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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2002



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4437

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]



Passed March 7, 2002

In Effect Ninety Days from Passage

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H. B. 4437

(BY MR. SPEAKER, MR. KISS, AND DELEGATE TRUMP)

[BY REQUEST OF THE EXECUTIVE]

[Passed March 7, 2002; in effect ninety days from passage.]

AN ACT to amend and reenact sections three 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; revising definitions; requiring independent program evaluation; and setting new termination date for the act.

Be it enacted by the Legislature of West Virginia:

That sections three 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.

§11-13J-3. Definitions.

1 (a) *General.* — When used in this article, or in the administra-
2 tion of this article, terms defined in subsection (b) of this section
3 have the meanings ascribed to them by this section, unless a
4 different meaning is clearly required by either the context in which
5 the term is used, or by specific definition in this article.

6 (b) *Terms defined.*

7 (1) “Affiliate” includes all business entities which are
8 affiliates of each other when either directly or indirectly:

9 (A) One business entity controls or has the power to control
10 the other business entity; or

11 (B) A third party or third parties control or have the power to
12 control both affiliates. In determining whether business entities are
13 independently owned and operated and whether or not affiliation
14 exists, consideration shall be given to all appropriate factors,
15 including common ownership, common management and
16 contractual relationships.

17 (2) “Capacity building” means to generally enhance the
18 capacity of the community to achieve improvements and to obtain
19 the community services described in subparagraphs (i) through
20 (v), inclusive, of the definition of that term, as set forth in
21 subdivision (4) of this subsection. Capacity building includes, but
22 is not limited to, improvement of the means, or capacity, to:

23 (i) Access, obtain and use private, charitable and governmen-
24 tal assistance programs, administrative assistance and private,
25 charitable and governmental resources or funds;

26 (ii) Fulfill legal, bureaucratic and administrative requirements
27 and qualifications for accessing assistance, resources or funds; and

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

32 (3) “Commissioner or tax commissioner” are used inter-
33 changeably in this article and mean the tax commissioner of the
34 state of West Virginia, or his or her delegate.

35 (4) “Community services” means services, provided at no
36 charge whatsoever, of:

37 (i) Providing any type of health, personal finance, psychologi-
38 cal or behavioral, religious, legal, marital, educational or housing
39 counseling and advice to economically disadvantaged citizens or
40 a specifically designated group of economically disadvantaged
41 citizens or in an economically disadvantaged area;

42 (ii) Providing emergency assistance or medical care to
43 economically disadvantaged citizens or to a specifically desig-
44 nated group of economically disadvantaged citizens or in an
45 economically disadvantaged area;

46 (iii) Establishing, maintaining or operating recreational
47 facilities, or housing facilities for economically disadvantaged
48 citizens or a specifically designated group of economically
49 disadvantaged citizens or in an economically disadvantaged area;

50 (iv) Providing economic development assistance to economi-
51 cally disadvantaged citizens or a specifically designated group of
52 economically disadvantaged citizens; without regard to whether
53 they are located in an economically disadvantaged area, or to
54 individuals, groups or neighborhood or community organizations,
55 in an economically disadvantaged area; or

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

61 (5) “Compensation” means wages, salaries, commissions and
62 any other form of remuneration paid to employees for personal
63 services.

64 (6) "Corporation" means any corporation, joint-stock com-
65 pany or association and any business conducted by a trustee or
66 trustees in which interest or ownership is evidenced by a certifi-
67 cate of interest or ownership or similar written instrument.

68 (7) "Crime prevention" means any activity which aids in the
69 reduction of crime.

70 (8) "Delegate" in the phrase "or his or her delegate," when
71 used in reference to the tax commissioner, means any officer or
72 employee of the tax division of the department of tax and revenue
73 duly authorized by the tax commissioner directly, or indirectly by
74 one or more redelegations of authority, to perform the functions
75 mentioned or described in this article.

76 (9) "Director or director of the West Virginia development
77 office" means the director of the West Virginia office.

78 (10) "Economically disadvantaged" means:

79 (A) *In a municipality.* — Any area not exceeding fifteen
80 square miles in West Virginia which contains any portion of an
81 incorporated municipality

82 (i) In which area the aggregate poverty rate of persons
83 residing in the area, based upon the most recent decennial census
84 of population, is at least one hundred twenty-five percent of the
85 statewide poverty rate; and

86 (ii) That is certified as an economically disadvantaged area by
87 the West Virginia development office;

88 (B) *In a rural area.* — Any area not exceeding twenty-five
89 square miles in West Virginia:

90 (i) Which area is located in a rural area and which contains no
91 incorporated municipalities or portions thereof;

