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STATE OF WEST VIRGINIA

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



# ENROLLED

SENATE BILL NO. 455

(By Senators Taublin, Mr. President, and Buckalew,  
By REQUEST OF THE EXECUTIVE)



PASSED APRIL 11, 1997

In Effect NINETY DAYS FROM Passage

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LEGISLATIVE DEPARTMENT

**ENROLLED**

**Senate Bill No. 455**

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND BUCKALEW,  
BY REQUEST OF THE EXECUTIVE)

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[Passed April 11, 1997; in effect ninety days from passage.]

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AN ACT to amend and reenact sections three, four, four-a, eight, eleven and twelve, article thirteen-j, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the neighborhood investment program act; amending the definition of economically disadvantaged area; eliminating certain definitions; removing certain time limitations within which an application for approval of a project must be certified and permitting the neighborhood investment program advisory board to delay consideration of an application when additional information is needed; requiring project transferees to file quarterly reports on progress of certified projects; removing obsolete language regarding an initial appropriation from general revenue for administrative expenses and initial appointments to

the advisory board; permitting advisory board members to solicit support or donations for certified projects; reducing the required number of meetings of the advisory board; clarifying language permitting the tax division and the development office to perform joint audits; clarifying program evaluation language; and providing for termination of the act on the first day of July, one thousand nine hundred ninety-nine.

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

That sections three, four, four-a, eight, eleven and twelve, article thirteen-j, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 13J. NEIGHBORHOOD INVESTMENT PROGRAM.**

**§11-13J-3. Definitions.**

1 (a) *General.* — When used in this article, or in the  
2 administration of this article, terms defined in subsection  
3 (b) of this section shall have the meanings ascribed to  
4 them by this section, unless a different meaning is clearly  
5 required by either the context in which the term is used,  
6 or by specific definition in this article.

7 (b) *Terms defined.*

8 (1) *Affiliate.* — The terms “affiliate” or “affiliates”  
9 include all concerns which are affiliates of each other  
10 when either directly or indirectly:

11 (A) One concern controls or has the power to control the  
12 other; or

13 (B) A third party or third parties control or have the  
14 power to control both. In determining whether concerns  
15 are independently owned and operated and whether or not  
16 affiliation exists, consideration shall be given to all  
17 appropriate factors, including common ownership,  
18 common management and contractual relationships.

19 (2) *Capacity building.* — The term “capacity building”  
20 means to generally enhance the capacity of the community  
21 to achieve improvements and to obtain the community

22 services described in items (i) through (v), inclusive, of the  
23 definition of that term, as set forth in subdivision (4) of  
24 this subsection. Capacity building includes, but is not  
25 limited to, improvement of the means, or capacity, to:

26 (i) Access, obtain and use private, charitable and gov-  
27 ernmental assistance programs, administrative assistance,  
28 and private, charitable and governmental resources or  
29 funds;

30 (ii) Fulfill legal, bureaucratic and administrative  
31 requirements and qualifications for accessing assistance,  
32 resources or funds; and

33 (iii) Attract and direct political and community atten-  
34 tion to needs of the community for the purpose of increas-  
35 ing access to and use of assistance, resources or funds for  
36 a given purpose, goal or need.

37 (3) *Commissioner or tax commissioner.* — The terms  
38 “commissioner” and “tax commissioner” are used inter-  
39 changeably herein and mean the tax commissioner of the  
40 state of West Virginia, or his or her delegate.

41 (4) *Community services.* — “Community services” means  
42 services, provided at no charge whatsoever, of:

43 (i) Providing any type of health, personal finance,  
44 psychological or behavioral, religious, legal, marital,  
45 educational or housing counseling and advice to economi-  
46 cally disadvantaged citizens or a specifically designated  
47 group of economically disadvantaged citizens or in an  
48 economically disadvantaged area; or

49 (ii) Providing emergency assistance or medical care to  
50 economically disadvantaged citizens or to a specifically  
51 designated group of economically disadvantaged citizens  
52 or in an economically disadvantaged area; or

53 (iii) Establishing, maintaining or operating recreational  
54 facilities, or housing facilities for economically disadvan-  
55 taged citizens or a specifically designated group of  
56 economically disadvantaged citizens or in an economically  
57 disadvantaged area; or

58 (iv) Providing economic development assistance to

59 economically disadvantaged citizens or a specifically  
60 designated group of economically disadvantaged citizens;  
61 without regard to whether they are located in an economi-  
62 cally disadvantaged area, or to individuals, groups or  
63 neighborhood or community organizations, in an economi-  
64 cally disadvantaged area; or

65 (v) Providing community technical assistance and  
66 capacity building to economically disadvantaged citizens  
67 or a specifically designated group of economically disad-  
68 vantaged citizens, or to individuals, groups or neighbor-  
69 hood or community organizations in an economically  
70 disadvantaged area.

71 (5) *Compensation*. — The term “compensation” means  
72 wages, salaries, commissions and any other form of  
73 remuneration paid to employees for personal services.

74 (6) *Corporation*. — The term “corporation” means any  
75 corporation, joint-stock company or association and any  
76 business conducted by a trustee or trustees wherein  
77 interest or ownership is evidenced by a certificate of  
78 interest or ownership or similar written instrument.

79 (7) *Crime prevention*. — “Crime prevention” means any  
80 activity which aids in the reduction of crime.

81 (8) *Delegate*. — The term “delegate” in the phrase “or  
82 his or her delegate”, when used in reference to the tax  
83 commissioner, means any officer or employee of the tax  
84 division of the department of tax and revenue duly  
85 authorized by the tax commissioner directly, or indirectly  
86 by one or more redelegations of authority, to perform the  
87 functions mentioned or described in this article.

88 (9) *Director or director of the West Virginia development*  
89 *office*. — The term “director” or “director of the West  
90 Virginia development office” means the director of the  
91 West Virginia office.

