

1 **H. B. 4526**

2
3 (By Delegates Skaff, Mr. Speaker (Mr. Miley), White,
4 Craig, Hartman, Sponaugle, Williams, Pino, Guthrie and
5 Poore)
6

7 [Introduced February 14, 2014; referred to the
8 Committee on Finance.]

**FISCAL
NOTE**

9
10
11 A BILL to amend and reenact §12-7-3, §12-7-6, §12-7-7 and §12-7-8a
12 of the Code of West Virginia, 1931, as amended; to amend said
13 code by adding thereto a new section, designated §12-7-8b; and
14 to amend and reenact §12-7-9, §12-7-10, §12-7-13 and §12-7-14
15 of said code, all relating generally to the West Virginia Jobs
16 Investment Trust Fund economic development assistance
17 programs; limiting investments and loans to an eligible
18 business at any one time under the capital access program to
19 \$500,000; extending new millennium fund and nonincentive tax
20 credits; increasing the nonincentive tax credits from \$30
21 million to \$60 million; permitting promissory notes up to \$6
22 million per year be issued in 2015, 2016, 2017, 2018 and 2019;
23 permitting nonincentive tax credit commitments up to \$6
24 million per year be issued in 2015, 2016, 2017, 2018 and 2019;
25 creating West Virginia Capital Access Program II; creating the

1 West Virginia Capital Access Program Account consisting of
2 three revolving programs; providing that the capital access
3 program receive \$5 million per year for three years; setting
4 forth how the funds are to be allocated; giving the board the
5 authority to reapportion and transfer funds among the three
6 revolving programs; providing for management and control of
7 capital access program; requiring the board to appoint a
8 subcommittee to administer and operate the capital access
9 program; setting forth who shall serve on that subcommittee;
10 granting the board additional powers; setting forth how loans
11 and investments may be used; providing that program
12 participants, and not the board, may make certain
13 determinations; providing that applications from program
14 participants do not require the review or approval of the
15 executive director; authorizing rule-making; defining terms;
16 deleting obsolete language; and making technical corrections.

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

18 That §12-7-3, §12-7-6, §12-7-7 and §12-7-8a of the Code of
19 West Virginia, 1931, as amended, be amended and reenacted; that
20 said code be amended by adding thereto a new section, designated
21 §12-7-8b; and that §12-7-9, §12-7-10, §12-7-13 and §12-7-14 of said
22 code be amended and reenacted, all to read as follows:

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

24 **§12-7-3. Definitions.**

1 For purposes of this article:

2 ~~(a)~~ "Board" means the jobs investment trust board established
3 pursuant to section four of this article.

4 ~~(b)~~ "Eligible business" means any business, including, but not
5 limited to, a business licensed or seeking licensure by the small
6 business administration as a small business investment company
7 under the small business investment act, which is qualified to do
8 business in West Virginia and is in good standing with all
9 applicable laws affecting the conduct of such business.

10 "Eligible program applicant" means a community development
11 financial institution (CDFI), community development loan fund,
12 community development corporation, state-wide or local economic
13 development organization, government-backed revolving loan fund,
14 development venture capital fund, nonprofit organization or other
15 lender with a primary mission of strengthening the state's rural
16 health infrastructure by providing loans to health care providers,
17 or other nonprofit organization, lender or economic development
18 organization with a primary mission of providing community
19 development financial or technical assistance to entities serving
20 West Virginia communities. An eligible program applicant may not
21 include any financial institution.

22 "Financial institution" means a bank, trust company, savings
23 bank, savings and loan association or cooperative bank chartered by
24 any state or any national banking association, federal savings and

1 loan association or federal savings bank.

2 ~~(c)~~ "Nonincentive Tax Credits" means the nonincentive tax
3 credits issued by the state to the jobs investment trust board and
4 authorized for sale and transfer by the jobs investment trust board
5 pursuant to section eight-a of this article.

6 "Program participant" means an eligible program applicant
7 selected by the board to participate in the capital access program
8 established by section eight-b of this article.

9 ~~(d)~~ "Securities" means all bonds, notes, stocks, units of
10 ownership, debentures or any other form of negotiable or
11 nonnegotiable evidence of indebtedness or ownership.

