

# WEST VIRGINIA LEGISLATURE

## 2022 REGULAR SESSION

### Introduced

## House Bill 4654

FISCAL  
NOTE

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LINVILLE, AND MARTIN

[Introduced February 11, 2022; Referred to the Select  
Committee on Tourism and Economic Diversification  
then Finance]

1 A BILL to amend and reenact §11-13S-4 of the Code of West Virginia, 1931, as amended; and to  
2 amend said code by adding thereto a new article, designated §11-13LL-1, §11-13LL-2,  
3 §11-13LL-3, §11-13LL-4, §11-13LL-5, §11-13LL-6, §11-13LL-7, §11-13LL-8, §11-13LL-9,  
4 §11-13LL-10, §11-13LL-11, §11-13LL-12, §11-13LL-13, §11-13LL-14, §11-13LL-15, §11-  
5 13LL-16, §11-13LL-17, all relating generally to the creation of the Downstream Steel,  
6 Aluminum, and Metal Product Manufacturing Act of 2022; providing certain relief of  
7 taxation for the manufacturing, sale, and use of certain defined products to encourage  
8 economic growth; amending the definition of manufacturing for purposes of special  
9 method for appraising qualified capital additions to manufacturing facilities for property tax  
10 purposes; amending the formula for calculating the manufacturing investment tax credit  
11 amount allowed for manufacturing investment to include steel, aluminum, and metal  
12 product manufacturing; increasing the amount of such allowable credit for said industries;  
13 creating the Downstream Steel, Aluminum, and Metal Product Manufacturing Act of 2022;  
14 providing for administration and enforcement of the tax credit; making legislative findings;  
15 stating legislative purpose; defining terms; providing limitations based upon qualified  
16 investment amount; providing conditions for qualification and use; defining in service or  
17 use; providing for the application of the credit to the corporate net income tax and the  
18 personal income tax, as appropriate; providing for methods of calculation of the qualified  
19 investment; providing for carry over and forfeiture of unused tax credits; providing  
20 limitations for credits being carried over; allowing transfer of qualified investment property  
21 without forfeiture under certain circumstances; requiring identification of qualified  
22 investment property and record keeping; providing penalties for failure to keep required  
23 records; providing for interpretation and construction; requiring timely filing of application  
24 for credit; specifying burden of proof; requiring periodic tax credit review and accountability  
25 reports; authorizing rulemaking; making credit subject to West Virginia Tax Procedure and

26 Administration Act and West Virginia Tax Crimes and Penalties Act; and providing for  
27 severability; providing effective dates; and providing for certain exemptions.

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

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

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

1 (a) *Credit allowed.* — There is allowed to eligible taxpayers and to persons described in  
2 subdivision (4), subsection (b) of this section a credit against the taxes imposed by §11-13A- 1 *et*  
3 *seq.*, and §11-24-1-1 *et seq.* of this code: *Provided*, That a tax credit for any eligible taxpayer  
4 operating a business activity classified as having a sector identifier, consisting of the six digit code  
5 number 211112 such eligible taxpayer must comply with the provisions of subsection (e) of this  
6 section for all construction related thereto in order to be eligible for any credit under this article.  
7 The amount of credit shall be determined as hereinafter provided in this section.

8 (b) *Amount of credit allowable.* — The amount of allowable credit under this article is equal  
9 to five percent of the qualified manufacturing investment (as determined in section five of this  
10 article): *Provided*, That the amount of allowable credit under this article is equal to 50 percent of  
11 the qualified manufacturing investment (as determined in §11-13S-5. of this code) for any eligible  
12 taxpayer operating a business that is or may be classified as having a sector identifier, consisting  
13 of the six-digit code number 332992 or 332994, as defined on January 1, 2021, as well as for  
14 NAIC code numbers for steel, aluminum, and metal product manufacturing listed in subsection 14  
15 of §11-13LL-2, as defined on January 1, 2022. This credit shall reduce the severance tax, imposed  
16 under §11-13A-1 *et seq.* of this code and the corporation net income tax imposed under §11-24-  
17 1 *et seq.* of this code, in that order, subject to the following conditions and limitations:

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

21 (2) *Severance tax.* — The credit is applied to reduce the severance tax imposed under

