WEST VIRGINIA LEGISLATURE  
SECOND REGULAR SESSION, 2008

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4018

(By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]

Passed March 8, 2008

In Effect from Passage
AN ACT to amend and reenact §12-1A-1, §12-1A-3, §12-1A-4, §12-1A-5, §12-1A-6 and §12-1A-9 of the Code of West Virginia, 1931, as amended, all relating to the renewal of the West Virginia Small Business Linked Deposit Program.

Be it enacted by the Legislature of West Virginia:

That §12-1A-1, §12-1A-3, §12-1A-4, §12-1A-5, §12-1A-6 and §12-1A-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1A. WEST VIRGINIA SMALL BUSINESS LINKED DEPOSIT PROGRAM.

§12-1A-1. Definitions.

1 (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 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 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 deposit be less than zero percent. The linked deposit may be placed with the eligible lending institution for up to seven 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. If the rate is recomputed, the amount of the deposit shall be reduced by the amount of principal paid on the outstanding loan.

(e) "Linked deposit loan" means a loan between an eligible lending institution and an eligible small business for an amount not to exceed two 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 Treasurer receives the linked deposit request. In exchange for providing this reduced rate loan, the eligible lending institution receives a linked deposit. On an annual
date, as determined 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. If the rate is recomputed, the amount of the deposit shall be reduced by the amount of principal paid on the outstanding loan. 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-3. Limitations on investment in linked deposits.

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, the Workers’ Compensation Commission 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, the Bureau of Employment Programs and the Workers’ Compensation Commission 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) After all approvals of the Small Business Development Center and the financial institution have been given for a linked deposit loan, the Small Business Development Center and the financial institution shall forward to the Treasurer a linked deposit loan request in the
§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 request or any portion of a request based on the criteria prescribed by this article.

(b) Upon approving the linked deposit loan request, 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 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 for up to seven 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 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-9. Effective dates.

This article shall be effective from the amendment and
reenactment of this article during the regular session of the
Legislature in two thousand eight, through the first day of
July, two thousand thirteen.
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 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 15th day of ________, 2008.

Governor