

**Senate Bill No. 465**

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

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[Introduced February 8, 2011; referred to the Committee on  
Energy, Industry and Mining; and then to the Committee on  
Finance.]

**FISCAL  
NOTE**

\_\_\_\_\_  
A BILL to amend the Code of West Virginia, 1931, as amended, by  
adding thereto a new article, designated §5B-2H-1 and §5B-2H-  
2; to amend said code by adding thereto a new section,  
designated §11-1C-11c; to amend and reenact §11-6D-1, §11-6D-  
2, §11-6D-3, §11-6D-4, §11-6D-5, §11-6D-6, §11-6D-7 and §11-  
6D-8 of said code; to amend said code by adding thereto a new  
section, designated §11-6D-9; to amend and reenact §11-6F-2  
and §11-6F-3 of said code; to amend said code by adding  
thereto a new section, designated §11-13A-5b; to amend and  
reenact §11-13R-3 of said code; to amend and reenact §11-13S-3  
of said code; to amend and reenact §11-15-8d of said code; and  
to amend and reenact §24-2F-3 of said code, all relating  
generally to the Marcellus Gas and Manufacturing Development

1 Act of 2011; providing short title; making legislative  
2 findings and declarations; amending and reinstating  
3 alternative-fuel motor vehicles tax credit and providing  
4 credit for alternative-fuel refueling facilities; making  
5 legislative findings; stating legislative purpose; defining  
6 terms; allowing credit for purchase of alternative-fuel motor  
7 vehicles, conversion of vehicles to alternative-fuel motor  
8 vehicles and for commercial and residential alternative-fuel  
9 refueling facilities; providing for expiration of credits;  
10 requiring Tax Commissioner to promulgate rules and design  
11 forms; providing for carryover of unused credits and for  
12 recapture of credits; amending definition of "manufacturing"  
13 for purposes of special method for appraising qualified  
14 capital additions to manufacturing facilities for property tax  
15 purposes; providing new rules for treatment of certified  
16 capital addition property; setting baseline for oil and gas  
17 severance tax collections; providing for excess distribution  
18 and deposit of excess collections; amending definition of  
19 "research and development" for purposes of strategic research  
20 and development tax credit; amending definition of  
21 "manufacturing" for purposes of manufacturing investment tax  
22 credit; providing additional exception to limitation on right  
23 to assert sales and use tax exemptions; and clarifying meaning  
24 of "natural gas" for purposes of Alternative and Renewable

1 Energy Portfolio Standard Act.

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

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

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

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

18 **§5B-2H-1. Short Title.**

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

21 **§5B-2H-2. Legislative findings; declaration of public policy.**

22 (a) The Legislature finds that:

23 (1) The advent and advancement of new and existing  
 24 technologies and drilling practices have created the opportunity

1 for the efficient development of natural gas contained in  
2 underground shales and other geological formations.

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

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

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

18 (5) In developing regulatory actions and identifying  
19 appropriate approaches, agencies should attempt to promote  
20 coordination, simplification, and harmonization.

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

24 (7) Agencies should review their existing significant

1 legislative, interpretive and procedural rules to determine whether  
2 any such rules should be modified, streamlined, expanded or  
3 repealed so as to make the agency's regulatory program more  
4 effective or less burdensome in achieving the regulatory  
5 objectives.

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

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

17 **CHAPTER 11. TAXATION.**

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

19 **§11-1C-11c. Valuation of oil and gas drilling rigs.**

20 Notwithstanding any provision of this code to the contrary and  
21 to facilitate the equal and uniform taxation of oil and natural gas  
22 drilling rigs throughout the state, the State Tax Commissioner  
23 shall annually compile a schedule of oil and natural gas drilling  
24 rig values based on the wholesale values shown in a nationally

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

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

10 **§11-6D-1. Legislative findings and purpose.**

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

1 fuels.

