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Introduced

House Bill 4088

FISCAL NOTE

By Delegates Howell, Keaton, Linville, Hamrick, Criss, Householder, Storch, Hott, Riley, Smith, and Ferrell

[Introduced January 14, 2022; Referred to the Committee on Energy and Manufacturing then the Judiciary]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-13LL-1, §11-13LL-2, §11-13LL-3, §11-13LL-4, §11-13LL-5, §11-13LL-6, §11-13LL-7, §11-13LL-8, §11-13LL-9, §11-13LL-10, §11-13LL-11, §11-13LL-12, §11-13LL-13, §11-13LL-14, §11-13LL-15, §11-13LL-16, §11-13LL-17, §11-13LL-18, §11-13LL-19, and §11-13LL-20; and to amend said code by adding thereto a new section, designated §22-2-10, all relating to the creation of the Rare Earth Element and Critical Mineral Investment Tax Credit Act of 2022; providing for administration and enforcement of act; providing for a short title; making legislative findings relating to the mining and processing of rare earth elements and critical minerals, as well as the manufacturing of products that require rare earth elements and critical minerals; establishing the legislative purpose for the act; defining terms of the act; specifying an amount of credit allowable based on amount of qualified investment and the number of new jobs created as they relate to mining, processing, and manufacturing of products that require rare earth elements and critical minerals; providing limitations and conditions for the qualification and use of the act; defining in service or use; providing for the application of the credit to the corporate net income tax and the personal income tax, as appropriate; providing for methods of calculation of the qualified investment in rare earth element/critical mineral mining and processing facilities, as well as manufacturing facilities whose products require rare earth elements and critical minerals; providing for a determination and certification of the number of new jobs as they relate to the act; providing for carry over and forfeiture of unused tax credits and redetermination of tax credits under certain circumstances; providing certain limitations for credits being carried over; providing for full recapture and partial recapture of credit under certain circumstances and imposing a recapture tax; allowing transfer of qualified investment property without forfeiture or recapture under certain circumstances; requiring identification of qualified investment property and record keeping; providing penalties for failure to keep required records; providing for interpretation and construction of credit; requiring timely filing of application for credit; specifying burden of proof; requiring periodic tax credit review and accountability reports; authorizing rulemaking; making credit subject to West Virginia Tax Procedure and Administration Act and West Virginia Tax Crimes and Penalties Act; providing for severability; specifying an effective date for the act; and clarifying ownership of rare earth elements and critical minerals in order to incentivize acid mine drainage treatment while recovering rare earth elements and critical minerals.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13LL. RARE EARTH ELEMENT AND CRITICAL MINERAL INVESTMENT TAX CREDIT ACT OF 2022.

§11-13LL-1. Short title.

This article may be cited as the Rare Earth Element and Critical Mineral Investment Tax Credit Act of 2022.

§11-13LL-2. Legislative finding and purpose.

The Legislature finds that investment into the mining and processing of rare earth elements and critical minerals, and the manufacturing of products that require these rare earth elements and critical minerals is in the public's best interest, and such investment into these three phases promotes the general welfare and livelihoods of the workers and general population of this state. In order to encourage a greater capital investment into those businesses and companies who focus on mining, processing, and manufacturing, there is hereby enacted the Rare Earth Element and Critical Mineral Investment Tax Credit Act. By enacting this tax credit, it is expected that new and existing companies will take advantage of this unique opportunity in West Virginia and will create new jobs and facilities for the explicit purpose of mining and processing of rare earth elements/critical minerals, and the manufacturing of products that require rare earth elements and critical minerals. Those who extract and mine rare earth minerals/critical elements will benefit from the act, as well as those who process the rare earth elements and critical minerals after their extraction. Finally, manufacturing companies whose products require rare earth elements/critical minerals - everything from smart phones to touchscreens in SUVs – will benefit from the act, and this will position West Virginia to be a leader in this relatively new field.

§11-13LL-3. Definitions.

(a) *General*. – When used in this article, or in the administration of §11-13LL-1 *et seq.* of this code, terms defined in subsection (b) have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition, in §11-13LL-1 *et seq.* of this code.

(b) *Terms defined*.

(1) “Affiliated group” means any affiliated group within the meaning section 1504(a) of the Internal Revenue Code, or any similar group defined under a similar provision of state, local, or foreign law, except that section 1504 of the Internal Revenue Code shall be applied by substituting “more than 50 percent” for “at least 80 percent” each place it appears in that section.

(2) “Business” means a business engaged in mining, processing, or manufacturing rare earth elements or critical minerals which is taxable under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code.

(3) “Business expansion” means capital investment in a new or expanded rare earth element or critical mineral facility in this state which engages in the mining or processing of rare earth elements/critical minerals, or manufacturing products from rare earth elements/critical minerals.

(4) “Commissioner” or “Tax Commissioner” are used interchangeably in this article and mean the Tax Commissioner of the State of West Virginia, or his or her designee.

(5) “Compensation” means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.

(6) “Controlled group of corporations” means a controlled group of corporations as defined in section 1563(a) of the Internal Revenue Code.

(7) "Corporation" means any corporation, joint-stock company, association, or other entity treated as a corporation for federal income tax purposes, and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument.

(8) "Critical minerals" mean mineral resources that are essential to the economy and whose supply may be disrupted. Many of today's critical minerals are metals that are central to high-tech sectors. They include, but are not limited to, the rare earth elements (as further defined in this section) and other metals such as lithium, cobalt, manganese, indium, tellurium, gallium, and platinum group elements.

(9) "Designee" in the phrase "or his or her designee," when used in reference to the Tax Commissioner, means any officer or employee of the State Tax Department duly authorized by the commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article.

(10) "Eligible taxpayer" means any person who makes qualified investment in a new or expanded rare earth element or critical mineral mining, processing, or manufacturing facility located in this state and creates at least the required number of new jobs and who is subject to any of the taxes imposed by §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code.

(11) "Expanded facility" means any rare earth element or critical mineral mining or processing facility, or any manufacturing facility that uses rare earth elements/critical minerals for their products, other than a new or replacement business facility, resulting from the acquisition, construction, reconstruction, installation, or erection of improvements or additions to existing property if the improvements or additions are purchased on or after July 1, 2022, but only to the extent of the taxpayer's qualified investment in the improvements or additions.

