

1 ENGROSSED

2 COMMITTEE SUBSTITUTE

3 FOR

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5 FOR

6 **Senate Bill No. 465**

7 (By Senators McCabe, Kessler (Acting President),
8 Browning, Unger, Snyder, Stollings, Plymale, Wells, Palumbo,
9 Beach, Klempa, Yost and Foster)

10 _____
11 [Originating in the Committee on Finance;
12 reported February 24, 2011.]
13 _____

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15
16 A BILL to amend the Code of West Virginia, 1931, as amended, by
17 adding thereto a new article, designated §5B-2H-1, §5B-2H-2
18 and §5B-2H-3; to amend said code by adding thereto a new
19 section, designated §11-1C-11c; to amend and reenact §11-6D-1,
20 §11-6D-2, §11-6D-3, §11-6D-4, §11-6D-5, §11-6D-6, §11-6D-7 and
21 §11-6D-8 of said code; to amend said code by adding thereto a
22 new section, designated §11-6D-9; to amend and reenact §11-6F-
23 2 and §11-6F-3 of said code; to amend said code by adding
24 thereto a new section, designated §11-13A-5b; to amend and
25 reenact §11-13R-3 of said code; to amend and reenact §11-13S-3
26 and §11-13S-4 of said code; to amend and reenact §11-15-8d of

1 said code; and to amend and reenact §24-2F-3 of said code, all
2 relating generally to the Marcellus Gas and Manufacturing
3 Development Act of 2011; providing short title; making
4 legislative findings and declarations; creating a tax credit
5 for the personal property tax on horizontal drilling rigs and
6 related equipment; authorizing the tax commissioner to
7 promulgate rules; amending and reinstating alternative fuel
8 motor vehicle tax credit; providing credit for alternative
9 fuel refueling facilities; making legislative findings;
10 stating legislative purpose; defining terms; allowing credit
11 for purchase of alternative fuel motor vehicles, conversion of
12 vehicles to alternative fuel motor vehicles and for commercial
13 and residential alternative fuel refueling facilities;
14 providing for expiration of credits; requiring Tax
15 Commissioner to promulgate rules and design forms; providing
16 for carryover of unused credits and for recapture of credits;
17 amending definition of "manufacturing" for purposes of special
18 method for appraising qualified capital additions to
19 manufacturing facilities for property tax purposes; providing
20 new rules for treatment of certified capital addition
21 property; setting baseline for oil and gas severance tax
22 collections; providing for excess distribution and deposit of
23 excess collections; amending definition of "research and
24 development" for purposes of strategic research and
25 development tax credit; amending definition of "manufacturing"
26 for purposes of manufacturing investment tax credit; requiring

1 certain business activities comply with the West Virginia Jobs
2 Act in order to be eligible for the manufacturing investment
3 tax credit; providing additional exception to limitation on
4 right to assert sales and use tax exemptions; and clarifying
5 meaning of "natural gas" for purposes of Alternative and
6 Renewable Energy Portfolio Standard Act.

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

8 That the Code of West Virginia, 1931, as amended, be amended
9 by adding thereto a new article, designated §5B-2H-1, §5B-2H-2 and
10 §5B-2H-3; that said code be amended by adding thereto a new
11 section, designated §11-1C-11c; that §11-6D-1, §11-6D-2, §11-6D-3,
12 §11-6D-4, §11-6D-5, §11-6D-6, §11-6D-7 and §11-6D-8 of said code be
13 amended and reenacted; that said code be amended by adding thereto
14 a new section, designated §11-6D-9; that §11-6F-2 and §11-6F-3 of
15 said code be amended and reenacted; that said code be amended by
16 adding thereto a new section, designated §11-13A-5b; that §11-13R-3
17 of said code be amended and reenacted; that §11-13S-3 and §11-13S-4
18 of said code be amended and reenacted; that §11-15-8d of said code
19 be amended and reenacted; and that §24-2F-3 of said code be amended
20 and reenacted, all to read as follows:

21 **CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.**

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

23 **§5B-2H-1. Short Title.**

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

1 **§5B-2H-2. Legislative findings; declaration of public policy.**

2 (a) The Legislature finds that:

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

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

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

15 (4) Producers of natural gas, transporters of natural gas and
16 manufacturers of products using natural gas face a significant
17 number of regulatory requirements, some of which may be redundant,
18 inconsistent, or overlapping. Agencies should work together, where
19 practical, to avoid duplication, promote better coordination and
20 reduce these requirements, thus reducing costs, simplifying and
21 harmonizing rules and streamlining regulatory oversight.