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

17 **§11-6D-2. Definitions.**

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

20       (a) "Alternative fuel" includes:

21       (1) Compressed natural gas;

22       (2) Liquified natural gas;

23       (3) Liquified petroleum gas;

24       ~~(4) Methanol;~~

1 ~~(5) Ethanol;~~

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

5 ~~(A) Methanol;~~

6 ~~(B) Ethanol; or~~

7 ~~(C) Other alcohols;~~

8 (4) Hydrogen;

9 ~~(7)~~ (5) Coal-derived liquid fuels; and

10 ~~(8)~~ (6) 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



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

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

22       (f) "Qualified alternative fuel vehicle home refueling  
23 infrastructure" means property owned by the applicant for the tax  
24 credit located on a private residence or private home and used for

1 storing alternative fuels and for dispensing such alternative fuels  
 2 into fuel tanks of motor vehicles, including but not limited to,  
 3 compression equipment, storage tanks and dispensing units for  
 4 alternative fuel at the point where the fuel is delivered or for  
 5 providing electricity to plug-in hybrid electric vehicles or  
 6 electric vehicles: *Provided*, That the property is installed and  
 7 located in this state.

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

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

17 The tax ~~credit~~ credits for the purchase of alternative-fuel  
 18 motor vehicles or conversion to alternative-fuel motor vehicles,  
 19 qualified alternative fuel vehicle refueling infrastructure and  
 20 qualified alternative fuel vehicle home refueling infrastructure  
 21 provided in this article may be applied against the tax liability  
 22 of a taxpayer imposed by the provisions of either article twenty-  
 23 one, article twenty-three or article twenty-four of this chapter  
 24 but in no case may more than one credit be granted for the same

1 alternative-fuel motor vehicle as defined in subdivision (b),  
 2 section two of this article. This credit shall be available for  
 3 those tax years beginning after ~~June 30, 1997~~ January 1, 2011.

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

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

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

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

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

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

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

24 ~~(c)~~ (d) The credit provided in this article is not available

1 to and may not be claimed by any taxpayer under any obligation  
2 pursuant to any federal or state law, policy or regulation to  
3 convert to the use of alternative fuels for any motor vehicle.

4 **§11-6D-5. Amount of credit for alternative fuel motor vehicles.**

5 ~~(a) The total amount of any credit allowed under this article~~  
6 ~~for an alternative-fuel motor vehicle is limited by and subject to~~  
7 ~~the provisions set forth in this subsection and subsections (b),~~  
8 ~~(c) and (d) of this section and may not exceed: (1) In the case of~~  
9 ~~a motor vehicle conversions or retrofitting, the actual cost of~~  
10 ~~converting from a traditionally-fueled motor vehicle to an~~  
11 ~~alternatively-fueled motor vehicle; or (2) in the case of a new~~  
12 ~~purchase, the incremental difference in cost between an~~  
13 ~~alternative-fuel motor vehicle and a comparably equipped motor~~  
14 ~~vehicle that employs traditional fuel technology.~~

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

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

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

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

24 ~~(4) For a bus capable of seating at least twenty adults, fifty~~

1 ~~thousand dollars.~~

2 ~~(c) Subject to the limitations set forth in subsection (a) of~~  
3 ~~this section, a taxpayer who is otherwise entitled to a credit~~  
4 ~~against tax who claims the credit provided for in this article on~~  
5 ~~the basis of any alternative-fuel motor vehicle that operates~~  
6 ~~exclusively on electricity is entitled to an additional credit of~~  
7 ~~ten percent of the credit which is otherwise allowed under~~  
8 ~~subsection (b) of this section.~~

9 ~~(d) The maximum incremental credit allowed per year is one~~  
10 ~~third of the credit attributable to five vehicles with the~~  
11 ~~cumulative credit over a three-year period not to exceed one third~~  
12 ~~of the credit attributable to fifteen vehicles.~~

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

21 (b) 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 more than twenty-six  
24 thousand pounds is thirty-five percent of the purchase price of the

1 alternative-fuel motor vehicle up to a maximum amount of \$25,000 or  
2 fifty percent of the actual cost of converting from a traditionally  
3 fueled motor vehicle to an alternative fuel motor vehicle up to a  
4 maximum amount of \$25,000.

5 **§11-6D-6. Amount of credit for qualified alternative fuel vehicle**  
6 **refueling infrastructure and qualified alternative**  
7 **fuel vehicle home refueling infrastructure.**

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

15 (a) For taxable years beginning on and after January 1, 2011  
16 but prior to January 1, 2014, the amount of the credit allowed  
17 under this article for qualified alternative fuel vehicle refueling  
18 infrastructure is equal to an amount of fifty percent of the total  
19 costs directly associated with the construction or purchase and  
20 installation of the alternative fuel vehicle refueling  
21 infrastructure up to a maximum of \$250,000: *Provided, That if the*  
22 qualified alternative fuel vehicle refueling infrastructure is  
23 generally accessible for public use, the amount of the credit  
24 allowed will be multiplied by 1.25 and the maximum amount allowable

1 will be \$312,500. The amount of credit allowed may not exceed the  
2 cost of construction of the alternative fuel vehicle refueling  
3 infrastructure.

