

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 243

(By Senators Kessler (Acting President) and Hall,
By Request of the Executive)

[Originating in the Committee on Economic Development;
reported February 15, 2011.]

A BILL to amend and reenact §11-13J-4a, §11-13J-6, §11-13J-8 and §11-13J-12 of the Code of West Virginia, 1931, as amended, all relating to the Neighborhood Investment Program Act; specifying that board members who are affiliated, directly or indirectly, with an applicant may not discuss or vote on the applicant's proposal; increasing total maximum aggregate tax credits certified in any state fiscal year; specifying total maximum aggregate tax credits allowed in any state fiscal year; extending the date for termination of the Neighborhood Investment Program; and providing technical and clerical cleanup.

Be it enacted by the Legislature of West Virginia:

That §11-13J-4a, §11-13J-6, §11-13J-8 and §11-13J-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 13J. NEIGHBORHOOD INVESTMENT PROGRAM.

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

1 (a) There is hereby created a neighborhood investment
2 program 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 Develop-
7 ment Office, shall be the ex officio chairperson of the
8 neighborhood investment program advisory board.

9 (2) The chairperson shall vote on actions of the board only
10 in the event of a tie vote, in which case the chairperson's vote
11 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 not
15 affiliated with one another and which are currently licensed
16 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
19 not-for-profit organizations which are not affiliated with one
20 another which currently hold charitable organization status
21 under Section 501(c)(3) of the Internal Revenue Code and
22 which are currently licensed to do business in West Virginia.

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

31 A member appointed under this subdivision is not disqual-
32 ified from completion of his or her term if his or her income
33 in the year of appointment or in any year subsequent to the
34 year of appointment exceeds one hundred twenty-five
35 percent of the federal designated poverty level. A member
36 shall not be eligible for reappointment under this subdivision
37 unless he or she meets the original qualifications for ap-
38 pointment: *Provided*, That such member may be reappointed

39 pursuant to qualification under subdivision (1) or (2) of this
40 subsection if the member meets the requirements of subdivi-
41 sion (1) or (2), respectively.

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

43 (1) Not more than four members, exclusive of the chairper-
44 son, shall be appointed from any one congressional district.
45 Not more than seven of the members, exclusive of the
46 chairperson, may belong to the same political party. Mem-
47 bers shall be eligible for reappointment. However, no
48 member may serve for more than three consecutive terms.

49 (2) *Appointment terms.* —

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

55 (B) Except for midterm special appointments made to fill
56 irregular vacancies on the board, appointment terms shall
57 begin on July 1, of the beginning year. All appointment
58 terms, special and regular, shall end on June 30 of the ending
59 year.

60 (3) *Selection of members.* —

61 (A) For the initial appointment of members under this
62 subdivision, members shall be selected by the Director of the
63 West Virginia Development Office.

64 (B) At the end of a member's term, the chairperson shall
65 solicit new member nominations from the board and appoint
66 the most appropriate person to serve, in compliance with the
67 requirements set forth in this section.

68 (C) Vacancies on the board shall be filled in the same
69 manner as the original appointments for the duration of the
70 unexpired term.

71 (e) *Quorum; meetings; funding.* —

72 (1) The presence of a majority of the members of the board
73 constitutes a quorum for the transaction of business. The
74 board shall elect from among its members a vice chairperson
75 and such other officers as are necessary.

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

82 (3) Board members shall be reimbursed by the West
83 Virginia Development Office for sums necessary to carry out
84 responsibilities of the board and for reasonable travel
85 expenses to attend board meetings.

86 (f) *Annual report.* — The board shall make a report to the
87 Governor and the Legislature within thirty days of the close
88 of each fiscal year. The report shall include summaries of all
89 meetings of the board, an analysis of the overall progress of
90 the program, fiscal concerns, the relative impact the program
91 is having on the state and any suggestions and policy
92 recommendations that the board may have. The report shall
93 be public information made available to the general public
94 for examination and copying. The board is authorized to
95 publish the annual report, should the board elect to do so.

