WEST VIRGINIA LEGISLATURE
Regular Session, 2003

ENROLLED

SENATE BILL NO. 657

(By Senator )

PASSED March 8, 2003

In Effect 90 days from Passage
AN ACT to amend and reenact sections two, four, five and eight, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the West Virginia capital company act; lowering amount of tax credits available; making a portion of the venture capital company tax credit available to investors in economic development and technology advancement centers generally; declaration of policy; definitions; providing for tax credits for centers; and authorizing promulgation of legislative rules.

Be it enacted by the Legislature of West Virginia:

That sections two, four, five and eight, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:
ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

§5E-1-2. Declaration of policy.

(a) The Legislature finds and declares that the West Virginia economy can be strengthened by promoting private investment in West Virginia businesses.

(b) The Legislature further finds that:

1. Investment of capital in the West Virginia economy can be promoted by making tax credits available to taxpayers investing in West Virginia capital companies;

2. Economic development in the West Virginia economy can be stimulated and higher education can be promoted by making tax credits available to taxpayers investing in economic development and technology advancement centers organized to partner with institutions of higher education and qualified pursuant to the provisions of article twelve-a, chapter eighteen-b of this code;

3. Demands on state revenues restrict the financial ability of this state to make unlimited tax credits available for investment purposes and require that this state place reasonable limits on the total amount of tax credits to be made available for investment incentives;

4. Establishment of a tax credit program, which gives priority to investments in capital companies in the order in which they are qualified as such, will encourage investment in West Virginia businesses; and

5. The promotion of private investment in West Virginia businesses will tend to reduce unemployment by creating new or maintaining existing employment opportunities for the citizens of this state.

§5E-1-4. Definitions.

As used in this article, the following terms have the meanings ascribed to them in this section, unless the
context in which the term is used clearly requires another
meaning or a specific different definition is provided:

(a) “Authority” means the West Virginia economic
development authority, provided for in article fifteen,
chapter thirty-one of this code.

(b) “Capital base” means equity capital or net worth.

(c) “Certified West Virginia capital company” means:

(1) A West Virginia business development corporation
created pursuant to article fourteen, chapter thirty-one of
this code; or

(2) A profit or nonprofit entity organized and existing
under the laws of this state, created for the purpose of
making venture or risk capital available to qualified
investments that has been certified by the authority.

(d) “Qualified investment” means a debt or equity
financing of a West Virginia business, but only if the
business is engaged in one or more of the following
activities: Manufacturing; agricultural production or
processing; forestry production or processing; mineral
production or processing, except for conventional oil and
gas exploration; service industry; transportation; research
and development of products or processes associated with
any of the activities previously enumerated above; tour-
ism; computer software development companies engaged
in the creation of computer software; and wholesale or
retail distribution activities within the state. The invest-
ment by a West Virginia capital company in purchases of
property to be leased by it, as lessor, through a capital
lease to a West Virginia business lessee engaged in one of
the above enumerated activities is a qualified investment.

(e) “Qualified West Virginia capital company” means a
West Virginia capital company that has been designated
by the authority as a qualified capital company under the
provisions of section six of this article.

(g) "State" means the state of West Virginia.

(h) "Capital lease" means a lease meeting one or more of the following criteria:

(1) The lease transfers ownership of the property to the lessee at the end of the lease term by the lessee's exercise of a purchase option which is de minimis in amount; or

(2) The lease term is equal to seventy-five percent or more of the estimated economic life of the leased property. However, if the beginning of the lease term falls within the last twenty-five percent of the total estimated economic life of the leased property, including earlier years of use, this criterion shall not be used; or

(3) Under generally accepted accounting principles, the lessee cannot treat payments to the capital company as payments under an operating lease; or

(4) For federal income tax purposes, the parties are required to treat payments as amortization of principal and interest.

(i) "Economic development and technology advancement center" or "center" means an economic development and technology advancement center organized and operating under the laws of this state which has been designated by the authority as a qualified economic development and technology advancement center under the provisions of article twelve-a, chapter eighteen-b of this code.

§5E-1-5. Rules.

The authority shall promulgate rules in accordance with article three, chapter twenty-nine-a of this code to carry
out the policy and purposes of this article, to provide any
necessary clarification of the provisions of this article and
to efficiently provide for the general administration of this
article. The authority may promulgate additional rules in
accordance with article three, chapter twenty-nine-a of
this code that it considers necessary to provide for the
efficient administration of the credits allowed for invest-
ments in economic development and technology advance-
ment centers.

§5E-1-8. Tax credits.

(a) The total amount of tax credits authorized for a
single qualified company may not exceed two million
dollars. The total amount of tax credits authorized for a
econometric development and technology advancement
center may not exceed one million dollars. Capitalization
of the company or center may be increased pursuant to
rule of the authority.