12 **§12-7-6. Corporate powers.**

13 The board may:

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

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

23 (3) Make and execute contracts, releases, compromises,
24 agreements and other instruments necessary or convenient for the

1 exercise of its powers or to carry out its corporate purposes;

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

7 (5) Sue and be sued;

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

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

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

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

20 (10) Acquire real and personal property, or an interest in
21 real or personal property, in its own name, by purchase or
22 foreclosure when acquisition is necessary or appropriate to protect
23 any loan in which the board has an interest; to sell, transfer and
24 convey any real or personal property to a buyer; and, in the event

1 a sale, transfer or conveyance cannot be effected with reasonable
2 promptness or at a reasonable price, to lease real or personal
3 property to a tenant;

4 (11) Purchase, sell, own, hold, negotiate, transfer or assign:

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

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

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

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

23 (15) File its own travel rules;

24 (16) Borrow money to carry out its corporate purpose in

1 principal amounts and upon terms as are necessary to provide
2 sufficient funds for achieving its corporate purpose;

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

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

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

22 (20) Provide equity financing for any eligible business that
23 will stimulate economic growth and provide or retain jobs in this
24 state and hold, transfer, sell, assign, pool or syndicate, or

1 participate in the syndication of, any loans, notes, mortgages,
2 securities, debt instruments or other instruments evidencing loans
3 or equity interest in furtherance of the board's corporate
4 purposes;

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

9 (22) Provide for staff payroll and make purchases in the same
10 manner as the Housing Development Fund;

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

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

1 **§12-7-7. Limitation on investments.**

2 Subject to the provisions of section nine of this article, the
3 board may invest in any eligible business: *Provided*, That at the
4 time of the placement of the investment not more than twenty
5 percent of the board's total investment portfolio is invested in
6 one eligible business within any two-year period: *Provided*,
7 *however*, That the board may invest in an eligible business up to an
8 additional twenty percent of the board's total investment
9 portfolio, or up to a total of \$2 million, whichever is less. The
10 additional investment must be in the form of a short-term debt
11 investment to be repaid within twelve months of the investment.
12 ~~*Provided further*, That the board may extend said twelve month~~
13 ~~repayment term until September 30, 1994, and upon terms consistent~~
14 ~~with the actions of other investors involved in similar investments~~
15 ~~with the eligible business if the eligible business demonstrates to~~
16 ~~the board: (i) That said business is progressing with a plan for~~
17 ~~capital formation and business development; and (ii) that said~~
18 ~~extension of the twelve-month period, and any other modification~~
19 ~~thereto, will not substantially prejudice the position of the board~~
20 ~~in relation to the other investors in, and creditors of, the~~
21 ~~eligible business. The board shall report any extension of any~~
22 ~~repayment term made prior March 31, 1994, and approved by the board~~
23 ~~pursuant to the provisions of this section, to the Governor and to~~
24 ~~the Legislature's Joint Committee on Government and Finance within~~

1 ~~twenty days of such approval: And provided further, That the~~ The
2 board shall report to the Governor and the Joint Committee on
3 Government and Finance of its intention to extend any repayment
4 term at least twenty days prior to the board approving any
5 extension made on or after April 1, 1994. Notwithstanding any
6 provision in this section to the contrary, the total aggregate
7 amount of all investments and loans outstanding to an eligible
8 business at any one time under the capital access program shall not
9 exceed \$500,000.

10 **§12-7-8a. New millennium fund; new millennium fund promissory**
11 **notes; nonincentive tax credits; rulemaking.**

12 (a) The new millennium fund is continued to permit the board
13 to better fulfill its mission to mobilize financing and capital for
14 emerging, expanding and restructuring businesses in the state. New
15 millennium fund moneys are to consist of all appropriations for use
16 by the jobs investment trust board made by the Legislature
17 subsequent December 31, 1999, and funds borrowed from private or
18 institutional lenders by the board through the issuance of
19 promissory notes. Fund moneys may be held in a separate account or
20 accounts by or at the West Virginia Housing Development Fund for
21 the board until the board disburses any portion of the funds. Fund
22 moneys that are not set aside or otherwise designated for paying
23 interest on the promissory notes may be used by the board in
24 accordance with and to effectuate the purposes of this article.

