

(g) There is hereby continued a special revenue fund in the
state treasury which shall be designated and known as the
"lottery education fund." The fund shall consist of the amounts
allocated pursuant to subsection (f) of this section, which shall
be deposited into the lottery education fund by the state
treasurer. The lottery education fund shall also consist of all
interest earned from investment of the lottery education fund
and any other appropriations, gifts, grants, contributions or
moneys received by the lottery education fund from any source.
The revenues received or earned by the lottery education fund
shall be disbursed in the manner provided below and may not
be treated by the auditor and treasurer as part of the general
revenue of the state. Annually, the Legislature shall appropriate
the revenues received or earned by the lottery education fund to
the state system of public and higher education for these
educational programs it considers beneficial to the citizens of
this state.

(h) On or before the twenty-eighth day of each month, as
long as revenue bonds or refunding bonds are outstanding, the
lottery director shall allocate to the school building debt service
fund created pursuant to the provisions of section six, article
nine-d, chapter eighteen of this code, as a first priority from the
net profits of the lottery for the preceding month, an amount
equal to one tenth of the projected annual principal, interest and
coverage ratio requirements on any and all revenue bonds and
refunding bonds issued, or to be issued, on or after the first day
of April, one thousand nine hundred ninety-four, as certified to
the lottery director in accordance with the provisions of section
six, article nine-d, chapter eighteen of this code. In no event
shall the monthly amount allocated exceed one million eight
hundred thousand dollars, nor may the total allocation of the net
profits to be paid into the school building debt service fund, as
provided in this section, in any fiscal year exceed the lesser of
the principal and interest requirements certified to the lottery
director or eighteen million dollars. In the event there are
insufficient funds available in any month to transfer the amount
required to be transferred pursuant to this subsection to the
school debt service fund, the deficiency shall be added to the
amount transferred in the next succeeding month in which
revenues are available to transfer the deficiency. A lien on the
proceeds of the state lottery fund up to a maximum amount
equal to the projected annual principal, interest and coverage
ratio requirements, not to exceed twenty-seven million dollars
annually, may be granted by the school building authority in
favor of the bonds it issues which are secured by the net lottery
profits.

When the school improvement bonds, secured by profits
from the lottery and deposited in the school debt service fund,
mature, the profits shall become available for debt service on
additional school improvement bonds as a first priority from the
net profits of the lottery or may at the discretion of the authority
be placed into the school construction fund created pursuant to
the provisions of section six, article nine-d, chapter eighteen of
this code.

(i) Beginning on or before the twenty-eighth day of July,
one thousand nine hundred ninety-six, and continuing on or
before the twenty-eighth day of each succeeding month
thereafter, as long as revenue bonds or refunding bonds are
outstanding, the lottery director shall allocate to the education,
arts, sciences and tourism debt service fund created pursuant to
the provisions of section eleven-a, article six, chapter five of
this code, as a second priority from the net profits of the lottery
for the preceding month, an amount equal to one tenth of the
projected annual principal, interest and coverage ratio requirements on any and all revenue bonds and refunding bonds issued, or to be issued, on or after the first day of April, one thousand nine hundred ninety-six, as certified to the lottery director in accordance with the provisions of that section. In no event may the monthly amount allocated exceed one million dollars nor may the total allocation paid into the education, arts, sciences and tourism debt service fund, as provided in this section, in any fiscal year exceed the lesser of the principal and interest requirements certified to the lottery director or ten million dollars. In the event there are insufficient funds available in any month to transfer the amount required pursuant to this subsection to the education, arts, sciences and tourism debt service fund, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency. A second-in-priority lien on the proceeds of the state lottery fund up to a maximum amount equal to the projected annual principal, interest and coverage ratio requirements, not to exceed fifteen million dollars annually, may be granted by the state building commission in favor of the bonds it issues which are secured by the net lottery profits.

When the bonds, secured by profits from the lottery and deposited in the education, arts, sciences and tourism debt service fund, mature, the profits shall become available for debt service on additional bonds as a second priority from the net profits of the lottery.

