

SB 153

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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**ENROLLED**

*COMMITTEE SUBSTITUTE FOR*  
SENATE BILL NO. 153

(By Senator TOUBLIN, MR. PRESIDENT, ET AL)

—●—

PASSED MARCH 9, 1996  
In Effect NINETY DAYS FROM Passage

# ENROLLED

COMMITTEE SUBSTITUTE  
FOR

## Senate Bill No. 153

(SENATORS TOMBLIN, MR. PRESIDENT, AND MANCHIN,  
*original sponsors*)

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[Passed March 9, 1996; in effect ninety days from passage.]

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AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine-hundred thirty-one, as amended, by adding thereto a new article, designated article thirteen-j, relating to the establishment of a neighborhood investment program; specifying a short title; setting forth a legislative finding and purpose; defining terms; setting forth requirements for eligibility for tax credits; requiring certification of project plans by the West Virginia development office; requiring payment of a project certification fee to the West Virginia development office; specifying sanctions, procedures, penalties, interest and notice requirements relating to failure to timely pay the project certification fee; creating revolving fund; specifying accumulation and administration of

fund; appropriating funds out of general revenue; specifying deemed disapproval for applications not certified by the West Virginia development office within a given time; specifying prompt notification to applicants of certification or denial of certification of project plans; specifying that qualified charitable organizations which receive certification of a project may receive eligible contributions; specifying that taxpayers who make eligible contributions may gain entitlement to the tax credit; specifying that all applications for certification of a project plan filed under the article shall be public information; creating the neighborhood investment program advisory board; specifying powers and duties of the neighborhood investment program advisory board; specifying that the director of the West Virginia development office or the designee thereof shall be the ex officio chairperson of the neighborhood investment program advisory board; specifying qualifications for membership on the neighborhood investment program advisory board; specifying appointment terms for members of the neighborhood investment program advisory board; specifying limitations on selections of appointees to the neighborhood investment program advisory board; specifying terms of members of the neighborhood investment program advisory board; specifying the method of selection and appointment for members of the neighborhood investment program advisory board; specifying quorum requirements, meeting requirements and funding requirements for the neighborhood investment program advisory board; requiring that the neighborhood investment program advisory board make an annual report; specifying duties of the neighborhood investment program advisory board; prohibiting assistance by the neighborhood investment program advisory board of project sponsors to solicit support or donations; prohibiting voting by members of the neighborhood investment program advisory board who are affiliated with an applicant for project certification; setting forth criteria for project evaluation of proposed neighborhood investment pro-

gram project applications by the neighborhood investment program advisory board; specifying requirements for approval or disapproval of a proposed neighborhood investment program project by the neighborhood investment program advisory board; specifying requirements for certification of approved projects by the director of the West Virginia development office; specifying the amount of credit allowed to eligible taxpayers; specifying application of the credit over a period of five years beginning with the tax year of the taxpayer when the contribution is made; specifying annual application of the credit; prohibiting application of the credit against employer withholding taxes; specifying that unused credit shall be forfeited; specifying the manner in which modifications to federal taxable income shall affect application of credit; specifying the method for asserting the credit against tax; setting forth annual filing requirements; specifying that a tax credit reporting schedule be filed; authorizing disallowance of the credit; specifying the total maximum aggregate tax credit; specifying the beginning date for filing and the manner of filing of applications for certification of project plans with the West Virginia development office requiring that such applications be considered for approval or disapproval by the neighborhood investment program advisory board in a timely manner; requiring that when the total amount of credits certified by the West Virginia development office under the article equals the maximum amount of tax credit allowed in any state fiscal year, no further certifications shall be issued for that fiscal year; specifying that applications for certification of project plans shall be void on the last day of the fiscal year; specifying recapture of the tax credit; specifying the statute of limitations for the issuance of assessments; specifying that the tax commissioner shall annually publish the name and address of every taxpayer asserting the credit on a tax return and the amount of any credit asserted under the article; specifying that statutory information confidentiality provisions do not apply to information which is required

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to be published; authorizing the performance of audits and examinations by the tax commissioner and performance of joint audits and examinations by the tax commissioner and the West Virginia development office; authorizing the sharing of information between the tax commissioner and the West Virginia development office; requiring program evaluation on or before the thirtieth day of September, one thousand nine hundred ninety-eight, to be presented to the Legislature; specifying review and issuance of a recommendation by the joint committee on governmental operations not later than the first day of March, one thousand nine hundred ninety-nine, as to whether the program should continue; specifying procedures for the continuation of the program; and specifying procedures for taxpayers to obtain entitlement to credit in the event program is discontinued.

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

That chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article thirteen-j, to read as follows:

**ARTICLE 13J. NEIGHBORHOOD INVESTMENT PROGRAM.**

**§11-13J-1. Short title.**

- 1 This article shall be known as the Neighborhood
- 2 Investment Program Act.

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

- 1 It is the finding of the Legislature that community-
- 2 based organizations can be a powerful force in commu-
- 3 nity development. However, in West Virginia their
- 4 effectiveness has historically been weakened by meager
- 5 resources. Private corporations and individuals in West
- 6 Virginia possess the resources to aid community-based
- 7 organizations in their efforts to assist neighborhoods and
- 8 communities. Due to the lack of clear incentives, the
- 9 private and not-for-profit sectors have often not taken
- 10 advantage of opportunities to collaborate with

11 community-based organizations to the full extent  
12 possible by investment and participation in local pro-  
13 grams.

14 Therefore, the neighborhood investment program act  
15 is hereby enacted with the intent that it provide incen-  
16 tives for contributions to qualifying charitable projects.  
17 It is the intent of the Legislature that this act encourage  
18 private sector businesses and individuals to contribute  
19 capital to community-based organizations which estab-  
20 lish projects to assist neighborhoods and local communi-  
21 ties through such services as health care, counseling,  
22 emergency assistance, crime prevention, education,  
23 housing, job training and physical and environmental  
24 improvements.

### §11-13J-3. Definitions.

1 (a) *General.* — When used in this article, or in the  
2 administration of this article, terms defined in subsec-  
3 tion (b) of this section shall have the meanings ascribed  
4 to them by this section, unless a different meaning is  
5 clearly required by either the context in which the term  
6 is used, or by specific definition in this article.

7 (b) *Terms defined.*

8 (1) *Affiliate.* — The terms “affiliate” or “affiliates”  
9 include all concerns which are affiliates of each other  
10 when either directly or indirectly:

11 (A) One concern controls or has the power to control  
12 the other; or

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

19 (2) *Capacity building.* — The term “capacity building”  
20 means to generally enhance the capacity of the commu-  
21 nity to achieve improvements and to obtain the commu-

22 nity services described in items (i) through (v), inclusive  
23 of the definition of that term, as set forth in this subdivi-  
24 sion. Capacity building includes, but is not limited to,  
25 improvement of the means, or capacity, to:

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

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

33 (iii) Attract and direct political and community atten-  
34 tion to needs of the community for the purpose of  
35 increasing access to and use of assistance, resources or  
36 funds for a given purpose, goal or need.

37 (3) *Commissioner or tax commissioner.* — The terms  
38 “commissioner” and “tax commissioner” are used  
39 interchangeably herein and mean the tax commissioner  
40 of the state of West Virginia, or his or her delegate.

