WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997

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ENROLLED

SENATE BILL NO. 455

(By Senators TOMBLIN, MR. PRESIDENT, AND Buckalew, by Request of the Executive)

PASSED April 11, 1997

In Effect Ninety Days From Passage
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[Passed April 11, 1997; in effect ninety days from passage.]

AN ACT to amend and reenact sections three, four, four-a, eight, eleven and twelve, article thirteen-j, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the neighborhood investment program act; amending the definition of economically disadvantaged area; eliminating certain definitions; removing certain time limitations within which an application for approval of a project must be certified and permitting the neighborhood investment program advisory board to delay consideration of an application when additional information is needed; requiring project transferees to file quarterly reports on progress of certified projects; removing obsolete language regarding an initial appropriation from general revenue for administrative expenses and initial appointments to
the advisory board; permitting advisory board members to solicit support or donations for certified projects; reducing the required number of meetings of the advisory board; clarifying language permitting the tax division and the development office to perform joint audits; clarifying program evaluation language; and providing for termination of the act on the first day of July, one thousand nine hundred ninety-nine.

Be it enacted by the Legislature of West Virginia:

That sections three, four, four-a, eight, eleven and twelve, article thirteen-j, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 13J. NEIGHBORHOOD INVESTMENT PROGRAM.


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

7 (b) Terms defined.

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

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

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

19 (2) Capacity building. — The term “capacity building” means to generally enhance the capacity of the community to achieve improvements and to obtain the community
services described in items (i) through (v), inclusive, of the
definition of that term, as set forth in subdivision (4) of
this subsection. Capacity building includes, but is not
limited to, improvement of the means, or capacity, to:

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

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

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

(3) Commissioner or tax commissioner. — The terms
"commissioner" and "tax commissioner" are used inter-
changeably herein and mean the tax commissioner of the
state of West Virginia, or his or her delegate.

(4) Community services. — "Community services" means
services, provided at no charge whatsoever, of:

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

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

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

(iv) Providing economic development assistance to
(v) Providing community technical assistance and
capacity building to economically disadvantaged citizens
or a specifically designated group of economically disad-
vantaged citizens, or to individuals, groups or neighbor-
hood or community organizations in an economically
disadvantaged area.

(5) \textit{Compensation}. — The term “compensation” means
wages, salaries, commissions and any other form of
remuneration paid to employees for personal services.

(6) \textit{Corporation}. — The term “corporation” means any
corporation, joint-stock company or association and any
business conducted by a trustee or trustees wherein
interest or ownership is evidenced by a certificate of
interest or ownership or similar written instrument.

(7) \textit{Crime prevention}. — “Crime prevention” means any
activity which aids in the reduction of crime.

(8) \textit{Delegate}. — The term “delegate” in the phrase “or
his or her delegate”, when used in reference to the tax
commissioner, means any officer or employee of the tax
division of the department of tax and revenue duly
authorized by the tax commissioner directly, or indirectly
by one or more redelegations of authority, to perform the
functions mentioned or described in this article.

(9) \textit{Director or director of the West Virginia development
office}. — The term “director” or “director of the West
Virginia development office” means the director of the
West Virginia office.

(10) \textit{Economically disadvantaged area}. — The term
“economically disadvantaged area” means:

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

(i) In which area the aggregate poverty rate of persons residing in the area, based upon the most recent decennial census of population, is at least one hundred twenty-five percent of the statewide poverty rate; and

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

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

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

(ii) In which area the aggregate poverty rate of persons residing in the area, based upon the most recent decennial census of population, is at least one hundred twenty-five percent of the statewide poverty rate; and

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

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

(D) The certification of an economically disadvantaged area shall be made on the basis of a determination by the development office that an area meets the poverty criteria established in paragraphs (A) and (B), subdivision (10) of this subsection;

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

(F) At least a majority of all economically disadvantaged
areas holding designations as economically disadvantaged
areas at any one time shall be located in rural areas; and

(G) Such certification shall be filed with the secretary of
state and shall specifically set forth the boundaries of the
economically disadvantaged area by both description and
map, the date of certification of the area as an economi-
cally disadvantaged area, the date on which such certifi-
cation will terminate and a statement of the director's
findings as to the aggregate poverty rate of persons living
in the certified economically disadvantaged area.

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

(12) Education. — “Education” means any type of
scholastic instruction to, or scholarship by, an individual
that enables such individual to prepare for better life
opportunities. Education does not include courses in
physical training, physical conditioning, physical educa-
tion, sports training, sports camps and similar training or
conditioning courses (except for physical therapy pre-
scribed by a physician or other person licensed to pre-
scribe courses of medical treatment under West Virginia
law).

(13) Eligible contribution. —

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

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

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

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

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

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

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

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

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

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

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

(15) Includes and including. — The terms "includes" and "including", when used in a definition contained in this article, shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(16) Job training. — "Job training" means instruction to an individual that enables the individual to acquire vocational skills so as to become employable or to be able to seek a higher grade of employment.

