WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 2000

ENROLLED

Committee Substitute for Committee Substitute for
SENATE BILL NO. le30

(By Senator Helmick, et al)

PASSED March 10, 2000
In Effect from Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

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.

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

(b) The Legislature further finds that:

(1) The availability of financial assistance through the creation of the jobs investment trust will promote economic development in the state and will serve the public purposes of the state;

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

(3) It is in the public interest, in order to address the needs of the business community and the citizens of the
state, that a public body corporate be created with full power to accept grants, gifts and appropriations; to generate revenues to furnish money and credit to approved businesses or enterprises; to promote the establishment of new and innovative projects; and to upgrade, expand and retain existing projects; and

(4) Fundamental changes are occurring in national and international markets that increase the need for debt financing, equity capital and near-equity capital for emerging, expanding and restructuring business opportunities in the state.

(c) The Legislature further finds:

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

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

(3) That due to the availability of venture capital funds through this program the granting of venture capital company credits under the capital company act should be reduced for three fiscal years pending the full implementation of the jobs investment trust program;

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

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

(6) Due to the foregoing findings there shall be an annual line item appropriation, in an amount determined by the Legislature, to the West Virginia development office for a
matching grant program for regional economic development corporations or authorities.

§12-7-3. Definitions.

For purposes of this article:

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

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

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

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

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

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

(b) The board consists of thirteen members, five of whom serve by virtue of their respective positions. These five are the president of West Virginia university or his or her designee; the president of Marshall university or his or her
designee; the chancellor of the board of directors of the
state college system or his or her designee; the executive
director of the West Virginia housing development fund;
and the executive director of the West Virginia develop-
ment office. Two members shall be appointed by the
governor from a list of four names submitted by the board
of directors of the housing development fund. The other
six members shall be appointed from the general public by
the governor. Of the members of the general public
appointed by the governor, one shall be an attorney with
experience in finance and investment matters, one shall be
a certified public accountant, one shall be a representative
of labor, one shall be experienced or involved in innovative
business development, two shall be present or past execu-
tive officers of companies listed on a major stock exchange
or large privately held companies.

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

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

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

(f) Seven members of the board is a quorum. No action
may be taken by the board except upon the affirmative
vote of at least a majority of those members present, but in
no event fewer than six of the members serving on the
board.
(g) The members of the board, including the chairman, may receive no compensation for their services as members of the board but are entitled to their reasonable and necessary expenses actually incurred in discharging their duties under this article.

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

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

(j) Additionally, one member of the West Virginia House of Delegates and one member of the West Virginia Senate shall serve as advisory members of the jobs investment trust board and, as advisory members, shall be ex officio, nonvoting advisory members. The governor shall appoint the two legislative ex officio advisory members who shall serve for four years or such shorter time as he or she 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.

(a) It is the duty of the board to manage and control the jobs investment trust. In order to carry out the day-to-day management and control of the trust and effectuate the
purposes of this article, the board shall appoint an executive director who is or has been a senior executive of a major financial institution, brokerage firm, investment firm or similar institution, with extensive experience in capital market development. The board shall fix the executive director's duties. The board shall fix the compensation of the executive director and the compensation shall, at least in part, be incentive based. The executive director serves at the will and pleasure of the board.

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

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

(d) The acts of the board are solely the acts of its corporation and are not those of an agent of the state. No debt or obligation of the board is a debt or obligation of the state.

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

(f) The West Virginia housing development fund shall provide office space and staff support services for the director and the board shall act as fiscal agent for the board and, as such, shall provide accounting services for the board, invest all funds as directed by the board, service 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
connection with making equity investments and in connection with providing technical, consultative and project assistance services;

(5) To sue and be sued;

(6) To make, amend and repeal bylaws and rules consistent with the provisions of this article;

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

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

(9) To enter into agreements or other transactions with any federal or state agency, college or university, any person and any domestic or foreign partnership, corporation, association or organization;

(10) To acquire real property, or an interest in real or personal property, in its own name, by purchase or foreclosure when acquisition is necessary or appropriate to protect any loan in which the board has an interest; to sell, transfer and convey any real or personal property to a buyer; and, in the event a sale, transfer or conveyance cannot be effected with reasonable promptness or at a reasonable price, to lease real or personal property to a tenant;

(11) To purchase, sell, own, hold, negotiate, transfer or assign: (i) Any mortgage, instrument, note, credit, debenture, guarantee, bond or other negotiable instrument or obligation securing a loan, or any part of a loan; (ii) any security or other instrument evidencing ownership or indebtedness; or (iii) equity or other ownership interest.
An offering of one of the above instruments shall include the representation and qualification that the board is a public body corporate managing a venture capital fund that includes high-risk investments and, that in any transfer, sale or assignment of any interest, the transferee, purchaser or assignee accepts any risk without recourse to the jobs investment trust or to the state;

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

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

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

(15) To file its own travel rules;

