

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 3099**

4 (By Delegates Varner, Kominar, White, Pethtel,  
5 Ferro, Ennis, Ferns, Skaff, Storch, Givens and Nelson)

6  
7 (Originating in the Committee on Finance)

8 [February 23, 2011]

9  
10 A BILL to amend and reenact §11-6F-2 and §11-6F-3 of the Code of  
11 West Virginia, 1931, as amended; to amend and reenact §11-13Q-  
12 20 of said code; to amend and reenact §11-13R-3 of said code;  
13 to amend and reenact §11-13S-3 of said code; to amend and  
14 reenact §11-15-8d of said code; and to amend and reenact §24-  
15 2F-3 of said code, all relating generally to the tax treatment  
16 of manufacturing entities generally; amending definition of  
17 manufacturing for purposes of special method for appraising  
18 qualified capital additions to manufacturing facilities for  
19 property tax purposes; providing new rules for treatment of  
20 certified capital addition property; amending definition of  
21 research and development purposes of strategic research and  
22 development tax credit; amending definition of manufacturing  
23 for purposes of manufacturing investment tax credit; providing  
24 additional exception to limitation on right to assert sales  
25 and use tax exemptions; modifying meaning of natural gas for  
26 purposes of alternative and renewable energy portfolio

1 standard act; and requiring report on impact of act.

2 *Be it enacted by the Legislature of West Virginia:*

3 That §11-6F-2 and §11-6F-3 of the Code of West Virginia, 1931,  
4 as amended, be amended and reenacted; that §11-13Q-20 of said code  
5 be amended and reenacted; that §11-13R-3 of said code be amended  
6 and reenacted; that §11-13S-3 of said code be amended and  
7 reenacted; that §11-15-8d of said code be amended and reenacted;  
8 and that §24-2F-3 of said code be amended and reenacted, all to  
9 read as follows:

10 **CHAPTER 11. TAXATION.**

11 **ARTICLE 6F. SPECIAL METHOD FOR APPRAISING QUALIFIED CAPITAL**

12 **ADDITIONS TO MANUFACTURING FACILITIES.**

13 **§11-6F-2. Definitions.**

14 As used in this article, the term:

15 (a) "Certified capital addition property" means all real  
16 property and personal property included within or to be included  
17 within a qualified capital addition to a manufacturing facility  
18 that has been certified by the State Tax Commissioner in accordance  
19 with section four of this article: *Provided*, That airplanes and  
20 motor vehicles licensed by the Division of Motor Vehicles shall in  
21 no event constitute certified capital addition property: *Provided*,  
22 *however*, That no real property purchased, leased, constructed,  
23 located or installed on or after January 1, 2012, may be included  
24 in the measure of certified capital addition property.

25 (b) "Manufacturing" means any business activity classified as

1 having a sector identifier, consisting of the first two digits of  
2 the six-digit North American Industry Classification System code  
3 number of thirty-one, thirty-two or thirty-three or the six digit  
4 code number 211112.

5 ~~(b)~~ (c) "Manufacturing facility" means any factory, mill,  
6 chemical plant, refinery, warehouse, building or complex of  
7 buildings, including land on which it is located, and all  
8 machinery, equipment, improvements and other real property and  
9 personal property located at or within the facility used in  
10 connection with the operation of the facility in a manufacturing  
11 business.

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

17 ~~(d)~~ (e) "Qualified capital addition to a manufacturing  
18 facility" means all real property and personal property, the  
19 combined original cost of ~~all of the property~~ which exceeds \$50  
20 million to be constructed, located or installed at or within two  
21 miles of a manufacturing facility owned or operated by the person  
22 making the capital addition that has a total original cost before  
23 the capital addition of at least \$100 million. *Provided, That if*  
24 beginning on and after January 1, 2012, "qualified capital addition  
25 to a manufacturing facility" means only personal property, the  
26 combined original cost of which exceeds \$10 million to be