(b) (1) The total credits authorized by the authority for
all companies and centers may not exceed a total of ten
million dollars each fiscal year: Provided, That for the
fiscal year beginning on the first day of July, one thousand
nine hundred ninety-nine, the total credits authorized for
all companies may not exceed a total of six million dollars:
Provided, however, That for the fiscal year beginning on
the first day of July, two thousand, the total credits
authorized for all companies may not exceed a total of
four million dollars: Provided further, That for the fiscal
year beginning on the first day of July, two thousand one,
the total credits authorized for all companies may not
exceed a total of four million dollars: And provided
further, That for the fiscal year beginning on the first day
of July, two thousand two, the total credits authorized for
all companies may not exceed a total of three million
dollars: And provided further, That for the fiscal year
beginning on the first day of July, two thousand three, the
total credits authorized for all companies may not exceed
a total of three million dollars: And provided further, That
the capital base of any qualified company other than an economic development and technology advancement center qualified under the provisions of article twelve-a, chapter eighteen-b of this code shall be invested in accordance with the provisions of this article. The authority shall allocate these credits to qualified companies and centers in the order that the companies are qualified.

(2) Not more than two million dollars of the credits allowed under subdivision (1) of this subsection may be allocated by the authority during each fiscal year to one or more small business investment companies described in this subdivision. After a portion of the credits are allocated to small business investment companies as provided in this section, not more than one million dollars of the credits allowed under subdivision (1) of this subsection may be allocated by the authority during each fiscal year to one or more economic development and technology advancement centers qualified by the authority under article twelve-a, chapter eighteen-b of this code. The remainder of the tax credits allowed during the fiscal year shall be allocated by the authority under the provisions of section four, article two of this chapter. The portion of the tax credits allowed for small business investment companies described in this subdivision shall be allowed only if allocated by the authority during the first ninety days of the fiscal year, and may only be allocated to companies that: (A) Were organized on or after the first day of January, one thousand nine hundred ninety-nine; (B) are licensed by the small business administration as a small business investment company under the small business investment act; and (C) have certified in writing to the authority on the application for credits under this act that the company will diligently seek to obtain and thereafter diligently seek to invest leverage available to the small business investment companies under the small business investment act. These credits shall be allocated by the authority in the order that the companies are qualified.

The portion of the tax credits allowed for economic
development and technology advancement centers described in article twelve-a, chapter eighteen-b of the code shall be similarly allowed only if allocated by the authority during the first ninety days of the fiscal year. Any credits which have not been allocated to qualified companies meeting the requirements of this subdivision relating to small business investment companies or to qualified economic development and technology advancement centers during the first ninety days of the fiscal year shall be made available and allocated by the authority under the provisions of section four, article two of this chapter.

(c) Any investor, including an individual, partnership, limited liability company, corporation or other entity who makes a capital investment in a qualified West Virginia capital company, is entitled to a tax credit equal to fifty percent of the investment, except as otherwise provided in this section or in this article: Provided, That the tax credit available to investors who make a capital investment in an economic development and technology advancement center shall be one hundred percent of the investment. The credit allowed by this article shall be taken after all other credits allowed by chapter eleven of this code. It shall be taken against the same taxes and in the same order as set forth in subsections (c) through (i), inclusive, section five, article thirteen-c, chapter eleven of this code. The credit for investments by a partnership, limited liability company, a corporation electing to be treated as a subchapter S corporation or any other entity which is treated as a pass through entity under federal and state income tax laws may be divided pursuant to election of the entity’s partners, members, shareholders or owners.

(d) The tax credit allowed under this section is to be credited against the taxpayer’s tax liability for the taxable year in which the investment in a qualified West Virginia capital company or economic development and technology advancement center is made. If the amount of the tax credit exceeds the taxpayer’s tax liability for the taxable year in which the investment is made, the excess shall be carried over and allowed against the taxpayer’s tax liability for the following taxable years.
year, the amount of the credit which exceeds the tax
liability for the taxable year may be carried to succeeding
taxable years until used in full, or until forfeited: Pro-
vided, That: (i) Tax credits may not be carried forward
beyond fifteen years; and (ii) tax credits may not be
carried back to prior taxable years. Any tax credit
remaining after the fifteenth taxable year is forfeited.

(e) The tax credit provided for in this section is available
only to those taxpayers whose investment in a qualified
West Virginia capital company occurs or economic devel-
opment and technology advancement center after the first
day of July, one thousand nine hundred eighty-six.

(f) The tax credit allowed under this section may not be
used against any liability the taxpayer may have for
interest, penalties or additions to tax.

(g) Notwithstanding any provision in this code to the
contrary, the tax commissioner shall publish in the state
register the name and address of every taxpayer and the
amount, by category, of any credit asserted under this
article. The categories by dollar amount of credit received
are as follows:

(1) More than $1.00, but not more than $50,000;
(2) More than $50,000, but not more than $100,000;
(3) More than $100,000, but not more than $250,000;
(4) More than $250,000, but not more than $500,000;
(5) More than $500,000, but not more than $1,000,000;
and
(6) More than $1,000,000.
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 ninety days 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 __ day of April, 2003.

Governor
PRESENTED TO THE GOVERNOR

Date: 3/27/03
Time: 10:10 a.m.