WEST VIRGINIA LEGISLATURE
Regular Session, 2001

ENROLLED

SENATE BILL NO. 717

(By Senator Craig, et al)

PASSED April 13, 2001

In Effect July 1, 2001
AN ACT to amend and reenact article one-a, 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 nine, all relating to the West Virginia small business linked deposit program.

Be it enacted by the Legislature of West Virginia:

That article one-a, 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 nine, all to read as follows:

ARTICLE 1A. WEST VIRGINIA SMALL BUSINESS LINKED DEPOSIT PROGRAM.

§12-1A-1. Definitions.
(a) "Treasurer" means the West Virginia treasurer's office.

(b) "Eligible small business" means any business that: (1) Employs fifty or fewer employees and has gross annual receipts of five million dollars or less; (2) is headquartered in this state; and (3) is organized for profit.

(c) "Eligible lending institution" means a financial institution that is eligible to make commercial loans, is a public depository of state funds and agrees to participate in the linked deposit program.

(d) "Linked deposit" means a certificate of deposit placed by the treasurer with an eligible lending institution at three percent below current market rates, as determined and calculated by the treasurer, provided the institution agrees to lend the value of the deposit, according to the deposit agreement provided for by this article, to eligible small businesses at three percent below the present borrowing rate applicable to each specific business at the time of the deposit of state funds in the institution.

§12-1A-2. Legislative findings.

The Legislature finds that many small businesses throughout the state are experiencing economic stagnation or decline, that high interest rates have caused small businesses in this state to suffer disproportionately in profitability and competition and that the high interest rates have fostered a serious increase in unemployment. The linked deposit program provided for by this article is intended to provide a statewide availability of lower cost funds for lending purposes that will materially contribute to the economic revitalization of this state. Accordingly, it is declared to be the public policy of the state through the small business linked deposit program to create an availability of lower-cost funds to inject needed capital into the small business community, sustain or improve business profitability, and protect the jobs of citizens of
this state. The Legislature further finds that the involvement of both the treasurer in facilitating the deposit of funds for the program and the small business development center in determining which businesses will receive the benefits of the linked deposit program is necessary in order for state funds to be used in the most effective manner possible in assisting small businesses throughout the state and thereby maximizing the impact of the program.

§12-1A-3. Limitations on investment in linked deposits.

(a) The treasurer shall invest in linked deposits. The total amount so deposited at any one time shall not exceed, in the aggregate, twenty million dollars.

(b) Small business linked deposit funds shall be used to provide each applicant with no more than one hundred fifty thousand dollars for each reduced rate loan.

(c) When deciding how much to invest in linked deposits, the treasurer shall give priority to the investment, liquidity and cash flow needs of the state.

§12-1A-4. Applications for loan priority; loan package; counseling.

(a) An eligible lending institution that desires to receive a linked deposit shall accept and review applications for loans from eligible small businesses. The lending institution shall apply all usual lending standards to determine the credit worthiness of each eligible small business and whether the loan application meets the criteria established in this article.

(b) An eligible small business shall certify on its loan application that the reduced rate loan will be used exclusively to create new jobs or preserve existing jobs and employment opportunities. A reduced rate loan shall not be used to refinance an existing debt. Whoever knowingly makes a false statement concerning an application shall be
prohibited from entering into the linked deposit loan
program and shall be subject to the criminal penalties of
section eight of this article.

(c) In considering which eligible small businesses should
receive reduced rate loans, the eligible lending institution
shall give priority to the economic needs of the area in
which the business is located, the number of jobs to be
created and preserved by the receipt of the loan, the
reasonable ability of the small business to repay the loan
and other factors considered appropriate by the eligible
financial institution.

(d) A small business receiving a linked deposit loan shall
receive supervision and counseling provided by the small
business development center as a condition of remaining
in good standing with the lending institution and the state
and as a condition of having the loan renewed for up to
four years. The services available from the small business
development center include eligibility certification,
business planning, quarterly financial statement review
and loan proposal assistance. Eligible small businesses
shall also grant the lending institution the right to provide
information on the status of the loan to the small business
development center so as to assist the small business.

(e) The eligible financial institution shall forward to the
treasurer a linked deposit loan package, in the form and
manner as prescribed by the small business development
center and the treasurer. The package shall include the
amount of the loan requested and the number of jobs to be
created or sustained by each eligible small business. The
institution shall certify that each applicant is an eligible
small business, and may, for each business, certify the
present borrowing rate applicable to each specific eligible
business.

(f) The rate charged to the eligible small business shall
not exceed the prime interest rate as published by the wall
§12-1A-5. Acceptance or rejection of loan package; deposit agreement.

(a) The small business development center in cooperation with the treasurer may accept or reject a linked deposit loan package or any portion thereof based on the criteria prescribed by this article.

(b) The treasurer shall reject any linked deposit loan package if the small business requesting the loan is not in good standing with the state tax department and the bureau of employment programs and these agencies shall provide the treasurer with such information as to the standing of each small business loan applicant, notwithstanding any provision of this code to the contrary.

(c) Upon acceptance of the linked deposit loan package or any portion thereof by the small business development center in cooperation with the treasurer, the treasurer may place certificates of deposit with the eligible lending institution at three percent below current market rates, as determined and calculated by the treasurer. When necessary, the treasurer may place certificates of deposit prior to acceptance of a linked deposit loan package.

(d) The eligible lending institution shall enter into a deposit agreement with the treasurer in a form in compliance with the requirements of this article. The deposit agreement shall reflect the market conditions prevailing in the lending area and the period of time in which the lending institution is to lend funds upon the placement of a linked deposit. The deposit agreement shall include provisions for the certificates of deposit to be placed for a maximum of four years with annual renewals. Interest shall be paid at the times determined by the treasurer.
§12-1A-6. Rate of loan; certification and monitoring of compliance; accountability and reporting.

(a) Upon the placement of a linked deposit with an eligible lending institution, the institution is required to lend the funds to each approved eligible small business listed in the linked deposit loan package required in subsection (d), section four of this article and in accordance with the deposit agreement required by subsection (c), section five of this article. The loan shall be at three percent below the present borrowing rate applicable to each business. A certification of compliance with this section in the form and manner as prescribed by the small business development center and the treasurer shall be required of the eligible lending institution.

(b) The small business development center and the treasurer shall take any and all steps necessary to implement the linked deposit program and monitor compliance of eligible lending institutions. The small business development center shall monitor the compliance of eligible small businesses.

(c) By the first day of January of each year, the small business development center shall report on the linked deposit program for the preceding calendar year to the West Virginia development office, which shall then report to the joint committee on government and finance. The reports shall set forth the name of the small business, terms, delinquency and default rates, job growth, gross income evaluation and amounts of the loans upon which the linked deposits were based.

§12-1A-7. Liability of state.

The state, the treasurer, and the small business development center are not liable to any eligible lending institution in any manner for payment of the principal or interest on the loan to an eligible small business. Any delay in payment or default on the part of an eligible small busi-
§12-1A-8. **Penalties for violation of article.**

1. Any person who violates this article is guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred nor more than five hundred dollars or imprisoned in the county jail not less than one month nor more than one year.

§12-1A-9. **Effective dates.**

1. This article shall be effective from the first day of July, two thousand one, through the first day of July, two thousand six.
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.

To take effect July 1, 2001.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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Governor