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

(17) To take options in or warrants for, subscribe to, acquire, purchase, own hold, transfer, sell, vote, employ, mortgage, pledge, assign, pool or syndicate: (i) Any loans, notes, mortgages or securities; (ii) debt instruments, ownership certificates or other instruments evidencing loans or equity; or (iii) securities or other ownership interests of or in domestic or foreign corporations, associations, partnerships, limited partnerships, limited liability partnerships, limited liability companies, joint ventures or other private enterprise to foster economic growth, jobs preservation and creation in the state of West Virginia, and all other acts that carry out the board’s purpose;
(18) To contract with either Marshall university or West Virginia university, or both, for the purpose of retaining the services of, and paying the reasonable cost of, services performed by the institution for the board in order to effectuate the purposes of this article;

(19) To enter into collaborative arrangements or contracts with private venture capital companies when considered advisable by the board;

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

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

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

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

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

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

(b) Without limiting the powers otherwise enumerated in
this article, the board has the power to: (1) Sell and
transfer portions of the nonincentive tax credits created,
issued and transferred to the board pursuant to the
provisions of this section to contracting taxpayers and/or
their assigns in return for the payments described in
subsection (f) of this section; (2) issue or provide promis-
sory notes on loans made to the board having terms of up
to ten years on a zero-coupon basis or otherwise; (3) enter
into put options or similar commitment contracts with
taxpayers that would be for terms of up to ten years
committing, at the board's option, to sell and transfer to
the contracting taxpayers or their assigns at the end of the
term and as soon after the term as is reasonable under the
circumstances portions of the nonincentive tax credits
created, issued and transferred to the board pursuant to
this section; (4) grant, transfer and assign the benefits of
the put options or similar commitment contracts as
collateral to secure the board's obligations pursuant to its
promissory notes; and (5) satisfy the board's payment
obligations under its promissory notes from assets of the
board, other than the benefits of the put options or similar
commitment contracts, then to effect a corresponding
cancellation of the board's related nonincentive tax credit
commitment. The terms and conditions of the promissory
notes, put options or similar commitment contracts shall be consistent with the purposes of this section, and approved by board resolution, and may be different for separate transactions.

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

(d) The board may issue its promissory notes pursuant to this section in amounts totaling no more than six million dollars in each of the fiscal years ending in two thousand one, two thousand two, two thousand three, two thousand four and two thousand five, and may issue its nonincentive tax credit commitments in amounts totaling no more than six million dollars in each of the fiscal years ending in two thousand one, two thousand two, two thousand three, two thousand four and two thousand five. The board may agree to sell and transfer at its option, nonincentive tax credits to taxpayers ten years after the date of its commitments, and as soon thereafter as it is reasonable under the circumstances.

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

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

(2) The existence and pledge of a put option or similar commitment contract that is supported by the nonincentive tax credits that are committed by the board
is a material inducement to the private or institutional lender transferring moneys to the board to be placed in the new millennium fund.

(f) The board may sell and transfer nonincentive tax credits only in conjunction with the satisfaction of its obligations under its promissory notes issued pursuant to this section. Each original sale and transfer of nonincentive tax credits by the board shall be consummated upon payment to the board, or for its benefits, of an amount equal to the dollar amount of the nonincentive tax credits sold and transferred minus the amount of any federal tax deduction lost by the purchasing taxpayer, if any, resulting from the purchase and projected use of the nonincentive tax credit in satisfying state tax obligations. The nonincentive tax credits sold and transferred by the board pursuant to this section shall be claimed as a credit on the tax returns for the year or years in which the nonincentive tax credits are sold and transferred by the board. The amount of the nonincentive tax credit that exceeds the taxpayer's tax liability for the taxable year in the year of the purchase may be carried to succeeding taxable years until used in full up to two years after the year of purchase, and may not be carried back to prior taxable years. Any nonincentive tax credit sold and transferred by the board that remains outstanding after the third taxable year subsequent to and including the year of the transfer is forfeited.

(g) Nonincentive tax credits are created, issued and transferred by the state to the board in a total amount of thirty million dollars to be used by taxpayers, including persons, firms, corporations and all other business entities, to reduce the tax liabilities imposed upon them pursuant to articles twelve-a, thirteen, thirteen-a, thirteen-b, twenty-one, twenty-three and twenty-four, chapter eleven of this code. The total amount of nonincentive tax credits
that are created, issued and transferred to the board is
thirty million dollars. The nonincentive tax credits are
freely transferable to subsequent transferees. The board
shall immediately notify the president of the Senate, the
speaker of the House of Delegates and the governor in
writing if and when any nonincentive tax credits are sold
and transferred by the board.

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

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

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

(a) The board shall accept and review applications from
eligible businesses and shall determine the investment
worthiness, the benefits to the West Virginia economy, the
leverage potential for investments in a small business
investment companies, the jobs creation potential and the
economic circumstances of the region or regions of the
state that would benefit from each proposal. The board
shall attempt to balance its investments, as nearly as is
practicable, among the geographic regions of the state.
(b) Any faculty or students of a public or private institution of higher education in the state may present for the board's consideration proposals relating to innovative projects or investment opportunities.

(c) An annual audit shall be conducted by an independent firm of certified public accountants and shall be made available to the Legislature annually.

(d) The board shall forward to the West Virginia housing development fund for its review and information approved investment packages containing information as is necessary to permit the West Virginia housing development fund to carry out its duties under this article. The board shall determine whether each applicant is an eligible business.

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

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

Day of.............................................2000

Governor
PRESENTED TO THE
GOVERNOR
Date: 3/8/50
Time: 10:30 A.M.