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Senate Bill No. 674

(By Senators Browning, Klempa, McCabe, Stollings and Wells)

[Originating in the Committee on Economic Development; reported
February 22, 2012.]

A BILL to amend and reenact §12-7-5, §12-7-6, §12-7-7 and §12-7-11 of the Code of West Virginia, 1931, as amended, all relating generally to the Jobs Investment Trust; permitting Jobs Investment Trust Board to deposit funds into financial institution of its choice; expanding powers of Jobs Investment Trust Board to allow supplemental investments and creation of board committees; defining "total investment portfolio"; expanding information required to be made public; modernizing provisions of Jobs Investment Trust; making technical clarifications; and deleting obsolete language.

Be it enacted by the Legislature of West Virginia:

That §12-7-5, §12-7-6, §12-7-7 and §12-7-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

1 **ARTICLE 7. JOBS INVESTMENT TRUST FUND.**

2 **§12-7-5. Management and control of jobs investment trust vested in**
3 **board; officers; liability; authority of executive director to**
4 **act on behalf of board; relationship to higher education**
5 **institutions.**

6 (a) It is the duty of the board to manage and control the jobs
7 investment trust. With the advice and consent of the Senate, the
8 Governor appoints an executive director of the jobs investment
9 trust who is or has been a senior executive of a major financial
10 institution, brokerage firm, investment firm or similar
11 institution, with extensive experience in capital market
12 development. The director serves at the Governor's will and
13 pleasure and is responsible for managing and administering the
14 daily functions of the jobs investment trust and for performing
15 other functions necessary to the effective operation of the trust.
16 The compensation of the director is annually fixed by the board.

17 (b) The board annually elects a secretary to keep a record of
18 the proceedings of the board, who need not be a member of the
19 board.

20 (c) The members and officers of the board are not liable
21 personally, either jointly or severally, for any debt or obligation
22 created by the board.

23 (d) The acts of the board are solely the acts of its
24 corporation and are not those of an agent of the state. A debt or

1 obligation of the board is not a debt or obligation of the state.

2 (e) Upon the affirmative vote of at least a majority of those
3 members in attendance or participating by such other means as
4 described in subsection (g), section four of this article in a
5 meeting of the board, but in any event not fewer than six of the
6 members serving on the board, the board may approve any action to
7 be taken and authorize the executive director for and on behalf of
8 the board to execute and deliver all instruments, agreements or
9 other documents that are required or are reasonably necessary to
10 effectuate the decisions or acts of the board.

11 (f) The West Virginia Housing Development Fund shall provide
12 office space and staff support services for the director and the
13 board, shall act as fiscal agent for the board and, as such, shall
14 provide accounting services for the board, invest all funds as
15 directed by the board, service all investment activities of the
16 board and shall make the disbursements of all funds as directed by
17 the board, for which the West Virginia Housing Development Fund
18 shall be reasonably compensated as determined by the board;
19 Provided, That upon mutual agreement of the board and the West
20 Virginia Housing Development Fund, the board may deposit funds
21 except funds held pursuant to section eight-a of this article with
22 a financial institution of the board's choice, or the State
23 Treasurer's office, with respect to which funds the board may act
24 as its own fiscal agent, and the funds may be invested and

1 disbursed as directed by the board. The board may reasonably
2 compensate any financial institution or the State Treasurer's
3 office holding funds in accordance with this subsection, in the
4 amounts as may be approved by the board.

5 (g) The board and the executive director shall involve
6 students and faculty members of state institutions of higher
7 education in the board's activities in order to enhance the
8 opportunities at the institutions for learning and for
9 participation in the board's investment activities and in the
10 economic development of the state, whether in research, financial
11 analysis, management participation or in such other ways as the
12 board and the executive director may, in their discretion, find
13 appropriate.

14 **§12-7-6. Corporate powers.**

15 The board may:

16 (1) (I) Make loans to eligible businesses with or without
17 interest secured if and as required by the board; and (ii) acquire
18 ownership interests in eligible businesses. These investments may
19 be made in eligible businesses that stimulate economic growth and
20 provide or retain jobs in this state and shall be made only upon
21 the determination by the board that the investments are prudent and
22 meet the criteria established by the board;

23 (2) Accept appropriations, gifts, grants, bequests and devises
24 and use or dispose of them to carry out its corporate purposes;

1 (3) Make and execute contracts, releases, compromises,
2 agreements and other instruments necessary or convenient for the
3 exercise of its powers or to carry out its corporate purposes;

4 (4) Collect reasonable fees and charges in connection with
5 making and servicing loans, notes, bonds, obligations, commitments
6 and other evidences of indebtedness, in connection with making
7 equity investments and in connection with providing technical,
8 consultative and project assistance services;

9 (5) Sue and be sued;

10 (6) Make, amend and repeal bylaws and rules consistent with
11 the provisions of this article;

12 (7) Hire its own employees, who shall be employees of the
13 state of West Virginia for purposes of articles ten and sixteen,
14 chapter five of this code, and appoint officers and consultants and
15 fix their compensation and prescribe their duties;