96 (g) *Duties of the board.* —

97 (1) *Administrative duties.* — The board shall be responsible
98 for advising the West Virginia Development Office concern-
99 ing the administrative obligations of the program.

100 (2) *Project evaluation and approval; prohibition on project*
101 *promotion.* —

102 (A) The board shall select and approve projects, which may
103 then be certified by the director of the West Virginia Devel-

104 opment Office pursuant to section four of this article.

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

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

122 (A) The project is community based. A project is commu-
123 nity based if:

124 (i) The project is to be managed locally, without national,
125 state, multistate or international affiliations;

126 (ii) The project will benefit local citizens in the immediate
127 geographic area where the project is to operate; and

128 (iii) The sponsor of the project is a local entity, rather than
129 a statewide, national or international organization or an
130 affiliate of a statewide, national or international organiza-
131 tion.

132 (B) The proposed project will primarily serve low income
133 persons.

134 (C) The proposed project will serve highly distressed
135 neighborhoods or communities.

136 (D) The project plan incorporates collaborative partner-
137 ships among nonprofit groups, businesses, government
138 organizations and other community organizations.

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

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

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

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

148 (4) ~~In the event that~~ If an applicant is directly or indirectly
149 affiliated with one or more board members, those members
150 ~~may~~ shall not discuss the proposals with ~~the~~ one or more
151 board members, ~~but may~~ and shall not have a vote when that
152 project is considered for final approval or disapproval.

153 (5) *Project approval by the board.* — Proposed projects
154 shall be approved or denied approval by a majority vote of
155 the board after competitive comparison with proposed
156 projects of other applicants.

157 (h) *Project certification by the Director of the West Virginia*
158 *Development Office.* —

159 (1) Upon issuance of approval for a project by the board,
160 the approved project shall be certified by the Director of the
161 West Virginia Development Office: *Provided*, That no
162 certification may issue for any project, even though the
163 project may have been approved by the board, if the issuance
164 of certification for such project will cause the aggregate
165 amount of tax credits certified to exceed the limitation set
166 forth in this article. No certification may be issued by the
167 Director of the West Virginia Development Office for any
168 project which has not been approved by the board.

169 (2) The West Virginia Development Office shall promptly
170 notify applicants of the issuance of certification for their
171 projects, and shall issue tax credit vouchers to certified
172 project applicants in the amount of the tax credit repre-
173 sented by the project.

174 (3) The West Virginia Development Office may provide
175 incidental technical support and guidance to projects
176 certified under this article and may monitor the progress of
177 the projects. The West Virginia Development Office shall
178 make a quarterly report to the board on the progress of
179 certified projects and the program generally.

§11-13J-6. Application of annual credit allowance.

1 (a) *In general.* — The aggregate annual credit allowance for
2 a current tax year is an amount equal to the sum of the
3 following:

4 (1) The portion allowed under section five of this article for
5 an eligible contribution placed into service or use during a
6 prior tax year; plus

7 (2) The portion allowed under section five of this article for
8 an eligible contribution placed into service or use during the
9 current tax year.

10 (b) *Application of credit allowance.* — The amount deter-
11 mined under subsection (a) of this section shall be allowed as
12 a credit for tax years ending on and after July 1, 1996, as
13 follows:

14 (1) *Business franchise taxes.* —

15 The amount determined under subsection (a) of this section
16 shall be applied to reduce up to fifty percent of the taxes
17 imposed by article twenty-three of this chapter for the tax
18 year as determined after application of the credits against
19 tax provided in section seventeen of said article, but before
20 application of any other allowable credits against tax.

21 (2) *Corporation net income taxes.* — After application of
22 subdivision (1) of this subsection, any unused credit shall
23 next be applied to reduce up to fifty percent of the taxes
24 imposed by article twenty-four of this chapter, for the tax
25 year determined before application of allowable credits
26 against tax.

