

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 755

BY SENATORS PALUMBO, IHLENFELD, JEFFRIES, TAKUBO,
CLEMENTS, HARDESTY, PREZIOSO, BEACH, LINDSAY,
STOLLINGS, ROMANO, AND PLYMALE

[Introduced February 12, 2020; referred
to the Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §11-13FF-1, §11-13FF-2, §11-13FF-3, §11-13FF-4, and §11-13FF-5, all
 3 relating to the High-Wage Growth Business Tax Credit Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13FF. THE HIGH-WAGE GROWTH BUSINESS TAX CREDIT ACT.

§11-13FF-1. The High-Wage Growth Business Tax Credit Act.

1 This article shall be known and may be cited as the High-Wage Growth Business Tax
 2 Credit Act.

§11-13FF-2. Definitions.

1 As used in this article:

2 “Benefits” means all remuneration for work performed that is provided to an employee in
 3 whole or in part by the employer, other than wages, including the employer’s contributions to
 4 insurance programs, health care, medical, dental and vision plans, life insurance, employer
 5 contributions to pensions, such as a 401(k), and employer-provided services, such as child care,
 6 offered by an employer to the employee. “Benefits” does not include the employer’s share of
 7 payroll taxes, Social Security or Medicare contributions, federal or state unemployment insurance
 8 contributions or workers’ compensation;

9 “Consecutive qualifying period” means each of the three qualifying periods successively
 10 following the qualifying period in which the new high-wage job was created;

11 “Division” means the West Virginia State Tax Division;

12 “Domicile” means the sole place where an individual has a true, fixed, permanent home.
 13 It is the place where the individual has a voluntary, fixed habitation of self and family with the
 14 intention of making a permanent home;

15 “Eligible employee” means an individual who is employed in West Virginia by an eligible
 16 employer, who is a resident of West Virginia, and 100 percent of the employee’s income from
 17 such employment is West Virginia income. “Eligible employee” does not include an individual who:

18 (1) Bears any of the relationships described in paragraphs (1) through (8) of 26 U.S.C.
19 Section 152(a) to the employer or, if the employer is a corporation, to an individual who owns,
20 directly or indirectly, more than 50 percent in value of the outstanding stock of the corporation or,
21 if the employer is an entity other than a corporation, to an individual who owns, directly or
22 indirectly, more than 50 percent of the capital and profits interest in the entity;

23 (2) If the employer is an estate or trust, is a grantor, beneficiary, or fiduciary of the estate
24 or trust or is an individual who bears any of the relationships described in paragraphs (1) through
25 (8) of 26 U.S.C. Section 152(a) to a grantor, beneficiary, or fiduciary of the estate or trust;

26 (3) Is a dependent, as that term is described in 26 U.S.C. Section 152(a)(9), of the
27 employer or, if the taxpayer is a corporation, of an individual who owns, directly or indirectly, more
28 than 50 percent in value of the outstanding stock of the corporation or, if the employer is an entity
29 other than a corporation, of an individual who owns, directly or indirectly, more than 50 percent of
30 the capital and profits interest in the entity or, if the employer is an estate or trust, of a grantor,
31 beneficiary, or fiduciary of the estate or trust; or

32 (4) Is working or has worked as an employee or as an independent contractor for an entity
33 that, directly or indirectly, owns stock in a corporation of the eligible employer or other interest of
34 the eligible employer that represents 50 percent or more of the total voting power of that entity or
35 has a value equal to 50 percent or more of the capital and profits interest in the entity;

36 “Eligible employer” means a person whether organized for profit or not, or headquarters
37 of such entity registered to do business in West Virginia that is the owner or operator of a project
38 facility, that offers health benefits to all full-time eligible employees and certifies that it pays at
39 least 50 percent of such health benefit premiums.

40 “Health benefits” means coverage for basic hospital care, physician care, prescriptions,
41 and shall be the same coverage as is provided to employees employed in a bona fide executive,
42 administrative, or professional capacity by the employer who are exempt from the minimum wage
43 and maximum hour requirements of the federal Fair Labor Standards Act and the employer pays

44 at least 50 percent of such insurance premiums.