1 However, moneys received by the board as a result of the issuance
2 of any promissory notes authorized by this section after the
3 effective date of the 2014 amendments to this section shall be
4 deposited into the West Virginia Capital Access Program Account
5 created under subsection (c), section eight-b of this article, and
6 used by the board for loans or investments made under the capital
7 access program and for such other purposes as may be authorized in
8 section eight-b of this article. The board may impose reasonable
9 fees and charges associated with its investment of funds from the
10 new millennium fund in eligible businesses to be paid in any
11 combination of money, warrants or equity interests.

12 (b) Without limiting the powers otherwise enumerated in this
13 article, the board may: (1) Sell and transfer portions of the
14 nonincentive tax credits created, issued and transferred to the
15 board pursuant to the provisions of this section to contracting
16 taxpayers and/or their assigns in return for the payments described
17 in subsection (f) of this section; (2) issue or provide promissory
18 notes on loans made to the board having terms of up to ten years on
19 a zero-coupon basis or otherwise; (3) enter into put options or
20 similar commitment contracts with taxpayers that would be for terms
21 of up to ten years committing, at the board's option, to sell and
22 transfer to the contracting taxpayers or their assigns at the end
23 of the term and as soon after the term as is reasonable under the
24 circumstances portions of the nonincentive tax credits created,

1 issued and transferred to the board pursuant to this section; (4)
2 grant, transfer and assign the benefits of the put options or
3 similar commitment contracts as collateral to secure the board's
4 obligations pursuant to its promissory notes; (5) satisfy the
5 board's payment obligations under its promissory notes from assets
6 of the board, other than the benefits of the put options or similar
7 commitment contracts, then to effect a corresponding cancellation
8 of the board's related nonincentive tax credit commitment; and (6)
9 satisfy the board's payment obligations under its promissory notes
10 from the benefits of the put options or similar commitment
11 contracts, then to effect a corresponding sale and transfer of
12 nonincentive tax credits. The terms and conditions of the
13 promissory notes, put options or similar commitment contracts shall
14 be consistent with the purposes of this section, and approved by
15 board resolution, and may be different for separate transactions.

16 (c) Without limiting the powers otherwise enumerated in this
17 article and with regard to the new millennium fund, the board has
18 and may exercise all powers necessary to further the purposes of
19 this section, including, but not limited to, the power to commit,
20 sell and transfer nonincentive tax credits up to the total amount
21 of ~~\$30,000,000~~ \$60 million.

22 (d) The board may issue its promissory notes pursuant to this
23 section in amounts totaling no more than \$6 million in each of the
24 fiscal years ending in 2001, 2002, 2003, 2004, ~~and~~ 2005, 2015,

1 2016, 2017, 2018 and 2019 and may issue its nonincentive tax credit
2 commitments in amounts totaling no more than \$6 million in each of
3 the fiscal years ending in 2001, 2002, 2003, 2004 ~~and 2005~~, 2015,
4 2016, 2017, 2018 and 2019. The board may agree to sell and
5 transfer, at its option, nonincentive tax credits to taxpayers ten
6 years after the date of its commitments and as soon thereafter as
7 it is reasonable under the circumstances.

8 (e) Prior to committing to the sale and transfer of any
9 nonincentive tax credits, the board shall first determine that:

10 (1) The new millennium fund moneys to be received in
11 relationship to the commitment shall be used for the development,
12 promotion and expansion of the economy of the state; and

13 (2) The existence and pledge of a put option or similar
14 commitment contract that is supported by the nonincentive tax
15 credits that are committed by the board is a material inducement to
16 the private or institutional lender transferring moneys to the
17 board to be placed in the new millennium fund.