1 constructed, located or installed on or after January 1, 2012, at  
2 or within two miles of a manufacturing facility owned or operated  
3 by the person making the capital addition that has a total original  
4 cost immediately before the capital addition of at least \$20  
5 million dollars. No real property purchased, leased, constructed,  
6 located or installed on or after January 1, 2012, may be included  
7 in the measure of the qualified capital addition to a manufacturing  
8 facility. If the capital addition is made in a steel, chemical or  
9 polymer alliance zone as designated from time-to-time by executive  
10 order of the Governor, then the person making the capital addition  
11 may for purposes of satisfying the requirements of this subsection  
12 join in a multiparty project with a person owning or operating a  
13 manufacturing facility that has a total original cost immediately  
14 before the capital addition of at least \$100 million if the capital  
15 addition creates additional production capacity of existing or  
16 related products or feedstock or derivative products respecting the  
17 manufacturing facility, consists of a facility used to store,  
18 handle, process or produce raw materials for the manufacturing  
19 facility, consists of a facility used to store, handle or process  
20 natural gas to produce fuel for the generation of steam or  
21 electricity for the manufacturing facility, or consists of a  
22 facility that generates steam or electricity for the manufacturing  
23 facility, including but not limited to a facility that converts  
24 coal to a gas or liquid for the manufacturing facility's use in  
25 heating, manufacturing or generation of electricity: Provided,  
26 That with relation to multiparty projects entailing personal

1 property, the combined original cost of which exceeds \$10 million,  
2 to be constructed, located or installed on or after January 1,  
3 2012, the total original cost of the manufacturing facility  
4 immediately before the capital addition must be at least \$20  
5 million.

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

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

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

21 **ARTICLE 13Q. ECONOMIC OPPORTUNITY TAX CREDIT.**

22 **§11-13Q-20. Tax credit review and accountability.**

23 (a) Beginning on February 1, 2006 and every third year  
24 thereafter, the commissioner shall submit to the Governor, the  
25 President of the Senate and the Speaker of the House of Delegates

1 a tax credit review and accountability report evaluating the cost  
2 effectiveness of the economic opportunity credit during the most  
3 recent three-year period for which information is available. The  
4 criteria to be evaluated shall include, but not be limited to, for  
5 each year of the three-year period:

6 (1) The numbers of taxpayers claiming the credit;

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

9 (3) The cost of the credit;

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

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

13 (b) Taxpayers claiming the credit shall provide any  
14 information the Tax Commissioner may require to prepare the report:  
15 *Provided*, That the information provided is subject to the  
16 confidentiality and disclosure provisions of sections five-d and  
17 five-s, article ten of this chapter.

18 (c) In addition to the report required by subsection (a) of  
19 this section, on or before February 1, 2013, the commissioner, in  
20 consultation with the Department of Commerce, the Department of  
21 Transportation and the Department of Environmental Protection shall  
22 submit to the Governor, the President of the Senate and the Speaker  
23 of the House of Delegates a report of the impact of all the tax  
24 credits and other economic incentives provided in the act of the  
25 Legislature which amended and reenacted this section during 2011  
26 upon economic development in this state, including but not limited

1 to the creation of jobs in this state, upon the state's  
2 infrastructure, including but not limited to the need for  
3 construction or maintenance of the roads and highways of the state,  
4 upon the natural resources of the state, and upon public and  
5 private property interests in the state.

6 **ARTICLE 13R. STRATEGIC RESEARCH AND DEVELOPMENT TAX CREDIT.**

7 **§11-13R-3. Definitions.**

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

14 (b) *Terms defined.* --

15 (1) "Base amount" means:

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

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

1 taxable years, during which the taxpayer has filed a tax return  
2 under article twenty-three of this chapter; or

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

7 (2) "Commissioner" and "Tax Commissioner" are used  
8 interchangeably herein and mean the Tax Commissioner of the State  
9 of West Virginia or his or her delegate.

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

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

17 (5) "Delegate" in the phrase "or his or her delegate," when  
18 used in reference to the Tax Commissioner, means any officer or  
19 employee of the State Tax Division of the Department of Tax and  
20 Revenue duly authorized by the Tax Commissioner directly, or  
21 indirectly by one or more redelegations of authority, to perform  
22 the functions mentioned or described in this article.

23 (6) "Eligible taxpayer" means any person that is subject to  
24 the tax imposed by article twenty-three or article twenty-four of  
25 this chapter that is engaged in qualified research and development  
26 that has paid or incurred investment in qualified research and

1 development credit property or that has paid or incurred qualified  
2 research and development expenses as defined in section four of  
3 this article. In the case of a sole proprietorship subject to  
4 neither the tax imposed by article twenty-three nor the tax imposed  
5 by article twenty-four, the term "eligible taxpayer" means any sole  
6 proprietor who is subject to the tax imposed by article twenty-one  
7 of this chapter and who is engaged in qualified research and  
8 development that has paid or incurred investment in qualified  
9 research and development credit property or that has paid or  
10 incurred qualified research and development expenses as defined in  
11 section four of this article.