22 §11-13A-1 *et seq.* of this code (determined before application of the credit allowed by §11-12B-3  
23 of this code and before any other allowable credits against tax and before application of the annual  
24 exemption allowed by §11-13A-10 of this code). The amount of annual credit allowed may not  
25 reduce the severance tax, imposed under §11-13A-1 *et seq.* of this code, below 50 percent of the  
26 amount which would be imposed for such taxable year in the absence of this credit against tax:  
27 *Provided*, That for tax years beginning on and after January 1, 2009, the amount of annual credit  
28 allowed may not reduce the severance tax, imposed under §11-13A-1 *et seq.* of this code, below  
29 40 percent of the amount which would be imposed for such taxable year in the absence of this  
30 credit against tax. When in any taxable year the taxpayer is entitled to claim credit under this  
31 article and §11-13D-1 *et seq.* of this code, the total amount of all credits allowable for the taxable  
32 year may not reduce the amount of the severance tax, imposed under §11-13A-1 *et seq.* of this  
33 code, below 50 percent of the amount which would be imposed for such taxable year (determined  
34 before application of the credit allowed by §11-12B-3 of this code and before any other allowable  
35 credits against tax and before application of the annual exemption allowed by §11-13A-10 of this  
36 code): *Provided, however*, That when in any taxable year beginning on and after January 1, 2009,  
37 the taxpayer is entitled to claim credit under this article and §11-13D-1 *et seq.* of this code, the  
38 total amount of all credits allowable for the taxable year may not reduce the amount of the  
39 severance tax imposed under §11-13A-1 *et seq.* of this code, below 40 percent of the amount  
40 which would be imposed for such taxable year as determined before application of the credit  
41 allowed by §11-12B-3 of this code and before any other allowable credits against tax and before  
42 application of the annual exemption allowed by §11-13A-10 of this code;

43 (3) *Corporation net income tax.* —

44 After application of subdivision (2) of this subsection, any unused credit is next applied to  
45 reduce the corporation net income tax imposed under §11-24-1 *et seq.* of this code (determined  
46 before application of any other allowable credits against tax). The amount of annual credit allowed  
47 will not reduce corporation net income tax, imposed under §11-24-1 *et seq.* of this code, below

48 50 percent of the amount which would be imposed for such taxable year in the absence of this  
49 credit against tax: *Provided*, That for tax years beginning on and after January 1, 2009, the amount  
50 of annual credit allowed will not reduce corporation net income tax, imposed under §11-24-1 *et*  
51 *seq.* of this code, below 40 percent of the amount which would be imposed for such taxable year  
52 in the absence of this credit against tax. When in any taxable year the taxpayer is entitled to claim  
53 credit under this article and §11-13D-1 *et seq.* of this code, the total amount of all credits allowable  
54 for the taxable year may not reduce the amount of the corporation net income tax, imposed under  
55 §11-24-1 *et seq.* of this code, below 50 percent of the amount which would be imposed for the  
56 taxable year (determined before application of any other allowable credits against tax): *Provided*,  
57 *however*, That when in any taxable year beginning on and after January 1, 2009, the taxpayer is  
58 entitled to claim credit under this article and §11-13D-1 *et seq.* of this code, the total amount of  
59 all credits allowable for the taxable year may not reduce the amount of the corporation net income  
60 tax, imposed under article §11-24-1 *et seq.* of this code, below 40 percent of the amount which  
61 would be imposed for the taxable year as determined before application of any other allowable  
62 credits against tax;

63 (4) *Pass-through entities.* —

64 (A) If the eligible taxpayer is a limited liability company, small business corporation or a  
65 partnership, then any unused credit (after application of subdivisions (2) and (3) of this subsection)  
66 is allowed as a credit against the taxes imposed by §11-24-1 *et seq.* of this code on owners of  
67 the eligible taxpayer on the conduit income directly derived from the eligible taxpayer by its  
68 owners. Only those portions of the tax imposed by §11-24-1 *et seq.* of this code that are imposed  
69 on income directly derived by the owner from the eligible taxpayer are subject to offset by this  
70 credit.

71 (B) The amount of annual credit allowed will not reduce corporation net income tax,  
72 imposed under §11-24-1 *et seq.* of this code, below 50 percent of the amount which would be  
73 imposed on the conduit income directly derived from the eligible taxpayer by each owner for such

74 taxable year in the absence of this credit against the taxes (determined before application of any  
75 other allowable credits against tax): *Provided*, That for tax years beginning on and after January  
76 1, 2009, the amount of annual credit allowed will not reduce corporation net income tax, imposed  
77 under §11-24-1 *et seq.* of this code, below 40 percent of the amount which would be imposed on  
78 the conduit income directly derived from the eligible taxpayer by each owner for such taxable year  
79 in the absence of this credit against the taxes as determined before application of any other  
80 allowable credits against tax.

