

SB 630

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 2000



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Committee Substitute for Committee Substitute for
SENATE BILL NO. 630

(By Senator Helmick, et al)



PASSED March 10, **2000**
In Effect from **Passage**

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FOR

Senate Bill No. 630

(SENATORS HELMICK, ROSS, CRAIGO, FANNING, PLYMALE,
DAWSON AND UNGER, *original sponsors*)

[Passed March 10, 2000; in effect from passage.]

AN ACT to amend and reenact sections two, three, four, five, six, nine and sixteen, article seven, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section eight-a, all relating to the jobs investment trust fund; adding legislative findings; changing definitions and board composition; addressing the management and control of the trust; expanding the jobs investment trust board's corporate powers; establishing a

new venture capital funding pool, nonincentive tax credits and guarantees; and prohibiting the granting and pledging of the credit of the state.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, six, nine and sixteen, article seven, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section eight-a, all to read as follows:

ARTICLE 7. JOBS INVESTMENT TRUST FUND.

§12-7-2. Legislative findings.

1 (a) The Legislature finds that the creation of a public
2 body corporate to make investment funds available to
3 eligible businesses would stimulate economic growth and
4 provide or retain jobs within the state. Accordingly, it is
5 declared to be the public policy of the state to create an
6 investment program to inject needed capital into the
7 business community, sustain or improve business profit-
8 ability and provide jobs to the citizens of the state.

9 (b) The Legislature further finds that:

10 (1) The availability of financial assistance through the
11 creation of the jobs investment trust will promote eco-
12 nomic development in the state and will serve the public
13 purposes of the state;

14 (2) The public policy of the state will be served through
15 financing projects, extending loans, providing financing or
16 credit for working capital, creating innovative investment
17 plans and options, and providing equity financing or the
18 refinancing of existing debt of an enterprise;

19 (3) It is in the public interest, in order to address the
20 needs of the business community and the citizens of the

21 state, that a public body corporate be created with full
22 power to accept grants, gifts and appropriations; to
23 generaterevenues to furnish money and credit to approved
24 businesses or enterprises; to promote the establishment of
25 new and innovative projects; and to upgrade, expand and
26 retain existing projects; and

27 (4) Fundamental changes are occurring in national and
28 international markets that increase the need for debt
29 financing, equity capital and near-equity capital for
30 emerging, expanding and restructuring business opportu-
31 nities in the state.

32 (c) The Legislature further finds:

33 (1) That due to the creation of the jobs investment trust,
34 moneys will be available for venture capital in this state;

35 (2) That the implementation of this innovative program
36 may supplant the need for the state to otherwise assist
37 private venture capital concerns through other tax credits;

38 (3) That due to the availability of venture capital funds
39 through this program the granting of venture capital
40 company credits under the capital company act should be
41 reduced for three fiscal years pending the full implementa-
42 tion of the jobs investment trust program;

43 (4) That due to this reduction in the certification of tax
44 credits, additional general revenue may become available
45 for new economic development programs;

46 (5) These economic development programs may be
47 funded from general revenue in an amount appropriate to
48 effectuate the purposes of these programs; and

49 (6) Due to the foregoing findings there shall be an annual
50 line item appropriation, in an amount determined by the
51 Legislature, to the West Virginia development office for a

52 matching grant program for regional economic develop-
53 ment corporations or authorities.

§12-7-3. Definitions.

1 For purposes of this article:

2 (a) "Board" means the jobs investment trust board
3 established pursuant to section four of this article.

4 (b) "Eligible business" means any business, including,
5 but not limited to, a business licensed or seeking licensure
6 by the small business administration as a small business
7 investment company under the small business investment
8 act, which is qualified to do business in West Virginia and
9 is in good standing with all applicable laws affecting the
10 conduct of such business.

11 (c) "Non-Incentive Tax Credits" means the non-incen-
12 tive tax credits issued by the state to the jobs investment
13 trust board and authorized for sale and transfer by the
14 jobs investment trust board pursuant to section eight-a of
15 this article.

16 (d) "Securities" means all bonds, notes, stocks, units of
17 ownership, debentures or any other form of negotiable or
18 nonnegotiable evidence of indebtedness or ownership.

**§12-7-4. Jobs investment trust board; composition; appoint-
ment, term of private members; chairman; quorum.**

1 (a) The jobs investment trust board is continued. The
2 board is a public body corporate and established to
3 improve and otherwise promote economic development in
4 this state.