12 (7) "Partnership" includes a syndicate, group, pool, joint  
13 venture or other unincorporated organization through or by means of  
14 which any business, financial operation or venture is carried on,  
15 and which is not a trust or estate, a corporation or a sole  
16 proprietorship. The term "partner" includes a member in such a  
17 syndicate, group, pool, joint venture or other organization.

18 (8) "Person" includes any natural person, corporation, limited  
19 liability company or partnership.

20 (9) "Qualified research and development credit property" means  
21 depreciable property purchased for the conduct of qualified  
22 research and development.

23 (10) "Research and development" means systematic scientific,  
24 engineering or technological study and investigation in a field of  
25 knowledge in the physical, computer or software sciences often  
26 involving the formulation of hypotheses and experimentation for the

1 purpose of revealing new facts, theories or principles or  
2 increasing scientific knowledge which may reveal the basis for new  
3 or enhanced products, equipment or manufacturing processes.

4 (A) Research and development includes, but is not limited to,  
5 design, refinement and testing of prototypes of new or improved  
6 products ~~or design~~ or equipment or the design, refinement and  
7 testing of manufacturing processes before commercial sales relating  
8 thereto have begun. For purposes of this section, commercial sales  
9 includes, but is not limited to, sales of prototypes or sales for  
10 market testing.

11 (B) Research and development does not include:

12 (i) Market research;

13 (ii) Sales research;

14 (iii) Efficiency surveys;

15 (iv) Consumer surveys;

16 (v) Product market testing;

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

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

22 (viii) Management studies;

23 (ix) Advertising;

24 (x) Promotions;

25 (xi) The acquisition of another's patent, model, production or  
26 process or investigation or evaluation of the value or investment

1 potential related thereto;

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

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

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

8 (11) "Related person" means:

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

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

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

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

19 For purposes of this article, "control", with respect to a  
20 corporation, means ownership, directly or indirectly, of stock  
21 possessing fifty percent or more of the total combined voting power  
22 of all classes of the stock of the corporation entitled to vote.  
23 "Control", with respect to a trust, means ownership, directly or  
24 indirectly, of fifty percent or more of the beneficial interest in  
25 the principal or income of the trust. The ownership of stock in a  
26 corporation, of a capital or profits interest in a partnership or

1 association or of a beneficial interest in a trust is determined in  
2 accordance with the rules for constructive ownership of stock  
3 provided in section 267(c) of the United States Internal Revenue  
4 Code of 1986, as amended, other than paragraph (3) of that section.

5 (12) "Taxpayer" means any person subject to the tax imposed by  
6 article twenty-three or twenty-four of this chapter or both. In the  
7 case of a sole proprietorship subject to neither the tax imposed by  
8 article twenty-three nor the tax imposed by article twenty-four,  
9 the term "taxpayer" means any sole proprietor who is subject to the  
10 tax imposed by article twenty-one of this chapter.

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

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

14 **ARTICLE 13S. MANUFACTURING INVESTMENT TAX CREDIT.**

15 **§11-13S-3. Definitions.**

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

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

20 (1) "Eligible taxpayer" means an industrial taxpayer who  
21 purchases new property for the purpose of industrial expansion or  
22 for the purpose of industrial revitalization of an existing  
23 industrial facility in this state.

24 (2) "Industrial expansion" means capital investment in a new  
25 or expanded industrial facility in this state.

26 (3) "Industrial facility" means any factory, mill, plant,

1 refinery, warehouse, building or complex of buildings located  
2 within this state, including the land on which it is located, and  
3 all machinery, equipment and other real and tangible personal  
4 property located at or within the facility primarily used in  
5 connection with the operation of the manufacturing business.

6 (4) "Industrial revitalization" or "revitalization" means  
7 capital investment in an industrial facility located in this state  
8 to replace or modernize buildings, equipment, machinery and other  
9 tangible personal property used in connection with the operation of  
10 the facility in an industrial business of the taxpayer including  
11 the acquisition of any real property necessary to the industrial  
12 revitalization.

