HB 4343 (veto)

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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2014

ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4343

(By Delegates Skaff, Mr. Speaker, (Mr. Miley), Hartman, Miller, Barrett, Walters, Guthrie, Lawrence, Fragale, Young and Ashley)

Passed March 8, 2014

In effect ninety days from passage.

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COMMITTEE SUBSTITUTE

FOR

H. B. 4343

(BY DELEGATES SKAFF, MR. SPEAKER, (MR. MILEY), HARTMAN, MILLER, BARRETT, WALTERS, GUTHRIE, LAWRENCE, FRAGALE, YOUNG AND ASHLEY)

[Passed March 8, 2014; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5B-2I-1, §5B-2I-2, §5B-2I-3, §5B-2I-4, §5B-2I-5, §5B-2I-6, §5B-2I-7, §5B-2I-8, §5B-2I-9, §5B-2I-10, §5B-2I-11, §5B-2I-12, §5B-2I-13, §5B-2I-14, §5B-2I-15, §5B-2I-16, §5B-2I-17, §5B-2I-18, §5B-2I-19, §5B-2I-20, §5B-2I-21, §5B-2I-22, §5B-2I-23, §5B-2I-24, §5B-2I-25, §5B-2I-26, §5B-2I-27, §5B-2I-28, §5B-2I-29, §5B-2I-30, §5B-2I-31, §5B-2I-32, §5B-2I-33, §5B-2I-34, §5B-2I-35, §5B-2I-36, §5B-2I-37, §5B-2I-38, §5B-2I-39, §5B-2I-40 and §5B-2I-41; to amend said code by adding thereto a new article, designated §11-6L-1, §11-6L-2, §11-6L-3, §11-6L-4, §11-6L-5, §11-6L-6 and §11-6L-7; and to amend said code by adding thereto a new article, designated §11-21A-1, §11-21A-2, §11-21A-3, §11-21A-4, §11-21A-5, §11-21A-6, §11-21A-7, §11-21A-8, §11-21A-9, §11-21A-10, §11-21A-11, §11-21A-12, §11-21A-13, §11-21A-14, §11-21A-15, §11-21A-16, §11-21A-17 and §11-21A-18, all relating generally to economic development and job creation; creating the West Virginia Project Launchpad Act; providing short title; providing legislative purpose and finding; defining certain terms; providing criteria for establishment of West Virginia project launchpads by Governor; allowing county commissions and county councils to apply for launchpad designations; providing for form and content of applications; specifying process for review of applications and criteria for designating geographic areas as launchpads and for expansion and decertification of launchpads; providing economic benefits for businesses locating or expanding in launchpads including state and local tax relief and other economic benefits; prohibiting qualified businesses in a launchpad from employing illegal aliens, engaging in illegal activity or being delinquent in payment of state and local taxes; permitting transfer of economic benefits to successor businesses; requiring qualified business to comply with applicable zoning laws and state and local building and other codes; providing for recapture of taxes and other economic benefits under specified circumstances; promulgation of rules; imposing civil penalties for noncompliance; providing rules of application and construction; requiring periodic reports to Governor and Legislature; providing for severability and expiration; providing a special method for appraising property in launchpad for economic development; providing short title; defining certain terms; providing method of valuation of launchpad property; providing for initial determination of value by assessor and for protest and appeals; requiring periodic reports to Governor and Legislature and specifying effective dates; creating the Promoting West Virginia Employment Act; providing short title and scope of article; defining certain terms; providing qualification for benefits; specifying benefits upon application and review; specifying annual cap on benefits; providing for recapture of benefits; providing for administration and enforcement of article including issuance of regulations; requiring periodic reports to Governor and Legislature; and specifying effective dates.

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-2I-1, §5B-2I-2, §5B-2I-3, §5B-2I-4, §5B-2I-5, §5B-2I-6, §5B-2I-7, §5B-2I-8, §5B-2I-9, §5B-2I-10, §5B-2I-11, §5B-2I-12, §5B-2I-13, §5B-2I-14, §5B-2I-15, §5B-2I-16, §5B-2I-17, §5B-2I-18, §5B-2I-19, §5B-2I-20, §5B-2I-21, §5B-2I-22, §5B-2I-23, §5B-2I-24, §5B-2I-25, §5B-2I-26, §5B-2I-27, §5B-2I-28, §5B-2I-29, §5B-2I-30, §5B-2I-31, §5B-2I-32, §5B-2I-33, §5B-2I-34, §5B-2I-35, §5B-2I-36, §5B-2I-37, §5B-2I-38, §5B-2I-39, §5B-2I-40 and §5B-2I-41; to amend said code by adding thereto a new article, designated §11-6L-1, §11-6L-2, §11-6L-3, §11-6L-4, §11-6L-5, §11-6L-6 and §11-6L-7; and to amend said code by adding thereto a new article, designated §11-21A-1, §11-21A-2, §11-21A-3, §11-21A-4, §11-21A-5, §11-21A-6, §11-21A-7, §11-21A-8, §11-21A-9, §11-21A-10, §11-21A-11, §11-21A-12, §11-21A-13, §11-21A-14, §11-21A-15, §11-21A-16, §11-21A-17 and §11-21A-18, all to read as follows:

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2I. WEST VIRGINIA PROJECT LAUNCHPAD ACT.

§5B-2I-1. Short title.

This article shall be known and may be cited as the "West Virginia Project Launchpad Act."

§5B-2I-2. Purpose and legislative findings.

(a) *Purpose.* — The purpose of this article is to encourage economic opportunity, greater capital investment and development of the use in this state of new state-of-the-art technologies by enacting the West Virginia Project Launchpad Act.

(b) *Legislative findings.* —

(1) West Virginia's economy is under siege from actions and inactions of the federal government, which has declared war on coal but has no comprehensive energy policy, federal policies that stifle economic development and expansion and by a federal debt that now equals or exceeds the country's annual gross domestic product.

(2) The economy of the past that West Virginia has relied upon for employment, business activity, taxes and other items is rapidly shrinking and West Virginia has not done a good job to position itself for economic development in the new economy, which largely can be located anywhere in the United States or for that matter, in many instances, the world.

(3) Future expansion and development of the West Virginia economy, job creation potential and the physical environment are driven by the flow of energy and the nonstop emergence of new technologies.

(4) State-of-the-art technologies are being developed, demonstrated and manufactured or used in manufacturing in other states in order to support economic development by responding to the emergence of new technologies and the rapidly expanding worldwide export market for such technologies.

(5) In order to retain college and university graduates trained in use of new technologies and to encourage graduates of out-of-state colleges and universities trained in use of new technologies to be located in this state, employers are encouraged to assist their employees in paying their student loans.

(6) West Virginia has been slow to recognize the potential economic and technical benefits of these emerging technologies.

(7) The Legislature finds that it is in the public interest and the general welfare of the citizens of West Virginia to:

(A) Establish a foothold in the West Virginia economy for manufacturers of advanced products and the development of businesses employing other emerging technologies that are magnets for capital investment and produce new jobs that are characteristically knowledge-based;

(B) Encourage the application of nanotechnology and other supporting technology to:

(i) Aeronautics and space;

(ii) Agriculture;

(iii) Biotechnology;

(iv) Environment;

(v) Manufacturing and materials science;

(vi) Medicine and health;

(vii) Nanoelectronics and computer technology;

(viii) National and homeland security; and

(ix) Photonics; and

(C) Encourage the manufacture, sale and use of alternative fuel vehicles fueled by natural gas, electricity, hydrogen or other alternative fuel and development of the infrastructure necessary to the convenient and efficient refueling of such vehicles.

(8) There exist in this state areas of economic distress characterized by high unemployment, low investment of new capital, inadequate dwelling conditions, blighted conditions, underutilized, obsolete or abandoned industrial, commercial and residential structures and deteriorating tax bases.

(9) These areas require coordinated efforts by private and public entities to restore prosperity and enable these areas to

make significant contributions to the economic and social life of this state.

(10) Long-term economic viability of these areas requires the cooperative involvement of residents, businesses, state and local elected officials and community organizations.

(11) It is in the public interest and general welfare of the people of this state for state and local governments to assist and encourage the creation of West Virginia project launchpads for economic development and to provide temporary relief from certain taxes within the West Virginia launchpad to accomplish the purposes of this article.

§5B-2I-3. Definitions.

(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) "Advanced coal technology" includes, but is not limited to, a technology that is used in a new or existing energy-generating facility to reduce airborne carbon emissions associated with the combustion or use of coal and includes, but is not limited to, carbon dioxide capture and sequestration technology, supercritical technology, advanced supercritical technology as that technology is determined by the Public Service Commission of West Virginia, ultra supercritical technology and pressurized fluidized bed technology and any other resource, method, project or technology certified by the Public Service Commission of West Virginia as advanced coal technology: *Provided,* That the technology was not in

commercial use anywhere in the United States before July 1, 2014.

(2) "Advanced information technology" means the development, installation and implementation of computer systems and applications that utilize cloud computing, quantum computing or the next evolution beyond cloud and quantum computing: *Provided,* That the technology was not in commercial use anywhere in the United States before July 1, 2014.

(3) "Advanced manufacturing" means the application of state-of-the-art technologies, processes and methods to design and manufacture tangible personal property for commercial or industrial use or for use by consumers: *Provided,* That the technology was not in commercial use anywhere in the United States before July 1, 2014.

(4) "Bioinformatics" means the application of statistics and computer science to the field of molecular biology and entails the creation and advancement of databases, algorithms, computational and statistical techniques and theory to solve formal and practical problems arising from the management and analysis of biological data. The primary goal of bioinformatics is to increase the understanding of biological processes. What sets bioinformatics apart from other approaches is its focus on developing and applying computationally intensive techniques (e.g., pattern recognition, data mining, machine learning algorithms and visualization) to achieve this goal: *Provided,* That the technology was not in commercial use anywhere in the United States before July 1, 2014.

(5) "Bioscience" means the use of compositions, methods and organisms in cellular and molecular research, development and manufacturing processes for such diverse areas as pharmaceuticals, medical therapeutics, medical diagnostics, medical devices, medical instruments, biochemistry,

microbiology, veterinary medicine, plant biology; agriculture and industrial, environmental, and homeland security applications of bioscience, and future developments in the biosciences. Bioscience includes biotechnology and life sciences: *Provided,* That the technology was not in commercial use anywhere in the United States before July 1, 2014.

(6) "Bioscience company" means a corporation, limited liability company, S corporation, partnership, registered limited liability partnership, foundation, association, nonprofit entity, business trust, group, or other entity that is engaged in the business of bioscience in this state and has business operations in this state, including, without limitation, research, development, or production directed towards developing or providing bioscience products or processes for specific commercial or public purposes and are identified by the following NAICS codes: 325193, 325199, 325311, 325320, 325411, 325412, 325413, 325414, 334510, 334516, 334517, 339112, 339113, 339115, 541380, 541712, 541940, 621511, 621512 and 622110. "Bioscience company" does not include a sole proprietorship.

(7) "Biotechnology" means those fields focusing on technological developments in areas such as biocomputing, biodefense, bioinformatics, genetic engineering, genomics, molecular biology, nanotechnology, proteomics and physiomics: *Provided,* That the technology was not in commercial use anywhere in the United States before July 1, 2014.

(8) "Business" means any activity engaged in by any person in this state that is taxable under article twenty-one, twenty-three or twenty-four of chapter eleven of this code (or any combination of those articles of that chapter).

(9) "Business segment" means a component or subset of a business enterprise that: (A) Provides a single product or service or a group of related products and services; (B) is subject to risks

and returns that are different from those of other business segments; and (C) earns revenue for the business enterprise.

(10) "Clean coal technology" means a technology first used commercially in the United States on or after July 1, 2014, that significantly reduces the environmental impact of coal usage including, but not limited to, coal gasification and carbon capture and storage.

(11) "Clean natural gas technology" means a technology first used commercially in the United States on or after July 1, 2014, that significantly reduces the environmental impact of natural gas.

