

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 465**

4 (By Senators McCabe, Kessler (Acting President),
5 Browning, Unger, Snyder, Stollings, Plymale, Wells, Palumbo,
6 Beach, Klempa, Yost and Foster)

7 _____
8 [Originating in the Committee on Energy, Industry and Mining;
9 reported February 17, 2011.]
10 _____

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12
13 A BILL to amend the Code of West Virginia, 1931, as amended, by
14 adding thereto a new article, designated §5B-2H-1 and §5B-2H-
15 2; to amend said code by adding thereto a new section,
16 designated §11-1C-11c; to amend and reenact §11-6D-1, §11-6D-
17 2, §11-6D-3, §11-6D-4, §11-6D-5, §11-6D-6, §11-6D-7 and §11-
18 6D-8 of said code; to amend said code by adding thereto a new
19 section, designated §11-6D-9; to amend and reenact §11-6F-2
20 and §11-6F-3 of said code; to amend said code by adding
21 thereto a new section, designated §11-13A-5b; to amend and
22 reenact §11-13R-3 of said code; to amend and reenact §11-13S-3
23 of said code; to amend and reenact §11-15-8d of said code; and
24 to amend and reenact §24-2F-3 of said code, all relating
25 generally to the Marcellus Gas and Manufacturing Development
26 Act of 2011; providing short title; making legislative

1 findings and declarations; amending and reinstating
2 alternative-fuel motor vehicles tax credit; providing credit
3 for alternative-fuel refueling facilities; making legislative
4 findings; stating legislative purpose; defining terms;
5 allowing credit for purchase of alternative-fuel motor
6 vehicles, conversion of vehicles to alternative-fuel motor
7 vehicles and for commercial and residential alternative-fuel
8 refueling facilities; providing for expiration of credits;
9 requiring Tax Commissioner to promulgate rules and design
10 forms; providing for carryover of unused credits and for
11 recapture of credits; amending definition of "manufacturing"
12 for purposes of special method for appraising qualified
13 capital additions to manufacturing facilities for property tax
14 purposes; providing new rules for treatment of certified
15 capital addition property; setting baseline for oil and gas
16 severance tax collections; providing for excess distribution
17 and deposit of excess collections; amending definition of
18 "research and development" for purposes of strategic research
19 and development tax credit; amending definition of
20 "manufacturing" for purposes of manufacturing investment tax
21 credit; providing additional exception to limitation on right
22 to assert sales and use tax exemptions; and clarifying meaning
23 of "natural gas" for purposes of Alternative and Renewable
24 Energy Portfolio Standard Act.

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

26 That the Code of West Virginia, 1931, as amended, be amended

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

13 **CHAPTER 5B. ECONOMIC DEVELOPMENT ACT of 1985.**

14 **ARTICLE 2H. MARCELLUS GAS AND MANUFACTURING DEVELOPMENT ACT.**

15 **§5B-2H-1. Short Title.**

16 This article shall be known and cited as the "Marcellus Gas
17 and Manufacturing Development Act".

18 **§5B-2H-2. Legislative findings; declaration of public policy.**

19 (a) The Legislature finds that:

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

24 (2) With development of the Marcellus shale comes the
25 opportunity for economic development in related areas of the

1 economy including, but not limited to, manufacturing, transmission
2 of natural gas and related products and the transportation of
3 manufactured products.

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

7 (4) Producers of natural gas, transporters of natural gas and
8 manufacturers of products using natural gas face a significant
9 number of regulatory requirements, some of which may be redundant,
10 inconsistent, or overlapping. Agencies should work together, where
11 practical, to avoid duplication, promote better coordination and
12 reduce these requirements, thus reducing costs, simplifying and
13 harmonizing rules and streamlining regulatory oversight.

14 (5) In developing regulatory actions and identifying
15 appropriate approaches, agencies should attempt to promote
16 coordination, simplification, and harmonization.

