WEST VIRGINIA CODE CHAPTER 11 ARTICLE 13J

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§11-13J-1. Short title.

This article shall be known as the "Neighborhood Investment Program Act".

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§11-13J-2. Legislative finding and purpose.

It is the finding of the Legislature that community-based organizations can be a powerful force in community development. However, in West Virginia their effectiveness has historically been weakened by meager resources. Private corporations and individuals in West Virginia possess the resources to aid community-based organizations in their efforts to assist neighborhoods and communities. Due to the lack of clear incentives, the private and not-for-profit sectors have often not taken advantage of opportunities to collaborate with community-based organizations to the full extent possible by investment and participation in local programs.

Therefore, the neighborhood investment program act is hereby enacted with the intent that it provide incentives for contributions to qualifying charitable projects. It is the intent of the Legislature that this act encourage private sector businesses and individuals to contribute capital to community-based organizations which establish projects to assist neighborhoods and local communities through such services as health care, counseling, emergency assistance, crime prevention, education, housing, job training and physical and environmental improvements.

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§11-13J-3. Definitions.

(a) General. — When used in this article, or in the administration of this article, terms defined in subsection (b) of this section have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition in this article.

(b) Terms defined. —

"Affiliate" includes all business entities which are affiliates of each other when either directly or indirectly:

(A) One business entity controls or has the power to control the other business entity; or

(B) A third party or third parties control or have the power to control both affiliates. In determining whether business entities are independently owned and operated and whether or not affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management and contractual relationships.

"Capacity building" means to generally enhance the capacity of the community to achieve improvements and to obtain the community services described in subparagraphs (i) through (v), inclusive, of the definition of that term, as set forth in this subsection. Capacity building includes, but is not limited to, improvement of the means, or capacity, to:

(i) Access, obtain and use private, charitable and governmental assistance programs, administrative assistance and private, charitable and governmental resources or funds;

(ii) Fulfill legal, bureaucratic and administrative requirements and qualifications for accessing assistance, resources or funds; and

(iii) Attract and direct political and community attention to needs of the community for the purpose of increasing access to and use of assistance, resources or funds for a given purpose, goal or need.

"Commissioner or Tax Commissioner" are used interchangeably in this article and mean the Tax Commissioner of the State of West Virginia, or his or her delegate.

"Community services" means services, provided at no charge whatsoever, of:

(i) Providing any type of health, personal finance, psychological or behavioral, religious, legal, marital, educational or housing counseling and advice to economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens or in an economically disadvantaged area;

(ii) Providing emergency assistance or medical care to economically disadvantaged citizens or to a specifically designated group of economically disadvantaged citizens or in an

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economically disadvantaged area;

(iii) Establishing, maintaining or operating recreational facilities, or housing facilities for economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens or in an economically disadvantaged area;

(iv) Providing economic development assistance to economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens; without regard to whether they are located in an economically disadvantaged area, or to individuals, groups or neighborhood or community organizations, in an economically disadvantaged area; or

(v) Providing community technical assistance and capacity building to economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens, or to individuals, groups or neighborhood or community organizations in an economically disadvantaged area.

“Compensation” means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

“Community-based” means:

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

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

(iii) The sponsor of the project is a local entity, rather than a statewide, national or international organization or an affiliate of a statewide, national or international organization.

“Corporation” means any corporation, joint-stock company or association and any business conducted by a trustee or trustees in which interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument.

“Crime prevention” means any activity which aids in the reduction of crime.

“Delegate” in the phrase "or his or her delegate", when used in reference to the Tax Commissioner, means any officer or employee of the Tax Division of the Department of Revenue duly authorized by the Tax Commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article.

“Direct need programs” means a program, organization or community endowment that serve persons whose annual income is no more than 125 percent of the federal poverty level with self-reliance and independence from government assistance as its primary objective.

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"Director or Director of the West Virginia Development Office" means the Director of the West Virginia Development Office.

"Economically disadvantaged area" means any region of the state with a poverty rate greater than the average statewide poverty rate as determined by the U. S. Census Bureau's most recently published data.

"Economically disadvantaged citizen" means a natural person, who during the current taxable year has, or during the immediately preceding taxable year had, an annual gross personal income not exceeding one hundred twenty-five percent of the federal designated poverty level for personal incomes, and who is a domiciliary and resident of this state.

"Education" means any type of scholastic instruction to, or scholarship by, an individual that enables that individual to prepare for better life opportunities. Education does not include courses in physical training, physical conditioning, physical education, sports training, sports camps and similar training or conditioning courses, except for physical therapy prescribed by a physician or other person licensed to prescribe courses of medical treatment under this code.