(12) "Includes" and "including" when used in a definition contained in this article, shall not be considered to exclude other things otherwise within the meaning of the term defined.

(13) “Leased property” does not include property which the taxpayer is required to show on its books and records as an asset under generally accepted principles of financial accounting. If the taxpayer is prohibited from expensing the lease payments for federal income tax purposes, the property shall be treated as purchased property under this section.

(14) “New rare earth element or critical mineral mining, processing, or product manufacturing facility” means a business facility which satisfies all the requirements of paragraphs (A), (B), (C), and (D) of this subdivision.

(A) The facility is employed by the taxpayer in the conduct of rare earth element or critical mineral mining, processing, or product manufacturing activity, the net income of which is or would be taxable under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code. The facility is not considered a new rare earth element or critical mineral mining, processing, or product manufacturing facility in the hands of the taxpayer if the taxpayer’s only activity with respect to the facility is to lease it to another person or persons.

(B) The facility is purchased by, or leased to, the taxpayer on or after July 1, 2022.

(C) The facility was not purchased or leased by the taxpayer from a related person. The commissioner may waive this requirement if the facility was acquired from a related party for its fair market value and the acquisition was not tax motivated.

(D) The facility was not in service or use during the 90 days immediately prior to transfer of the title to the facility, or prior to the commencement of the term of the lease of the facility: *Provided*, That this 90-day period may be waived by the commissioner if the commissioner determines that persons employed at the facility may be treated as “new employees” as that term is defined in this subsection.

(15) “New employee” –

(A) The term new employee means an individual hired by the taxpayer to fill a position or a job in this state which previously did not exist in the taxpayer’s rare earth element or critical mineral mining, processing, or product manufacturing activity in this state prior to the date on which the taxpayer's qualified investment in a new or expanded rare earth element or critical mineral mining, processing, or product manufacturing facility is placed in service or use in this state. In no case may the number of new employees directly attributable to the investment for purposes of this credit exceed the total net increase in the taxpayer's employment in this state: *Provided,* That the Tax Commissioner may require that the net increase in the taxpayer's employment in this state be determined and certified for the taxpayer's controlled group: *Provided, however*, That persons filling jobs saved as a direct result of taxpayer's qualified investment in property purchased or leased for business expansion may be treated as new employees filling new jobs if the taxpayer certifies the material facts to the commissioner and the Tax Commissioner expressly finds that:

(i) But for the new employer purchasing the assets of a rare earth element or critical mineral mining, processing, or product manufacturing business in bankruptcy under chapter seven or 11 of the United States bankruptcy code and the new employer making qualified investment in property purchased or leased for business expansion, the assets would have been sold by the United States Bankruptcy Court in a liquidation sale and the jobs saved would have been lost; or

(ii) But for the taxpayer's qualified investment in property purchased or leased for rare earth element or critical mineral mining, processing, or product manufacturing business expansion in this state, the taxpayer would have closed its rare earth element or critical mineral mining, processing, or product manufacturing facility in this state and the employees of the taxpayer located at the facility would have lost their jobs: *Provided,* That the Tax Commissioner may not make this certification unless the commissioner finds that the taxpayer is insolvent as defined in 11 U.S.C. §101(32) or that the taxpayer's rare earth element or critical mineral mining, processing, or product manufacturing facility was destroyed, in whole or in significant part, by fire, flood, or other act of God.

(B) A person is considered to be a new employee only if the person's duties in connection with the operation of the rare earth element or critical mineral mining, processing, or product manufacturing facility are on:

(i) A regular, full-time and permanent basis:

(I) Full-time employment means employment for at least 140 hours per month at a wage not less than the applicable state or federal minimum wage, depending on which minimum wage provision is applicable to the business.

(II) Permanent employment does not include employment that is temporary or seasonal and therefore the wages, salaries, and other compensation paid to the temporary or seasonal employees will not be considered for purposes of §11-13LL-5 of this code.

(ii) A regular, part-time, and permanent basis: *Provided,* That the person is customarily performing the duties at least 20 hours per week for at least six months during the taxable year.

(16) "New job" means a job which did not exist in the rare earth element or critical mineral mining, processing, or product manufacturing business of the taxpayer in this state prior to the taxpayer's qualified investment being made, and which is filled by a new employee.

(17) "New property" means:

(A) Property, the construction, reconstruction, or erection of which is completed on or after July 1, 2022, and placed in service or use after that date; and

(B) Property leased or acquired by the taxpayer that is placed in service or use in this state on or after July 1, 2022, if the original use of the property commences with the taxpayer and commences after that date.

(18) "Original use" means the first use to which the property is put, whether or not the use corresponds to the use of the property by the taxpayer.

(19) "Partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried

on, which is treated as a partnership for federal income tax purposes, and which is not a trust or estate, a corporation, or a sole proprietorship.

(20) "Partner" includes a member in such a syndicate, group, pool, joint venture, or other organization.

(21) "Person" includes any natural person, corporation, or partnership.

(22) "Property purchased or leased for business expansion" –

(A) *Included property*. – Except as provided in paragraph (B), the term "property purchased or leased for business expansion" means real property and improvements thereto, and tangible personal property, but only if the real or personal property was constructed, purchased, or leased and placed in service or use by the taxpayer, for use as a component part of a new or expanded rare earth element or critical mineral mining, processing, or product manufacturing facility as defined in this section, which is located within the state of West Virginia. This term includes only:

(i) Real property and improvements thereto having a useful life of four or more years, placed in service or use on or after July 1, 2022, by the taxpayer.

(ii) Real property and improvements thereto, acquired by written lease having a primary term of 10 or more years and placed in service or use by the taxpayer on or after July 1, 2022.

(iii) Tangible personal property placed in service or use by the taxpayer on or after July 1, 2022, with respect to which depreciation, or amortization in lieu of depreciation, is allowable in determining the personal or corporation net income tax liability of the business taxpayer under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code, and which has a useful life, at the time the property is placed in service or use in this state, of four or more years.

(iv) Tangible personal property acquired by written lease having a primary term of four years or longer, that commenced and was executed by the parties thereto on or after July 1, 2020, if used as a component part of a new or expanded rare earth element or critical mineral mining, processing, or product manufacturing facility, shall be included within this definition.