(12) "Compensation" means wages, salaries, commissions, the cost of health insurance benefits and any other form of remuneration paid to employees for personal services.

(13) "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.

(14) "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.

(15) "County" or "county of this state" means a county of this state listed in article one, chapter one of this code.

(16) "Department of Commerce" means the Department of Commerce established in article two, chapter five-f of this code.

(17) "Department of Revenue" means the Department of Revenue established in article two, chapter five-f of this code.

(18) "Designee" in the phrase "or his or her designee", when used in reference to:

(A) The Secretary of Commerce, means any officer or employee of the Department of Commerce or any agency of that department as specified in article two, chapter five-f of this code, duly authorized by the Secretary of Commerce directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article for the Secretary of Commerce;

(B) The Secretary of Revenue, means any officer or employee of the Department of Revenue or any agency of that department as specified in article two, chapter five-f of this code, duly authorized by the Secretary of Revenue directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article for the Secretary of Revenue; and

(C) The State Tax Commissioner, means any officer or employee of the Tax Division of the Department of Revenue established in article one, chapter eleven of this code, 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 for the Tax Commissioner;

(19) "Eligible taxpayer" means a new business or a new segment of a business that is primarily engaged in an emerging technology industry or that is primarily utilizing new innovative business technologies, that makes at least the minimum required qualified investment in a new or expanded business facility located in this state and creates the required number of new jobs that pay good salaries and provide health insurance benefits, and that is subject to any of the taxes imposed by article twenty-one,

twenty-three and twenty-four of chapter eleven of this code (or any one or any combination of those articles).

(20) "Emerging technologies" are technologies that are currently being developed or will be developed over the next five to ten years, that represent significant technological developments that broach new territory in some significant way in their field and which will substantially alter the business and social environment. Examples of currently emerging technologies include, but are not limited to, advanced coal technologies, alternative fuel vehicles, artificial intelligence, biotechnology, clean coal and clean natural gas technologies, cognitive science, cloud computing, quantum computing, man-machine communications, nanotechnology, photonics, photovoltaic devices and advanced robotics. Whether a technology is an emerging technology is determined as of the date the new business or a new segment of an existing business is placed in service or use in this state. Emerging technologies do not include any technology that was in commercial use anywhere in the United States before July 1, 2014.

(21) "Employer" means an association, corporation, partnership, limited partnership, limited liability company, joint venture, or any other business entity that is an employer.

(22) "Expanded business facility" means any business facility (other than a new or replacement facility) resulting from the acquisition, construction, reconstruction, installation or erection of improvements or additions to existing property in this state when the improvements or additions are purchased on or after July 1, 2014, but only to the extent of the taxpayer's qualified investment in the improvements or additions and the extent to which the expansion of the business facility is directly used in a new segment of the taxpayer that primarily employs an emerging innovative business technology.

(23) "Governing body of a municipal corporation" means the "governing body" as defined in article one, chapter eight of this code.

(24) "Governor" means the duly elected Governor of this state.

(25) "Health insurance benefits" means employer-provided coverage for medical expenses of the employee or the employee and his or her family under a group accident or health plan, or employer contributions to an Archer medical savings account, as defined in Section 220 of the Internal Revenue Code of 1986, as amended, or to a health savings account, as defined in Section 223 of the Internal Revenue Code, of the employee when the employer's contribution to any such account is not less than fifty percent of the maximum amount permitted for the year as employer-provided coverage under Section 220 or 223 of the Internal Revenue Code, whichever section is applicable.

(26) "Includes" and "including", when used in a definition or sentence contained in this article, shall not be considered to exclude other things otherwise within the meaning of the term being defined or the sentence in which the word is used.

(27) "Innovative business technologies" means and includes, but is not limited to, emerging technologies and other business technologies that primarily use state-of-the-art methodologies, practices or techniques to manufacture, produce or provide its primary goods or services. Innovative business technologies do not include any technology that was in commercial use anywhere in the United States prior to July 1, 2014.

(28) "Internal Revenue Code of 1986, as amended", or "Internal Revenue Code", means the United States Internal Revenue Code of 1986 as codified in Title 26 of the United States Code, as amended, and as defined in section three, article twenty-four, chapter eleven of this code.

(29) "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.

(30) "Life science" means any of several branches of science, such as biology, medicine, anthropology or ecology, that deal with living organisms and their organization, life processes and relationships to each other and their environment.

(31) "Mayor" means "mayor" as defined in article one, chapter eight of this code.

(32) "Municipal corporation" or "municipality" means a "municipal corporation" of this state as defined in article one, chapter eight of this code.

(33) "Nanotechnology" means the branch of engineering that deals with things smaller than one hundred nanometers. Nanotechnology includes the materials and systems whose structures and components exhibit novel and significantly improved physical, chemical, and biological properties, phenomena, and processes due to their nanoscale size.

(34) "New business" means any business primarily employing emerging technology or innovative business technology whose ownership and activities are not closely related to a preexisting business. A mere change in the stock ownership of a corporation, or the equity ownership of a partnership or other entity treated as a partnership for federal income tax purposes, shall not affect its status as an existing business. Additionally, a new business that acquires substantially all of the assets of a corporation or other business entity or of a sole proprietorship shall not be treated as a new business for purposes of this article. In determining whether or not a new business is closely related to a preexisting business, all facts and circumstances shall be considered by the Tax Commissioner. The existence of a majority of the following factors establish that a new business is closely related to an existing business:

(A) The new business' products or services are very similar to the products or services provided by the preexisting business;

(B) The new business markets products and services to the same class of customers as that of the preexisting business;

(C) The new business is conducted in the same general location as the preexisting business;

(D) The new business requires the use of the same or similar operating assets as those used in the preexisting business;

(E) The new business' economic success builds on, or depends on, the success of the preexisting business;

(F) The activity of the new business is of a type that would normally be treated as a unit with the preexisting business in the accounting records of the preexisting business;

(G) If the new business and the preexisting business are regulated or licensed, they are regulated or licensed by the same or similar governmental authority; and

(H) Twenty percent or more of the equity of the new business is collectively owned by individuals and/or businesses that collectively owned more than fifty percent of the equity of the preexisting business.

These eight listed factors are not the only ones that may be considered by the Tax Commissioner. Others factors may also be taken into account, in the discretion of the Tax Commissioner. However, this definition does not exclude the categorization of a business as a new business for the sole reason that the entity engaging in the new business already does business in this state.

(35) "New business facility" means a business facility located in this state which satisfies each of the following requirements:

(A) The facility is employed by the taxpayer in a new business or in a new segment of an existing business, the conduct of a business the net income of which is or will be taxable under article twenty-one, twenty-three or twenty-four of chapter eleven of this code. 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 July 1, 2015;

(C) The facility was not purchased or leased by the taxpayer from a related person: *Provided*, That the Tax Commissioner may waive this requirement if the facility was acquired from a related person for its fair market value and the acquisition was not tax motivated; and

(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 Tax 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.

(36) "New employee" means:

(A) 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 taxpayer'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. The term "new employee" also includes a person employed by the taxpayer who works outside this state who relocates in this state, becomes domiciled in this state and is employed full-time at the new business facility in this state. In no case may the number of new employees directly attributable to the investment for purposes of this credit exceed the total net increase in the taxpayer's employment in this state: *Provided,* That the Tax Commissioner may require that the net increase in the taxpayer's employment in this state be determined and certified for the taxpayer's controlled group.

(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" 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" does not include employment that is temporary or seasonal and therefore the wages, salaries and other compensation paid to the temporary or seasonal employees may 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.

(37) "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.

(38) "New property" means:

(A) Property, the construction, reconstruction or erection of which is completed on or after July 1, 2015, 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 July 1, 2015, if the original use of the property commences with the taxpayer and commences after that date.

(39) "NAICS" means the 2012 United States North American Industry Classification System issued by the Census Bureau of the United States Department of Commerce.

(40) "Opportunity plan" means a written plan that addresses the criteria and meets the requirements of section six of this article.

(41) "Order" means an order entered by a county commission or county council.

(42) "Ordinance" means an "ordinance" as defined in article one of chapter eight of this code.

(43) "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.

(44) "Partnership" includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business or venture is carried on, and which is not a trust or estate, a corporation or a sole proprietorship and which is treated as a partnership for tax purposes under the laws of this state. The term "partner" includes a member in such a syndicate, group, pool, joint venture or other organization.

(45) "Person" includes any natural person, corporation or partnership, and includes any entity that is treated like a corporation or partnership for federal income tax purposes.

(46) "Photonics" includes the generation, emission, transmission, modulation, signal processing, switching, amplification, detection and sensing of light: *Provided,* That the

technology was not in commercial use anywhere in the United States before July 1, 2014.

(47) "Photovoltaic devices" means those products designed, manufactured and produced to convert sunlight directly into electricity: *Provided,* That the technology was not in commercial use anywhere in the United States before July 1, 2014.

(48) "Political subdivision" means a county or municipal corporation in this state.

(49) "Property purchased or leased for business expansion" means:

(A) *Included property.* — Except as provided in paragraph (B) of this subdivision, 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 business facility or expanded business facility as defined in this section, which is located within the State of West Virginia. This term includes only:

(i) Real property and improvements thereto having a useful life of four or more years, placed in service or use on or after July 1, 2014, by the taxpayer;

(ii) 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 July 1, 2014;

(iii) Tangible personal property placed in service or use by the taxpayer on or after July 1, 2014, 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, twenty-three or twenty-four of chapter eleven of this code, 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;

(iv) 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 July 1, 2014, shall be included within this definition if the leased tangible personal property is used as a component part of a new or expanded business facility; and

(v) 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 July 1, 2014, 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 13C, 13D, 13E, 13H, 13Q, 13R, 13S, 13T, 13U, 13AA or 13BB, chapter 11 of this code;

(ii) Property owned or leased by the taxpayer and for which the seller, lessor, or other transferor, was previously allowed tax credit under article 13C, 13D, 13E, 13H, 13Q, 13R, 13S, 13T, 13U, 13AA or 13BB, chapter 11 of this code, or the tax credits allowed by this article;

(iii) Property owned or leased by the taxpayer that is used to qualify for any other credit against state taxes allowed by this code;

(iv) 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;

(v) Airplanes;

(vi) 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;

(vii) 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;

(viii) Natural resources in place; or

(ix) 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.

(50) "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;

(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 may 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.

(51) "Qualified activity" means any business or other activity subject to any of the taxes imposed by article 13, 21, 23 or 24, chapter 11 of this code (or any combination of those articles), but does not include the activity of severance or production of natural resources.

(52) "Qualified business" means a business authorized to do business in this state which is physically located or partially located within an authorized West Virginia project launchpad and is engaged in the active conduct of a trade or business in accordance with the requirements of section twelve of this article for the taxable year. Physical presence in an authorized West Virginia project launchpad of an agent, broker, employee or representative of a business physically located outside the geographic boundaries of an authorized West Virginia project launchpad does not, for purposes of this article, result in the business being engaged in the active conduct of trade or business within the project launchpad for purposes of this article.

(53) "Qualified political subdivision" means a county commission, county council or municipal corporation that has real property within its jurisdiction that has been designated by the Governor pursuant to this article as a West Virginia project launchpad for economic development, including an extension thereof.

(54) "Resident" means an individual who is domiciled and resides in an area that is designated as an authorized West

Virginia project launchpad for economic development pursuant to this article and who meets the residency requirements of section eleven of this article.

(55) "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 definition, "control", with respect to a corporation, means ownership, directly or indirectly, of stock possessing more than fifty percent 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.

(56) "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.

(57) "Secretary of Commerce" means the chief executive officer of the Department of Commerce established in article one, chapter five-f of this code, or his or her designee.

(58) "Secretary of Revenue" means the chief executive officer of the Department of Revenue established in article one, chapter five-f of this code, or his or her designee.