45 “New high-wage job” means a new job created in West Virginia by an eligible employer on
46 or after July 1, 2020, that is occupied for at least 48 weeks of a qualifying period by an eligible
47 employee who is paid wages calculated for the qualifying period to be at least two and twenty-
48 five hundredths times the state median salary;

49 “New job” means a job that is occupied by an employee who was not previously on the
50 employer’s payroll in West Virginia, nor previously on the payroll of such employer’s parent entity,
51 subsidiary, alter ego, or affiliate in West Virginia, or previously on the payroll of any business
52 whose physical plant and employees are substantially the same as those of the employer in West
53 Virginia in the three years prior to the date of hire. “New job” does not mean any job that is a result
54 of job shifts due to the gain or loss of an in-state contract to supply goods and services, nor does
55 it mean an employee who is retained following the acquisition of all or part of an in-state business
56 by an employer;

57 “Qualifying period” means the period of 12 months beginning on the day an eligible
58 employee begins working in a new high-wage job or the period of 12 months beginning on the
59 anniversary of the day an eligible employee began working in a new high-wage job;

60 “Resident” means a natural person whose domicile is in West Virginia at the time of hire
61 or within 180 days of the date of hire;

62 “Threshold job” means a job that is occupied for at least 44 weeks of a calendar year by
63 an eligible employee and that meets the wage requirements for a “new high-wage job”; and

64 “Wages” means all compensation paid by an eligible employer to an eligible employee
65 through the employer’s payroll system, including those wages that the employee elects to defer
66 or redirect or the employee’s contribution to a 401(k) or cafeteria plan program, but “wages” does
67 not include benefits or the employer’s share of payroll taxes, Social Security or Medicare
68 contributions, federal or state unemployment insurance contributions, or workers’ compensation.

§11-13FF-3. High-wage growth business tax credit.

1 (a) The Development Office may authorize no more than \$5 million of the tax credits
2 allowed under this article during any fiscal year and the total amount of tax credit that may be
3 awarded or used in any taxable year by any qualified taxpayer in combination with the owners of
4 the qualified taxpayer may not exceed more than 10 percent of the salaries for the new direct
5 jobs. Depending on the nature of the anticipated benefits to the state, the Development Office
6 may establish a tax credit at a level less than the maximum. Nothing in this article entitles a
7 qualified employer to receive a tax credit under this article and the Development Office has full
8 discretion, subject to annual or ad hoc review, in determining whether and the amount to which
9 to award a tax credit.

10 (b) A taxpayer that is an eligible employer seeking to obtain a tax credit shall make an
11 application to the Development Office prior to the taxable year in which the eligible employer is
12 seeking the credit. The application shall be on a form prescribed by the Development Office and
13 shall contain such information as may be required by the Development Office to determine if the
14 applicant is qualified. The application shall contain a sworn statement by a duly authorized officer
15 of the employer listing the names of persons or other entities who have received or who will
16 receive any payment or other consideration from the employer for the purpose of representing
17 the employer in applying for or receiving the benefits provided for in this article and shall include
18 a certificate of good standing from the State Tax Department.

19 (c) The employer shall certify that during the eligible employer's tax year and that at the
20 end of the eligible employer's tax year it will meet or exceed all of the requirements established
21 in §11-13FF-4 of this code;

22 (d) After the filing of an application by an eligible employer, the Development Office shall
23 undertake an analysis and determine whether, the extent to which, and the conditions upon which
24 an eligible employer may obtain a tax credit if it fulfills the commitments made in the eligible
25 employer's application. In considering whether to approve the eligible employer's application for
26 a tax credit, the Development Office shall consider the following factors:

27 (1) The significance of the eligible employer’s need for the tax credit;

28 (2) The amount of projected net fiscal benefit to the state of the project and the period in
29 which the state would realize such net fiscal benefit;

30 (3) The overall size and quality of the proposed project, including the number of new jobs,
31 proposed wages, growth potential of the qualified company, the potential multiplier effect of the
32 project, and similar factors;

33 (4) The financial stability and creditworthiness of the eligible employer;

34 (5) The level of economic distress in the area;

35 (6) An evaluation of the competitiveness of alternative locations for the location of the
36 eligible employer, as applicable;

37 (7) Whether other state incentives are available and have been awarded to the eligible
38 employer; and

39 (8) The amount of local incentives committed.

