ENROLLED

COMMITTEE SUBSTITUTE

FOR

House Bill No. 3189

(By Delegates Doyle, Leach, Hall, Proudfoot, Boggs and Ashley)

Passed March 13, 2004

In Effect July 1, 2004
AN ACT to amend and reenact §5E-1-8 of the code of West Virginia, 1931, as amended, relating to reducing the total tax credits available under the capital company act during the fiscal year beginning on the first day of July, two thousand four.

Be it enacted by the Legislature of West Virginia:

That §5E-1-8 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

§5E-1-8. Tax credits.

1 (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 single economic
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 for the fiscal year beginning on the first day of
July, two thousand four, no credits are authorized: 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, 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: Provided, 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 or economic development and technology advancement center occurs 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.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Greg Butler
Chairman House Committee

Originating in the House.

In effect July 1, 2004.

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 41th day of April, 2004.

Governor