(59) "State-of-the-art technology" includes emerging technologies and innovative business technologies and means the highest level of development, as of a device, technique, or scientific field achieved at a particular time: *Provided,* That the technology was not in commercial use anywhere in the United States before July 1, 2014.

(60) "Tax benefit" means and includes a tax exemption, tax deduction, tax abatement, tax credit, special valuation methodology or other tax benefit pursuant to this article.

(61) "Tax Commissioner" or "Commissioner" means the chief executive officer of the Tax Division of the Department of Revenue provided in article one, chapter eleven of this code, or his or her designee.

(62) "Taxpayer" means any person subject to any of the taxes imposed by article twenty-one, twenty-three or twenty-four of chapter eleven of this code (or any combination of those articles).

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

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

(65) "Unoccupied parcel" means a parcel on which there is no commercial activity on the date an application for extension of an authorized West Virginia project launchpad for economic development, in which the parcel is included, is submitted to the Secretary of Commerce. Construction activity on a parcel shall not be deemed to be commercial business activity for purposes of this definition.

(66) "Used property" means property acquired after June 30, 2015, that is not "new property".

(67) "West Virginia project launchpad for economic development" or "economic development launchpad" means a defined geographic area comprised of one or more political subdivisions or portions of political subdivisions of this state authorized by the Governor under this article as a West Virginia project launchpad for economic development.

§5B-2I-4. West Virginia project launchpad.

(a) *Establishment.* — There is hereby established within the Department of Commerce, established pursuant to article two, chapter five-f of this code, the Project Launchpad program providing for West Virginia launchpads for economic development authorized by the Governor pursuant to this article.

(b) *Authorization of launchpads.* — The Governor may authorize not more than ten West Virginia project launchpads for economic development. Businesses that locate in a West Virginia launchpad for economic development and utilize as a primary component of their business at that location an "emerging technology", an "innovative business technology" or a "state-of-the-art technology" as those terms are defined in section three of this article, and businesses already located in a geographic area that is designated as a West Virginia project launchpad for economic development, that expand their business after the designation of the geographic area as a West Virginia project launchpad for economic development that expand their current facility and increase the number of employees at the facility and employ as a primary component of the expansion an "emerging technology", an "innovative business technology" or a "state-of-the-art technology" as those terms are defined in section two of this article shall be entitled to the benefits authorized in this article.

(c) *Size of launchpad.* — A West Virginia project launchpad for economic development may not be less than ten contiguous acres nor more than two thousand five hundred contiguous acres per launchpad for economic development.

(d) *Geographic limitation.* — No West Virginia project launchpad for economic development may encompass the entire geographic area of the municipal corporation, or of the county, in which the proposed project launchpad for economic development would be located.

(e) *Municipality may have one launchpad; exception.* — A municipal corporation may not be part of more than one West Virginia project launchpad for economic development, except that a municipal corporation may join with another municipal corporation or with the county commission or county council in proposing a project launchpad for economic development that includes land located within two municipalities, or land within and outside a municipal corporation, when the application required by this article is also approved by the county commission of the county in which the property is located.

(f) *No overlap of boundaries of launchpads.* — The boundaries of two or more West Virginia project launchpads for economic development may not overlap.

(g) *Duration of launchpad designation.* — The designation of a geographic area as a West Virginia project launchpad for economic development is for a period not to exceed eight years, beginning January 1, 2015 and ending December 31, 2022, unless the launchpad is sooner decertified as provided in this article, or the ending date is extended by the Legislature.

(h) *Authorization for local tax exemption.* — Every county commission, county council and municipal corporation within which a proposed West Virginia project launchpad for economic development would be located, whether in whole or in part, is hereby authorized to provided tax exemptions, deductions, abatements or credits to persons or businesses qualified under this article. The county commission, county council and municipal corporation shall agree to provide tax exemptions, deductions, abatements or credits from all local taxes as set forth in this article in order to qualify to have a geographic area within the county or municipal corporation designated as a West Virginia project launchpad for economic development. The tax benefit shall be effective on or before July 1, 2015, except that the ordinance or order providing for the tax benefit may be made contingent upon the area being authorized by the Governor of West Virginia project launchpad for economic development as provided in this article. The tax benefit shall be binding upon the county commission, county council and municipal corporation for the duration of the West Virginia project launchpad designation.

§5B-2I-5. Application for designation.

(a) *Counties.* — On or before December 30, 2014, the president of a county commission or county council may apply to the Secretary of Commerce to have one or more geographic areas in his or her county designated by the Governor as a West Virginia project launchpad for economic development.

(b) *Municipalities.* — On or before October 1, 2015, the mayor of a municipal corporation may apply to the county commission or county council of his or her county to have one geographic area within the municipal corporation included in the county's application under subsection (a) of this section to have one or more geographic areas of the county designated by the Governor as a West Virginia project launchpad for economic development.

§5B-2I-6. Form and content of application.

(a) *In general.* — The application shall be in a form prescribed by the Secretary of Commerce. The application shall provide the information required by the form and shall include the following:

(1) A true copy of the order entered or resolution adopted by the county commission or county council of the county authorizing submission of the application.

(2) A true copy of the ordinance adopted by the governing body of the municipality, or the county commission or county council of a county in which the West Virginia project launchpad for economic development would be located, which provides for the tax benefits and other benefits required by this article. This ordinance may be adopted contingent upon the geographic area being designated a West Virginia launchpad for economic development.

(3) A true copy of the opportunity plan for the proposed West Virginia project launchpad for economic development adopted by the county commission or county council of the county in which the project launchpad will be located or, if the launchpad is located, in whole or in part, within a municipal corporation, a true copy of the opportunity plan adopted by the governing body of the municipal corporation in whose jurisdiction the West Virginia project launchpad for economic development will be located, in whole or in part.

(4) A detailed map of the proposed West Virginia project launchpad for economic development, or the proposed expansion of an existing project launchpad, including geographic

boundaries, total area and present use and conditions of the land and structures of the proposed West Virginia project launchpad for economic development, or of a proposed expansion of an existing launchpad.

(5) The statement of the county assessor certifying the taxable assessed value of real and tangible personal property having a tax situs in the proposed launchpad for economic development pad for the most recent tax year for which that information is available and identifying whether or not the proposed West Virginia project launchpad for economic development would be located in an area which has tax revenue dedicated to the payment of debt.

(b) *Content of opportunity plan.* — The opportunity plan required by subsection (a) of this section shall include the information required by the Secretary of Commerce. The required information may include one or more of the following:

(1) Evidence of support from and participation of other local government officials, county boards of education, other educational institutions, business groups, community organizations and the public for the creation, or expansion, of a West Virginia project launchpad for economic development.

(2) A proposal to increase economic opportunity, reduce crime, improve education, facilitate infrastructure improvement, or reduce the local regulatory burden on business, and which identifies potential jobs and job training opportunities within the launchpad.

(3) A general description of the current social, economic and demographic characteristics of the proposed West Virginia project launchpad for economic development and anticipated improvements in education, health, human services, public safety and employment that will result from establishment of the West Virginia project launchpad for economic development, or

from expansion of an existing launchpad for economic development.

(4) A general description of anticipated activity in the proposed West Virginia project launchpad for economic development, or in the proposed expansion of an existing launchpad for economic development, including, but not limited to, industrial use, industrial site reuse, commercial use, retail use and residential use.

(5) Evidence of potential private and public investment in the proposed West Virginia project launchpad for economic development, or in the proposed expansion of an existing launchpad for economic development.

(6) The anticipated role of the proposed West Virginia project launchpad for economic development in local or regional economic and community development.

(7) A report on youth at risk within a twenty-five mile radius from the center of the proposed West Virginia project launchpad for economic development, to include issues relating to health, welfare, education and opportunities for employment.

(8) A report on unemployment within a twenty-five mile radius from the center of the proposed West Virginia project launchpad for economic development, to include issues relating to health, welfare and education of the unemployed.

(9) Evidence that the proposed West Virginia project launchpad for economic development meets the required criteria specified in section eight of this article for authorization of the project launchpad for economic development, or for a proposed expansion of an existing launchpad for economic development.

(10) Any other information reasonably required by the Secretary of Commerce in his or her discretion.

§5B-2I-7. Review of applications.

(a) *Action by Secretary.* — The Secretary of Commerce, in consultation with the Secretary of Revenue, shall review all completed applications submitted timely under this article.

(b) *Timely submission.* — An application for authorization and designation of a geographic area as a West Virginia project launchpad for economic development is timely if it is physically delivered by hand delivery, or by United States mail or by a package delivery service, to the office of the Secretary of Commerce on or before December 30, 2014.

(c) *Review process.* — The Governor may, after consultation with the Secretary of Commerce and the Secretary of Revenue, authorize up to ten West Virginia project launchpads for economic development from applications meeting the criteria specified in this article and based upon need and the likelihood of success of the project launchpad for economic development, as determined by the Governor in his or her sole discretion.

(d) *Authorization.* — The Governor shall authorize all West Virginia project launchpads for economic development by December 31, 2014.

§5B-2I-8. Criteria for authorization of West Virginia project launchpads for economic development.

(a) *Specific criteria.* — In order to qualify for authorization under this article, the proposed West Virginia project launchpad for economic development shall meet at least two of the following twelve criteria:

(1) At least twenty percent of the population is below the federal poverty level.

(2) The unemployment rate is 1.25 times the statewide average.

(3) At least twenty percent of all real property within a five-mile radius of the proposed West Virginia project launchpad for economic development to be located outside a municipal corporation is, as a class, deteriorated, underutilized or vacant.

(4) At least twenty percent of all real property within a one-mile radius of the proposed West Virginia project launchpad for economic development to be located within a municipal corporation is, as a class, deteriorated, underutilized or vacant.

(5) At least twenty percent of all occupied housing within a two-mile radius of the proposed West Virginia project launchpad for economic development to be located outside a municipal corporation is, as a class, deteriorated, substandard or vacant.

(6) At least twenty percent of all occupied housing within a one-mile radius of the proposed West Virginia project launchpad for economic development to be located in a municipal corporation is. as a class, deteriorated substandard or vacant.

(7) If the proposed West Virginia project launchpad for economic development would be located in a municipal corporation. the median family income of residents of the municipal corporation shall be eighty percent or less of the median family income for the nearest metropolitan statistical area.

(8) If the proposed West Virginia project launchpad for economic development is to be located outside of a municipal corporation, then the median family income of residents of the county living outside a municipal corporation shall be eighty percent or less of the statewide nonurban median family income.

(9) The population loss exceeds ten percent in an area that includes the proposed West Virginia project launchpad for economic development and its surrounding area but is not larger than the county or counties in which the proposed West Virginia project launchpad for economic development would be located,

based on 2010 census data or census estimates since 2010 establishing a pattern of population loss.

(10) The county or municipality in which the proposed West Virginia project launchpad for economic development would be located has experienced a sudden and/or severe job loss.

(11) At least thirty-three percent of the real property in a proposed West Virginia project launchpad for economic development would, but for establishment of the West Virginia project launchpad for economic development, remain underdeveloped or nonperforming for at least the next five years after the year in which the application is filed due to physical characteristics of the real property.

(12) The area of the proposed West Virginia project launchpad for economic development has substantial real property with adequate infrastructure and energy to support new or expanded development of the launchpad for economic development. For purposes of this subdivision, "infrastructure" means transportation infrastructure (road, water and rail, as appropriate), water and sewer infrastructure, communications infrastructure including telephone, cellular telephone and broadband infrastructure, and electricity.

(b) *Additional criteria.* — In addition to the criteria required under subsection (a) of this section, the Governor shall consider the following additional criteria:

(1) Evidence of distress, including, but not limited to, unemployment, percentage of population below eighty percent of the state median income, poverty rate, deteriorated property and adverse economic and socioeconomic conditions in the proposed West Virginia project launchpad for economic development.

(2) The strength and viability of the proposed goals, objectives and strategies in the opportunity plan as determined by the Secretary of Commerce and Secretary of Revenue.