41 (4) *Community services.* — “Community services”  
42 means services, provided at no charge whatsoever, of:

43 (i) Providing any type of health, personal finance,  
44 psychological or behavioral, religious, legal, marital,  
45 educational or housing counseling and advice to econom-  
46 ically disadvantaged citizens or a specifically designated  
47 group of economically disadvantaged citizens, or in an  
48 economically disadvantaged area; or

49 (ii) Providing emergency assistance or medical care to  
50 economically disadvantaged citizens or to a specifically  
51 designated group of economically disadvantaged citi-  
52 zens, or in an economically disadvantaged area; or

53 (iii) Establishing, maintaining or operating recre-  
54 ational facilities, or housing facilities for economically  
55 disadvantaged citizens or a specifically designated group  
56 of economically disadvantaged citizens, or in an econom-  
57 ically disadvantaged area; or

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

65 (v) Providing community technical assistance and  
66 capacity building to economically disadvantaged citizens  
67 or a specifically designated group of economically  
68 disadvantaged citizens or to individuals, groups or  
69 neighborhood or community organizations in an econom-  
70 ically disadvantaged area.

71 (5) *Compensation*. — The term “compensation” means  
72 wages, salaries, commissions and any other form of  
73 remuneration paid to employees for personal services.

74 (6) *Corporation*. — The term “corporation” means any  
75 corporation, joint-stock company or association, and any  
76 business conducted by a trustee or trustees wherein  
77 interest or ownership is evidenced by a certificate of  
78 interest or ownership or similar written instrument.

79 (7) *Crime prevention*. — “Crime prevention” means any  
80 activity which aids in the reduction of crime.

81 (8) *Delegate*. — The term “delegate” in the phrase “or  
82 his or her delegate,” when used in reference to the tax  
83 commissioner, means any officer or employee of the tax  
84 division of the department of tax and revenue duly  
85 authorized by the tax commissioner directly, or indi-  
86 rectly by one or more redelegations of authority, to  
87 perform the functions mentioned or described in this  
88 article.

89 (9) *Director or director of the West Virginia develop-*  
90 *ment office*. — The term “director” or “director of the  
91 West Virginia development office” means the director of  
92 the West Virginia office.

93 (10) *Economically disadvantaged area*. — The term

94 "economically disadvantaged area" means:

95 (A) In a municipality - any area not exceeding fifteen  
96 square miles in West Virginia which contains any portion  
97 of an incorporated municipality and:

98 (i) In which area the average annual gross personal  
99 income of residents living therein is not more than one  
100 hundred twenty-five percent of the federal designated  
101 poverty level for personal incomes; and

102 (ii) That is certified as an economically disadvantaged  
103 area by the West Virginia development office.

104 (B) In a rural area - any area not exceeding twenty-five  
105 square miles in West Virginia:

106 (i) Which area is located in a rural area and which  
107 contains no incorporated municipalities or portions  
108 thereof;

109 (ii) In which area the average annual gross personal  
110 income of residents living therein is not more than one  
111 hundred twenty-five percent of the federal designated  
112 poverty level for personal incomes; and

113 (iii) That is certified as an economically disadvantaged  
114 area by the West Virginia development office.

115 (C) An economically disadvantaged area shall qualify  
116 as such only pursuant to a certification issued by the  
117 West Virginia development office. Such certifications  
118 issued by the West Virginia development office shall  
119 expire after the passage of five calendar years, unless  
120 specifically limited to a shorter time by specific order of  
121 the West Virginia development office, and no area shall  
122 hold the status of a certified economically disadvantaged  
123 area for a period of time greater than ten years, either  
124 consecutively or in the aggregate.

125 (D) The certification of an economically disadvantaged  
126 area shall be made on the basis of current indices of  
127 social and economic conditions, which shall include, but  
128 not be limited to, the median per capita income of the

129 area in relation to the median per capita income of the  
130 state or standard metropolitan statistical area in which  
131 the area is located.

132 (E) No economically disadvantaged area may be  
133 certified within twenty-five miles of any other certified  
134 economically disadvantaged area. Not more than six  
135 economically disadvantaged areas may hold the status of  
136 certified economically disadvantaged areas at any one  
137 time in this state.

138 (F) At least a majority of all economically disadvan-  
139 tagged areas holding designations as economically disad-  
140 vantaged areas at any one time shall be located in rural  
141 areas.

142 (G) Such certification shall be filed with the secretary  
143 of state and shall specifically set forth the boundaries of  
144 the economically disadvantaged area by both description  
145 and map, the date of certification of the area as an  
146 economically disadvantaged area, the date on which such  
147 certification will terminate and a statement of the  
148 director's findings as to the average annual gross per-  
149 sonal income of residents living in the certified economi-  
150 cally disadvantaged area.

151 (12) *Economically disadvantaged citizen.* — The term  
152 "economically disadvantaged citizen" means a natural  
153 person, who during the current taxable year has, or  
154 during the immediately preceding taxable year had, an  
155 annual gross personal income not exceeding one hundred  
156 twenty-five percent of the federal designated poverty  
157 level for personal incomes, and who is a domiciliary and  
158 resident of this state.

159 (13) *Education.* — "Education" means any type of  
160 scholastic instruction to, or scholarship by, an individual  
161 that enables such individual to prepare for better life  
162 opportunities. Education does not include courses in  
163 physical training, physical conditioning, physical educa-  
164 tion, sports training, sports camps and similar training  
165 or conditioning courses (except for physical therapy

166 prescribed by a physician or other person licensed to  
167 prescribe courses of medical treatment under West  
168 Virginia law).

169 (14) *Eligible contribution.* —

170 (A) An eligible contribution consists of cash, tangible  
171 personal property valued at its fair market value, real  
172 property valued at its fair market value or a contribution  
173 of in kind professional services valued at seventy-five  
174 percent of fair market value.

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

178 (i) Reasonably priced and valued, and reasonably  
179 necessary services customarily and normally provided by  
180 the contributor in the normal course of business to  
181 customers, clients or patients other than those encom-  
182 passed by the project plan;

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

185 (iii) Are services which are not available elsewhere in  
186 the community.

187 (C) The term “professional services” means only those  
188 services provided directly by a physician licensed to  
189 practice in this state, those services provided directly by  
190 a dentist licensed to practice in this state, those services  
191 provided directly by a lawyer licensed to practice in this  
192 state, those services provided directly by a registered  
193 nurse, licensed practical nurse, dental hygienist, or other  
194 health care professional licensed to practice in this state  
195 and those services provided directly by a certified public  
196 accountant or public accountant licensed to practice in  
197 this state.

198 (D) *Minimum contribution.* — No contribution of cash,  
199 property or professional services or any combination  
200 thereof contributed in any tax year by any taxpayer  
201 having a fair market value of less than five hundred

202 dollars qualifies as an eligible contribution.

203 (E) *Maximum contribution.* — No contribution of cash,  
204 property or professional services or any combination  
205 thereof contributed in any tax year by any taxpayer  
206 having a fair market value in excess of two hundred  
207 thousand dollars qualifies as an eligible contribution.

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

213 (15) *Eligible taxpayer.* —

214 (A) The term “eligible taxpayer” means any person  
215 subject to the taxes imposed by articles twenty-one,  
216 twenty-three or twenty-four of this chapter which makes  
217 an eligible contribution to a qualified charitable organ-  
218 ization pursuant to the terms of a certified project plan  
219 for the purpose of providing neighborhood assistance,  
220 community services, or crime prevention, or for the  
221 purpose of providing job training or education for  
222 individuals not employed by the contributing taxpayer  
223 or an affiliate of the contributing taxpayer or a person  
224 related to the contributing taxpayer.