40 (e) The Development Office may authorize the continued ability to receive the tax credit
41 as long as the employer retains its eligibility by maintaining the number of new direct jobs in
42 successive years, as provided under this article, not to exceed five years.

43 (f) A qualified employer that has qualified pursuant to this article is eligible to receive tax
44 credits under this article only in accordance with the provisions under which it initially applied and
45 was approved. If a qualified employer that is receiving tax credits and creates new direct jobs, it
46 may apply for additional tax credits based on the new direct jobs anticipated from the expansion
47 only, pursuant to this article.

§11-13FF-4. Obtaining tax credit following tax year.

1 (a) At the end of the approved employer’s tax year, the qualified employer may file an
2 application to use the tax credits previously approved by the Development Office. The application
3 shall contain a sworn statement by a duly authorized officer of the qualified employer concerning
4 with respect to the employer’s fiscal year:

5 (1) That the eligible employer remained a qualified employer under the provisions of this
6 article;

7 (2) The total number of and the gross payroll of the new direct jobs, with salary information
8 provided by new direct job and that each new direct job was filled for at least 48 weeks during the
9 tax year;

10 (3) That the employer had or maintained a net overall increase in employment statewide
11 for each new direct job and the number of such net overall increase of at least 10 new direct jobs,
12 in the case where an employer has contracts covering multiple locations;

13 (4) That employees holding the new direct jobs:

14 (A) Were residents in the State of West Virginia;

15 (B) Were not previously on the employer's payroll;

16 (C) Were not previously on the payroll of the employer's parent entity, subsidiary, or
17 affiliate, alter ego, or previously on the payroll of the business whose physical plant and
18 employees were substantially the same as those of the employer;

19 (D) Did not exist as of the date the employer filed the application for the tax credit;

20 (E) Were not jobs created as a result of job shifts due to the gain or loss of an in-state
21 contract to supply goods and services;

22 (F) Were not jobs retained following the acquisition of all, or part of, an in-state business
23 by the employer;

24 (5) That the employer has offered the health benefits to the eligible employees it employs
25 in new direct jobs; and

26 (6) That the employer:

27 (A) Did not default on or otherwise not repay any loan or other obligation involving public
28 funds;

29 (B) Has not declared bankruptcy under which an obligation of the employer to pay or repay
30 public funds or moneys was discharged as part of such bankruptcy;

31 (C) Is not in default on any filing or payment with or to the state or any of its agencies or
32 political subdivisions in which such assessment or judgment is final, not appealable, and remains
33 outstanding.

34 (b) The division may request such additional information from the employer as may be
35 necessary to determine whether the application is correct and whether the qualified employer is
36 eligible for the annual tax credit for that year, or may request that the qualified employer revise its
37 application.

38 (c) The tax credits authorized in this article shall be authorized after the qualified employer
39 has filed its application for annual tax credit at the end of the qualified employer's tax year with
40 the Development Office pursuant to this section, and the division has determined from the
41 information submitted along with such application that the employer has fulfilled its obligations in
42 original application.

43 (d) Upon approval of the application for use of the tax credit, the application shall be
44 forwarded to the Department of Revenue. The eligible employer may then use such tax credit in
45 filing its tax return.

46 (e) A new high-wage job is not eligible for a credit pursuant to this section for the initial
47 qualifying period unless the eligible employer's total number of employees with threshold jobs on
48 the last day of the initial qualifying period at the location at which the job is performed or based is
49 at least one more than the number of threshold jobs on the day prior to the date the new high-
50 wage job was created. A new high-wage job is not eligible for a credit pursuant to this section for
51 a consecutive qualifying period unless the total number of threshold jobs at a location at which
52 the job is performed or based on the last day of that qualifying period is greater than or equal to
53 the number of threshold jobs at that same location on the last day of the initial qualifying period
54 for the new high-wage job.

55 (f) If a consecutive qualifying period for a new high-wage job does not meet the wage,
56 occupancy and residency requirements, then the qualifying period is ineligible.