22 (5) In developing regulatory actions and identifying
23 appropriate approaches, agencies should attempt to promote
24 coordination, simplification, and harmonization.

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

1 innovation.

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

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

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

19 **§5B-2H-3. Tax Credit for the amount of personal property tax on all**
20 **horizontal drilling rigs and related equipment.**

21 (a) Each company organized in the state of West Virginia with
22 corporate headquarters in the state of West Virginia, that owns a
23 horizontal drilling rig and related equipment to horizontal
24 drilling is entitled to a tax credit against the taxes imposed in
25 articles thirteen, thirteen-a, twenty-one, twenty-three, and
26 twenty-four of chapter eleven of this code for the amount provided

1 in subsection (b) of this section: Provided, that such company
2 complies with the West Virginia Jobs Act as provided in Article
3 one-c, chapter twenty one of this code.

4 (b) The amount of credit allowed under this section is one
5 hundred percent of the annual personal property taxes imposed on
6 the company as a result of the company's ownership of the
7 horizontal drilling rig and related equipment to the horizontal
8 drilling.

9 (c) All companies eligible for this tax credit may only take
10 such credit for a five year period.

11 (d) No company is eligible to begin taking this credit for the
12 five-year period after July 1, 2013.

13 (e) No carryover of the credit is allowed.

14 (f) The tax commissioner shall propose rules for legislative
15 approval in accordance with article three, chapter twenty-nine-a of
16 this code to carry out the policy and purposes of this section, to
17 provide any necessary clarification of the provisions of this
18 section and to efficiently provide for the general administration
19 of this section. The tax commissioner is authorized to promulgate
20 emergency rules to implement the provisions of this section.

21 **CHAPTER 11. TAXATION.**

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

23 **§11-1C-11c. Valuation of oil and gas drilling rigs.**

24 Notwithstanding any provision of this code to the contrary and
25 to facilitate the equal and uniform taxation of oil and natural gas

1 drilling rigs throughout the state, the State Tax Commissioner
2 shall annually compile a schedule of oil and natural gas drilling
3 rig values based on the wholesale values shown in a nationally
4 recognized guide or bulletin published during the calendar year
5 that includes the assessment date, using the appropriate depth
6 rating assigned to the drawworks by its manufacturer and the actual
7 condition of the drilling rig. The State Tax Commissioner shall
8 furnish the schedule to each assessor and it shall be used by him
9 or her as a guide in placing the assessed values on all oil and
10 natural gas drilling rigs in his or her county. This section
11 applies to assessment years beginning on and after July 1, 2011.

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

13 **§11-6D-1. Legislative findings and purpose.**

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

1 than the cost of fueling traditional motor vehicles with oil based
2 fuels.

3 However, because the cost of motor vehicles which utilize
4 alternative-fuel technologies remains high in relation to motor
5 vehicles that employ more traditional technologies, citizens of
6 this state who might otherwise choose an alternatively-fueled motor
7 vehicle are forced by economic necessity to continue using motor
8 vehicles that are fueled by more conventional means. Additionally,
9 the availability of commercial and residential infrastructure to
10 support alternatively-fueled vehicles available to the public is
11 inadequate to encourage the use of alternatively-fueled motor
12 vehicles. Therefore, in order to encourage the use of
13 alternatively-fueled motor vehicles and possibly reduce unnecessary
14 pollution of our environment and reduce our dependence on foreign
15 sources of energy, there is hereby created an alternative-fuel
16 motor vehicles tax credit and an alternative-fuel infrastructure
17 tax credit.

18 **§11-6D-2. Definitions.**

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

21 (a) "Alternative fuel" includes:

22 (1) Compressed natural gas;

23 (2) Liquified natural gas;

24 (3) Liquified petroleum gas;

25 ~~(4) Methanol;~~

26 ~~(5) Ethanol;~~

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

4 ~~(A) Methanol;~~

5 ~~(B) Ethanol; or~~

6 ~~(C) Other alcohols;~~

7 (4) Natural gas hydrocarbons and derivatives;

8 (5) Hydrogen;

9 ~~(7)~~ (6) Coal-derived liquid fuels; and

10 ~~(8)~~ (7) Electricity, including electricity from solar energy.