225 (B) “Eligible taxpayer” also includes an affiliated  
226 group of taxpayers if such group elects to file a consoli-  
227 dated corporation net income tax return under article  
228 twenty-four of this chapter and if one or more affiliates  
229 included in such affiliated group would qualify as an  
230 eligible taxpayer under part (A) of this paragraph.

231 (16) *Includes and including.* — The terms “includes”  
232 and “including”, when used in a definition contained in  
233 this article, shall not be deemed to exclude other things  
234 otherwise within the meaning of the term defined.

235 (17) *Job training.* — “Job training” means instruction  
236 to an individual that enables the individual to acquire  
237 vocational skills so as to become employable or to be



238 able to seek a higher grade of employment.

239 (18) *Natural person or individual.* — The term “natural  
240 person” and the term “individual” mean a human being.  
241 The terms “natural person” and “individual” do not  
242 mean, and specifically exclude any corporation, limited  
243 liability company, partnership, joint venture, trust,  
244 organization, association, agency, governmental subdivi-  
245 sion, syndicate, affiliate or affiliation, group, unit or any  
246 entity other than a human being.

247 (19) *Neighborhood assistance.* — “Neighborhood  
248 assistance” means either:

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

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

255 (20) *Neighborhood organization.* — “Neighborhood  
256 organization” means any organization:

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

259 (B) Which is exempt from income taxation under  
260 Section 501(c)(3) or (4) of the Internal Revenue Code.

261 (21) *West Virginia development office.* — The term  
262 “West Virginia development office” means the West  
263 Virginia development office.

264 (22) *Partnership and partner.* — The term “partner-  
265 ship” includes a syndicate, group, pool, joint venture or  
266 other unincorporated organization through or by means  
267 of which any business, financial operation or venture is  
268 carried on, and which is not a trust or estate, a corpora-  
269 tion or a sole proprietorship. The term “partner” in-  
270 cludes a member in such a syndicate, group, pool, joint  
271 venture or organization.

272 (23) *Person*. — The term “person” includes any natural  
273 person, corporation, limited liability company or part-  
274 nership.

275 (24) *Project transferee*. — The term “project trans-  
276 feree” means any neighborhood organization, qualified  
277 charitable organization, charitable organization or other  
278 organization, entity or person that receives an eligible  
279 contribution or part of an eligible contribution from an  
280 eligible taxpayer for the purpose of directly or indirectly  
281 providing neighborhood assistance, community services,  
282 or crime prevention, or for the purpose of providing job  
283 training or education or other services or assistance  
284 pursuant to a project plan. The project transferee is  
285 typically the first entity or person receiving eligible  
286 contributions from eligible taxpayers under a project  
287 plan. However, in the case of eligible contributions of in-  
288 kind services or other eligible contributions or portions  
289 thereof made pursuant to a certified project plan directly  
290 to indigent, disadvantaged or needy persons, economi-  
291 cally disadvantaged citizens, or other persons or organi-  
292 zations under the sponsorship or auspices of any neigh-  
293 borhood organization, qualified charitable organization,  
294 charitable organization or other organization, entity or  
295 person as a certified project participant, such eligible  
296 contributions shall be deemed to have been made to the  
297 entity, organization or person under whose sponsorship  
298 or auspices such eligible contributions are made, and  
299 that entity, organization or person is deemed to be the  
300 project transferee with relation to those eligible contri-  
301 butions. The project transferee is the entity, organiza-  
302 tion or person that is liable under this article for pay-  
303 ment of the project certification fee to the West Virginia  
304 development office. The term project transferee shall  
305 mean and include any deemed project transferee, deemed  
306 as such under the provisions of this article.

307 (25) *Qualified charitable organization*. — The term  
308 “qualified charitable organization” means a neighbor-  
309 hood organization, as defined in this section, which is the  
310 sponsor of a project which has received certification by

311 the director of the West Virginia development office  
312 pursuant to the requirements of this article: *Provided*,  
313 That no organization may qualify as a qualified organi-  
314 zation for purposes of this article if such organization is  
315 not registered with this state as required under the  
316 solicitation of charitable funds act.

317 (26) *Related person*. — The term "related person" or  
318 "person related to" a stated taxpayer means:

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

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

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

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

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

347 (27) *State fiscal year*. — “State fiscal year” means a  
 348 twelve-month period beginning on the first day of July  
 349 and ending on the thirtieth day of June.

350 (28) *Taxpayer*. — The term “taxpayer” means any  
 351 person subject to the tax imposed by articles twenty-one,  
 352 twenty-three or twenty-four of this chapter (or any one  
 353 or combination of such articles of this chapter).

354 (29) *Technical assistance*. —

355 (A) The term “technical assistance” means assistance  
 356 in understanding, using and fulfilling the legal, bureau-  
 357 cratic and administrative requirements and qualifica-  
 358 tions which must be negotiated for the purpose of  
 359 effectively accessing, obtaining and using private,  
 360 charitable, not-for-profit or governmental assistance,  
 361 resources or funds, and maximizing the value thereof.

362 (B) “Technical assistance” also means assistance  
 363 provided by any person holding a license under West  
 364 Virginia law to practice any licensed profession or  
 365 occupation, whereby such person, in the practice of such  
 366 profession or occupation, assists economically disadvan-  
 367 taged citizens or the persons in an economically disad-  
 368 vantaged area by:

369 (i) Providing any type of health, personal finance,  
 370 psychological or behavioral, religious, legal, marital,  
 371 educational or housing counseling and advice to econom-  
 372 ically disadvantaged citizens or a specifically designated  
 373 group of economically disadvantaged citizens, or in an  
 374 economically disadvantaged area; or

375 (ii) Providing emergency assistance or medical care to  
 376 economically disadvantaged citizens or to a specifically  
 377 designated group of economically disadvantaged citi-  
 378 zens, or in an economically disadvantaged area; or

379 (iii) Establishing, maintaining or operating recre-  
 380 ational facilities, or housing facilities for economically  
 381 disadvantaged citizens or a specifically designated group  
 382 of economically disadvantaged citizens, or in an econom-

383 ically disadvantaged area; or

384 (iv) Providing economic development assistance to  
385 economically disadvantaged citizens or a specifically  
386 designated group of economically disadvantaged citizens  
387 without regard to whether they are located in an econo-  
388 mically disadvantaged area, or to individuals, groups or  
389 neighborhood or community organizations, in an econo-  
390 mically disadvantaged area; or

391 (v) Providing community technical assistance and  
392 capacity building to economically disadvantaged citizens  
393 or a specifically designated group of economically  
394 disadvantaged citizens or to individuals, groups or  
395 neighborhood or community organizations in an econom-  
396 ically disadvantaged area.

397 (30) *This code.* — The term “this code” means the code  
398 of West Virginia, one thousand nine hundred thirty-one,  
399 as amended.

400 (31) *This state.* — The term “this state” means the state  
401 of West Virginia.

