WEST VIRGINIA CODE: §5B-12-3

§5B-12-3. Program established; application.

(a) There is hereby created the WV First Small Business Growth Program, to be administered by the Department of Commerce.

(b) A growth fund that seeks to have an equity investment certified as a capital investment eligible for credits authorized under the provisions of this article shall apply to the department. The department shall begin accepting applications within 90 days of the effective date of this article. The application shall include:

(1) The amount of capital investment requested;

(2) A copy of the growth fund applicant's or an affiliate of the growth fund applicant's licenses as a rural business investment company under 7 U.S.C. § 2009cc or as a small business investment company under 15 U.S.C. § 681, and a certificate executed by an executive officer of the growth fund applicant attesting that such license remains in effect and has not been revoked;

(3) Evidence that, as of the date the application is submitted, the growth fund applicant or affiliates of the growth fund applicant have invested at least $100 million in nonpublic companies located in counties within the United States with a population of less than 75,000 according to the 2020 Federal Decennial Census of the United States; such evidence may be in the form of a list containing the names of the companies, their location and the amounts invested by the growth fund applicant or affiliates of the applicant, provided that an officer of the growth fund applicant certifies such list;

(4) A business plan that includes a revenue-impact assessment projecting state and local tax revenue to be generated by the growth fund applicant's proposed qualified investments, prepared by a nationally recognized, third-party, independent economic forecasting firm using a dynamic economic forecasting model that analyzes the growth fund applicant's business plan over the 10 years following the date that the application is submitted to the department. Such plan shall include an estimate of the number of jobs created and jobs retained in this state as a result of the growth fund applicant's qualified investments; and

(5) A nonrefundable application fee of $5,000 payable to the department.

(c) Within 30 days after the receipt of a completed application, the department shall grant or deny the application in full or in part. The department shall deny the application if:

(1) The growth fund applicant does not satisfy all the criteria provided by subsection (b) of this section;

(2) The revenue-impact assessment submitted with the application does not demonstrate

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that the growth fund applicant's business plan will result in a positive fiscal impact on the state over a 10-year period that exceeds the cumulative amount of credits that would be issued to the growth fund applicant if the application was approved; or

(3) The department has already approved the maximum amount of capital investment authority under §5B-12-4 of this code.

(d) If the department denies any part of the application, it shall inform the growth fund applicant of the grounds for such denial. If the growth fund applicant provides any additional information required by the department or otherwise completes its application within 15 days of the notice of denial, the application shall be considered complete as of the original date of submission. If the growth fund applicant fails to provide the information or fails to complete its application within the 15-day period, the application shall remain denied and must be resubmitted with a new submission date and a new application fee.

(e) Upon approval of an application, the department shall certify the proposed equity investment as a capital investment eligible for credits under this article, subject to limitations laid out in §5B-12-4 of this code. The department shall provide written notice of the certification to the growth fund applicant which shall include the amount of the growth fund applicant's capital investment authority and a schedule of credits by year and amount related to the capital investment authority. The department shall certify capital investments in the order that the application is received by the department. Applications received on the same day shall be deemed to have been received simultaneously. For applications that are complete and received on the same day, the department shall certify applications in proportionate percentages based upon the ratio of the amount of capital investment authority requested in all applications.

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