(v) Tangible personal property owned or leased, and used by the taxpayer at a business location outside this state which is moved into the state of West Virginia on or after July 1, 2022, for use as a component part of a new or expanded rare earth element or critical mineral mining, processing, or product manufacturing facility located in this state: *Provided,* That if the property is owned, it must be depreciable or amortizable personal property for income tax purposes, and have a useful life of four or more years remaining at the time it is placed in service or use in this state, and if the property is leased, the primary term of the lease remaining at the time the leased property is placed in service or use in this state, must be four or more years.

(B) *Excluded property*. – The term property purchased or leased for business expansion does not include:

(i) Property owned or leased by the taxpayer and for which the taxpayer was previously or is currently being allowed tax credit under §11-13D-1 *et seq.*, §11-13Q-1 *et seq.*, §11-13S-1 *et seq.*, or §11-13U-1 *et seq.* of this code.

(ii) Property owned or leased by the taxpayer and for which the seller, lessor, or other transferor, was previously or is currently being allowed tax credit under §11-13D-1 *et seq.*, §11-13Q-1 *et seq.*, §11-13S-1 *et seq.*, or §11-13U-1 *et seq.* of this code.

(iii) Repair costs, including materials used in the repair, unless for federal income tax purposes the cost of the repair must be capitalized and not expensed.

(iv) Airplanes and helicopters.

(v) Property which is primarily used outside this state, with use being determined based upon the amount of time the property is actually used both within and outside this state.

(vi) Property which is acquired incident to the purchase of the stock or assets of the seller, unless for good cause shown, the Tax Commissioner consents to waiving this requirement.

(vii) Natural resources in place.

(viii) Purchased or leased property, the cost or consideration for which cannot be quantified with any reasonable degree of accuracy at the time the property is placed in service or use: *Provided,* That when the contract of purchase or lease specifies a minimum purchase price or minimum annual rent the amount thereof shall be used to determine the qualified investment in the property under §11-13LL-6 of this code if the property otherwise qualifies as property purchased or leased for expansion of a rare earth element or critical mineral mining, processing, or manufacturing facility.

(23) “Purchase” means any acquisition of property, but only if:

(A) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under section 267 or 707 (b) of the United States Internal Revenue Code.

(B) The property is not acquired by one component member of an affiliated or controlled group from another component member of the same affiliated or controlled group, as applicable. The Tax Commissioner may waive this requirement if the property was acquired from a related party for its then fair market value; and

(C) The basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined:

(i) In whole or in part, by reference to the federal adjusted basis of the property in the hands of the person from whom it was acquired; or

(ii) Under Section 1014(e) of the United States Internal Revenue Code.

(24) “Qualified activity” means any rare earth element or critical mineral mining, processing, or product manufacturing business activity subject to any of the taxes imposed by §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code.

(25) “Rare earth elements” are defined as scandium, yttrium, lanthanum, cerium, praseodymium, neodymium, promethium, samarium, europium, gadolinium, terbium, dysprosium, holmium, erbium, thulium, ytterbium, and lutetium. This definition also encompasses critical minerals as otherwise defined in this section.

(26) “Rare earth element or critical element mining” or a “rare earth element or critical mineral mining facility” refers to rare earth or critical element mining operations that take place during the initial extraction of rare earth elements or critical elements, and includes any factory, mill, plant, warehouse, building, or complex of buildings located within this state, including the land on which it is located, and all machinery, equipment, and other real and personal property located at or within the facility, used in connection with the operation of the facility, in a business that is taxable in this state, and all site preparation and start-up costs of the taxpayer for the rare earth element or critical mineral mining facility which it capitalizes for federal income tax purposes.

(27) “Rare earth element or critical element processing” or a “rare earth element or critical mineral processing facility” refers to rare earth or critical element processing operations that take place after the initial extraction of rare earth elements or critical elements but before the manufacturing of such elements/minerals, and includes any factory, mill, plant, warehouse, building, or complex of buildings located within this state, including the land on which it is located, and all machinery, equipment, and other real and personal property located at or within the facility, used in connection with the operation of the facility, in a business that is taxable in this state, and all site preparation and start-up costs of the taxpayer for the rare earth element or critical mineral processing facility which it capitalizes for federal income tax purposes.

(28) “Rare earth or critical mineral product manufacturing” or a “rare earth element or critical mineral product manufacturing facility” refers to manufacturing operations that occur after both the extraction and processing phase of rare earth elements or critical minerals, whose companies primarily manufacture products that use rare earth elements or critical minerals, and includes any factory, mill, plant, warehouse, building, or complex of buildings located within this state, including the land on which it is located, and all machinery, equipment, and other real and personal property located at or within the facility, used in connection with the operation of the facility, in a business that is taxable in this state, and all site preparation and start-up costs of the

taxpayer for the rare earth element or critical mineral product manufacturing facility which it capitalizes for federal income tax purposes.

(29) “Related person” means:

(A) A corporation, partnership, association, or trust controlled by the taxpayer;

(B) An individual, corporation, partnership, association, or trust that is in control of the taxpayer;

(C) A corporation, partnership, association, or trust controlled by an individual, corporation, partnership, association, or trust that is in control of the taxpayer; or

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

For purposes of this subdivision, control, with respect to a corporation, means ownership, directly or indirectly, of stock possessing 50 percent or more of the total combined voting power of all classes of the stock of the corporation entitled to vote.

Control, with respect to a trust, means ownership, directly or indirectly, of 50 percent or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association, or of a beneficial interest in a trust is determined in accordance with the rules for constructive ownership of stock provided in section 267(c) of the United States Internal Revenue Code, other than paragraph (3) of that section.

(30) “Replacement rare earth element or critical mineral mining, processing, or product manufacturing facility” means any property (other than an expanded rare earth element or critical mineral mining, processing, or product manufacturing facility) that replaces or supersedes any other property located within this state that:

(A) The taxpayer or a related person used in or in connection with any rare earth element or critical mineral mining, processing, or product manufacturing facility for more than two years during the period of five consecutive years ending on the date the replacement or superseding property is placed in service by the taxpayer; or

(B) Is not used by the taxpayer or a related person in or in connection with any rare earth element or critical mineral mining, processing, or product manufacturing facility for a continuous period of one year or more commencing with the date the replacement or superseding property is placed in service by the taxpayer.

(31) "Taxpayer" means any person subject to any of the taxes imposed by §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code.