27 (3) *Personal income taxes.* —

28 (A) If the eligible taxpayer is an electing small business
29 corporation as defined in Section 1361 of the United States
30 Internal Revenue Code, a limited liability company treated
31 as a partnership for purposes of the federal income tax, a

32 partnership or a sole proprietorship, then any unused credit,
33 after application of subdivisions (1) and (2) of this subsec-
34 tion, shall be allowed as a credit against up to fifty percent
35 of the taxes imposed by article twenty-one of this chapter on
36 income of proprietors, partners or shareholders, subject to
37 the limitations set forth in paragraphs (B) and (C) of this
38 subdivision.

39 (B) Electing small business corporations, partnerships and
40 other unincorporated organizations shall allocate the credit
41 allowed by this article among the members thereof in the
42 same manner as profits and losses are allocated for the tax
43 year.

44 (C) Any taxpayer subject to the personal income tax under
45 article twenty-one of this chapter, who makes an eligible
46 contribution to a qualified charitable organization, and
47 receives back from that organization a properly completed
48 neighborhood investment program tax credit voucher, is
49 eligible to claim the credit. The credit shall be allowed
50 without regard to the source of that income, whether it is
51 from wages, passive investment or retirement income,
52 income from a trade or business or any other source.

53 (c) *Unused credit forfeited.* — If any credit to an eligible
54 taxpayer remains after application of subsections (a) and (b)
55 of this section, the amount thereof may be carried forward no
56 more than four years from the tax year in which the contri-
57 bution was made. Unused credits of an eligible taxpayer may
58 not be carried forward beyond the time limits imposed under
59 section five of this article and the total maximum aggregate
60 tax credits certified in any state fiscal year may not exceed
61 ~~\$2,000,000~~ \$3,000,000.

62 (d) *Addition of deductions, decreasing adjustments or*
63 *decreasing modifications taken in determining taxable*
64 *income for which credit is taken.* — Any deduction, decreas-
65 ing adjustment or decreasing modification taken by any
66 taxpayer in determining federal taxable income which
67 affects West Virginia taxable income or in determining West
68 Virginia taxable income under article twenty-one or
69 twenty-four of this chapter for the taxable year for any
70 charitable contribution, or payment or portion thereof,
71 which qualifies as an eligible contribution under this article
72 and for which credit is claimed, shall be added to West
73 Virginia taxable income in determining the tax liability of
74 the taxpayer under article twenty-one or twenty-four of this

75 chapter, as appropriate, before application of the credit
76 allowed under this article for the taxable year.

77 (e) *Annual limit.* — The aggregate annual credit allowance
78 to any taxpayer may not exceed \$100,000 in any tax year.

§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 five hundred thousand dollars~~
3 \$3,000,000 in any state fiscal year.

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

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

18 board, the Director of the West Virginia Development Office
19 shall certify the approved project unless certification is
20 prohibited by the limitations and requirements set forth in
21 this article.

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

**§11-13J-12. Program evaluation; expiration of credit; preservation
of entitlement.**

1 Beginning on December 15, 2005, and every second year
2 thereafter, the director shall secure an independent review
3 of the neighborhood investment program created by this
4 article and present the findings to the Joint Committee on
5 Government and Finance. Unless sooner terminated by law,
6 the Neighborhood Investment Program Act terminates on
7 ~~July 1, 2011~~ July 1, 2016. There is no entitlement to the tax
8 credit under this article for a contribution made to a certified
9 project after ~~July 1, 2011~~ July 1, 2016, and no credit is

10 available to any taxpayer for any contribution made after
11 that date. Taxpayers which have gained entitlement to the
12 credit pursuant to eligible contributions made to certified
13 projects prior to ~~July 1, 2011~~ July 1, 2016, shall retain that
14 entitlement and apply the credit in due course pursuant to
15 the requirements and limitations of this article.

(NOTE: The purpose of this bill is to change the termination date for the Neighborhood Investment Program from July 1, 2011, to July 1, 2016; to prevent board members affiliated with applicants from discussing or voting on proposals put forth by those applicants; to increase the amount of total aggregate tax credit certified each year from \$2 million to \$3 million; and to increase the amount of total aggregate tax credit allowed each year from \$2.5 million to \$3 million.)

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)