92 (10) *Economically disadvantaged area*. — The term  
93 “economically disadvantaged area” means:

94 (A) In a municipality - any area not exceeding fifteen  
95 square miles in West Virginia which contains any portion

96 of an incorporated municipality and:

97 (i) In which area the aggregate poverty rate of persons  
98 residing in the area, based upon the most recent decennial  
99 census of population, is at least one hundred twenty-five  
100 percent of the statewide poverty rate; and

101 (ii) That is certified as an economically disadvantaged  
102 area by the West Virginia development office;

103 (B) In a rural area - any area not exceeding twenty-five  
104 square miles in West Virginia:

105 (i) Which area is located in a rural area and which  
106 contains no incorporated municipalities or portions  
107 thereof;

108 (ii) In which area the aggregate poverty rate of persons  
109 residing in the area, based upon the most recent decennial  
110 census of population, is at least one hundred twenty-five  
111 percent of the statewide poverty rate; and

112 (iii) That is certified as an economically disadvantaged  
113 area by the West Virginia development office;

114 (C) An economically disadvantaged area shall qualify as  
115 such only pursuant to a certification issued by the West  
116 Virginia development office. Such certifications issued by  
117 the West Virginia development office shall expire after the  
118 passage of five calendar years, unless specifically limited  
119 to a shorter time by specific order of the West Virginia  
120 development office, and no area shall hold the status of a  
121 certified economically disadvantaged area for a period of  
122 time greater than ten years, either consecutively or in the  
123 aggregate;

124 (D) The certification of an economically disadvantaged  
125 area shall be made on the basis of a determination by the  
126 development office that an area meets the poverty criteria  
127 established in paragraphs (A) and (B), subdivision (10) of  
128 this subsection;

129 (E) No economically disadvantaged area may be certi-  
130 fied within twenty-five miles of any other certified  
131 economically disadvantaged area. Not more than six  
132 economically disadvantaged areas may hold the status of

133 certified economically disadvantaged areas at any one  
134 time in this state;

135 (F) At least a majority of all economically disadvantaged  
136 areas holding designations as economically disadvantaged  
137 areas at any one time shall be located in rural areas; and

138 (G) Such certification shall be filed with the secretary of  
139 state and shall specifically set forth the boundaries of the  
140 economically disadvantaged area by both description and  
141 map, the date of certification of the area as an economi-  
142 cally disadvantaged area, the date on which such certifi-  
143 cation will terminate and a statement of the director's  
144 findings as to the aggregate poverty rate of persons living  
145 in the certified economically disadvantaged area.

146 (11) *Economically disadvantaged citizen.* — The term  
147 “economically disadvantaged citizen” means a natural  
148 person, who during the current taxable year has, or during  
149 the immediately preceding taxable year had, an annual  
150 gross personal income not exceeding one hundred twenty-  
151 five percent of the federal designated poverty level for  
152 personal incomes, and who is a domiciliary and resident of  
153 this state.

154 (12) *Education.* — “Education” means any type of  
155 scholastic instruction to, or scholarship by, an individual  
156 that enables such individual to prepare for better life  
157 opportunities. Education does not include courses in  
158 physical training, physical conditioning, physical educa-  
159 tion, sports training, sports camps and similar training or  
160 conditioning courses (except for physical therapy pre-  
161 scribed by a physician or other person licensed to pre-  
162 scribe courses of medical treatment under West Virginia  
163 law).

164 (13) *Eligible contribution.* —

165 (A) An eligible contribution consists of cash, tangible  
166 personal property valued at its fair market value, real  
167 property valued at its fair market value or a contribution  
168 of in kind professional services valued at seventy-five  
169 percent of fair market value;

170 (B) For purposes of this definition, the value of in kind

171 professional services will not qualify as an eligible contri-  
172 bution unless the services are:

173 (i) Reasonably priced and valued, and reasonably  
174 necessary services customarily and normally provided by  
175 the contributor in the normal course of business to cus-  
176 tomers, clients or patients other than those encompassed  
177 by the project plan;

178 (ii) Not reimbursable, in whole or in part, from sources  
179 other than the tax credit provided under this article; and

180 (iii) Are services which are not available without cost  
181 elsewhere in the community;

182 (C) The term "professional services" means only those  
183 services provided directly by a physician licensed to  
184 practice in this state, those services provided directly by  
185 a dentist licensed to practice in this state, those services  
186 provided directly by a lawyer licensed to practice in this  
187 state, those services provided directly by a registered  
188 nurse, licensed practical nurse, dental hygienist or other  
189 health care professional licensed to practice in this state  
190 and those services provided directly by a certified public  
191 accountant or public accountant licensed to practice in  
192 this state;

193 (D) *Minimum contribution.* — No contribution of cash,  
194 property or professional services or any combination  
195 thereof contributed in any tax year by any taxpayer  
196 having a fair market value of less than five hundred  
197 dollars qualifies as an eligible contribution;

198 (E) *Maximum contribution.* — No contribution of cash,  
199 property or professional services or any combination  
200 thereof contributed in any tax year by any taxpayer  
201 having a fair market value in excess of two hundred  
202 thousand dollars qualifies as an eligible contribution; and

203 (F) *Limitations.* — Not more than twenty-five percent of  
204 total eligible contributions to a certified project may be in  
205 kind contributions. Not more than twenty-five percent of  
206 total eligible contributions made by any taxpayer to any  
207 certified project may be in kind contributions.



208 (14) *Eligible taxpayer.* —

209 (A) The term “eligible taxpayer” means any person  
210 subject to the taxes imposed by article twenty-one,  
211 twenty-three or twenty-four of this chapter which makes  
212 an eligible contribution to a qualified charitable organiza-  
213 tion pursuant to the terms of a certified project plan for  
214 the purpose of providing neighborhood assistance, com-  
215 munity services or crime prevention, or for the purpose of  
216 providing job training or education for individuals not  
217 employed by the contributing taxpayer or an affiliate of  
218 the contributing taxpayer or a person related to the  
219 contributing taxpayer;

220 (B) “Eligible taxpayer” also includes an affiliated group  
221 of taxpayers if such group elects to file a consolidated  
222 corporation net income tax return under article twenty-  
223 four of this chapter and if one or more affiliates included  
224 in such affiliated group would qualify as an eligible  
225 taxpayer under paragraph (A) of this subdivision.