(j) There is hereby continued a special revenue fund in the state treasury which shall be designated and known as the “lottery senior citizens fund.” The fund shall consist of the amounts allocated pursuant to subsection (f) of this section, which amounts shall be deposited into the lottery senior citizens fund by the state treasurer. The lottery senior citizens fund shall also consist of all interest earned from investment of the lottery
senior citizens fund and any other appropriations, gifts, grants, contributions or moneys received by the lottery senior citizens fund from any source. The revenues received or earned by the lottery senior citizens fund shall be distributed in the manner provided below and may not be treated by the auditor or treasurer as part of the general revenue of the state. Annually, the Legislature shall appropriate the revenues received or earned by the lottery senior citizens fund to such senior citizens medical care and other programs as it considers beneficial to the citizens of this state.

(k) The division of natural resources and the West Virginia development office, as appropriated by the Legislature, may use the amounts allocated to them pursuant to subsection (f) of this section for one or more of the following purposes: (1) The payment of any or all of the costs incurred in the development, construction, reconstruction, maintenance or repair of any project or recreational facility, as these terms are defined in section four, article five, chapter twenty of this code, pursuant to the authority granted to it under article five, chapter twenty of this code; (2) the payment, funding or refunding of the principal of, interest on or redemption premiums on any bonds, security interests or notes issued by the parks and recreation section of the division of natural resources under article five, chapter twenty of this code; or (3) the payment of any advertising and marketing expenses for the promotion and development of tourism or any tourist facility or attraction in this state.

§29-22-18a. State excess lottery revenue fund

(a) There is hereby created a special revenue fund within the state lottery fund in the state treasury which shall be designated and known as the "state excess lottery revenue fund". The fund shall consist of all appropriations to the fund and all interest earned from investment of the fund and any gifts, grants or contributions received by the fund. All revenues
received under the provisions of sections ten-b and ten-c, article
twenty-two-a of this chapter and under article twenty-two-b of
this chapter, except the amounts due the commission under
section 29-22B-1408(a) (1) of this chapter, shall be deposited
in the state treasury and placed into the "state excess lottery
revenue fund". The revenue shall be disbursed in the manner
provided in this section for the purposes stated in this section
and shall not be treated by the auditor and the state treasurer as
part of the general revenue of the state.

(b) For the fiscal year beginning the first day of July, two
thousand one, the moneys of the fund established in this section
shall be used for the purpose of subsidizing salary increases and
associated employee benefits paid from the state general
revenue fund as determined by the secretary of administration
effective the first day of July, two thousand one or thereafter,
including, but not limited, to the salary increase for teachers
provided in section two, article four, chapter eighteen-a of this
code, by enactment of the Legislature in two thousand one; the
salary increase for members of the state police provided in
section five, article two, chapter fifteen of this code by enact-
ment of the Legislature in two thousand one; and general salary
increases for state employees: Provided, That effective the first
day of October, two thousand one, the full year salary increases
for state employees other than correctional officers and mem-
bers of the state police equal seven hundred fifty-six dollars for
each full-time employee: Provided, however, That effective the
first day of July, two thousand one, the full year salary in-
creases for uniformed correctional officers equal two thousand
dollars for each full-time employee; and that the full year salary
increases for non-uniformed correctional staff, whose core
duties include contact with inmates or juvenile detainees on a
regular and frequent basis, equal one thousand two hundred
fifty dollars for each full-time employee; but that for all other
division of correction and division of juvenile services employ-
ees, the full year salary increase equals seven hundred fifty-six
dollars for each full-time employee. Until the thirtieth day of
June, two thousand two, the lottery commission shall, upon
direction from the governor, transfer the moneys of the account
to the state general revenue fund in the amounts specified in the
governor's official revenue estimates to subsidize the funding
of the salary increases described in this subsection. Beginning
the first day of July, two thousand two, and thereafter, the
transfer authority granted by this subsection is terminated. After
first satisfying the funding requirements directed by this
subsection, the moneys remaining in the fund shall be disbursed
in the manner provided by subsection (c) of this section.

