

RECEIVED

03 APR '2 PM 2:36

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

Regular Session, 2003

---

**ENROLLED**

SENATE BILL NO. 657

(By Senator Helmick, et. al )

---

**PASSED** March 8, 2003

In Effect 90 days from **Passage**

INDEXED

03 APR 22 PM 2:36

OFFICE OF THE  
SECRETARY OF STATE

## ENROLLED

### Senate Bill No. 657

(BY SENATORS HELMICK, SHARPE, CHAFIN, PLYMALE, PREZIOSO,  
EDGELL, LOVE, BAILEY, BOWMAN, MCCABE, UNGER, DEMPSEY,  
BOLEY, MINEAR, FACEMYER, GULLS AND SPROUSE)

[Passed March 8, 2003; in effect ninety days from passage.]

AN ACT to amend and reenact sections two, four, five and eight, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the West Virginia capital company act; lowering amount of tax credits available; making a portion of the venture capital company tax credit available to investors in economic development and technology advancement centers generally; declaration of policy; definitions; providing for tax credits for centers; and authorizing promulgation of legislative rules.

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

That sections two, four, five and eight, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.**

**§5E-1-2. Declaration of policy.**

1 (a) The Legislature finds and declares that the West  
2 Virginia economy can be strengthened by promoting  
3 private investment in West Virginia businesses.

4 (b) The Legislature further finds that:

5 (1) Investment of capital in the West Virginia economy  
6 can be promoted by making tax credits available to  
7 taxpayers investing in West Virginia capital companies;

8 (2) Economic development in the West Virginia economy  
9 can be stimulated and higher education can be promoted  
10 by making tax credits available to taxpayers investing in  
11 economic development and technology advancement  
12 centers organized to partner with institutions of higher  
13 education and qualified pursuant to the provisions of  
14 article twelve-a, chapter eighteen-b of this code.

15 (3) Demands on state revenues restrict the financial  
16 ability of this state to make unlimited tax credits available  
17 for investment purposes and require that this state place  
18 reasonable limits on the total amount of tax credits to be  
19 made available for investment incentives;

20 (4) Establishment of a tax credit program, which gives  
21 priority to investments in capital companies in the order  
22 in which they are qualified as such, will encourage invest-  
23 ment in West Virginia businesses; and

24 (5) The promotion of private investment in West Virginia  
25 businesses will tend to reduce unemployment by creating  
26 new or maintaining existing employment opportunities for  
27 the citizens of this state.

**§5E-1-4. Definitions.**

1 As used in this article, the following terms have the  
2 meanings ascribed to them in this section, unless the

3 context in which the term is used clearly requires another  
4 meaning or a specific different definition is provided:

5 (a) "Authority" means the West Virginia economic  
6 development authority, provided for in article fifteen,  
7 chapter thirty-one of this code.

8 (b) "Capital base" means equity capital or net worth.

9 (c) "Certified West Virginia capital company" means:

10 (1) A West Virginia business development corporation  
11 created pursuant to article fourteen, chapter thirty-one of  
12 this code; or

13 (2) A profit or nonprofit entity organized and existing  
14 under the laws of this state, created for the purpose of  
15 making venture or risk capital available to qualified  
16 investments that has been certified by the authority.

17 (d) "Qualified investment" means a debt or equity  
18 financing of a West Virginia business, but only if the  
19 business is engaged in one or more of the following  
20 activities: Manufacturing; agricultural production or  
21 processing; forestry production or processing; mineral  
22 production or processing, except for conventional oil and  
23 gas exploration; service industry; transportation; research  
24 and development of products or processes associated with  
25 any of the activities previously enumerated above; tour-  
26 ism; computer software development companies engaged  
27 in the creation of computer software; and wholesale or  
28 retail distribution activities within the state. The invest-  
29 ment by a West Virginia capital company in purchases of  
30 property to be leased by it, as lessor, through a capital  
31 lease to a West Virginia business lessee engaged in one of  
32 the above enumerated activities is a qualified investment.

33 (e) "Qualified West Virginia capital company" means a  
34 West Virginia capital company that has been designated  
35 by the authority as a qualified capital company under the  
36 provisions of section six of this article.

37 (f) "Small business investment company" means a small  
38 business investment company licensed by the United  
39 States small business investment administration under the  
40 federal small business investment act of 1958, 15 U. S. C.  
41 §661, *et seq.*, as amended.