**§11-13J-4. Eligibility for tax credits; creation of neighbor-  
hood investment fund; certification of project  
plans by the West Virginia development of-  
fice.**

1 (a) A neighborhood organization which seeks to  
2 sponsor a project and have that project certified pursu-  
3 ant to this article shall submit to the director of the West  
4 Virginia development office an application for certifica-  
5 tion of a project plan, in such form as the director shall  
6 prescribe, setting forth the project to be implemented,  
7 the identity of all project participant organizations, the  
8 economically disadvantaged citizens or a specifically  
9 designated group of economically disadvantaged citi-  
10 zens, to be assisted by the project or the economically  
11 disadvantaged area or areas selected for assistance by  
12 the project, the amount of total tax credits to be created  
13 by the proposed project pursuant to the receipt of  
14 eligible contributions from eligible taxpayers under this

15 article, the amount of the total estimated eligible contri-  
16 butions to be received pursuant to the project, and the  
17 schedule for implementing the project.

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

20 (1) (A) *Project certification fee.* — Any project trans-  
21 feree that receives eligible contributions under or  
22 pursuant to a certified project plan shall pay to the West  
23 Virginia development office a project certification fee in  
24 the amount of three percent of the amount of the total  
25 eligible contributions received by such project transferee  
26 pursuant to the certified project plan. The project  
27 certification fee shall be paid to the West Virginia  
28 development office within thirty days of the receipt of  
29 any eligible contribution, or portion thereof.

30 (B) *Eligible contributions made through direct service*  
31 *to end users or recipients, or contributions to end users*  
32 *or recipients.* — In the case of eligible contributions of  
33 in-kind services or other eligible contributions or  
34 portions thereof made pursuant to a certified project  
35 plan and contributed or provided directly to indigent,  
36 disadvantaged or needy persons, economically disadvan-  
37 tagged citizens or other persons or organizations made  
38 under the sponsorship or auspices of any neighborhood  
39 organization, qualified charitable organization, charita-  
40 ble organization or other organization, entity or person  
41 as a certified project participant, such eligible contribu-  
42 tions shall be deemed to have been made to the entity,  
43 organization or person under whose sponsorship or  
44 auspices such eligible contributions are made, and that  
45 entity, organization or person is deemed to be the project  
46 transferee with relation to those eligible contributions.  
47 Such deemed project transferee shall be liable for the  
48 project certification fee due for such eligible contribu-  
49 tions.

50 (C) *Computation of fee based on fair market value.* —  
51 In the case of eligible contributions consisting of in-kind  
52 services, tangible personal property or realty, the project

53 transferee shall pay to the West Virginia development  
54 office a project certification fee in the amount of three  
55 percent of the fair market value of eligible contributions  
56 received pursuant to the certified project plan.

57 (2) *Sanctions for failure to timely pay the project*  
58 *certification fee.* — Failure to timely pay the project  
59 certification fee imposed by this section shall be grounds  
60 for imposition of any of the following sanctions, to be  
61 imposed by the director of the West Virginia develop-  
62 ment office at the discretion of the director:

63 (A) Prospective revocation of the project certification.

64 No tax credit shall be allowed for any project for  
65 which certification has been revoked for periods subse-  
66 quent to the effective date of revocation. Credit taken by  
67 any taxpayer in accordance with this article pursuant to  
68 the making of an eligible contribution to a project  
69 transferee pursuant to a certified project plan prior to  
70 the effective date of revocation of project certification  
71 shall not be subject to recapture by reason of revocation  
72 of the certification. However, such credit shall otherwise  
73 be subject to audit and adjustment or recapture in  
74 accordance with the requirements of this article.

75 (B) Retroactive withdrawal of the project certification.

76 No tax credit shall be allowed for any project for  
77 which certification has been withdrawn. Credit taken by  
78 any taxpayer in accordance with this article pursuant to  
79 the making of an eligible contribution to a project  
80 transferee pursuant to a certified project plan for which  
81 certification is later withdrawn pursuant to the provi-  
82 sions of this section shall be subject to recapture upon  
83 withdrawal of the certification.

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

86 No tax credit shall be allowed for contributions made  
87 during the suspension period for a project. Credit taken  
88 by any taxpayer in accordance with this article pursuant

89 to the making of an eligible contribution to a project  
90 transferee pursuant to a certified project plan prior to or  
91 subsequent to the suspension period shall not be subject  
92 to recapture by reason of the suspension. However, such  
93 credit shall otherwise be subject to audit and adjustment  
94 or recapture in accordance with the requirements of this  
95 article.

96 (D) Temporary or permanent disqualification of one or  
97 more project transferees, neighborhood organizations,  
98 qualified charitable organizations, charitable organiza-  
99 tions or other organizations, entities or persons from  
100 participation in a particular specified certified project.

101 No tax credit shall be allowed under this article for  
102 any contribution made during the disqualification period  
103 to any project transferee, neighborhood organization,  
104 qualified charitable organization, charitable organiza-  
105 tion or other organization, entity or person disqualified  
106 under this section from participation in a certified  
107 project. Tax credit taken by any taxpayer in accordance  
108 with this article pursuant to the making of an eligible  
109 contribution to any project transferee, neighborhood  
110 organization, qualified charitable organization, charita-  
111 ble organization or other organization, entity or person  
112 pursuant to a certified project plan prior to or subse-  
113 quent to the disqualification period shall not be subject  
114 to recapture by reason of the disqualification of the  
115 recipient thereof. However, such credit shall otherwise  
116 be subject to audit and adjustment or recapture in  
117 accordance with the requirements of this article.

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

125 (i) No tax credit shall be allowed under this article for  
126 any contribution made during the disqualification period



127 to any project transferee, neighborhood organization,  
128 qualified charitable organization, charitable organiza-  
129 tion or other organization, entity or person disqualified  
130 under this section from participation in any and all  
131 certified projects under this article. Tax credit taken by  
132 any eligible taxpayer in accordance with this article  
133 pursuant to the making of an eligible contribution to the  
134 project transferee, neighborhood organization, qualified  
135 charitable organization, charitable organization or other  
136 organization, entity or person disqualified from partici-  
137 pation in any and all certified projects under this article,  
138 pursuant to a certified project plan prior to or subse-  
139 quent to the disqualification period shall not be subject  
140 to recapture by reason of the disqualification. However,  
141 such credit shall otherwise be subject to audit and  
142 adjustment or recapture in accordance with the require-  
143 ments of this article; and

144 (ii) No certification shall be issued during the dis-  
145 qualification period for any proposed project in which a  
146 project transferee, neighborhood organization, qualified  
147 charitable organization, charitable organization or other  
148 organization, entity or person disqualified under this  
149 section from participation in any and all certified  
150 projects is listed as a proposed project participant.

151 (F) Any combination of the aforementioned sanctions.

152 (3) *Audits and investigations.* — The West Virginia  
153 development office or the department of tax and reve-  
154 nue, or both, may initiate and carry out investigations or  
155 audits of any recipient of any eligible contribution under  
156 this article, any eligible taxpayer or any project trans-  
157 feree to determine whether the project certification fee  
158 imposed by this section has been paid in accordance with  
159 the requirements of this article.

160 (4) *Procedures, failure to timely pay the project cer-*  
161 *tification fee upon written demand.* —

162 (A) *Written demand.* — The director of the West  
163 Virginia development office shall, upon a reasonable

164 belief that a project transferee has failed to timely pay  
165 the fee imposed by this section, issue a written demand  
166 for payment thereof, plus interest determined at the  
167 interest rate prescribed under section seventeen, article  
168 ten of this chapter, in such form as the director of the  
169 West Virginia development office may specify. The  
170 director of the West Virginia development office may  
171 also impose a penalty for failure to timely pay the project  
172 certification fee in the amount of twenty percent of the  
173 amount of the project certification fee due and interest  
174 due. Such demand shall notify the project transferee of  
175 the opportunity to show that the project certification fee  
176 is not due and owing.