81 (C) When in any taxable year the taxpayer is entitled to claim credit under this article and  
82 §11-13D-1 *et seq.* of this code, the total amount of all credits allowable for the taxable year will  
83 not reduce the corporation net income tax imposed on the conduit income directly derived from  
84 the eligible taxpayer by each owner below 50 percent of the amount that would be imposed for  
85 such taxable year on the conduit income (determined before application of any other allowable  
86 credits against tax): *Provided*, That when in any taxable year beginning on and after January 1,  
87 2009, the taxpayer is entitled to claim credit under this article and §11-13D-1 *et seq.* of this code,  
88 the total amount of all credits allowable for the taxable year will not reduce the corporation net  
89 income tax imposed on the conduit income directly derived from the eligible taxpayer by each  
90 owner below 40 percent of the amount that would be imposed for such taxable year on the conduit  
91 income as determined before application of any other allowable credits against tax;

92 (5) Small business corporations, limited liability companies, partnerships and other  
93 unincorporated organizations shall allocate any unused credit after application of subdivisions (2)  
94 and (3) of this subsection among their members in the same manner as profits and losses are  
95 allocated for the taxable year; and

96 (6) No credit is allowed under this article against any tax imposed by §11-21-1 *et seq.* of  
97 this code.

98 (c) No carryover to a subsequent taxable year or carryback to a prior taxable year is  
99 allowed for the amount of any unused portion of any annual credit allowance. Any unused credit

100 is forfeited.

101 (d) *Application for credit required.* —

102 (1) *Application required.* — Notwithstanding any provision of this article to the contrary, no  
103 credit is allowed or may be applied under this article for any qualified investment property placed  
104 in service or use until the person claiming the credit makes written application to the Tax  
105 Commissioner for allowance of credit as provided in this section. This application shall be in the  
106 form prescribed by the Tax Commissioner and shall provide the number and type of jobs created,  
107 if any, by the manufacturing investment, the average wage rates and benefits paid to employees  
108 filling the new jobs and any other information the Tax Commissioner may require. This application  
109 shall be filed with the Tax Commissioner no later than the last day for filing the annual return,  
110 determined by including any authorized extension of time for filing the return, required under §11-  
111 21-1 *et seq.* or §11-24-1-1 *et seq.* of this code for the taxable year in which the property to which  
112 the credit relates is placed in service or use.

113 (2) *Failure to file.* — The failure to timely apply the application for credit under this section  
114 results in forfeiture of 50 percent of the annual credit allowance otherwise allowable under this  
115 article. This penalty applies annually until the application is filed.

116 (e) (1) Any person or entity undertaking any construction related to any business activity  
117 included within North American Industrial Code six-digit code number 211112, the value of which  
118 is an amount equal to or greater than \$500,000, shall hire at least 75 percent of employees for  
119 said construction from the local labor market, to be rounded off, with at least two employees from  
120 outside the local labor market permissible for each employer per project, “the local labor market”  
121 being defined as every county in West Virginia and any county outside of West Virginia if any  
122 portion of that county is within 50 miles of the border of West Virginia.

123 (2) Any person or entity unable to employ the minimum number of employees from the  
124 local labor market shall inform the nearest office of the Bureau of Employment Programs’ division  
125 of employment services of the number of qualified employees needed and provide a job

126 description of the positions to be filled.

127 (3) If, within three business days following the placing of a job order, the division is unable  
128 to refer any qualified job applicants to the person or entity engaged in said construction or refers  
129 less qualified job applicants than the number requested, then the division shall issue a waiver to  
130 the person or entity engaged in said construction stating the unavailability of applicants and shall  
131 permit the person or entity engaged in said construction to fill any positions covered by the waiver  
132 from outside the local labor market. The waiver shall be either oral or in writing and shall be issued  
133 within the prescribed three days. A waiver certificate shall be sent to the person or entity engaged  
134 in said construction for its permanent project records.

**ARTICLE 13LL. DOWNSTREAM STEEL, ALUMINUM, AND METAL PRODUCT  
MANUFACTURING ACT OF 2022.**

**§11-13LL-1. Legislative finding and purpose.**

1 The Legislature finds that the encouragement of manufacturing of steel, aluminum, and  
2 other metallurgical products in this state is in the public interest and promotes the general welfare  
3 of the people of this state. In order to encourage capital investment in steel, aluminum, and metal  
4 product manufacturing in this state and thereby increase economic opportunity for its citizens  
5 there is hereby enacted the tax credit for the benefit of this type of manufacturing and the creation  
6 of products downstream in the market throughout West Virginia.

