WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 2004

ENROLLED

Committee Substitute for
SENATE BILL NO. 513

(By Senator __________)

PASSED ________ March 13, 2004

In Effect 90 Days From Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 513
(SENATORS MCCABE, MINARD AND UNGER, original sponsors)
[Passed March 13, 2004; in effect ninety days from passage.]

AN ACT to amend and reenact §12-7-4, §12-7-6, §12-7-8a and §12-7-11 of the code of West Virginia, 1931, as amended, all relating to the jobs investment trust board; expanding board powers; providing for sale or transfer of nonincentive tax credits; and providing that certain documents be available for public inspection.

Be it enacted by the Legislature of West Virginia:

That §12-7-4, §12-7-6, §12-7-8a and §12-7-11 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 7. JOBS INVESTMENT TRUST FUND.

§12-7-4. Jobs investment trust board; composition; appointment, term of private members; chairman; quorum.
(a) The jobs investment trust board is continued. The board is a public body corporate and established to improve and otherwise promote economic development in this state.

(b) The board consists of thirteen members, five of whom serve by virtue of their respective positions. These five are the president of West Virginia university or his or her designee; the president of Marshall university or his or her designee; the chancellor of the higher education policy commission or his or her designee; the executive director of the West Virginia housing development fund; and the executive director of the West Virginia development office. One member shall be appointed by the governor from a list of two names submitted by the board of directors of the housing development fund. One member shall be appointed by the governor from a list of two names submitted by the commissioner of the division of tourism. The other six members shall be appointed from the general public by the governor. Of the members of the general public appointed by the governor, one shall be an attorney with experience in finance and investment matters, one shall be a certified public accountant, one shall be a representative of labor, one shall be experienced or involved in innovative business development and two shall be present or past executive officers of companies listed on a major stock exchange or large privately held companies: Provided, That all appointments made pursuant to the provisions of this article shall be by and with the advice and consent of the Senate.

(c) A vacancy on the board shall be filled by appointment by the governor for the unexpired term in the same manner as the original appointment. Any person appointed to fill a vacancy serves only for the unexpired term.

(d) The governor may remove any appointed member in case of incompetency, neglect of duty, moral turpitude or malfeasance in office and the governor may declare the
office vacant and fill the vacancy as provided in other cases of vacancy.

(e) The chairman of the board shall be elected by the board from among the members of the board.

(f) Seven members of the board is a quorum. No action may be taken by the board except upon the affirmative vote of at least a majority of those members present or participating by any other means as described in subsection (g) of this section, but in no event fewer than six of the members serving on the board.

(g) Members of the board may participate in a meeting of the board by means of conference telephone or similar communication equipment by means of which all persons participating in the meeting can hear each other and participation in a board meeting pursuant to this subsection constitutes presence in person at the meeting.

(h) The members of the board, including the chairman, may receive no compensation for their services as members of the board, but are entitled to their reasonable and necessary expenses actually incurred in discharging their duties under this article.

(i) The board shall meet on a quarterly basis or more often if necessary.

(j) The governor shall appoint a member for a four-year term. Any member whose term has expired serves until his or her successor has been duly appointed and qualified. Any member is eligible for reappointment.

(k) Additionally, one member of the West Virginia House of Delegates, to be appointed by the speaker of the House of Delegates, and one member of the West Virginia Senate, to be appointed by the president of the Senate, shall serve as advisory members of the jobs investment trust board and, as advisory members, shall be ex officio, nonvoting members.
§12-7-6. Corporate powers.