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

15 (6) "Manufacturing" means any business activity classified as  
16 having a sector identifier, consisting of the first two digits of  
17 the six-digit North American Industry Classification System code  
18 number, of thirty-one, thirty-two or thirty-three or the six digit  
19 code number 211112.

20 (7) "Property purchased for manufacturing investment" means  
21 real property, and improvements thereto, and tangible personal  
22 property but only if the property was constructed or purchased on  
23 or after ~~the first day of January, two thousand three,~~ January 1,  
24 2003, for use as a component part of a new, expanded or revitalized  
25 industrial facility. This term includes only that tangible  
26 personal property with respect to which depreciation, or

1 amortization in lieu of depreciation, is allowable in determining  
2 the federal income tax liability of the industrial taxpayer, that  
3 has a useful life, at the time the property is placed in service or  
4 use in this state, of four years or more. Property acquired by  
5 written lease for a primary term of ten years or longer, if used as  
6 a component part of a new or expanded industrial facility, is  
7 included within this definition.

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

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

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

15 (iii) Airplanes;

16 (iv) Off-premises transportation equipment;

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

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

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

26 (i) The property is not acquired from a person whose

1 relationship to the person acquiring it would result in the  
2 disallowance of deductions under section 267 or 707(b) of the  
3 United States Internal Revenue Code of 1986, as amended;

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

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

15 (8) "Qualified manufacturing investment" means that amount  
16 determined under section five of this article as qualified  
17 manufacturing investment.

18 (9) "Taxpayer" means any person subject to any of the taxes  
19 imposed by article thirteen-a, twenty-three or twenty-four of this  
20 chapter or any combination of those articles of this chapter.

21 **ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.**

22 **§11-15-8d. Limitations on right to assert exemptions.**

23 (a) Persons who perform "contracting" as defined in section  
24 two of this article or persons acting in an agency capacity may not  
25 assert any exemption to which the purchaser of such contracting  
26 services or the principal is entitled. Any statutory exemption to

1 which a taxpayer may be entitled ~~shall be~~ is invalid unless the  
2 tangible personal property or taxable service is actually purchased  
3 by such taxpayer and is directly invoiced to and paid by such  
4 taxpayer. This section ~~shall not~~ does not apply to purchases by an  
5 employee for his or her employer, purchases by a partner for his or  
6 her partnership or purchases by a duly authorized officer of a  
7 corporation, or unincorporated organization, for his or her  
8 corporation or unincorporated organization so long as the purchase  
9 is invoiced to and paid by the employer, partnership, corporation  
10 or unincorporated organization.

11 (b) *Transition rule.* -- This section ~~shall not~~ does not apply  
12 to purchases of tangible personal property or taxable services in  
13 fulfillment of a purchasing agent or procurement agent contract  
14 executed and legally binding on the parties thereto prior to  
15 September 15, 1999. ~~Provided, That~~ This transition rule ~~shall not~~  
16 does not apply to any purchases of tangible personal property or  
17 taxable services made under such a contract after August 31, 1991  
18 and this transition rule ~~shall not~~ does not apply if the primary  
19 purpose of the purchasing agent or procurement agent contract was  
20 to avoid payment of consumers sales and use taxes. ~~However,~~  
21 Effective July 1, 2007, this section ~~shall not~~ does not apply to  
22 purchases of services, machinery, supplies or materials, except  
23 gasoline and special fuel, to be directly used or consumed in the  
24 construction, alteration, repair or improvement of a new or  
25 existing building or structure by a person performing  
26 "contracting", as defined in section two of this article, if the

1 purchaser of the "contracting" services would be entitled to claim  
2 the refundable exemption under subdivision (2), subsection (b),  
3 section nine of this article had it purchased the services,  
4 machinery, supplies or materials. Effective July 1, 2009, this  
5 section ~~shall not~~ does not apply to purchases of services,  
6 computers, servers, building materials and tangible personal  
7 property, except purchases of gasoline and special fuel, to be  
8 installed into a building or facility or directly used or consumed  
9 in the construction, alteration, repair or improvement of a new or  
10 existing building or structure by a person performing  
11 "contracting", as defined in section two of this article, if the  
12 purchaser of the "contracting" services would be entitled to claim  
13 the exemption under subdivision (7), subsection (a), section nine-h  
14 of this article. Effective July 1, 2011, this section does not  
15 apply to purchases of services, machinery, supplies or materials,  
16 except gasoline and special fuel, to be directly used or consumed  
17 in the construction, alteration, repair or improvement of a new or  
18 existing natural gas compressor station or gas transmission line  
19 having a diameter of twenty inches or more by a person performing  
20 "contracting", as defined in section two of this article, if the  
21 purchaser of the "contracting" services would be entitled to claim  
22 the refundable exemption under subdivision (2), subsection (b),  
23 section nine of this article had it purchased the services,  
24 machinery, supplies or materials.