**§11-13LL-2. Definitions.**

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

5 (b) Terms defined. —

6 (1) “Affiliated group” means any affiliated group within the meaning section 1504(a) of the



7 Internal Revenue Code, or any similar group defined under a similar provision of state, local, or  
8 foreign law, except that section 1504 of Internal Revenue Code shall be applied by substituting  
9 “more than 50 percent” for “at least 80 percent” each place it appears in that section.

10 (2) “Aluminum or aluminum product manufacturing” refers to a facility which is or may be  
11 classified under the North American Industry Classification System with a six-digit North American  
12 Industry Classification System code for a product produced at a facility with a code number found  
13 in subdivision 14 of this subsection.

14 (3) “Aluminum or aluminum product manufacturing business” means a business primarily  
15 engaged in this state in steel manufacturing which is or may be classified under the North  
16 American Industry Classification System with a six-digit North American Industry Classification  
17 System code for a product produced at a facility with a code number found in subdivision 14 of  
18 this section.

19 (4) “Aluminum or aluminum product manufacturing facility” means any factory, mill, plant,  
20 warehouse, building, or complex of buildings located within this state, including the land on which  
21 it is located, and all machinery, equipment, and other real and personal property located at or  
22 within the facility, used in connection with the operation of the facility, and all site preparation and  
23 start-up costs of the taxpayer for the tire manufacturing facility, which is or may be classified under  
24 the North American Industry Classification System a six-digit North American Industry  
25 Classification System code for a product produced at a facility with a code number found in  
26 subdivision 14 of this subsection.

27 (5) “Business” means manufacturing business activity, which is or may be classified under  
28 the North American Industry Classification System a six-digit North American Industry  
29 Classification System code for a product produced at a facility with a code number found in  
30 subdivision 14 of this subsection.

31 (6) “Business expansion” means capital investment in a new or used manufacturing facility  
32 in this state, which is or may be classified under the North American Industry Classification

33 System a six-digit North American Industry Classification System code for a product produced at  
34 a facility with a code number found in subdivision 14 of this subsection.

35 (7) "Commissioner" or "Tax Commissioner" are used interchangeably in this article and  
36 mean the Tax Commissioner of the State of West Virginia, or his or her designee.

37 (8) "Controlled group of corporations" means a controlled group of corporations as defined  
38 in section 1563(a) of the Internal Revenue Code.

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

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

47 (11) "Metal or metal product manufacturing" refers to a facility which is or may be classified  
48 under the North American Industry Classification System a six-digit North American Industry  
49 Classification System code for a product produced at a facility with a code numbers found in  
50 subdivision 14 of this subsection.

51 (12) "Metal or metal product manufacturing business" means a business primarily  
52 engaged in this state in metal manufacturing which is or may be classified under the North  
53 American Industry Classification System a six-digit North American Industry Classification System  
54 code for a product produced at a facility with a code number found in subdivision 14 of this  
55 subsection.

56 (13) "Metal or metal product manufacturing facility" means any factory, mill, plant,  
57 warehouse, building, or complex of buildings located within this state, including the land on which  
58 it is located, and all machinery, equipment, and other real and personal property located at or

59 within the facility, used in connection with the operation of the facility, and all site preparation and  
60 start-up costs of the taxpayer for the tire manufacturing facility, which is or may be classified under  
61 the North American Industry Classification System a six-digit North American Industry  
62 Classification System code for a product produced at a facility with a code number found in  
63 subdivision 14 of this subsection. and which it capitalizes for federal income tax purposes in a  
64 business that is taxable in this state.

65 (14) "NAIC designation" means an NAIC designation given for aluminum, metal, or steel  
66 creation, and products associated or produced out of manufacturing facilities therein, all classified  
67 under the North American Industry Classification System North American Industry Classification  
68 System codes:

69 (A) 3311 - Iron and Steel Mills and Ferroalloy Manufacturing; including 331110;

70 (B) 3312 – Steel Product Manufacturing from Purchased Steel, including 331210, 331221,  
71 331222;

72 (C) 3313 - Alumina and Aluminum Production and Processing, including 331313, 331314,  
73 331315, and 331318;

74 (D) 3314 - Nonferrous Metal (except Aluminum) Production and Processing, including  
75 331410, 331320, 331491, and 331492;

76 (E) 3315 – Foundries, including 331511, 331512, 331513, 331523, 331524, and 331529;

77 (F) 3321 - Forging and Stamping, including 332111, 332112, 332114, 332117, and  
78 332119;

