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Senate Bill No. 465

(Senators McCabe, Kessler (Acting President), Browning, Unger, Snyder, Stollings, Plymale, Wells, Palumbo, Beach, Klemka, Yost and Foster, original sponsors)

[Passed March 12, 2011; to take effect July 1, 2011.]
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5B-2H-1 and §5B-2H-2; to amend said code by adding thereto a new section, designated §11-1C-11c; to amend and reenact §11-6D-1, §11-6D-2, §11-6D-3, §11-6D-4, §11-6D-5, §11-6D-6, §11-6D-7 and §11-6D-8 of said code; to amend said code by adding thereto a new section, designated §11-6D-9; to amend and reenact §11-6F-2 and §11-6F-3 of said code; to amend and reenact §11-13Q-20 of said code; to amend and reenact §11-13R-3 of said code; to amend and reenact §11-13S-3 and §11-13S-4 of said code; to amend and reenact §11-15-8d of said code; and to amend and reenact §24-2F-3 of said code, all relating generally to the Marcellus Gas and Manufacturing Development Act of 2011; providing short title; making legislative findings and
declarations; providing guideline for valuation of drilling rigs for property tax purposes; authorizing the Tax Commissioner to promulgate rules; amending and reinstating alternative fuel motor vehicle tax credit; providing credit for alternative fuel refueling facilities; making legislative findings; stating legislative purpose; defining terms; allowing credit for purchase of alternative fuel motor vehicles, conversion of vehicles to alternative fuel motor vehicles and for commercial and residential alternative fuel refueling facilities; providing for expiration of credits; requiring Tax Commissioner to promulgate rules and design forms; providing for carryover of unused credits and for recapture of credits; amending definition of "manufacturing" for purposes of special method for appraising qualified capital additions to manufacturing facilities for property tax purposes; providing new rules for treatment of certified capital addition property; adding additional requirements for reports to Governor and Legislature; amending definition of "research and development" for purposes of strategic research and development tax credit; amending definition of "manufacturing" for purposes of manufacturing investment tax credit; requiring certain business activities comply with certain hiring requirements in order to be eligible for the manufacturing investment tax credit and sales tax exemption; providing additional exception to limitation on right to assert sales and use tax exemptions; and clarifying meaning of "natural gas" for purposes of Alternative and Renewable Energy Portfolio Standard Act.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §5B-2H-1 and §5B-2H-2; that said code be amended by adding thereto a new section, designated §11-1C-11c; that §11-6D-1, §11-6D-2, §11-6D-3, §11-6D-4, §11-6D-5, §11-6D-6, §11-6D-7 and §11-6D-8 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §11-6D-9; that §11-6F-2 and §11-6F-3 of said code be amended and reenacted; that §11-13Q-20 of said code be amended and reenacted; that §11-13R-3 of said code be amended and reenacted; that §11-13S-3 and §11-13S-4 of
said code be amended and reenacted; that §11-15-8d of said code be amended and reenacted; and that §24-2F-3 of said code be amended and reenacted, all to read as follows:

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2H. MARCELLUS GAS AND MANUFACTURING DEVELOPMENT ACT.

§5B-2H-1. Short Title.

1 This article shall be known and cited as the “Marcellus Gas and Manufacturing Development Act.”

§5B-2H-2. Legislative findings; declaration of public policy.

1 (a) The Legislature finds that:

2 (1) The advent and advancement of new and existing technologies and drilling practices have created the opportunity for the efficient development of natural gas contained in underground shales and other geological formations.

6 (2) With development of the Marcellus shale comes the opportunity for economic development in related areas of the economy including, but not limited to, manufacturing, transmission of natural gas and related products and the transportation of manufactured products.

11 (3) It is in the interest of national security to encourage post-production uses of natural gas and its various components as a replacement for oil imported from other countries.

14 (4) Producers of natural gas, transporters of natural gas and manufacturers of products using natural gas face a significant number of regulatory requirements, some of which may be redundant, inconsistent, or overlapping. Agencies should work together, where practical, to avoid duplication, promote better coordination and reduce these requirements, thus reducing costs, simplifying and harmonizing rules and streamlining regulatory oversight.
(5) In developing regulatory actions and identifying appropriate approaches, agencies should attempt to promote coordination, simplification, and harmonization.

(6) Agencies should also seek to identify, as appropriate, means to achieve regulatory goals that are designed to promote innovation.

(7) Agencies should review their existing significant legislative, interpretive and procedural rules to determine whether any such rules should be modified, streamlined, expanded or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.

