ENROLLED
H. B. 3040
(By Delegate Williams)

[Passed March 14, 1987; in effect from passage.]

AN ACT to amend and reenact sections four, six, seven, eight, ten, twelve, and sixteen, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended; all relating to the West Virginia Capital Company Act.

Be it enacted by the Legislature of West Virginia:

That sections four, six, seven, eight, ten, twelve and sixteen, article one, chapter 5E of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

§5E-1-4. Definitions.

1 As used in this article, the following terms shall have the meanings ascribed to them in this section, unless the context in which the term is used clearly requires another meaning or a specific different definition is provided.

6 (a) “Board” means the board of directors of the West Virginia industrial and trade jobs development corporation, provided for in article two, chapter five-e of this code.

10 (b) “Capital base” means equity capital or net worth.

(c) “Certified West Virginia capital company” means:
(1) A West Virginia business development corporation created pursuant to article fourteen, chapter thirty-one of this code; or

(2) A profit or nonprofit entity organized and existing under the laws of this state, created for the purpose of making venture or risk capital available to qualified investments, that has been certified by the board.

(d) "Qualified investment" means a debt or equity financing of a West Virginia business but only if the business is engaged in one or more of the following activities: Manufacturing; agricultural production or processing; forestry production or processing; mineral production or processing, except for conventional oil and gas exploration; service industry; transportation; research and development of products or processes associated with any of the activities previously enumerated above; tourism; and wholesale or retail distribution activities within the state.

(e) "Qualified West Virginia capital company" means a West Virginia capital company that has been designated by the board as a qualified capital company under the provisions of section six of this article.

(f) "State" means the state of West Virginia.

§5E-1-6. Qualification of West Virginia capital companies.

(a) The board shall qualify West Virginia capital companies commencing after the effective date of this article. A company seeking to be qualified as a West Virginia capital company must make written application to the board on forms provided by the board. The application must contain the information required by section ten of this article. Further, the application must specify the level of capitalization of the company.

(b) The application shall set forth the applicant's purpose.

(c) The board may certify West Virginia capital companies in existence after the first day of July, 1986.

§5E-1-7. Minimum standards of qualified West Virginia
capital companies.

The board shall qualify West Virginia capital companies that have been capitalized at a minimum level of one million dollars. Capitalization of the company may be increased pursuant to regulation of the board.

§5E-1-8. Tax credits.

(a) The total amount of tax credits authorized for a single qualified company may not exceed two million dollars. Capitalization of the company may be increased pursuant to regulation of the board.

(b) The total credits authorized by the board for all companies may not exceed a total of ten million dollars each fiscal year. The board shall allocate these credits to qualified companies in the order that said companies are qualified.

(c) Any investor, including an individual, partnership or corporation who makes a capital investment in a qualified West Virginia capital company is entitled to a tax credit equal to fifty percent of the investment. The credit allowed by this article shall be taken after all other credits allowed by chapter eleven of this code. It shall be taken against the same taxes and in the same order as set forth in subsections (c) through (i), section five, article thirteen-c, chapter eleven of this code. The credit for investments by a partnership or by a corporation electing to be treated as a Subchapter S corporation may be divided pursuant to election of partners or shareholders.

(d) The tax credit allowed under this section is to be credited against the taxpayer's tax liability for the taxable year in which the investment in a qualified West Virginia capital company is made. If the amount of the tax credit exceeds the taxpayer's tax liability for the taxable year, the amount of the credit which exceeds the tax liability may be carried back or may be carried forward in accordance with the provisions of section forty-six (b) of the Internal Revenue Code of 1954, as amended.
(e) The tax credit provided for in this section is available only to those taxpayers whose investment in a qualified West Virginia capital company occurs after the first day of July, one thousand nine hundred eighty-six.

§5E-l-10. Application requirements.

Each company shall make application to the board on forms provided therefor, which shall set forth:

1. Capitalization level of capital company;
2. Purpose of the company;
3. Names of investors;
4. A process for disclosing to investors the tax credit available pursuant to this article. Such disclosure shall clearly set forth that no tax credit will be available until the qualification of said company shall be granted by the board and the disclosure of immunity of the state for damages is provided to said investors; and
5. The location of the escrow account which has been established for investors for the period of time between the investment and the qualification of the capital company by the board.

§5E-1-12. Qualified investments.

(a) A qualified West Virginia capital company must use its capital base to make qualified investments according to the following schedule:

1. At least twenty percent of its capital base within the first year of the date on which the capital company was designated as qualified by the board;
2. At least forty percent of its capital base within two years of the date on which the capital company was designated as qualified by the board; and
3. At least sixty percent of its capital base within three years of the date on which the capital company was designated as a qualified by the board.

(b) The board shall annually audit the certified audit of each qualified company, as required by section
sixteen of this article, and the results of said audit shall
be used to notify the tax commissioner of any companies
that are not in compliance with this section.

e) A qualified West Virginia capital company that
fails to make qualified investments pursuant to subsec-
tion (a) of this section shall pay to the tax commissioner
a penalty equal to all of the tax credits allowed to the
taxpayers investing in said company with interest at the
rate of one and one-half percent per month, compounded
monthly, from the date the tax credits were certified as
allocated to the qualified West Virginia capital com-
pany. The tax commissioner shall give notice to the
company of any penalties under this section. The tax
commissioner may abate said penalty upon written
request if the capital company establishes reasonable
cause for the failure to make qualified investments. The
tax commissioner shall deposit any amounts received
under this subsection in the state general fund.

§5E-1-16. Examination.
(a) Annually each qualified capital company shall
cause its books and records to be audited by an
independent certified public accountant in accordance
with generally accepted auditing and accounting
principles. In addition to the performance of a financial
audit, the audit shall address the methods of operation
and conduct of the business of the West Virginia capital
company to determine compliance with this article and
that the funds received by the company have been
invested within the time limits required by this article.
Upon completion, a copy of the audit report shall be
certified and sent to the board.

The board may examine, under oath, any of the
officers, directors, agents, employees or investors of a
West Virginia capital company regarding the affairs
and business of the company. The board may issue
subpoenas and subpoenas duces tecum and administer
oaths. Refusal to obey such a subpoena or subpoena
duces tecum may at once be reported to the circuit court
of the county in which the company is located or the
persons subpoenaed reside and the circuit court shall
enforce obedience to the subpoena or subpoena duces
tecum in the manner provided by law for compliance
with a subpoena or subpoena duces tecum issued by a
circuit court of this state.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within approved this the 2nd day of April, 1987.

Governor
PRESENTED TO THE
GOVERNOR
Date 3/27/57
Time 3:47 p.m.