92 (ii) In which area the aggregate poverty rate of persons
93 residing in the area, based upon the most recent decennial census

94 of population, is at least one hundred twenty-five percent of the
95 statewide poverty rate; and

96 (iii) That is certified as an economically disadvantaged area
97 by the West Virginia development office;

98 (C) An economically disadvantaged area qualifies only
99 pursuant to a certification issued by the West Virginia develop-
100 ment office. The certifications issued by the West Virginia
101 development office expire after the passage of five calendar years,
102 unless specifically limited to a shorter time by specific order of the
103 West Virginia development office, and no area shall hold the
104 status of a certified economically disadvantaged area for a period
105 of time greater than ten years, either consecutively or in the
106 aggregate;

107 (D) The certification of an economically disadvantaged area
108 shall be made on the basis of a determination by the development
109 office that an area meets the poverty criteria established in
110 paragraphs (A) and (B) of this subdivision;

111 (E) No economically disadvantaged area may be certified
112 within twenty-five miles of any other certified economically
113 disadvantaged area. Not more than six economically disadvan-
114 taged areas may hold the status of certified economically disad-
115 vantaged areas at any one time in this state;

116 (F) At least a majority of all economically disadvantaged
117 areas holding designations as economically disadvantaged areas
118 at any one time shall be located in rural areas; and

119 (G) The certification shall be filed with the secretary of state
120 and shall specifically set forth the boundaries of the economically
121 disadvantaged area by both description and map, the date of
122 certification of the area as an economically disadvantaged area,
123 the date on which the certification will terminate and a statement
124 of the director's findings as to the aggregate poverty rate of
125 persons living in the certified economically disadvantaged area.

126 (11) "Economically disadvantaged citizen" means a natural
127 person, who during the current taxable year has, or during the
128 immediately preceding taxable year had, an annual gross personal
129 income not exceeding one hundred twenty-five percent of the
130 federal designated poverty level for personal incomes, and who is
131 a domiciliary and resident of this state.

132 (12) "Education" means any type of scholastic instruction to,
133 or scholarship by, an individual that enables that individual to
134 prepare for better life opportunities. Education does not include
135 courses in physical training, physical conditioning, physical
136 education, sports training, sports camps and similar training or
137 conditioning courses (except for physical therapy prescribed by a
138 physician or other person licensed to prescribe courses of medical
139 treatment under this code).

140 (13) "Eligible contribution consists of:

141 (i) Cash;

142 (ii) Tangible personal property, valued at its fair market value;

143 (iii) Real property, valued at its fair market value;

144 (iv) In kind professional services, valued at seventy-five
145 percent of fair market value;

146 and,

147 (v) Publicly traded common or preferred stock representing
148 ownership in a corporation, valued at its fair market value in
149 accordance with the regulations of the internal revenue service:
150 *Provided*, That contributed stock shall be sold by the project
151 transferee within one hundred eighty days of its receipt.

152 (B) For purposes of this definition, the value of in kind
153 professional services will not qualify as an eligible contribution
154 unless the services are:

155 (i) Reasonably priced and valued, and reasonably necessary
156 services customarily and normally provided by the contributor in
157 the normal course of business to customers, clients or patients
158 other than those encompassed by the project plan;

159 (ii) Not reimbursable, in whole or in part, from sources other
160 than the tax credit provided under this article; and

161 (iii) Services which are not available without cost elsewhere
162 in the community;

163 (C) Professional services” means only those services provided
164 directly by a physician licensed to practice in this state, those
165 services provided directly by a dentist licensed to practice in this
166 state, those services provided directly by a lawyer licensed to
167 practice in this state, those services provided directly by a
168 registered nurse, licensed practical nurse, dental hygienist or other
169 health care professional licensed to practice in this state , those
170 services provided directly by a certified public accountant or
171 public accountant licensed to practice in this state, and those
172 services provided directly by an architect licensed to practice in
173 this state;

174 (D) *Minimum contribution.* — No contribution of cash, stock,
175 property or professional services or any combination thereof
176 contributed in any tax year by any taxpayer having a fair market
177 value of less than five hundred dollars qualifies as an eligible
178 contribution;

179 (E) *Maximum contribution.* — No contribution of cash, stock,
180 property or professional services or any combination thereof
181 contributed in any tax year by any taxpayer having a fair market
182 value in excess of two hundred thousand dollars qualifies as an
183 eligible contribution; and

184 (F) *Limitations.* — Not more than twenty-five percent of total
185 eligible contributions to a certified project may be in-kind
186 contributions. Not more than twenty-five percent of total eligible

187 contributions made by any taxpayer to any certified project may
188 be in-kind contributions.