18 (f) The board may sell and transfer nonincentive tax credits
19 only in conjunction with the satisfaction of its obligations under
20 its promissory notes issued pursuant to this section. Each
21 original sale and transfer of nonincentive tax credits by the board
22 shall be consummated upon payment to the board, or for its
23 benefits, of an amount equal to the dollar amount of the
24 nonincentive tax credits sold and transferred. The nonincentive

1 tax credits sold and transferred by the board pursuant to this
2 section shall be claimed as a credit on the tax returns for the
3 year or years in which the nonincentive tax credits are sold and
4 transferred by the board. The amount of the nonincentive tax
5 credit that exceeds the taxpayer's tax liability for the taxable
6 year in the year of the purchase may be carried to succeeding
7 taxable years until used in full up to two years after the year of
8 purchase and may not be carried back to prior taxable years. Any
9 nonincentive tax credit sold and transferred by the board that
10 remains outstanding after the third taxable year subsequent to and
11 including the year of the transfer is forfeited.

12 (g) Nonincentive tax credits are created, issued and
13 transferred by the state to the board in a total amount of
14 ~~\$30,000,000~~ \$60 million to be used by taxpayers, including persons,
15 firms, corporations and all other business entities, to reduce the
16 tax liabilities imposed upon them pursuant to articles twelve-a,
17 thirteen, thirteen-a, thirteen-b, twenty-one, twenty-three and
18 twenty-four, chapter eleven of this code. The total amount of
19 nonincentive tax credits that are created, issued and transferred
20 to the board is ~~\$30,000,000~~ \$60 million. The nonincentive tax
21 credits are freely transferable to subsequent transferees. The
22 board shall immediately notify the President of the Senate, the
23 Speaker of the House of Delegates and the Governor in writing if
24 and when any nonincentive tax credits are sold and transferred by

1 the board.

2 (h) In conjunction with the Tax Division of the Department of
3 ~~Tax and~~ Revenue, the board shall develop a system for: (i)
4 Registering nonincentive tax credits, commitments for the sale and
5 transfer of nonincentive tax credits, the assignments of the
6 commitments and the assignments of the nonincentive tax credits;
7 and (ii) certifying nonincentive tax credits so that when
8 nonincentive tax credits are claimed on a tax return, they may be
9 verified as validly issued by the board, properly taken in the year
10 of claim and in accordance with the requirements of this section.

11 (i) The board may promulgate, repeal, amend and change rules
12 consistent with the provisions of this article to carry out the
13 purposes of this section. These rules are not subject to the
14 provisions of chapter twenty-nine-a of this code, but shall be
15 filed with the Secretary of State.

16 **§12-7-8b. Capital access program; rulemaking.**

17 (a) The board shall create, operate and administer a capital
18 access program to be known as the "West Virginia Capital Access
19 Program II" to assist eligible businesses that otherwise find it
20 difficult to obtain traditional financing. The program shall
21 consist of three separate and distinct revolving programs:

22 (1) A venture capital program designated as the "West Virginia
23 Small Business Seed Capital Co-Investment Program;"

24 (2) A subordinated debt program designated as the "West

1 Virginia Small Business Subordinated Debt Program;" and

2 (3) A collateral support program designated as the "West
3 Virginia Small Business Collateral Support Program."

4 (b) Funds permitting, the Legislature shall appropriate to the
5 capital access program \$5 million per year for three consecutive
6 years, commencing on July 1, 2014, and on the first day of July in
7 each of the next two succeeding years. The funds shall be
8 transferred to the board and held in a separate account at the
9 Housing Development Fund in accordance with subsection (c) of this
10 section.

11 (c) The capital access program shall be funded by
12 appropriations, revenues, grants, gifts, bequests, devises or
13 contributions obtained or designated for the program, and any
14 borrowings by the board from private or institutional lenders
15 through the issuance of promissory notes in accordance with section
16 eight-a of this article. Moneys received pursuant to this section
17 shall be deposited in a separate account or accounts at the West
18 Virginia Housing Development Fund for the board, which shall be
19 designated as the "West Virginia Capital Access Program Account,"
20 which account or accounts may be a new millennium account. Funds
21 shall be held in this account or accounts until a disbursement of
22 such funds is directed by the board.