For the fiscal year beginning the first day of July, two
thousand one, the commission shall deposit: (1) Five million
five hundred thousand dollars into the account hereby created
in the state treasury to be known as the "education improvement
fund" for appropriation by the Legislature to the "promise
scholarship fund" created in section seven, article seven,
chapter eighteen-c of this code; (2) twenty-five million dollars
to the school building debt service fund created in section six,
article nine-d, chapter eighteen of this code for the issuance of
revenue bonds; (3) twenty-five million dollars in the West
Virginia infrastructure fund created in section nine, article
fifteen-a, chapter thirty-one of this code to be spent in accor-
dance with the provisions of that article; (4) ten million dollars
into a separate account within the state lottery fund to be known
as the higher education improvement fund for higher education;
and (5) nine million dollars into a separate account within the
state lottery fund to be known as the state park improvement
fund for park improvements. For the fiscal year beginning the
first day of July, two thousand two, the commission shall
deposit: (1) Sixty-five million dollars into the subaccount of the
state excess lottery revenue fund hereby created in the state
treasury to be known as the "general purpose account" to be
expended pursuant to appropriation of the Legislature; (2) ten
million dollars into the education improvement fund for
appropriation by the Legislature to the “promise scholarship fund” created in section seven, article seven, chapter eighteen-c of this code; (3) nineteen million dollars into the economic development project fund created in subsection (d) of this section, for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) twenty million dollars to the school building debt service fund created in section six, article nine-d, chapter eighteen of this code for the issuance of revenue bonds; (5) forty million dollars in the West Virginia infrastructure fund created in section nine, article fifteen-a, chapter thirty-one of this code to be spent in accordance with the provisions of that article; (6) ten million dollars into the higher education improvement fund for higher education; and (7) five million dollars into the state park improvement fund for park improvements. For the fiscal year beginning the first day of July, two thousand three, the commission shall deposit: (1) Sixty-five million dollars into the general purpose account to be expended pursuant to appropriation of the Legislature; (2) seventeen million dollars into the education improvement fund for appropriation by the Legislature to the “promise scholarship fund” created in section seven, article seven, chapter eighteen-c of this code; (3) nineteen million dollars into the economic development project fund created in subsection (d) of this section, for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) twenty million dollars to the school building debt service fund created in section six, article nine-d, chapter eighteen of this code for the issuance of revenue bonds; (5) forty million dollars in the West Virginia infrastructure fund created in section nine, article fifteen-a, chapter thirty-one of this code, to be spent in accordance with the provisions of that article; (6) ten million dollars into the higher education improvement fund for higher education; and (7) five million dollars into the state park improvement fund for park improvements. For the fiscal year beginning the first day of July, two thousand
four, and subsequent fiscal years, the commission shall deposit:

(1) Sixty-five million dollars into the general purpose account to be expended pursuant to appropriation of the Legislature; (2) twenty-seven million dollars into the education improvement fund for appropriation by the Legislature to the “promise scholarship fund” created in section seven, article seven, chapter eighteen-c of this code; (3) nineteen million dollars into the economic development project fund created in subsection (d) of this section, for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) nineteen million dollars to the school building debt service fund created in section six, article nine-d, chapter eighteen of this code for the issuance of revenue bonds; (5) forty million dollars in the West Virginia infrastructure fund created in section nine, article fifteen-a, chapter thirty-one of this code to be spent in accordance with the provisions of that article; (6) ten million dollars into the higher education improvement fund for higher education; and (7) five million dollars into the state park improvement fund for park improvements. No portion of the distributions made as provided in subsection (c) of this section, except distributions made in connection with bonds issued under subsection (d) of this section, may be used to pay debt service on bonded indebtedness until after the Legislature expressly authorizes issuance of the bonds and payment of debt service on the bonds through statutory enactment or the passage of a concurrent resolution by both houses of the Legislature. Until subsequent legislative enactment or adoption of a resolution that expressly authorizes issuance of the bonds and payment of debt service on the bonds with funds distributed under subsection (c) of this section, except distributions made in connection with bonds issued under subsection (d) of this section, the distributions may be used only to fund capital improvements that are not financed by bonds and only pursuant to appropriation of the Legislature.
(d) The Legislature finds and declares that in order to attract new business, commerce and industry to this state, to retain existing business and industry providing the citizens of this state with economic security and to advance the business prosperity of this state and the economic welfare of the citizens of this state, it is necessary to provide public financial support for constructing, equipping, improving and maintaining economic development projects, capital improvement projects and infrastructure which promote economic development in this state.