79 (G) 3328 - Coating, Engraving, Heat Treating, and Allied Activities, including 332811,  
80 332812, and 332813;

81 (H) 3334 - Ventilation, Heating, Air-Conditioning, and Commercial Refrigeration  
82 Equipment Manufacturing, including 333413, 333414, and 333415;

83 (I) 3362 - Motor Vehicle Body and Trailer Manufacturing, including 336211, 336212,  
84 336213, and 336214;

85 (J) 3363 - Motor Vehicle Parts Manufacturing, including 336310, 336320, 336330, 336340,  
86 336360, 336370, and 336390;

87 (K) 3364 - Aerospace Product and Parts Manufacturing, including 336411, 336412,  
88 336413, 336414, 336415, and 336419;

89 (L) 3366 - Ship and Boat Building, including 336611 and 336612;

90 (M) 3369 - Other Transportation Equipment Manufacturing, including 336991, 336992,  
91 and 336999; all as they are defined on January 1, 2022.

92 (15) "Steel or steel product manufacturing" refers to a facility which is or may be classified  
93 under the North American Industry Classification System a six-digit North American Industry  
94 Classification System code for a product produced at a facility with a code number found in  
95 subdivision 14 of this subsection.

96 (16) "Steel or steel product manufacturing business" means a business primarily engaged  
97 in this state in steel manufacturing which is or may be classified under the North American  
98 Industry Classification System a six-digit North American Industry Classification System code for  
99 a product produced at a facility with a code number found in subdivision 14 of this subsection.

100 (17) "Steel or steel product manufacturing facility" means any factory, mill, plant,  
101 warehouse, building, or complex of buildings located within this state, including the land on which  
102 it is located, and all machinery, equipment, and other real and personal property located at or  
103 within the facility, used in connection with the operation of the facility, and all site preparation and  
104 start-up costs of the taxpayer for the tire manufacturing facility, which is or may be classified under  
105 the North American Industry Classification System a six-digit North American Industry  
106 Classification System code for a product produced at a facility with a code number found in  
107 subdivision 14 of this subsection, and which it capitalizes for federal income tax purposes in a  
108 business that is taxable in this state.

109 (18) "Eligible taxpayer" means any person who makes a qualified investment in a new or  
110 expanded steel, aluminum, or metal product manufacturing facility located in this state and who

111 is subject to any of the taxes imposed by §11-21-1 et seq. or §11-24-1 et seq. of this code.

112 (19) "Expanded facility" means any manufacturing facility, other than a new or replacement  
113 business facility, resulting from the acquisition, construction, reconstruction, installation, or  
114 erection of improvements or additions to existing property if the improvements or additions are  
115 purchased on or after July 1, 2022, but only to the extent of the taxpayer's qualified investment in  
116 the improvements or additions.

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

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

123 (22) "New manufacturing facility" means a business facility which satisfies all the  
124 requirements of paragraphs (A), (B), (C), and (D) of this subdivision:

125 (A) The facility is employed by the taxpayer in the conduct of a manufacturing activity the  
126 net income of which is or would be taxable under §11-21-1 et seq. or §11-24-1 et seq. of this  
127 code. The facility is not considered a new steel, aluminum, or metal product manufacturing facility  
128 in the hands of the taxpayer if the taxpayer's only activity with respect to the facility is to lease it  
129 to another person or persons.

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

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

134 (D) The facility was not in service or use during the 90 days immediately prior to transfer  
135 of the title to the facility, or prior to the commencement of the term of the lease of the facility.

136 (23) "New property" means:

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

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

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

144 (25) "Partnership" includes a syndicate, group, pool, joint venture, or other unincorporated  
145 organization through or by means of which any business, financial operation, or venture is carried  
146 on, which is treated as a partnership for federal income tax purposes, and which is not a trust or  
147 estate, a corporation, or a sole proprietorship.

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

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

151 (28) "Property purchased or leased for business expansion" —

152 (A) *Included property.* — Except as provided in paragraph (B) of this subdivision, the term  
153 "property purchased or leased for business expansion" means real property and improvements  
154 thereto, and tangible personal property, but only if the real or personal property was constructed,  
155 purchased, or leased and placed in service or use by the taxpayer, for use as a component part  
156 of a new or expanded steel, aluminum, or metal product manufacturing facility as defined in this  
157 section, which is located within the State of West Virginia. This term includes only:

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

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

162 (iii) Tangible personal property placed in service or use by the taxpayer on or after July 1,

163 2022, with respect to which depreciation, or amortization in lieu of depreciation, is allowable in  
164 determining the personal or corporation net income tax liability of the business taxpayer under  
165 §11-21-1 et seq. or §11-24-1 et seq. of this code, and which has a useful life, at the time the  
166 property is placed in service or use in this state, of four or more years.