16 (8) Acquire, hold and dispose of real and personal property
17 for its corporate purposes;

18 (9) Enter into agreements or other transactions with any
19 federal or state agency, college or university, any person and any
20 domestic or foreign partnership, corporation, association or
21 organization;

22 (10) Acquire real and personal property, or an interest in
23 real or personal property, in its own name, by purchase or
24 foreclosure when acquisition is necessary or appropriate to protect

1 any loan in which the board has an interest; to sell, transfer and
2 convey any real or personal property to a buyer; and, in the event
3 a sale, transfer or conveyance cannot be effected with reasonable
4 promptness or at a reasonable price, to lease real or personal
5 property to a tenant;

6 (11) Purchase, sell, own, hold, negotiate, transfer or assign:
7 (I) Any mortgage, instrument, note, credit, debenture, guarantee,
8 bond or other negotiable instrument or obligation securing a loan,
9 or any part of a loan; (ii) any security or other instrument
10 evidencing ownership or indebtedness; or (iii) equity or other
11 ownership interest. An offering of one of these instruments shall
12 include the representation and qualification that the board is a
13 public body corporate managing a venture capital fund that includes
14 high-risk investments and that in any transfer, sale or assignment
15 of any interest, the transferee, purchaser or assignee accepts any
16 risk without recourse to the jobs investment trust or to the state;

17 (12) Procure insurance against losses to its property in
18 amounts, and from insurers, as is prudent;

19 (13) Consent, when prudent, to the modification of the rate of
20 interest, time of maturity, time of payment of installments of
21 principal or interest or any other terms of the investment, loan,
22 contract or agreement in which the board is a party;

23 (14) Establish training and educational programs to further
24 the purposes of this article;

1 (15) File its own travel rules;

2 (16) Borrow money to carry out its corporate purpose in
3 principal amounts and upon terms as are necessary to provide
4 sufficient funds for achieving its corporate purpose;

5 (17) Take options in or warrants for, subscribe to, acquire,
6 purchase, own, hold, transfer, sell, vote, employ, mortgage,
7 pledge, assign, pool or syndicate: (I) Any loans, notes, mortgages
8 or securities; (ii) debt instruments, ownership certificates or
9 other instruments evidencing loans or equity; or (iii) securities
10 or other ownership interests of or in domestic or foreign
11 corporations, associations, partnerships, limited partnerships,
12 limited liability partnerships, limited liability companies, joint
13 ventures or other private enterprise to foster economic growth,
14 jobs preservation and creation in the state of West Virginia and
15 all other acts that carry out the board's purpose;

16 (18) Contract with either Marshall university or West Virginia
17 university, or both, for the purpose of retaining the services of,
18 and paying the reasonable cost of, services performed by the
19 institution for the board in order to effectuate the purposes of
20 this article;

21 (19) Enter into collaborative arrangements or contracts with
22 private venture capital companies when considered advisable by the
23 board;

24 (20) Provide equity financing for any eligible business that

1 will stimulate economic growth and provide or retain jobs in this
2 state and hold, transfer, sell, assign, pool or syndicate, or
3 participate in the syndication of, any loans, notes, mortgages,
4 securities, debt instruments or other instruments evidencing loans
5 or equity interest in furtherance of the board's corporate
6 purposes;

7 (21) Form partnerships, create subsidiaries or take all other
8 actions necessary to qualify as a small business investment company
9 under the United States Small Business Investment Act, PL 85-699,
10 as amended;

11 (22) Provide for staff payroll and make purchases in the same
12 manner as the housing development fund;

13 (23) Indemnify its members, directors, officers, employees and
14 agents relative to actions and proceedings to which they have been
15 made parties and make advances for expenses relative thereto and
16 purchase and maintain liability insurance on behalf of those
17 persons all to the same extent as authorized for West Virginia
18 business corporations under present or future laws of the state
19 applicable to business corporations generally; ~~and~~

20 (24) Contract for the provision of legal services by private
21 counsel and, notwithstanding the provisions of article three,
22 chapter five of this code, counsel may, but is not limited to,
23 represent the board in court, negotiate contracts and other
24 agreements on behalf of the board, render advice to the board on

1 any matter relating thereto, prepare contracts and other agreements
2 and provide any other legal services requested by the board;

3 (25) Authorize the executive director, without prior
4 presentation at a board meeting but with written consent from the
5 board's chairperson or vice-chairperson, to approve supplemental
6 investments (loans or ownership interests) in the board's portfolio
7 entities in amounts as provided in a board resolution but not
8 greater than \$25,000 for any one investment, not greater than
9 \$50,000 in the aggregate to any one portfolio entity, and not
10 greater than \$100,000 in the aggregate for all portfolio entities
11 in any one fiscal year; and to authorize the executive director,
12 when a supplemental investment is made, to negotiate the terms of
13 the investments and to execute and deliver for and on behalf of the
14 board all instruments, agreements or other documents that are
15 required or are reasonably necessary to effectuate the supplemental
16 investments; and