"Eligible contribution" consists of:

(A)(i) Cash;

(ii) Tangible personal property, valued at its fair market value;

(iii) Real property, valued at its fair market value;

(iv) In-kind professional services, valued at seventy-five percent of fair market value; and

(v) Publicly traded common or preferred stock representing ownership in a corporation, valued at its fair market value in accordance with the regulations of the Internal Revenue Service: Provided, That contributed stock shall be sold by the project transferee within one hundred eighty days of its receipt.

(B) For purposes of this definition, the value of in-kind professional services will not qualify as an eligible contribution unless the services are:

(i) Reasonably priced and valued, and reasonably necessary services customarily and normally provided by the contributor in the normal course of business to customers, clients or patients other than those encompassed by the project plan;

(ii) Not reimbursable, in whole or in part, from sources other than the tax credit provided under this article; and

(iii) Services which are not available without cost elsewhere in the community;

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(C) “Professional services” means only those services provided directly by a physician licensed to practice in this state, those services provided directly by a dentist licensed to practice in this state, those services provided directly by a lawyer licensed to practice in this state, those services provided directly by a registered nurse, licensed practical nurse, dental hygienist or other health care professional licensed to practice in this state, those services provided directly by a certified public accountant or public accountant licensed to practice in this state, and those services provided directly by an architect licensed to practice in this state;

(D) Minimum contribution. — No contribution of cash, stock, property or professional services or any combination thereof contributed in any tax year by any taxpayer having a fair market value of less than $500 qualifies as an eligible contribution;

(E) Maximum contribution. — No contribution of cash, stock, property or professional services or any combination thereof contributed in any tax year by any taxpayer having a fair market value in excess of $200,000 qualifies as an eligible contribution; and

(F) Limitations. — Not more than twenty-five percent of total eligible contributions to a certified project may be in-kind contributions. Not more than twenty-five percent of total eligible contributions made by any taxpayer to any certified project may be in-kind contributions.

Eligible taxpayer. —

(A) “Eligible taxpayer” means any person subject to the taxes imposed by article twenty-one, twenty-three or twenty-four of this chapter which makes an eligible contribution to a qualified charitable organization pursuant to the terms of a certified project plan for the purpose of providing neighborhood assistance, community services or crime prevention, or for the purpose of providing job training or education for individuals not employed by the contributing taxpayer or an affiliate of the contributing taxpayer or a person related to the contributing taxpayer;

(B) “Eligible taxpayer” also includes an affiliated group of taxpayers if the group elects to file a consolidated corporation net income tax return under article twenty-four of this chapter and if one or more affiliates included in the affiliated group would qualify as an eligible taxpayer under paragraph (A) of this subdivision.

“Emergency assistance” means the provision of basic needs including shelter, clothing, food, water, medical attention or supplies, personal safety, or funds to obtain these to an individual facing circumstances that prevent him or her from securing or maintaining these basic needs.

“Includes and including”, when used in a definition contained in this article, shall not be considered to exclude other things otherwise within the meaning of the term defined.

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"Job training" means instruction to an individual that enables the individual to acquire vocational skills to become employable or able to seek a higher grade of employment.

"Natural person or individual" means a human being. The terms "natural person" and "individual" do not mean, and specifically exclude, any corporation, limited liability company, partnership, joint venture, trust, organization, association, agency, governmental subdivision, syndicate, affiliate or affiliation, group, unit or any entity other than a human being.

"Neighborhood assistance" means either:

(A) Furnishing financial assistance, labor, material and technical advice to aid in the physical or economic improvement of any part or all of an economically disadvantaged area; or

(B) Furnishing technical advice to promote higher employment in an economically disadvantaged area.

"Neighborhood organization" means any organization:

(A) Which is performing community services, as defined in this section; and

(B) Which is exempt from income taxation under Section 501(c)(3) of the Internal Revenue Code.

"Partnership and partner" includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, financial operation or venture is carried on, and which is not a trust or estate, a corporation or a sole proprietorship. The term "partner" includes a member in a syndicate, group, pool, joint venture or organization.

"Person" includes any natural person, corporation, limited liability company or partnership.