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

17 (c) For taxable years beginning on and after January 1, 2016,  
18 but prior to January 1, 2022, 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 \$150,000: Provided, That if the  
24 qualified alternative fuel vehicle refueling infrastructure is

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

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

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

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



1 propose for legislative approval in accordance with article three,  
2 chapter twenty-nine-a of this code to administer this section.

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

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

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

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

22 **§11-6D-8. Commissioner to design forms and schedules; promulgation**  
23 **of rules.**

24 (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

1 reduction if it is determined by the State Tax Commissioner that a  
 2 taxpayer was not entitled to the credit, in whole or in part, in  
 3 the tax year in which it was claimed by the taxpayer. The amount  
 4 of credit that flows through to equity owners of a passthrough  
 5 entity may be recaptured or recovered from either the taxpayer or  
 6 the equity owners in the discretion of the Tax Commissioner.

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

9 **§11-6F-2. Definitions.**

10 As used in this article, the term:

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

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

23 ~~(b)~~ (c) "Manufacturing facility" means any factory, mill,  
 24 chemical plant, refinery, warehouse, building or complex of

1 buildings, including land on which it is located, and all  
2 machinery, equipment, improvements and other real property and  
3 personal property located at or within the facility used in  
4 connection with the operation of the facility in a manufacturing  
5 business.

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

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

1 creates additional production capacity of existing or related  
2 products or feedstock or derivative products respecting the  
3 manufacturing facility, is a source of raw materials for the  
4 operating manufacturing facility, or converts coal to a gas or  
5 liquid for its use in heating, manufacturing or generation of  
6 electricity. Beginning July 1, 2011, wherever the number "100" is  
7 used in this subsection, the number "20" shall be substituted and  
8 where the number "50" is used, the number "10" shall be  
9 substituted.

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

15 **§11-6F-3. Tax treatment of certified capital addition property.**

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

1 **ARTICLE 13A. SEVERANCE TAXES.**

2 **§11-13A-5b. Distribution of oil and gas severance tax for**  
3 **maintenance of highways and permitting and**  
4 **inspection of shale gas wells.**

5       (a) Effective July 1, 2011, a baseline for the imposition of  
6 the severance tax on oil and gas that is deposited in the General  
7 Revenue Fund and that is distributed to counties and municipalities  
8 as provided in section five-a of this article is established at  
9 \$64.8 million.

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

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

14       (2) Two million dollars shall be distributed into a special  
15 revenue account hereby created within the State Treasury and known  
16 as the "Marcellus Shale Permit Fund" as an interest bearing,  
17 nonexpiring special revenue account. The Marcellus Shale Permit  
18 Fund shall be separate and apart from the General Revenue Fund and  
19 shall be administered by the West Virginia Department of  
20 Environmental Protection. Expenditures from the special revenue  
21 account shall be for the purposes set forth in this section and  
22 made in accordance with appropriations from the Legislature and  
23 pursuant to the provisions of article three, chapter twelve of this  
24 code and after the fulfillment of the provisions of article two,

1 chapter eleven-b of this code: *Provided*, That for the fiscal year  
2 ending June 30, 2012, expenditures are authorized from collections.  
3 Moneys in the Marcellus Shale Permit Fund not expended at the close  
4 of the fiscal year do not lapse or revert to the General Fund but  
5 are carried forward to the next fiscal year. Interest earnings on  
6 the revolving fund becomes a part of the revolving fund and do not  
7 lapse or revert to the General Fund. The West Virginia Department  
8 of Environmental Protection shall use the moneys in the Marcellus  
9 Shale Permit Fund for the purposes of paying for additional costs  
10 associated with permitting activity in the marcellus shale.

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

14 (c) This section shall have no force or effect after June 30,  
15 2016.