25 **CHAPTER 24. PUBLIC SERVICE COMMISSION.**

26 **ARTICLE 2F. ALTERNATIVE AND RENEWABLE ENERGY PORTFOLIO STANDARD.**

1 **§24-2F-3. Definitions.**

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

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

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

20 (3) "Alternative energy resources" means any of the following  
21 resources, methods or technologies for the production or generation  
22 of electricity:

23 (A) Advanced coal technology;

24 (B) Coal bed methane;

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

26 (D) Fuel produced by a coal gasification or liquefaction

1 facility;

2 (E) Synthetic gas;

3 (F) Integrated gasification combined cycle technologies;

4 (G) Waste coal;

5 (H) Tire-derived fuel;

6 (I) Pumped storage hydroelectric projects; and

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

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

16 (5) "Alternative energy resource facility" means a facility or  
17 equipment that generates electricity from alternative energy  
18 resources.

19 (6) "Commission" or "Public Service Commission" means the  
20 Public Service Commission of West Virginia as continued pursuant to  
21 section three, article one of this chapter.

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

26 (8) "Electric utility" means any electric distribution company

1 or electric generation supplier that sells electricity to retail  
2 customers in this state. Unless specifically provided for  
3 otherwise, for the purposes of this article, the term "electric  
4 utility" may not include rural electric cooperatives, municipally-  
5 owned electric facilities or utilities serving less than thirty  
6 thousand residential electric customers in West Virginia.

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

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

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

21 (C) Industrial by-product technologies consisting of the use  
22 of a by-product from an industrial process, including, but not  
23 limited to, the reuse of energy from exhaust gases or other  
24 manufacturing by-products that can be used in the direct production  
25 of electricity at the customer's facility;

26 (D) Customer-sited generation, demand-response, energy

1 efficiency or peak demand reduction capabilities, whether new or  
2 existing, that the customer commits for integration into the  
3 electric utility's demand-response, energy efficiency or peak  
4 demand reduction programs; or

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

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

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

19 (B) Forestation, afforestation or reforestation; and

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

22 (11) "Net metering" means measuring the difference between  
23 electricity supplied by an electric utility and electricity  
24 generated from an alternative or renewable energy resource facility  
25 owned or operated by an electric retail customer when any portion  
26 of the electricity generated from the alternative or renewable

1 energy resource facility is used to offset part or all of the  
2 electric retail customer's requirements for electricity.

3 (12) "Reclaimed surface mine" means a surface mine, as that  
4 term is defined in section three, article three, chapter twenty-two  
5 of this code, that is reclaimed or is being reclaimed in accordance  
6 with state or federal law.

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

10 (A) Solar photovoltaic or other solar electric energy;

11 (B) Solar thermal energy;

12 (C) Wind power;

13 (D) Run of river hydropower;

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

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

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

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

1 (I) Recycled energy, which means useful thermal, mechanical or  
2 electrical energy produced from: (i) Exhaust heat from any  
3 commercial or industrial process; (ii) waste gas, waste fuel or  
4 other forms of energy that would otherwise be flared, incinerated,  
5 disposed of or vented; and (iii) electricity or equivalent  
6 mechanical energy extracted from a pressure drop in any gas,  
7 excluding any pressure drop to a condenser that subsequently vents  
8 the resulting heat; and

9 (J) Any other resource, method, project or technology  
10 certified by the commission as a renewable energy resource.

11 (14) "Renewable energy resource facility" means a facility or  
12 equipment that generates electricity from renewable energy  
13 resources.

14 (15) "Waste coal" means a technology by which electricity is  
15 produced by the combustion of the by-product, waste or residue  
16 created from processing coal, such as gob.