(3) Whether the opportunity plan is creative and innovative in comparison to other applications, based on recommendations of the Secretary of Commerce and the Secretary of Revenue.

(4) Local public and private commitment to the development of the proposed West Virginia project launchpad for economic development and the potential cooperation of surrounding communities, based on recommendations of the Secretary of Commerce and the Secretary of Revenue.

(5) Existing resources available to the proposed West Virginia project launchpad for economic development, as determined by the Secretary of Commerce and the Secretary of Revenue.

(6) How the proposed West Virginia project launchpad for economic development would relate to other current economic and community development projects and to regional initiatives or programs for the area in which the project launchpad for economic development would be located, as determined by the Secretary of Commerce and the Secretary of Revenue, in their sole discretion, and recommended to the Governor.

(7) How the local regulatory burden will be eased for businesses operating in the proposed West Virginia project launchpad for economic development.

(8) Proposals to implement educational opportunities and improvements in the proposed West Virginia project launchpad for economic development.

(9) Crime statistics and proposals to implement local crime reduction measures in the proposed West Virginia project launchpad for economic development.

(10) Proposals to establish and link job creation and job training in the proposed West Virginia project launchpad for economic development.

(c) *Tax reduction orders and ordinances.* — An area may not be authorized as a West Virginia project launchpad for economic development unless, as a part of the application, each county commission, county council and governing body of a municipal corporation in which the proposed project launchpad for economic development is to be located adopts and provides a copy of its ordinance, order or other required action from the governing body of the qualified political subdivision that provides the tax benefits or other benefits to qualified persons and qualified businesses upon designation of the area as a West Virginia project launchpad for economic development. All appropriate ordinances, orders or other required action shall be effective on or before July 1, 2014, and may be made contingent upon the West Virginia project launchpad for economic development being authorized by the Governor as provided in this article. The ordinance, order or other required action shall be binding and nonrevocable on the qualified political subdivisions for the duration of the West Virginia project launchpad for economic development.

§5B-2I-9. Failure to submit timely application.

Failure of a county commission, county council or municipal corporation, to submit the application provided in sections five and six of this article, on or before the date specified in section seven of this article, shall preclude any portion of the unincorporated area of the county, or the incorporated area of a municipality, as the case may be, from being designated as a West Virginia project launchpad for economic development by the Governor, until section seven is amended by the Legislature specifying a new date by which applications may be filed.

§5B-2I-10. Extension of authorized West Virginia project launchpads.

(a) The Governor may approve an application to extend the geographic boundaries of a previously authorized West Virginia project launchpad for economic development to include an unoccupied parcel or tract of land when the proposed extension is of land contiguous to the existing project launchpad for economic development and the extension does not result in the project launchpad for economic development, after extension, exceeding the maximum number of contiguous acres specified in section four of this article or the other limitations specified in that section.

(b) When the proposed extension is of a West Virginia project launchpad for economic development located in an unincorporated area of the county and land proposed to be included in the launchpad is also located in the unincorporated area of that county, then application for extension shall be submitted by the president of the county commission or county council of the county after adoption by the county commission or county council of a resolution authorizing submission of the application for extension of the West Virginia project launchpad for economic development to the Secretary of Commerce.

(c) When the proposed extension is of a West Virginia project launchpad for economic development located within the corporate limits of a municipality and land proposed to be included in the launchpad is also located within that municipality or is located outside the municipal corporation or is located both within and without the municipal corporation, the application for extension of the existing launchpad must be submitted by the mayor of the municipal corporation and the president of the county commission or county council pursuant to adoption of a resolution by the governing body of the municipal corporation and adoption of a resolution by the county commission or county council authorizing its submission to the Secretary of Commerce.

(d) When the proposed extension involves land located in two municipalities, or in two counties, or in any combination thereof, the application for extension must be signed by the mayor of each municipal corporation pursuant to a resolution adopted by the governing body of the municipal corporation and by the president of the county commission or county council of each county in which the land is located pursuant to a resolution adopted by the county commission or county council authorizing submission of the application for extension to the Secretary of Commerce.

(e) The application for extension of an existing West Virginia project launchpad for economic development shall be in a form prescribed by the Secretary of Commerce and shall include all of the information required by section six of this article updated to reflect any changes in the information provided in the original application submitted under section six of this article due to passage of time and any additional information required by the Secretary of Commerce. The map of the previously authorized West Virginia project launchpad for economic development shall be updated to clearly identify the boundaries of contiguous acres that would be added to the existing West Virginia project launchpad for economic development.

(f) The application for extension of an existing West Virginia project launchpad for economic development shall be processed as provided in section eight of this article.

(g) The Governor may authorize the expansion of an existing West Virginia project launchpad for economic development, when the application for extension is filed with the Secretary of Commerce on or before December 31, 2019.

§5B-2I-11. Residency of individuals.

In order to qualify for a tax benefit under this article, an individual shall be domiciled and reside in a West Virginia project launchpad for economic development for a period of one hundred eighty four days or more each taxable year, which period may begin on the date of designation of the West Virginia project launchpad for economic development by the Governor or on the date the person first resides in a West Virginia project launchpad for economic development.

§5B-2I-12. Qualified businesses.

(a) *Qualification.* — In order to qualify each year for a tax benefit provided under this article, a business shall own or lease real property in a West Virginia project launchpad for economic development from which the business actively conducts a trade, profession or other business activity utilizing a state-of-the-art technology, as defined in section three of this article, as a primary component of the business activity in the project launchpad for economic development. The qualified business shall receive certification from the Secretary of Commerce that the business is a qualified business located and engaged in the active conduct of a trade, profession or other business activity utilizing as a primary component or primary element of the business a state-of-the-art technology within the West Virginia project launchpad for economic development. The business shall obtain annual renewal of the certification from the Secretary of Commerce to continue to qualify under this section.

(b) *Relocation.* — Any business that relocates from outside a West Virginia project launchpad for economic development may not receive any tax benefit set forth in this article unless that business utilizes within the project launchpad for economic development a state-of-the-art technology as a primary element or component of the business activity within the project launchpad for economic development and does one of the following:

(1) Increases full-time employment by at least twenty percent in the first full year of operation within the West Virginia project launchpad for economic development;

(2) Makes a capital investment in the property located within the West Virginia project launchpad for economic development at least equivalent to ten percent of the gross revenues of that business in the immediately preceding calendar or fiscal year of the business; or

(3) Enters into a lease agreement for property located within the West Virginia project launchpad for economic development:

(A) For a primary term at least ten years; and

(B) With aggregate payment under the lease agreement at least equivalent to five percent of the gross revenues of that business in the immediately preceding calendar or fiscal year of the business.

The Secretary of Commerce, in consultation with the Secretary of Revenue, may waive or modify the requirements of this subsection (b), as appropriate, and in their sole discretion.

§5B-2I-13. Decertification.

(a) *Application.* — The president of the county commission or county council of the county in which the West Virginia project launchpad for economic development is located or the mayor of the municipal corporation when the project launchpad is located, in whole or in part, within the corporate limits of the municipal corporation, pursuant to resolution adopted by the county commission or county council or the governing body of the municipal corporation, may apply to the Secretary of Commerce to have the Governor decertify and remove the designation of West Virginia project launchpad for economic development from some or all of the geographic area previously designated as a project launchpad for economic development pursuant to this article. The application for decertification shall contain all of the following:

(1) An identification of the property to be removed from the existing West Virginia project launchpad for economic development.

(2) A copy of an agreement which was supported by consideration in which each entity which possesses an interest in the real property to be removed, including any holder of an option either to purchase the real estate or to enter into a ground lease of the real estate or any other leasehold interest in the real estate, waives the party's right to any exemptions, deductions, abatements or credits granted by this article.

(3) A copy of a binding ordinance, resolution or other governing document passed by the qualified political subdivision removing any exemptions, deductions, abatements or credits granted by this article effective upon decertification by the Secretary of Commerce.

(b) *Review process.* — The Secretary of Commerce may after consultation with the Secretary of Revenue request that the Governor grant the application to decertify and remove the property when the application for decertification is complete and has been signed by the president of the county commission or county council and the mayor of the municipal corporation. if any, in which the West Virginia project launchpad for economic development is located.

§5B-2I-14. Prohibition on use of illegal alien labor.

(a) *General rule.* — No person or business that receives a tax benefit under this article may knowingly permit the labor services of an illegal alien under a contract to which the person or business is a party in the applicable West Virginia project launchpad for economic development. A person or business shall be deemed to have knowingly employed or knowingly permitted the labor services of an illegal alien if the business or person has active knowledge of or has reason to know that the labor services of an illegal alien have been provided under the contract in the applicable West Virginia project launchpad for economic development.

(b) *Reimbursement.* — As a condition of the receipt of a tax benefit under this article, the department or political subdivision that awards the tax benefit under this article shall require full repayment of the value or amount of the tax exemption, deduction, abatement or credit if subsection (c) of this section applies.

(c) *Violations.* —

(1) Repayment under subsection (b) of this section is required if any of the following apply:

(A) The person or business that received the tax exemption, deduction, abatement or credit under this article is sentenced under federal law for an offense involving knowing use of labor by an illegal alien under the contract in the applicable West Virginia project launchpad for economic development.

(B) All of the following apply:

(i) A contractor to a person or business that received the tax exemption, deduction, abatement or credit under this article is sentenced under federal law for an offense involving knowing use of labor by an illegal alien on the contract.

(ii) The person or business knew or had reason to know of the contractor's use of labor by an illegal alien on the contract.

(2) Any person or business that is required to repay the State Tax Commissioner or a qualified political subdivision under this section shall be ineligible to apply for any tax exemption, deduction, abatement or credit under this article for a period of two years.

(3) It is an affirmative defense to a violation of this section, if the person or business contracts with a contractor to provide labor under the contract in the applicable West Virginia project launchpad for economic development and establishes that the person has required the contractor to certify compliance with the requirements of section 274A of the Immigration Reform and Control Act of 1986 (Public Law 99-603, 8 U.S.C. § 1324A) with respect to the hiring, recruiting or referral for employment of an alien in the United States and has notified the appropriate federal authority, if the person knew that the contractor used labor by an illegal alien.

(d) *Definition.* — As used in this section, "illegal alien" means a noncitizen of the United States who is violating federal immigration laws and is providing compensated labor within this state.

§5B-2I-15. State taxes.

A person who is a resident of a West Virginia project launchpad for economic development, as defined in section eleven of this article, a qualified business, as defined in section twelve of this article, or a nonresident under section seventeen of this article shall receive the tax benefits as provided in this article for the duration of the West Virginia project launchpad for economic development, or after expansion of the project launchpad for economic development, or the person ceases to be a resident, a qualified business or a nonresident deriving income from activity in a West Virginia project launchpad for economic development, whichever occurs first. Tax benefits shall expire on the date of expiration of the West Virginia project launchpad for economic development, whether the expiration is by operation of law or by decertification.

§5B-2I-16. State sales and use taxes.

(a) *Exemption.* — Sales of tangible personal property except motor vehicles and motor fuel, and sales of custom software and services to a qualified business or a construction contractor pursuant to a construction contract with a qualified business, landowner or lessee for the exclusive use, consumption and utilization of the tangible personal property or service by the qualified business, landowner or lessee at the qualified business's, landowner's or lessee's facility located within a West Virginia project launchpad for economic development shall be exempt from the taxes imposed by articles fifteen and fifteen-a of chapter eleven of this code. No person may be allowed an exemption for purchases made prior to designation of the real property as part of a West Virginia project launchpad for economic development.

(b) *Expiration of exemption.* — The exemption allowed by this section shall remain in effect for the duration of the West Virginia project launchpad for economic development or the person ceases to be a resident, a qualified business or a nonresident deriving income from activity in a West Virginia project launchpad for development, whichever occurs first. Unless the exemption as to any person sooner expires, this exemption shall expire on the date of expiration of the West Virginia project launchpad for economic development, whether the expiration is by operation of law or by decertification.