167 (iv) Tangible personal property acquired by written lease having a primary term of four  
168 years or longer, that commenced and was executed by the parties thereto on or after July 1, 2022,  
169 if used as a component part of a new or expanded steel, aluminum, or metal product  
170 manufacturing business facility, shall be included within this definition.

171 (v) Tangible personal property owned or leased, and used by the taxpayer at a business  
172 location outside this state which is moved into the State of West Virginia on or after July 1, 2022,  
173 for use as a component part of a new or expanded steel, aluminum, or metal product  
174 manufacturing facility located in this state: *Provided*, That if the property is owned, it must be  
175 depreciable or amortizable personal property for income tax purposes, and have a useful life of  
176 four or more years remaining at the time it is placed in service or use in this state, and if the  
177 property is leased, the primary term of the lease remaining at the time the leased property is  
178 placed in service or use in this state, must be four or more years.

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

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

183 (ii) Airplanes and helicopters.

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

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

188 (v) Purchased or leased property, the cost or consideration for which cannot be quantified

189 with any reasonable degree of accuracy at the time the property is placed in service or use:  
190 Provided, That when the contract of purchase or lease specifies a minimum purchase price or  
191 minimum annual rent the amount thereof shall be used to determine the qualified investment in  
192 the property under §11-13LL-6 of this code if the property otherwise qualifies as property  
193 purchased or leased for expansion of a steel, aluminum, or metal product manufacturing facility.

194 (29) "Purchase" means any acquisition of property, but only if:

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

198 (B) The property is not acquired by one component member of an affiliated or controlled  
199 group from another component member of the same affiliated or controlled group, as applicable.

200 The Tax Commissioner may waive this requirement if the property was acquired from a related  
201 party for its then fair market value; and

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

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

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

207 (30) "Qualified activity" means any manufacturing business activity subject to any of the  
208 taxes imposed by §11-21-1 et seq. or §11-24-1 et seq. of this code which is or may be classified  
209 under the North American Industry Classification System with a six-digit North American Industry  
210 Classification System code for a product produced at a facility with code numbers 441320,  
211 326211, 326212, 314994, 423130, 339920, 325414, 311119, or 324110 as they are defined on  
212 January 1, 2022.

213 (31) "Related person" means:

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



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

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

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

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

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

229 (32) "Replacement manufacturing facility" means any property (other than an expanded  
230 manufacturing facility) that replaces or supersedes any other property located within this state  
231 that:

232 (A) The taxpayer or a related person used in or in connection with any steel, aluminum, or  
233 metal product manufacturing facility for more than two years during the period of five consecutive  
234 years ending on the date the replacement or superseding property is placed in service by the  
235 taxpayer; or

236 (B) Is not used by the taxpayer or a related person in or in connection with any steel,  
237 aluminum, or metal product manufacturing facility for a continuous period of one year or more  
238 commencing with the date the replacement or superseding property is placed in service by the  
239 taxpayer.

240 (33) "Taxpayer" means any person subject to any of the taxes imposed by §11-21-1 et

241 seq. or §11-24-1 et seq. of this code.

242 (34) “This code” means the Code of West Virginia, 1931, as amended.

243 (35) “This state” means the State of West Virginia.

244 (36) “United States Internal Revenue Code” or “I.R.C.” means the Internal Revenue Code  
245 as defined in §11-21-1 et seq. or §11-24-1 et seq. of this code.

246 (37) “Used property” means property acquired after June 30, 2023, that is not “new  
247 property”.

**§11-13LL-3. Amount of credit allowed.**

1 (a) Credit allowed. — Notwithstanding any other provision of this code, eligible taxpayers  
2 are allowed a credit against the portion of taxes imposed by this state that are attributable to and  
3 the consequence of the taxpayer’s qualified investment in a new or expanded steel, aluminum, or  
4 metal product manufacturing facility in this state: *Provided*, That such qualified investment is equal  
5 to or greater than \$2 million. The amount of this credit is determined and applied as provided in  
6 this article.