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

13 (1) Operates solely on one alternative fuel;

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

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

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

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

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

25 (2) A plug-in hybrid electric vehicle conversion that provides
26 an increase in city fuel economy of seventy-five percent or more as

1 compared to a comparable nonhybrid version vehicle for a minimum of
2 twenty miles and that is capable of recharging its battery from an
3 on-board generation source and an off-board electricity source. A
4 vehicle is comparable if it is the same model year and the same
5 vehicle class as established by the United States Environmental
6 Protection Agency and is comparable in weight, size, and use. Fuel
7 economy comparisons shall be made using city fuel economy standards
8 in a manner that is substantially similar to the manner in which
9 city fuel economy is measured in accordance with procedures set
10 forth in 40 C.F.R. 600 as in effect on January 1, 2011.

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

20 (f) "Qualified alternative fuel vehicle home refueling
21 infrastructure" means property owned by the applicant for the tax
22 credit located on a private residence or private home and used for
23 storing alternative fuels and for dispensing such alternative fuels
24 into fuel tanks of motor vehicles, including but not limited to,
25 compression equipment, storage tanks and dispensing units for
26 alternative fuel at the point where the fuel is delivered or for

1 providing electricity to plug-in hybrid electric vehicles or
2 electric vehicles: Provided, That the property is installed and
3 located in this state.

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

8 **§11-6D-3. Credit allowed for alternative-fuel motor vehicles and**
9 **qualified alternative fuel vehicle refueling**
10 **infrastructure; application against personal income**
11 **tax, business franchise tax or corporate net income**
12 **tax; effective date.**

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

24 **§11-6D-4. Eligibility for credit.**

25 A taxpayer is eligible to claim the credit against tax

1 provided in this article if he or she:

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

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

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

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

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

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

23 **§11-6D-5. Amount of credit for alternative fuel motor vehicles.**

24 (a) For taxable years beginning on and after January 1, 2011,
25 the amount of the credit allowed under this article for an
26 alternative-fuel motor vehicle that weighs less than twenty-six

1 thousand pounds is thirty-five percent of the purchase price of the
2 alternative-fuel motor vehicle up to a maximum amount of \$7,500 or
3 fifty percent of the actual cost of converting from a traditionally
4 fueled motor vehicle to an alternative fuel motor vehicle up to a
5 maximum amount of \$7,500.

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

14 **§11-6D-6. Amount of credit for qualified alternative fuel vehicle**
15 **refueling infrastructure and qualified alternative**
16 **fuel vehicle home refueling infrastructure.**

17 (a) For taxable years beginning on and after January 1, 2011
18 but prior to January 1, 2014, the amount of the credit allowed
19 under this article for qualified alternative fuel vehicle refueling
20 infrastructure is equal to an amount of fifty percent of the total
21 costs directly associated with the construction or purchase and
22 installation of the alternative fuel vehicle refueling
23 infrastructure up to a maximum of \$250,000: *Provided*, That if the
24 qualified alternative fuel vehicle refueling infrastructure is
25 generally accessible for public use, the amount of the credit

1 allowed will be multiplied by 1.25 and the maximum amount allowable
2 will be \$312,500. The amount of credit allowed may not exceed the
3 cost of construction of the alternative fuel vehicle refueling
4 infrastructure.

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

18 (c) For taxable years beginning on and after January 1, 2016,
19 but prior to January 1, 2022, the amount of the credit allowed
20 under this article for qualified alternative fuel vehicle refueling
21 infrastructure is equal to an amount of fifty percent of the total
22 costs directly associated with the construction or purchase and
23 installation of the alternative fuel vehicle refueling
24 infrastructure up to a maximum of \$150,000: *Provided*, That if the
25 qualified alternative fuel vehicle refueling infrastructure is
26 generally accessible for public use, the amount of the credit

1 allowed will be multiplied by 1.25 and the maximum amount allowable
2 will be \$187,500. The amount of credit allowed may not exceed the
3 cost of construction of the alternative fuel vehicle refueling
4 infrastructure.

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

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

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

26 (g) No credit allowed by this article may be applied against

1 employer withholding taxes imposed by article twenty-one of this
2 chapter.

3 **§11-6D-7. Duration of availability of credit.**

4 No person is eligible to receive a tax credit under this
5 article for: (i) An alternative-fuel motor vehicle purchased after
6 December 31, 2021; (ii) a vehicle converted to an alternative-fuel
7 motor vehicle after December 31, 2021; or (iii) the construction or
8 purchase and installation of qualified alternative fuel vehicle
9 refueling infrastructure or qualified alternative fuel vehicle home
10 refueling infrastructure occurring after December 31, 2021.

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

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

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

23 (c) Within one year ~~following~~ prior to the expiration of the
24 credit established in this article, the State Tax Commissioner
25 shall provide a written report to the Legislature setting forth the

1 utilization of the credit, the benefit of the credit and the
2 overall cost of the credit.

