

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 729

By Senators Jeffries, Queen, and Smith

[Introduced February 20, 2023; referred
to the Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §11-13MM-1, §11-13MM-2, §11-13MM-3, §11-13MM-4, and §11-13MM-5, all
 3 relating to providing an income tax credit for certain eligible taxpayers that sell electricity to
 4 energy intensive industrial and manufacturing consumers; setting forth legislative findings
 5 and purpose; providing for definitions; providing for a credit against state business and
 6 operating taxes; providing for the allowance of certain tax credits in specific taxable years;
 7 providing for the application of certain tax credits; and authorizing rulemaking.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 13MM. ENERGY INTENSIVE INDUSTRIAL OR MANUFACTURING
 CONSUMER TAX CREDIT.**

§11-13MM-1. Legislative finding and purpose.

1 The Legislature finds that incentivizing industrial and manufacturing businesses to locate
 2 facilities in the state is in the public interest and promotes the general welfare of the people of this
 3 state.

§11-13MM-2. Definitions.

1 (a) Any term used in this article shall have the same meaning as when used in a
 2 comparable context in §11-13-1 et seq. of this code, unless a different meaning is clearly required
 3 by the context of its use or by definition in this article.

4 (b) For purposes of this article, the term:

5 (1) "Commission" means the West Virginia Public Service Commission.

6 (2) "Electric utility" means any electric utility operating within this state that is regulated by
 7 the commission.

8 (3) "Eligible taxpayer" means an electric utility that is subject to the tax imposed by §11-13-
 9 1 et seq. of this code as calculated by §11-13-2o of this code.

10 (4) "Energy intensive industrial and manufacturing consumer" –

11 (A) The term energy intensive industrial and manufacturing consumer means an
12 industrial or manufacturing facility, plant, or enterprise located in or to be located in West Virginia
13 after January 1, 2024, that is a party to a special contract;

14 (B) A facility, plant, or enterprise is considered to be an energy intensive industrial and
15 manufacturing consumer only if the following requirements are satisfied:

16 (i) The facility, plant, or enterprise's cost of electricity consumed in the industrial or
17 manufacturing process constitutes or is anticipated to constitute at least 15 percent of the cost of
18 production under normal operating conditions;

19 (ii) The facility, plant, or enterprise creates at least 25 new jobs;

20 (iii) If the facility, plant, or enterprise existed on January 1, 2024, it must have an increase in
21 its annual billing demand of at least 5,000 kilowatts compared to 2023, or if the facility, plant, or
22 enterprise did not exist on January 1, 2024, it must have a projected billing demand of at
23 least 5,000 kilowatts and upon construction of the facility, plant, or enterprise have a billing
24 demand of at least 5,000 kilowatts; and

25 (iv) The facility, plant, or enterprise has invested at least \$5,000,000 in fixed assets or other
26 capital expenditures at the service location that is set forth in the special contract.

27 (5) "New employee" —

28 (A) The term new employee means an individual hired by the taxpayer to fill a position or a
29 job in this state which previously did not exist in the energy intensive industrial and
30 manufacturing consumer's industrial or manufacturing activity in this state prior to January 1,
31 2024. In no case may the number of new employees for purposes of this credit exceed the total net
32 increase in the energy intensive industrial and manufacturing consumer's employment in this
33 state.

34 (B) A person is considered to be a new employee only if the person's duties in connection
35 with the energy intensive industrial and manufacturing consumer's business are on:

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

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

40 (iii) Permanent employment does not include employment that is temporary or seasonal
41 and therefore wages, salaries, and other compensation paid to temporary or seasonal employees
42 will not be considered for purposes of this definition.

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

45 (6) "New job" means a job which did not exist in the business of the energy intensive
46 industrial and manufacturing consumer in this state prior to January 1, 2024, and which is filled by
47 a new employee.

48 (7) "Person" means any natural person, corporation, or partnership.

49 (8) "Special contract" means a bilateral contract for electric service negotiated between an
50 energy intensive industrial or manufacturing consumer and a utility regulated by the commission,
51 including rates, terms, and conditions that may reflect the unique circumstances of the consumer,
52 or are designed to attract, retain, or incentivize additional investment by the consumer, or provide
53 benefits to the utility and its customers through actions that serve to reduce the utility's cost of
54 providing _____ service.

§11-13MM-3. Amount of credit allowed.

1 (a) *Credit allowed.*- For tax years beginning on or after January 1, 2024, through and
2 including the tax year beginning on January 1, 2034, eligible taxpayers shall be allowed a credit
3 against the tax imposed by §11-13-1 *et seq.* of this code, the application of which and the amount
4 of which shall be determined as provided in this article.

5 (b) *Amount of credit.*- The credit available to any eligible taxpayer shall be equal to
6 nineteen hundredths of one cent times the kilowatt hours of electricity sold by the eligible taxpayer
7 to an energy intensive industrial and manufacturing consumer.

§11-13MM-4. Credit allowed for specific taxable years.

1 The credit authorized in section three of this article shall be allowed against the tax
2 imposed by §11-13-1 et seq. of this code in the applicable taxable year. The Tax Commissioner
3 shall require disclosure of information regarding the credits allowed in section one of this article in
4 accordance with the provisions of section §11-10-55 of this code.

§11-13MM-5. Legislative rules; authority of the Tax Commissioner.

1 (a) The Tax Commissioner shall propose rules for legislative approval in accordance with
2 the provisions of §29A-3-1 et seq. of this code as may be necessary to carry out the purpose of this
3 article.

4 (b) The Tax Commissioner may create forms and require the submission of documentation
5 from any taxpayer who claims entitlement to the credit authorized by this article in order to verify
6 such entitlement.

NOTE: The purpose of this bill is to establish the Energy Intensive Industrial or Manufacturing Consumer Tax Credit.

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