5 (b) The board consists of thirteen members, five of whom
6 serve by virtue of their respective positions. These five are
7 the president of West Virginia university or his or her
8 designee; the president of Marshall university or his or her

9 designee; the chancellor of the board of directors of the
10 state college system or his or her designee; the executive
11 director of the West Virginia housing development fund;
12 and the executive director of the West Virginia develop-
13 ment office. Two members shall be appointed by the
14 governor from a list of four names submitted by the board
15 of directors of the housing development fund. The other
16 six members shall be appointed from the general public by
17 the governor. Of the members of the general public
18 appointed by the governor, one shall be an attorney with
19 experience in finance and investment matters, one shall be
20 a certified public accountant, one shall be a representative
21 of labor, one shall be experienced or involved in innovative
22 business development, two shall be present or past execu-
23 tive officers of companies listed on a major stock exchange
24 or large privately held companies.

25 (c) A vacancy on the board shall be filled by appointment
26 by the governor for the unexpired term in the same
27 manner as the original appointment. Any person ap-
28 pointed to fill a vacancy serves only for the unexpired
29 term.

30 (d) The governor may remove any appointed member in
31 case of incompetency, neglect of duty, moral turpitude or
32 malfeasance in office and the governor may declare the
33 office vacant and fill the vacancy as provided in other
34 cases of vacancy.

35 (e) The chairman of the board shall be elected by the
36 board from among the members of the board.

37 (f) Seven members of the board is a quorum. No action
38 may be taken by the board except upon the affirmative
39 vote of at least a majority of those members present, but in
40 no event fewer than six of the members serving on the
41 board.

42 (g) The members of the board, including the chairman,
43 may receive no compensation for their services as members
44 of the board but are entitled to their reasonable and
45 necessary expenses actually incurred in discharging their
46 duties under this article.

47 (h) The board shall meet on a quarterly basis or more
48 often if necessary.

49 (i) The terms of the board members appointed by the
50 governor first taking office on or after the one thousand
51 nine hundred ninety-two effective date of the jobs invest-
52 ment trust act expired as designated by the governor at the
53 time of the nomination, two at the end of the first year,
54 two at the end of the second year, two at the end of the
55 third year and two at the end of the fourth year. These
56 original appointments were for and each subsequent
57 appointment was and shall be for a full four-year term.
58 Any member whose term has expired serves until his or her
59 successor has been duly appointed and qualified. Any
60 member is eligible for reappointment.

61 (j) Additionally, one member of the West Virginia House
62 of Delegates and one member of the West Virginia Senate
63 shall serve as advisory members of the jobs investment
64 trust board and, as advisory members, shall be ex officio,
65 nonvoting advisory members. The governor shall appoint
66 the two legislative ex officio advisory members who shall
67 serve for four years or such shorter time as he or she
68 continues to be a West Virginia legislator.

**§12-7-5. Management and control of jobs investment trust
vested in board; officers; liability; authority of
executive director to act on behalf of board;
relationship to higher education institutions.**

1 (a) It is the duty of the board to manage and control the
2 jobs investment trust. In order to carry out the day-to-day
3 management and control of the trust and effectuate the

4 purposes of this article, the board shall appoint an execu-
5 tive director who is or has been a senior executive of a
6 major financial institution, brokerage firm, investment
7 firm or similar institution, with extensive experience in
8 capital market development. The board shall fix the
9 executive director's duties. The board shall fix the com-
10 pensation of the executive director and the compensation
11 shall, at least in part, be incentive based. The executive
12 director serves at the will and pleasure of the board.

13 (b) The board shall elect a secretary annually, who need
14 not be a member of the board, to keep a record of the
15 proceedings of the board.

16 (c) The members and officers of the board are not liable
17 personally, either jointly or severally, for any debt or
18 obligation created by the board.

19 (d) The acts of the board are solely the acts of its corpo-
20 ration and are not those of an agent of the state. No debt
21 or obligation of the board is a debt or obligation of the
22 state.

23 (e) Upon the affirmative vote of at least a majority of
24 those members in attendance or participating in a meeting
25 of the board, but in no event fewer than six of the mem-
26 bers serving on the board, the board may approve any
27 action to be taken and authorize the executive director for
28 and on behalf of the board to execute and deliver all
29 instruments, agreements or other documents that are
30 required or are reasonably necessary to effectuate the
31 decisions or acts of the board.

32 (f) The West Virginia housing development fund shall
33 provide office space and staff support services for the
34 director and the board shall act as fiscal agent for the
35 board and, as such, shall provide accounting services for
36 the board, invest all funds as directed by the board, service
37 all investment activities of the board and shall make the

38 disbursements of all funds as directed by the board, for
39 which the West Virginia housing development fund shall
40 be reasonably compensated, as determined by the board.