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

178 Failure of the project transferee to pay any project  
179 certification fee due, with interest and penalties, as  
180 stated in the written demand for payment of the project  
181 certification fee, within thirty days of service of such  
182 demand, and failure of the project transferee to prove to  
183 the satisfaction of the director of the West Virginia  
184 development office that the fee imposed by this section  
185 is not due and owing, shall result in a determination by  
186 the director of the West Virginia development office that  
187 sanctions shall apply.

188 (C) *Notice of pending sanctions.* — Upon the making of  
189 a determination by the director of the West Virginia  
190 development office that sanctions for failure to pay the  
191 project certification fee apply, the director of the West  
192 Virginia development office shall serve upon the project  
193 transferee from which the project certification fee, or  
194 some portion thereof, is due and owing, a notice of  
195 pending sanctions. If the project transferee from which  
196 the certified project fee, or some portion thereof, is due  
197 and owing is not the applicant for project certification,  
198 then an informational copy of the notice of pending  
199 sanctions shall also be served upon the applicant for  
200 project certification.

201 (D) *Service of notice, content of notice.* — The notice of

202 pending sanctions shall be served upon the delinquent  
 203 project transferee in the same manner as an assessment  
 204 of tax in accordance with article ten of this chapter.  
 205 Such notice of pending sanctions shall state the sanc-  
 206 tions to be applied in accordance with this section, the  
 207 effective date or dates of such sanctions, with specific  
 208 statements of whether any sanction is to be applied  
 209 retroactively or in part retroactively, and the commence-  
 210 ment and termination dates for any suspensions of  
 211 certification or temporary disqualifications of any  
 212 program transferee, neighborhood organization, quali-  
 213 fied charitable organization, charitable organization or  
 214 other organization, entity or person to be disqualified  
 215 under this section from participation in certified pro-  
 216 jects. The notice of pending sanctions shall state that  
 217 sanctions shall be imposed sixty days after service of the  
 218 notice of pending sanctions upon the delinquent project  
 219 transferee, unless the delinquent project transferee pays  
 220 the amount of the project certification fee due and  
 221 owing, plus interest and penalties.

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

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

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

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

240 and penalties.

241 (F) *Statutory confidentiality.* — No information,  
242 document or proceeding brought pursuant to this  
243 section, relating to the liability of any project transferee  
244 for the project certification fee, interest or penalties  
245 imposed under this section is subject to the confidential-  
246 ity provisions of article ten of this chapter or any other  
247 confidentiality provision of this code. However, any  
248 proceeding relating to any amount of tax due or the  
249 recapture of tax credit taken under this article or any  
250 adjustment of the amount of tax credit taken under this  
251 article is subject to the provisions of article ten of this  
252 chapter, including all statutory confidentiality provi-  
253 sions, and shall be subject to all other applicable statu-  
254 tory tax confidentiality provisions of this code.

255 (G) *Effect of a final determination, waiver of penalties*  
256 *or sanctions.* — The notice of pending sanctions shall  
257 become final sixty days after service, unless an appeal is  
258 filed under this section, and shall not be subject to  
259 further appeal by the recipient thereof. When a determi-  
260 nation has become final that a project transferee has  
261 failed to timely pay the project certification fee, or any  
262 part thereof, the sanctions described in the notice of  
263 pending sanctions shall apply, effective as of the date set  
264 forth in that notice, unless the project certification fee,  
265 interest and penalties due are paid to the West Virginia  
266 development office within thirty days of the date on  
267 which the determination has become final. The twenty  
268 percent penalty authorized under this section may be  
269 imposed, adjusted, withdrawn or waived, in whole or in  
270 part, at the discretion of the director of the West Virginia  
271 development office. However, payment of the project  
272 certification fee and interest due shall not be subject to  
273 waiver. The sanctions for failure to pay the project  
274 certification fee authorized under this section may be  
275 imposed, adjusted, withdrawn or waived, in whole or in  
276 part, at the discretion of the director of the West Virginia  
277 development office.

278 (c) Within sixty days after the close of the regular  
279 meeting of the neighborhood investment advisory board  
280 next succeeding the date of receipt of a complete appli-  
281 cation for approval of a proposed project, the director of  
282 the West Virginia development office shall certify, or  
283 deny certification of, the proposed project for which  
284 such application has been filed. Those applications not  
285 approved by the director within sixty days as aforesaid  
286 shall be deemed disapproved by operation of law.

287 (d) The West Virginia development office shall prompt-  
288 ly notify an applicant as to whether an application for  
289 certification of a project plan has been approved or  
290 disapproved.

291 (e) Those prospective qualified charitable organiza-  
292 tions which receive certification of a project plan, and  
293 which otherwise comply with the requirements of this  
294 article so as to become qualified charitable organiza-  
295 tions, as defined in section three of this article, may  
296 receive eligible contributions, as defined in said section.  
297 Eligible taxpayers which make eligible contributions  
298 shall receive a tax credit as provided in section five of  
299 this article. No tax credit may be granted under this  
300 article for any contribution except eligible contributions  
301 made to a project which has been certified in accordance  
302 with the requirements of this article prior to the making  
303 of the contribution. No tax credit may be granted under  
304 this article for any contribution which, if allowed, would  
305 cause the amount of tax credit generated by the project  
306 to exceed the maximum amount of tax credit for which  
307 the project was certified as stated in the application for  
308 project certification filed with the West Virginia devel-  
309 opment office.

310 (f) All applications for certification of a project filed  
311 with the West Virginia development office, whether such  
312 project is certified or denied certification, are public  
313 information which may be viewed and copied by the  
314 public and, at the discretion of the West Virginia devel-  
315 opment office, published by the West Virginia develop-

316 ment office.

317 (g) *Revolving fund.* —

318 (1) For the purpose of permitting payments to be made  
 319 and costs to be met for operation of the program estab-  
 320 lished by this article, there is hereby created a revolving  
 321 fund for the West Virginia development office, which  
 322 shall be known as the neighborhood investment fund.  
 323 All money received by the West Virginia development  
 324 office under this article shall be paid into the state  
 325 treasury, and shall be deposited to the credit of the  
 326 neighborhood investment fund, and shall be expended  
 327 only for the purposes of defraying the costs of the  
 328 neighborhood investment program advisory board and  
 329 the West Virginia development office in administering  
 330 the program established pursuant to this article, unless  
 331 otherwise directed by the Legislature.

332 (2) The neighborhood investment fund shall be accu-  
 333 mulated and administered as follows:

334 (A) There shall be appropriated from the general  
 335 revenue fund the sum of sixty thousand dollars to be  
 336 transferred to the neighborhood investment fund to  
 337 create a revolving fund which, together with other  
 338 payments into this fund as provided in this article, shall  
 339 be utilized to defray the costs of the neighborhood  
 340 investment program advisory board and the West  
 341 Virginia development office in administering the pro-  
 342 gram established pursuant to this article, unless other-  
 343 wise directed by the Legislature.

344 (B) Payments received under this article shall be  
 345 deposited into the neighborhood investment fund.

346 (C) Any appropriations made to the neighborhood  
 347 investment fund shall not be deemed to have expired at  
 348 the end of any fiscal period.