(8) The West Virginia Economic Development Authority established in article fifteen, chapter thirty-one of this code and the West Virginia Infrastructure and Jobs Development Council created in article fifteen-a, chapter thirty-one of this code, should, where appropriate, provide assistance that grows or sustains this segment of the economy.

(b) The Legislature declares that facilitating the development of business activity directly and indirectly related to development of the Marcellus shale serves the public interest of the citizens of this state by promoting economic development and improving economic opportunities for the citizens of this state.

CHAPTER 11. TAXATION.

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-11c. Valuation of oil and gas drilling rigs.

Notwithstanding any provision of this code to the contrary and to facilitate the equal and uniform taxation of oil and natural gas drilling rigs throughout the state, the State Tax Commissioner shall annually compile a schedule of oil and natural gas drilling rig values based on the values shown in
5 a nationally recognized guide or bulletin published during
the calendar year that includes the assessment date, using
the appropriate depth rating assigned to the drawworks by
its manufacturer and the actual condition of the drilling rig.
The State Tax Commissioner shall furnish the schedule to
each assessor and it shall be used by him or her as a guide in
placing the assessed values on all oil and natural gas drilling
rigs in his or her county. This section applies to assessment
years beginning on and after July 1, 2011.

ARTICLE 6D. ALTERNATIVE-FUEL MOTOR VEHICLES TAX CREDIT.

§11-6D-1. Legislative findings and purpose.

Consistent with the public policy as stated in section one,
article two-d, chapter twenty-four of this code, the Legisla-
ture hereby finds that the use of alternative fuels is in the
public interest and promotes the general welfare of the
people of this state insofar as it addresses serious concerns
for our environment and our state's and nation's dependence
on foreign oil as a source of energy. The Legislature further
finds that this state has an abundant supply of alternative
fuels and an extensive supply network and that, by encour-
aging the use of alternatively-fueled motor vehicles, the state
will be reducing its dependence on foreign oil and attempt-
ing to improve its air quality. The Legislature further finds
that the wholesale cost of fuel for certain alternatively-
fueled motor vehicles is significantly lower than the cost of
fueling traditional motor vehicles with oil based fuels.

However, because the cost of motor vehicles which utilize
alternative-fuel technologies remains high in relation to
motor vehicles that employ more traditional technologies,
citizens of this state who might otherwise choose an
alternatively-fueled motor vehicle are forced by economic
necessity to continue using motor vehicles that are fueled by
more conventional means. Additionally, the availability of
commercial and residential infrastructure to support
alternatively-fueled vehicles available to the public is
inadequate to encourage the use of alternatively-fueled
motor vehicles. It is the intent of the Legislature that the alternative fuel motor vehicle tax credit previously expired in 2006 be hereby reinstated with changes and amendments as set forth herein. Therefore, in order to encourage the use of alternatively-fueled motor vehicles and possibly reduce unnecessary pollution of our environment and reduce our dependence on foreign sources of energy, there is hereby created an alternative-fuel motor vehicles tax credit and an alternative-fuel infrastructure tax credit.

§11-6D-2. Definitions.

As used in this article, the following terms have the meanings ascribed to them in this section:

(a) “Alternative fuel” includes:

(1) Compressed natural gas;

(2) Liquified natural gas;

(3) Liquified petroleum gas;

(4) Ethanol;

(5) Fuel mixtures that contain eighty-five percent or more by volume, when combined with gasoline or other fuels, of the following:

(A) Methanol;

(B) Ethanol; or

(C) Other alcohols;

(6) Natural gas hydrocarbons and derivatives;

(7) Hydrogen;

(8) Coal-derived liquid fuels; and
(9) Electricity, including electricity from solar energy.

(b) "Alternative-fuel motor vehicle" means a motor vehicle that as a new or retrofitted or converted fuel vehicle:

(1) Operates solely on one alternative fuel;

(2) Is capable of operating on one or more alternative fuels, singly or in combination; or

(3) Is capable of operating on an alternative fuel and is also capable of operating on gasoline or diesel fuel.

(c) "Bi-fueled" means the ability of an alternative-fuel motor vehicle to operate on an alternative fuel and another form of fuel.