1 The board may:

2 (1)(i) Make loans to eligible businesses with or without
3 interest secured if and as required by the board; and (ii)
4 acquire ownership interests in eligible businesses. These
5 investments may be made in eligible businesses that
6 stimulate economic growth and provide or retain jobs in
7 this state and shall be made only upon the determination
8 by the board that the investments are prudent and meet
9 the criteria established by the board;

10 (2) Accept appropriations, gifts, grants, bequests and
11 devises and to use or dispose of them to carry out its
12 corporate purposes;

13 (3) Make and execute contracts, releases, compromises,
14 agreements and other instruments necessary or convenient
15 for the exercise of its powers or to carry out its corporate
16 purposes;

17 (4) Collect reasonable fees and charges in connection
18 with making and servicing loans, notes, bonds, obligations,
19 commitments and other evidences of indebtedness, in
20 connection with making equity investments and in connec-
21 tion with providing technical, consultative and project
22 assistance services;

23 (5) Sue and be sued;

24 (6) Make, amend and repeal bylaws and rules consistent
25 with the provisions of this article;

26 (7) Hire its own employees, whom shall be employees of
27 the state of West Virginia for purposes of articles ten and
28 sixteen, chapter five of this code, and to appoint officers
29 and consultants and to fix their compensation and pre-
30 scribe their duties;

31 (8) Acquire, hold and dispose of real and personal
32 property for its corporate purposes;
(9) Enter into agreements or other transactions with any federal or state agency, college or university, any person and any domestic or foreign partnership, corporation, association or organization;

(10) Acquire real and personal property, or an interest in real or personal property, in its own name, by purchase or foreclosure when acquisition is necessary or appropriate to protect any loan in which the board has an interest; to sell, transfer and convey any real or personal property to a buyer; and, in the event a sale, transfer or conveyance cannot be effected with reasonable promptness or at a reasonable price, to lease real or personal property to a tenant;

(11) Purchase, sell, own, hold, negotiate, transfer or assign: (i) Any mortgage, instrument, note, credit, debenture, guarantee, bond or other negotiable instrument or obligation securing a loan, or any part of a loan; (ii) any security or other instrument evidencing ownership or indebtedness; or (iii) equity or other ownership interest. An offering of one of these instruments shall include the representation and qualification that the board is a public body corporate managing a venture capital fund that includes high-risk investments and, that in any transfer, sale or assignment of any interest, the transferee, purchaser or assignee accepts any risk without recourse to the jobs investment trust or to the state;

(12) Procure insurance against losses to its property in amounts, and from insurers, as is prudent;

(13) Consent, when prudent, to the modification of the rate of interest, time of maturity, time of payment of installments of principal or interest or any other terms of the investment, loan, contract or agreement in which the board is a party;

(14) Establish training and educational programs to further the purposes of this article;
(15) File its own travel rules;

(16) Borrow money to carry out its corporate purpose in principal amounts and upon terms as are necessary to provide sufficient funds for achieving its corporate purpose;

(17) Take options in or warrants for, subscribe to, acquire, purchase, own, hold, transfer, sell, vote, employ, mortgage, pledge, assign, pool or syndicate: (i) Any loans, notes, mortgages or securities; (ii) debt instruments, ownership certificates or other instruments evidencing loans or equity; or (iii) securities or other ownership interests of or in domestic or foreign corporations, associations, partnerships, limited partnerships, limited liability partnerships, limited liability companies, joint ventures or other private enterprise to foster economic growth, jobs preservation and creation in the state of West Virginia and all other acts that carry out the board's purpose;

(18) Contract with either Marshall university or West Virginia university, or both, for the purpose of retaining the services of, and paying the reasonable cost of, services performed by the institution for the board in order to effectuate the purposes of this article;

(19) Enter into collaborative arrangements or contracts with private venture capital companies when considered advisable by the board;

(20) Provide equity financing for any eligible business that will stimulate economic growth and provide or retain jobs in this state and to hold, transfer, sell, assign, pool or syndicate, or participate in the syndication of, any loans, notes, mortgages, securities, debt instruments or other instruments evidencing loans or equity interest in furtherance of the board's corporate purposes;

(21) Form partnerships, create subsidiaries or take all other actions necessary to qualify as a small business
investment company under the United States Small Business Investment Act, PL 85–699, as amended;

(22) Provide for staff payroll and make purchases in the same manner as the housing development fund;

(23) Indemnify its members, directors, officers, employees and agents relative to actions and proceedings to which they have been made parties and make advances for expenses relative thereto and purchase and maintain liability insurance on behalf of those persons all to the same extent as authorized for West Virginia business corporations under present or future laws of the state applicable to business corporations generally; and

(24) Contract for the provision of legal services by private counsel and, notwithstanding the provisions of article three, chapter five of this code, counsel may, but is not limited to, represent the board in court, negotiate contracts and other agreements on behalf of the board, render advice to the board on any matter relating thereto, prepare contracts and other agreements and provide any other legal services requested by the board.