§5B-2I-17. Personal income tax.

(a) *General rule.* — An individual shall be allowed a decreasing modification to his or her federal adjusted gross income for the taxable year for the following items, to the extent they are included in his or her federal adjusted gross income:

(1) The West Virginia source income of a partner in a partnership, or a shareholder in a small business corporation, that is a qualified business located in a West Virginia project launchpad for economic development that is attributable to business activity of the partnership, or electing small business corporation, conducted within a West Virginia project launchpad

for economic development, except that when a partnership or other pass through entity operates in West Virginia but does business both within and outside the West Virginia project launchpad for economic development, West Virginia source income of the partnership or other pass through entity shall be apportioned to the project launchpad for economic development by the ratio the gross receipts from business activity done in the project launchpad for economic development bears to total West Virginia gross receipts for the taxable year from all business activity in West Virginia.

(2) All of the following:

(A) Net gains or income, less net losses, derived by a resident or nonresident of a West Virginia project launchpad for economic development from the sale, exchange or other disposition of real or tangible personal property located in a West Virginia project launchpad for economic development as determined in accordance with generally accepted accounting principles and practices. The exemption provided in this paragraph (A) shall not apply to the sale, exchange or other disposition of any stock of goods, merchandise or inventory, or any operational assets unless the transfer is in connection with the sale, exchange or other disposition of all of the assets in complete liquidation of a qualified business located in a West Virginia project launchpad for economic development. This paragraph (A) shall also apply to intangible personal property employed in a trade, profession or business that is a qualified business in a West Virginia project launchpad for economic development, but only when transferred in connection with a sale, exchange or other disposition of all of the assets in complete liquidation of the qualified business located in the West Virginia project launchpad for economic development.

(B) The exemption from income for gain or loss provided in subparagraphs (i) and (ii) of this paragraph (B) shall be prorated based on the following:

(i) In the case of gains, less net losses, in this subparagraph (i), the percentage of time, based on calendar days, the property located in a West Virginia project launchpad for economic development was held by a resident or nonresident of the West Virginia project launchpad for economic development during the time period the West Virginia project launchpad for economic development was in effect in relation to the total time the property was held; and

(ii) In the case of gains, less net losses, in this subparagraph (ii), the percentage of time, based on calendar days, the property was held by the business while a resident of a West Virginia project launchpad for economic development in relation to the total time the property was held by the person or business.

(3) Net gains or income derived from or in the form of rents received by a person, whether a resident or nonresident of a West Virginia project launchpad for economic development, to the extent that income or loss from the rental of real or tangible personal property is allocable to a West Virginia project launchpad for economic development. For purposes of calculating this exemption:

(A) Net rents derived from real or tangible personal property located in a West Virginia project launchpad for economic development are allocable to a West Virginia project launchpad for economic development.

(B) If the tangible personal property was used both within and without the West Virginia project launchpad for economic development during the taxable year, only the net income attributable to use in the West Virginia project launchpad for economic development is exempt. The net rental income shall be multiplied by a fraction, the numerator of which is the number of days the property was used in the West Virginia project launchpad for economic development and the denominator which is the total days of use.

(4) The part of the income or gains received by an estate or trust for its taxable year ending within or with the resident-beneficiary's taxable year which, under the governing instrument and applicable state law, is required to be distributed currently or is in fact paid or credited to the resident-beneficiary and which would have been exempt under this article if received by a resident-beneficiary directly.

(b) Exemptions.

(i) Beginning January 1, 2015, a person located in a designated West Virginia project launchpad for economic development shall be allowed a deduction under subsection (a) of this section from federal adjusted gross income, to the extent included therein for purposes of the tax imposed by article twenty-one, chapter eleven of this code for the classes of income set forth in subsection (a) of this section. No person shall be allowed a deduction for activities conducted prior to designation of the real property as part of a West Virginia project launchpad for economic development.

(ii) Pass through entities. - The deductions provided in subdivisions (1), (2) and (3) of subsection (a) shall apply to all of the following:

(iii) The income or gain of a partnership or association. The partner or member shall be entitled to the exemptions under this section for the partner's or member's share, whether or not distributed, of the income or gain received by the partnership or association for its taxable year.

(iv) The income or gain of electing small business corporation. The shareholder shall be entitled to the exemptions under this section for the shareholder's pro rata share, whether or not distributed, of the income or gain received by the corporation for its taxable year ending within or with the shareholder's taxable year.

(c) *Limitations.* —

(1) A partnership, association, electing small business corporation, resident or nonresident individual may not apply an exemption from income under this article for any class of income against any other classes of income or gain.

(2) A partnership, association, electing small business corporation, resident or nonresident individual may not carry back or carry forward any deduction or exemption under this article from year to year.

(3) Any credit allowed under this section may not exceed the tax liability of the taxpayer under article twenty-one, chapter eleven of this code for the taxable year.

(d) *Section not applicable to certain entities.* — Any portion of net income or gain that is attributable to operation of a railroad, truck, bus or airline company, pipeline or natural gas company, water transportation company or other public service business subject to the jurisdiction of the West Virginia Public Service Commission may not be used to compute a deduction or exemption from tax under this section.

§5B-2I-18. Residency considerations.

If a person completes the residency requirements under section eleven of this article or if a nonresident realizes income attributable to business activity or property within an authorized West Virginia project launchpad for economic development, on or before the end of the taxable year, the person may claim the deductions from federal adjusted gross income, to the extent included therein, for the items set forth in section seventeen of this article for that portion of the tax year that the person was a resident for that portion of the tax year during which the area is designated as an authorized West Virginia project launchpad for economic development.

§5B-2I-19. Corporate net income tax.

(a) *Credits.* — For the tax years that begin on or after January 1, 2015, a corporation that is a qualified business under this article may claim a credit against the tax imposed by article twenty-four, chapter eleven of this code, for tax liability attributable to business activity conducted within the authorized West Virginia project launchpad for economic development in the taxable year.

(b) *Limitation.* — No credit may be claimed for activities conducted prior to designation of the real property as part of an authorized West Virginia project launchpad for economic development. The business activity must be conducted directly by a corporation in the authorized West Virginia project launchpad for economic development in order for the corporation to claim the tax credit allowed by this section.

(c) *Tax liability determinations.* — The corporate tax liability attributable to business activity conducted within an authorized West Virginia project launchpad for economic development shall be determined by multiplying the corporation's West Virginia taxable income that is attributable to business activity conducted within the authorized West Virginia project launchpad for economic development by the rate of tax imposed under article twenty-four, chapter eleven of this code for the taxable year.

(d) *Determinations of attributable tax liability.* — Tax liability attributable to business activity conducted within an authorized West Virginia project launchpad for economic development shall be computed, construed, administered and enforced in conformity with article twenty-four, chapter eleven of this code and with specific reference to the following:

(1) If the entire business of the corporation in this state is transacted wholly within the authorized West Virginia project

launchpad for economic development, the taxable income attributable to business activity within the project launchpad for economic development shall consist of the West Virginia taxable income of the business as determined under article twenty-four, chapter eleven of this code.

(2) If the entire business of the corporation in this state is not transacted wholly within the authorized West Virginia project launchpad for economic development, the West Virginia taxable income of the corporation attributable to business activity in the West Virginia project launchpad for economic development shall be determined by apportioning the West Virginia taxable income as provided in subsection (e) of this section.

(e) *Income apportionment.* — The West Virginia taxable income of a corporation that is a qualified business doing business both within and outside of a West Virginia project launchpad for economic development shall be apportioned to the authorized West Virginia project launchpad for economic development by multiplying the corporation's West Virginia taxable income by a fraction, the numerator of which is the property factor plus the payroll factor and the denominator of which is two, in accordance with the following:

(1) Property factor. — The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the authorized West Virginia project launchpad for economic development during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period but shall not include the security interest of any corporation as seller or lessor in personal property sold or leased under a conditional sale, bailment lease, chattel mortgage or other contract providing for the retention of a lien or title as security for the sales price of the property.

(2) Payroll factor. — The payroll factor is a fraction, the numerator of which is the total amount paid to employees based in the authorized West Virginia project launchpad for economic development during the taxable year by the taxpayer for compensation and the denominator of which is the total compensation taxpayer paid to employees in this state during the taxable year. Compensation is paid in the authorized West Virginia project launchpad for economic development if:

(A) The person's service is performed entirely within the authorized West Virginia project launchpad for economic development;

(B) The person's service is performed both within and without the authorized West Virginia project launchpad for economic development, but the service performed without the project launchpad is incidental to the person's service within the project launchpad for economic development; or

(C) Some of the service is performed in the West Virginia project launchpad for economic development and the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the project launchpad for economic development, or the base of operations or the place from which the service is directed or controlled is not in any location in which some part of the service is performed, but the person's residence is in the project launchpad for economic development.

(f) *Computation.* — A corporation shall compute its West Virginia taxable income in conformity with article twenty-four, chapter eleven of this code, with no adjustments or subtractions for authorized West Virginia project launchpad for economic development taxable income.

(g) *Limitation on amount of credit.* — The credit allowed under this section may not exceed the tax liability of the taxpayer under article twenty-four, chapter eleven of this code for the tax year, determined after application of any net operating losses and application of tax credits allowed for the year under chapter eleven of this code.

(h) *Section not applicable to certain businesses.* — Any portion of the taxpayer's taxable income that is attributable to the operation of a railroad, truck, bus or airline company, pipeline or natural gas company, water transportation company, or other public service business regulated by the West Virginia Public Service Commission must be excluded when determining the tax credit allowed by this section. Additionally, the property factor may not include in the numerator or denominator any property of the public service business actively and the payroll factor may not include in either the numerator or the denominator compensation paid for the taxable year to employees employed in the public service business activity.

§5B-2I-20. Business franchise tax.

(a) *Exemption.* — A business that has its official headquarters located in an authorized West Virginia project launchpad for economic development is exempt from the tax imposed by article twenty-three, chapter eleven of this code attributable to business activity engaged in within the authorized West Virginia project launchpad for economic development for taxable years beginning on or after January 1, 2015, notwithstanding any provision of the code to the contrary.

(b) *Credits.* — For tax years that begin on or after January 1, 2015, a corporation, partnership or other pass through entity that is a qualified business as defined in section twelve of this article may claim a credit against the tax imposed by article twenty-three, chapter eleven of this code, for tax liability attributable to the taxable capital employed within the West Virginia project launchpad for economic development in the taxable year. No credit may be claimed for capital employed prior to designation of the real property as part of a West Virginia project launchpad for economic development. The business activity in the West Virginia project launchpad for economic development must be conducted directly by a corporation, partnership or other pass through entity in order for the corporation, partnership or other pass through entity to claim the tax credit allowed by this section.

(c) *Tax liability.* — When the corporation, partnership or other pass through entity does business both within and outside the West Virginia project launchpad for economic development, the entity's tax liability attributable to capital employed within a project launchpad for economic development shall be determined by multiplying the portion of entity's taxable capital attributable to business activity within the project launchpad for economic development, determined as provided in subsection (d) of this section, by the rate of tax imposed under article twenty-three, chapter eleven of this code for the taxable year. The corporation, partnership or other pass through entity shall compute its West Virginia taxable capital in conformity with article twenty-three, chapter eleven of this code with no adjustments or subtractions for the capital employed in the West Virginia project launchpad for economic development.

(d) *Determination of attributable tax liability.* — The determination of the taxable capital of a corporation, partnership or other pass through entity attributable to the capital employed within a West Virginia project launchpad for economic development shall be determined with specific reference to the following:

(1) If the entire business of the corporation in this state is transacted wholly within the project launchpad, the taxable capital attributable to the business activity within the West Virginia project launchpad for economic development shall consist of the entire West Virginia taxable capital as determined under article twenty-three, chapter eleven of this code.