189 (14) *Eligible taxpayer.* —

190 (A) “Eligible taxpayer” means any person subject to the taxes
191 imposed by article twenty-one, twenty-three or twenty-four of this
192 chapter which makes an eligible contribution to a qualified
193 charitable organization pursuant to the terms of a certified project
194 plan for the purpose of providing neighborhood assistance,
195 community services or crime prevention, or for the purpose of
196 providing job training or education for individuals not employed
197 by the contributing taxpayer or an affiliate of the contributing
198 taxpayer or a person related to the contributing taxpayer;

199 (B) “Eligible taxpayer” also includes an affiliated group of
200 taxpayers if the group elects to file a consolidated corporation net
201 income tax return under article twenty-four of this chapter and if
202 one or more affiliates included in the affiliated group would
203 qualify as an eligible taxpayer under paragraph (A) of this
204 subdivision.

205 (15) Includes and including” when used in a definition
206 contained in this article, shall not be considered to exclude other
207 things otherwise within the meaning of the term defined.

208 (16) “Job training” means instruction to an individual that
209 enables the individual to acquire vocational skills to become
210 employable or able to seek a higher grade of employment.

211 (17) “Natural person or individual” means a human being.
212 The terms “natural person” and “individual” do not mean, and
213 specifically exclude any corporation, limited liability company,
214 partnership, joint venture, trust, organization, association, agency,
215 governmental subdivision, syndicate, affiliate or affiliation, group,
216 unit or any entity other than a human being.

217 (18) “Neighborhood assistance” means either:

218 (A) Furnishing financial assistance, labor, material and
219 technical advice to aid in the physical or economic improvement
220 of any part or all of an economically disadvantaged area; or

221 (B) Furnishing technical advice to promote higher employ-
222 ment in an economically disadvantaged area.

223 (19) "Neighborhood organization" means any organization:

224 (A) Which is performing community services, as defined in
225 this section; and

226 (B) Which is exempt from income taxation under Section
227 501(c)(3) of the Internal Revenue Code.

228 (20) "Partnership and partner" includes a syndicate, group,
229 pool, joint venture or other unincorporated organization through
230 or by means of which any business, financial operation or venture
231 is carried on, and which is not a trust or estate, a corporation or a
232 sole proprietorship. The term "partner" includes a member in a
233 syndicate, group, pool, joint venture or organization.

234 (21) "Person" includes any natural person, corporation,
235 limited liability company or partnership.

236 (22) "Project transferee" means any neighborhood organiza-
237 tion, qualified charitable organization, charitable organization or
238 other organization, entity or person that receives an eligible
239 contribution or part of an eligible contribution from an eligible
240 taxpayer for the purpose of directly or indirectly providing
241 neighborhood assistance, community services or crime prevention,
242 or for the purpose of providing job training or education or other
243 services or assistance pursuant to a project plan. The project
244 transferee is typically the first entity or person receiving eligible
245 contributions from eligible taxpayers under a project plan.
246 However, in the case of eligible contributions of in kind services
247 or other eligible contributions or portions of those contributions
248 made pursuant to a certified project plan directly to indigent,
249 disadvantaged or needy persons, economically disadvantaged

250 citizens or other persons or organizations under the sponsorship or
251 auspices of any neighborhood organization, qualified charitable
252 organization, charitable organization or other organization, entity
253 or person as a certified project participant, the eligible contribu-
254 tions shall be considered to have been made to the entity, organi-
255 zation or person under whose sponsorship or auspices the eligible
256 contributions are made, and that entity, organization or person is
257 considered to be the project transferee with relation to those
258 eligible contributions. The project transferee is the entity, organi-
259 zation or person that is liable under this article for payment of the
260 project certification fee to the West Virginia development office.
261 The term “project transferee” means and includes any considered
262 project transferee, considered as such under the provisions of this
263 article.

264 (23) “Qualified charitable organization” means a neighbor-
265 hood organization, as defined in this section, which is the sponsor
266 of a project which has received certification by the director of the
267 West Virginia development office pursuant to the requirements of
268 this article: *Provided*, That no organization may qualify as a
269 qualified organization for purposes of this article if the organiza-
270 tion is not registered with this state as required under the sollicita-
271 tion of charitable funds act.