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

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

(34) "United States Internal Revenue Code" or "I.R.C." means the Internal Revenue Code as defined in §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code.

(35) "Used property" means property acquired after June 30, 2022, that is not "new property".

§11-13LL-4. Amount of credit allowed.

(a) *Credit allowed*. — Notwithstanding any other provision of this code, eligible taxpayers are allowed a credit against the portion of taxes imposed by this state that are attributable to and the consequence of the taxpayer's qualified investment in a new or expanded rare earth element or critical mineral mining, processing, or product manufacturing facility in this state, which results in the creation of new jobs. The amount of this credit is determined and applied as provided in this article.

(b) *Amount of credit*. — The amount of credit allowable is determined by multiplying the amount of the taxpayer's qualified investment, determined under §11-13LL-6 of this code, in property purchased or leased for a new, or expansion of an existing "rare earth element or critical mineral mining, processing, or product manufacturing facility", as defined in §11-13LL-3 of this code, by the taxpayer's new jobs percentage, determined under §11-13LL-7 of this code. The product of this calculation establishes the maximum amount of credit allowable under this article due to the qualified investment.

(c) *Application of credit over 10 years*. — The amount of credit allowable must be taken over a 10-year period, at the rate of one tenth of the amount thereof per taxable year, beginning with the taxable year in which the taxpayer places the qualified investment in service or use in this state, unless the taxpayer elected to delay the beginning of the 10-year period until the next succeeding taxable year. This election shall be made in the annual income tax return filed under this chapter for the taxable year in which qualified investment is first placed into service or use by the taxpayer. Once made, the election cannot be revoked. The annual credit allowance is taken in the manner prescribed in §11-13LL-5 of this code.

(d) *Placed in service or use*. — For purposes of the credit allowed by this section, property is considered placed in service or use in the earlier of the following taxable years:

(1) The taxable year in which, under the taxpayer's depreciation practice, the period for depreciation with respect to the property begins; or

(2) The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.

§11-13LL-5. Application of annual credit allowance.

(a) *In general*. — The aggregate annual credit allowance for the current taxable year is an amount equal to the sum of the following:

(1) The one-tenth part allowed under §11-13LL-4 of this code for qualified investment property placed into service or use during a prior taxable year; plus

(2) The one-tenth part allowed under §11-13LL-4 of this code for qualified investment property placed into service or use during the current taxable year.

(b) *Application of current year annual credit allowance*. — The amount determined under subsection (a) of this section is allowed as a credit against 80 percent of that portion of the taxpayer's state tax liability which is attributable to and the direct result of the taxpayer's qualified investment, and applied as provided in subsections (c) and (d), both inclusive, of this section, and in that order: *Provided,* That if the median salary of the new jobs is higher than the statewide average nonfarm payroll wage, as determined annually by Workforce West Virginia, the amount determined under subsection (a) of this section is allowed as a credit against 100 percent of that portion of the taxpayer's state tax liability which is attributable to and the direct result of the taxpayer's qualified investment, and shall be applied, as provided in subsections (c) through (d), both inclusive, of this section, and in that order.

(c) *Corporation net income taxes*. –

(1) That portion of the allowable credit attributable to qualified investment in rare earth element or critical mineral mining, processing, or product manufacturing facility may be applied to reduce the taxes imposed by §11-24-1 *et seq.* of this code for the taxable year as determined before application of allowable credits against tax.

(2) If the taxes due under §11-24-1 *et seq.* of this code, as determined before application of allowable credits against tax, are not solely attributable to and the direct result of the taxpayer's qualified investment in a rare earth element or critical mineral mining, processing, or product manufacturing business, the amount of the taxes that is attributable are determined by multiplying the amount of taxes due under §11-24-1 *et seq.* of this code for the taxable year, as determined before application of allowable credits against tax, by a fraction, the numerator of which is all wages, salaries, and other compensation paid during the taxable year to all employees of the taxpayer employed in this state whose positions are directly attributable to the qualified investment. The denominator of the fraction is the wages, salaries, and other compensation paid during the taxable year to all employees of the taxpayer employed in this state.

(d) *Personal income taxes*. —

(1) If the person making the qualified investment in a rare earth element or critical mineral mining, processing, or manufacturing facility is an electing small business corporation, as defined in section 1361 of the United States Internal Revenue Code, a partnership, a limited liability company that is treated as a partnership for federal income tax purposes, or a sole proprietorship, then any unused credit is allowed as a credit against the taxes imposed by §11-21-1 *et seq.* of

this code on the income from a rare earth element or critical mineral mining, processing, or product manufacturing facility, or on income of a sole proprietor attributable to the rare earth element or critical mineral mining, processing, or product manufacturing facility.

(2) Electing small business corporations, limited liability companies treated as partnerships for federal income tax purposes, partnerships, and other unincorporated organizations shall allocate the credit allowed by this article among its members in the same manner as profits and losses are allocated for the taxable year.

(3) If the amount of taxes due under §11-21-1 *et seq.* of this code, as determined before application of allowable credits against tax, that is attributable to business, is not solely attributable to and the direct result of the qualified investment of the electing small business corporation, limited liability company treated as a partnership for federal income tax purposes, other unincorporated organization, or sole proprietorship, the amount of the taxes that are so attributable are determined by multiplying the amount of taxes due under §11-21-1 *et seq.* of this code, as determined before application of allowable credits against tax that is attributable to business by a fraction, the numerator of which is all wages, salaries, and other compensation paid during the taxable year to all employees of the electing small business corporation, limited liability company, partnership, other unincorporated organization, or sole proprietorship employed in this state, whose positions are directly attributable to the qualified investment. The denominator of the fraction is the wages, salaries, and other compensation paid during the taxable year to all employees of the taxpayer.

(4) No credit is allowed under this section against any employer withholding taxes imposed by §11-21-1 *et seq.* of this code.

(e) If the wages, salaries, and other compensation fraction formula provisions of subsections (c) and (d) of this section, inclusive, do not fairly represent the taxes solely attributable to and the direct result of qualified investment of the taxpayer the Tax Commissioner may require, in respect to all or any part of the taxpayer's businesses or activities, if reasonable:

(1) Separate accounting or identification;

(2) Adjustment to the wages, salaries, and other compensation fraction formula to reflect all components of the tax liability;

(3) The inclusion of one or more additional factors that will fairly represent the taxes solely attributable to and the direct result of the qualified investment of the taxpayer and all other project participants in the businesses or other activities subject to tax; or

(4) The employment of any other method to effectuate an equitable attribution of the taxes. In order to effectuate the purposes of this subsection, the Tax Commissioner may propose for promulgation rules, including emergency rules, in accordance with §29A-3-1 *et seq.* of this code.