7 (b) Application of credit over 10 years. — The amount of credit allowable shall be taken  
8 over a 10-year period, beginning with the taxable year in which the taxpayer places the qualified  
9 investment in service or use in this state, unless the taxpayer elected to delay the beginning of  
10 the 10-year period until the next succeeding taxable year. This election shall be made in the  
11 annual income tax return filed under this chapter for the taxable year in which qualified investment  
12 is first placed into service or use by the taxpayer. Once made, the election cannot be revoked.  
13 The annual credit allowance is taken in the manner prescribed in §11-13LL-4 of this code.

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

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

18 (2) The taxable year in which the property is placed in a condition or state of readiness

19 and availability for a specifically assigned function.

**§11-13LL-4. Application of annual credit allowance.**

1 (a) The amount determined under §11-13LL-3 of this code is allowed as a credit against  
2 100 percent of that portion of the taxpayer's state tax liability which is attributable to and the direct  
3 result of the taxpayer's qualified investment and applied as provided in subsections (b) and (c),  
4 both inclusive of this section, and in that order.

5 (b) Corporation net income taxes. —

6 (1) That portion of the allowable credit attributable to qualified investment in a steel,  
7 aluminum, or metal product manufacturing facility may be applied to reduce the taxes imposed  
8 by §11-24-1 et seq. of this code for the taxable year as determined before application of allowable  
9 credits against tax.

10 (2) If the taxes due under §11-24-1 et seq. of this code, as determined before application  
11 of allowable credits against tax, are not solely attributable to and the direct result of the taxpayer's  
12 qualified investment in a steel, aluminum, or metal product manufacturing business, the amount  
13 of the taxes that is attributable are determined by multiplying the amount of taxes due under §11-  
14 24-1 et seq. of this code for the taxable year, as determined before application of allowable credits  
15 against tax, by a fraction, the numerator of which is all wages, salaries, and other compensation  
16 paid during the taxable year to all employees of the taxpayer employed in this state whose  
17 positions are directly attributable to the qualified investment. The denominator of the fraction is  
18 the wages, salaries, and other compensation paid during the taxable year to all employees of the  
19 taxpayer employed in this state.

20 (c) Personal income taxes. —

21 (1) If the person making the qualified investment in a steel, aluminum, or metal product  
22 manufacturing facility is an electing small business corporation, as defined in section 1361 of the  
23 United States Internal Revenue Code, a partnership, a limited liability company that is treated as  
24 a partnership for federal income tax purposes, or a sole proprietorship, then any unused credit is

25 allowed as a credit against the taxes imposed by §11-21-1 et seq. of this code on the income from  
26 steel, aluminum, or metal product manufacturing facility, or on income of a sole proprietor  
27 attributable to the manufacturing facility.

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

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

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

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

51 (1) Separate accounting or identification;

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

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

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

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

**§11-13LL-5. Qualified investment.**

1 (a) General. — The qualified investment in property purchased or leased for a new, or  
2 expansion of an existing, steel, aluminum, or metal product manufacturing facility is the applicable  
3 percentage of the cost of each property purchased or leased for the purpose of the new, or  
4 expansion of an existing, manufacturing facility which is placed in service or use in this state by  
5 the taxpayer during the taxable year.

6 (b) Cost. — For purposes of subsection (a) of this section, the cost of each property  
7 purchased for a new, or expansion of an existing, manufacturing facility is determined under the  
8 following rules:

9 (1) Trade-ins. — Cost does not include the value of property given in trade or exchange  
10 for the property purchased for a new, or for expansion of an existing, manufacturing facility.

11 (2) Damaged, destroyed, or stolen property. — If property is damaged or destroyed by

12 fire, flood, storm, or other casualty, or is stolen, then the cost of replacement property does not  
13 include any insurance proceeds received in compensation for the loss.

14 (3) Rental property. —

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

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

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

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

21 or

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

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

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

**§11-13LL-6. Forfeiture of unused tax credits; redetermination of credit allowed.**

1           (a) Disposition of property or cessation of use. — If during any taxable year, property with  
2           respect to which a tax credit has been allowed under §11-13LL-1 et seq. of this code is disposed  
3           of or ceases to be used in a steel, aluminum, or metal product manufacturing facility of the  
4           taxpayer in this state, then the unused portion of the credit allowed for the property is forfeited for  
5           the taxable year and all ensuing years, except when the property is damaged or destroyed by fire,  
6           flood, storm, or other casualty, or is stolen.

7           (b) Cessation of operation of steel, aluminum, or metal product manufacturing facility. —  
8           If during any taxable year the taxpayer ceases operation of a steel, aluminum, or metal product  
9           manufacturing facility in this state for which credit was allowed under this article, then the unused  
10          portion of the allowed credit is forfeited for the taxable year and for all ensuing years, except when  
11          the cessation is due to fire, flood, storm, or other casualty.