**§11-13J-4a. Neighborhood investment program advisory board.**

1 (a) There is hereby created a neighborhood investment

2 advisory board, which shall consist of twelve voting  
3 members and the chairperson.

4 (b) *Chairperson.* —

5 (1) The director of the West Virginia development  
6 office, or the designee of the director of the West Vir-  
7 ginia development office, shall be the ex officio chairper-  
8 son of the neighborhood investment program advisory  
9 board.

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

13 (c) *Board members.* —

14 (1) Four of the members shall each be officers or  
15 members of the boards of directors of unrelated corpora-  
16 tions which are not affiliated with one another and  
17 which are currently licensed to do business in West  
18 Virginia.

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

26 (3) Four of the members shall be economically  
27 disadvantaged citizens of the state:

28 (i) An appointee will qualify as an economically  
29 disadvantaged citizen of this state if the appointee is an  
30 economically disadvantaged person who, for the taxable  
31 year immediately preceding the year of the member's  
32 appointment to the board, had an annual gross personal  
33 income that was not more than one hundred twenty-five  
34 percent of the federal designated poverty level for  
35 personal incomes, and who has been a domiciliary and  
36 resident of this state for at least one year at the time of  
37 the appointment;

38 (ii) *Continued qualification and reappointment.* — An  
 39 appointee or member appointed under this subdivision  
 40 is not disqualified from appointment to the board or  
 41 from completion of the member's ongoing term of service  
 42 on the board if the appointee's or member's income in  
 43 the year of appointment or in any year subsequent to the  
 44 year of appointment exceeds one hundred twenty-five  
 45 percent of the federal designated poverty level. How-  
 46 ever, a serving member shall not qualify under this  
 47 subdivision for reappointment to the board unless such  
 48 member has had, for the taxable year immediately  
 49 preceding the year of the member's reappointment to the  
 50 board, an annual gross personal income that was not  
 51 more than one hundred twenty-five percent of the  
 52 federal designated poverty level for personal incomes,  
 53 and has been a domiciliary and resident of this state for  
 54 at least one year at the time of the member's reappoint-  
 55 ment to the board: *Provided*, That such member may be  
 56 reappointed pursuant to qualification under subdivision  
 57 (1) or subdivision (2) of this subsection, notwithstanding  
 58 disqualification under this subdivision, if such member  
 59 meets the requirements of subdivision (1) or subdivision  
 60 (2), respectively, of this subsection at the time of reap-  
 61 pointment.

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

63 (1) Not more than four members (exclusive of the  
 64 chairperson) shall be appointed from any one congressio-  
 65 nal district. Not more than seven of the members  
 66 (exclusive of the chairperson) may belong to the same  
 67 political party. Members shall be eligible for reappoint-  
 68 ment. However, no member may serve for more than  
 69 three consecutive terms.

70 (2) *Appointment terms.* —

71 (A) Except for initial appointments described under  
 72 subdivision (3) of this subsection, and except for mid-  
 73 term special appointments made to fill irregular vacan-  
 74 cies on the board, members shall be appointed for terms  
 75 of three years each.



76 (B) Except for midterm special appointments made to  
77 fill irregular vacancies on the board, appointment terms  
78 shall begin on the first day of July of the beginning year.  
79 All appointment terms, special and regular, shall end on  
80 the thirtieth day of June of the ending year.

81 (3) *Initial appointments.* — The members first ap-  
82 pointed shall be appointed for a term commencing on the  
83 first day of July, one thousand nine hundred ninety-six.  
84 In order that the terms may be staggered so that four  
85 members are appointed each year:

86 (A) Four of the members first appointed shall, for the  
87 first term, be appointed for terms of one year. Those  
88 four members shall be appointed so that at least one  
89 appointee is appointed from each of the three member  
90 appointee groups specified in subdivisions (1), (2) and (3),  
91 subsection (c) of this section.

92 (B) Four of the members first appointed shall, for the  
93 first term, be appointed for terms of two years. Those  
94 four members shall be appointed so that at least one  
95 appointee is appointed from each of the three member  
96 appointee groups specified in subdivisions (1), (2) and (3),  
97 subsection (c) of this section.

98 (C) Four of the members first appointed shall, for the  
99 first term, be appointed for terms of three years. Those  
100 four members shall be appointed so that at least one  
101 appointee is appointed from each of the three member  
102 appointee groups specified in subdivisions (1), (2) and (3),  
103 subsection (c) of this section.

104 (D) Subsequent appointments of members, except for  
105 midterm special appointments made to fill irregular  
106 vacancies on the board, shall be for terms of three years  
107 in accordance with subdivision (2) of this subsection.

108 (4) *Selection of members.* —

109 (A) For the initial appointment of members under  
110 subdivision (3) of this subsection, members shall be  
111 selected by the director of the West Virginia develop-

112 ment office.

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

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

121 (e) *Quorum; meetings; funding.* —

122 (1) The presence of a majority of the members of the  
123 board constitutes a quorum for the transaction of  
124 business. The board shall elect from among its members  
125 a vice chairperson and such other officers as are neces-  
126 sary.

127 (2) The board shall meet not less than six times during  
128 the fiscal year, and additional meetings may be held  
129 upon a call of the chairperson or of a majority of the  
130 members.

131 (3) Board members shall be reimbursed by the West  
132 Virginia development office for sums necessary to carry  
133 out responsibilities of the board and for reasonable  
134 travel expenses to attend board meetings.

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

146 (g) *Duties of the board.* —

147 (1) *Administrative duties.* —

148 (A) The board shall be responsible for advising the  
149 West Virginia development office concerning the admin-  
150 istrative obligations of the program.

151 (B) The board shall approve application forms, track-  
152 ing systems and program record-keeping systems and  
153 methods.

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

156 (A) The board shall select and approve projects, which  
157 may then be certified by the director of the West Virginia  
158 development office pursuant to section four of this  
159 article.

160 (B) Only projects sponsored by qualified charitable  
161 organizations, as defined in section three of this article,  
162 may be approved by the board or certified by the direc-  
163 tor of the West Virginia development office. An appli-  
164 cant that does not hold current status as a charitable  
165 organization under Section 501(c)(3) of the Internal  
166 Revenue Code may not receive project approval from the  
167 board, or project certification from the director of the  
168 West Virginia development office, for any proposed  
169 project. Failure of any applicant to provide convincing  
170 documentation proving such status as a charitable  
171 organization under Section 501(c)(3) of the Internal  
172 Revenue Code shall result in automatic denial of project  
173 approval and denial of project certification under this  
174 article.

175 (C) The board may not assist project sponsors or others  
176 in their efforts to solicit support or donations from any  
177 governmental, corporate or individual source for projects  
178 certified under this article.

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

183 (A) The project is community-based. A project is  
184 community-based if:

185 (i) The project is to be managed locally, without  
186 national, state, multi-state or international affiliations;

187 (ii) The project will benefit local citizens in the imme-  
188 diate geographic area where the project is to operate;  
189 and

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

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

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

198 (D) The project plan incorporates collaborative part-  
199 nerships among nonprofit groups, businesses, govern-  
200 ment organizations and other community organizations.

201 (E) The applicant or sponsor of the project has demon-  
202 strated a proven capacity to deliver the proposed ser-  
203 vices.

204 (F) The applicant or sponsor of the project historically  
205 maintains low administrative costs.