(d) "Plug-in hybrid electric vehicle" means:

(1) A plug-in hybrid electric vehicle manufactured by an established motor vehicle manufacturer of plug-in hybrid electric vehicles that can operate solely on electric power and that is capable of recharging its battery from an on-board generation source and an off-board electricity source; and

(2) A plug-in hybrid electric vehicle conversion that provides an increase in city fuel economy of seventy-five percent or more as compared to a comparable nonhybrid version vehicle for a minimum of twenty miles and that is capable of recharging its battery from an on-board generation source and an off-board electricity source. A vehicle is comparable if it is the same model year and the same vehicle class as established by the United States Environmental Protection Agency and is comparable in weight, size and use. Fuel economy comparisons shall be made using city fuel economy standards in a manner that is substantially similar to the manner in which city fuel economy is measured in accordance with procedures set forth in 40 C.F.R. 600 as in effect on January 1, 2011.
(e) "Qualified alternative fuel vehicle refueling infrastructure" means property owned by the applicant for the tax credit and used for storing alternative fuels and for dispensing such alternative fuels into fuel tanks of motor vehicles, including, but not limited to, compression equipment, storage tanks and dispensing units for alternative fuel at the point where the fuel is delivered: Provided, That the property is installed and located in this state and is not located on a private residence or private home.

(f) "Qualified alternative fuel vehicle home refueling infrastructure" means property owned by the applicant for the tax credit located on a private residence or private home and used for storing alternative fuels and for dispensing such alternative fuels into fuel tanks of motor vehicles, including, but not limited to, compression equipment, storage tanks and dispensing units for alternative fuel at the point where the fuel is delivered or for providing electricity to plug-in hybrid electric vehicles or electric vehicles: Provided, That the property is installed and located in this state.

(g) "Taxpayer" means any natural person, corporation, limited liability company or partnership subject to the tax imposed under article twenty-one, article twenty-three or article twenty-four of this chapter or any combination thereof.

§11-6D-3. Credit allowed for alternative-fuel motor vehicles and qualified alternative fuel vehicle refueling infrastructure; application against personal income tax, business franchise tax or corporate net income tax; effective date.

1 The tax credits for the purchase of alternative-fuel motor vehicles or conversion to alternative-fuel motor vehicles, qualified alternative fuel vehicle refueling infrastructure and qualified alternative fuel vehicle home refueling infrastructure provided in this article may be applied against the tax liability of a taxpayer imposed by the provisions of either article twenty-one, article twenty-three or article twenty-
§11-6D-4. Eligibility for credit.

A taxpayer is eligible to claim the credit against tax provided in this article if he or she:

(a) Converts a motor vehicle that is presently registered in West Virginia to operate exclusively on an alternative fuel as defined in subdivision (a), section two of this article; or

(b) Purchases from an original equipment manufacturer or an after-market conversion facility or any other automobile retailer, a new dedicated or bi-fueled alternative-fuel motor vehicle for which the taxpayer then obtains a valid West Virginia registration; or

(c) Constructs or purchases and installs qualified alternative fuel vehicle refueling infrastructure or qualified alternative fuel vehicle home refueling infrastructure that is capable of dispensing alternative fuel for alternative-fuel motor vehicles.

(d) The credit provided in this article is not available to and may not be claimed by any taxpayer under any obligation pursuant to any federal or state law, policy or regulation to convert to the use of alternative fuels for any motor vehicle.

§11-6D-5. Amount of credit for alternative fuel motor vehicles.

(a) For taxable years beginning on and after January 1, 2011, the amount of the credit allowed under this article for an alternative-fuel motor vehicle that weighs less than twenty-six thousand pounds is thirty-five percent of the purchase price of the alternative-fuel motor vehicle up to a
maximum amount of $7,500 or fifty percent of the actual cost of converting from a traditionally fueled motor vehicle to an alternative fuel motor vehicle up to a maximum amount of $7,500.

(b) For taxable years beginning on and after January 1, 2011, the amount of the credit allowed under this article for an alternative-fuel motor vehicle that weighs more than twenty-six thousand pounds is thirty-five percent of the purchase price of the alternative-fuel motor vehicle up to a maximum amount of $25,000 or fifty percent of the actual cost of converting from a traditionally fueled motor vehicle to an alternative fuel motor vehicle up to a maximum amount of $25,000.

§11-6D-6. Amount of credit for qualified alternative fuel vehicle refueling infrastructure and qualified alternative fuel vehicle home refueling infrastructure.

(a) For taxable years beginning on and after January 1, 2011, but prior to January 1, 2014, the amount of the credit allowed under this article for qualified alternative fuel vehicle refueling infrastructure is equal to an amount of fifty percent of the total costs directly associated with the construction or purchase and installation of the alternative fuel vehicle refueling infrastructure up to a maximum of $250,000:  Provided, That if the qualified alternative fuel vehicle refueling infrastructure is generally accessible for public use, the amount of the credit allowed will be multiplied by 1.25 and the maximum amount allowable will be $312,500. The amount of credit allowed may not exceed the cost of construction of the alternative fuel vehicle refueling infrastructure.