§12-7-Sa. New millennium fund; new millennium fund promissory notes; nonincentive tax credits; rulemaking.

(a) The new millennium fund is continued to permit the board to better fulfill its mission to mobilize financing and capital for emerging, expanding and restructuring businesses in the state. New millennium fund moneys are to consist of all appropriations for use by the jobs investment trust board made by the Legislature subsequent to the thirty-first day of December, one thousand nine hundred ninety-nine, and funds borrowed from private or institutional lenders by the board through the issuance of promissory notes. Fund moneys may be held in a separate account or accounts by or at the West Virginia housing development fund for the board until the board disburses any portion of the funds. Fund moneys that are not set
aside or otherwise designated for paying interest on the
promissory notes may be used by the board in accordance
with and to effectuate the purposes of this article. The
board may impose reasonable fees and charges associated
with its investment of funds from the new millennium
fund in eligible businesses to be paid in any combination
of money, warrants or equity interests.

(b) Without limiting the powers otherwise enumerated
in this article, the board may: (1) Sell and transfer portions
of the nonincentive tax credits created, issued and trans-
ferred to the board pursuant to the provisions of this
section to contracting taxpayers and/or their assigns in
return for the payments described in subsection (f) of this
section; (2) issue or provide promissory notes on loans
made to the board having terms of up to ten years on a
zero-coupon basis or otherwise; (3) enter into put options
or similar commitment contracts with taxpayers that
would be for terms of up to ten years committing, at the
board's option, to sell and transfer to the contracting
taxpayers or their assigns at the end of the term and as
soon after the term as is reasonable under the circum-
stances portions of the nonincentive tax credits created,
issued and transferred to the board pursuant to this
section; (4) grant, transfer and assign the benefits of the
put options or similar commitment contracts as collateral
to secure the board's obligations pursuant to its promis-
sory notes; (5) satisfy the board's payment obligations
under its promissory notes from assets of the board, other
than the benefits of the put options or similar commitment
contracts, then to effect a corresponding cancellation of
the board's related nonincentive tax credit commitment;
and (6) satisfy the board's payment obligations under its
promissory notes from the benefits of the put options or
similar commitment contracts, then to effect a correspond-
ing sale and transfer of nonincentive tax credits. The
terms and conditions of the promissory notes, put options
or similar commitment contracts shall be consistent with
the purposes of this section, and approved by board
resolution, and may be different for separate transactions.

(c) Without limiting the powers otherwise enumerated in
this article and with regard to the new millennium fund,
the board has and may exercise all powers necessary to
further the purposes of this section, including, but not
limited to, the power to commit, sell and transfer
nonincentive tax credits up to the total amount of thirty
million dollars.

(d) The board may issue its promissory notes pursuant to
this section in amounts totaling no more than six million
dollars in each of the fiscal years ending in two thousand
one, two thousand two, two thousand three, two thousand
four and two thousand five and may issue its nonincentive
tax credit commitments in amounts totaling no more than
six million dollars in each of the fiscal years ending in two
thousand one, two thousand two, two thousand three, two
thousand four and two thousand five. The board may
agree to sell and transfer, at its option, nonincentive tax
credits to taxpayers ten years after the date of its commit-
ments and as soon thereafter as it is reasonable under the
circumstances.