3 **§11-6D-9. Carryover credit allowed; recapture of credit.**

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

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

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

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

20 **ADDITIONS TO MANUFACTURING FACILITIES.**

21 **§11-6F-2. Definitions.**

22 As used in this article, the term:

23 (a) "Certified capital addition property" means all real
24 property and personal property included within or to be included
25 within a qualified capital addition to a manufacturing facility

1 that has been certified by the State Tax Commissioner in accordance
2 with section four of this article: *Provided*, That airplanes and
3 motor vehicles licensed by the Division of Motor Vehicles shall in
4 no event constitute certified capital addition property.

5 (b) "Manufacturing" means any business activity classified as
6 having a sector identifier, consisting of the first two digits of
7 the six-digit North American Industry Classification System code
8 number of thirty-one, thirty-two or thirty-three or the six digit
9 code number 211112.

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

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

22 ~~(d)~~ (e) "Qualified capital addition to a manufacturing
23 facility" means all real property and personal property, the
24 combined original cost of all of the property which exceeds \$50
25 million to be constructed, located or installed at or within two
26 miles of a manufacturing facility owned or operated by the person

1 making the capital addition that has a total original cost before
2 the capital addition of at least \$100 million. ~~Provided, That~~ If
3 the capital addition is made in a steel, chemical or polymer
4 alliance zone as designated from time-to-time by executive order of
5 the Governor, then the person making the capital addition may for
6 purposes of satisfying the requirements of this subsection join in
7 a multiparty project with a person owning or operating a
8 manufacturing facility that has a total original cost before the
9 capital addition of at least \$100 million if the capital addition
10 creates additional production capacity of existing or related
11 products or feedstock or derivative products respecting the
12 manufacturing facility, consists of a facility used to store,
13 handle, process or produce raw materials for the manufacturing
14 facility, consists of a facility used to store, handle or process
15 natural gas to produce fuel for the generation of steam or
16 electricity for the manufacturing facility or consists of a
17 facility that generates steam or electricity for the manufacturing
18 facility. Beginning July 1, 2011, wherever the number "100" is used
19 in this subsection, the number "20" shall be substituted and where
20 the number "50" is used, the number "10" shall be substituted.

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

26 **§11-6F-3. Tax treatment of certified capital addition property.**

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

10 **ARTICLE 13A. SEVERANCE TAXES.**

11 **§11-13A-5b. Distribution of oil and gas severance tax for**
12 **maintenance of highways and permitting and**
13 **inspection of shale gas wells.**

14 (a) Effective July 1, 2011, a baseline for the imposition of
15 the severance tax on oil and gas that is deposited in the General
16 Revenue Fund and that is distributed to counties and municipalities
17 as provided in section five-a of this article is established at
18 \$64.8 million.

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

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

23 (2) Two million dollars shall be distributed into a special
24 revenue account hereby created within the State Treasury and known
25 as the "Marcellus Shale Permit Fund" as an interest bearing,

1 nonexpiring special revenue account. The Marcellus Shale Permit
2 Fund shall be separate and apart from the General Revenue Fund and
3 shall be administered by the West Virginia Department of
4 Environmental Protection. Expenditures from the special revenue
5 account shall be for the purposes set forth in this section and
6 made in accordance with appropriations from the Legislature and
7 pursuant to the provisions of article three, chapter twelve of this
8 code and after the fulfilment of the provisions of article two,
9 chapter eleven-b of this code: *Provided*, That for the fiscal year
10 ending June 30, 2012, expenditures are authorized from collections.
11 Moneys in the Marcellus Shale Permit Fund not expended at the close
12 of the fiscal year do not lapse or revert to the General Fund but
13 are carried forward to the next fiscal year. Interest earnings on
14 the revolving fund becomes a part of the revolving fund and do not
15 lapse or revert to the General Fund. The West Virginia Department
16 of Environmental Protection shall use the moneys in the Marcellus
17 Shale Permit Fund for the purposes of paying for additional costs
18 associated with permitting activity in the marcellus shale.

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

22 (c) This section shall have no force or effect after June 30,
23 2016.

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

25 **§11-13R-3. Definitions.**

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

7 (b) *Terms defined.* --

8 (1) "Base amount" means:

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

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

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

25 (2) "Commissioner" and "Tax Commissioner" are used
26 interchangeably herein and mean the Tax Commissioner of the State

1 of West Virginia or his or her delegate.