23 (d) Moneys held in the West Virginia Capital Access Program
24 Account that are not set aside or otherwise designated for paying

1 board administrative expenses or fees to program participants as
2 authorized by subsection (g) of this section shall be allocated as
3 follows:

4 (1) Fifty percent of the funds held in the West Virginia
5 Capital Access Program Account shall be allocated to the West
6 Virginia Seed Capital Co-Investment Program;

7 (2) Twenty-five percent of the funds held in the West Virginia
8 Capital Access Program Account shall be allocated to the West
9 Virginia Small Business Subordinated Debt Program; and

10 (3) Twenty-five percent of the funds held in the West Virginia
11 Capital Access Program Account shall be allocated to the West
12 Virginia Small Business Collateral Support Program.

13 The board shall have the authority to reapportion and transfer
14 funds among these three programs in its reasonable discretion and
15 to fulfill the purposes of this article. Funds held in the West
16 Virginia Capital Access Program Account may be used by the board
17 for paying board administrative expenses related to the capital
18 access program and for fees payable by the board to program
19 participants in accordance with subsection (g) of this section.

20 (e) The board shall appoint a subcommittee to carry out the
21 administration and operation of the capital access program and for
22 such other purposes as the board deems appropriate. The
23 subcommittee shall consist of seven members, four of whom serve by
24 virtue of their respective positions. These four members are the

1 executive director of the board; the Secretary of the West Virginia
2 Department of Commerce, or his or her designee; the Executive
3 Director of the West Virginia Economic Development Authority, or
4 his or her designee; and the Director of the West Virginia Small
5 Business Development Center, or his or her designee. Two members
6 of the subcommittee shall be members of the board of directors of
7 the board. One member of the subcommittee shall be the present or
8 past executive officer of a community development financial
9 institution (CDFI), a financial institution, a company listed on a
10 major stock exchange or a large privately held company, or shall
11 have present or past experience in business development or shall be
12 a certified public accountant. The executive director of the board
13 shall serve as the chair. The subcommittee shall meet no less than
14 once each calendar quarter at the time and place designated by the
15 chair. The subcommittee shall adopt bylaws to govern its internal
16 functions, which shall be approved by the board. The subcommittee
17 may:

18 (1) Develop eligibility criteria for eligible program
19 applicants seeking to participate in the program, which shall be
20 approved by the board;

21 (2) Select the program participants based on its review of
22 applications submitted by eligible program applicants and its
23 determination that the eligible program applicant satisfies the
24 eligibility criteria for program participants, which shall be

1 approved by the board;

2 (3) Develop and negotiate memorandums of understanding or
3 other agreements with program participants as required by
4 subsection (f) of this section;

5 (4) Develop program eligibility criteria for transactions to
6 be funded from the capital access program, which shall be approved
7 by the board;

8 (5) Develop program guidelines for each of the three programs
9 constituting the capital access program, which shall be approved by
10 the board;

11 (6) Review and approve or decline applications submitted by
12 program participants for funds from the capital access program
13 based upon compliance with the eligibility criteria of the program:
14 Provided, That the program participants shall be responsible for
15 originating and underwriting transactions in accordance with their
16 own internal underwriting and credit and investment policies and
17 criteria and the subcommittee shall not make any underwriting or
18 credit or investment decision with regard to any transaction but
19 shall only evaluate transaction applications on the basis of the
20 program eligibility criteria. The subcommittee may not approve the
21 disbursement of any funds from the capital access program until a
22 program participant has demonstrated to the reasonable satisfaction
23 of the subcommittee that a transaction has been approved by the
24 program participant's board, loan committee or other governing or

1 approval body in accordance with the program participant's
2 underwriting or credit or investment policies and criteria;

3 (7) Perform such other functions as the board may delegate to
4 the subcommittee; and

5 (8) Take all such other actions as may be reasonably necessary
6 or desirable to effectuate the purposes of this section.

7 (f) All program participants shall execute a memorandum of
8 understanding or other agreement in such form as the board or its
9 subcommittee may prescribe, which agreement shall contain the terms
10 and conditions of its participation in the program as the board or
11 its subcommittee may deem necessary or appropriate.

12 (g) The board may enter into agreements with program
13 participants that authorize the payment of origination, closing or
14 other transaction fees up to a total of two percent of the amount
15 of any transaction, or which contain other terms to encourage a
16 program participant's participation in the capital access program
17 while still maintaining the perpetual and revolving nature of the
18 capital access program.