(f) *Unused credit*. — If any credit remains after application of subsection (b) of this section, the amount thereof is carried forward to each ensuing tax year until used or until the expiration of the tenth taxable year subsequent to the end of the initial 10-year credit application period. If any unused credit remains after the 20th year, the amount thereof is forfeited. No carryback to a prior taxable year is allowed for the amount of any unused portion of any annual credit allowance.

§11-13LL-6. Qualified investment.

(a) *General*. — The qualified investment in property purchased or leased for a new, or expansion of an existing, rare earth element or critical mineral mining, processing, or product manufacturing facility is the applicable percentage of the cost of each property purchased or leased for the purpose of the new, or expansion of an existing, rare earth element or critical mineral mining, processing, or product manufacturing facility which is placed in service or use in this state by the taxpayer during the taxable year.

(b) *Applicable percentage*. — For the purpose of subsection (a), the applicable percentage of any property is determined under the following table:

If useful life is:	The applicable percentage is:
Less than four years	0%
Four years or more but less than six years	33 1/3%

Six years or more but less than eight years	66 2/3%
Eight years or more	100%

The useful life of any property, for purposes of this section, is determined as of the date the property is first placed in service or use in this state by the taxpayer, determined in accordance with such rules and requirements the Tax Commissioner may prescribe.

(c) *Cost*. — For purposes of subsection (a) of this section, the cost of each property purchased for a new, or expansion of an existing, rare earth element or critical mineral mining, processing, or manufacturing facility is determined under the following rules:

(1) *Trade-ins*. — Cost does not include the value of property given in trade or exchange for the property purchased for a new, or for expansion of an existing, rare earth element or critical mineral mining, processing, or manufacturing facility.

(2) *Damaged, destroyed, or stolen property*. — If property is damaged or destroyed by fire, flood, storm, or other casualty, or is stolen, then the cost of replacement property does not include any insurance proceeds received in compensation for the loss.

(3) *Rental property*. –

(A) The cost of real property acquired by written lease for a primary term of 10 years or longer is 100 percent of the rent reserved for the primary term of the lease, not to exceed 20 years.

(B) The cost of tangible personal property acquired by written lease for a primary term of:

(i) Four years, or longer, is one third of the rent reserved for the primary term of the lease;

(ii) Six years, or longer, is two thirds of the rent reserved for the primary term of the lease; or

(iii) Eight years, or longer, is 100 percent of the rent reserved for the primary term of the lease, not to exceed 20 years: *Provided,* That in no event may rent reserved include rent for any year subsequent to expiration of the book life of the equipment, determined using the straight-line method of depreciation.

(4) *Self-constructed property*. — In the case of self-constructed property, the cost thereof is the amount properly charged to the capital account for depreciation in accordance with federal income tax law.

(5) *Transferred property*. — The cost of property used by the taxpayer out-of-state and then brought into this state, is determined based on the remaining useful life of the property at the time it is placed in service or use in this state, and the cost is the original cost of the property to the taxpayer less straight line depreciation allowable for the tax years or portions thereof the taxpayer used the property outside this state. In the case of leased tangible personal property, cost is based on the period remaining in the primary term of the lease after the property is brought into this state for use in a new or expanded business facility of the taxpayer, and is the rent reserved for the remaining period of the primary term of the lease, not to exceed 20 years, or the remaining useful life of the property, as determined as aforesaid, whichever is less.

§11-13LL-7. New jobs percentage.

(a) *In general*. — The new jobs percentage is based on the number of new jobs created in this state directly attributable to the qualified investment of the taxpayer.

(b) *When a job is attributable*. — An employee's position is directly attributable to the qualified investment if:

(1) The employee's service is performed or his or her base of operations is at the new or expanded rare earth element or critical mineral mining, processing, or manufacturing facility;

(2) The position did not exist prior to the construction, renovation, expansion, or acquisition of the rare earth element or critical mineral mining, processing, or product manufacturing facility and the making of the qualified investment; and

(3) But for the qualified investment, the position would not have existed.

(c) *Applicable percentage*. — For the purpose of subsection (a) of this section, the applicable new jobs percentage is determined under the following table:

If number of new jobs is at least:	The applicable percentage is:

5	10%
50	15%
150	20%

(d) *Certification of new jobs*. — With the annual return for the applicable taxes filed for the taxable year in which the qualified investment is first placed in service or use in this state, the taxpayer shall estimate and certify the number of new jobs reasonably projected to be created by it in this state within the period prescribed in subsection (f) of this section that are, or will be, directly attributable to the qualified investment of the taxpayer. For purposes of this section, applicable taxes means the taxes imposed by §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code against which this credit is applied.

(e) *Equivalency of permanent employees*. — The hours of part-time employees shall be aggregated to determine the number of equivalent full-time employees for the purpose of this section.

(f) *Redetermination of new jobs percentage*. — With the annual return for the applicable taxes imposed, filed for the third taxable year in which the qualified investment is in service or use, the taxpayer shall certify the actual number of new jobs created by it in this state that are directly attributable to the qualified investment of the taxpayer.

(1) If the actual number of jobs created would result in a higher new jobs percentage, the credit allowed under this article shall be redetermined and amended returns shall be filed for the first and second taxable years that the qualified investment was in service or use in this state.

(2) If the actual number of jobs created would result in a lower new jobs percentage, the credit previously allowed under this article shall be redetermined and amended returns shall be filed for the first and second taxable years. In applying the amount of redetermined credit allowable for the two preceding taxable years, the redetermined credit shall first be applied to the extent it was originally applied in the prior two years to personal income taxes, and then to corporation net income taxes. Any additional taxes due under this chapter shall be remitted with

the amended returns filed with the Tax Commissioner, along with interest, as provided in §11-10-17 of this code, and a 10 percent penalty determined on the amount of taxes due with the amended return, which may be waived by the commissioner if the taxpayer shows that the overclaimed amount of the new jobs percentage was due to reasonable cause and not due to willful neglect.