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

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

9 (5) "Delegate" in the phrase "or his or her delegate," when
10 used in reference to the Tax Commissioner, means any officer or
11 employee of the State Tax Division of the Department of Tax and
12 Revenue duly authorized by the Tax Commissioner directly, or
13 indirectly by one or more redelegations of authority, to perform
14 the functions mentioned or described in this article.

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

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

4 (7) "Partnership" includes a syndicate, group, pool, joint
5 venture or other unincorporated organization through or by means of
6 which any business, financial operation or venture is carried on,
7 and which is not a trust or estate, a corporation or a sole
8 proprietorship. The term "partner" includes a member in such a
9 syndicate, group, pool, joint venture or other organization.

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

12 (9) "Qualified research and development credit property" means
13 depreciable property purchased for the conduct of qualified
14 research and development.

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

22 (A) Research and development includes, but is not limited to,
23 design, refinement and testing of prototypes of new or improved
24 products ~~or design~~ or equipment or the design, refinement and
25 testing of manufacturing processes before commercial sales relating
26 thereto have begun. For purposes of this section, commercial sales

1 includes, but is not limited to, sales of prototypes or sales for
2 market testing.

3 (B) Research and development does not include:

4 (i) Market research;

5 (ii) Sales research;

6 (iii) Efficiency surveys;

7 (iv) Consumer surveys;

8 (v) Product market testing;

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

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

14 (viii) Management studies;

15 (ix) Advertising;

16 (x) Promotions;

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

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

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

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

26 (11) "Related person" means:

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

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

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

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

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

23 (12) "Taxpayer" means any person subject to the tax imposed by
24 article twenty-three or twenty-four of this chapter or both. In the
25 case of a sole proprietorship subject to neither the tax imposed by
26 article twenty-three nor the tax imposed by article twenty-four,

1 the term "taxpayer" means any sole proprietor who is subject to the
2 tax imposed by article twenty-one of this chapter.

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

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

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

7 **§11-13S-3. Definitions.**

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

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

12 (1) "Eligible taxpayer" means an industrial taxpayer who
13 purchases new property for the purpose of industrial expansion or
14 for the purpose of industrial revitalization of an existing
15 industrial facility in this state.

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

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

24 (4) "Industrial revitalization" or "revitalization" means
25 capital investment in an industrial facility located in this state
26 to replace or modernize buildings, equipment, machinery and other

1 tangible personal property used in connection with the operation of
2 the facility in an industrial business of the taxpayer including
3 the acquisition of any real property necessary to the industrial
4 revitalization.

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

7 (6) "Manufacturing" means any business activity classified as
8 having a sector identifier, consisting of the first two digits of
9 the six-digit North American Industry Classification System code
10 number, of thirty-one, thirty-two or thirty-three or the six digit
11 code number 211112.

12 (7) "Property purchased for manufacturing investment" means
13 real property, and improvements thereto, and tangible personal
14 property but only if the property was constructed or purchased on
15 or after ~~the first day of January, two thousand three,~~ January 1,
16 2003, for use as a component part of a new, expanded or revitalized
17 industrial facility. This term includes only that tangible
18 personal property with respect to which depreciation, or
19 amortization in lieu of depreciation, is allowable in determining
20 the federal income tax liability of the industrial taxpayer, that
21 has a useful life, at the time the property is placed in service or
22 use in this state, of four years or more. Property acquired by
23 written lease for a primary term of ten years or longer, if used as
24 a component part of a new or expanded industrial facility, is
25 included within this definition.

26 (A) "Property purchased for manufacturing investment" does not

1 include:

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

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

7 (iii) Airplanes;

8 (iv) Off-premises transportation equipment;

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

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

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

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

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

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

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

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

13 **§11-13S-4. Amount of credit allowed for manufacturing investment.**

14 (a) *Credit allowed.* -- There is allowed to eligible taxpayers
15 and to persons described in subdivision (5), subsection (b) of this
16 section a credit against the taxes imposed by articles thirteen-a,
17 twenty-three and twenty-four of this chapter: Provided, that a tax
18 credit for any eligible taxpayer operating a business activity
19 classified as having a sector identifier, consisting of the six
20 digit code number 211112, such eligible taxpayer must comply with
21 the West Virginia Jobs Act as provided in Article one-c, chapter
22 twenty one of this code in order to be eligible for any credit
23 under this article. The amount of credit shall be determined as
24 hereinafter provided in this section.