(b) For taxable years beginning on and after January 1, 2014, but prior to January 1, 2016, the amount of the credit allowed under this article for qualified alternative fuel vehicle refueling infrastructure is equal to an amount of fifty percent of the total costs directly associated with the construction or purchase and installation of the alternative fuel vehicle refueling infrastructure up to a maximum of
$200,000: Provided, That if the qualified alternative fuel
vehicle refueling infrastructure is generally accessible for
public use, the amount of the credit allowed will be multi-
plied by 1.25 and the maximum amount allowable will be
$250,000. The amount of credit allowed may not exceed the
cost of construction of the alternative fuel vehicle refueling
infrastructure.

(c) For taxable years beginning on and after January 1,
2016, but prior to January 1, 2022, the amount of the credit
allowed under this article for qualified alternative fuel
vehicle refueling infrastructure is equal to an amount of fifty
percent of the total costs directly associated with the
construction or purchase and installation of the alternative
fuel vehicle refueling infrastructure up to a maximum of
$150,000: Provided, That if the qualified alternative fuel
vehicle refueling infrastructure is generally accessible for
public use, the amount of the credit allowed will be multi-
plied by 1.25 and the maximum amount allowable will be
$187,500. The amount of credit allowed may not exceed the
cost of construction of the alternative fuel vehicle refueling
infrastructure.

(d) For taxable years beginning on and after January 1,
2011, the amount of the credit allowed under this article for
qualified alternative fuel vehicle home refueling infrastruc-
ture is equal to an amount of fifty percent of the total costs
directly associated with the construction or purchase and
installation of the alternative fuel vehicle home refueling
infrastructure up to a maximum of $10,000.

(e) The cost of construction of the alternative fuel vehicle
refueling infrastructure or alternative fuel vehicle home
refueling infrastructure eligible for a tax credit under this
section does not include costs associated with exploration,
development or production activities necessary for severing
natural resources from the soil or ground.

(f) When the taxpayer is a pass-through entity treated like
a partnership for federal and state income tax purposes, the
credit allowed under this article for the year shall flow through to the equity owners of the pass-through entity in the same manner that distributive share flows through to the equity owners and in accordance with any legislative rule the Tax Commissioner may propose for legislative approval in accordance with article three, chapter twenty-nine-a of this code to administer this section.

(g) No credit allowed by this article may be applied against employer withholding taxes imposed by article twenty-one of this chapter.

§11-6D-7. Duration of availability of credit.

No person is eligible to receive a tax credit under this article for: (1) An alternative-fuel motor vehicle purchased after December 31, 2021; (2) a vehicle converted to an alternative-fuel motor vehicle after December 31, 2021; or (3) the construction or purchase and installation of qualified alternative fuel vehicle refueling infrastructure or qualified alternative fuel vehicle home refueling infrastructure occurring after December 31, 2021.

§11-6D-8. Commissioner to design forms and schedules; promulgation of rules.

(a) The Tax Commissioner shall design and provide to the public simplified forms and schedules to implement and effectuate the provisions of this article.

(b) The Tax Commissioner shall promulgate new rules for the administration of this article consistent with its provisions and in accordance with article three, chapter twenty-nine-a of this code as the Commissioner deems necessary after the effective date of the amendments to this article. Such rules shall include rules relating to the necessary documentation required to be filed in order to take the tax credits allowed in this article.

(c) Within one year prior to the expiration of the credit established in this article, the State Tax Commissioner shall
provide a written report to the Legislature setting forth the utilization of the credit, the benefit of the credit and the overall cost of the credit.

§11-6D-9. Carryover credit allowed; recapture of credit.

(a) If the tax credit allowed under this article in any taxable year exceeds the taxpayer's tax liability as determined in accordance with article twenty-one, article twenty-three or article twenty-four of this chapter for that taxable year, the excess may be applied for succeeding taxable years until the full amount of the excess tax credit is used.

(b) No carry back to a prior taxable year is allowed for the amount of any unused credit in any taxable year.

(c) A tax credit is subject to recapture, elimination or reduction if it is determined by the State Tax Commissioner that a taxpayer was not entitled to the credit, in whole or in part, in the tax year in which it was claimed by the taxpayer. The amount of credit that flows through to equity owners of a passthrough entity may be recaptured or recovered from either the taxpayer or the equity owners in the discretion of the Tax Commissioner.

ARTICLE 6F. SPECIAL METHOD FOR APPRAISING QUALIFIED CAPITAL ADDITIONS TO MANUFACTURING FACILITIES.

§11-6F-2. Definitions.