272 (24) “Related person” or “person related to” a stated taxpayer
273 means:

274 (A) An individual, corporation, partnership, affiliate, associa-
275 tion or trust or any combination or group thereof controlled by the
276 taxpayer;

277 (B) An individual, corporation, partnership, affiliate, associa-
278 tion or trust or any combination or group thereof that is in control
279 of the taxpayer;

280 (C) An individual, corporation, partnership, affiliate, associa-
281 tion or trust or any combination or group thereof controlled by an
282 individual, corporation, partnership, affiliate, association or trust

283 or any combination or group thereof that is in control of the
284 taxpayer; or

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

286 For purposes of this article, “control,” with respect to a
287 corporation means ownership, directly or indirectly, of stock
288 possessing fifty percent or more of the total combined voting
289 power of all classes of the stock of the corporation which entitles
290 its owner to vote. “Control,” with respect to a trust, means
291 ownership, directly or indirectly, of fifty percent or more of the
292 beneficial interest in the principal or income of the trust. The
293 ownership of stock in a corporation, of a capital or profits interest
294 in a partnership or association or of a beneficial interest in a trust
295 shall be determined in accordance with the rules for constructive
296 ownership of stock provided in Section 267(c), other than
297 paragraph (3) of that section, of the United States Internal
298 Revenue Code, as amended.

299 (25) “State fiscal year” means a twelve-month period begin-
300 ning on the first day of July and ending on the thirtieth day of
301 June.

302 (26) “Taxpayer” means any person subject to the tax imposed
303 by article twenty-one, twenty-three or twenty-four of this chapter
304 (or any one or combination of the articles of this chapter).

305 (27) “Technical assistance” means:

306 (A) Assistance in understanding, using and fulfilling the legal,
307 bureaucratic and administrative requirements and qualifications
308 which must be negotiated for the purpose of effectively accessing,
309 obtaining and using private, charitable, not-for-profit or govern-
310 mental assistance, resources or funds, and maximizing the value
311 of the assistance, resources or fund;

312 (B) Assistance provided by any person holding a license
313 under West Virginia law to practice any licensed profession or
314 occupation, by which the person, in the practice of the profession

315 or occupation, assists economically disadvantaged citizens or the
316 persons in an economically disadvantaged area by:

317 (i) Providing any type of health, personal finance, psychologi-
318 cal or behavioral, religious, legal, marital, educational or housing
319 counseling and advice to economically disadvantaged citizens or
320 a specifically designated group of economically disadvantaged
321 citizens or in an economically disadvantaged area;

322 (ii) Providing emergency assistance or medical care to
323 economically disadvantaged citizens or to a specifically desig-
324 nated group of economically disadvantaged citizens or in an
325 economically disadvantaged area;

326 (iii) Establishing, maintaining or operating recreational
327 facilities, or housing facilities for economically disadvantaged
328 citizens or a specifically designated group of economically
329 disadvantaged citizens or in an economically disadvantaged area;

330 (iv) Providing economic development assistance to economi-
331 cally disadvantaged citizens or a specifically designated group of
332 economically disadvantaged citizens, without regard to whether
333 they are located in an economically disadvantaged area, or to
334 individuals, groups or neighborhood or community organizations,
335 in an economically disadvantaged area; or

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

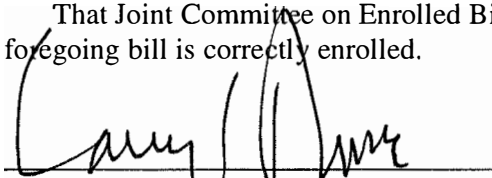
**§11-13J-12. Program evaluation; expiration of credit; preservation
of entitlement.**

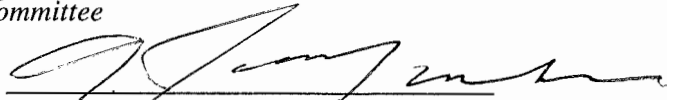
1 Annually, on or before the fifteenth day of December, the
2 director shall secure an independent review of the neighborhood
3 investment program created by this article and present the findings
4 to the joint committee on government and finance. Unless sooner

5 terminated by law, the neighborhood investment program act shall
6 terminate on the first day of July, two thousand five. No entitle-
7 ment to the tax credit under this article shall result from any
8 contribution made to any certified project after the first day of
9 July, two thousand five, and no credit shall be available to any
10 taxpayer for any contribution made after that date. Taxpayers
11 which have gained entitlement to the credit pursuant to eligible
12 contributions made to certified projects prior to the first day of
13 July, two thousand five, shall retain that entitlement and apply the
14 credit in due course pursuant to the requirements and limitations
15 of this article.

Enr. Com. Sub. for H. B. 4437] 14

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

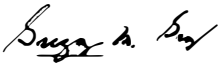

Chairman Senate Committee

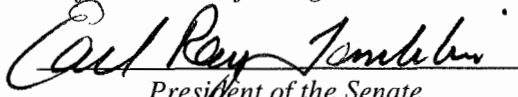

Chairman House Committee

Originating in the House.

In effect ninety days from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 15th
day of March, 2002.


Governor

PRESENTED TO THE
GOVERNOR

Date 3/11/02

Time 4:05pm