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

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

26 (8) The West Virginia Economic Development Authority

1 established in article fifteen, chapter thirty-one of this code and
2 the West Virginia Infrastructure and Jobs Development Council
3 created in article fifteen-a, chapter thirty-one of this code,
4 should, where appropriate, provide assistance that grows or
5 sustains this segment of the economy.

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

11 **CHAPTER 11. TAXATION.**

12 **ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.**

13 **§11-1C-11c. Valuation of oil and gas drilling rigs.**

14 Notwithstanding any provision of this code to the contrary and
15 to facilitate the equal and uniform taxation of oil and natural gas
16 drilling rigs throughout the state, the State Tax Commissioner
17 shall annually compile a schedule of oil and natural gas drilling
18 rig values based on the wholesale values shown in a nationally
19 recognized guide or bulletin published during the calendar year
20 that includes the assessment date, using the appropriate depth
21 rating assigned to the drawworks by its manufacturer and the actual
22 condition of the drilling rig. The State Tax Commissioner shall
23 furnish the schedule to each assessor and it shall be used by him
24 or her as a guide in placing the assessed values on all oil and
25 natural gas drilling rigs in his or her county. This section

1 applies to assessment years beginning on and after July 1, 2011.

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

3 **§11-6D-1. Legislative findings and purpose.**

4 Consistent with the public policy as stated in section one,
5 article two-d, chapter twenty-four of this code, the Legislature
6 hereby finds that the use of alternative fuels is in the public
7 interest and promotes the general welfare of the people of this
8 state insofar as it addresses serious concerns for our environment
9 and our state's and nation's dependence on foreign oil as a source
10 of energy. The Legislature further finds that this state has an
11 abundant supply of alternative fuels and an extensive supply
12 network and that, by encouraging the use of alternatively-fueled
13 motor vehicles, the state will be reducing its dependence on
14 foreign oil and attempting to improve its air quality. The
15 Legislature further finds that the wholesale cost of fuel for
16 certain alternatively-fueled motor vehicles is significantly lower
17 than the cost of fueling traditional motor vehicles with oil based
18 fuels.

19 However, because the cost of motor vehicles which utilize
20 alternative-fuel technologies remains high in relation to motor
21 vehicles that employ more traditional technologies, citizens of
22 this state who might otherwise choose an alternatively-fueled motor
23 vehicle are forced by economic necessity to continue using motor
24 vehicles that are fueled by more conventional means. Additionally,
25 the availability of commercial and residential infrastructure to
26 support alternatively-fueled vehicles available to the public is

1 inadequate to encourage the use of alternatively-fueled motor
2 vehicles. Therefore, in order to encourage the use of
3 alternatively-fueled motor vehicles and possibly reduce unnecessary
4 pollution of our environment and reduce our dependence on foreign
5 sources of energy, there is hereby created an alternative-fuel
6 motor vehicles tax credit and an alternative-fuel infrastructure
7 tax credit.

8 **§11-6D-2. Definitions.**

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

11 (a) "Alternative fuel" includes:

12 (1) Compressed natural gas;

13 (2) Liquefied natural gas;

14 (3) Liquefied petroleum gas;

15 ~~(4) Methanol;~~

16 ~~(5) Ethanol;~~

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

20 ~~(A) Methanol;~~

21 ~~(B) Ethanol; or~~

22 ~~(C) Other alcohols;~~

23 (4) Natural gas hydrocarbons and derivatives;

24 (5) Hydrogen;

25 ~~(7)~~ (6) Coal-derived liquid fuels; and

26 ~~(8)~~ (7) Electricity, including electricity from solar energy.