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

(18) Neighborhood assistance. — "Neighborhood assistance" means either:

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

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

(19) Neighborhood organization. — "Neighborhood organization" means any organization:

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

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

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

(21) Person. — The term "person" includes any natural person, corporation, limited liability company or partnership.

(22) Project transferee. — The term "project transferee" means any neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person that receives an eligible contribution or part of an eligible contribution from an eligible taxpayer for the purpose of directly or indirectly providing neighborhood assistance, community services or crime prevention, or for the purpose of providing job training or education or other services or assistance pursuant to a project plan. The project transferee is typically the first entity or person receiving eligible contributions from eligible taxpayers under a project plan. However, in the case of eligible contributions of in kind services or other eligible contributions or portions thereof made pursuant to a certified project plan directly to indigent, disadvantaged or needy persons, economically disadvantaged
citizens or other persons or organizations under the sponsorship or auspices of any neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person as a certified project participant, such eligible contributions shall be deemed to have been made to the entity, organization or person under whose sponsorship or auspices such eligible contributions are made, and that entity, organization or person is deemed to be the project transferee with relation to those eligible contributions. The project transferee is the entity, organization or person that is liable under this article for payment of the project certification fee to the West Virginia development office. The term “project transferee” shall mean and include any deemed project transferee, deemed as such under the provisions of this article.

(23) Qualified charitable organization. — The term “qualified charitable organization” means a neighborhood organization, as defined in this section, which is the sponsor of a project which has received certification by the director of the West Virginia development office pursuant to the requirements of this article: Provided, That no organization may qualify as a qualified organization for purposes of this article if such organization is not registered with this state as required under the solicitation of charitable funds act.

(24) Related person. — The term “related person” or “person related to” a stated taxpayer means:

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

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

(C) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof that is in control of the taxpayer; or
(D) A member of the same controlled group as the taxpayer.

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

(25) **State fiscal year.** — "State fiscal year" means a twelve-month period beginning on the first day of July and ending on the thirtieth day of June.

(26) **Taxpayer.** — The term "taxpayer" means any person subject to the tax imposed by article twenty-one, twenty-three or twenty-four of this chapter (or any one or combination of such articles of this chapter).

(27) **Technical assistance.** — The term "technical assistance" means:

(A) Assistance in understanding, using and fulfilling the legal, bureaucratic and administrative requirements and qualifications which must be negotiated for the purpose of effectively accessing, obtaining and using private, charitable, not-for-profit or governmental assistance, resources or funds, and maximizing the value thereof;

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

(i) Providing any type of health, personal finance,
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(360) psychological or behavioral, religious, legal, marital,
(361) educational or housing counseling and advice to economi-
(362) cally disadvantaged citizens or a specifically designated
(363) group of economically disadvantaged citizens or in an
(364) economically disadvantaged area; or
(365) (ii) Providing emergency assistance or medical care to
(366) economically disadvantaged citizens or to a specifically
(367) designated group of economically disadvantaged citizens
(368) or in an economically disadvantaged area; or
(369) (iii) Establishing, maintaining or operating recreational
(370) facilities, or housing facilities for economically disadvan-
(371) taged citizens or a specifically designated group of
(372) economically disadvantaged citizens or in an economically
(373) disadvantaged area; or
(374) (iv) Providing economic development assistance to
(375) economically disadvantaged citizens or a specifically
(376) designated group of economically disadvantaged citizens,
(377) without regard to whether they are located in an economi-
(378) cally disadvantaged area, or to individuals, groups or
(379) neighborhood or community organizations, in an economi-
(380) cally disadvantaged area; or
(381) (v) Providing community technical assistance and
(382) capacity building to economically disadvantaged citizens
(383) or a specifically designated group of economically disad-
(384) vantaged citizens or to individuals, groups or neighbor-
(385) hood or community organizations in an economically
(386) disadvantaged area.

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

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

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

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

(B) Eligible contributions made through direct service to
end users or recipients, or contributions to end users or
recipients. — In the case of eligible contributions of in
kind services or other eligible contributions or portions
thereof made pursuant to a certified project plan and
contributed or provided directly to indigent, disadvan-
taged or needy persons, economically disadvantaged
citizens or other persons or organizations made under the
sponsorship or auspices of any neighborhood organization,
qualified charitable organization, charitable organization
or other organization, entity or person as a certified
project participant, such eligible contributions shall be
deemed to have been made to the entity, organization or
person under whose sponsorship or auspices such eligible
contributions are made, and that entity, organization or
person is deemed to be the project transferee with relation
to those eligible contributions. Such deemed project
transferee shall be liable for the project certification fee
due for such eligible contributions.
(C) Computation of fee based on fair market value. — In the case of eligible contributions consisting of in kind services, tangible personal property or realty, the project transferee shall pay to the West Virginia development office a project certification fee in the amount of three percent of the fair market value of eligible contributions received pursuant to the certified project plan.