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

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

212 (4) In the event that an applicant is directly or indi-  
213 rectly affiliated with one or more board members, those  
214 members may discuss the proposals with the board, but  
215 may not have a vote when that project is considered for  
216 final approval or disapproval.

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

221 (h) *Project certification by the director of the West*  
222 *Virginia development office.* —

223 (1) Upon issuance of approval for a project by the  
224 board, the approved project shall be certified by the  
225 director of the West Virginia development office:  
226 *Provided,* That no certification may issue for any project,  
227 even though the project may have been approved by the  
228 board, if the issuance of certification for such project  
229 will cause the aggregate amount of tax credits certified  
230 to exceed the limitation set forth in section eight of this  
231 article or elsewhere in this article. No certification may  
232 be issued by the director of the West Virginia develop-  
233 ment office for any project which has not been approved  
234 by the board.

235 (2) The West Virginia development office shall prompt-  
236 ly notify applicants of the issuance of certification for  
237 their projects, and shall issue tax credit vouchers to  
238 certified project applicants in the amount of the tax  
239 credit represented by the project.

240 (3) The West Virginia development office may provide  
241 incidental technical support and guidance to projects  
242 certified under this article and may monitor the progress  
243 of the projects. The West Virginia development office  
244 shall make a quarterly report to the board on the prog-  
245 ress of certified projects and the program generally.

**§11-13J-5. Amount of credit allowed.**

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

5 (b) *Amount of credit.* — The amount of credit allowable  
6 is fifty percent of the amount of the taxpayer's " eligible

7 contribution”.

8 (c) *Application of credit over five years.* — The amount  
 9 of credit allowable must be taken over a five-year  
 10 period, at the rate of one fifth of the amount thereof per  
 11 tax year, beginning with the tax year in which the  
 12 taxpayer irrevocably transfers its eligible contribution to  
 13 the project plan transferee. Notwithstanding any other  
 14 provision of this article to the contrary, the tax credit  
 15 which a taxpayer receives under this article may not  
 16 exceed one hundred thousand dollars in any tax year of  
 17 the eligible taxpayer. A tax credit shall be allowable  
 18 under this article only for the tax year of the eligible  
 19 taxpayer in which the eligible contribution is irretriev-  
 20 ably transferred to the project plan transferee, and for  
 21 the next succeeding four tax years.

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

1 (a) *In general.* — The aggregate annual credit allow-  
 2 ance for a current tax year is an amount equal to the sum  
 3 of the following:

4 (1) The one-fifth part allowed under section five of this  
 5 article for an eligible contribution placed into service or  
 6 use during a prior tax year; plus

7 (2) The one-fifth part allowed under section five of this  
 8 article for an eligible contribution placed into service or  
 9 use during the current tax year.

10 (b) *Application of current year annual credit allow-*  
 11 *ance.* — The amount determined under subsection (a) of  
 12 this section shall be allowed as a credit for tax years  
 13 ending on and after the first day of July, one thousand  
 14 nine hundred ninety-six, as follows:

15 (1) *Business franchise taxes.* —

16 The amount determined under subsection (a) of this  
 17 section shall be applied to reduce up to fifty percent of  
 18 the taxes imposed by article twenty-three of this chapter  
 19 for the tax year (determined after application of the  
 20 credits against tax provided in section seventeen of said

21 article, but before application of any other allowable  
22 credits against tax).

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

29 (3) *Personal income taxes.* —

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

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

46 (C) No credit may be allowed under this section against  
47 any tax due under article twenty-one of this chapter on  
48 any wage, salary or other compensation paid to any  
49 employee of any electing small business corporation,  
50 limited liability company, partnership, other unincorpo-  
51 rated organization or sole proprietorship or against any  
52 amount of tax due on any wage, salary or other com-  
53 pensation reported on federal form W2.

54 (c) *Unused credit forfeited.* — If any annual credit  
55 remains after application of subsections (a) and (b) of  
56 this section, the amount thereof shall be forfeited. No  
57 carryover to a subsequent tax year or carryback to a

58 prior tax year shall be allowed for the amount of any  
 59 unused portion of any annual credit allowance under this  
 60 article.

61 (d) *Addition of deductions, decreasing adjustments or*  
 62 *decreasing modifications taken in determining taxable*  
 63 *income for which credit is taken.* — Any deduction,  
 64 decreasing adjustment or decreasing modification taken  
 65 by any taxpayer in determining federal taxable income  
 66 which affects West Virginia taxable income or in deter-  
 67 mining West Virginia taxable income under article  
 68 twenty-one or article twenty-four of this chapter for the  
 69 taxable year for any charitable contribution, or payment  
 70 or portion thereof, which qualifies as an eligible contri-  
 71 bution under this article and for which credit is claimed,  
 72 shall be added to West Virginia taxable income in  
 73 determining the tax liability of the taxpayer under  
 74 article twenty-one or article twenty-four of this chapter,  
 75 as appropriate, before application of the credit allowed  
 76 under this article for the taxable year.

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

1 (a) Any eligible taxpayer which desires to claim a tax  
 2 credit as provided in this article shall file with the West  
 3 Virginia tax commissioner, in such form as the tax  
 4 commissioner may prescribe, an annual tax credit  
 5 reporting schedule stating the amount of the eligible  
 6 contribution which the taxpayer has made. The eligible  
 7 taxpayer shall file with the tax credit reporting schedule  
 8 a certificate, issued by the director of the West Virginia  
 9 development office, evidencing approval of the project  
 10 plan by the director of the West Virginia development  
 11 office, pursuant to which the contribution was made.

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

15 (c) The tax credit reporting schedule shall be filed with  
 16 the annual return for the taxes imposed by article  
 17 twenty-four of this chapter for the tax year in which the



18 eligible contribution is first irrevocably transferred to a  
19 transferee pursuant to a certified project plan: *Provided,*  
20 That, if the eligible taxpayer is not required to file a tax  
21 return under article twenty-four of this chapter, then  
22 such tax credit reporting schedule shall be filed with the  
23 annual return for the taxes imposed by article twenty-  
24 three of this chapter for such year: *Provided, however,*  
25 That, if the eligible taxpayer is not required to file a tax  
26 return under article twenty-four or article twenty-three  
27 of this chapter, then such tax credit reporting schedule  
28 shall be filed with the annual return for the taxes  
29 imposed by article twenty-one of this chapter for such  
30 year.

31 (d) The tax credit reporting schedule shall be accompa-  
32 nied by such proof of payment as the tax commissioner  
33 may prescribe, showing that the amount to be contrib-  
34 uted under the certified project plan has been paid to the  
35 transferee designated in the certified plan solely for the  
36 certified project.

37 (e) The tax commissioner may disallow any credit  
38 claimed under this article for which a properly com-  
39 pleted tax credit reporting schedule or a properly  
40 completed and valid statement or proof of payment of  
41 the eligible contribution, or other required documenta-  
42 tion, statements or proofs are not timely filed.

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

1 (a) The amount of tax credits allowed under this article  
2 may not exceed two million dollars in any state fiscal  
3 year.