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

3 (1) Operates solely on one alternative fuel;

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

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

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

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

11 (1) An original equipment manufacturer plug-in hybrid electric
12 vehicle that can operate solely on electric power and that is
13 capable of recharging its battery from an on-board generation
14 source and an off-board electricity source; and

15 (2) A plug-in hybrid electric vehicle conversion that provides
16 an increase in city fuel economy of seventy-five percent or more as
17 compared to a comparable nonhybrid version vehicle for a minimum of
18 twenty miles and that is capable of recharging its battery from an
19 on-board generation source and an off-board electricity source. A
20 vehicle is comparable if it is the same model year and the same
21 vehicle class as established by the United States Environmental
22 Protection Agency and is comparable in weight, size, and use. Fuel
23 economy comparisons shall be made using city fuel economy standards
24 in a manner that is substantially similar to the manner in which
25 city fuel economy is measured in accordance with procedures set
26 forth in 40 C.F.R. 600 as in effect on January 1, 2011.

1 (e) "Qualified alternative fuel vehicle refueling
2 infrastructure" means property owned by the applicant for the tax
3 credit and used for storing alternative fuels and for dispensing
4 such alternative fuels into fuel tanks of motor vehicles, including
5 but not limited to, compression equipment, storage tanks and
6 dispensing units for alternative fuel at the point where the fuel
7 is delivered: Provided, That the property is installed and located
8 in this state and is not located on a private residence or private
9 home.

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

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

24 **§11-6D-3. Credit allowed for alternative-fuel motor vehicles and**
25 **qualified alternative fuel vehicle refueling**

1 infrastructure; application against personal income
2 tax, business franchise tax or corporate net income
3 tax; effective date.

4 The tax ~~credit~~ credits for the purchase of alternative-fuel
5 motor vehicles or conversion to alternative-fuel motor vehicles,
6 qualified alternative fuel vehicle refueling infrastructure and
7 qualified alternative fuel vehicle home refueling infrastructure
8 provided in this article may be applied against the tax liability
9 of a taxpayer imposed by the provisions of either article twenty-
10 one, article twenty-three or article twenty-four of this chapter
11 but in no case may more than one credit be granted for the same
12 alternative-fuel motor vehicle as defined in subdivision (b),
13 section two of this article. This credit shall be available for
14 those tax years beginning after ~~June 30, 1997~~ January 1, 2011.

15 **§11-6D-4. Eligibility for credit.**

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

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

21 ~~(1) Exclusively on an alternative fuel as defined in~~
22 ~~subdivision (a), section two of this article; or~~

23 ~~(2) In a dual fuel mode, as defined in paragraph (6),~~
24 ~~subdivision (a), section two of this article; as a bi-fueled~~
25 ~~alternative-fuel motor vehicle; or~~

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

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

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

14 **§11-6D-5. Amount of credit for alternative fuel motor vehicles.**

15 ~~(a) The total amount of any credit allowed under this article~~
16 ~~for an alternative fuel motor vehicle is limited by and subject to~~
17 ~~the provisions set forth in this subsection and subsections (b),~~
18 ~~(c) and (d) of this section and may not exceed: (1) In the case of~~
19 ~~a motor vehicle conversions or retrofitting, the actual cost of~~
20 ~~converting from a traditionally fueled motor vehicle to an~~
21 ~~alternatively-fueled motor vehicle; or (2) in the case of a new~~
22 ~~purchase, the incremental difference in cost between an~~
23 ~~alternative-fuel motor vehicle and a comparably equipped motor~~
24 ~~vehicle that employs traditional fuel technology.~~

25 ~~(b) The maximum total credit allowed for an alternative-fuel~~
26 ~~motor vehicle is:~~

1 ~~(1) For a vehicle with a gross vehicle weight of not more than~~
2 ~~ten thousand pounds, three thousand seven hundred fifty dollars;~~

3 ~~(2) For a vehicle with a gross vehicle weight of more than ten~~
4 ~~thousand pounds up to twenty-six thousand pounds, nine thousand two~~
5 ~~hundred fifty dollars;~~

6 ~~(3) For a truck or van with a gross vehicle weight of more~~
7 ~~than twenty-six thousand pounds, fifty thousand dollars; and~~

8 ~~(4) For a bus capable of seating at least twenty adults, fifty~~
9 ~~thousand dollars.~~

