West Virginia Legislature
Second Regular Session, 2006

Enrolled

House Bill No. 4846

(By Delegates Michael, Leach, Kominar, Stalnaker, Varner, H. K. White, Williams, Hall, Evans and G. White)

Passed March 11, 2006
In Effect Ninety Days from Passage
ENROLLED

H. B. 4846

(By Delegates Michael, Leach, Kominar, Stalnaker, Varner, H. K. White, Williams, Hall, Evans and G. White)

[Passed March 11, 2006: in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-10-22i; to amend and reenact §5E-1-8 of said code; to amend said code by adding thereto a new section, designated §11-24-43; and to amend said code by adding thereto a new section, designated §18-7A-26t, all relating to providing one-time supplements to certain annuitants; dedication of corporate net income tax proceeds to pay for supplement; and supplying fiscal support for such supplements by increasing available general revenue through the expiration of certain tax credits.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5-10-22i; that §5E-1-8 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §11-24-43; and that said code be amended by adding thereto a new section, designated §18-7A-26t, all to read as follows:
§5-10-22i. One-time supplement for certain annuitants effective July 1, 2006.

(a) A one-time supplement to retirement benefits of not less than three percent and not exceeding four and one-half percent, as determined by appropriation of the Legislature, shall be provided to all retirees that are age seventy or older and have been annuitants for at least five consecutive years as of the effective date of this section and beneficiaries of deceased members who would have been at least seventy years of age or older and have been annuitants for at least five consecutive years as of the effective date of this section.

(b) The one-time supplement provided for in this section applies only to members who have retired at least five years prior to the effective date of this section or, if applicable, to beneficiaries of deceased members who have been receiving benefits under the retirement system at least five years prior to the effective date of this section: Provided, That the supplement provided herein is subject to any applicable limitations thereon under Section 415 of the Internal Revenue Code of 1986, as amended.

CHAPTER 5E. VENTURE CAPITAL COMPANY.

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

§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 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, the total credits authorized for all
companies may not exceed a total of one million dollars: And
provided further, That for the fiscal year beginning on the first
day of July, two thousand five, there shall be no credits
authorized: And provided further, That for the fiscal year
beginning on the first day of July, two thousand six, the total
credits authorized for all companies may not exceed a total of
one million dollars: And provided further, That for the fiscal
years beginning on the first day of July, two thousand seven,
and two thousand eight, there shall be no credits 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: Provided,
That for the fiscal year beginning on the first day of July, two
thousand four, and for the fiscal year beginning on the first day
of July, two thousand five, no credits authorized by this section
may be allocated by the authority to one or more small business
investment companies: Provided, however, That for the fiscal
year beginning on the first day of July, two thousand six, all of
the credits allowed under subdivision (1) of this subsection
shall be allocated only to one or more small business invest-
ment companies described in this subdivision: Provided,
further, That for the fiscal years beginning on the first day of
July, two thousand seven and two thousand eight, no credits
authorized by this section may be allocated by the authority to
one or more small business investment companies. 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 technol-
ogy advancement centers qualified by the authority under
article twelve-a, chapter eighteen-b of this code: Provided,
however, That for the fiscal year beginning on the first day of
July, two thousand four, all of the credits allowed under
subdivision (1) of this subsection shall be allocated only to one
or more qualified economic development and technology
advancement centers: Provided further, That for the fiscal year
beginning on the first day of July, two thousand five, no credits
allowed under subdivision (1) of this subsection shall be allocated to any qualified economic development and technology advancement center; And provided further, That for the fiscal years beginning on the first day of July, two thousand six, two thousand seven and two thousand eight, no credits allowed under subdivision (1) of this subsection shall be allocated to any qualified economic development and technology advancement center. 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: Provided, That for the fiscal year beginning on the first day of July, two thousand four, and for the fiscal year beginning on the first day of July, two thousand five, no credits authorized by this section may be allocated by the authority to a taxpayer pursuant to the provisions of section four, article two of this chapter: Provided, however, That for the fiscal year beginning on the first day of July, two thousand six, two thousand seven and two thousand eight, no credits authorized by this section may be allocated by the authority to a taxpayer pursuant to 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 this code shall be similarly allowed only if allocated by the authority during the first ninety days of the fiscal year: *And provided further*, That solely for the fiscal year beginning on the first day of July, two thousand four, the authority may allocate the tax credits allowed for economic development and technology advancement centers at any time during 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: *Provided*, That for the fiscal year beginning on the first day of July, two thousand four, and for the fiscal year beginning on the first day of July, two thousand five, and for the fiscal years beginning on the first day of July, two thousand six, two thousand seven, and two thousand eight, no credits authorized by this section may be allocated by the authority to a taxpayer pursuant to the provisions of section four, article two of this chapter.

(3) Notwithstanding any provision of this code or legislative rule promulgated thereunder to the contrary, for the fiscal year beginning on the first day of July, two thousand four, and for the fiscal year beginning on the first day of July, two thousand five, the authority has the sole discretion to allocate or refuse to allocate tax credits authorized under this section to any qualified economic development and technology advancement center upon its determination of the extent to which the center will fulfill the purposes of this article. The determination shall be based upon the application of the center, the extent to which the company or center fulfilled those purposes in prior years after receiving tax credits authorized under this section, the extent to which the center is expected to stimulate economic development and high technology research in the chemical
industry and such other similarly related criteria as the authority may establish by vote of the majority of authority.

(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 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.

CHAPTER 11. TAXATION.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-43. Dedication of corporation net income tax proceeds.

(a) There is hereby dedicated for the fiscal years beginning on the first day of July, two thousand six, two thousand seven and two thousand eight, an annual amount of ten million dollars from annual collections of the tax imposed by this article for
payment of the unfunded liability created by the one-time supplement of certain annuitants as provided in section twenty-two-i, article ten, chapter five and section twenty-six-t, article seven-a, chapter eighteen of this code.

(b) Notwithstanding any other provision of this code to the contrary, on the first day of October of two thousand six, two thousand seven and two thousand eight, ten million dollars from collections of the tax imposed by this article shall be deposited with the reserves of the public employees retirement and state teachers retirement systems in such allocations as the consolidated public retirement board finds to be necessary and advantageous in funding the one-time supplements of certain annuitants as provided in section twenty-two-i, article ten, chapter five and section twenty-six-t, article seven-a, chapter eighteen of this code.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-26t. One-time supplement for certain annuitants effective July 1, 2006.

(a) A one-time supplement to retirement benefits of three percent shall be provided to all retirees that are age seventy or older and have been annuitants for at least five consecutive years as of the effective date of this section and beneficiaries of deceased members who would have been at least seventy years of age or older and have been annuitants for at least five consecutive years as of the effective date of this section.

(b) The one-time supplement provided for in this section applies only to members who have retired at least five years prior to the effective date of this section or, if applicable, to beneficiaries of deceased members who have been receiving benefits under the retirement system at least five years prior to
Provided, That the supplement provided herein is subject to any applicable limitations thereon under Section 415 of the Internal Revenue Code of 1986, as amended.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

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 25th day of April, 2006.

Governor