(g) *Additional new jobs percentage*. — When the qualified investment is $20 million or more and if the number of full-time construction laborers and mechanics working at the job site of the new or expanded business facility is 50 or more, or if the number of hours of all construction laborers and mechanics working at the job site is equal to or greater than the number of hours 50 full-time construction laborers and mechanics would have worked at the job site during a 12 consecutive month period, a taxpayer that is allowed a new jobs percentage determined under subsection (a) of this section shall be allowed a new jobs percentage that is five percentage points higher than the new jobs percentage allowed under subsection (a) of this section. In no event may construction laborers and mechanics be used to attain or retain a subsection (a) new jobs percentage. The number of full-time construction laborers and mechanics working at the job site shall be determined by dividing the total number of hours worked by all construction laborers and mechanics on a new or expanded business facility during a 12 consecutive month period by 2,080 hours per year. A taxpayer may not claim the additional new jobs percentage allowed by this section unless the taxpayer includes with the certification filed under subsection (d) of this section a certification signed by the general contractor or the construction manager certifying that construction laborers employed at the job site during a consecutive 12 month period aggregated the equivalent of at least 50 full-time employees and the taxpayer has received from the general contractor or construction manager records substantiating the certification, which records shall be retained by the taxpayer for 13 years after the day the expansion to an existing business facility, or the new business facility, is first placed in service or use by the taxpayer. For purposes of subsection (g) of this section:

(1) The term construction laborers and mechanics means those workers, utilized by a contractor or subcontractor at any tier, whose duties are manual or physical in nature, including those workers who use tools or are performing the work of a trade, as distinguished from mental or managerial and working supervisors who devote more than 20 percent of their time during a workweek performing the duties of a laborer or mechanic; and

(2) The term job site is limited to the physical place or places where the construction called for in the contract will remain when the work on it is completed and nearby property, as described in subdivision (3) of this subsection, used by the contractor or subcontractor during construction that, because of proximity, can reasonably be included in the site.

(3) Except as provided in subdivision (4) of this subsection, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, and tool yards are part of the job site provided they are dedicated exclusively, or nearly so, to performance of the contract or project and are located in proximity to the actual construction location so that it would be reasonable to include them.

(4) The term “job site” does not include permanent home offices, branch offices, branch plant establishments, fabrication yards, or tool yards of a contractor or subcontractor whose locations and continuance in operation are determined without regard to the contract or subcontract for construction of a new or expanded business facility.

§11-13LL-8. Forfeiture of unused tax credits; redetermination of credit allowed.

(a) *Disposition of property or cessation of use*. — If during any taxable year, property with respect to which a tax credit has been allowed under §11-13LL-1 *et seq.* of this code:

(1) Is disposed of prior to the end of its useful life, as determined under §11-13LL-6 of this code; or

(2) Ceases to be used in a rare earth element or critical mineral mining, processing, or product manufacturing facility of the taxpayer in this state prior to the end of its useful life, as determined under §11-13LL-6 of this code, then the unused portion of the credit allowed for the

property is forfeited for the taxable year and all ensuing years. Additionally, except when the property is damaged or destroyed by fire, flood, storm, or other casualty, or is stolen, the taxpayer shall redetermine the amount of credit allowed in all earlier years by reducing the applicable percentage of cost of the property allowed under §11-13LL-5 of this code, to correspond with the percentage of cost allowable for the period of time that the property was actually used in this state in the new or expanded business of the taxpayer. The taxpayer shall then file a reconciliation statement for the year in which the forfeiture occurs and pay any additional taxes owed due to reduction of the amount of credit allowable for the earlier years, plus interest and any applicable penalties. The reconciliation statement shall be filed with the annual income return for the primary tax for which the taxpayer is liable under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code, whichever is applicable.

(b) *Cessation of operation of rare earth element or critical mineral mining, processing, or product manufacturing facility*. — If during any taxable year the taxpayer ceases operation of a rare earth element or critical mineral mining, processing, or product manufacturing facility in this state for which credit was allowed under this article, before expiration of the useful life of property with respect to which tax credit has been allowed under this article, then the unused portion of the allowed credit is forfeited for the taxable year and for all ensuing years. Additionally, except when the cessation is due to fire, flood, storm, or other casualty, the taxpayer shall redetermine the amount of credit allowed in earlier years by reducing the applicable percentage of cost of the property allowed under §11-13LL-6 of this code, to correspond with the percentage of cost allowable for the period of time that the property was actually used in this state in a rare earth element or critical mineral mining, processing, or product manufacturing business of the taxpayer that is taxable under §11-24-1 *et seq.* of this code, or in the case of a partnership, limited liability company treated as a partnership for federal income tax purposes, electing small business corporation, other unincorporated entity, or sole proprietorship, taxable under §11-21-1 *et seq.* of this code. The taxpayer shall then file a reconciliation statement with the annual return for the primary tax for which the taxpayer is liable under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code, whichever is applicable, for the year in which the forfeiture occurs, and pay any additional taxes owed due to the reduction of the amount of credit allowable for the earlier years, plus interest and any applicable penalties.

(c) *Reduction in number of employees*. — If during any taxable year subsequent to the taxable year in which the new jobs percentage is redetermined as provided in §11-13LL-7 of this code, the average number of employees of the taxpayer, for the then current taxable year, employed in positions created because of and directly attributable to the qualified investment falls below the minimum number of new jobs created upon which the taxpayer's annual credit allowance is based, the taxpayer shall calculate what his or her annual credit allowance would have been had his or her new jobs percentage been determined based upon the average number of employees, for the then current taxable year, employed in positions created because of and directly attributable to the qualified investment. The difference between the result of this calculation and the taxpayer's annual credit allowance for the qualified investment as determined under §11-13LL-4 of this code, is forfeited for the then current taxable year, and for each succeeding taxable year unless for a succeeding taxable year the taxpayer's average employment in positions directly attributable to the qualified investment once again meets the level required to enable the taxpayer to utilize its full annual credit allowance for that taxable year.

§11-13LL-9. Recapture of credit; recapture tax imposed.