19 (h) The board may authorize a program participant to earn and
20 retain a return on any loan or investment made by the program
21 participant under the capital access program, but such earned
22 return shall not include any amounts received by a program
23 participant: (1) As the recovery of the principal amount of any
24 loan or investment; or (2) the portion of sums earned on any loan

1 or investment not authorized by the board to be retained by the
2 program participant, which amounts shall be paid over by the
3 program participant to the board in accordance with section
4 thirteen of this article.

5 (i) Funds shall be disbursed by the board to the program
6 participants for eligible transactions using moneys from the West
7 Virginia Capital Access Program Account. To be eligible to receive
8 funds from the capital access program, a program participant must
9 demonstrate to the board or its subcommittee that each transaction
10 receiving funds from the capital access program:

11 (1) Satisfies the program participant's own underwriting and
12 investment or credit policies and criteria;

13 (2) A lender or lenders, an investor or investors, or the
14 program participant has at least twenty percent of its own capital
15 at risk in the transaction;

16 (3) for transactions receiving funds under the West Virginia
17 Seed Co-Investment Program or the West Virginia Small Business
18 Subordinated Debt Program, at a minimum, \$1 of funds from the
19 capital access program will cause and result in at least \$1 of new
20 private financing, and for transactions receiving funds under the
21 West Virginia Small Business Collateral Support Program, at a
22 minimum, \$1 of funds from the capital access program will cause and
23 result in at least \$4 of new private financing; and

24 (4) Otherwise satisfies all other eligibility criteria of the

1 capital access program developed by the board.

2 For purposes of this section (i), private financing includes
3 equity investments or loans made by the board or any other state-
4 sponsored venture capital fund, private sector venture capital
5 fund, seed capital fund or angel investor network, loans from
6 financial institutions or other private sector lenders or
7 investors, including individual lenders or investors, and loans
8 from state-sponsored lending programs.

9 (j) Proceeds of a loan or investment made by a program
10 participant with funds from the capital access program may only be
11 used for a business purpose, and may not be used to refinance a
12 loan or investment previously made by the program participant to an
13 eligible business or for any other purpose prohibited under or
14 pursuant to the Small Business Jobs Act of 2010, Public Law 111-
15 240, as in effect on the effective date of this section: *Provided,*
16 That a program participant may refinance a loan or investment made
17 to an eligible business through the capital access program. For
18 purposes of this section, a business purpose shall include, but is
19 not limited to, start-up costs, working capital, business
20 procurement, franchise fees, equipment financing, inventory
21 financing, and the purchase, construction, renovation or tenant
22 improvements to an applicant's place of business, and any other
23 purpose deemed to be a business purpose under or pursuant to the
24 Small Business Jobs Act of 2010, as in effect on the effective date

1 of this section.

2 (k) Without limiting the powers otherwise enumerated in this
3 article, the board has and may exercise all powers necessary to
4 further the purposes of this section.

5 (l) The board may promulgate, repeal, amend and change rules
6 consistent with the provisions of this article to carry out the
7 purposes of this section. These rules are not subject to the
8 provisions of chapter twenty-nine-a of this code, but shall be
9 filed with the Secretary of State.

10 **§12-7-9. Applications for investment priority; investment package.**

11 (a) The board shall accept and review applications from
12 eligible businesses and shall determine the investment worthiness,
13 the benefits to the West Virginia economy, the leverage potential
14 for investments in small business investment companies, the jobs
15 creation potential and the economic circumstances of the region or
16 regions of the state that would benefit from each proposal.
17 However, the creditworthiness and other determinations shall be
18 made by a program participant and not the board, with respect to
19 all funds to be loaned or invested from the capital access program
20 by that program participant. The board shall attempt to balance its
21 investments, as nearly as is practicable, among the geographic
22 regions of the state.

23 (b) Any faculty or students of a public or private institution
24 of higher education in the state may present for the board's

1 consideration proposals relating to innovative projects or
2 investment opportunities.

3 (c) An annual audit shall be conducted by an independent firm
4 of certified public accountants and shall be made available to the
5 Legislature annually.