As used in this article, the term:

(a) “Certified capital addition property” means all real property and personal property included within or to be included within a qualified capital addition to a manufacturing facility that has been certified by the State Tax Commissioner in accordance with section four of this article: Provided, That airplanes and motor vehicles licensed by the
Division of Motor Vehicles shall in no event constitute certified capital addition property.

(b) “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 or the six digit code number 211112.

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

(d) “Personal property” means all property specified in subdivision (q), section ten, article two, chapter two of this code and includes, but is not limited to, furniture, fixtures, machinery and equipment, pollution control equipment, computers and related data processing equipment, spare parts and supplies.

(e) “Qualified capital addition to a manufacturing facility” means all real property and personal property, the combined original cost of all of the property which exceeds $50 million to be constructed, located or installed at or within two miles of a manufacturing facility owned or operated by the person making the capital addition that has a total original cost before the capital addition of at least $100 million. If the capital addition is made in a steel, chemical or polymer alliance zone as designated from time-to-time by executive order of the Governor, then the person making the capital addition may for purposes of satisfying the requirements of this subsection join in a multiparty project with a person owning or operating a manufacturing facility that has a total original cost before the capital addition of at least $100 million if the capital addition creates additional production
capacity of existing or related products or feedstock or derivative products respecting the manufacturing facility, consists of a facility used to store, handle, process or produce raw materials for the manufacturing facility, consists of a facility used to store, handle or process natural gas to produce fuel for the generation of steam or electricity for the manufacturing facility or consists of a facility that generates steam or electricity for the manufacturing facility, including but not limited to a facility that converts coal to a gas or liquid for the manufacturing facility’s use in heating, manufacturing or generation of electricity. Beginning on and after July 1, 2011, when the new capital addition is a facility that is or will be classified under the North American Industry Classification System with a six digit code number 211112, or is a manufacturing facility that uses product produced at a facility with code number 211112, then wherever the term “100 million” is used in this subsection, the term “20 million” shall be substituted and where the term “50 million” is used, the term “10 million” shall be substituted.

(f) “Real property” means all property specified in subdivision (p), section ten, article two, chapter two of this code and includes, but is not limited to, lands, buildings and improvements on the land such as sewers, fences, roads, paving and leasehold improvements.

§11-6F-3. Tax treatment of certified capital addition property.

Notwithstanding any other provisions of law, the value of certified capital addition property, for purposes of ad valorem property taxation under this chapter, is its salvage value, which for purposes of this article is five percent of the certified capital addition property’s original cost. For capital additions certified on or after July 1, 2011, the value of the land before any improvements shall be subtracted from the value of the capital addition and the unimproved land value shall not be given salvage value treatment.

ARTICLE 13Q. ECONOMIC OPPORTUNITY TAX CREDIT.
§11-13Q-20. Tax credit review and accountability.

(a) Beginning on February 1, 2006, 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.

(c) On or before February 1, 2013, the Department of Commerce, in consultation with the Tax Commissioner, the Department of Transportation and the Department of Environmental Protection shall submit to the Governor, the President of the Senate and the Speaker of the House of Delegates a report of the impact of all the tax credits and other economic incentives provided in the act of the Legislature which amended and reenacted this section during 2011 upon economic development in this state, including but not limited to the creation of jobs in this state, upon the state’s
infrastructure, including but not limited to the need for construction or maintenance of the roads and highways of the state, upon the natural resources of the state, and upon public and private property interests in the state.

ARTICLE 13R. 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 organization.

(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 investiga-
tion in a field of knowledge in the physical, computer or
software sciences often involving the formulation of hypoth-
eses and experimentation for the purpose of revealing new
facts, theories or principles or increasing scientific knowl-
edge 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 equipment or the 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;

(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.

(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 proprietor who is subject to the tax imposed by article twenty-one of this chapter.

(13) "This code" means the Code of West Virginia, 1931, as amended.

(14) "This state" means the State of West Virginia.

ARTICLE 13S. MANUFACTURING INVESTMENT TAX CREDIT.


(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 taxpayer 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 or the six digit code number 211112.

(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 January 1, 2003, 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 determining 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;

(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.

(8) “Qualified manufacturing investment” means that amount determined under section five of this article as qualified manufacturing investment.