(a) *When recapture tax applies*. —

(1) Any person who places qualified investment property in service or use at a rare earth element or critical mineral mining, processing, or manufacturing facility and who fails to use the qualified investment property for at least the period of its useful life, as determined as of the time the property was placed in service or use, or the period of time over which tax credits allowed under this article with respect to the property are applied under this article, whichever period is less, and who reduces the number of its employees filling new jobs at its rare earth element or

critical mineral mining, processing, or product manufacturing facility in this state, which were created and are directly attributable to the qualified investment property, after the third taxable year in which the qualified investment property was placed in service or use, or fails to continue to employ individuals in all the new jobs created as a direct result of the qualified investment property and used to qualify for the credit allowed by this article, prior to the end of the tenth taxable year after the qualified investment property was placed in service or use, the person shall pay the recapture tax imposed by subsection (b) of this section.

(2) This section does not apply when §11-13LL-11 of this code applies. However, the successor, or the successors, and the person, or persons, who previously claimed credit under this article with respect to the qualified investment property and the new jobs attributable thereto, are jointly and severally liable for payment of any recapture tax subsequently imposed under this section with respect to the qualified investment property and new jobs.

(b) *Recapture tax imposed*. — The recapture tax imposed by this subsection is the amount determined as follows:

(1) *Full recapture*. — If the taxpayer prematurely removes qualified investment property placed in service (when considered as a class) from economic service in the taxpayer's rare earth element or critical mineral mining, processing, or product manufacturing facility in this state, and the number of employees filling the new jobs created by the person falls below the number of new jobs required to be created in order to qualify for the amount of credit being claimed, the taxpayer shall recapture the amount of credit claimed under §11-13LL-5 of this code for the taxable year, and all preceding taxable years, on qualified investment property which has been prematurely removed from service. The amount of tax due under this subdivision is an amount equal to the amount of credit that is recaptured under this subdivision.

(2) *Partial recapture*. — If the taxpayer prematurely removes qualified investment property from economic service in the taxpayer's rare earth element or critical mineral mining, processing, or product manufacturing facility in this state, and the number of employees filling the new jobs

created by the person remains 20 or more, but falls below the number necessary to sustain continued application of credit determined by use of the new job percentage upon which the taxpayer's one-tenth annual credit allowance was determined under §11-13LL-4 of this code, taxpayer shall recapture an amount of credit equal to the difference between:

(A) The amount of credit claimed under §11-13LL-5 of this code for the taxable year, and all preceding taxable years; and

(B) The amount of credit that would have been claimed in those years if the amount of credit allowable under §11-13LL-4 of this code had been determined based on the qualified investment property which remains in service using the average number of new jobs filled by employees in the taxable year for which recapture occurs. The amount of tax due under this subdivision is an amount equal to the amount of credit that is recaptured under this subdivision.

(3) *Additional recapture*. — If after a partial recapture under subdivision (2) of this subsection, the taxpayer further reduces the number of employees filling new jobs, the taxpayer shall recapture an additional amount determined as provided under subdivision (1) of this subsection. The amount of tax due under this subdivision is an amount equal to the amount of credit that is recaptured under this subdivision.

(c) *Payment of recapture tax*. — The amount of tax recaptured under this section is due and payable on the day the person's annual return is due for the taxable year in which this section applies, under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code. When the employer is a partnership, limited liability company, or S corporation for federal income tax purposes, the recapture tax shall be paid by those persons who are partners in the partnership, members in the company, or shareholders in the S corporation, in the taxable year in which recapture occurs under this section.

(d) *Rules*. — The Tax Commissioner may promulgate such rules as may be useful or necessary to carry out the purpose of this section and to implement the intent of the Legislature. Rules shall be promulgated in accordance with the provisions of §29A-3-1 *et seq.* of this code.

§11-13LL-10. Transfer of qualified investment to successors.

(a) *Mere change in form of business*. — Property may not be treated as disposed of under §11-13LL-8 of this code, by reason of a mere change in the form of conducting the business as long as the property is retained in the successor's rare earth element or critical mineral mining, processing, or product manufacturing facility in this state, and the transferor business retains a controlling interest in the successor business. In this event, the successor business is allowed to claim the amount of credit still available with respect to the business facility or facilities transferred, and the transferor business may not be required to redetermine the amount of credit allowed in earlier years.

(b) *Transfer or sale to successor*. — Property is not treated as disposed of under §11-13LL-10 of this code by reason of any transfer or sale to a successor business which continues to operate the rare earth element or critical mineral mining, processing, or product manufacturing facility in this state. Upon transfer or sale, the successor shall acquire the amount of credit that remains available under this article for each subsequent taxable year and the transferor business is not required to redetermine the amount of credit allowed in earlier years.

§11-13LL-11. Identification of investment credit property.

Every taxpayer who claims credit under §11-13LL-1 *et seq.* of this code shall maintain sufficient records to establish the following facts for each item of qualified property:

(1) Its identity;

(2) Its actual or reasonably determined cost;

(3) Its straight-line depreciation life;

(4) The month and taxable year in which it was placed in service;

(5) The amount of credit taken; and

(6) The date it was disposed of or otherwise ceased to be use as qualified property in the rare earth element or critical mineral mining, processing, or product manufacturing facility of the taxpayer.

§11-13LL-12. Failure to keep records of investment credit property.

A taxpayer who does not keep the records required for identification of investment credit property is subject to the following rules:

(1) A taxpayer is treated as having disposed of, during the taxable year, any investment credit property which the taxpayer cannot establish was still on hand, in this state, at the end of that year.

(2) If a taxpayer cannot establish when investment credit property reported for purposes of claiming this credit returned during the taxable year was placed in service, the taxpayer is treated as having placed it in service in the most recent prior year in which similar property was placed in service, unless the taxpayer can establish that the property placed in service in the most recent year is still on hand. In that event, the taxpayer will be treated as having placed the returned property in service in the next most recent year.

§11-13LL-13. Interpretation and construction.

(a) No inference, implication, or presumption of legislative construction or intent may be drawn or made by reason of the location or grouping of any particular section, provision, or portion of §11-13LL-1 *et seq.* of this code; and no legal effect may be given to any descriptive matter or heading relating to any section, subsection, or paragraph of this article.

(b) The provisions of §11-13LL-1 *et seq.* of this code shall be reasonably construed in order to effectuate the legislative intent recited in §11-13LL-2 of this code.

§11-13LL-14. Burden of proof; application required; failure to make timely application.

(a) *Burden of proof*. — The burden of proof is on the taxpayer to establish by clear and convincing evidence that the taxpayer is entitled to the benefits allowed by §11-13LL-1 *et seq.* of this code.