(2) If the entire business of the corporation in this state is not wholly transacted within an authorized West Virginia project launchpad for economic development, the taxable capital of a corporation or pass through entity doing business in an authorized West Virginia project launchpad for economic development shall be determined upon such portion of the West Virginia taxable capital not attributable to the capital employed within the authorized West Virginia project launchpad for economic development by employing the apportionment factors set forth in subsection (e), section nineteen of this article.

(e) *Limitation on amount of credit.* — The credit allowed under this section may not exceed the tax liability of the taxpayer under article twenty-three, chapter eleven of this code, for the tax year.

(f) *Credit not available.* — Any portion of the taxpayer's taxable capital that is attributable to the capital employed in the operation of a railroad, truck, bus or airline company, pipeline or natural gas company, water transportation company, or other public service business subject to regulation by the West Virginia Public Service Commission shall not be used to calculate a credit under this section.

§5B-2I-21. West Virginia project launchpad jobs tax credit.

(a) *Credits.* — For tax years that begin on or after January 1, 2015, a qualified business under this article may apply to the State Tax Commissioner for a jobs tax credit against the taxes imposed by articles twenty-three and twenty-four of chapter eleven of this code, or for the taxes imposed by articles twenty-one and twenty-three of chapter eleven of this code, when the qualified business is a pass through entity for federal income tax purposes, for all new full-time jobs with health benefits located within an authorized West Virginia project launchpad for economic development. The job must be held directly with a qualified business and be based in the authorized West Virginia project launchpad for economic development in order for the qualified business to apply for the tax credit. The Tax Commissioner shall prescribe the form of the application and the process to obtain the credit. The Tax Commissioner may promulgate in accordance with the provisions of article three, chapter twenty-nine-a of this code, rules the commissioner deems necessary to implement, administer and enforce this section.

(b) Application when business relocates within state.

(1) A business that relocates from a location in this state that is not located in an authorized West Virginia project launchpad for economic development to a location in an authorized West Virginia project launchpad for economic development may not apply for a credit for an existing job that is transferred, discontinued or lost in this state which is attributable to the relocation.

(2) A qualified business that has relocated pursuant to subdivision (1) of this subsection may apply for a West Virginia project launchpad job tax credit, for a new full-time job with health benefits that is created and based in the authorized West Virginia project launchpad for economic development. A new full-time job is created with a qualified business if the average monthly employment for that qualified business has increased from the average monthly employment of the business in this state during the prior twelve-month calendar year and the new job is based in an authorized West Virginia project launchpad for economic development.

(c) *Application of credit.* — A qualified business may apply for a credit allowed by this section by January 15 of the then current calendar year for credit for the previous calendar year.

(d) *Apportionment.* — The State Tax Commissioner shall apportion a West Virginia project launchpad jobs tax credit, for a qualified business that has not operated in an authorized West Virginia project launchpad for economic development for a full fiscal year by the percentage that the number of days the qualified business operated in the project launchpad for economic development bears to three hundred sixty five days.

(e) *Credit determinations.* — The West Virginia project launchpad jobs tax credit shall be determined by multiplying the monthly average of all full-time jobs by the allowance. The allowance for purposes of the West Virginia project launchpad jobs tax credit. for taxable years shall be $1.250 per new job with health benefits created by the qualified business when the new job is based in the West Virginia launchpad for economic development.

(f) *Notification of credit.* — By March 15 of each year, the Tax Commissioner shall notify each qualifying business that applies for credit under this section of the amount of credit approved for that qualified business.

(g) *Limitation on amount of credit.* — The tax credit allowed under this section shall be applied by the qualified business after all other credits allowable for the year under this code have been applied but may not reduce the liability of the business for taxes under articles twenty-three and twenty-four of chapter eleven of this code, by more than fifty percent of the tax liability of the qualified business under articles twenty-three and twenty-four of chapter eleven of this code attributable to the business activity of the qualified business engaged in within the West Virginia project launchpad for economic development.

(h) *Allocation.* — The total amount of credits approved by the Tax Commissioner may not exceed $1 million annually. If the credits applied for exceed the $1 million cap in a given year, the credits shall be allocated on a pro rata basis.

(i) *Computation of allocation.* — If the total amount of West Virginia project launchpad jobs tax credits applied for by all qualified businesses under this section exceeds $1 million then the credit to be received by each qualified business shall be the product of $1 million multiplied by the quotient of the credit applied for by the qualified business divided by the total of all credits applied for by all qualified businesses. The algebraic equivalent for this computation is: Qualified business's West Virginia project launchpad jobs tax credit = $1 million X (the amount of West Virginia project launchpad tax credit applied for by the qualified business divided by the sum of all West Virginia project launchpad jobs tax credits applied for by all qualified businesses for the taxable year).

(j) *Pass-through entities.* — The tax credits provided in this section shall apply to the following:

(1) A partner or member of a partnership, limited partnership, limited liability company or association that qualifies under this section shall be entitled to a job creation tax credit in proportion to the partner's or member's share, whether or not distributed, of the income or gain received by the partnership, limited partnership, limited liability company or association for its taxable year.

(2) A shareholder of a small business corporation that qualifies under this section shall be entitled to a job creation tax credit in proportion to the shareholder's pro rata share, whether or not distributed, of the income or gain received by the corporation for its taxable year ending within or with the shareholder's taxable year.

(3) No partnership, limited partnership, limited liability company, association or small business corporation, or partner, member or shareholder, may claim any other tax benefit, expense or credit for the same West Virginia project launchpad jobs tax credit.

(k) *Unused credit forfeited.* — Unused project launchpad jobs tax credit allowed under this section may not carry back or forward to any other year and may not be transferred to any other person or business.

§5B-2I-22. Local taxes.

Every qualified political subdivision in which an authorized West Virginia project launchpad for economic development is located, in whole or in part, shall exempt, deduct, abate or credit local taxes in accordance with ordinances and orders adopted pursuant to section four of this article, as is applicable. Failure to exempt, deduct, abate or credit local taxes shall result in the revocation of the authorization to be a West Virginia project launchpad for economic development.

§5B-2I-23. Ad valorem property tax.

General rule. — Notwithstanding any provision of this code to the contrary property located in an authorized West Virginia project launchpad for economic development owned by a qualified business shall be eligible for the special valuation methodology for ad valorem property tax purposes provided in article six-l, chapter eleven of this code as of July 1 beginning on or after the date the geographic area is designated a West Virginia project launchpad for economic development or beginning on or after the date the West Virginia project launchpad for economic development is extended to include the geographic area in which the qualified business is located.

§5B-2I-24. Local business and occupation taxes and net profits taxes.

(a) *General exemption.* — A municipal corporation or county commission or county council that has enacted any tax on the privilege of engaging in any business activity, profession or occupation, measured by gross receipts or net profits, may impose that tax on persons or qualified businesses located within the boundaries of an authorized West Virginia project launchpad for economic development. The municipal corporation or county commission or county council shall exempt from the imposition or operation of the local tax ordinances, statutes, regulations or otherwise:

(1) The business gross receipts for operations conducted by a qualified business within an authorized West Virginia project launchpad for economic development; and

(2) The net profits of a qualified business attributable to business activity conducted within an authorized West Virginia project launchpad for economic development when imposed by the qualified political subdivision where that qualified business is located.

No exemption may be granted for operations conducted, for earned income received or for activities conducted prior to designation of the real property as part of an authorized West Virginia project launchpad for economic development.

(b) *Determination of exemption.* — For the purposes of determining an exemption under this section, a tax on or measured by any of the following shall be attributed to business activity conducted within an authorized West Virginia project launchpad for economic development by applying the apportionment factors under section nineteen of this article:

(1) Business gross receipts.

(2) Gross or net profits.

§5B-2I-25. Local business license tax.

(a) *Municipalities.* — No person or qualified business with a physical location in an authorized West Virginia project launchpad for economic development may be required to pay any license tax or fee to that municipal corporation for business activity done in a West Virginia project launchpad for economic development. For purposes of this section "business license tax" means a license tax or fee that a municipal corporation imposes pursuant to article thirteen, chapter eight of this code.

(b) *Counties.* — No person or qualified business with a physical location in the portion of a county located in an authorized West Virginia project launchpad for economic development may be required to pay any license tax or fee to the county corporation for business activity done in a launchpad for economic development located in the county. For purposes of this section "business license tax" means a license tax or fee that a county or county council may impose pursuant to chapter seven of this code.

§5B-2I-26. Local sales and use taxes.

A municipal corporation or county commission or county council shall exempt from its sales and use taxes purchases, including leases, of tangible personal property, custom software or services for use or consumption within a West Virginia project launchpad for economic development by a qualified business with a physical location in the West Virginia project launchpad for economic development.

§5B-2I-27. No transferability of tax benefits.

Any tax benefit provided under this article to any person or qualified business is nontransferable and may not be applied, used or assigned to any other person or business, except as expressly provided in this article in the case of pass through entities treated as a partnership for federal income tax purposes for the taxable year.

§5B-2I-28. Recapture.

(a) *General rule.* — If any qualified business located within an authorized West Virginia project launchpad for economic development has received any tax benefit or other economic benefit under this article and subsequently relocates outside of the project launchpad for economic development or ceases to do business within the first five years of locating in or expanding in an authorized West Virginia project launchpad for economic development, that business shall refund to the State Tax Commissioner and to the qualified political subdivisions which granted the tax or other benefit received in accordance with the following:

(1) If a qualified business relocates, or ceases doing business, within three years from the date of first locating in a West Virginia project launchpad for economic development, sixty- six percent of all of the tax and other benefits attributed to that qualified business's participation in the West Virginia project launchpad for economic development shall be refunded to the State Tax Commissioner and to the qualified political subdivisions that provided the benefits.

(2) If a qualified business relocates, or ceases doing business, within three to five years from the date of first locating in a West Virginia project launchpad for economic development, thirty-three percent of all tax and other benefits attributed to that qualified business's activity in the West Virginia project launchpad for economic development shall be refunded to the State Tax Commissioner and to the qualified political subdivisions that provided the benefits.

(b) *Waiver.*— The Secretary of Commerce, in consultation with the State Tax Commissioner and the applicable qualified political subdivisions, may waive or modify the recapture requirements under this section if the Secretary of Commerce determines that the business relocation was due to circumstances beyond the control of the business, including, but not limited to:

(1) Natural disaster;

(2) Unforeseen industry trends; or

(3) Loss of a major supplier or market.

§5B-2I-29. Delinquent or deficient state or local taxes.

(a) *Persons.* — No person may claim or receive any tax benefit under this article unless that person is in full compliance with all West Virginia state and local tax laws, ordinances and resolutions that are applicable to the person.

(b) *Qualified businesses.* —

(1) No qualified business may claim or receive any tax benefit under this article unless that qualified business is in full compliance with all West Virginia state and local tax laws, ordinances and resolutions applicable to that business.

(2) No qualified business may claim or receive a tax benefit under this article if any person or business with a twenty percent or greater interest in that qualified business is not in full compliance with all West Virginia state and local tax laws, ordinances and resolutions applicable to that person or business.

(c) *Later compliance and eligibility.* —

(1) Any person or qualified business that is not eligible to claim any tax benefit under this article due to noncompliance with any West Virginia state or local tax law, ordinance or resolution may become eligible if that person or qualified business subsequently comes into full compliance with all West Virginia state and local tax laws, ordinances and orders applicable to the person or business to the satisfaction of the Tax Commissioner or the tax collector of the political subdivision within the calendar year in which the noncompliance first occurred.

(2) If full compliance is not attained by February 5 of the calendar year following the calendar year during which noncompliance first occurred or is first discovered, whichever occurs last, then that person or qualified business is precluded from claiming any tax benefit under this article for that

preceding calendar year, whether or not full compliance is achieved subsequently.

(d) For purposes of this section, a person or qualified business is not out of compliance during the time the question of compliance is being litigated in an administrative or judicial proceeding, or the person or qualified business is in compliance with the terms of any authorized plan for payment of past due taxes.