41 (g) The board and the executive director shall involve
42 students and faculty members of state institutions of
43 higher education in the board's activities, in order to
44 enhance the opportunities at the institutions for learning,
45 and for participation in the board's investment activities
46 and in the economic development of the state, whether in
47 research, financial analysis, management participation, or
48 in such other ways as the board and the executive director
49 may, in their discretion, find appropriate.

§12-7-6. Corporate powers.

1 The board has the power:

2 (1) (a) To make loans to eligible businesses with or
3 without interest secured if and as required by the board;
4 and (b) to acquire ownership interests in eligible busi-
5 nesses. These investments may be made in eligible busi-
6 nesses that stimulate economic growth and provide or
7 retain jobs in this state, and shall be made only upon the
8 determination by the board that the investments are
9 prudent and meet the criteria established by the board;

10 (2) To accept appropriations, gifts, grants, bequests and
11 devises and to use or dispose of them to carry out its
12 corporate purposes;

13 (3) To make and execute contracts, releases, compro-
14 mises, agreements and other instruments necessary or
15 convenient for the exercise of its powers or to carry out its
16 corporate purposes;

17 (4) To collect reasonable fees and charges in connection
18 with making and servicing loans, notes, bonds, obligations,
19 commitments and other evidences of indebtedness, in

20 connection with making equity investments and in connec-
21 tion with providing technical, consultative and project
22 assistance services;

23 (5) To sue and be sued;

24 (6) To make, amend and repeal bylaws and rules consis-
25 tent with the provisions of this article;

26 (7) To hire its own employees, whom shall be employees
27 of the state of West Virginia for purposes of articles ten
28 and sixteen, chapter five of this code, and to appoint
29 officers and consultants, and to fix their compensation and
30 prescribe their duties;

31 (8) To acquire, hold and dispose of real and personal
32 property for its corporate purposes;

33 (9) To enter into agreements or other transactions with
34 any federal or state agency, college or university, any
35 person and any domestic or foreign partnership, corpora-
36 tion, association or organization;

37 (10) To acquire real property, or an interest in real or
38 personal property, in its own name, by purchase or fore-
39 closure when acquisition is necessary or appropriate to
40 protect any loan in which the board has an interest; to sell,
41 transfer and convey any real or personal property to a
42 buyer; and, in the event a sale, transfer or conveyance
43 cannot be effected with reasonable promptness or at a
44 reasonable price, to lease real or personal property to a
45 tenant;

46 (11) To purchase, sell, own, hold, negotiate, transfer or
47 assign: (i) Any mortgage, instrument, note, credit, debenture,
48 guarantee, bond or other negotiable instrument or
49 obligation securing a loan, or any part of a loan; (ii) any
50 security or other instrument evidencing ownership or
51 indebtedness; or (iii) equity or other ownership interest.

52 An offering of one of the above instruments shall include
53 the representation and qualification that the board is a
54 public body corporate managing a venture capital fund
55 that includes high-risk investments and, that in any
56 transfer, sale or assignment of any interest, the transferee,
57 purchaser or assignee accepts any risk without recourse to
58 the jobs investment trust or to the state;

59 (12) To procure insurance against losses to its property
60 in amounts, and from insurers, as is prudent;

61 (13) To consent, when prudent, to the modification of the
62 rate of interest, time of maturity, time of payment of
63 installments of principal or interest, or any other terms of
64 the investment, loan, contract or agreement in which the
65 board is a party;

66 (14) To establish training and educational programs to
67 further the purposes of this article;

68 (15) To file its own travel rules;

69 (16) To borrow money to carry out its corporate purpose
70 in principal amounts and upon terms as are necessary to
71 provide sufficient funds for achieving its corporate
72 purpose;

73 (17) To take options in or warrants for, subscribe to,
74 acquire, purchase, own hold, transfer, sell, vote, employ,
75 mortgage, pledge, assign, pool or syndicate: (i) Any loans,
76 notes, mortgages or securities; (ii) debt instruments,
77 ownership certificates or other instruments evidencing
78 loans or equity; or (iii) securities or other ownership
79 interests of or in domestic or foreign corporations, associa-
80 tions, partnerships, limited partnerships, limited liability
81 partnerships, limited liability companies, joint ventures or
82 other private enterprise to foster economic growth, jobs
83 preservation and creation in the state of West Virginia,
84 and all other acts that carry out the board's purpose;

85 (18) To contract with either Marshall university or West
86 Virginia university, or both, for the purpose of retaining
87 the services of, and paying the reasonable cost of, services
88 performed by the institution for the board in order to
89 effectuate the purposes of this article;