226 (15) *Includes and including.* — The terms “includes” and  
227 “including”, when used in a definition contained in this  
228 article, shall not be deemed to exclude other things  
229 otherwise within the meaning of the term defined.

230 (16) *Job training.* — “Job training” means instruction to  
231 an individual that enables the individual to acquire  
232 vocational skills so as to become employable or to be able  
233 to seek a higher grade of employment.

234 (17) *Natural person or individual.* — The term “natural  
235 person” and the term “individual” means a human being.  
236 The terms “natural person” and “individual” do not mean,  
237 and specifically exclude any corporation, limited liability  
238 company, partnership, joint venture, trust, organization,  
239 association, agency, governmental subdivision, syndicate,  
240 affiliate or affiliation, group, unit or any entity other than  
241 a human being.

242 (18) *Neighborhood assistance.* — “Neighborhood assis-  
243 tance” means either:

244 (A) Furnishing financial assistance, labor, material and

245 technical advice to aid in the physical or economic im-  
246 provement of any part or all of an economically disadvan-  
247 tagged area; or

248 (B) Furnishing technical advice to promote higher  
249 employment in an economically disadvantaged area.

250 (19) *Neighborhood organization*. — “Neighborhood  
251 organization” means any organization:

252 (A) Which is performing community services, as defined  
253 in this section; and

254 (B) Which is exempt from income taxation under Section  
255 501(c)(3) of the Internal Revenue Code.

256 (20) *Partnership and partner*. — The term “partnership”  
257 includes a syndicate, group, pool, joint venture or other  
258 unincorporated organization through or by means of  
259 which any business, financial operation or venture is  
260 carried on, and which is not a trust or estate, a corpora-  
261 tion or a sole proprietorship. The term “partner” includes  
262 a member in such a syndicate, group, pool, joint venture or  
263 organization.

264 (21) *Person*. — The term “person” includes any natural  
265 person, corporation, limited liability company or partner-  
266 ship.

267 (22) *Project transferee*. — The term “project transferee”  
268 means any neighborhood organization, qualified charita-  
269 ble organization, charitable organization or other organi-  
270 zation, entity or person that receives an eligible contribu-  
271 tion or part of an eligible contribution from an eligible  
272 taxpayer for the purpose of directly or indirectly provid-  
273 ing neighborhood assistance, community services or crime  
274 prevention, or for the purpose of providing job training or  
275 education or other services or assistance pursuant to a  
276 project plan. The project transferee is typically the first  
277 entity or person receiving eligible contributions from  
278 eligible taxpayers under a project plan. However, in the  
279 case of eligible contributions of in kind services or other  
280 eligible contributions or portions thereof made pursuant  
281 to a certified project plan directly to indigent, disadvan-  
282 tagged or needy persons, economically disadvantaged

283 citizens or other persons or organizations under the  
284 sponsorship or auspices of any neighborhood organization,  
285 qualified charitable organization, charitable organization  
286 or other organization, entity or person as a certified  
287 project participant, such eligible contributions shall be  
288 deemed to have been made to the entity, organization or  
289 person under whose sponsorship or auspices such eligible  
290 contributions are made, and that entity, organization or  
291 person is deemed to be the project transferee with relation  
292 to those eligible contributions. The project transferee is  
293 the entity, organization or person that is liable under this  
294 article for payment of the project certification fee to the  
295 West Virginia development office. The term "project  
296 transferee" shall mean and include any deemed project  
297 transferee, deemed as such under the provisions of this  
298 article.

299 (23) *Qualified charitable organization.* — The term  
300 "qualified charitable organization" means a neighborhood  
301 organization, as defined in this section, which is the  
302 sponsor of a project which has received certification by  
303 the director of the West Virginia development office  
304 pursuant to the requirements of this article: *Provided,*  
305 That no organization may qualify as a qualified organiza-  
306 tion for purposes of this article if such organization is not  
307 registered with this state as required under the solicitation  
308 of charitable funds act.

309 (24) *Related person.* — The term "related person" or  
310 "person related to" a stated taxpayer means:

311 (A) An individual, corporation, partnership, affiliate,  
312 association or trust or any combination or group thereof  
313 controlled by the taxpayer; or

314 (B) An individual, corporation, partnership, affiliate,  
315 association or trust or any combination or group thereof  
316 that is in control of the taxpayer; or

317 (C) An individual, corporation, partnership, affiliate,  
318 association or trust or any combination or group thereof  
319 controlled by an individual, corporation, partnership,  
320 affiliate, association or trust or any combination or group  
321 thereof that is in control of the taxpayer; or

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

324 For purposes of this article, “control”, with respect to a  
325 corporation means ownership, directly or indirectly, of  
326 stock possessing fifty percent or more of the total com-  
327 bined voting power of all classes of the stock of such  
328 corporation which entitles its owner to vote. “Control”,  
329 with respect to a trust, means ownership, directly or  
330 indirectly, of fifty percent or more of the beneficial  
331 interest in the principal or income of such trust. The  
332 ownership of stock in a corporation, of a capital or profits  
333 interest in a partnership or association or of a beneficial  
334 interest in a trust shall be determined in accordance with  
335 the rules for constructive ownership of stock provided in  
336 Section 267(c), other than paragraph (3) of such section, of  
337 the United States Internal Revenue Code, as amended.

338 (25) *State fiscal year.* — “State fiscal year” means a  
339 twelve-month period beginning on the first day of July  
340 and ending on the thirtieth day of June.

341 (26) *Taxpayer.* — The term “taxpayer” means any  
342 person subject to the tax imposed by article twenty-one,  
343 twenty-three or twenty-four of this chapter (or any one or  
344 combination of such articles of this chapter).

