

FILED

2004 APR -1 P 4: 42

OFFICE OF THE SECRETARY OF STATE  
WEST VIRGINIA

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2004

---

**ENROLLED**

## House Bill No. 4451

(By Delegates Cann, Pethtel, Perry, Palumbo,  
Browning, Poling and Walters)

---

Passed March 13, 2004

In Effect from Passage

FILED

2004 APR -1 P 4: 42

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**E N R O L L E D**

**H. B. 4451**

(BY DELEGATES CANN, PETHTEL, PERRY, PALUMBO,  
BROWNING, POLING AND WALTERS)

---

[Passed March 13, 2004; in effect from passage.]

---

AN ACT to amend and reenact §5E-1-16 and §5E-1-17 of the code of West Virginia, 1931, as amended, relating to the West Virginia capital company act; and clarifying that the economic development authority and tax commissioner are authorized to require certain examination and compliance actions.

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

That §5E-1-16 and §5E-1-17 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

**§5E-1-16. Examination.**

- 1 (a) Annually each qualified capital company and center
- 2 shall cause its books and records to be audited by an independ-
- 3 ent certified public accountant in accordance with generally
- 4 accepted auditing and accounting principles. In addition to the
- 5 performance of a financial audit, the audit shall address the

6 methods of operation and conduct of the business of the West  
7 Virginia capital company or center to determine compliance  
8 with this article and that the funds received by the company  
9 have been invested within the time limits required by this  
10 article. Upon completion, a copy of the audit report shall be  
11 certified and sent to the authority.

12 (b) The authority may examine, under oath, any of the  
13 officers, directors, agents, employees or investors of a West  
14 Virginia capital company or center regarding the affairs and  
15 business of the company or center. The authority may issue  
16 subpoenas and subpoenas duces tecum and administer oaths.  
17 Refusal to obey such a subpoena or subpoena duces tecum may  
18 at once be reported to the circuit court of the county in which  
19 the company or center is located or the persons subpoenaed  
20 reside and the circuit court shall enforce obedience to the  
21 subpoena or subpoena duces tecum in the manner provided by  
22 law for compliance with a subpoena or subpoena duces tecum  
23 issued by a circuit court of this state.

24 (c) In addition to the audits herein required, the authority  
25 and the tax commissioner may jointly audit any capital com-  
26 pany or number of capital companies or centers in any year on  
27 a random basis, or for cause, or for any other basis the authority  
28 or the tax commissioner may select. The tax commissioner may  
29 also audit any company or business in which a capital company  
30 has made an investment, or which a capital company proposes  
31 to invest, on a random audit selection basis, or for cause, or on  
32 any other basis the tax commissioner may select. Nothing  
33 herein shall be construed to prohibit the tax commissioner from  
34 conducting any audit relating to the administration or enforce-  
35 ment of the tax laws of this state which the tax commissioner  
36 may, in his or her discretion, determine to be appropriate.

**§5E-1-17. Failure to comply.**

1       (a) If the examination conducted pursuant to section sixteen  
2 of this article discloses that a West Virginia capital company or  
3 center is not in compliance with the provisions of this article,  
4 the authority may exercise any of the powers necessary and  
5 appropriate to protect the authority's interest.

6       (b) The authority shall give a West Virginia capital com-  
7 pany or center written notice of any inadequacies in its compli-  
8 ance with the provisions of this article, and specify a period of  
9 time the company has to redress such inadequacies. Failure  
10 within said time period to make corrections will result in further  
11 action by the authority pursuant to this section.

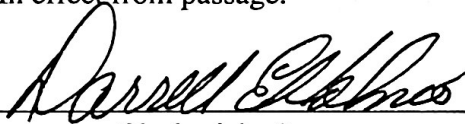
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

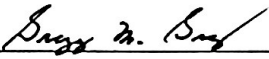
  
Chairman Senate Committee

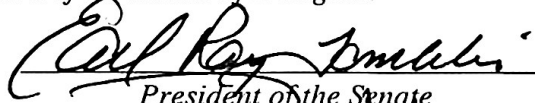
  
Chairman House Committee

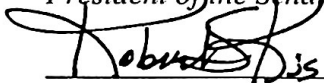
Originating in the House.

In effect from passage.

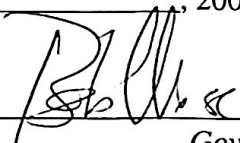
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved this the 1<sup>st</sup>  
day of April, 2004.

  
Governor

3/26/04  
3:40p