90 (19) To enter into collaborative arrangements or con-
91 tracts with private venture capital companies when
92 considered advisable by the board;

93 (20) To provide equity financing for any eligible business
94 that will stimulate economic growth and provide or retain
95 jobs in this state, and to hold, transfer, sell, assign, pool or
96 syndicate, or participate in the syndication of, any loans,
97 notes, mortgages, securities, debt instruments or other
98 instruments evidencing loans or equity interest in further-
99 ance of the board's corporate purposes;

100 (21) To form partnerships, create subsidiaries or take all
101 other actions necessary to qualify as a small business
102 investment company under the United States Public Law
103 (85-699) Small Business Investment Act, as amended; and

104 (22) To provide for staff payroll and make purchases in
105 the same manner as the housing development fund.

**§12-7-8a. New millennium fund; new millennium fund promis-
sory notes; nonincentive tax credits; rule making.**

1 (a) The new millennium fund is established to permit the
2 board to better fulfill its mission to mobilize financing and
3 capital for emerging, expanding and restructuring busi-
4 nesses in the state. New millennium fund moneys are to
5 consist of all appropriations for use by the jobs investment
6 trust board made by the Legislature subsequent to the
7 thirty-first day of December, one thousand nine hundred
8 ninety-nine, and funds borrowed from private or institu-
9 tional lenders by the board through the issuance of

10 promissory notes. Fund moneys may be held in a separate
11 account or accounts by or at the West Virginia housing
12 development fund for the board until the board disburses
13 any portion of the funds. Fund moneys that are not set
14 aside or otherwise designated for paying interest on the
15 promissory notes may be used by the board in accordance
16 with and to effectuate the purposes of this article. The
17 board may impose reasonable fees and charges associated
18 with its investment of funds from the new millennium
19 fund in eligible businesses to be paid in any combination
20 of money, warrants or equity interests.

21 (b) Without limiting the powers otherwise enumerated in
22 this article, the board has the power to: (1) Sell and
23 transfer portions of the nonincentive tax credits created,
24 issued and transferred to the board pursuant to the
25 provisions of this section to contracting taxpayers and/or
26 their assigns in return for the payments described in
27 subsection (f) of this section; (2) issue or provide promis-
28 sory notes on loans made to the board having terms of up
29 to ten years on a zero-coupon basis or otherwise; (3) enter
30 into put options or similar commitment contracts with
31 taxpayers that would be for terms of up to ten years
32 committing, at the board's option, to sell and transfer to
33 the contracting taxpayers or their assigns at the end of the
34 term and as soon after the term as is reasonable under the
35 circumstances portions of the nonincentive tax credits
36 created, issued and transferred to the board pursuant to
37 this section; (4) grant, transfer and assign the benefits of
38 the put options or similar commitment contracts as
39 collateral to secure the board's obligations pursuant to its
40 promissory notes; and (5) satisfy the board's payment
41 obligations under its promissory notes from assets of the
42 board, other than the benefits of the put options or similar
43 commitment contracts, then to effect a corresponding
44 cancellation of the board's related nonincentive tax credit
45 commitment. The terms and conditions of the promissory

46 notes, put options or similar commitment contracts shall
47 be consistent with the purposes of this section, and
48 approved by board resolution, and may be different for
49 separate transactions.

50 (c) Without limiting the powers otherwise enumerated in
51 this article and with regard to the new millennium fund,
52 the board has and may exercise all powers necessary to
53 further the purposes of this section, including, but not
54 limited to, the power to commit, sell and transfer
55 nonincentive tax credits up to the total amount of thirty
56 million dollars.

57 (d) The board may issue its promissory notes pursuant to
58 this section in amounts totaling no more than six million
59 dollars in each of the fiscal years ending in two thousand
60 one, two thousand two, two thousand three, two thousand
61 four and two thousand five, and may issue its nonincentive
62 tax credit commitments in amounts totaling no more than
63 six million dollars in each of the fiscal years ending in two
64 thousand one, two thousand two, two thousand three, two
65 thousand four and two thousand five. The board may
66 agree to sell and transfer at its option, nonincentive tax
67 credits to taxpayers ten years after the date of its commit-
68 ments, and as soon thereafter as it is reasonable under the
69 circumstances.

70 (e) Prior to committing to the sale and transfer of any
71 nonincentive tax credits, the board shall first determine
72 that:

73 (1) The new millennium fund moneys to be received in
74 relationship to the commitment shall be used for the
75 development, promotion and expansion of the economy of
76 the state; and

77 (2) The existence and pledge of a put option or similar
78 commitment contract that is supported by the
79 nonincentive tax credits that are committed by the board

80 is a material inducement to the private or institutional
81 lender transferring moneys to the board to be placed in the
82 new millennium fund.