(1) The West Virginia economic development authority created and provided for in article fifteen, chapter thirty-one of this code, shall, by resolution, in accordance with the provisions of this article, and article fifteen, chapter thirty-one of this code, and upon direction of the governor, issue revenue bonds of the economic development authority in no more than two series to pay for all or a portion of the cost of constructing, equipping, improving or maintaining projects under this section or to refund the bonds, at the discretion of the authority. Any revenue bonds issued on or after the first day of July, two thousand two, which are secured by state excess lottery revenue proceeds shall mature at a time or times not exceeding thirty years from their respective dates. The principal of, and the interest and redemption premium, if any, on the bonds shall be payable solely from the special fund provided in this section for the payment.

(2) There is hereby created in the state treasury a special revenue fund named the “economic development project fund” into which shall be deposited on and after the first day of July, two thousand two, the amounts to be deposited in said fund as specified in subsection (c), section eighteen-a of this article. The economic development project fund shall consist of all such moneys, all appropriations to the fund, all interest earned from investment of the fund, and any gifts, grants or contributions received by the fund. All amounts deposited in the fund
shall be pledged to the repayment of the principal, interest and
devolution premium, if any, on any revenue bonds or refunding
revenue bonds authorized by this section, including any and all
commercially customary and reasonable costs and expenses
which may be incurred in connection with the issuance,
refunding, redemption or defeasance thereof. The West Virginia
economic development authority may further provide in the
resolution and in the trust agreement for priorities on the
revenues paid into the economic development project fund as
may be necessary for the protection of the prior rights of the
holders of bonds issued at different times under the provisions
of this section. The bonds issued pursuant to this section shall
be separate from all other bonds which may be or have been
issued from time to time under the provisions of this article.

After the West Virginia economic development authority
has issued bonds authorized by this section, and after the
requirements of all funds have been satisfied, including any
coverage and reserve funds established in connection with the
bonds issued pursuant to this section, any balance remaining in
the economic development project fund may be used for the
redemption of any of the outstanding bonds issued under this
section which, by their terms, are then redeemable or for the
purchase of the outstanding bonds at the market price, but not
to exceed the price, if any, at which redeemable, and all bonds
redeemed or purchased shall be immediately canceled and shall
not again be issued.

(3) The West Virginia economic development authority
shall expend the bond proceeds from the revenue bond issues
authorized and directed by this section of this code for such
projects as may be certified under the provision of this subsec-
tion: Provided, That the bond proceeds shall be expended in
accordance with the requirements and provisions of article five-
a, chapter twenty-one of this code and either twenty-two or
article twenty-two-a, chapter five of this code, as the case may
be: Provided, however, That if such bond proceeds are expended pursuant to article-twenty-two-a, chapter five of this code, and if the design-build board created under said article determines that the execution of a design-build contract in connection with a project is appropriate pursuant to the criteria set forth in said article, and that a competitive bidding process was used in selecting the design builder and awarding such contract, such determination shall be conclusive for all purposes and shall be deemed to satisfy all the requirements of said article. For the purpose of certifying the projects that will receive funds from the bond proceeds, a committee is hereby established and comprised of the governor, or his or her designee, the secretary of the department of tax and revenue, the executive director of the West Virginia development office, three persons appointed by the governor from a list of five names to be submitted to the governor by the president of the West Virginia senate, and three persons appointed by the governor from a list of five names to be submitted to the governor by the speaker of the West Virginia house of delegates. The committee shall meet as often as necessary and take recommendations from any source whatever regarding possible projects to be funded, in whole or in part, and make certifications, from bond proceeds in accordance with this subsection. The committee shall meet within thirty days of the effective date of this section. Prior to making each certification, the committee shall conduct at least one public hearing, which may be held outside of Kanawha County. Notice of the time, place, date and purpose of the hearing shall be published in at least one newspaper in each of the three congressional districts at least fourteen days prior to the date of the public hearing. Prior to the issuance of bonds under this subsection, the committee shall certify to the economic development authority a list of those projects that will receive funds from the proceeds of the bonds. Once certified, the list may not thereafter be altered or amended other than by legislative enactment.
(e) If the commission receives revenues in an amount that is not sufficient to fully comply with the requirements of subsection (c) and (h) of this section, the commission shall first make the distribution to the economic development project fund, second, make the distribution or distributions to the other funds from which debt service is to be paid, third, make the distribution to the education improvement fund for appropriation by the Legislature to the promise scholarship fund, and fourth, make the distribution to the general purpose account: Provided, That, subject to the foregoing, to the extent such revenues are not pledged in support of revenue bonds which are or may be issued from time to time under this section, the aforesaid revenues shall be distributed on a pro rata basis.

