WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 2002

ENROLLED
Committee Substitute for
SENATE BILL NO. 521

(By Senator OLIVERIO, ET AL)

PASSED March 9, 2002

In Effect From Passage
ENROLLED
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.

(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; (3) is organized for profit; and (4) complies with the terms and conditions of this article regarding eligibility.

(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 and comply with its terms and conditions.

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

(e) "Linked deposit loan" means a loan between an eligible lending institution and an eligible small business for an amount not to exceed one hundred fifty thousand dollars at a rate of not more than one percent above the prime interest rate as published by the wall street journal.
on the date the eligible lending institution submits the
loan package to the treasurer. In exchange for providing
this reduced rate loan, the eligible lending institution
receives a linked deposit. On an annual date, as deter-
mined by the treasurer, the rate charged to the eligible
small business may be recomputed but shall not exceed the
prime interest rate plus one percent. The linked deposit
loan may be part of a comprehensive loan package,
including guaranteed loans by the United States small
business administration, or other federal or state agency
providing a partial or full guarantee against loss to the
eligible lending institution.

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

§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 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 in conjunction
with various guaranteed loan programs to create an
availability of lower-cost funds to inject needed capital
into the small business community, sustain or improve
business profitability, provide greater incentives to
lending institutions to lend funds to small businesses 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 meet the eligibility requirements 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.

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

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 participate in the linked deposit program shall accept and review loan applications from eligible small businesses that have been prepared with the advice of the small business development center. 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: (1) The small business is in good standing with the state tax division and the bureau of employment programs as of the date of the application; (2) the linked deposit loan will be used to create new jobs or preserve existing jobs and employment opportunities; and (3) the linked deposit loan shall not be used to refinance an existing debt.

(c) In considering which eligible small businesses should receive linked deposit 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 when applying for the loan. The services available from the small business development center include eligibility certification, business planning, quarterly financial statement review and loan application assistance. The state tax division and the bureau of employment programs shall provide the small business development center with information as to the standing of each small business loan applicant. The small business development center shall include these certifications with the loan application.

(e) The eligible financial institution shall forward to the treasurer a linked deposit loan package, in the form and manner prescribed by the treasurer. The treasurer shall forward notice of approval of the loan to the small business development center at the same time it is furnished to the eligible financial institution.

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

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

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

(c) The eligible lending institution shall enter into a deposit agreement with the treasurer in a form prescribed by the treasurer and in compliance with the requirements of this article.
§12-1A-6. Certification and monitoring of compliance; accountability and reporting.

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

(b) 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 loan recipient shall receive supervision and counseling provided by the small business development center. 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.

(c) The small business development center and the treasurer shall take any and all steps necessary to implement, advertise and monitor compliance with the linked deposit program.

(d) By the thirty-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 business does not in any manner affect the deposit agreement between the eligible lending institution and the treasurer.

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

(a) Any person who knowingly makes a false statement concerning an application or violates another provision of 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 confined in the county or regional jail not less than one month nor more than one year.

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

§12-1A-9. Effective dates.

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.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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

Governor