6 (d) The board shall forward to the West Virginia Housing
7 Development Fund for its review and information approved investment
8 packages containing information as is necessary to permit the West
9 Virginia Housing Development Fund to carry out its duties under
10 this article. The board shall determine whether each applicant is
11 an eligible business.

12 **§12-7-10. Acceptance or rejection of investment package.**

13 (a) The board may approve or disapprove an investment package
14 or any portion thereof: *Provided*, That notwithstanding any
15 provision of this article to the contrary, the board may not accept
16 any investment package or any portion thereof unless the same has
17 been reviewed and approved by the board's executive director in his
18 or her sole discretion. However, applications submitted by program
19 participants other than the board to the subcommittee under section
20 eight-b of this article relating to the capital access program do
21 not require the review and approval of the executive director.

22 (b) The board shall disapprove any investment package if the
23 business requesting such investment is not in good standing with
24 all applicable laws affecting the conduct of such business. Upon

1 request of the board, each affected state agency shall provide the
2 board with such information as to the standing of each applicant,
3 notwithstanding any provision of this code to the contrary.

4 **§12-7-13. Earnings.**

5 All earnings, interest and fees collected by the board on or
6 in respect of funds provided by the West Virginia Housing
7 Development Fund shall go back into the jobs development fund
8 created pursuant to section twenty-c, article eighteen, chapter
9 thirty-one of this code, for reinvestment and no such earnings,
10 interest or fees shall be considered part of the general revenue of
11 the state. All earnings, interest and fees received by the board in
12 respect of funds provided under this article for the capital access
13 program and all funds returned by the program participants to the
14 board under subsection (h), section eight-b of this article shall
15 be deposited in the West Virginia Capital Access Program Account
16 created pursuant to section eight-b of this article, for relending
17 or reinvestment under the capital access program and earnings,
18 interest, fees or funds paid over to the board by the the program
19 participants are not part of the general revenue of the state.

20 **§12-7-14. Exemption from certain requirements; audit.**

21 In order to provide excellent investment opportunities and to
22 effectively implement the new millennium fund and the capital
23 access program, the investment activity, and the new millennium
24 fund activity and the capital access program activity provided by

1 this article shall be exempt from the bidding and public sale
2 requirements, from the approval of contractual agreements by the
3 Department of Finance and Administration or the Attorney General
4 and from the requirements of chapter five-a of this code. The
5 transactions provided by this article shall be subject to an annual
6 audit by an independent firm of certified public accountants.

NOTE: The purpose of this bill is to extend and expand economic development programs of West Virginia Jobs Investment Trust Fund. The bill accomplishes this by extending the Millennium Fund and nonincentive tax credits for another five years and creating the West Virginia Capital Access Program II. The bill creates a new separate account designated as the West Virginia Capital Access Program Account consisting of three revolving programs. The bill defines terms. The bill limits investments and loans to an eligible business at any one time under the capital access program to \$500,000. The bill extends new millennium fund and nonincentive tax credits. The bill increases the nonincentive tax credits from \$30 million to \$60 million. The bill permits promissory notes up to \$6 million per year be issued in 2015, 2016, 2017, 2018 and 2019. The bill permits nonincentive tax credit commitments up to \$6 million per year be issued in 2015, 2016, 2017, 2018 and 2019. The bill provides that the capital access program receive \$5 million per year for three years. The bill sets forth how the funds are to be allocated. The bill gives the board the authority to reapportion and transfer funds among the three revolving programs. The bill provides for management and control of capital access program. The bill requires the board to appoint a subcommittee to administer and operate the capital access program. The bill sets forth who shall serve on that subcommittee. The bill grants the board additional powers. The bill sets forth how loans and investments may be used. The bill provides that program participants, and not the board, may make certain determinations. The bill provides that applications from program participants do not require the review or approval of the executive director. The bill authorizes rule-making. The bill deletes obsolete language. The bill makes technical corrections.

Strike-throughs indicate language that would be stricken from

the present law, and underscoring indicates new language that would be added.

§12-7-8b is new; therefore, strike-throughs and underscoring have been omitted.