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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 2002



ENROLLED

COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 561

(By Senator *OLIVERIO, ET AL*)



PASSED MARCH 9, 2002

In Effect From Passage

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 561

(SENATORS OLIVERIO, UNGER, ANDERSON, BURNETTE,
CRAIGO, KESSLER, MCCABE, REDD, ROSS, SHARPE,
BOLEY AND DEEM, *original sponsors*)

[Passed March 9, 2002; in effect from passage.]

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, relating to the West Virginia small business linked deposit program; providing for linked deposit loans of not more than one percent above the prime interest rate; providing for linked deposits of not less than one percent; suggesting that guaranteed loans be used; and requiring the program to be marketed.

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 to read as follows:

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

§12-1A-1. Definitions.

1 (a) "Treasurer" means the West Virginia treasurer's
2 office.

3 (b) "Eligible small business" means any business that: (1)
4 Employs fifty or fewer employees and has gross annual
5 receipts of five million dollars or less; (2) is headquartered
6 in this state; (3) is organized for profit; and (4) complies
7 with the terms and conditions of this article regarding
8 eligibility.

9 (c) "Eligible lending institution" means a financial
10 institution that is eligible to make commercial loans, is a
11 public depository of state funds and agrees to participate
12 in the linked deposit program and comply with its terms
13 and conditions.

14 (d) "Linked deposit" means a certificate of deposit
15 placed by the treasurer with an eligible lending institution
16 that agrees to lend a linked deposit loan to an eligible
17 small business. The amount of the certificate of deposit is
18 equal to the amount of the linked deposit loan at an
19 interest rate of three percent below the current market
20 rate as determined and calculated by the treasurer, but in
21 no event may the interest rate on the certificate of deposit
22 be less than one percent. The linked deposit may be placed
23 with the eligible lending institution for up to four years
24 depending upon whether the small business remains
25 eligible for the program. On an annual date, as deter-
26 mined by the treasurer, the rate paid to the treasurer shall
27 be recomputed based upon the current market rate.

28 (e) "Linked deposit loan" means a loan between an
29 eligible lending institution and an eligible small business
30 for an amount not to exceed one hundred fifty thousand
31 dollars at a rate of not more than one percent above the
32 prime interest rate as published by the wall street journal

33 on the date the eligible lending institution submits the
34 loan package to the treasurer. In exchange for providing
35 this reduced rate loan, the eligible lending institution
36 receives a linked deposit. On an annual date, as deter-
37 mined by the treasurer, the rate charged to the eligible
38 small business may be recomputed but shall not exceed the
39 prime interest rate plus one percent. The linked deposit
40 loan may be part of a comprehensive loan package,
41 including guaranteed loans by the United States small
42 business administration, or other federal or state agency
43 providing a partial or full guarantee against loss to the
44 eligible lending institution.

45 (f) "Small business development center" means the West
46 Virginia small business development center, a division of
47 the West Virginia development office.

§12-1A-2. Legislative findings.

1 The Legislature finds that many small businesses
2 throughout the state are experiencing economic stagnation
3 or decline, that high interest rates have caused small
4 businesses in this state to suffer disproportionately in
5 profitability and competition and that high interest rates
6 have fostered a serious increase in unemployment. The
7 linked deposit program provided for by this article is
8 intended to provide a statewide availability of lower cost
9 funds for lending purposes that will materially contribute
10 to the economic revitalization of this state. Accordingly,
11 it is declared to be the public policy of the state through
12 the small business linked deposit program in conjunction
13 with various guaranteed loan programs to create an
14 availability of lower-cost funds to inject needed capital
15 into the small business community, sustain or improve
16 business profitability, provide greater incentives to
17 lending institutions to lend funds to small businesses and
18 protect the jobs of citizens of this state. The Legislature
19 further finds that the involvement of both the treasurer in
20 facilitating the deposit of funds for the program and the
21 small business development center in determining which

22 businesses meet the eligibility requirements of the linked
23 deposit program is necessary in order for state funds to be
24 used in the most effective manner possible in assisting
25 small businesses throughout the state and thereby maxi-
26 mizing the impact of the program.

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

1 The treasurer shall invest in linked deposits. The total
2 amount deposited at any one time shall not exceed, in the
3 aggregate, twenty million dollars.

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

**§12-1A-4. Applications for loan priority; loan package; counsel-
ing.**

1 (a) An eligible lending institution that desires to partici-
2 pate in the linked deposit program shall accept and review
3 loan applications from eligible small businesses that have
4 been prepared with the advice of the small business
5 development center. The lending institution shall apply all
6 usual lending standards to determine the credit worthiness
7 of each eligible small business and whether the loan
8 application meets the criteria established in this article.

9 (b) An eligible small business shall certify on its loan
10 application that: (1) The small business is in good standing
11 with the state tax division and the bureau of employment
12 programs as of the date of the application; (2) the linked
13 deposit loan will be used to create new jobs or preserve
14 existing jobs and employment opportunities; and (3) the
15 linked deposit loan shall not be used to refinance an
16 existing debt.