57 (g) Except as provided in subsection (h) of this section, a new high-wage job is not eligible
58 for a credit pursuant to this section if:

59 (1) The new high-wage job is created due to a business merger or acquisition or other
60 change in business organization;

61 (2) The eligible employee was terminated from employment in West Virginia by another
62 employer involved in the business merger or acquisition or other change in business organization
63 with the taxpayer; and

64 (3) The new high-wage job is performed by:

65 (A) The person who performed the job or its functional equivalent prior to the business
66 merger or acquisition or other change in business organization; or

67 (B) A person replacing the person who performed the job or its functional equivalent prior
68 to a business merger or acquisition or other change in business organization.

69 (h) A new high-wage job that was created by another employer and for which an
70 application for the high-wage growth business tax credit was received and is under review by the
71 division prior to the time of the business merger or acquisition or other change in business
72 organization shall remain eligible for the high-wage growth business tax credit for the balance of
73 the consecutive qualifying periods. The new employer that results from a business merger or
74 acquisition or other change in business organization may only claim the high-wage growth
75 business tax credit for the balance of the consecutive qualifying periods for which the new high-
76 wage job is otherwise eligible.

77 (i) A new high-wage job is not eligible for a credit pursuant to this section if the job is
78 created due to an eligible employer entering into a contract or becoming a subcontractor to a
79 contract with a governmental entity that replaces one or more entities performing functionally
80 equivalent services for the governmental entity unless the job is a new high-wage job that was
81 not being performed by an employee of the replaced entity.

82 (j) A new high-wage job is not eligible for a credit pursuant to this section if the eligible

83 employer has more than one business location in the state from which it conducts business and
84 the requirements of subsection (e) of this section are satisfied solely by moving the job from one
85 business location of the eligible employer in this state to another business location of the eligible
86 employer in the state.

87 (k) With respect to each annual application for a high-wage growth business tax credit, the
88 employer shall certify and include:

89 (1) The responsibilities and amount of wages paid to each eligible employee in a new high-
90 wage job during the qualifying period;

91 (2) The number of weeks each position was occupied during the qualifying period;

92 (3) Which qualifying period the application pertains to for each eligible employee;

93 (4) The total number of employees employed by the employer at the job location on the
94 day prior to the qualifying period and on the last day of the qualifying period;

95 (5) The total number of threshold jobs performed or based at the eligible employer's
96 location on the day prior to the qualifying period and on the last day of the qualifying period;

97 (6) For an eligible employer that has more than one business location in the state from
98 which it conducts business, the total number of threshold jobs performed or based at each
99 business location of the eligible employer in the state on the day prior to the qualifying period and
100 on the last day of the qualifying period;

101 (7) Whether the eligible employer has ceased business operations at any of its business
102 locations in this state; and

103 (8) Whether the application is precluded by subsection (o) of this section.

104 (l) Any person who willfully submits a false, incorrect, or fraudulent certification required
105 pursuant this section shall be subject to all applicable penalties under §11-9-1 et seq. and §11-
106 10-1 et seq. of this code, except that the amount on which the penalty is based shall be the total
107 amount of credit requested on the application for approval.

108 (m) Except as provided in subsection (o) of this section, an approved high-wage growth

109 business tax credit shall be claimed against the taxpayer's taxes imposed by §11-23-1 et seq.,
110 §11-24-1 et seq., and §11-21-1 et seq. of this code, in that order, as specified in this subsection:

111 (1) *Business franchise tax.* — The credit is first applied to reduce the taxes imposed by
112 §11-23-1 et seq. of this code for the taxable year, determined after application of the credits
113 against tax provided in §11-23-17 of this code, but before application of any other allowable credits
114 against tax.

115 (2) *Corporation net income taxes.* — After application of subdivision (1) of this subsection,
116 any unused credit is next applied to reduce the taxes imposed by §11-24-1 et seq. of this code
117 for the taxable year, determined before application of allowable credits against tax.