**§11-13LL-7. Transfer of qualified investment to successors.**

1           (a) Mere change in form of business. — Property may not be treated as disposed of under  
2           §11-13LL-8 of this code, by reason of a mere change in the form of conducting the business as  
3           long as the property is retained in the successor's manufacturing facility in this state, and the  
4           transferor business retains a controlling interest in the successor business. In this event, the  
5           successor business is allowed to claim the amount of credit still available with respect to the  
6           business facility or facilities transferred.

7           (b) Transfer or sale to successor. — Property is not treated as disposed of under §11-  
8           13LL-10 of this code by reason of any transfer or sale to a successor business which continues  
9           to operate the steel, aluminum, or metal product manufacturing facility in this state. Upon transfer  
10          or sale, the successor shall acquire the amount of credit that remains available under this article  
11          for each subsequent taxable year.

**§11-13LL-8. Identification of investment credit property.**

1           Every taxpayer who claims credit under §11-13LL-1 et seq. of this code shall maintain

2 sufficient records to establish the following facts for each item of qualified property:

3 (1) Its identity;

4 (2) Its actual or reasonably determined cost;

5 (3) Its straight-line depreciation life;

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

7 (5) The amount of credit taken; and

8 (6) The date it was disposed of or otherwise ceased to be use as qualified property in the  
9 steel, aluminum, or metal product manufacturing facility of the taxpayer.

**§11-13LL-9. Failure to keep records of investment credit property.**

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

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

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

**§11-13LL-10. Interpretation and construction.**

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

5 (b) The provisions of §11-13LL-1 et seq. of this code shall be reasonably construed in



6 order to effectuate the legislative intent recited in §11-13LL-1 of this code.

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

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

4 (b) Application for credit required. —

5 (1) Application required. — Notwithstanding any provision of this article to the contrary, no  
6 credit is allowed or may be applied under §11-13LL-1 et seq. of this code for any qualified  
7 investment property placed in service or use until the person asserting a claim for the allowance  
8 of credit under this article makes written application to the commissioner for allowance of credit  
9 as provided in this subsection. An application for credit shall be filed, in the form prescribed by  
10 the Tax Commissioner, no later than the last day for filing the tax returns, determined by including  
11 any authorized extension of time for filing the return, required under §11-21-1 et seq. or §11-24-  
12 1 et seq. of this code for the taxable year in which the property to which the credit relates is placed  
13 in service or use and all information required by the form shall be provided.

14 (2) Failure to make timely application. — The failure to timely apply for the credit results  
15 in the forfeiture of 50 percent of the annual credit allowance otherwise allowable under §11-13LL-  
16 1 et seq. of this code. This penalty applies annually until the application is filed.

**§11-13LL-12. Tax credit review and accountability.**

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

6 (1) The numbers of taxpayers claiming the credit;

7 (2) The moneys invested, and net number of new jobs created by all taxpayers claiming

8 the credit;

9 (3) The cost of the credit;

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

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

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

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

#### **§11-13LL-13. Rules.**

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

#### **§11-13LL-14. General procedure and administration.**

1 Each provision of the "West Virginia Tax Procedure and Administration Act" set forth in  
2 §11-10-1 *et seq.* of this code applies to the tax credit allowed under §11-13LL-1 *et seq.* of this

3 code, except as otherwise expressly provided in this article, with like effect as if that act were  
4 applicable only to the tax credit allowed by §11-13LL-1 et seq. of this code and were set forth in  
5 extenso in this article.

**§11-13LL-15. Crimes and penalties.**

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

**§11-13LL-16. Severability.**

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

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

**§11-13LL-17. Effective date.**

1 The credit allowed by this article is allowable for qualified investment property placed in  
2 service or use on or after July 1, 2022, subject to the rules contained in §11-13LL-1 et seq. of this  
3 code and rules promulgated by the Tax Commissioner pursuant to §29A-3-1 et seq. of this code.

NOTE: The purpose of this bill is to create the Downstream Steel, Aluminum, and Metal Product Manufacturing Act of 2022. The bill stimulates economic growth in manufacturing industries by amending the definition of manufacturing for purposes of special method for appraising qualified capital additions to manufacturing facilities for property tax purposes. The bill amends the formula for calculating the credit allowed for manufacturing investment to include steel, aluminum, and other metallurgical products. The bill provides for its administration and enforcement of the tax credit. Finally, the bill exempts certain taxes.

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