(2) Sanctions for failure to timely pay the project certification fee. — Failure to timely pay the project certification fee imposed by this section shall be grounds for imposition of any of the following sanctions, to be imposed by the director of the West Virginia development office at the discretion of the director:

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

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

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

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

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

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

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

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

(F) Any combination of the aforementioned sanctions.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Within sixty days after the close of the regular
meeting of the neighborhood investment advisory board at
which a complete application for approval of a proposed
project is considered by the board, the director of the West
Virginia development office shall certify, or deny certifi-
cation of, the proposed project for which such application
has been filed: Provided, That applications for which the
board requires additional information may be considered
at the next regular meeting of the board. Those applica-
tions not approved by the director within sixty days of
final action of the board shall be deemed disapproved by
operation of law.
(d) The West Virginia development office shall promptly notify an applicant as to whether an application for certification of a project plan has been approved or disapproved.

(e) Those prospective qualified charitable organizations which receive certification of a project plan, and which otherwise comply with the requirements of this article so as to become qualified charitable organizations, as defined in section three of this article, may receive eligible contributions, as defined in said section. Eligible taxpayers which make eligible contributions shall receive a tax credit as provided in section five of this article. No tax credit may be granted under this article for any contribution except eligible contributions made to a project which has been certified in accordance with the requirements of this article prior to the making of the contribution. No tax credit may be granted under this article for any contribution which, if allowed, would cause the amount of tax credit generated by the project to exceed the maximum amount of tax credit for which the project was certified as stated in the application for project certification filed with the West Virginia development office.

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

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

(h) Revolving fund. —

(1) For the purpose of permitting payments to be made and costs to be met for operation of the program established by this article, there is hereby created a revolving fund for the West Virginia development office, which shall be known as the neighborhood investment fund. All
money received by the West Virginia development office under this article shall be paid into the state treasury, and shall be deposited to the credit of the neighborhood investment fund, and shall be expended only for the purposes of defraying the costs of the neighborhood investment program advisory board and the West Virginia development office in administering the program established pursuant to this article, unless otherwise directed by the Legislature.

(2) The neighborhood investment fund shall be accumulated and administered as follows:

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

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

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

(a) There is hereby created a neighborhood investment advisory board, which shall consist of twelve voting members and the chairperson.

(b) Chairperson.

(1) The director of the West Virginia development office, or the designee of the director of the West Virginia development office, shall be the ex officio chairperson of the neighborhood investment program advisory board.

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

(c) Board members.

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

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

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

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

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

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

(2) Appointment terms. —

(A) Except for initial appointments described under subdivision (3) of this subsection, and except for midterm special appointments made to fill irregular vacancies on the board, members shall be appointed for terms of three years each.
(B) Except for midterm special appointments made to fill irregular vacancies on the board, appointment terms shall begin on the first day of July of the beginning year. All appointment terms, special and regular, shall end on the thirtieth day of June of the ending year.

(3) Selection of members. —

(A) For the initial appointment of members under subdivision (3) of this subsection, members shall be selected by the director of the West Virginia development office.

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

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

(e) Quorum; meetings; funding. —

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

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

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

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

(g) Duties of the board. —

(1) Administrative duties. The board shall be responsible
for advising the West Virginia development office con-
cerning the administrative obligations of the program.

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

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

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

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

(A) The project is community based. A project is com-

(i) The project is to be managed locally, without na-
tional, state, multi-state or international affiliations;
(ii) The project will benefit local citizens in the immediate geographic area where the project is to operate; and
(iii) The sponsor of the project is a local entity, rather than a statewide, national or international organization or an affiliate of a statewide, national or international organization.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

On or before the thirtieth day of September, one thousand nine hundred ninety-eight, the board shall secure an independent review of the neighborhood investment program created by this article and present the findings to the Legislature. Pursuant to this report, and any independent evaluation that the Legislature or the joint
committee on government operations may wish to initiate, the joint committee on government operations shall issue a recommendation to the Legislature, not later than the first day of February, one thousand nine hundred ninety-nine, as to whether the program should continue. Unless sooner terminated by law, the neighborhood investment program act shall terminate on the first day of July, one thousand nine hundred ninety-nine. No entitlement to the tax credit under this article shall result from any contribution made to any certified project after the first day of July, one thousand nine hundred ninety-nine, and no credit shall be available to any taxpayer for any contribution made after that date. Taxpayers which have gained entitlement to the credit pursuant to eligible contributions made to certified projects prior to the first day of July, one thousand nine hundred ninety-nine, shall retain that entitlement and apply the credit in due course pursuant to the requirements and limitations of this article.
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

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 2nd day of , 1997.

Governor