345 (27) *Technical assistance.* — The term “technical assis-  
346 tance” means:

347 (A) Assistance in understanding, using and fulfilling the  
348 legal, bureaucratic and administrative requirements and  
349 qualifications which must be negotiated for the purpose of  
350 effectively accessing, obtaining and using private, charita-  
351 ble, not-for-profit or governmental assistance, resources  
352 or funds, and maximizing the value thereof;

353 (B) Assistance provided by any person holding a license  
354 under West Virginia law to practice any licensed profes-  
355 sion or occupation, whereby such person, in the practice  
356 of such profession or occupation, assists economically  
357 disadvantaged citizens or the persons in an economically  
358 disadvantaged area by:

359 (i) Providing any type of health, personal finance,

360 psychological or behavioral, religious, legal, marital,  
361 educational or housing counseling and advice to economi-  
362 cally disadvantaged citizens or a specifically designated  
363 group of economically disadvantaged citizens or in an  
364 economically disadvantaged area; or

365 (ii) Providing emergency assistance or medical care to  
366 economically disadvantaged citizens or to a specifically  
367 designated group of economically disadvantaged citizens  
368 or in an economically disadvantaged area; or

369 (iii) Establishing, maintaining or operating recreational  
370 facilities, or housing facilities for economically disadvan-  
371 taged citizens or a specifically designated group of  
372 economically disadvantaged citizens or in an economically  
373 disadvantaged area; or

374 (iv) Providing economic development assistance to  
375 economically disadvantaged citizens or a specifically  
376 designated group of economically disadvantaged citizens,  
377 without regard to whether they are located in an economi-  
378 cally disadvantaged area, or to individuals, groups or  
379 neighborhood or community organizations, in an economi-  
380 cally disadvantaged area; or

381 (v) Providing community technical assistance and  
382 capacity building to economically disadvantaged citizens  
383 or a specifically designated group of economically disad-  
384 vantaged citizens or to individuals, groups or neighbor-  
385 hood or community organizations in an economically  
386 disadvantaged area.

**§11-13J-4. Eligibility for tax credits; creation of neighborhood  
investment fund; certification of project plans  
by the West Virginia development office.**

1 (a) A neighborhood organization which seeks to sponsor  
2 a project and have that project certified pursuant to this  
3 article shall submit to the director of the West Virginia  
4 development office an application for certification of a  
5 project plan, in such form as the director shall prescribe,  
6 setting forth the project to be implemented, the identity of  
7 all project participant organizations, the economically  
8 disadvantaged citizens or a specifically designated group

9 of economically disadvantaged citizens, to be assisted by  
10 the project, or the economically disadvantaged area or  
11 areas selected for assistance by the project, the amount of  
12 total tax credits to be created by the proposed project  
13 pursuant to the receipt of eligible contributions from  
14 eligible taxpayers under this article, the amount of the  
15 total estimated eligible contributions to be received  
16 pursuant to the project and the schedule for implementing  
17 the project.

18 (b) *Project certification fee; payment of costs; revolving*  
19 *fund.* —

20 (1) (A) *Project certification fee.* — Any project transferee  
21 that receives eligible contributions under or pursuant to a  
22 certified project plan shall pay to the West Virginia  
23 development office a project certification fee in the  
24 amount of three percent of the amount of the total eligible  
25 contributions received by such project transferee pursuant  
26 to the certified project plan. The project certification fee  
27 shall be paid to the West Virginia development office  
28 within thirty days of the receipt of any eligible contribu-  
29 tion, or portion thereof.

30 (B) *Eligible contributions made through direct service to*  
31 *end users or recipients, or contributions to end users or*  
32 *recipients.* — In the case of eligible contributions of in  
33 kind services or other eligible contributions or portions  
34 thereof made pursuant to a certified project plan and  
35 contributed or provided directly to indigent, disadvan-  
36 tagged or needy persons, economically disadvantaged  
37 citizens or other persons or organizations made under the  
38 sponsorship or auspices of any neighborhood organization,  
39 qualified charitable organization, charitable organization  
40 or other organization, entity or person as a certified  
41 project participant, such eligible contributions shall be  
42 deemed to have been made to the entity, organization or  
43 person under whose sponsorship or auspices such eligible  
44 contributions are made, and that entity, organization or  
45 person is deemed to be the project transferee with relation  
46 to those eligible contributions. Such deemed project  
47 transferee shall be liable for the project certification fee  
48 due for such eligible contributions.

49 (C) *Computation of fee based on fair market value.* — In  
50 the case of eligible contributions consisting of in kind  
51 services, tangible personal property or realty, the project  
52 transferee shall pay to the West Virginia development  
53 office a project certification fee in the amount of three  
54 percent of the fair market value of eligible contributions  
55 received pursuant to the certified project plan.

56 (2) *Sanctions for failure to timely pay the project*  
57 *certification fee.* — Failure to timely pay the project  
58 certification fee imposed by this section shall be grounds  
59 for imposition of any of the following sanctions, to be  
60 imposed by the director of the West Virginia development  
61 office at the discretion of the director:

62 (A) Prospective revocation of the project certification.

63 No tax credit shall be allowed for any project for which  
64 certification has been revoked for periods subsequent to  
65 the effective date of revocation. Credit taken by any  
66 taxpayer in accordance with this article pursuant to the  
67 making of an eligible contribution to a project transferee  
68 pursuant to a certified project plan prior to the effective  
69 date of revocation of project certification shall not be  
70 subject to recapture by reason of revocation of the certifi-  
71 cation. However, such credit shall otherwise be subject to  
72 audit and adjustment or recapture in accordance with the  
73 requirements of this article.

74 (B) Retroactive withdrawal of the project certification.

75 No tax credit shall be allowed for any project for which  
76 certification has been withdrawn. Credit taken by any  
77 taxpayer in accordance with this article pursuant to the  
78 making of an eligible contribution to a project transferee  
79 pursuant to a certified project plan for which certification  
80 is later withdrawn pursuant to the provisions of this  
81 section shall be subject to recapture upon withdrawal of  
82 the certification.

83 (C) Suspension of the project certification for a stated  
84 period of time.

85 No tax credit shall be allowed for contributions made  
86 during the suspension period for a project. Credit taken

87 by any taxpayer in accordance with this article pursuant  
88 to the making of an eligible contribution to a project  
89 transferee pursuant to a certified project plan prior to or  
90 subsequent to the suspension period shall not be subject to  
91 recapture by reason of the suspension. However, such  
92 credit shall otherwise be subject to audit and adjustment  
93 or recapture in accordance with the requirements of this  
94 article.