42 (g) "State" means the state of West Virginia.

43 (h) "Capital lease" means a lease meeting one or more of  
44 the following criteria:

45 (1) The lease transfers ownership of the property to the  
46 lessee at the end of the lease term by the lessee's exercise  
47 of a purchase option which is de minimis in amount; or

48 (2) The lease term is equal to seventy-five percent or  
49 more of the estimated economic life of the leased property.  
50 However, if the beginning of the lease term falls within the  
51 last twenty-five percent of the total estimated economic  
52 life of the leased property, including earlier years of use,  
53 this criterion shall not be used; or

54 (3) Under generally accepted accounting principles, the  
55 lessee cannot treat payments to the capital company as  
56 payments under an operating lease; or

57 (4) For federal income tax purposes, the parties are  
58 required to treat payments as amortization of principal  
59 and interest.

60 (i) "Economic development and technology advancement  
61 center" or "center" means an economic development and  
62 technology advancement center organized and operating  
63 under the laws of this state which has been designated by  
64 the authority as a qualified economic development and  
65 technology advancement center under the provisions of  
66 article twelve-a, chapter eighteen-b of this code.

#### **§5E-1-5. Rules.**

1 The authority shall promulgate rules in accordance with  
2 article three, chapter twenty-nine-a of this code to carry

3 out the policy and purposes of this article, to provide any  
4 necessary clarification of the provisions of this article and  
5 to efficiently provide for the general administration of this  
6 article. The authority may promulgate additional rules in  
7 accordance with article three, chapter twenty-nine-a of  
8 this code that it considers necessary to provide for the  
9 efficient administration of the credits allowed for invest-  
10 ments in economic development and technology advance-  
11 ment centers.

**§5E-1-8. Tax credits.**

1 (a) The total amount of tax credits authorized for a  
2 single qualified company may not exceed two million  
3 dollars. The total amount of tax credits authorized for a  
4 single economic development and technology advancement  
5 center may not exceed one million dollars. Capitalization  
6 of the company or center may be increased pursuant to  
7 rule of the authority.

8 (b) (1) The total credits authorized by the authority for  
9 all companies and centers may not exceed a total of ten  
10 million dollars each fiscal year: *Provided*, That for the  
11 fiscal year beginning on the first day of July, one thousand  
12 nine hundred ninety-nine, the total credits authorized for  
13 all companies may not exceed a total of six million dollars:  
14 *Provided, however*, That for the fiscal year beginning on  
15 the first day of July, two thousand, the total credits  
16 authorized for all companies may not exceed a total of  
17 four million dollars: *Provided further*, That for the fiscal  
18 year beginning on the first day of July, two thousand one,  
19 the total credits authorized for all companies may not  
20 exceed a total of four million dollars: *And provided*  
21 *further*, That for the fiscal year beginning on the first day  
22 of July, two thousand two, the total credits authorized for  
23 all companies may not exceed a total of three million  
24 dollars: *And provided further*, That for the fiscal year  
25 beginning on the first day of July, two thousand three, the  
26 total credits authorized for all companies may not exceed  
27 a total of three million dollars: *And provided further*, That

28 the capital base of any qualified company other than an  
29 economic development and technology advancement  
30 center qualified under the provisions of article twelve-a,  
31 chapter eighteen-b of this code shall be invested in accor-  
32 dance with the provisions of this article. The authority  
33 shall allocate these credits to qualified companies and  
34 centers in the order that the companies are qualified.

35 (2) Not more than two million dollars of the credits  
36 allowed under subdivision (1) of this subsection may be  
37 allocated by the authority during each fiscal year to one or  
38 more small business investment companies described in  
39 this subdivision. After a portion of the credits are allo-  
40 cated to small business investment companies as provided  
41 in this section, not more than one million dollars of the  
42 credits allowed under subdivision (1) of this subsection  
43 may be allocated by the authority during each fiscal year  
44 to one or more economic development and technology  
45 advancement centers qualified by the authority under  
46 article twelve-a, chapter eighteen-b of this code. The  
47 remainder of the tax credits allowed during the fiscal year  
48 shall be allocated by the authority under the provisions of  
49 section four, article two of this chapter. The portion of the  
50 tax credits allowed for small business investment compa-  
51 nies described in this subdivision shall be allowed only if  
52 allocated by the authority during the first ninety days of  
53 the fiscal year, and may only be allocated to companies  
54 that: (A) Were organized on or after the first day of  
55 January, one thousand nine hundred ninety-nine; (B) are  
56 licensed by the small business administration as a small  
57 business investment company under the small business  
58 investment act; and (C) have certified in writing to the  
59 authority on the application for credits under this act that  
60 the company will diligently seek to obtain and thereafter  
61 diligently seek to invest leverage available to the small  
62 business investment companies under the small business  
63 investment act. These credits shall be allocated by the  
64 authority in the order that the companies are qualified.  
65 The portion of the tax credits allowed for economic