"Project transferee" means any neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person that receives an eligible contribution or part of an eligible contribution from an eligible taxpayer for the purpose of directly or indirectly providing neighborhood assistance, community services or crime prevention, or for the purpose of providing job training or education or other services or assistance pursuant to a project plan. The project transferee is typically the first entity or person receiving eligible contributions from eligible taxpayers under a project plan. However, in the case of eligible contributions of in-kind services or other eligible contributions or portions of those contributions made pursuant to a certified project plan directly to indigent, disadvantaged or needy persons, economically disadvantaged citizens or other persons or organizations under the sponsorship or auspices of any neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person as a certified project participant, the eligible contributions shall be considered to have been made to the entity, organization or person under whose

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sponsorship or auspices the eligible contributions are made, and that entity, organization or person is considered to be the project transferee with relation to those eligible contributions. The project transferee is the entity, organization or person that is liable under this article for payment of the project certification fee to the West Virginia Development Office. The term "project transferee" means and includes any considered project transferee, considered as such under the provisions of this article.

"Qualified charitable organization" means a neighborhood organization, as defined in this section, which is the sponsor of a project which has received certification by the Director of the West Virginia Development Office pursuant to the requirements of this article: Provided, That no organization may qualify as a qualified organization for purposes of this article if the organization is not registered with this state as required under the Solicitation of Charitable Funds Act.

"Related person" or "person related to" a stated taxpayer means:

(A) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof controlled by the taxpayer;

(B) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof that is in control of the taxpayer;

(C) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof controlled by an individual, corporation, partnership, affiliate, association or trust or any combination or group thereof that is in control of the taxpayer; or

(D) A member of the same controlled group as the taxpayer.

For purposes of this article, "control", with respect to a corporation means ownership, directly or indirectly, of stock possessing fifty percent or more of the total combined voting power of all classes of the stock of the corporation which entitles its owner to vote. "Control", with respect to a trust, means ownership, directly or indirectly, of fifty percent or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in Section 267(c), other than paragraph (3) of that section, of the United States Internal Revenue Code, as amended.

"State fiscal year" means a twelve-month period beginning on July 1 and ending on June 30.

"Taxpayer" means any person subject to the tax imposed by article twenty-one, twenty-three or twenty-four of this chapter, or any one or combination of the articles of this chapter.

"Technical assistance" means:

(A) Assistance in understanding, using and fulfilling the legal, bureaucratic and

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administrative requirements and qualifications which must be negotiated for the purpose of effectively accessing, obtaining and using private, charitable, not-for-profit or governmental assistance, resources or funds, and maximizing the value of the assistance, resources or fund;

(B) Assistance provided by any person holding a license under West Virginia law to practice any licensed profession or occupation, by which the person, in the practice of the profession or occupation, assists economically disadvantaged citizens or the persons in an economically disadvantaged area by:

(i) Providing any type of health, personal finance, psychological or behavioral, religious, legal, marital, educational or housing counseling and advice to economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens or in an economically disadvantaged area;

(ii) Providing emergency assistance or medical care to economically disadvantaged citizens or to a specifically designated group of economically disadvantaged citizens or in an economically disadvantaged area;

(iii) Establishing, maintaining or operating recreational facilities, or housing facilities for economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens or in an economically disadvantaged area;

(iv) Providing economic development assistance to economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens, without regard to whether they are located in an economically disadvantaged area, or to individuals, groups or neighborhood or community organizations, in an economically disadvantaged area; or

(v) Providing community technical assistance and capacity building to economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens or to individuals, groups or neighborhood or community organizations in an economically disadvantaged area.

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§11-13J-4. Eligibility for tax credits; creation of neighborhood investment fund; certification of project plans by the West Virginia Development Office.

(a) A neighborhood organization which seeks to sponsor a project and have that project certified pursuant to this article shall submit to the Director of the West Virginia Development Office an application for certification of a project plan, in such form as the director shall prescribe, setting forth the project to be implemented, the identity of all project participant organizations, the economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens, to be assisted by the project, or the economically disadvantaged area or areas selected for assistance by the project, the amount of total tax credits to be created by the proposed project pursuant to the receipt of eligible contributions from eligible taxpayers under this article, the amount of the total estimated eligible contributions to be received pursuant to the project and the schedule for implementing the project.

(b) Project certification fee; payment of costs; revolving fund. —

(1) (A) Project certification fee. — Any project transferee that receives eligible contributions under or pursuant to a certified project plan shall pay to the West Virginia Development Office a project certification fee in the amount of three percent of the amount of the total eligible contributions received by such project transferee pursuant to the certified project plan. The project certification fee shall be paid to the West Virginia Development Office within thirty days of the receipt of any eligible contribution, or portion thereof.