95 (D) Temporary or permanent disqualification of one or  
96 more project transferees, neighborhood organizations,  
97 qualified charitable organizations, charitable organiza-  
98 tions or other organizations, entities or persons from  
99 participation in a particular specified certified project.

100 No tax credit shall be allowed under this article for any  
101 contribution made during the disqualification period to  
102 any project transferee, neighborhood organization,  
103 qualified charitable organization, charitable organization  
104 or other organization, entity or person disqualified under  
105 this section from participation in a certified project. Tax  
106 credit taken by any taxpayer in accordance with this  
107 article pursuant to the making of an eligible contribution  
108 to any project transferee, neighborhood organization,  
109 qualified charitable organization, charitable organization  
110 or other organization, entity or person pursuant to a  
111 certified project plan prior to or subsequent to the dis-  
112 qualification period shall not be subject to recapture by  
113 reason of the disqualification of the recipient thereof.  
114 However, such credit shall otherwise be subject to audit  
115 and adjustment or recapture in accordance with the  
116 requirements of this article.

117 (E) Temporary or permanent disqualification of any  
118 project transferee, neighborhood organization, qualified  
119 charitable organization, charitable organization or other  
120 organization, entity or person, or group thereof, from  
121 participation in any and all certified projects currently in  
122 existence or to be formed, proposed or certified under this  
123 article:

124 (i) No tax credit shall be allowed under this article for  
125 any contribution made during the disqualification period



126 to any project transferee, neighborhood organization,  
127 qualified charitable organization, charitable organization  
128 or other organization, entity or person disqualified under  
129 this section from participation in any and all certified  
130 projects under this article. Tax credit taken by any  
131 eligible taxpayer in accordance with this article pursuant  
132 to the making of an eligible contribution to the project  
133 transferee, neighborhood organization, qualified charita-  
134 ble organization, charitable organization or other organi-  
135 zation, entity or person disqualified from participation in  
136 any and all certified projects under this article, pursuant  
137 to a certified project plan prior to or subsequent to the  
138 disqualification period shall not be subject to recapture by  
139 reason of the disqualification. However, such credit shall  
140 otherwise be subject to audit and adjustment or recapture  
141 in accordance with the requirements of this article; and

142 (ii) No certification shall be issued during the disqualifi-  
143 cation period for any proposed project in which a project  
144 transferee, neighborhood organization, qualified charita-  
145 ble organization, charitable organization or other organi-  
146 zation, entity or person disqualified under this section  
147 from participation in any and all certified projects is listed  
148 as a proposed project participant.

149 (F) Any combination of the aforementioned sanctions.

150 (3) *Audits and investigations.* — The West Virginia  
151 development office or the department of tax and revenue,  
152 or both, may initiate and carry out investigations or audits  
153 of any recipient of any eligible contribution under this  
154 article, any eligible taxpayer or any project transferee to  
155 determine whether the project certification fee imposed by  
156 this section has been paid in accordance with the require-  
157 ments of this article.

158 (4) *Procedures, failure to timely pay the project certifica-*  
159 *tion fee upon written demand.* —

160 (A) *Written demand.* — The director of the West Virginia  
161 development office shall, upon a reasonable belief that a  
162 project transferee has failed to timely pay the fee imposed  
163 by this section, issue a written demand for payment  
164 thereof, plus interest determined at the interest rate

165 prescribed under section seventeen, article ten of this  
166 chapter, in such form as the director of the West Virginia  
167 development office may specify. The director of the West  
168 Virginia development office may also impose a penalty for  
169 failure to timely pay the project certification fee in the  
170 amount of twenty percent of the amount of the project  
171 certification fee due and interest due. Such demand shall  
172 notify the project transferee of the opportunity to show  
173 that the project certification fee is not due and owing.

174 (B) *Failure to pay pursuant to written demand.* —

175 Failure of the project transferee to pay any project  
176 certification fee due, with interest and penalties, as stated  
177 in the written demand for payment of the project certifi-  
178 cation fee, within thirty days of service of such demand,  
179 and failure of the project transferee to prove to the  
180 satisfaction of the director of the West Virginia develop-  
181 ment office that the fee imposed by this section is not due  
182 and owing, shall result in a determination by the director  
183 of the West Virginia development office that sanctions  
184 shall apply.

185 (C) *Notice of pending sanctions.* — Upon the making of  
186 a determination by the director of the West Virginia  
187 development office that sanctions for failure to pay the  
188 project certification fee apply, the director of the West  
189 Virginia development office shall serve upon the project  
190 transferee from which the project certification fee, or  
191 some portion thereof, is due and owing, a notice of pend-  
192 ing sanctions. If the project transferee from which the  
193 certified project fee, or some portion thereof, is due and  
194 owing is not the applicant for project certification, then an  
195 informational copy of the notice of pending sanctions shall  
196 also be served upon the applicant for project certification.

197 (D) *Service of notice, content of notice.* — The notice of  
198 pending sanctions shall be served upon the delinquent  
199 project transferee in the same manner as an assessment of  
200 tax in accordance with article ten of this chapter. Such  
201 notice of pending sanctions shall state the sanctions to be  
202 applied in accordance with this section, the effective date  
203 or dates of such sanctions, with specific statements of

204 whether any sanction is to be applied retroactively or in  
205 part retroactively, and the commencement and termina-  
206 tion dates for any suspensions of certification or tempo-  
207 rary disqualifications of any program transferee, neigh-  
208 borhood organization, qualified charitable organization,  
209 charitable organization or other organization, entity or  
210 person to be disqualified under this section from partici-  
211 pation in certified projects. The notice of pending sanc-  
212 tions shall state that sanctions shall be imposed sixty days  
213 after service of the notice of pending sanctions upon the  
214 delinquent project transferee, unless the delinquent  
215 project transferee pays the amount of the project certifica-  
216 tion fee due and owing, plus interest and penalties.

