WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1999

ENROLLED
Committee Substitute For
SENATE BILL NO. 650

(By Senator TOMBLIN, Mr. President, et al.)

PASSED March 12, 1999
In Effect Ninety Days From Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 650

(Senators Tomblin, Mr. President, Oliverio, Kessler, Chafin, Craigo, Sprouse, McCabe, Plymale, Minard, Anderson, Minear, McKenzie, Mitchell, Ross, Hunter, Snyder, Prezioso, Sharpe and Unger,
original sponsors)

[Passed March 12, 1999; in effect ninety days from passage.]

AN ACT to amend and reenact sections three, five, six and twelve, article thirteen-j, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to reauthorizing the neighborhood investment program act; stating definitions; establishing amount of credit allowed; permitting application of credit within five years; setting forth application of annual credit allowance; requiring forfeiture of unused credit; requiring independent program evaluation; and setting termination date for the act.

Be it enacted by the Legislature of West Virginia:
That sections three, five, six 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.


(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.

(b) Terms defined.

(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.

(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 subparagraphs (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 governmental assistance programs, administrative assistance and private, charitable and governmental resources or funds;
(ii) Fulfill legal, bureaucratic and administrative requirements and qualifications for accessing assistance, resources or funds; and

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

(3) Commissioner or tax commissioner. – The terms “commissioner” and “tax commissioner” are used interchangeably 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 economically 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 disadvantaged citizens or a specifically designated group of economically disadvantaged citizens or in an economically disadvantaged area; or

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

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

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

(6) **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) **Crime prevention.** – “Crime prevention” means any activity which aids in the reduction of crime.

(8) **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) **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) **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 offices 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) of this subdivision;

(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 economically disadvantaged area, the date on which such certification 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 education, sports training, sports camps and similar training or conditioning courses (except for physical therapy prescribed by a physician or other person licensed to prescribe courses of medical treatment under West Virginia law).

(13) *Eligible contribution.* –

(A) An eligible contribution consists of cash, publicly traded common or preferred stock representing ownership in a corporation valued at the closing price on the date of transfer, tangible personal property valued at its fair market value, real property valued at its fair market value: Provided, That any common or preferred stock contributed shall be sold by the project transferee within one hundred eighty days of its receipt; 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 cus-
tomers, 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,
stock, property or professional services or any combination
thereof contributed in any tax year by any taxpayer
having a fair market value of less than five hundred
dollars qualifies as an eligible contribution;

(E) Maximum contribution. – No contribution of cash,
stock, property or professional services or any combination
thereof contributed in any tax year by any taxpayer
having a fair market value in excess of 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 considered 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 considered 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 considered to be the project transferee with relation to those eligible contributions. The project transferee is the entity, organization or person that is liable under this article for payment of the project certification fee to the West Virginia development office. The term "project transferee" shall mean and include any considered project transferee, considered 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 the 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 controlled by an individual, corporation, partnership, affiliate, association or trust or any combination or group thereof that is in control of the taxpayer; or

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

For purposes of this article, "control", with respect to a corporation means ownership, directly or indirectly, of stock possessing fifty percent or more of the total com-
bined voting power of all classes of the stock of the corporation which entitles its owner to vote. "Control", with respect to a trust, means ownership, directly or indirectly, of fifty percent or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in Section 267(c), other than paragraph (3) of 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 the 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 the person, in the practice of the profession or occupation, assists economically disadvantaged citizens or the persons in an economically disadvantaged area by:

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

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

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

§11-13J-5. Amount of credit allowed.

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

(b) Amount of credit. – The amount of credit allowable is fifty percent of the amount of the taxpayer’s “eligible contribution”.

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

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

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

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

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

(b) Application of credit allowance. – The amount determined under subsection (a) of this section shall be allowed as a credit for tax years ending on and after the first day of July, one thousand nine hundred ninety-six, as follows:

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

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

(3) Personal income taxes. –

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

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

(C) No credit may be allowed under this section against any tax due under article twenty-one of this chapter on any wage, salary or other compensation paid to any employee of any electing small business corporation, limited liability company, partnership, other unincorporated organization or sole proprietorship or against any amount of tax due on any wage, salary or other compensation reported on federal form W2.

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

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

(e) Annual limit. – The aggregate annual credit allowance to any taxpayer may not exceed one hundred thousand dollars in any tax year.

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

On or before the fifteenth day of December, two thousand one, the director shall secure an independent review of the neighborhood investment program created by this article and present the findings to the Legislature. Unless sooner terminated by law, the neighborhood investment program act shall terminate on the first day of July, two thousand two. 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, two thousand two, 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, two thousand two, 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

Originating 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 approved this the 2nd
Day of April, 1999

Governor