(B) Eligible contributions made through direct service to end users or recipients, or contributions to end users or recipients. — In the case of eligible contributions of in-kind services or other eligible contributions or portions thereof made pursuant to a certified project plan and contributed or provided directly to indigent, disadvantaged or needy persons, economically disadvantaged citizens or other persons or organizations made under the sponsorship or auspices of any neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person as a certified project participant, such eligible contributions shall be deemed to have been made to the entity, organization or person under whose sponsorship or auspices such eligible contributions are made, and that entity, organization or person is deemed to be the project transferee with relation to those eligible contributions. Such deemed project transferee shall be liable for the project certification fee due for such eligible contributions.

(C) Computation of fee based on fair market value. — In the case of eligible contributions consisting of in-kind services, tangible personal property or realty, the project transferee shall pay to the West Virginia Development Office a project certification fee in the amount of three percent of the fair market value of eligible contributions received pursuant to the certified project plan.

(2) Sanctions for failure to timely pay the project certification fee. — Failure to timely pay the project certification fee imposed by this section shall be grounds for imposition of any of

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the following sanctions, to be imposed by the Director of the West Virginia Development Office at the discretion of the director:

(A) Prospective revocation of the project certification. —

No tax credit shall be allowed for any project for which certification has been revoked for periods subsequent to the effective date of revocation. Credit taken by any taxpayer in accordance with this article pursuant to the making of an eligible contribution to a project transferee pursuant to a certified project plan prior to the effective date of revocation of project certification shall not be subject to recapture by reason of revocation of the certification. However, such credit shall otherwise be subject to audit and adjustment or recapture in accordance with the requirements of this article.

(B) Retroactive withdrawal of the project certification. —

No tax credit shall be allowed for any project for which certification has been withdrawn. Credit taken by any taxpayer in accordance with this article pursuant to the making of an eligible contribution to a project transferee pursuant to a certified project plan for which certification is later withdrawn pursuant to the provisions of this section shall be subject to recapture upon withdrawal of the certification.

(C) Suspension of the project certification for a stated period of time. —

No tax credit shall be allowed for contributions made during the suspension period for a project. Credit taken by any taxpayer in accordance with this article pursuant to the making of an eligible contribution to a project transferee pursuant to a certified project plan prior to or subsequent to the suspension period shall not be subject to recapture by reason of the suspension. However, such credit shall otherwise be subject to audit and adjustment or recapture in accordance with the requirements of this article.

(D) Temporary or permanent disqualification of one or more project transferees, neighborhood organizations, qualified charitable organizations, charitable organizations or other organizations, entities or persons from participation in a particular specified certified project. —

No tax credit shall be allowed under this article for any contribution made during the disqualification period to any project transferee, neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person disqualified under this section from participation in a certified project. Tax credit taken by any taxpayer in accordance with this article pursuant to the making of an eligible contribution to any project transferee, neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person pursuant to a certified project plan prior to or subsequent to the disqualification period shall not be subject to recapture by reason of the disqualification of the recipient thereof. However, such credit shall otherwise be subject to audit and adjustment or recapture in accordance with

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the requirements of this article.

(E) Temporary or permanent disqualification of any project transferee, neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person, or group thereof, from participation in any and all certified projects currently in existence or to be formed, proposed or certified under this article. —

(i) No tax credit shall be allowed under this article for any contribution made during the disqualification period to any project transferee, neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person disqualified under this section from participation in any and all certified projects under this article. Tax credit taken by any eligible taxpayer in accordance with this article pursuant to the making of an eligible contribution to the project transferee, neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person disqualified from participation in any and all certified projects under this article, pursuant to a certified project plan prior to or subsequent to the disqualification period shall not be subject to recapture by reason of the disqualification. However, such credit shall otherwise be subject to audit and adjustment or recapture in accordance with the requirements of this article; and

(ii) No certification shall be issued during the disqualification period for any proposed project in which a project transferee, neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person disqualified under this section from participation in any and all certified projects is listed as a proposed project participant.

(F) Any combination of the aforementioned sanctions.

(3) Audits and investigations. — The West Virginia Development Office or the Department of Revenue, or both, may initiate and carry out investigations or audits of any recipient of any eligible contribution under this article, any eligible taxpayer or any project transferee to determine whether the project certification fee imposed by this section has been paid in accordance with the requirements of this article.

(4) Procedures, failure to timely pay the project certification fee upon written demand. —

(A) Written demand. — The Director of the West Virginia Development Office shall, upon a reasonable belief that a project transferee has failed to timely pay the fee imposed by this section, issue a written demand for payment thereof, plus interest determined at the interest rate prescribed under section seventeen, article ten of this chapter, in such form as the Director of the West Virginia Development Office may specify. The Director of the West Virginia Development Office may also impose a penalty for failure to timely pay the project certification fee in the amount of twenty percent of the amount of the project certification fee due and interest due. Such demand shall notify the project transferee of the opportunity to show that the project certification fee is not due and owing.