217 (E) *Appeals.* — The project transferee may file an appeal  
218 of pending sanctions as if the notice of pending sanctions  
219 were an assessment of tax under article ten of this chap-  
220 ter, and the matter on appeal shall be subject to the  
221 procedures set forth in article ten of this chapter. On  
222 appeal, the burden of proof shall be on the project trans-  
223 feree to prove that the project certification fee and  
224 associated interest and penalties are not due and owing.  
225 The review on appeal shall be limited to:

226 (i) The issue of whether a failure to timely pay the  
227 project certification fee or any portion thereof has oc-  
228 curred, the time period or periods over which such failure  
229 occurred, and whether such failure continues to occur;

230 (ii) The amount of the project certification fee and  
231 interest due; and

232 (iii) The mathematical and methodological accuracy of  
233 the computation of the project certification fee, interest  
234 and penalties.

235 (F) *Statutory confidentiality.* — No information, docu-  
236 ment or proceeding brought pursuant to this section,  
237 relating to the liability of any project transferee for the  
238 project certification fee, interest or penalties imposed  
239 under this section is subject to the confidentiality provi-  
240 sions of article ten of this chapter or any other confiden-  
241 tiality provision of this code. However, any proceeding  
242 relating to any amount of tax due or the recapture of tax

243 credit taken under this article or any adjustment of the  
244 amount of tax credit taken under this article is subject to  
245 the provisions of article ten of this chapter, including all  
246 statutory confidentiality provisions, and shall be subject  
247 to all other applicable statutory tax confidentiality  
248 provisions of this code.

249 (G) *Effect of a final determination, waiver of penalties or*  
250 *sanctions.* — The notice of pending sanctions shall become  
251 final sixty days after service, unless an appeal is filed  
252 under this section, and shall not be subject to further  
253 appeal by the recipient thereof. When a determination has  
254 become final that a project transferee has failed to timely  
255 pay the project certification fee, or any part thereof, the  
256 sanctions described in the notice of pending sanctions  
257 shall apply, effective as of the date set forth in that notice,  
258 unless the project certification fee, interest and penalties  
259 due are paid to the West Virginia development office  
260 within thirty days of the date on which the determination  
261 has become final. The twenty percent penalty authorized  
262 under this section may be imposed, adjusted, withdrawn  
263 or waived, in whole or in part, at the discretion of the  
264 director of the West Virginia development office. How-  
265 ever, payment of the project certification fee and interest  
266 due shall not be subject to waiver. The sanctions for  
267 failure to pay the project certification fee authorized  
268 under this section may be imposed, adjusted, withdrawn  
269 or waived, in whole or in part, at the discretion of the  
270 director of the West Virginia development office.

271 (c) Within sixty days after the close of the regular  
272 meeting of the neighborhood investment advisory board at  
273 which a complete application for approval of a proposed  
274 project is considered by the board, the director of the West  
275 Virginia development office shall certify, or deny certifi-  
276 cation of, the proposed project for which such application  
277 has been filed: *Provided*, That applications for which the  
278 board requires additional information may be considered  
279 at the next regular meeting of the board. Those applica-  
280 tions not approved by the director within sixty days of  
281 final action of the board shall be deemed disapproved by  
282 operation of law.

283 (d) The West Virginia development office shall promptly  
284 notify an applicant as to whether an application for  
285 certification of a project plan has been approved or  
286 disapproved.

287 (e) Those prospective qualified charitable organizations  
288 which receive certification of a project plan, and which  
289 otherwise comply with the requirements of this article so  
290 as to become qualified charitable organizations, as defined  
291 in section three of this article, may receive eligible contri-  
292 butions, as defined in said section. Eligible taxpayers  
293 which make eligible contributions shall receive a tax  
294 credit as provided in section five of this article. No tax  
295 credit may be granted under this article for any contribu-  
296 tion except eligible contributions made to a project which  
297 has been certified in accordance with the requirements of  
298 this article prior to the making of the contribution. No  
299 tax credit may be granted under this article for any  
300 contribution which, if allowed, would cause the amount of  
301 tax credit generated by the project to exceed the maxi-  
302 mum amount of tax credit for which the project was  
303 certified as stated in the application for project certifica-  
304 tion filed with the West Virginia development office.

305 (f) All applications for certification of a project filed  
306 with the West Virginia development office, whether such  
307 project is certified or denied certification, are public  
308 information which may be viewed and copied by the  
309 public and, at the discretion of the West Virginia develop-  
310 ment office, published by the West Virginia development  
311 office.

312 (g) Project transferees shall file quarterly reports with  
313 the West Virginia development office on the progress of  
314 the certified project. The quarterly reports shall be filed  
315 in a form approved by the director.

316 (h) *Revolving fund.* —

317 (1) For the purpose of permitting payments to be made  
318 and costs to be met for operation of the program estab-  
319 lished by this article, there is hereby created a revolving  
320 fund for the West Virginia development office, which shall  
321 be known as the neighborhood investment fund. All

322 money received by the West Virginia development office  
 323 under this article shall be paid into the state treasury, and  
 324 shall be deposited to the credit of the neighborhood  
 325 investment fund, and shall be expended only for the  
 326 purposes of defraying the costs of the neighborhood  
 327 investment program advisory board and the West Virginia  
 328 development office in administering the program estab-  
 329 lished pursuant to this article, unless otherwise directed  
 330 by the Legislature.

331 (2) The neighborhood investment fund shall be accumu-  
 332 lated and administered as follows:

333 (A) Payments received under this article shall be depos-  
 334 ited into the neighborhood investment fund.

335 (B) Any appropriations made to the neighborhood  
 336 investment fund shall not be deemed to have expired at  
 337 the end of any fiscal period.

**§11-13J-4a. Neighborhood investment program advisory board.**

1 (a) There is hereby created a neighborhood investment  
 2 advisory board, which shall consist of twelve voting  
 3 members and the chairperson.

4 (b) *Chairperson.* —

5 (1) The director of the West Virginia development office,  
 6 or the designee of the director of the West Virginia  
 7 development office, shall be the ex officio chairperson of  
 8 the neighborhood investment program advisory board.