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

17 **§11-13R-3. Definitions.**

18 (a) *General.* -- When used in this article or in the  
19 administration of this article, terms defined in subsection (b) of  
20 this section have the meanings ascribed to them by this section  
21 unless a different meaning is clearly required by either the  
22 context in which the term is used or by specific definition in this  
23 article.

24 (b) *Terms defined.* --

1 (1) "Base amount" means:

2 (A) The average annual combined qualified research and  
3 development expenditure for the three taxable years immediately  
4 preceding the taxable year for which a credit is claimed under this  
5 article;

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

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

18 (2) "Commissioner" and "Tax Commissioner" are used  
19 interchangeably herein and mean the Tax Commissioner of the State  
20 of West Virginia or his or her delegate.

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

23 (4) "Corporation" means any corporation, limited liability  
24 company, joint-stock company or association and any business



1 conducted by a trustee or trustees wherein interest or ownership is  
2 evidenced by a certificate of interest or ownership or similar  
3 written instrument.

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

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

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

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

9           (9) "Qualified research and development credit property" means  
10 depreciable property purchased for the conduct of qualified  
11 research and development.

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

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

1 market testing.

2 (B) Research and development does not include:

3 (i) Market research;

4 (ii) Sales research;

5 (iii) Efficiency surveys;

6 (iv) Consumer surveys;

7 (v) Product market testing;

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

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

13 (viii) Management studies;

14 (ix) Advertising;

15 (x) Promotions;

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

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

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

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

1 (11) "Related person" means:

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

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

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

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

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

24 (12) "Taxpayer" means any person subject to the tax imposed by

1 article twenty-three or twenty-four of this chapter or both. In the  
2 case of a sole proprietorship subject to neither the tax imposed by  
3 article twenty-three nor the tax imposed by article twenty-four,  
4 the term "taxpayer" means any sole proprietor who is subject to the  
5 tax imposed by article twenty-one of this chapter.

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

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

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

10 **§11-13S-3. Definitions.**

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

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

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

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

21 (3) "Industrial facility" means any factory, mill, plant,  
22 refinery, warehouse, building or complex of buildings located  
23 within this state, including the land on which it is located, and  
24 all machinery, equipment and other real and tangible personal

1 property located at or within the facility primarily used in  
2 connection with the operation of the manufacturing business.

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

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

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

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

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

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

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

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

14 (iii) Airplanes;

15 (iv) Off-premises transportation equipment;

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

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

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

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

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

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

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

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

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

23 **§11-15-8d. Limitations on right to assert exemptions.**

24 (a) Persons who perform "contracting" as defined in section



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

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

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

1 "contracting", as defined in section two of this article, if the  
2 purchaser of the "contracting" services would be entitled to claim  
3 the refundable exemption under subdivision (2), subsection (b),  
4 section nine of this article had it purchased the services,  
5 machinery, supplies or materials.

6 **CHAPTER 24. PUBLIC SERVICE COMMISSION.**

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

8 **§24-2F-3. Definitions.**

9 Unless the context clearly requires a different meaning, as  
10 used in this article:

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

21 (2) "Alternative and renewable energy portfolio standard" or  
22 "portfolio standard" means a requirement in any given year that  
23 requires an electric utility to own credits in an amount equal to  
24 a certain percentage of electric energy sold in the preceding

1 calendar year by the electric utility to retail customers in this  
2 state.

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

6 (A) Advanced coal technology;

7 (B) Coal bed methane;

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

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

11 (E) Synthetic gas;

12 (F) Integrated gasification combined cycle technologies;

13 (G) Waste coal;

14 (H) Tire-derived fuel;

15 (I) Pumped storage hydroelectric projects; and

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

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

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

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

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

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

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

22           (A) Energy efficiency technologies, equipment, management  
23 practices or other strategies utilized by residential, commercial,  
24 industrial, institutional or government customers that reduce

1 electricity consumption by those customers;

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

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

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

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

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

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

8           (B) Forestation, afforestation or reforestation; and

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

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

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

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

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

2 (B) Solar thermal energy;

3 (C) Wind power;

4 (D) Run of river hydropower;

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

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

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

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

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



1 the resulting heat; and

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

4 (14) "Renewable energy resource facility" means a facility or  
5 equipment that generates electricity from renewable energy  
6 resources.

7 (15) "Waste coal" means a technology by which electricity is  
8 produced by the combustion of the by-product, waste or residue  
9 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.