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(B) Failure to pay pursuant to written demand. —

Failure of the project transferee to pay any project certification fee due, with interest and penalties, as stated in the written demand for payment of the project certification fee, within thirty days of service of such demand, and failure of the project transferee to prove to the satisfaction of the Director of the West Virginia Development Office that the fee imposed by this section is not due and owing, shall result in a determination by the Director of the West Virginia Development Office that sanctions shall apply.

(C) Notice of pending sanctions. — Upon the making of a determination by the Director of the West Virginia Development Office that sanctions for failure to pay the project certification fee apply, the Director of the West Virginia Development Office shall serve upon the project transferee from which the project certification fee, or some portion thereof, is due and owing, a notice of pending sanctions. If the project transferee from which the certified project fee, or some portion thereof, is due and owing is not the applicant for project certification, then an informational copy of the notice of pending sanctions shall also be served upon the applicant for project certification.

(D) Service of notice, content of notice. — The notice of pending sanctions shall be served upon the delinquent project transferee in the same manner as an assessment of tax in accordance with article ten of this chapter. Such notice of pending sanctions shall state the sanctions to be applied in accordance with this section, the effective date or dates of such sanctions, with specific statements of whether any sanction is to be applied retroactively or in part retroactively, and the commencement and termination dates for any suspensions of certification or temporary disqualifications of any program transferee, neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person to be disqualified under this section from participation in certified projects. The notice of pending sanctions shall state that sanctions shall be imposed sixty days after service of the notice of pending sanctions upon the delinquent project transferee, unless the delinquent project transferee pays the amount of the project certification fee due and owing, plus interest and penalties.

(E) Appeals. — The project transferee may file an appeal of pending sanctions as if the notice of pending sanctions were an assessment of tax under article ten of this chapter, and the matter on appeal shall be subject to the procedures set forth in article ten of this chapter. On appeal, the burden of proof shall be on the project transferee to prove that the project certification fee and associated interest and penalties are not due and owing. The review on appeal shall be limited to:

(i) The issue of whether a failure to timely pay the project certification fee or any portion thereof has occurred, the time period or periods over which such failure occurred, and whether such failure continues to occur;

(ii) The amount of the project certification fee and interest due; and

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(iii) The mathematical and methodological accuracy of the computation of the project certification fee, interest and penalties.

(F) Statutory confidentiality. — No information, document or proceeding brought pursuant to this section, relating to the liability of any project transferee for the project certification fee, interest or penalties imposed under this section is subject to the confidentiality provisions of article ten of this chapter or any other confidentiality provision of this code. However, any proceeding relating to any amount of tax due or the recapture of tax credit taken under this article or any adjustment of the amount of tax credit taken under this article is subject to the provisions of article ten of this chapter, including all statutory confidentiality provisions, and shall be subject to all other applicable statutory tax confidentiality provisions of this code.

(G) Effect of a final determination, waiver of penalties or sanctions. — The notice of pending sanctions shall become final sixty days after service, unless an appeal is filed under this section, and shall not be subject to further appeal by the recipient thereof. When a determination has become final that a project transferee has failed to timely pay the project certification fee, or any part thereof, the sanctions described in the notice of pending sanctions shall apply, effective as of the date set forth in that notice, unless the project certification fee, interest and penalties due are paid to the West Virginia Development Office within thirty days of the date on which the determination has become final. The twenty percent penalty authorized under this section may be imposed, adjusted, withdrawn or waived, in whole or in part, at the discretion of the Director of the West Virginia Development Office. However, payment of the project certification fee and interest due shall not be subject to waiver. The sanctions for failure to pay the project certification fee authorized under this section may be imposed, adjusted, withdrawn or waived, in whole or in part, at the discretion of the Director of the West Virginia Development Office.

(c) Within sixty days after the close of the regular meeting of the Neighborhood Investment Advisory Board at which a complete application for approval of a proposed project is considered by the board, the Director of the West Virginia Development Office shall certify, or deny certification of, the proposed project for which such application has been filed: Provided, That applications for which the board requires additional information may be considered at the next regular meeting of the board. Those applications not approved by the director within sixty days of final action of the board shall be deemed disapproved by operation of law.

(d) The West Virginia Development Office shall promptly notify an applicant as to whether an application for certification of a project plan has been approved or disapproved.