4 (b) Applications for project certification shall be filed  
5 with the West Virginia development office beginning on  
6 and after the first day of July, one thousand nine hun-  
7 dred ninety-six. The West Virginia development office  
8 shall record the time of filing of each application for  
9 certification of a project plan required under section  
10 four of this article. All complete and valid applications  
11 filed shall be considered for approval or disapproval in

12 a timely manner by the neighborhood assistance advisory  
13 board at the regular meeting of the board next succeed-  
14 ing the date when such applications are filed, and at  
15 such continuing meetings as may be necessary to dispose  
16 of business in a timely manner. The board may, in its  
17 discretion, consider applications for approval or disap-  
18 proval at special or interim meetings for expedited  
19 processing.

20 (c) When the total amount of tax credits certified under  
21 this article equals the maximum amount of tax credits  
22 allowed, as specified in subsection (a) of this section, in  
23 any state fiscal year, no further certifications shall be  
24 issued in that same fiscal year. Upon approval of a  
25 project by the board, the director of the West Virginia  
26 development office shall certify the approved project  
27 unless certification is prohibited by the limitations and  
28 requirements set forth in this article.

29 (d) All applications filed in any state fiscal year and  
30 not certified during the state fiscal year in which they  
31 are filed shall be null and void by operation of law on the  
32 last day of the state fiscal year in which they are filed,  
33 and all applicants which elect to seek certification of a  
34 project plan shall file anew on and after the first day of  
35 the immediately succeeding state fiscal year without  
36 regard to whether such applicants have previously filed  
37 and failed to obtain certification for their application, or  
38 have never before filed.

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

1 If it appears upon audit or otherwise that an eligible  
2 taxpayer has not made contribution as represented, or  
3 should it appear that contributions made by an eligible  
4 taxpayer were made to the direct or indirect benefit of  
5 the eligible taxpayer making the contribution or to the  
6 direct or indirect benefit of any person related to the  
7 eligible taxpayer making the contribution, the credit  
8 previously allowed under this article shall be recaptured,  
9 and amended returns shall be filed for any tax year for

10 which the credit was taken. Any additional taxes due  
11 under this chapter shall be remitted with the amended  
12 return or returns filed with the tax commissioner, along  
13 with interest, as provided in section seventeen, article  
14 ten of this chapter, and a ten percent penalty, which may  
15 be waived by the tax commissioner if the taxpayer shows  
16 that the overclaimed amount was due to reasonable  
17 cause and not due to willful neglect, and such other  
18 penalties and additions to tax as may be applicable  
19 pursuant to the provisions of article ten of this chapter.  
20 Notwithstanding the provisions of article ten of this  
21 chapter, the statute of limitations for the issuance of an  
22 assessment of tax by the tax commissioner shall be five  
23 years from the date of the filing of any tax return on  
24 which this credit was taken or five years from the date of  
25 payment of any tax liability calculated pursuant to the  
26 assertion of this credit, whichever is later.

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

1 The tax commissioner shall annually publish in the  
2 state register the name and address of every taxpayer  
3 asserting this credit on a tax return, and the amount of  
4 any credit asserted on a tax return under this article by  
5 each such taxpayer, and the confidentiality provisions of  
6 section four-a, article one, or section five-d, article ten  
7 of this chapter, or of any other provision of this code, do  
8 not apply to such information.

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

1 (a) In addition to, or instead of, discretionary audits of  
2 eligible taxpayers which may be carried out by the tax  
3 commissioner, the tax commissioner may, at the tax  
4 commissioner's discretion, perform joint audits or  
5 examinations in concert with the West Virginia develop-  
6 ment office, or, or independently audit or examine, the  
7 books and records and other information, as appropriate,  
8 of any taxpayer, or of any person, organization or entity  
9 which has filed an application for certification of a  
10 project plan under section four of this article with the  
11 West Virginia development office, or of any taxpayer

12 which has asserted this credit on a tax return, or of any  
13 person, organization or entity believed to have relevant  
14 information.

15 (b) For purposes of joint audits, or any administrative  
16 or judicial proceeding or procedure relating to any tax  
17 credit taken, asserted or sought under this article, the  
18 tax commissioner may share such tax information as the  
19 tax commissioner may deem appropriate with the West  
20 Virginia development office, notwithstanding the  
21 provisions of section four-a, article one, or section five-d,  
22 article ten of this chapter, or any other provision of this  
23 code to the contrary.

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

1 On or before the thirtieth day of September, one  
2 thousand nine hundred ninety-eight, the board shall  
3 secure an independent review of the program created  
4 under this article and shall present the findings of that  
5 review to the Legislature. Pursuant to this report, and  
6 any independent evaluation that the Legislature or the  
7 joint committee on governmental operations may wish to  
8 initiate, the joint committee on governmental operations  
9 shall issue a recommendation to the Legislature, not  
10 later than the first day of March, one thousand nine  
11 hundred ninety-nine, as to whether the program should  
12 continue. Should the joint committee on governmental  
13 operations recommend that the program not be terminated,  
14 appropriate legislation shall be prepared specifying  
15 that the program shall continue in such manner as  
16 the joint committee on governmental operations may  
17 recommend, and the same shall be submitted to the  
18 Legislature by the joint committee on governmental  
19 operations in a timely manner for consideration by the  
20 Legislature during the then ongoing legislative session.  
21 Should the joint committee on governmental operations  
22 fail to recommend the continuation of the program, as  
23 aforesaid, then, notwithstanding any other provision of  
24 this article to the contrary, no entitlement to the tax

25 credit under this article shall result from any contribu-  
26 tion made to any certified project after the first day of  
27 July, one thousand nine hundred ninety-nine, and no  
28 credit shall be available to any taxpayer for any such  
29 contribution made after that date. However, taxpayers  
30 which have gained entitlement to the credit pursuant to  
31 the requirements of this article for eligible contributions  
32 made to certified projects prior to the first day of July,  
33 one thousand nine hundred ninety-nine, shall retain that  
34 entitlement and apply the credit in due course pursuant  
35 to the requirements and limitations of this article, and  
36 subject to all provisions thereof.

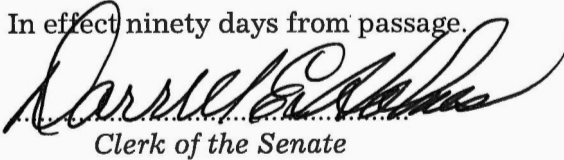
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
.....  
Chairman Senate Committee

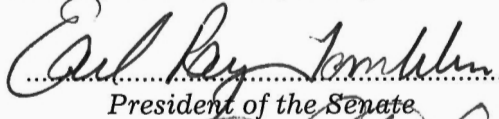
  
.....  
Chairman House Committee

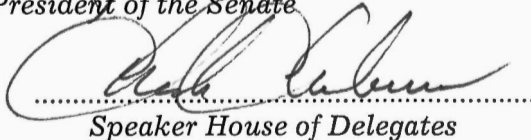
Originated in the Senate.

In effect ninety days from passage.

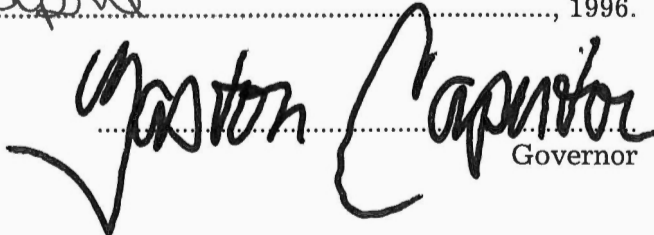
  
.....  
Clerk of the Senate

  
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Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within is approved this the 1<sup>st</sup>  
day of April, 1996.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/29/96

Time 9:55 am