17 (26) By resolution or bylaw, create one or more committees of
18 the board. The creation of a committee and the appointment of its
19 members shall be approved by no less than seven of the board
20 members participating in a meeting of the board notwithstanding any
21 provision of this article to the contrary. Committee appointees
22 shall serve at the will and pleasure of the board. To the extent
23 specified by the board, each committee may exercise the authority
24 and perform the duties of the board existing by reason of the

1 provisions of this article: *Provided*, That the board may not
2 delegate its authority pursuant to section ten of this article to
3 approve or disapprove an initial investment package presented to
4 the board for consideration. Each committee may include persons not
5 members of the board, who shall be voting members of the committee.
6 Each committee shall include at least two board members and the
7 board's executive director. Any action taken by a committee shall
8 be approved by the affirmative vote of a majority of the committee
9 members provided the affirmative votes include the affirmative
10 votes of all members of the board serving on the committee and the
11 board's executive director.

12 **§12-7-7. Limitation on investments.**

13 Subject to the provisions of section nine of this article, the
14 board may invest in any eligible business: *Provided*, That at the
15 time of the placement of the investment not more than twenty
16 percent of the board's total investment portfolio is invested in
17 one eligible business within any two-year period, total investment
18 portfolio to include investments in eligible businesses and board
19 funds available for investments in eligible businesses.: ~~*Provided*,~~
20 ~~*however*, That the board may invest in an eligible business up to an~~
21 ~~additional twenty percent of the board's total investment~~
22 ~~portfolio, or up to a total of two million dollars, whichever is~~
23 ~~less. The additional investment must be in the form of a short-~~
24 ~~term debt investment to be repaid within twelve months of the~~

1 ~~investment: Provided further, That the board may extend said~~
2 ~~twelve-month repayment term until the thirtieth day of September,~~
3 ~~one thousand nine hundred ninety-four, and upon terms consistent~~
4 ~~with the actions of other investors involved in similar investments~~
5 ~~with the eligible business if the eligible business demonstrates to~~
6 ~~the board: (I) That said business is progressing with a plan for~~
7 ~~capital formation and business development; and (ii) that said~~
8 ~~extension of the twelve-month period, and any other modification~~
9 ~~thereto, will not substantially prejudice the position of the board~~
10 ~~in relation to the other investors in, and creditors of, the~~
11 ~~eligible business. The board shall report any extension of any~~
12 ~~repayment term made prior to the thirty-first day of March, one~~
13 ~~thousand nine hundred ninety-four, and approved by the board~~
14 ~~pursuant to the provisions of this section, to the governor and to~~
15 ~~the Legislature's joint committee on government and finance within~~
16 ~~twenty days of such approval: And provided further, That the board~~
17 ~~shall report to the governor and the joint committee on government~~
18 ~~and finance of its intention to extend any repayment term at least~~
19 ~~twenty days prior to the board approving any extension made on or~~
20 ~~after the first day of April, one thousand nine hundred~~
21 ~~ninety-four.~~

22 **§12-7-11. Documentary materials concerning trade secrets;**
23 **commercial, financial or personal information;**
24 **confidentiality.**

1 Any documentary material or data made or received by the board
2 for the purpose of furnishing assistance, to the extent that the
3 material or data consists of trade secrets, commercial, financial
4 or personal information regarding the financial position or
5 activities of such business or person, shall not be considered
6 public records and shall be exempt from disclosure pursuant to the
7 provisions of chapter twenty-nine-b of this code. Any discussion or
8 consideration of the trade secrets, commercial, financial or
9 personal information may be held by the board in executive session
10 closed to the public, notwithstanding the provisions of article
11 nine-a, chapter six of this code: *Provided*, That the board shall
12 make public the following information regarding executed
13 investments:

14 (1) The names and addresses of the principals of the business
15 and its board of directors;

16 (2) the location or locations of the projects;

17 (3) the amount of the investment or financial assistance
18 provided by the board;

19 (4) the purpose of the investment or financial assistance;

20 (5) the maturity, interest rate and other pertinent terms of
21 the investment;

22 (6) the fixed assets which serve as security for the
23 investment; ~~and~~

24 (7) the names and addresses of all persons holding twenty-five

1 percent or more of the equity of the entity receiving investment
2 assistance: *Provided, however,* That the board shall keep available
3 in its offices for inspection by any citizen of this state the
4 annual report prepared pursuant to the requirements of section
5 twelve of this article and the annual audit report prepared
6 pursuant to the requirements of sections nine and fourteen of this
7 article;

8 (8) Any information as is required to be included or the board
9 elects to include in a report required to be filed pursuant to the
10 provisions of section twelve of this article, or required by other
11 applicable law or regulation, and any information included in an
12 audit report resulting from an audit required by the provisions of
13 section fourteen of this article, or required by other applicable
14 law or regulation; and

15 (9) Any information disclosed or reported by the board to the
16 United States Department of the Treasury and its officers, agents,
17 representative, successors and assigns, in connection with the
18 State Small Business Credit Initiative program established by
19 Congress under the Small Business Jobs Act of 2010, Public Law 111-
20 240 Stat. 2568, 2582.

NOTE: The purpose of this bill is to modernize the Jobs Investment Trust.

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

be added.