10 ~~(c) Subject to the limitations set forth in subsection (a) of~~
11 ~~this section, a taxpayer who is otherwise entitled to a credit~~
12 ~~against tax who claims the credit provided for in this article on~~
13 ~~the basis of any alternative-fuel motor vehicle that operates~~
14 ~~exclusively on electricity is entitled to an additional credit of~~
15 ~~ten percent of the credit which is otherwise allowed under~~
16 ~~subsection (b) of this section.~~

17 ~~(d) The maximum incremental credit allowed per year is one~~
18 ~~third of the credit attributable to five vehicles with the~~
19 ~~cumulative credit over a three-year period not to exceed one third~~
20 ~~of the credit attributable to fifteen vehicles.~~

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

1 fueled motor vehicle to an alternative fuel motor vehicle up to a
2 maximum amount of \$7,500.

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

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

14 ~~The credit against tax for any alternative fuel motor vehicle~~
15 ~~provided for in this article may be taken by a taxpayer claiming~~
16 ~~the credit only in three equal increments over a three consecutive~~
17 ~~tax-year period, so that in any tax year in which a taxpayer is~~
18 ~~entitled to the credit, only one third of the total credit allowed~~
19 ~~for a certain alternative-fuel motor vehicle under section five may~~
20 ~~be taken.~~

21 (a) For taxable years beginning on and after January 1, 2011
22 but prior to January 1, 2014, the amount of the credit allowed
23 under this article for qualified alternative fuel vehicle refueling
24 infrastructure is equal to an amount of fifty percent of the total
25 costs directly associated with the construction or purchase and

1 installation of the alternative fuel vehicle refueling
2 infrastructure up to a maximum of \$250,000: Provided, That if the
3 qualified alternative fuel vehicle refueling infrastructure is
4 generally accessible for public use, the amount of the credit
5 allowed will be multiplied by 1.25 and the maximum amount allowable
6 will be \$312,500. The amount of credit allowed may not exceed the
7 cost of construction of the alternative fuel vehicle refueling
8 infrastructure.

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

22 (c) For taxable years beginning on and after January 1, 2016,
23 but prior to January 1, 2022, the amount of the credit allowed
24 under this article for qualified alternative fuel vehicle refueling
25 infrastructure is equal to an amount of fifty percent of the total
26 costs directly associated with the construction or purchase and

1 installation of the alternative fuel vehicle refueling
2 infrastructure up to a maximum of \$150,000: *Provided*, That if the
3 qualified alternative fuel vehicle refueling infrastructure is
4 generally accessible for public use, the amount of the credit
5 allowed will be multiplied by 1.25 and the maximum amount allowable
6 will be \$187,500. The amount of credit allowed may not exceed the
7 cost of construction of the alternative fuel vehicle refueling
8 infrastructure.

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

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

22 (f) When the taxpayer is a pass-through entity treated like a
23 partnership for federal and state income tax purposes, the credit
24 allowed under this article for the year shall flow through to the
25 equity owners of the pass-through entity in the same manner that
26 distributive share flows through to the equity owners and in

1 accordance with any legislative rule the Tax Commissioner may
2 propose for legislative approval in accordance with article three,
3 chapter twenty-nine-a of this code to administer this section.

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

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

8 ~~The tax credit provided in this article shall expire by~~
9 ~~operation of law ten years after the effective date of this~~
10 ~~article: *Provided*, That any eligible taxpayer who makes a valid~~
11 ~~claim for the credit before that expiration is entitled to claim~~
12 ~~and receive the remaining one-third increment or increments of the~~
13 ~~total credit allowed under section five of this article for the tax~~
14 ~~year or years ensuing after the expiration of this article until~~
15 ~~the total amount of credit allowed has been exhausted.~~

16 No person is eligible to receive a tax credit under this
17 article for: (i) An alternative-fuel motor vehicle purchased after
18 December 31, 2021; (ii) a vehicle converted to an alternative-fuel
19 motor vehicle after December 31, 2021; or (iii) the construction or
20 purchase and installation of qualified alternative fuel vehicle
21 refueling infrastructure or qualified alternative fuel vehicle home
22 refueling infrastructure occurring after December 31, 2021.