25 (b) *Amount of credit allowable.* -- The amount of allowable
26 credit under this article is equal to five percent of the qualified

1 manufacturing investment (as determined in section five of this
2 article) and shall reduce the severance tax, imposed under article
3 thirteen-a of this chapter, the business franchise tax imposed
4 under article twenty-three of this chapter and the corporation net
5 income tax imposed under article twenty-four of this chapter, in
6 that order, subject to the following conditions and limitations:

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

12 (2) *Severance tax.* -- The credit is applied to reduce the
13 severance tax imposed under article thirteen-a of this chapter
14 (determined before application of the credit allowed by section
15 three, article twelve-b of this chapter and before any other
16 allowable credits against tax and before application of the annual
17 exemption allowed by section ten, article thirteen-a of this
18 chapter). The amount of annual credit allowed may not reduce the
19 severance tax, imposed under article thirteen-a of this chapter,
20 below fifty percent of the amount which would be imposed for such
21 taxable year in the absence of this credit against tax: *Provided,*
22 That for tax years beginning on and after January 1, 2009, the
23 amount of annual credit allowed may not reduce the severance tax,
24 imposed under article thirteen-a of this chapter, below forty
25 percent of the amount which would be imposed for such taxable year
26 in the absence of this credit against tax. When in any taxable

1 year the taxpayer is entitled to claim credit under this article
2 and article thirteen-d of this chapter, the total amount of all
3 credits allowable for the taxable year may not reduce the amount of
4 the severance tax, imposed under article thirteen-a of this
5 chapter, below fifty percent of the amount which would be imposed
6 for such taxable year (determined before application of the credit
7 allowed by section three, article twelve-b of this chapter and
8 before any other allowable credits against tax and before
9 application of the annual exemption allowed by section ten, article
10 thirteen-a of this chapter): *Provided, however,* That when in any
11 taxable year beginning on and after January 1, 2009, the taxpayer
12 is entitled to claim credit under this article and article
13 thirteen-d of this chapter, the total amount of all credits
14 allowable for the taxable year may not reduce the amount of the
15 severance tax, imposed under article thirteen-a of this chapter,
16 below forty percent of the amount which would be imposed for such
17 taxable year as determined before application of the credit allowed
18 by section three, article twelve-b of this chapter and before any
19 other allowable credits against tax and before application of the
20 annual exemption allowed by section ten, article thirteen-a of this
21 chapter;

22 (3) *Business franchise tax.* --

23 After application of subdivision (2) of this subsection, any
24 unused credit is next applied to reduce the business franchise tax
25 imposed under article twenty-three of this chapter (determined
26 after application of the credits against tax provided in section

1 seventeen, article twenty-three of this chapter, but before
2 application of any other allowable credits against tax). The
3 amount of annual credit allowed will not reduce the business
4 franchise tax, imposed under article twenty-three of this chapter,
5 below fifty percent of the amount which would be imposed for such
6 taxable year in the absence of this credit against tax: *Provided,*
7 That for tax years beginning on and after January 1, 2009, the
8 amount of annual credit allowed will not reduce the business
9 franchise tax, imposed under article twenty-three of this chapter,
10 below forty percent of the amount which would be imposed for such
11 taxable year in the absence of this credit against tax. When in
12 any taxable year the taxpayer is entitled to claim credit under
13 this article and article thirteen-d of this chapter, the total
14 amount of all credits allowable for the taxable year will not
15 reduce the amount of the business franchise tax, imposed under
16 article twenty-three of this chapter, below fifty percent of the
17 amount which would be imposed for the taxable year (determined
18 after application of the credits against tax provided in section
19 seventeen, article twenty-three of this chapter, but before
20 application of any other allowable credits against tax): *Provided,*
21 *however,* That when in any taxable year beginning on and after
22 January 1, 2009, the taxpayer is entitled to claim credit under
23 this article and article thirteen-d of this chapter, the total
24 amount of all credits allowable for the taxable year will not
25 reduce the amount of the business franchise tax, imposed under
26 article twenty-three of this chapter, below forty percent of the

1 amount which would be imposed for the taxable year as determined
2 after application of the credits against tax provided in section
3 seventeen, article twenty-three of this chapter, but before
4 application of any other allowable credits against tax;