(9) “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: Provided, That a tax credit for any eligible taxpayer operating a business activity classified as having a sector identifier, consisting of the six digit code number 211112 such eligible taxpayer must comply with the provisions of subsection (e) of this section for all construction related thereto in order to be eligible for any credit under this article. 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 applica-
tion 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: *Provided,* That for tax
years beginning on and after January 1, 2009, the amount of
annual credit allowed may not reduce the severance tax,
imposed under article thirteen-a of this chapter, below forty
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): Provided, however, That when in any taxable year beginning on and after January 1, 2009, 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 forty percent of the amount which would be imposed for such taxable year as 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 subdivision (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, 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: Provided, That for tax years beginning on and after January 1, 2009, the amount of annual credit allowed will not reduce the business franchise tax, imposed under article twenty-three of this chapter, below forty 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 franchise 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,
article twenty-three of this chapter, but before application of any other allowable credits against tax): Provided, however, That when in any taxable year beginning on and after January 1, 2009, 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 franchise tax, imposed under article twenty-three of this chapter, below forty percent of the amount which would be imposed for the taxable year as determined after application of the credits against tax provided in section seventeen, 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: Provided, That for tax years beginning on and after January 1, 2009, the amount of annual credit allowed will not reduce corporation net income tax, imposed under article twenty-four of this chapter, below forty 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): Provided, however, That when in any taxable year beginning on and after January 1, 2009, 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 forty percent of the
amount which would be imposed for the taxable year as
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 (deter-
mined before application of any other allowable credits
against tax): *Provided,* That for tax years beginning on and
after January 1, 2009, the amount of annual credit allowed
will not reduce corporation net income tax, imposed under
article twenty-four of this chapter, below forty 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 as determined before application of any other allow-
able 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
165 taxable year will not reduce the corporation net income tax
imposed on the conduit income directly derived from the
168 eligible taxpayer by each owner below fifty percent of the
169 amount that would be imposed for such taxable year on the
170 conduit income (determined before application of any other
allowable credits against tax): Provided, That when in any
taxable year beginning on and after January 1, 2009, the
taxpayer is entitled to claim credit under this article and
article thirteen-d of this chapter, the total amount of all
175 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 forty percent of the amount that would be imposed for
such taxable year on the conduit income as determined
before application of any other allowable credits against tax;

(6) Small business corporations, limited liability compa-
182 nies, partnerships and other unincorporated organizations
shall allocate any unused credit after application of subdivi-
sions (2), (3) and (4) of this subsection among their members
in the same manner as profits and losses are allocated for the
186 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
191 unused portion of any annual credit allowance. Any unused
192 credit is forfeited.

(d) Application for credit required. —

(1) Application required. — Notwithstanding any provision
of this article to the contrary, no credit is allowed or may be
applied under this article for any qualified investment
property placed in service or use until the person claiming
the credit makes written application to the Tax Commis-
sioner for allowance of credit as provided in this section.
This application shall be in the form prescribed by the Tax Commissioner and shall provide the number and type of jobs created, if any, by the manufacturing investment, the average wage rates and benefits paid to employees filling the new jobs and any other information the Tax Commissioner may require. This application shall be filed with the Tax Commissioner no later than the last day for filing the annual return, determined by including any authorized extension of time for filing the return, 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.

(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 the application is filed.

(e) (1) Any person or entity undertaking any construction related to any business activity included within North American Industrial Code six digit code number 211112, the value of which is an amount equal to or greater than $500,000, shall hire at least seventy-five percent of employees for said construction from the local labor market, to be rounded off, with at least two employees from outside the local labor market permissible for each employer per project, “the local labor market” being defined as every county in West Virginia and any county outside of West Virginia if any portion of that county is within fifty miles of the border of West Virginia.

(2) Any person or entity unable to employ the minimum number of employees from the local labor market shall inform the nearest office of the bureau of employment programs’ division of employment services of the number of qualified employees needed and provide a job description of the positions to be filled.
(3) If, within three business days following the placing of a job order, the division is unable to refer any qualified job applicants to the person or entity engaged in said construction or refers less qualified job applicants than the number requested, then the division shall issue a waiver to the person or entity engaged in said construction stating the unavailability of applicants and shall permit the person or entity engaged in said construction to fill any positions covered by the waiver from outside the local labor market. The waiver shall be either oral or in writing and shall be issued within the prescribed three days. A waiver certificate shall be sent to the person or entity engaged in said construction for its permanent project records.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-8d. Limitations on right to assert exemptions.

(a) Persons who perform “contracting” as defined in section two of this article or persons acting in an agency capacity may not assert any exemption to which the purchaser of such contracting services or the principal is entitled. Any statutory exemption to which a taxpayer may be entitled is invalid unless the tangible personal property or taxable service is actually purchased by such taxpayer and is directly invoiced to and paid by such taxpayer. This section does not apply to purchases by an employee for his or her employer, purchases by a partner for his or her partnership or purchases by a duly authorized officer of a corporation, or unincorporated organization, for his or her corporation or unincorporated organization so long as the purchase is invoiced to and paid by the employer, partnership, corporation or unincorporated organization.