17 (c) In considering which eligible small businesses should
18 receive linked deposit loans, the eligible lending institu-
19 tion shall give priority to the economic needs of the area in
20 which the business is located, the number of jobs to be

21 created and preserved by the receipt of the loan, the
22 reasonable ability of the small business to repay the loan
23 and other factors considered appropriate by the eligible
24 financial institution.

25 (d) A small business receiving a linked deposit loan shall
26 receive supervision and counseling provided by the small
27 business development center when applying for the loan.
28 The services available from the small business develop-
29 ment center include eligibility certification, business
30 planning, quarterly financial statement review and loan
31 application assistance. The state tax division and the
32 bureau of employment programs shall provide the small
33 business development center with information as to the
34 standing of each small business loan applicant. The small
35 business development center shall include these certifica-
36 tions with the loan application.

37 (e) The eligible financial institution shall forward to the
38 treasurer a linked deposit loan package, in the form and
39 manner prescribed by the treasurer. The treasurer shall
40 forward notice of approval of the loan to the small busi-
41 ness development center at the same time it is furnished to
42 the eligible financial institution.

**§12-1A-5. Acceptance or rejection of loan package; deposit
agreement for linked deposits.**

1 (a) The treasurer may accept or reject a linked deposit
2 loan package or any portion of a package based on the
3 criteria prescribed by this article.

4 (b) Upon acceptance of the linked deposit loan package,
5 the treasurer shall place a linked deposit with the lending
6 institution.

7 (c) The eligible lending institution shall enter into a
8 deposit agreement with the treasurer in a form prescribed
9 by the treasurer and in compliance with the requirements
10 of this article.

§12-1A-6. Certification and monitoring of compliance; accountability and reporting.

1 (a) Upon the placement of a linked deposit with an
2 eligible lending institution, the institution shall lend the
3 funds to the approved eligible small business listed in the
4 linked deposit loan package. A certification of compliance
5 with this section shall be sent to the small business
6 development center and the treasurer by the eligible
7 lending institution.

8 (b) As a condition of remaining in good standing with the
9 lending institution and the state and as a condition of
10 having the loan renewed for up to four years, the loan
11 recipient shall receive supervision and counseling provided
12 by the small business development center. Eligible small
13 businesses shall also grant the lending institution the right
14 to provide information on the status of the loan to the
15 small business development center so as to assist the small
16 business.

17 (c) The small business development center and the
18 treasurer shall take any and all steps necessary to imple-
19 ment, advertise and monitor compliance with the linked
20 deposit program.

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

§12-1A-7. Liability of state.

1 The state, the treasurer and the small business develop-
2 ment center are not liable to any eligible lending institu-
3 tion in any manner for payment of the principal or interest

4 on the loan to an eligible small business. Any delay in
5 payment or default on the part of an eligible small busi-
6 ness does not in any manner affect the deposit agreement
7 between the eligible lending institution and the treasurer.

§12-1A-8. Penalties for violation of article.

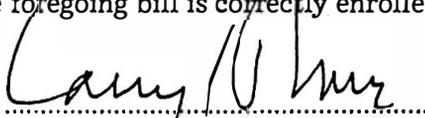
1 (a) Any person who knowingly makes a false statement
2 concerning an application or violates another provision of
3 this article is guilty of a misdemeanor and, upon convic-
4 tion thereof, shall be fined not less than one hundred nor
5 more than five hundred dollars or confined in the county
6 or regional jail not less than one month nor more than one
7 year.

8 (b) In addition to the criminal penalties provided in this
9 section, no person who is convicted of a violation of
10 subsection (a) of this section is eligible to participate in the
11 linked deposit program.

§12-1A-9. Effective dates.

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

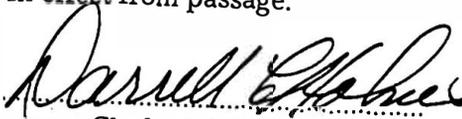
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

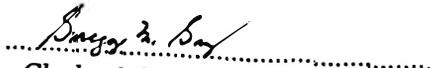

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Chairman Senate Committee

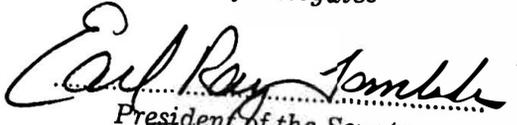

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Chairman House Committee

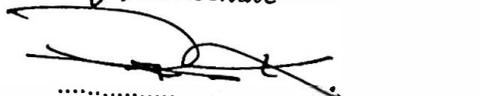
Originated in the Senate.

In effect from passage.


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within is approved this the 25th
Day of March , 2002.


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Governor

PRESENTED TO THE
GOVERNOR

Date 3/19/02

Time 9:00 am