5 (4) *Corporation net income tax.* --

6 After application of subdivision (3) of this subsection, any
7 unused credit is next applied to reduce the corporation net income
8 tax imposed under article twenty-four of this chapter (determined
9 before application of any other allowable credits against tax).
10 The amount of annual credit allowed will not reduce corporation net
11 income tax, imposed under article twenty-four of this chapter,
12 below fifty percent of the amount which would be imposed for such
13 taxable year in the absence of this credit against tax: *Provided,*
14 That for tax years beginning on and after January 1, 2009, the
15 amount of annual credit allowed will not reduce corporation net
16 income tax, imposed under article twenty-four of this chapter,
17 below forty percent of the amount which would be imposed for such
18 taxable year in the absence of this credit against tax. When in
19 any taxable year the taxpayer is entitled to claim credit under
20 this article and article thirteen-d of this chapter, the total
21 amount of all credits allowable for the taxable year may not reduce
22 the amount of the corporation net income tax, imposed under article
23 twenty-four of this chapter, below fifty percent of the amount
24 which would be imposed for the taxable year (determined before
25 application of any other allowable credits against tax): *Provided,*
26 *however,* That when in any taxable year beginning on and after

1 January 1, 2009, the taxpayer is entitled to claim credit under
2 this article and article thirteen-d of this chapter, the total
3 amount of all credits allowable for the taxable year may not reduce
4 the amount of the corporation net income tax, imposed under article
5 twenty-four of this chapter, below forty percent of the amount
6 which would be imposed for the taxable year as determined before
7 application of any other allowable credits against tax;

8 (5) *Pass-through entities.* --

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

19 (B) The amount of annual credit allowed will not reduce
20 corporation net income tax, imposed under article twenty-four of
21 this chapter, below fifty percent of the amount which would be
22 imposed on the conduit income directly derived from the eligible
23 taxpayer by each owner for such taxable year in the absence of this
24 credit against the taxes (determined before application of any
25 other allowable credits against tax): *Provided,* That for tax years
26 beginning on and after January 1, 2009, the amount of annual credit

1 allowed will not reduce corporation net income tax, imposed under
2 article twenty-four of this chapter, below forty percent of the
3 amount which would be imposed on the conduit income directly
4 derived from the eligible taxpayer by each owner for such taxable
5 year in the absence of this credit against the taxes as determined
6 before application of any other allowable credits against tax.

7 (C) When in any taxable year the taxpayer is entitled to claim
8 credit under this article and article thirteen-d of this chapter,
9 the total amount of all credits allowable for the taxable year will
10 not reduce the corporation net income tax imposed on the conduit
11 income directly derived from the eligible taxpayer by each owner
12 below fifty percent of the amount that would be imposed for such
13 taxable year on the conduit income (determined before application
14 of any other allowable credits against tax): *Provided*, That when
15 in any taxable year beginning on and after January 1, 2009, the
16 taxpayer is entitled to claim credit under this article and article
17 thirteen-d of this chapter, the total amount of all credits
18 allowable for the taxable year will not reduce the corporation net
19 income tax imposed on the conduit income directly derived from the
20 eligible taxpayer by each owner below forty percent of the amount
21 that would be imposed for such taxable year on the conduit income
22 as determined before application of any other allowable credits
23 against tax;

24 (6) Small business corporations, limited liability companies,
25 partnerships and other unincorporated organizations shall allocate
26 any unused credit after application of subdivisions (2), (3) and

1 (4) of this subsection among their members in the same manner as
2 profits and losses are allocated for the taxable year; and

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

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

9 (d) *Application for credit required.* --

10 (1) *Application required.* -- Notwithstanding any provision of
11 this article to the contrary, no credit is allowed or may be
12 applied under this article for any qualified investment property
13 placed in service or use until the person claiming the credit makes
14 written application to the Tax Commissioner for allowance of credit
15 as provided in this section. This application shall be in the form
16 prescribed by the Tax Commissioner and shall provide the number and
17 type of jobs created, if any, by the manufacturing investment, the
18 average wage rates and benefits paid to employees filling the new
19 jobs and any other information the Tax Commissioner may require.
20 This application shall be filed with the Tax Commissioner no later
21 than the last day for filing the annual return, determined by
22 including any authorized extension of time for filing the return,
23 required under article twenty-one or twenty-four of this chapter
24 for the taxable year in which the property to which the credit
25 relates is placed in service or use.

26 (2) *Failure to file.* -- The failure to timely apply the

1 application for credit under this section results in forfeiture of
2 fifty percent of the annual credit allowance otherwise allowable
3 under this article. This penalty applies annually until the
4 application is filed.