(e) Prior to committing to the sale and transfer of any
nonincentive tax credits, the board shall first determine
that:

(1) The new millennium fund moneys to be received in
relationship to the commitment shall be used for the
development, promotion and expansion of the economy of
the state; and

(2) The existence and pledge of a put option or similar
commitment contract that is supported by the
nonincentive tax credits that are committed by the board
is a material inducement to the private or institutional
lender transferring moneys to the board to be placed in the
new millennium fund.
(f) The board may sell and transfer nonincentive tax credits only in conjunction with the satisfaction of its obligations under its promissory notes issued pursuant to this section. Each original sale and transfer of nonincentive tax credits by the board shall be consummated upon payment to the board, or for its benefits, of an amount equal to the dollar amount of the nonincentive tax credits sold and transferred. The nonincentive tax credits sold and transferred by the board pursuant to this section shall be claimed as a credit on the tax returns for the year or years in which the nonincentive tax credits are sold and transferred by the board. The amount of the nonincentive tax credit that exceeds the taxpayer's tax liability for the taxable year in the year of the purchase may be carried to succeeding taxable years until used in full up to two years after the year of purchase and may not be carried back to prior taxable years. Any nonincentive tax credit sold and transferred by the board that remains outstanding after the third taxable year subsequent to and including the year of the transfer is forfeited.

(g) Nonincentive tax credits are created, issued and transferred by the state to the board in a total amount of thirty million dollars to be used by taxpayers, including persons, firms, corporations and all other business entities, to reduce the tax liabilities imposed upon them pursuant to articles twelve-a, thirteen, thirteen-a, thirteen-b, twenty-one, twenty-three and twenty-four, chapter eleven of this code. The total amount of nonincentive tax credits that are created, issued and transferred to the board is thirty million dollars. The nonincentive tax credits are freely transferable to subsequent transferees. The board shall immediately notify the president of the Senate, the speaker of the House of Delegates and the governor in writing if and when any nonincentive tax credits are sold and transferred by the board.

(h) In conjunction with the department of tax and revenue, the board shall develop a system for: (i) Register-
ing nonincentive tax credits, commitments for the sale and
transfer of nonincentive tax credits, the assignments of the
commitments and the assignments of the nonincentive tax
credits; and (ii) certifying nonincentive tax credits so that
when nonincentive tax credits are claimed on a tax return,
they may be verified as validly issued by the board,
properly taken in the year of claim and in accordance with
the requirements of this section.

(i) The board may promulgate, repeal, amend and change
rules consistent with the provisions of this article to carry
out the purposes of this section. These rules are not
subject to the provisions of chapter twenty-nine-a of this
code, but shall be filed with the secretary of state.

§12-7-11. Documentary materials concerning trade secrets;
commercial, financial or personal information;
confidentiality.

Any documentary material or data made or received by
the board for the purpose of furnishing assistance, to the
extent that the material or data consists of trade secrets,
commercial, financial or personal information regarding
the financial position or activities of such business or
person, shall not be considered public records and shall be
exempt from disclosure pursuant to the provisions of
chapter twenty-nine-b of this code. Any discussion or
consideration of the trade secrets, commercial, financial or
personal information may be held by the board in execu-
tive session closed to the public, notwithstanding the
provisions of article nine-a, chapter six of this code:
Provided, That the board shall make public the following
information regarding executed investments: (1) The
names and addresses of the principals of the business and
its board of directors; (2) the location or locations of the
projects; (3) the amount of the investment or financial
assistance provided by the board; (4) the purpose of the
investment or financial assistance; (5) the maturity,
interest rate and other pertinent terms of the investment;
(6) the fixed assets which serve as security for the invest-
ment; and (7) the names and addresses of all persons holding twenty-five percent or more of the equity of the entity receiving investment assistance: Provided, however, that the board shall keep available in its offices for inspection by any citizen of this state the annual report prepared pursuant to the requirements of section twelve of this article and the annual audit report prepared pursuant to the requirements of sections nine and fourteen of this article.
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............ Approved............ this the............ Day of............,............ 2004.

Governor
PRESENTED TO THE
GOVERNOR
DATE 3-31-01
TIME 10:45 AM