(b) Transition rule. — This section does not apply to purchases of tangible personal property or taxable services in fulfillment of a purchasing agent or procurement agent contract executed and legally binding on the parties thereto prior to September 15, 1999. This transition rule does not apply to any purchases of tangible personal property or

22 taxable services made under such a contract after August 31, 1991 and this transition rule does not apply if the primary purpose of the purchasing agent or procurement agent contract was to avoid payment of consumers sales and use taxes. Effective July 1, 2007, this section does not apply to purchases of services, machinery, supplies or materials, except gasoline and special fuel, to be directly used or consumed in the construction, alteration, repair or improvement of a new or existing building or structure by a person performing “contracting”, as defined in section two of this article, if the purchaser of the “contracting” services would be entitled to claim the refundable exemption under subdivision (2), subsection (b), section nine of this article had it purchased the services, machinery, supplies or materials. Effective July 1, 2009, this section does not apply to purchases of services, computers, servers, building materials and tangible personal property, except purchases of gasoline and special fuel, to be installed into a building or facility or directly used or consumed in the construction, alteration, repair or improvement of a new or existing building or structure by a person performing “contracting”, as defined in section two of this article, if the purchaser of the “contracting” services would be entitled to claim the exemption under subdivision (7), subsection (a), section nine-h of this article. This section shall not apply to qualified purchases of computers and computer software, primary material handling equipment, racking and racking systems, and their components, or to qualified purchases of building materials and certain tangible personal property, as those terms are defined in section nine-n of this article, by a person performing “contracting,” as defined in section two of this article, if the purchaser of the “contracting” services would be entitled to claim the refundable exemption under section nine-n of this article. Purchases of gasoline and special fuel shall not be treated as exempt pursuant to this section.

(c) Effective July 1, 2011, notwithstanding any other provision of this code to the contrary, this section shall apply as to purchases of services, machinery, supplies or materials, except gasoline and special fuel, to be directly used or
consumed in the construction, alteration, repair or improve-
ment of a new or existing natural gas compressor station or
gas transmission line having a diameter of twenty inches or
more by a person performing “contracting”, as defined in
section two of this article, even though the purchaser of the
“contracting” services would be entitled to claim the
refundable exemption under subdivision (2), subsection (b),
section nine of this article had it purchased the services,
machinery, supplies or materials, unless the person or entity
performing “contracting” under this subsection, as the term
“contracting” is defined in section two of this article,
complies with subsection (e), section four, article thirteen-s
of this chapter.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2F. ALTERNATIVE AND RENEWABLE ENERGY PORTFO-
LIO STANDARD.

§24-2F-3. Definitions.

1 Unless the context clearly requires a different meaning, as
2 used in this article:

3 (1) “Advanced coal technology” means a technology that is
4 used in a new or existing energy generating facility to reduce
5 airborne carbon emissions associated with the combustion or
6 use of coal and includes, but is not limited to, carbon dioxide
7 capture and sequestration technology, supercritical technol-
8 ogy, advanced supercritical technology as that technology is
determined by the Public Service Commission, ultrasuper-
9 critical technology and pressurized fluidized bed technology
10 and any other resource, method, project or technology
11 certified by the commission as advanced coal technology.

13 (2) “Alternative and renewable energy portfolio standard”
or “portfolio standard” means a requirement in any given
year that requires an electric utility to own credits in an
amount equal to a certain percentage of electric energy sold
in the preceding calendar year by the electric utility to retail customers in this state.

(3) “Alternative energy resources” means any of the following resources, methods or technologies for the production or generation of electricity:

(A) Advanced coal technology;

(B) Coal bed methane;

(C) Natural gas, including any component of raw natural gas;

(D) Fuel produced by a coal gasification or liquefaction facility;

(E) Synthetic gas;

(F) Integrated gasification combined cycle technologies;

(G) Waste coal;

(H) Tire derived fuel;

(I) Pumped storage hydroelectric projects; and

(J) Any other resource, method, project or technology certified as an alternative energy resource by the Public Service Commission.

(4) “Alternative and renewable energy resource credit” or “credit” means a tradable instrument that is used to establish, verify and monitor the generation of electricity from alternative and renewable energy resource facilities, energy efficiency or demand-side energy initiative projects or greenhouse gas emission reduction or offset projects.