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

6 **§11-15-8d. Limitations on right to assert exemptions.**

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

21 (b) *Transition rule.* -- This section ~~shall not~~ does not apply
22 to purchases of tangible personal property or taxable services in
23 fulfillment of a purchasing agent or procurement agent contract
24 executed and legally binding on the parties thereto prior to
25 September 15, 1999. ~~Provided, That~~ This transition rule ~~shall not~~

1 does not apply to any purchases of tangible personal property or
2 taxable services made under such a contract after August 31, 1991
3 and this transition rule ~~shall not~~ does not apply if the primary
4 purpose of the purchasing agent or procurement agent contract was
5 to avoid payment of consumers sales and use taxes. ~~However,~~
6 Effective July 1, 2007, this section ~~shall not~~ does not apply to
7 purchases of services, machinery, supplies or materials, except
8 gasoline and special fuel, to be directly used or consumed in the
9 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 refundable exemption under subdivision (2), subsection (b),
14 section nine of this article had it purchased the services,
15 machinery, supplies or materials. Effective July 1, 2009, this
16 section ~~shall not~~ does not apply to purchases of services,
17 computers, servers, building materials and tangible personal
18 property, except purchases of gasoline and special fuel, to be
19 installed into a building or facility or directly used or consumed
20 in the construction, alteration, repair or improvement of a new or
21 existing building or structure by a person performing
22 "contracting", as defined in section two of this article, if the
23 purchaser of the "contracting" services would be entitled to claim
24 the exemption under subdivision (7), subsection (a), section nine-h
25 of this article. Effective July 1, 2011, this section does not
26 apply to purchases of services, machinery, supplies or materials,

1 except gasoline and special fuel, to be directly used or consumed
2 in the construction, alteration, repair or improvement of a new or
3 existing natural gas compressor station or gas transmission line
4 having a diameter of twenty inches or more by a person performing
5 "contracting", as defined in section two of this article, if the
6 purchaser of the "contracting" services would be entitled to claim
7 the refundable exemption under subdivision (2), subsection (b),
8 section nine of this article had it purchased the services,
9 machinery, supplies or materials.

10 **CHAPTER 24. PUBLIC SERVICE COMMISSION.**

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

12 **§24-2F-3. Definitions.**

13 Unless the context clearly requires a different meaning, as
14 used in this article:

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

25 (2) "Alternative and renewable energy portfolio standard" or

1 "portfolio standard" means a requirement in any given year that
2 requires an electric utility to own credits in an amount equal to
3 a certain percentage of electric energy sold in the preceding
4 calendar year by the electric utility to retail customers in this
5 state.

6 (3) "Alternative energy resources" means any of the following
7 resources, methods or technologies for the production or generation
8 of electricity:

9 (A) Advanced coal technology;

10 (B) Coal bed methane;

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

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

14 (E) Synthetic gas;

15 (F) Integrated gasification combined cycle technologies;

16 (G) Waste coal;

17 (H) Tire-derived fuel;

18 (I) Pumped storage hydroelectric projects; and

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

22 (4) "Alternative and renewable energy resource credit" or
23 "credit" means a tradable instrument that is used to establish,
24 verify and monitor the generation of electricity from alternative
25 and renewable energy resource facilities, energy efficiency or
26 demand-side energy initiative projects or greenhouse gas emission

1 reduction or offset projects.

2 (5) "Alternative energy resource facility" means a facility or
3 equipment that generates electricity from alternative energy
4 resources.

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

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

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

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

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

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

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

12 (D) Customer-sited generation, demand-response, energy
13 efficiency or peak demand reduction capabilities, whether new or
14 existing, that the customer commits for integration into the
15 electric utility's demand-response, energy efficiency or peak
16 demand reduction programs; or

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

24 (10) "Greenhouse gas emission reduction or offset project"
25 means a project to reduce or offset greenhouse gas emissions from
26 sources in this state other than the electric utility's own

1 generating and energy delivery operations. Greenhouse gas emission
2 reduction or offset projects include, but are not limited to:

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

5 (B) Forestation, afforestation or reforestation; and

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

8 (11) "Net metering" means measuring the difference between
9 electricity supplied by an electric utility and electricity
10 generated from an alternative or renewable energy resource facility
11 owned or operated by an electric retail customer when any portion
12 of the electricity generated from the alternative or renewable
13 energy resource facility is used to offset part or all of the
14 electric retail customer's requirements for electricity.

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

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

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

23 (B) Solar thermal energy;

24 (C) Wind power;

25 (D) Run of river hydropower;

26 (E) Geothermal energy, which means a technology by which

1 electricity is produced by extracting hot water or steam from
2 geothermal reserves in the earth's crust to power steam turbines
3 that drive generators to produce electricity;

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

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

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

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

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

23 (14) "Renewable energy resource facility" means a facility or
24 equipment that generates electricity from renewable energy
25 resources.

26 (15) "Waste coal" means a technology by which electricity is

1 produced by the combustion of the by-product, waste or residue

2 created from processing coal, such as gob.