(e) Those prospective qualified charitable organizations which receive certification of a project plan, and which otherwise comply with the requirements of this article so as to become qualified charitable organizations, as defined in section three of this article, may receive eligible contributions, as defined in said section. Eligible taxpayers which make eligible contributions shall receive a tax credit as provided in section five of this article. No

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tax credit may be granted under this article for any contribution except eligible contributions made to a project which has been certified in accordance with the requirements of this article prior to the making of the contribution. No tax credit may be granted under this article for any contribution which, if allowed, would cause the amount of tax credit generated by the project to exceed the maximum amount of tax credit for which the project was certified as stated in the application for project certification filed with the West Virginia Development Office.

(f) All applications for certification of a project filed with the West Virginia Development Office, whether such project is certified or denied certification, are public information which may be viewed and copied by the public and, at the discretion of the West Virginia Development Office, published by the West Virginia Development Office.

(g) Project transferees shall file biannual reports with the West Virginia Development Office on the progress of the certified project. The biannual reports shall be filed in a form approved by the director.

(h) Revolving fund. —

(1) For the purpose of permitting payments to be made and costs to be met for operation of the program established by this article, there is hereby created a revolving fund for the West Virginia Development Office, which shall be known as the Neighborhood Investment Fund. All money received by the West Virginia Development Office under this article shall be paid into the State Treasury, and shall be deposited to the credit of the Neighborhood Investment Fund, and shall be expended only for the purposes of defraying the costs of the Neighborhood Investment Program Advisory Board and the West Virginia Development Office in administering the program established pursuant to this article, unless otherwise directed by the Legislature.

(2) The Neighborhood Investment Fund shall be accumulated and administered as follows:

(A) Payments received under this article shall be deposited into the Neighborhood Investment Fund.

(B) Any appropriations made to the Neighborhood Investment Fund shall not be deemed to have expired at the end of any fiscal period.

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§11-13J-4a. Neighborhood Investment Program Advisory Board.

(a) There is hereby created a Neighborhood Investment Program Advisory Board, which shall consist of 12 voting members and the chairperson.

(b) *Chairperson*. —

(1) The Director of the West Virginia Development Office, or the designee of the Director of the West Virginia Development Office, shall be the ex officio chairperson of the Neighborhood Investment Program Advisory Board.

(2) The chairperson shall vote on actions of the board only in the event of a tie vote, in which case the chairperson's vote shall be the deciding vote.

(c) *Board members*. —

(1) Four members shall be officers or members of the boards of directors of unrelated corporations which are not affiliated with one another and which are currently licensed to do business in West Virginia.

(2) Four members shall be executive directors, officers, or members of the boards of directors of unrelated not-for-profit organizations which are not affiliated with one another which currently hold charitable organization status under Section 501(c)(3) of the Internal Revenue Code and which are currently licensed to do business in West Virginia.

(3) Four members shall be economically disadvantaged citizens of the state that, for the taxable year immediately preceding the year of appointment to the board, had an annual gross personal income that was not more than 125 percent of the federal designated poverty level for personal incomes, and who has been a domiciliary and resident of this state for at least one year at the time of appointment.

A member appointed under this subdivision is not disqualified from completion of his or her term if his or her income in the year of appointment or in any year subsequent to the year of appointment exceeds 125 percent of the federal designated poverty level. A member shall not be eligible for reappointment under this subdivision unless he or she meets the original qualifications for appointment: *Provided*, That such member may be reappointed pursuant to qualification under subdivision (1) or (2) of this subsection if the member meets the requirements of subdivision (1) or (2), respectively.

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

(1) Six members, exclusive of the chairperson, shall be appointed from each congressional district. Not more than seven of the members, exclusive of the chairperson, may belong to the same political party. Members shall be eligible for reappointment. However, no member may serve for more than three consecutive terms.

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(2) *Appointment terms*. —

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

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

(3) *Selection of members*. —

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

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

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

(e) *Quorum; meetings; funding*. —

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

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

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

(f) *Annual report*. — The board shall make a report to the Governor and the Legislature within 30 days of the close of each fiscal year. The report shall include summaries of all meetings of the board, an analysis of the overall progress of the program, fiscal concerns, the relative impact the program is having on the state and any suggestions and policy recommendations that the board may have. The report shall be public information made available to the general public for examination and copying. The board is authorized to publish the annual report, should the board elect to do so.

(g) *Duties of the board*. —

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(1) Administrative duties. — The board shall be responsible for advising the West Virginia Development Office concerning the administrative obligations of the program.

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

(A) The board shall select and approve projects, which may then be certified by the Director of the West Virginia Development Office pursuant to section four of this article.

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

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

(A) The project is community based.

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

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

(D) The project plan incorporates collaborative partnerships among nonprofit groups, businesses, government organizations, and other community organizations.