9 (2) The chairperson shall vote on actions of the board  
 10 only in the event of a tie vote, in which case the chairper-  
 11 son's vote shall be the deciding vote.

12 (c) *Board members.* —

13 (1) Four members shall be officers or members of the  
 14 boards of directors of unrelated corporations which are  
 15 not affiliated with one another and which are currently  
 16 licensed to do business in West Virginia.

17 (2) Four members shall be executive directors, officers or  
 18 members of the boards of directors of unrelated not-for-  
 19 profit organizations which are not affiliated with one

20 another which currently hold charitable organization  
21 status under Section 501(c)(3) of the Internal Revenue  
22 Code and which are currently licensed to do business in  
23 West Virginia.

24 (3) Four members shall be economically disadvantaged  
25 citizens of the state that, for the taxable year immediately  
26 preceding the year of appointment to the board, had an  
27 annual gross personal income that was not more than one  
28 hundred twenty-five percent of the federal designated  
29 poverty level for personal incomes, and who has been a  
30 domiciliary and resident of this state for at least one year  
31 at the time of appointment.

32 A member appointed under this subdivision is not  
33 disqualified from completion of his or her term if his or  
34 her income in the year of appointment or in any year  
35 subsequent to the year of appointment exceeds one  
36 hundred twenty-five percent of the federal designated  
37 poverty level. A member shall not be eligible for reap-  
38 pointment under this subdivision unless he or she meets  
39 the original qualifications for appointment: *Provided,*  
40 That such member may be reappointed pursuant to  
41 qualification under subdivision (1) or (2) of this subsection  
42 if the member meets the requirements of subdivision (1) or  
43 (2), respectively.

44 (d) *Limitations; terms of members; appointments.* —

45 (1) Not more than four members (exclusive of the  
46 chairperson) shall be appointed from any one congressio-  
47 nal district. Not more than seven of the members (exclu-  
48 sive of the chairperson) may belong to the same political  
49 party. Members shall be eligible for reappointment.  
50 However, no member may serve for more than three  
51 consecutive terms.

52 (2) *Appointment terms.* —

53 (A) Except for initial appointments described under  
54 subdivision (3) of this subsection, and except for midterm  
55 special appointments made to fill irregular vacancies on  
56 the board, members shall be appointed for terms of three  
57 years each.

58 (B) Except for midterm special appointments made to  
59 fill irregular vacancies on the board, appointment terms  
60 shall begin on the first day of July of the beginning year.  
61 All appointment terms, special and regular, shall end on  
62 the thirtieth day of June of the ending year.

63 (3) *Selection of members.* —

64 (A) For the initial appointment of members under  
65 subdivision (3) of this subsection, members shall be  
66 selected by the director of the West Virginia development  
67 office.

68 (B) At the end of a member's term, the chairperson shall  
69 solicit new member nominations from the board and  
70 appoint the most appropriate person to serve, in compli-  
71 ance with the requirements set forth in this section.

72 (C) Vacancies on the board shall be filled in the same  
73 manner as the original appointments for the duration of  
74 the unexpired term.

75 (e) *Quorum; meetings; funding.* —

76 (1) The presence of a majority of the members of the  
77 board constitutes a quorum for the transaction of busi-  
78 ness. The board shall elect from among its members a vice  
79 chairperson and such other officers as are necessary.

80 (2) The board shall meet not less than four times during  
81 the fiscal year, and additional meetings may be held upon  
82 a call of the chairperson or of a majority of the members:  
83 *Provided*, That no meeting of the board shall be required  
84 if the total amount of tax credits available for the fiscal  
85 year have been allotted.

86 (3) Board members shall be reimbursed by the West  
87 Virginia development office for sums necessary to carry  
88 out responsibilities of the board and for reasonable travel  
89 expenses to attend board meetings.

90 (f) *Annual report.* — The board shall make a report to  
91 the governor and the Legislature within thirty days of the  
92 close of each fiscal year. The report shall include summa-  
93 ries of all meetings of the board, an analysis of the overall  
94 progress of the program, fiscal concerns, the relative



95 impact the program is having on the state and any sugges-  
96 tions and policy recommendations that the board may  
97 have. The report shall be public information made  
98 available to the general public for examination and  
99 copying. The board is authorized to publish the annual  
100 report, should the board elect to do so.

101 (g) *Duties of the board.* —

102 (1) *Administrative duties.* The board shall be responsible  
103 for advising the West Virginia development office con-  
104 cerning the administrative obligations of the program.

105 (2) *Project evaluation and approval; prohibition on*  
106 *project promotion.* —

107 (A) The board shall select and approve projects, which  
108 may then be certified by the director of the West Virginia  
109 development office pursuant to section four of this article.

110 (B) Only projects sponsored by qualified charitable  
111 organizations, as defined in section three of this article,  
112 may be approved by the board or certified by the director  
113 of the West Virginia development office. An applicant  
114 that does not hold current status as a charitable organiza-  
115 tion under Section 501(c)(3) of the Internal Revenue Code  
116 may not receive project approval from the board, or  
117 project certification from the director of the West Virginia  
118 development office, for any proposed project. Failure of  
119 any applicant to provide convincing documentation  
120 proving such status as a charitable organization under  
121 Section 501(c)(3) of the Internal Revenue Code shall result  
122 in automatic denial of project approval and denial of  
123 project certification under this article.

124 (3) *Criteria for evaluation.* — In evaluating projects for  
125 approval, the board shall give priority to projects based  
126 upon the following criteria. A proposed project shall be  
127 favored if:

128 (A) The project is community based. A project is com-  
129 munity based if:

130 (i) The project is to be managed locally, without na-  
131 tional, state, multi-state or international affiliations;

132 (ii) The project will benefit local citizens in the immedi-  
133 ate geographic area where the project is to operate; and

134 (iii) The sponsor of the project is a local entity, rather  
135 than a statewide, national or international organization or  
136 an affiliate of a statewide, national or international  
137 organization.

138 (B) The proposed project will primarily serve low income  
139 persons.

140 (C) The proposed project will serve highly distressed  
141 neighborhoods or communities.