(5) “Alternative energy resource facility” means a facility or equipment that generates electricity from alternative energy resources.
(6) “Commission” or “Public Service Commission” means the Public Service Commission of West Virginia as continued pursuant to section three, article one of this chapter.

(7) “Customer-generator” means an electric retail customer who owns and operates a customer-sited generation project utilizing an alternative or renewable energy resource or a net metering system in this state.

(8) “Electric utility” means any electric distribution company or electric generation supplier that sells electricity to retail customers in this state. Unless specifically provided for otherwise, for the purposes of this article, the term “electric utility” may not include rural electric cooperatives, municipally-owned electric facilities or utilities serving less than thirty thousand residential electric customers in West Virginia.

(9) “Energy efficiency or demand-side energy initiative project” means a project in this state that promotes customer energy efficiency or the management of customer consumption of electricity through the implementation of:

(A) Energy efficiency technologies, equipment, management practices or other strategies utilized by residential, commercial, industrial, institutional or government customers that reduce electricity consumption by those customers;

(B) Load management or demand response technologies, equipment, management practices, interruptible or curtailable tariffs, energy storage devices or other strategies in residential, commercial, industrial, institutional and government customers that shift electric load from periods of higher demand to periods of lower demand;

(C) Industrial by-product technologies consisting of the use of a by-product from an industrial process, including, but not limited to, the reuse of energy from exhaust gases or other manufacturing by-products that can be used in the direct production of electricity at the customer’s facility;
(D) Customer-sited generation, demand-response, energy efficiency or peak demand reduction capabilities, whether new or existing, that the customer commits for integration into the electric utility's demand-response, energy efficiency or peak demand reduction programs; or

(E) Infrastructure and modernization projects that help promote energy efficiency, reduce energy losses or shift load from periods of higher demand to periods of lower demand, including the modernization of metering and communications, (also known as “smart grid”), distribution automation, energy storage, distributed energy resources and investments to promote the electrification of transportation.

(10) “Greenhouse gas emission reduction or offset project” means a project to reduce or offset greenhouse gas emissions from sources in this state other than the electric utility’s own generating and energy delivery operations. Greenhouse gas emission reduction or offset projects include, but are not limited to:

(A) Methane capture and destruction from landfills, coal mines or farms;

(B) Forestation, afforestation or reforestation; and

(C) Nitrous oxide or carbon dioxide sequestration through reduced fertilizer use or no-till farming.

(11) “Net metering” means measuring the difference between electricity supplied by an electric utility and electricity generated from an alternative or renewable energy resource facility owned or operated by an electric retail customer when any portion of the electricity generated from the alternative or renewable energy resource facility is used to offset part or all of the electric retail customer’s requirements for electricity.

(12) “Reclaimed surface mine” means a surface mine, as that term is defined in section three, article three, chapter
twenty-two of this code, that is reclaimed or is being re-
claimed in accordance with state or federal law.

(13) "Renewable energy resource" means any of the
following resources, methods, projects or technologies for the
production or generation of electricity:

(A) Solar photovoltaic or other solar electric energy;

(B) Solar thermal energy;

(C) Wind power;

(D) Run of river hydropower;

(E) Geothermal energy, which means a technology by
which electricity is produced by extracting hot water or
steam from geothermal reserves in the earth's crust to power
steam turbines that drive generators to produce electricity;

(F) Biomass energy, which means a technology by which
electricity is produced from a nonhazardous organic material
that is available on a renewable or recurring basis, including
pulp mill sludge;

(G) Biologically derived fuel including methane gas,
ethanol or biodiesel fuel;

(H) Fuel cell technology, which means any electrochemical
device that converts chemical energy in a hydrogen-rich fuel
directly into electricity, heat and water without combustion;

(I) Recycled energy, which means useful thermal, mechani-
cal or electrical energy produced from: (i) Exhaust heat from
any commercial or industrial process; (ii) waste gas, waste
fuel or other forms of energy that would otherwise be flared,
incinerated, disposed of or vented; and (iii) electricity or
equivalent mechanical energy extracted from a pressure drop
in any gas, excluding any pressure drop to a condenser that
subsequently vents the resulting heat; and
(J) Any other resource, method, project or technology certified by the commission as a renewable energy resource.

(14) “Renewable energy resource facility” means a facility or equipment that generates electricity from renewable energy resources.

(15) “Waste coal” means a technology by which electricity is produced by the combustion of the by-product, waste or residue created from processing coal, such as gob.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect July 1, 2011.

Clerk of the Senate

Clerk of the House of Delegates

Acting President of the Senate

Speaker of the House of Delegates

The within is approved this the .....

Day of ........................................ April ........................................................., 2011.

Governor