(f) For the fiscal year beginning on the first day of July, two thousand two, and each fiscal year thereafter, the commission shall, after meeting the requirements of subsections (c) and (h) of this section, and after transferring to the state lottery fund created under section eighteen of this article, an amount equal to any transfer from the state lottery fund to the excess lottery fund pursuant to subsection (f) of said section, deposit fifty percent of the amount by which annual gross revenue deposited in the state excess lottery revenue fund exceeds two hundred twenty-five million dollars in a fiscal year in a separate account in the state lottery fund to be available for appropriation by the Legislature.

(g) When bonds are issued for projects under subsection (d) of this section or for the school building authority, infrastructure, higher education or park improvement purposes described in this section that are secured by profits from lotteries deposited in the state excess lottery revenue fund, the lottery director shall allocate first, to the economic development project fund an amount equal to one tenth of the projected annual principal, interest and coverage requirements on any and all revenue bonds issued, or to be issued, on or after the first day of July,
two thousand two, as certified to the lottery director, and
second, to the fund or funds from which debt service is paid on
bonds issued under this section for the school building author-
ity, infrastructure, higher education and park improvements an
amount equal to one tenth of the projected annual principal,
interest and coverage requirements on any and all revenue
bonds issued, or to be issued, on or after the first day of April,
two thousand two, as certified to the lottery director. In the
event there are insufficient funds available in any month to
transfer the amounts required pursuant to this subsection, the
deficiency shall be added to the amount transferred in the next
succeeding month in which revenues are available to transfer
the deficiency.

(h) In fiscal year two thousand four, and thereafter, prior to
the distributions provided in subsection (c) of this section, the
lottery commission shall deposit into the general revenue fund
amounts necessary to provide reimbursement for the refundable
credit allowable under section twenty-one, article twenty-one,
chapter eleven of this code.

(i) (1) The Legislature considers the following as priorities
in the expenditure of any surplus revenue funds:

(A) Providing salary and/or increment increases for
professional educators and public employees;

(B) Providing adequate funding for the public employees
insurance agency; and

(C) Providing funding to help address the shortage of
qualified teachers and substitutes in areas of need, both in
number of teachers and in subject matters areas.

(2) The provisions of this subsection may not be construed
by any court to require any appropriation or any specific
appropriation or level of funding for the purposes set forth in this subsection.

(j) The Legislature further directs the Governor to focus resources on the creation of a prescription drug program for senior citizens by pursuing a medicaid waiver to offer prescription drug services to senior citizens; by investigating the establishment of purchasing agreements with other entities to reduce costs; by providing discount prices or rebate programs for seniors; by coordinating programs offered by pharmaceutical manufacturers that provide reduced cost or free drugs; by coordinating a collaborative effort among all state agencies to ensure the most efficient and cost effective program possible for the senior citizens of this state; and by working closely with the state's congressional delegation to ensure that a national program is implemented. The Legislature further directs that the Governor report his progress back to the joint committee on government and finance on an annual basis beginning in November of the year two thousand one, until a comprehensive program has been fully implemented.
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That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 30th day of March, 2002.

Governor