118 (A) If the eligible taxpayer is a limited liability company, small business corporation, or a
119 partnership, then any unused credit after application of subdivisions (1) and (2) of this subsection
120 is allowed as a credit against the taxes imposed by §11-24-1 et seq. of this code on owners of
121 the eligible taxpayer on the conduit income directly derived from the eligible taxpayer by its
122 owners. Only those portions of the tax imposed by §11-24-1 et seq. of this code that are imposed
123 on income directly derived by the owner from the eligible taxpayer are subject to offset by this
124 credit.

125 (B) Small business corporations, limited liability companies, partnerships, and other
126 unincorporated organizations shall allocate the credit allowed by this section among their
127 members in the same manner as profits and losses are allocated for the taxable year.

128 (3) *Personal income tax taxes.* — After application of subdivisions (1) and (2) of this
129 subsection, any unused credit is next applied to reduce the taxes imposed by §11-21-1 et seq. of
130 this code for the taxable year determined before application of allowable credits against tax of the
131 eligible taxpayer.

132 (4) If the eligible taxpayer is a limited liability company, small business corporation, or a
133 partnership, then any unused credit after application of subdivisions (1), (2), and (3) of this
134 subsection is allowed as a credit against the taxes imposed by §11-21-1 et seq. of this code on

135 owners of the eligible taxpayer on the conduit income directly derived from the eligible taxpayer
136 by its owners. Only those portions of the tax imposed by §11-21-1 et seq. of this code that are
137 imposed on income directly derived by the owner from the eligible taxpayer are subject to offset
138 by this credit.

139 (5) Small business corporations, limited liability companies, partnerships, and other
140 unincorporated organizations shall allocate the credit allowed by this section among their
141 members in the same manner as profits and losses are allocated for the taxable year.

142 (6) No credit is allowed under this section against any withholding tax imposed by, or
143 payable under, §11-21-1 et seq. of this code.

144 (7) Unused credit carry forward. — Except to the extent excess credit is refunded as
145 provided in subdivision (8) of this subsection, if the credit allowed under this article in any taxable
146 year exceeds the sum of the taxes enumerated in subdivisions (1), (2), and (3) of this subsection
147 for that taxable year, the eligible taxpayer and owners of eligible taxpayers described in
148 subdivisions (4) and (5) of this subsection may apply the excess as a credit against those taxes,
149 in the order and manner stated in this section, for succeeding taxable years until the earlier of the
150 following:

151 (A) The full amount of the excess credit is used; or

152 (B) The expiration of the 10th taxable year after the taxable year in which the annual
153 salaries for the new direct job was paid or incurred. Any credit remaining thereafter is forfeited.

154 (8) If the credit allowed under this section in any taxable year exceeds the sum of taxes
155 enumerated in subdivisions (1), (2), (3), (4), and (5) of this subsection for that taxable year, the
156 eligible taxpayer and owners of the eligible taxpayers described in subdivisions (4) and (5) of this
157 subsection may claim for that year the excess amount as a refundable credit, not to exceed
158 \$100,000 per taxpayer, including owners and the controlled group, if applicable.

159 (9) Tax credits provided under this section may not be transferred, sold, or assigned by
160 filing a notarized endorsement thereof with the division that names the transferee, the amount of

161 tax credit transferred, and the value received for the credit, as well as any other information
162 reasonably requested by the division.

163 (n) If the taxpayer ceases business operations in this state while an application for credit
164 approval is pending or after an application for credit has been approved for any qualifying period
165 for a new high-wage job, the division may not grant an additional high-wage growth business tax
166 credit to that taxpayer except as provided in subsection (m) of this section and shall extinguish
167 any amount of credit approved for that taxpayer that has not already been claimed against the
168 taxpayer's modified combined tax liability.

169 (o) A taxpayer that has received a high-wage growth business tax credit may not submit
170 a new application for the credit for a minimum of two calendar years from the closing date of the
171 last qualifying period for which the taxpayer received the credit if the taxpayer lost eligibility to
172 claim the credit from a previous application pursuant to subsection (m) of this section.

§11-13FF-5. Rules.

1 The division shall propose legislative rules implementing this article in accordance with
2 the provisions of §29A-3-1 et seq. of this code.

NOTE: The purpose of this bill is to create the West Virginia Works – High-wage Business Tax Credit Act.

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