(b) *Application for credit required*. — (1) *Application required*. — Notwithstanding any provision of this article to the contrary, no credit is allowed or may be applied under §11-13LL-1 *et seq.* of this code for any qualified investment property placed in service or use until the person asserting a claim for the allowance of credit under this article makes written application to the commissioner for allowance of credit as provided in this subsection. An application for credit shall be filed, in the form prescribed by the Tax Commissioner, no later than the last day for filing the tax returns, determined by including any authorized extension of time for filing the return, required under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code for the taxable year in which the property to which the credit relates is placed in service or use and all information required by the form shall be provided.

(2) *Failure to make timely application*. — The failure to timely apply for the credit results in the forfeiture of 50 percent of the annual credit allowance otherwise allowable under §11-13LL-1 *et seq.* of this code. This penalty applies annually until the application is filed.

§11-13LL-15. Tax credit review and accountability.

(a) Beginning on February 1, 2027, and every third year thereafter, the Tax Commissioner shall submit to the Governor, the President of the Senate, and the Speaker of the House of Delegates a tax credit review and accountability report evaluating the cost effectiveness of this credit during the most recent three-year period for which information is available. The criteria to be evaluated shall include, but not be limited to, for each year of the three-year period:

(1) The numbers of taxpayers claiming the credit;

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

(3) The cost of the credit;

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

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

(b) Taxpayers claiming the credit shall provide any information the Tax Commissioner may require to prepare the report required by this section: *Provided,* That the information provided is subject to the confidentiality and disclosure provisions of §11-10-5d of this code.

(c) On or before February 1, 2027, the Department of Commerce, in consultation with the Tax Commissioner, the Department of Transportation, and the Department of Environmental Protection shall submit to the Governor, the President of the Senate, and the Speaker of the House of Delegates a report of the impact of all the tax credits and other economic incentives provided in §11-13LL-1 *et seq.* of this code upon: (1) Economic development in this state, including, but not limited to, the creation of jobs in this state; (2) the state's infrastructure, including, but not limited to, the need for construction or maintenance of the roads and highways of the state; (3) the natural resources of the state; and (4) upon public and private property interests in the state.

§11-13LL-16. Rules.

The Tax Commissioner may promulgate such interpretive, legislative, and procedural rules as the commissioner deems to be useful or necessary to carry out the purpose of §11-13LL-1 *et seq.* of this code and to implement the intent of the Legislature. The Tax Commissioner may promulgate emergency rules if they are filed in the West Virginia Register before January 1, 2023. All rules shall be promulgated in accordance with the provisions of §29A-3-1 *et seq.* of this code.

§11-13LL-17. General procedure and administration.

Each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in §11-10-1 *et seq.* of this code applies to the tax credit allowed under §11-13LL-1 *et seq.* of this code, except as otherwise expressly provided in this article, with like effect as if that act were applicable only to the tax credit allowed by §11-13LL-1 *et seq.* of this code and were set forth *in extenso* in this article.

§11-13LL-18. Crimes and penalties.

Each and every provision of the “West Virginia Tax Crimes and Penalties Act” set forth in §11-9-1 *et seq.* of this code applies to the tax credit allowed by §11-13LL-1 *et seq.* of this code with like effect as if that act were applicable only to the tax credit §11-13LL-1 *et seq.* of this code and were set forth *in extenso* in this article.

§11-13LL-19. Severability.

(a) If any provision of §11-13LL-1 *et seq.* of this code, or the application thereof, is for any reason adjudged by any court of competent jurisdiction to be invalid, the judgment may not affect, impair, or invalidate the remainder of §11-13LL-1 *et seq.* of this code, but shall be confined in its operation to the provision thereof directly involved in the controversy in which the judgment shall have been rendered, and the applicability of the provision to other persons or circumstances may not be affected thereby.

(b) If any provision of §11-13LL-1 *et seq.* of this code, or the application thereof, is made invalid or inapplicable by reason of the repeal or any other invalidation of any statute therein addressed or referred to, such invalidation or inapplicability may not affect, impair, or invalidate the remainder of §11-13LL-1 *et seq.* of this code, but shall be confined in its operation to the provision thereof directly involved with, pertaining to, addressing, or referring to the statute, and the application of the provision with regard to other statutes or in other instances not affected by any such repealed or invalid statute may not be abrogated or diminished in any way.

§11-13LL-20. Effective date.

The credit allowed by this article is allowable for qualified investment property placed in service or use on or after July 1, 2023, subject to the rules contained in §11-13LL-1 *et seq.* of this code and rules promulgated by the Tax Commissioner pursuant to §29A-3-1 *et seq.* of this code.

ARTICLE 2. ABANDONED MINE LANDS AND RECLAMATION ACT.

§22-2-10. Ownership of substances derived from treatment of acid mine drainage.

Treatment of acid mine drainage reduces its environmental harm by reducing metal and acid pollution of receiving streams. Treatment also produces materials that may contain valuable concentrations of rare earth elements and critical materials. Various parties may elect or be compelled to treat acid mine drainage. In order to encourage the treatment of acid mine drainage, the State of West Virginia determines that all chemical compounds, elements, and other materials of value derived from the byproducts of acid mine drainage treatment may, at the discretion of the treating party accrue, be used by the treating party or its designee for its commercial benefit. This condition applies regardless of land or other mineral ownership claims.

The DEP may promulgate such emergency, interpretive, legislative, and procedural rules as the secretary deems to be useful or necessary to carry out the purpose of this article and to implement the intent of the Legislature.

NOTE: The purpose of this bill is to create the Rare Earth Element and Critical Mineral Investment Tax Credit Act of 2022. The amount of credit allowable depends upon the cost of the qualified investment property and the number of new jobs created. Property that qualifies for another tax credit in chapter 11 of the West Virginia Code is not eligible for credit under this bill. Similarly, qualified investment property under this bill is not eligible for another credit under chapter 11 of the code. The bill includes rules for administration and enforcement of the credit. If enacted, the credit would apply to qualified investment property placed in service or use at a rare earth element or critical mineral mining or processing facility, or a manufacturing facility that uses rare earth elements or critical minerals in this state. The bill provides for an effective date. Finally, the bill establishes clear legal right to the title of chemical compounds, elements, and substances that are derived from the treatment of acid mine drainage on mined lands.

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