23 **§11-6D-8. Commissioner to design forms and schedules; promulgation**
24 **of rules.**

25 (a) The Tax Commissioner shall design and provide to the

1 public simplified forms and schedules to implement and effectuate
2 the provisions of this article.

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

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

15 **§11-6D-9. Carryover credit allowed; recapture of credit.**

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

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

24 (c) A tax credit is subject to recapture, elimination or
25 reduction if it is determined by the State Tax Commissioner that a
26 taxpayer was not entitled to the credit, in whole or in part, in

1 the tax year in which it was claimed by the taxpayer. The amount
2 of credit that flows through to equity owners of a passthrough
3 entity may be recaptured or recovered from either the taxpayer or
4 the equity owners in the discretion of the Tax Commissioner.

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

7 **§11-6F-2. Definitions.**

8 As used in this article, the term:

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

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

21 ~~(b)~~ (c) "Manufacturing facility" means any factory, mill,
22 chemical plant, refinery, warehouse, building or complex of
23 buildings, including land on which it is located, and all
24 machinery, equipment, improvements and other real property and
25 personal property located at or within the facility used in

1 connection with the operation of the facility in a manufacturing
2 business.

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

8 ~~(d)~~ (e) "Qualified capital addition to a manufacturing
9 facility" means all real property and personal property, the
10 combined original cost of all of the property which exceeds \$50
11 million to be constructed, located or installed at or within two
12 miles of a manufacturing facility owned or operated by the person
13 making the capital addition that has a total original cost before
14 the capital addition of at least \$100 million. ~~Provided, That~~ If
15 the capital addition is made in a steel, chemical or polymer
16 alliance zone as designated from time-to-time by executive order of
17 the Governor, then the person making the capital addition may for
18 purposes of satisfying the requirements of this subsection join in
19 a multiparty project with a person owning or operating a
20 manufacturing facility that has a total original cost before the
21 capital addition of at least \$100 million if the capital addition
22 creates additional production capacity of existing or related
23 products or feedstock or derivative products respecting the
24 manufacturing facility, consists of a facility used to store,
25 handle, process or produce raw materials for the manufacturing
26 facility, consists of a facility used to store, handle or process

1 (a) Effective July 1, 2011, a baseline for the imposition of
2 the severance tax on oil and gas that is deposited in the General
3 Revenue Fund and that is distributed to counties and municipalities
4 as provided in section five-a of this article is established at
5 \$64.8 million.

6 (b) The State Treasurer shall apportion any net collections in
7 excess of the baseline as follows:

8 (1) Ten percent of the excess shall be distributed as provided
9 in section five-a of this article; and

10 (2) Two million dollars shall be distributed into a special
11 revenue account hereby created within the State Treasury and known
12 as the "Marcellus Shale Permit Fund" as an interest bearing,
13 nonexpiring special revenue account. The Marcellus Shale Permit
14 Fund shall be separate and apart from the General Revenue Fund and
15 shall be administered by the West Virginia Department of
16 Environmental Protection. Expenditures from the special revenue
17 account shall be for the purposes set forth in this section and
18 made in accordance with appropriations from the Legislature and
19 pursuant to the provisions of article three, chapter twelve of this
20 code and after the fulfilment of the provisions of article two,
21 chapter eleven-b of this code: *Provided*, That for the fiscal year
22 ending June 30, 2012, expenditures are authorized from collections.
23 Moneys in the Marcellus Shale Permit Fund not expended at the close
24 of the fiscal year do not lapse or revert to the General Fund but
25 are carried forward to the next fiscal year. Interest earnings on
26 the revolving fund becomes a part of the revolving fund and do not

1 lapse or revert to the General Fund. The West Virginia Department
2 of Environmental Protection shall use the moneys in the Marcellus
3 Shale Permit Fund for the purposes of paying for additional costs
4 associated with permitting activity in the marcellus shale.

