WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 2000

ENROLLED

SENATE BILL NO. 137

(By Senators Craig, Walker and Plymale)

PASSED March 11, 2000

In Effect ninety days from Passage
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Senate Bill No. 137

(BY SENATORS CRAIGO, WALKER AND PLYMALE)

[Passed March 11, 2000; in effect ninety days from passage.]

AN ACT to amend and reenact sections six and eight, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the capital company act; requiring venture capital funds to be held in escrow until an applicant business provides proof of the creation of jobs to otherwise qualify for the provision of funding; providing for four million dollars in authorized credits for the fiscal year beginning on the first day of July, two thousand; and requiring two million dollars of that amount be allocated to small business investment companies.

Be it enacted by the Legislature of West Virginia:

That sections six and eight, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.
§5E-1-6. Qualification of West Virginia capital companies.

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

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

(c) The authority may certify West Virginia capital companies in existence after the first day of July, one thousand nine hundred eighty-six.

(d) An applicant shall establish an escrow account located in West Virginia, into which funds invested in the applicant shall be deposited and held for the period of time between their receipt by the applicant and the designation of the applicant as a qualified company. The funds shall not be invested by the applicant until it is designated by the authority as a qualified company.

Provided, That, in addition to the minimum standards set forth in section seven of this article, no applicant may be designated a qualified company without providing sufficient proof to the authority that the proposed project will sufficiently promote the purpose of providing employment in accordance with the provisions of section three, article fifteen, chapter thirty-one of this code. In the event the authority does not designate the applicant a qualified company, such funds shall be returned to the investors, if requested by the investors.

(e) A West Virginia capital company may not qualify or be issued a certification under this article unless the company holds a valid business registration certificate
issued pursuant to article twelve, chapter eleven of this code. A company exempt from registration under article twelve may qualify and be certified under this article upon proof of its exemption.

§5E-1-8. Tax credits.

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

(b) (1) The total credits authorized by the authority for all companies may not exceed a total of ten million dollars each fiscal year: Provided, That for the fiscal year beginning on the first day of July, one thousand nine hundred ninety-nine, the total credits authorized for all companies may not exceed a total of six million dollars: Provided, however, That for the fiscal year beginning on the first day of July, two thousand, the total credits authorized for all companies may not exceed a total of four million dollars: Provided further, That the capital base of any such qualified company shall be invested in accordance with the provisions of this article. The authority shall allocate these credits to qualified companies in the order that the companies are qualified.

(2) Not more than one million seven hundred fifty thousand dollars of the credits allowed under subdivision (1) of this subsection may be allocated by the authority during each fiscal year to one or more small business investment companies described in this subdivision: Provided, That for the fiscal year beginning on the first day of July, two thousand, two million dollars of the credits allowed under subdivision (1) of this subsection shall be allocated by the authority during that fiscal year to one or more small business investment companies described in this subdivision. The remainder of the tax
credits allowed during the fiscal year shall be allocated to qualified companies other than those small business investment companies. The portion of the tax credits allowed for small business investment companies described in this subdivision shall be allowed only if allocated by the authority during the first ninety days of the fiscal year, and may only be allocated to companies that:

(A) Were organized on or after the first day of January, one thousand nine hundred ninety-nine; (B) have registered for licensure by the small business administration as a small business investment company under the small business investment act; and (C) have certified in writing to the authority on the application for credits under this act that the company will diligently seek to obtain and thereafter diligently seek to invest leverage available to such small business investment companies under the small business investment act. These credits shall be allocated by the authority in the order that the companies are qualified.

Any credits which have not been allocated to qualified companies meeting the requirements of this subdivision relating to small business investment companies during the first ninety days of the fiscal year shall be made available and allocated to other qualified companies in the manner prescribed in this section for qualified companies generally.

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

(d) The tax credit allowed under this section is to be credited against the taxpayer's tax liability for the taxable year in which the investment in a qualified West Virginia capital company is made. If the amount of the tax credit exceeds the taxpayer's tax liability for the taxable year, the amount of the credit which exceeds the tax liability for the taxable year may be carried to succeeding taxable years until used in full, or until forfeited: Provided, That:

(i) Tax credits may not be carried forward beyond fifteen years; and (ii) tax credits may not be carried back to prior taxable years. Any tax credit remaining after the fifteenth taxable year is forfeited.

(e) The tax credit provided for in this section is available only to those taxpayers whose investment in a qualified West Virginia capital company occurs after the first day of July, one thousand nine hundred eighty-six.

(f) The tax credit allowed under this section may not be used against any liability the taxpayer may have for interest, penalties or additions to tax.

(g) Notwithstanding any provision in this code to the contrary, the tax commissioner shall publish in the state register the name and address of every taxpayer, and the amount, by category, of any credit asserted under this article. The categories by dollar amount of credit received are as follows:

1. More than $1.00, but not more than $50,000;
2. More than $50,000, but not more than $100,000;
3. More than $100,000, but not more than $250,000;
4. More than $250,000, but not more than $500,000;
97  (5) More than $500,000, but not more than $1,000,000;
98  (6) More than $1,000,000.
The 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 approved this the 3rd Day of April, 2000.

Governor
PRESENTED TO THE
GOVERNOR
Date 3/3/10
Time 2:45p