83 (f) The board may sell and transfer nonincentive tax
84 credits only in conjunction with the satisfaction of its
85 obligations under its promissory notes issued pursuant to
86 this section. Each original sale and transfer of
87 nonincentive tax credits by the board shall be consum-
88 mated upon payment to the board, or for its benefits, of an
89 amount equal to the dollar amount of the nonincentive tax
90 credits sold and transferred minus the amount of any
91 federal tax deduction lost by the purchasing taxpayer, if
92 any, resulting from the purchase and projected use of the
93 nonincentive tax credit in satisfying state tax obligations.
94 The nonincentive tax credits sold and transferred by the
95 board pursuant to this section shall be claimed as a credit
96 on the tax returns for the year or years in which the
97 nonincentive tax credits are sold and transferred by the
98 board. The amount of the nonincentive tax credit that
99 exceeds the taxpayer's tax liability for the taxable year in
100 the year of the purchase may be carried to succeeding
101 taxable years until used in full up to two years after the
102 year of purchase, and may not be carried back to prior
103 taxable years. Any nonincentive tax credit sold and
104 transferred by the board that remains outstanding after
105 the third taxable year subsequent to and including the
106 year of the transfer is forfeited.

107 (g) Nonincentive tax credits are created, issued and
108 transferred by the state to the board in a total amount of
109 thirty million dollars to be used by taxpayers, including
110 persons, firms, corporations and all other business entities,
111 to reduce the tax liabilities imposed upon them pursuant
112 to articles twelve-a, thirteen, thirteen-a, thirteen-b,
113 twenty-one, twenty-three and twenty-four, chapter eleven
114 of this code. The total amount of nonincentive tax credits

115 that are created, issued and transferred to the board is
116 thirty million dollars. The nonincentive tax credits are
117 freely transferable to subsequent transferees. The board
118 shall immediately notify the president of the Senate, the
119 speaker of the House of Delegates and the governor in
120 writing if and when any nonincentive tax credits are sold
121 and transferred by the board.

122 (h) In conjunction with the department of tax and
123 revenue, the board shall develop a system for: (i) Register-
124 ing nonincentive tax credits, commitments for the sale and
125 transfer of nonincentive tax credits, the assignments of the
126 commitments and the assignments of the nonincentive tax
127 credits; and (ii) certifying nonincentive tax credits so that
128 when nonincentive tax credits are claimed on a tax return,
129 they may be verified as validly issued by the board,
130 properly taken in the year of claim and in accordance with
131 the requirements of this section.

132 (i) The board may promulgate, repeal, amend and change
133 rules consistent with the provisions of this article to carry
134 out the purposes of this section. These rules are not
135 subject to the provisions of chapter twenty-nine-a of this
136 code, but shall be filed with the secretary of state.

§12-7-9. Applications for investment priority; investment package.

1 (a) The board shall accept and review applications from
2 eligible businesses and shall determine the investment
3 worthiness, the benefits to the West Virginia economy, the
4 leverage potential for investments in a small business
5 investment companies, the jobs creation potential and the
6 economic circumstances of the region or regions of the
7 state that would benefit from each proposal. The board
8 shall attempt to balance its investments, as nearly as is
9 practicable, among the geographic regions of the state.

10 (b) Any faculty or students of a public or private institu-
11 tion of higher education in the state may present for the
12 board's consideration proposals relating to innovative
13 projects or investment opportunities.

14 (c) An annual audit shall be conducted by an independ-
15 ent firm of certified public accountants and shall be made
16 available to the Legislature annually.

17 (d) The board shall forward to the West Virginia housing
18 development fund for its review and information approved
19 investment packages containing information as is neces-
20 sary to permit the West Virginia housing development
21 fund to carry out its duties under this article. The board
22 shall determine whether each applicant is an eligible
23 business.

§12-7-16. Credit of state not pledged.

1 The provisions of this article do not and shall not be
2 construed to authorize the jobs investment trust board at
3 any time or in any manner to grant or pledge the credit or
4 taxing power of the state. None of the obligations or debts
5 created by the jobs investment trust board under the
6 authority granted in this article are or are to be construed
7 to be obligations of the state.

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

Chairman Senate Committee

Chairman House Committee

Originating in the Senate.

In effect 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 2/5

Day of March 2000

Governor

PRESENTED TO THE

GOVERNOR

Date 3/18/00

Time 12:30 pm