66 development and technology advancement centers de-  
67 scribed in article twelve-a, chapter eighteen-b of the code  
68 shall be similarly allowed only if allocated by the author-  
69 ity during the first ninety days of the fiscal year. Any  
70 credits which have not been allocated to qualified compa-  
71 nies meeting the requirements of this subdivision relating  
72 to small business investment companies or to qualified  
73 economic development and technology advancement  
74 centers during the first ninety days of the fiscal year shall  
75 be made available and allocated by the authority under the  
76 provisions of section four, article two of this chapter.

77 (c) Any investor, including an individual, partnership,  
78 limited liability company, corporation or other entity who  
79 makes a capital investment in a qualified West Virginia  
80 capital company, is entitled to a tax credit equal to fifty  
81 percent of the investment, except as otherwise provided in  
82 this section or in this article: *Provided*, That the tax credit  
83 available to investors who make a capital investment in an  
84 economic development and technology advancement  
85 center shall be one hundred percent of the investment. The  
86 credit allowed by this article shall be taken after all other  
87 credits allowed by chapter eleven of this code. It shall be  
88 taken against the same taxes and in the same order as set  
89 forth in subsections (c) through (i), inclusive, section five,  
90 article thirteen-c, chapter eleven of this code. The credit  
91 for investments by a partnership, limited liability com-  
92 pany, a corporation electing to be treated as a subchapter  
93 S corporation or any other entity which is treated as a pass  
94 through entity under federal and state income tax laws  
95 may be divided pursuant to election of the entity's part-  
96 ners, members, shareholders or owners.

97 (d) The tax credit allowed under this section is to be  
98 credited against the taxpayer's tax liability for the taxable  
99 year in which the investment in a qualified West Virginia  
100 capital company or economic development and technology  
101 advancement center is made. If the amount of the tax  
102 credit exceeds the taxpayer's tax liability for the taxable



103 year, the amount of the credit which exceeds the tax  
104 liability for the taxable year may be carried to succeeding  
105 taxable years until used in full, or until forfeited: *Pro-*  
106 *vided*, That: (i) Tax credits may not be carried forward  
107 beyond fifteen years; and (ii) tax credits may not be  
108 carried back to prior taxable years. Any tax credit  
109 remaining after the fifteenth taxable year is forfeited.

110 (e) The tax credit provided for in this section is available  
111 only to those taxpayers whose investment in a qualified  
112 West Virginia capital company occurs or economic devel-  
113 opment and technology advancement center after the first  
114 day of July, one thousand nine hundred eighty-six.

115 (f) The tax credit allowed under this section may not be  
116 used against any liability the taxpayer may have for  
117 interest, penalties or additions to tax.

118 (g) Notwithstanding any provision in this code to the  
119 contrary, the tax commissioner shall publish in the state  
120 register the name and address of every taxpayer and the  
121 amount, by category, of any credit asserted under this  
122 article. The categories by dollar amount of credit received  
123 are as follows:

124 (1) More than \$1.00, but not more than \$50,000;

125 (2) More than \$50,000, but not more than \$100,000;

126 (3) More than \$100,000, but not more than \$250,000;

127 (4) More than \$250,000, but not more than \$500,000;

128 (5) More than \$500,000, but not more than \$1,000,000;

129 and

130 (6) More than \$1,000,000.

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

*Craig A. ...*  
.....  
Chairman Senate Committee

*Shawn ...*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Russell ...*  
.....  
Clerk of the Senate

*Suzanne ...*  
.....  
Clerk of the House of Delegates

*Carl ...*  
.....  
President of the Senate

*Tim ...*  
.....  
Speaker House of Delegates

The within is approved this the 2nd  
Day of April, 2003.  
*Bob ...*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/27/03

Time 10:10am