(E) The applicant or sponsor of the project has demonstrated a proven capacity to deliver the proposed services.

(F) The applicant or sponsor of the project historically maintains reasonable administrative costs.

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

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

(I) The proposed project is a direct need program or will provide emergency assistance.

(4) If an applicant is directly or indirectly affiliated with one or more board members, those members shall not discuss the proposals with one or more board members, and shall not have a vote when that project is considered for final approval or disapproval.

WV Legislature

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

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

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

(2) The West Virginia Development Office shall promptly notify applicants of the issuance of certification for their projects and shall issue tax credit vouchers to certified project applicants in the amount of the tax credit represented by the project.

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

WV Legislature

§11-13J-5. Amount of credit allowed.

(a) Credit allowed. -- Eligible taxpayers shall be allowed a credit against taxes imposed by this state, the application of which and the amount of which shall be determined as provided in this article.

(b) Amount of credit. -- The amount of credit allowable is fifty percent of the amount of the taxpayer's "eligible contribution".

(c) Application of credit within five years. -- The amount of credit allowable must be taken within a five-year period, beginning with the tax year in which the taxpayer irrevocably transfers its eligible contribution to the project plan transferee. Notwithstanding any other provision of this article to the contrary, the tax credit which a taxpayer receives under this article may not exceed $100,000 in any tax year of the eligible taxpayer. A tax credit shall be allowable under this article only for the tax year of the eligible taxpayer in which the eligible contribution is irretrievably transferred to the project plan transferee, and for the next succeeding four tax years.

WV Legislature

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

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

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

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

(b) Application of credit allowance. -- The amount determined under subsection (a) of this section shall be allowed as a credit for tax years ending on and after July 1, 1996, as follows:

(1) Business franchise taxes. --

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

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

(3) Personal income taxes. --

(A) If the eligible taxpayer is an electing small business corporation as defined in Section 1361 of the United States Internal Revenue Code, a limited liability company treated as a partnership for purposes of the federal income tax, a partnership or a sole proprietorship, then any unused credit, after application of subdivisions (1) and (2) of this subsection, shall be allowed as a credit against up to fifty percent of the taxes imposed by article twenty-one of this chapter on income of proprietors, partners or shareholders, subject to the limitations set forth in paragraphs (B) and (C) of this subdivision.

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

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

WV Legislature

(c) Unused credit forfeited. -- If any credit to an eligible taxpayer remains after application of subsections (a) and (b) of this section, the amount thereof may be carried forward no more than four years from the tax year in which the contribution was made. Unused credits of an eligible taxpayer may not be carried forward beyond the time limits imposed under section five of this article and the total maximum aggregate tax credits certified in any state fiscal year may not exceed $3,000,000.

(d) Addition of deductions, decreasing adjustments or decreasing modifications taken in determining taxable income for which credit is taken. -- Any deduction, decreasing adjustment or decreasing modification taken by any taxpayer in determining federal taxable income which affects West Virginia taxable income or in determining West Virginia taxable income under article twenty-one or twenty-four of this chapter for the taxable year for any charitable contribution, or payment or portion thereof, which qualifies as an eligible contribution under this article and for which credit is claimed, shall be added to West Virginia taxable income in determining the tax liability of the taxpayer under article twenty-one or twenty-four of this chapter, as appropriate, before application of the credit allowed under this article for the taxable year.

(e) Annual limit. –- The aggregate annual credit allowance to any taxpayer may not exceed $100,000 in any tax year.

WV Legislature

§11-13J-7. Assertion of the tax credit against tax.

(a) Any eligible taxpayer which desires to claim a tax credit as provided in this article shall file with the West Virginia Tax Commissioner, in such form as the Tax Commissioner may prescribe, an annual tax credit reporting schedule stating the amount of the eligible contribution which the taxpayer has made. The eligible taxpayer shall file with the tax credit reporting schedule a certificate, issued by the director of the West Virginia Development Office, evidencing approval of the project plan by the director of the West Virginia Development Office, pursuant to which the contribution was made.

(b) In the tax credit reporting schedule required under this section, the taxpayer shall provide all information required by the Tax Commissioner's prescribed form.

(c) The tax credit reporting schedule shall be filed with the annual return for the taxes imposed by article twenty-four of this chapter for the tax year in which the eligible contribution is first irrevocably transferred to a transferee pursuant to a certified project plan: Provided, That, if the eligible taxpayer is not required to file a tax return under article twenty-four of this chapter, then such tax credit reporting schedule shall be filed with the annual return for the taxes imposed by article twenty-three of this chapter for such year: Provided, however, That, if the eligible taxpayer is not required to file a tax return under article twenty-three or twenty-four of this chapter, then such tax credit reporting schedule shall be filed with the annual return for the taxes imposed by article twenty-one of this chapter for such year.