5 (3) The remaining balance after the distributions in
6 subdivision (1) and (2) of this subsection shall be divided pro
7 rata among the General Fund and the State Road Fund.

8 (c) This section shall have no force or effect after June 30,
9 2016.

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

11 **§11-13R-3. Definitions.**

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

18 (b) *Terms defined.* --

19 (1) "Base amount" means:

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

24 (B) For a taxpayer that has filed a tax return under article
25 twenty-three of this chapter for fewer than three but at least one

1 prior taxable year, determined on the basis of all filings by the
2 taxpayer's controlled group, the base amount is the average annual
3 combined qualified research and development expenditure for the
4 number of immediately preceding taxable years, other than short
5 taxable years, during which the taxpayer has filed a tax return
6 under article twenty-three of this chapter; or

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

11 (2) "Commissioner" and "Tax Commissioner" are used
12 interchangeably herein and mean the Tax Commissioner of the State
13 of West Virginia or his or her delegate.

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

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

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

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

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

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

24 (9) "Qualified research and development credit property" means
25 depreciable property purchased for the conduct of qualified
26 research and development.

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

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

15 (B) Research and development does not include:

16 (i) Market research;

17 (ii) Sales research;

18 (iii) Efficiency surveys;

19 (iv) Consumer surveys;

20 (v) Product market testing;

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

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

26 (viii) Management studies;

1 (ix) Advertising;

2 (x) Promotions;

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

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

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

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

12 (11) "Related person" means:

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

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

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

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

23 For purposes of this article, "control", with respect to a
24 corporation, means ownership, directly or indirectly, of stock
25 possessing fifty percent or more of the total combined voting power
26 of all classes of the stock of the corporation entitled to vote.

1 "Control", with respect to a trust, means ownership, directly or
2 indirectly, of fifty percent or more of the beneficial interest in
3 the principal or income of the trust. The ownership of stock in a
4 corporation, of a capital or profits interest in a partnership or
5 association or of a beneficial interest in a trust is determined in
6 accordance with the rules for constructive ownership of stock
7 provided in section 267(c) of the United States Internal Revenue
8 Code of 1986, as amended, other than paragraph (3) of that section.

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

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

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

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

19 **§11-13S-3. Definitions.**

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

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

24 (1) "Eligible taxpayer" means an industrial taxpayer who
25 purchases new property for the purpose of industrial expansion or
26 for the purpose of industrial revitalization of an existing

1 industrial facility in this state.

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

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

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

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

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

24 (7) "Property purchased for manufacturing investment" means
25 real property, and improvements thereto, and tangible personal
26 property but only if the property was constructed or purchased on

1 or after ~~the first day of January, two thousand three,~~ January 1,
2 2003, for use as a component part of a new, expanded or revitalized
3 industrial facility. This term includes only that tangible
4 personal property with respect to which depreciation, or
5 amortization in lieu of depreciation, is allowable in determining
6 the federal income tax liability of the industrial taxpayer, that
7 has a useful life, at the time the property is placed in service or
8 use in this state, of four years or more. Property acquired by
9 written lease for a primary term of ten years or longer, if used as
10 a component part of a new or expanded industrial facility, is
11 included within this definition.

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

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

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

19 (iii) Airplanes;

20 (iv) Off-premises transportation equipment;

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

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

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

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

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

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

19 (8) "Qualified manufacturing investment" means that amount
20 determined under section five of this article as qualified
21 manufacturing investment.