142 (D) The project plan incorporates collaborative partner-  
143 ships among nonprofit groups, businesses, government  
144 organizations and other community organizations.

145 (E) The applicant or sponsor of the project has demon-  
146 strated a proven capacity to deliver the proposed services.

147 (F) The applicant or sponsor of the project historically  
148 maintains low administrative costs.

149 (G) The applicant produces a strong showing of need for  
150 the services which the proposed project would provide,  
151 and produces convincing documentation of that need.

152 (H) The proposed project is innovative, novel, creative or  
153 unique in program approach.

154 (4) In the event that an applicant is directly or indirectly  
155 affiliated with one or more board members, those mem-  
156 bers may discuss the proposals with the board, but may  
157 not have a vote when that project is considered for final  
158 approval or disapproval.

159 (5) *Project approval by the board.* — Proposed projects  
160 shall be approved or denied approval by a majority vote of  
161 the board after competitive comparison with proposed  
162 projects of other applicants.

163 (h) *Project certification by the director of the West*  
164 *Virginia development office.* —

165 (1) Upon issuance of approval for a project by the board,  
166 the approved project shall be certified by the director of

167 the West Virginia development office: *Provided*, That no  
168 certification may issue for any project, even though the  
169 project may have been approved by the board, if the  
170 issuance of certification for such project will cause the  
171 aggregate amount of tax credits certified to exceed the  
172 limitation set forth in this article. No certification may be  
173 issued by the director of the West Virginia development  
174 office for any project which has not been approved by the  
175 board.

176 (2) The West Virginia development office shall promptly  
177 notify applicants of the issuance of certification for their  
178 projects, and shall issue tax credit vouchers to certified  
179 project applicants in the amount of the tax credit repre-  
180 sented by the project.

181 (3) The West Virginia development office may provide  
182 incidental technical support and guidance to projects  
183 certified under this article and may monitor the progress  
184 of the projects. The West Virginia development office shall  
185 make a quarterly report to the board on the progress of  
186 certified projects and the program generally.

**§11-13J-8. Total maximum aggregate tax credit amount.**

1 (a) The amount of tax credits allowed under this article  
2 may not exceed two million dollars in any state fiscal year.

3 (b) Applications for project certification shall be filed  
4 with the West Virginia development office. The West  
5 Virginia development office shall record the date each  
6 application is filed. All complete and valid applications  
7 shall be considered for approval or disapproval in a timely  
8 manner by the neighborhood assistance advisory board.  
9 The board may, in its discretion, consider applications for  
10 approval or disapproval at special or interim meetings for  
11 expedited processing.

12 (c) When the total amount of tax credits certified under  
13 this article equals the maximum amount of tax credits  
14 allowed, as specified in subsection (a) of this section, in  
15 any state fiscal year, no further certifications shall be  
16 issued in that same fiscal year. Upon approval of a project  
17 by the board, the director of the West Virginia develop-

18 ment office shall certify the approved project unless  
 19 certification is prohibited by the limitations and require-  
 20 ments set forth in this article.

21 (d) All applications filed in any state fiscal year and not  
 22 certified during the state fiscal year in which they are  
 23 filed shall be null and void by operation of law on the last  
 24 day of the state fiscal year in which they are filed, and all  
 25 applicants which elect to seek certification of a project  
 26 plan shall file anew on and after the first day of the  
 27 succeeding state fiscal year.

**§11-13J-11. Audits and examinations; information sharing.**

1 (a) The tax commissioner may, at his or her discretion,  
 2 perform joint audits or examinations with the West  
 3 Virginia development office or independently audit or  
 4 examine the books, records and other information, as  
 5 appropriate, of any taxpayer or of any person, organiza-  
 6 tion or entity which has filed an application for certifica-  
 7 tion of a project plan under this article, or of any taxpayer  
 8 which has asserted this credit on a tax return, or of any  
 9 person, organization or entity believed to have relevant  
 10 information.

11 (b) For purposes of joint audits, or any administrative or  
 12 judicial proceeding or procedure relating to any tax credit  
 13 taken, asserted or sought under this article, the tax  
 14 commissioner may share such tax information as the tax  
 15 commissioner may deem appropriate with the West  
 16 Virginia development office, notwithstanding the provi-  
 17 sions of section four-a, article one of this chapter or  
 18 section five-d, article ten of said chapter, or any other  
 19 provision of this code to the contrary.

**§11-13J-12. Program evaluation; expiration of credit; preserva-  
 tion of entitlements.**

1 On or before the thirtieth day of September, one thou-  
 2 sand nine hundred ninety-eight, the board shall secure an  
 3 independent review of the neighborhood investment  
 4 program created by this article and present the findings to  
 5 the Legislature. Pursuant to this report, and any inde-  
 6 pendent evaluation that the Legislature or the joint

7 committee on government operations may wish to initiate,  
8 the joint committee on government operations shall issue  
9 a recommendation to the Legislature, not later than the  
10 first day of February, one thousand nine hundred ninety-  
11 nine, as to whether the program should continue. Unless  
12 sooner terminated by law, the neighborhood investment  
13 program act shall terminate on the first day of July, one  
14 thousand nine hundred ninety-nine. No entitlement to the  
15 tax credit under this article shall result from any contri-  
16 bution made to any certified project after the first day of  
17 July, one thousand nine hundred ninety-nine, and no  
18 credit shall be available to any taxpayer for any contribu-  
19 tion made after that date. Taxpayers which have gained  
20 entitlement to the credit pursuant to eligible contributions  
21 made to certified projects prior to the first day of July, one  
22 thousand nine hundred ninety-nine, shall retain that  
23 entitlement and apply the credit in due course pursuant to  
24 the requirements and limitations of this article.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Randy H. Hoover*  
.....  
Chairman Senate Committee

*Nick J. Santora*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Parrell B. King*  
.....  
Clerk of the Senate

*Gregory W. Boy*  
.....  
Clerk of the House of Delegates

*Earl Ray Tomblin*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *is approved* this the *2nd* day of *May*, 1997.

*[Signature]*  
.....  
Governor

PRESENTED TO

GOVERNOR

Date

4/21/97

Time

11:20am