(d) The tax credit reporting schedule shall be accompanied by such proof of payment as the Tax Commissioner may prescribe, showing that the amount to be contributed under the certified project plan has been paid to the transferee designated in the certified plan solely for the certified project.

(e) The Tax Commissioner may disallow any credit claimed under this article for which a properly completed tax credit reporting schedule or a properly completed and valid statement or proof of payment of the eligible contribution, or other required documentation, statements or proofs are not timely filed.

WV Legislature

§11-13J-8. Total maximum aggregate tax credit amount.

(a) The amount of tax credits allowed under this article may not exceed $3,000,000 in any state fiscal year.

(b) Applications for project certification shall be filed with the West Virginia Development Office. The West Virginia Development Office shall record the date each application is filed. All complete and valid applications shall be considered for approval or disapproval in a timely manner by the neighborhood assistance advisory board. The board may, in its discretion, consider applications for approval or disapproval at special or interim meetings for expedited processing.

(c) When the total amount of tax credits certified under this article equals the maximum amount of tax credits allowed, as specified in subsection (a) of this section, in any state fiscal year, no further certifications shall be issued in that same fiscal year. Upon approval of a project by the board, the Director of the West Virginia Development Office shall certify the approved project unless certification is prohibited by the limitations and requirements set forth in this article.

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

WV Legislature

§11-13J-9. Credit recapture; interest; penalties; additions to tax; statute of limitations.

If it appears upon audit or otherwise that an eligible taxpayer has not made contribution as represented, or should it appear that contributions made by an eligible taxpayer were made to the direct or indirect benefit of the eligible taxpayer making the contribution or to the direct or indirect benefit of any person related to the eligible taxpayer making the contribution, the credit previously allowed under this article shall be recaptured, and amended returns shall be filed for any tax year for which the credit was taken. Any additional taxes due under this chapter shall be remitted with the amended return or returns filed with the Tax Commissioner, along with interest, as provided in section seventeen, article ten of this chapter, and a ten percent penalty, which may be waived by the Tax Commissioner if the taxpayer shows that the overclaimed amount was due to reasonable cause and not due to willful neglect, and such other penalties and additions to tax as may be applicable pursuant to the provisions of article ten of this chapter. Notwithstanding the provisions of article ten of this chapter, the statute of limitations for the issuance of an assessment of tax by the Tax Commissioner shall be five years from the date of the filing of any tax return on which this credit was taken or five years from the date of payment of any tax liability calculated pursuant to the assertion of this credit, whichever is later.

WV Legislature

§11-13J-10. Public information relating to tax credit.

(a) The Tax Commissioner shall annually publish in the State Register the name of every taxpayer asserting this credit on a tax return, and the amount of any credit asserted on a tax return under this article by each such taxpayer, and the confidentiality provisions of §11-1-4a or §11-10-5d of this code, or of any other provision of this code, do not apply to such information.

(b) The provisions of §11-13J-10(a) of this code shall have no force or effect on or after January 1, 2022.

WV Legislature

§11-13J-11. Audits and examinations; information sharing.

(a) The Tax Commissioner may, at his or her discretion, perform joint audits or examinations with the West Virginia Development Office or independently audit or examine the books, records and other information, as appropriate, of any taxpayer or of any person, organization or entity which has filed an application for certification of a project plan under this article, or of any taxpayer which has asserted this credit on a tax return, or of any person, organization or entity believed to have relevant information.

(b) For purposes of joint audits, or any administrative or judicial proceeding or procedure relating to any tax credit taken, asserted or sought under this article, the Tax Commissioner may share such tax information as the Tax Commissioner may deem appropriate with the West Virginia Development Office, notwithstanding the provisions of section four-a, article one of this chapter or section five-d, article ten of said chapter, or any other provision of this code to the contrary.

WV Legislature

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

Beginning on December 15, 2005, and every third year thereafter, the director shall secure an independent review of the Neighborhood Investment Program created by this article and present the findings to the Joint Committee on Government and Finance. Unless sooner terminated by law, the Neighborhood Investment Program Act terminates on July 1, 2031. There is no entitlement to the tax credit under this article for a contribution made to a certified project after July 1, 2031, and no credit is available to any taxpayer for any contribution made after that date. Taxpayers which have gained entitlement to the credit pursuant to eligible contributions made to certified projects prior to July 1, 2031, shall retain that entitlement and apply the credit in due course pursuant to the requirements and limitations of this article.

WV Legislature