§5B-2I-30. Code compliance.

(a) *General rule.* — A person or qualified business is precluded from claiming any tax benefit provided in this article if that person or qualified business owns real property in an authorized West Virginia project launchpad for economic development and the real property is not in compliance with all applicable state and local zoning, building and housing laws and ordinances or orders of the county commission or county council.

(b) *Opportunity to achieve compliance.* —

(1) The person or qualified business who is not in compliance under subsection (a) of this section has until December 31 of the calendar year following designation of the real property as part of an authorized West Virginia project launchpad for economic development to be in compliance in order to claim any tax benefit under this article for that year or the prior calendar year. If full compliance is not attained by December 31 of that following calendar year, the person or qualified business is precluded from claiming any tax benefit under this article for the year on noncompliance or for the following calendar year, whether or not compliance is achieved in a subsequent calendar year. A municipal corporation or county commission or county council of a county in which the West Virginia project launchpad for economic development is located

may extend the time period in which a person or qualified business must come into compliance with a local ordinance or order, for a period not to exceed one year if the county or county council or municipal corporation determines that the person or qualified business has made and shall continue to make a good faith effort to come into compliance and that an extension will enable the person or qualified business to achieve full compliance.

(2) Municipal corporations and county commissions or county councils are required to notify the Tax Commissioner in writing, within thirty days following the end of each calendar year, of all persons or qualified businesses not in compliance with this subsection.

§5B-2I-31. Reporting to Governor and Legislature.

The Secretary of Commerce and the Tax Commissioner shall report to the Governor, the President of the Senate, and the Speaker of the House of Delegates on the economic effects of this article in each authorized West Virginia project launchpad economic development on or before the first day of the regular session of the Legislature in 2019 and 2023. This report may be a joint report of the Secretary of Commerce and the Tax Commissioner, or the reports required by this section may be separate reports prepared and filed in compliance with this section.

§5B-2I-32. Other tax credits.

A person or qualified business that is entitled to claim a tax benefit in accordance with the provisions of this article is not entitled to claim or accumulate any of the following tax benefits due to activity within a West Virginia project launchpad for economic development: The tax credits allowed by article thirteen-c, thirteen-d, thirteen-e, thirteen-j, thirteen-k, thirteen-l, thirteen-m, thirteen-n, thirteen-o, thirteen-p, thirteen-q, thirteenr, thirteen-s, thirteen-t, thirteen-u, thirteen-v, thirteen-w, thirteen-x, thirteen-z, thirteen-aa or thirteen-bb of chapter eleven of this code or the credit allowed by this article.

§5B-2I-33. Illegal activity.

Any funds or other forms of consideration received by a person or business conducting any type of illegal activity are not eligible for any of the tax benefits or any other benefit otherwise allowable under this article.

§5B-2I-34. Rules.

(a) The Tax Commissioner may propose rules for legislative approval pursuant to article three, chapter twenty-nine-a of this code, that the commissioner deems to be necessary to effectuate the provisions of this article administered by the Tax Commissioner.

(b) The Secretary of Commerce may propose rules for legislative approval pursuant to article three, chapter twenty-nine-a of this code, that the secretary deems to be necessary to effectuate the provisions of this article administered by the Secretary of Commerce.

§5B-2I-35. Compliance.

Any person or qualified business eligible for any tax benefit under this article shall comply with all reporting, filing and compliance requirements any tax imposed by or administered under chapter eleven of this code, on the person or qualified business and for any tax imposed by a county commission or county council pursuant to chapter seven of this code, or a municipal corporation pursuant to article thirteen, chapter eight of this code, unless otherwise provided in this article.

§5B-2I-36. Penalties.

Civil money penalties. —

(1) In addition to any additions to tax or other penalty authorized by article ten, chapter eleven of this code, for violations of that article, the Tax Commissioner may impose an additional administrative penalty not to exceed $10,000 for any violation of this article relating to state and local taxes, including the filing of any false statement, return or document.

(2) The Tax Commissioner may impose a civil penalty not to exceed $10,000 for a violation of this article, including the filing of any false statement, return or document.

(3) In addition to any additions to tax or other penalty set forth in an ordinance of a municipal corporation imposing a tax for violations of that tax, the municipal corporation by its authorized officer may impose an additional administrative penalty not to exceed $10,000 for any violation of this article relating to local taxes collected by the municipal corporation, including the filing of any false statement, return or document.

(4) The civil money penalties imposed by this section may be collected in the same manner as additions to tax or tax penalties are collected by the State Tax Commissioner or the municipal corporation.

§5B-2I-37. Construction of article.

This article is declared to be socioeconomic legislation that shall be interpreted to ensure that all provisions relating to state and local tax benefits and other benefits are liberally construed in favor of the taxpayer and strictly construed against the government.

§5B-2I-38. Applicability of article.

The provisions of this article shall be applied prospectively. No person or business may claim any tax benefit or other benefit under this article until that person or business becomes qualified as provided in this article.

§5B-2I-39. Severability.

The provisions of this article are severable. If any provision of this article or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application.

§5B-2I-40. Conflicts.

Should any provision of this code be inconsistent with this article, the provisions of this article shall be deemed to control.

§5B-2I-41. Expiration.

This article and all benefits associated with this article shall terminate for tax years beginning after December 31, 2022, unless this date is extended by the Legislature.

CHAPTER 11. TAXATION.

ARTICLE 6L. SPECIAL METHOD FOR APPRAISING PROPERTY IN WEST VIRGINIA PROJECT LAUNCHPADS for ECONOMIC DEVELOPMENT.

§11-6L-1. Short title.

This article shall be known and cited as the "West Virginia Project Launchpad for Economic Development Property Valuation Act".

§11-6L-2. Definitions.

For the purposes of this article:

(1) "Salvage value" means five percent of original cost;

(2) "State-of-the-art technologies" means "state-of-the-art technologies" as defined in section two, article two-I, chapter

five-b of this code when the owner of the property is a "qualified business" as defined in section two, article two-I of chapter five-b of this code. Qualifications for that tax credit and the special valuation methodology provided in this article include, but are not limited to, a minimum capital investment requirement, a minimum new jobs creation requirement and a requirement that the new jobs created be good paying jobs with health insurance benefits, all as defined in article two-I of chapter five-b of this code; and

(3) "Tax Commissioner" or "Commissioner" means the chief executive officer of the Tax Division of the Department of Revenue provided in article one, chapter eleven of this code, or his or her designee.

§11-6L-3. Valuation of property in West Virginia project launchpad for economic development.

Notwithstanding any other provision of this code to the contrary, the value of tangible personal property placed in service or use on or after July 1, 2015, and directly used in a state-of-the-art technology as defined in section two of this article shall, for the purpose of ad valorem property taxation under this chapter and under Article X of the Constitution of this state, is its salvage value.

§11-6L-4. Initial determination by county assessor.

(a) On or before September 1 of the assessment year, the owner of tangible personal property placed in service or use on or after July 1, 2015, directly used in a new business, or in a new segment of an existing business, that utilizes a state-of-the-art business technology and qualifies for the tax benefits allowed by article two-i, chapter five-b of this code may file a report with the county assessor of the county in which the property was located on July 1 of that assessment year, listing the tangible personal property placed in service or use on or after July 1, 2015, that is qualified investment for purposes of the tax benefits allowed by article two-I, chapter five-b of this code. A taxpayer that fails to timely file the report required by this subsection shall be deemed to have waived valuation of the property as provided in this article for that assessment year.

(b) When the county assessor receives the report described in subsection (a) of this section, the assessor shall review the report and make such inquiries as he or she deems necessary to determine whether the tangible personal property placed in service or use on or after July 1, 2015, listed in the report is eligible for valuation under this article. The county assessor shall notify the taxpayer in writing of his or her determination not later than January 15 of the assessment year.

(c) Upon making a determination that a taxpayer owns tangible personal property placed in service or use on or after July 1, 2015, directly used in an innovative business technology, as defined in section 2, article two-I, chapter five-b of this code, that is eligible for valuation under this article, the county assessor shall notify the Tax Commissioner of that determination and shall provide information to the Tax Commissioner as he or she requires relating to that determination.

§11-6L-5. Protest and appeal.

(a) If the taxpayer disagrees with the county assessor's determination under section four of this article or if the assessor fails to notify the taxpayer of the assessor's determination on or before the day specified in section four of this article the taxpayer may file objections in writing with the county assessor. The county assessor shall decide the matter by either sustaining the protest and making proper corrections, or by stating, in writing if requested, the reasons for the county assessor's refusal. The county assessor may, and if the taxpayer requests, the county assessor shall, before February 1 of the assessment year, certify the question to the Tax Commissioner in a statement sworn to by both parties, or if the parties are unable to agree, in separate sworn statements. The sworn statement or statements shall contain a full description of the property and any other information which the Tax Commissioner may require.

(b) The Tax Commissioner shall, as soon as possible on receipt of the question, but in no case later than February 28 of the assessment year, instruct the county assessor as to how the property shall be treated. The instructions issued and forwarded by mail to the county assessor are binding upon the county assessor, but either the county assessor or the taxpayer may apply to the circuit court of the county for review of the question of the applicability of this article to the property in the same fashion as is provided for appeals from the county commission or county council in section twenty-five, article three of this chapter. The Tax Commissioner shall prescribe forms on which the questions under this section shall be certified and the Tax Commissioner has the authority to pursue any inquiry and procure any information necessary for disposition of the matter.

§11-6L-6. Report on economic benefit.

The Secretary of Commerce shall provide to the Joint Committee on Government and Finance by March 1, 2019, and again by March 1, 2022, a report detailing the economic benefit of the valuation method specified in this article. The report shall include the number of new jobs created due to the provisions of this article and the ad valorem property tax impact.

§11-6L-7. Effective date.

This article shall be effective on and after July 1, 2015, for property placed in service or use on or after July 1, 2015, when the property and its use meet the requirements of this article.

ARTICLE 21A. PROMOTING WEST VIRGINIA EMPLOYMENT ACT.

§11-21A-1. Short title.

This article shall be known and may be cited as the "Promoting West Virginia Employment Act".

§11-21A-2. Scope of article.

This article relates to fostering economic development, creating new jobs and opportunities for citizens of West Virginia and providing incentives for businesses to locate or expand business facilities, other operations and jobs in a launchpad established in article two-i, chapter five-b of this code.

§11-21A-3. Definitions.

(a) The following words and phrases when used in this article have the meanings given to them in this section unless the context in which used clearly indicates that a different meaning was intended by the Legislature.

(b) Terms defined.

(1) "Agreement" means an agreement entered into under section eight of this article.

(2) "Development Office" means the Development Office of the Department of Commerce established in chapter five-e of this code.

(3) "Health insurance benefits" means employer-provided coverage for medical expenses of the employee or the employee and his or her family under a group accident or health plan, or employer contributions to an Archer medical savings account, as defined in Section 220 of the Internal Revenue Code of 1986, as amended, or to a health savings account, as defined in Section 223 of the Internal Revenue Code, of the employee when the employer's contribution to any such account is not less than fifty percent of the maximum amount permitted for the year as employer-provided coverage under Section 220 or 223 of the Internal Revenue Code, whichever section is applicable.

(4) "Qualified company" means a for-profit corporation, partnership or other entity that agrees to create at least five new

jobs in this state within twenty-four months from the date the agreement is entered into under section eight of this article, makes available to its full-time employees health insurance coverage, and pays at least fifty percent of the premium for the health insurance and meets the requirements of section four of this article: *Provided*, That "qualified company" does not include any corporation, partnership or other entity which meets any of the following:

(A) Is identified by any of the following North American Industry Classification System code groups, sectors or subsectors:

(i) Industry group 7132 or 8131.

(ii) Sectors 44, 45, 61, 92 or 221, including water and sewer services.

(iii) Subsector 722.

(B) Is delinquent in the payment of any taxes or any other amounts to the Federal Government, this state or any political subdivision of this state.