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

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

26 **§11-15-8d. Limitations on right to assert exemptions.**

1 (a) Persons who perform "contracting" as defined in section
2 two of this article or persons acting in an agency capacity may not
3 assert any exemption to which the purchaser of such contracting
4 services or the principal is entitled. Any statutory exemption to
5 which a taxpayer may be entitled ~~shall be~~ is invalid unless the
6 tangible personal property or taxable service is actually purchased
7 by such taxpayer and is directly invoiced to and paid by such
8 taxpayer. This section ~~shall not~~ does not apply to purchases by an
9 employee for his or her employer, purchases by a partner for his or
10 her partnership or purchases by a duly authorized officer of a
11 corporation, or unincorporated organization, for his or her
12 corporation or unincorporated organization so long as the purchase
13 is invoiced to and paid by the employer, partnership, corporation
14 or unincorporated organization.

15 (b) *Transition rule.* -- This section ~~shall not~~ does not apply
16 to purchases of tangible personal property or taxable services in
17 fulfillment of a purchasing agent or procurement agent contract
18 executed and legally binding on the parties thereto prior to
19 September 15, 1999. ~~Provided, That~~ This transition rule ~~shall not~~
20 does not apply to any purchases of tangible personal property or
21 taxable services made under such a contract after August 31, 1991
22 and this transition rule ~~shall not~~ does not apply if the primary
23 purpose of the purchasing agent or procurement agent contract was
24 to avoid payment of consumers sales and use taxes. ~~However,~~
25 Effective July 1, 2007, this section ~~shall not~~ does not apply to
26 purchases of services, machinery, supplies or materials, except

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

1 section nine of this article had it purchased the services,
2 machinery, supplies or materials.

3 **CHAPTER 24. PUBLIC SERVICE COMMISSION.**

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

5 **§24-2F-3. Definitions.**

6 Unless the context clearly requires a different meaning, as
7 used in this article:

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

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

24 (3) "Alternative energy resources" means any of the following
25 resources, methods or technologies for the production or generation

1 of electricity:

2 (A) Advanced coal technology;

3 (B) Coal bed methane;

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

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

7 (E) Synthetic gas;

8 (F) Integrated gasification combined cycle technologies;

9 (G) Waste coal;

10 (H) Tire-derived fuel;

11 (I) Pumped storage hydroelectric projects; and

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

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

21 (5) "Alternative energy resource facility" means a facility or
22 equipment that generates electricity from alternative energy
23 resources.

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

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

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

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

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

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

26 (C) Industrial by-product technologies consisting of the use

1 of a by-product from an industrial process, including, but not
2 limited to, the reuse of energy from exhaust gases or other
3 manufacturing by-products that can be used in the direct production
4 of electricity at the customer's facility;

5 (D) Customer-sited generation, demand-response, energy
6 efficiency or peak demand reduction capabilities, whether new or
7 existing, that the customer commits for integration into the
8 electric utility's demand-response, energy efficiency or peak
9 demand reduction programs; or

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

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

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

24 (B) Forestation, afforestation or reforestation; and

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

1 (11) "Net metering" means measuring the difference between
2 electricity supplied by an electric utility and electricity
3 generated from an alternative or renewable energy resource facility
4 owned or operated by an electric retail customer when any portion
5 of the electricity generated from the alternative or renewable
6 energy resource facility is used to offset part or all of the
7 electric retail customer's requirements for electricity.

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

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

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

16 (B) Solar thermal energy;

17 (C) Wind power;

18 (D) Run of river hydropower;

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

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

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

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

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

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

16 (14) "Renewable energy resource facility" means a facility or
17 equipment that generates electricity from renewable energy
18 resources.

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

NOTE: The purpose of this bill is to enact the Marcellus Gas and Manufacturing Development Act of 2011 which encourages and facilitates the development of oil and gas wells and the downstream uses of natural gas in this state and economic development in this state associated with production and various downstream uses.

§5B-2H-1, §5B-2H-2, §11-1C-11C, §11-6D-9 and §11-13A-5b are new; therefore, strike-throughs and underscoring have been omitted.

Strike-throughs indicate language that would be stricken from the present law and underscoring indicates new language that would be added.