(C) Has filed for or has publicly announced its intention to file for bankruptcy protection.

(5) "Student loan payment assistance" means the payment of principal or interest on:

(A) Any indebtedness incurred by the employee solely to pay qualified higher education expenses (as defined in section 221 of the Internal Revenue Code), which:

(i) Are paid or incurred within a reasonable period of time before or after the indebtedness was incurred, and

(ii) Are attributable to education furnished during a period during which the employee was an eligible student, or

(B) Any indebtedness used to refinance indebtedness described in paragraph (A). However, "student loan payment assistance" does not include any payment of principal or interest on indebtedness owed to a person who is related (within the meaning of subsection (b), section 267 of the Internal Revenue Code or subsection (b), section 707 of the Internal Revenue Code), to the employee or to any person by reason of a loan under any qualified employer plan, as defined in paragraph (4), subsection (p), section 72 of the Internal Revenue Code, or under any contract referred to in paragraph (5), subsection (p), section 72 of the Internal Revenue Code.

(6) "Withholding tax" means the tax employers are required to withhold from their employees under section 71, article 21 of this chapter.

§11-21A-4. Qualification.

In order to qualify for benefits under this article, a qualified company must be located in this state and meet the requirements under subsection (a), section five of this article.

§11-21A-5. Benefits.

(a) *Requirement.* — A qualified company that enters into an agreement must create at least five new jobs in a launchpad established pursuant to article two-i, chapter five-b of this code, within two years of entering into the agreement under section eight of this article.

(b) *Retention.* — A qualified company that meets the requirements of subsection (a) of this section is eligible to retain seventy-five percent of the qualified company's withholding taxes for individuals employed in the new jobs for one of the following periods:

(1) Seven years, if the individuals are compensated at a rate equal to at least one hundred percent of the amount specified in section six of this article.

(2) Eight years, if the individuals are compensated at a rate equal to at least one hundred and ten percent of the amount specified in section six of this article.

(3) Nine years, if the individuals are compensated at a rate equal to at least one hundred and twenty percent of the amount specified in section six of this article.

(4) Ten years, if the individuals are compensated at a rate equal to at least one hundred and forty percent of the amount specified in section six of this article.

(c) When the qualified company certifies that it has a student loan payment assistance program that provides student loan assistance benefits to its West Virginia employees, then the words "ninety-five percent" shall be substituted for "seventy-five percent" in subsection (b) of this section.

(d) *Information statement.* — A qualified company shall comply with section seventy-two, article twenty-one of this chapter, without regard to the benefits the company receives under this article.

(e) *Notice.* — The qualified company shall provide to each individual employed in a new job notice of the benefits the qualified company is receiving under this article at the time the individual is hired. The information must be easily understandable and must state that the employee's withholding tax is being retained by the qualified company under this article and that the amount of taxes withheld will still be allowed as a credit when the employee files his or her West Virginia income tax return.

§11-21A-6. Compensation of employees filling new jobs.

(a) The benefit allowed by this article shall be available for each new job in this state of the qualified company that:

(1) Pays at least $34,100 annually. Beginning January 1, 2015, and on January 1 of each year thereafter, the Tax Commissioner shall prescribe an amount that shall apply in lieu of the $34,100 amount for new jobs filled during that calendar year. This amount is prescribed by increasing the $34,100 figure by the cost-of-living adjustment for that calendar year. If any increase under this subdivision is not a multiple of $50, the increase shall be rounded to the next lowest multiple of $50;

(2) Provides health insurance. The employer may in addition offer benefits including child care, retirement, student loan repayment assistance and other benefits; and

(3) Is a full-time, permanent position, as those terms are defined in this section.

(b) Jobs that pay less than $34,100 annually, or less than the amount prescribed by the Tax Commissioner pursuant to subdivision (1), subsection (a) of this section, whichever is higher, or that pay that salary but do not also provide health benefits in addition to the salary do not qualify for benefits under this article. Jobs that are less than full-time, permanent positions do not qualify for the benefits under this article.

(c) The employer having obtained entitlement to the benefit under this article for the year in which the new job is filled is not required to raise wages of the employees currently employed in the new jobs upon which the initial benefit was based by reason of the cost-of-living adjustment for new jobs filled in subsequent years provided the employer continues to provide healthcare benefits and, if applicable, student loan payment assistance.

(b) For purposes of this section, the following definitions apply:

(1) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(2) "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 2015.

(3) "Consumer price index" for any calendar year means the average of the federal consumer price index as of the close of the twelve-month period ending on August 31 of that calendar year.

(4) "Federal consumer price index" means the most recent consumer price index as of August 31 each year for all urban consumers published by the United States Department of Labor.

(5) "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 taxpayer's business enterprise in this state prior to the date the application was filed under section seven of this article. In no event may the number of new employees exceed the total net increase in the employer's employment in this state: *Provided*, That the Tax Commissioner may require that the net increase in the taxpayer's employment in this state be determined and certified for the taxpayer's controlled group as defined in article twenty-four of this chapter. In addition, a person is a "new employee" only if the person's duties are on a regular, full-time and permanent basis:

(A) "Full-time employment" means employment for at least one hundred forty hours per month at a wage not less than the amount specified in subdivision (1), subsection (a) of this section; and

(B) "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 this article even if the compensation paid to the temporary or seasonal employee equal or exceeds the amount specified in subdivision (1), subsection (a) of this section; or

(6) "New job" means a job which did not exist in the business of the taxpayer in this state prior to filing the application for benefits under this article, and which is filled by a new employee.

§11-21A-7. Application and review.

(a) *Application.* — A qualified company that meets the requirements of section four of this article may apply to the Development Office for benefits under this article. The application shall be on a form required by the Development Office and shall include all of the following:

(1) The name and address of the applicant.

(2) Documentation that the applicant is a qualified company.

(3) Documentation that the applicant meets the requirements of section four of this article.

(4) Documentation that the applicant does not owe any delinquent taxes or any other amounts to the federal government, this state or any political subdivision of this state.

(5) An affidavit that the applicant has not filed for or publicly announced its intention to file for bankruptcy protection and that the company will not seek bankruptcy protection within the next six calendar months following the date of the application.

(6) A waiver of confidentiality under section five-d, article ten of this chapter for information provided in the application.

(7) Any other information required by the Development Office.

(b) *Review.* — Within thirty days of receipt of the application, the Development Office, in conjunction with the Tax Division of the Department of Revenue, shall review the application and determine if the applicant is a qualified company and that the requirements of section four of this article have been met.

(c) *Approval.* — The Development Office may approve or deny the application. Upon approval of an application, the Development Office shall notify the applicant in writing and enter into an agreement with the qualified company for benefits under this article.

§11-21A-8. Agreement.

(a) The agreement between the qualified company and the Development Office shall be entered into before any benefits may be provided under this article.

(b) The agreement shall do all of the following:

(1) Specify the terms and conditions the qualified company must comply with in order to receive benefits under this article.

(2) Require the Development Office to certify all of the following to the Tax Division of the Department of Revenue every taxable year:

(A) That the qualified company is eligible to receive benefits under this article.

(B) The number of new jobs created by the company during each taxable year.

(C) The amount of gross wages being paid to each individual employed in a new job.

(3) Include any other information deemed necessary by the Development Office.

§11-21A-9. Recapture of withholding taxes.

(a) *Compliance with terms and conditions.* — If the qualified company fails to comply with the terms and conditions set forth in the agreement or fails to comply with this article, the Development Office shall immediately terminate the agreement. The qualified company is not entitled to any further benefits provided under this article and shall be required to remit to the Tax Commissioner an amount equal to the aggregate withholding taxes retained by the qualified company under this article as of the date the agreement is terminated.

(b) *Relocation.* — If a qualified company relocates outside of this state within the five-year period immediately following the last year the company received benefits under this article, the following apply:

(1) If a qualified company relocates within three years from the last year the company received benefits under this article, an amount equal to sixty-six percent of the aggregate withholding taxes retained by the qualified company under this article shall be paid over to the Tax Commissioner.

(2) If a qualified company relocates within three to five years from the last year the company received benefits under this article, an amount equal to thirty-three percent of the aggregate withholding taxes retained by the qualified company under this article shall be paid over to the Tax Commissioner.

(c) *Waiver.* — The Development Office may waive or modify recapture requirements under subsection (b) if the Development Office determines that the qualified company's relocation was due to circumstances beyond the control of the company, including, but not limited to:

(1) Natural disaster; or

(2) Loss of a major supplier or market.

§11-21A-10. Quarterly filing.

(a) *Filing.* — Within thirty days from the end of each calendar quarter for the duration of the agreement, a qualified company shall file quarterly with the Tax Division of the Department of Revenue on a form prescribed by the Tax Commissioner.

(b) *Contents.* — The form under subsection (a) of this section shall request the following information:

(1) The name and Employer Identification Number of the qualified company.

(2) The effective date of the agreement.

(3) The reporting period end date.

(4) Information relating to each individual employed in a new job as required by the Tax Commissioner.

(5) Information on amounts retained or remitted.

(6) Any other information required by the Tax Commissioner.

(c) *Confidentiality.* — The contents of the completed form shall be subject to the confidentiality rules set forth in section five-d, article ten of this chapter.

§11-21A-11. Prohibitions.

A qualified company claiming benefits under this article may not participate in any program in which any portion of the qualified company's withholding taxes attributable to new jobs have been pledged to finance indebtedness or transferred to or for the benefit of the qualified company.

§11-21A-12. Employee withholding statement.

An individual employed in a new job whose withholding tax is subject to this act shall be credited one hundred percent of the withholding tax withheld from the individual's paycheck as if the qualified company remitted one hundred percent of the withholding tax to the Tax Commissioner.

§11-21A-13. Administration and regulation.

The Development Office of the Department of Commerce, in conjunction with the Tax Commissioner, shall adopt guidelines necessary to implement and administer this article.

§11-21A-14. Review.

(a) *Duty.* — The Development Office shall conduct an annual review of the activities undertaken by a qualified company to ensure that the qualified company is in compliance with this article, the agreements and any regulations or guidelines adopted under this article.

(b) *Inspection.* — The books and records concerning employment and wages of any employees for which the qualified company has retained any withholding taxes shall be available for inspection by the Development Office or the Tax Commissioner, or by both agencies, during regular business hours. The Development Office may request the Tax Commissioner to audit the qualified company for compliance with this article.

§11-21A-15. Report to Governor and Legislature.

(a) *Duty.* — The Development Office shall submit an annual report to the Governor, the President of the Senate and the Speaker of the House of Delegates indicating the effectiveness of the tax benefits provided by this article no later than January

15 following the year in which the benefits were approved under this article. The report shall include the following information:

(1) The name of each qualified company participating as of the date of the report.

(2) The types of qualified companies utilizing this article.

(3) The location of the qualified company and any of its business operations in this state.

(4) The number of new jobs created.

(5) The wages paid to individuals employed in the new jobs.

(6) The annual amount of benefits provided under this article.

(7) The estimated net fiscal impact to the state, including the direct and indirect new state tax revenue to be derived from the new jobs created.

(8) An estimate of the multiplier effect of the benefits received under this act.

(b) *Confidentiality.* — Notwithstanding any provision of this code providing for the confidentiality of tax records or records of the Development Office, the information contained in the report is public information.

§11-21A-16. Annual limitation on benefits.

The aggregate annual amount of benefits retained under this article may not exceed $5 million per fiscal year of the state.

§11-21A-17. Applicability.

No agreement under this article may be entered into after December 31, 2020.

§11-21A-18. Effective dates.

This article shall take effect July 1, 2015 and be of no further effect after December 31, 2020, except as to benefits awarded before December 31, 2020.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Danny Wells
Chairman, House Committee

Member ~~Chairman,~~ *Senate Committee*

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within is disapproved this the 31st day of March, 2014.

Earl Ray Tomblin
Governor

PRESENTED TO THE GOVERNOR

MAR 2 8 20[illegible]

Time 10:45am