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ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 243

(BY SENATORS KESSLER (ACTING PRESIDENT) AND HALL,
BY REQUEST OF THE EXECUTIVE)

[Passed March 12, 2011; to take effect July 1, 2011.]
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AN ACT to amend and reenact §11-13J-4a, §11-13J-6, §11-13J-8 and §11-13J-12 of the Code of West Virginia, 1931, as amended, all relating to the Neighborhood Investment Program Act; specifying that board members who are affiliated, directly or indirectly, with an applicant may not discuss or vote on the applicant’s proposal; increasing total maximum aggregate tax credits certified in any state fiscal year; specifying total maximum aggregate tax credits allowed in any state fiscal year; extending the date for termination of the Neighborhood Investment Program; and providing technical and clerical cleanup.

Be it enacted by the Legislature of West Virginia:

That §11-13J-4a, §11-13J-6, §11-13J-8 and §11-13J-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 13J. NEIGHBORHOOD INVESTMENT PROGRAM.
§11-13J-4a. Neighborhood investment program advisory board.

(a) There is hereby created a neighborhood investment program advisory board, which shall consist of twelve voting members and the chairperson.

(b) Chairperson. —

(1) The Director of the West Virginia Development Office, or the designee of the Director of the West Virginia Development Office, shall be the ex officio chairperson of the neighborhood investment program advisory board.

(2) The chairperson shall vote on actions of the board only in the event of a tie vote, in which case the chairperson's vote shall be the deciding vote.

(c) Board members. —

(1) Four members shall be officers or members of the boards of directors of unrelated corporations which are not affiliated with one another and which are currently licensed to do business in West Virginia.

(2) Four members shall be executive directors, officers or members of the boards of directors of unrelated not-for-profit organizations which are not affiliated with one another which currently hold charitable organization status under Section 501(c)(3) of the Internal Revenue Code and which are currently licensed to do business in West Virginia.

(3) Four members shall be economically disadvantaged citizens of the state that, for the taxable year immediately preceding the year of appointment to the board, had an annual gross personal income that was not more than one hundred twenty-five percent of the federal designated poverty level for personal incomes, and who has been a domiciliary and resident of this state for at least one year at the time of appointment.

A member appointed under this subdivision is not disqualified from completion of his or her term if his or her income
in the year of appointment or in any year subsequent to the
year of appointment exceeds one hundred twenty-five
percent of the federal designated poverty level. A member
shall not be eligible for reappointment under this subdivision
unless he or she meets the original qualifications for ap-
pointment: Provided, That such member may be reappointed
pursuant to qualification under subdivision (1) or (2) of this
subsection if the member meets the requirements of subdivi-
sion (1) or (2), respectively.

(d) Limitations; terms of members; appointments. —

(1) Not more than four members, exclusive of the chairper-
son, shall be appointed from any one congressional district.
Not more than seven of the members, exclusive of the
chairperson, may belong to the same political party. Mem-
bers shall be eligible for reappointment. However, no
member may serve for more than three consecutive terms.

(2) Appointment terms. —

(A) Except for initial appointments described under
subdivision (3) of this subsection, and except for midterm
special appointments made to fill irregular vacancies on the
board, members shall be appointed for terms of three years
each.

(B) Except for midterm special appointments made to fill
irregular vacancies on the board, appointment terms shall
begin on July 1, of the beginning year. All appointment
terms, special and regular, shall end on June 30 of the ending
year.

(3) Selection of members. —

(A) For the initial appointment of members under this
subdivision, members shall be selected by the Director of the
West Virginia Development Office.

(B) At the end of a member's term, the chairperson shall
solicit new member nominations from the board and appoint
the most appropriate person to serve, in compliance with the
requirements set forth in this section.

(C) Vacancies on the board shall be filled in the same
manner as the original appointments for the duration of the
unexpired term.

(e) Quorum; meetings; funding. —

(1) The presence of a majority of the members of the board
constitutes a quorum for the transaction of business. The
board shall elect from among its members a vice chairperson
and such other officers as are necessary.

(2) The board shall meet not less than four times during the
fiscal year, and additional meetings may be held upon a call
of the chairperson or of a majority of the members: Provided,
That no meeting of the board shall be required if the total
amount of tax credits available for the fiscal year have been
alotted.

(3) Board members shall be reimbursed by the West
Virginia Development Office for sums necessary to carry out
responsibilities of the board and for reasonable travel
expenses to attend board meetings.

(f) Annual report. — The board shall make a report to the
Governor and the Legislature within thirty days of the close
of each fiscal year. The report shall include summaries of all
meetings of the board, an analysis of the overall progress of
the program, fiscal concerns, the relative impact the program
is having on the state and any suggestions and policy
recommendations that the board may have. The report shall
be public information made available to the general public
for examination and copying. The board is authorized to
publish the annual report, should the board elect to do so.

(g) Duties of the board. —

(1) Administrative duties. — The board shall be responsible
for advising the West Virginia Development Office concern-
ing the administrative obligations of the program.
(2) Project evaluation and approval; prohibition on project promotion. —

(A) The board shall select and approve projects, which may then be certified by the director of the West Virginia Development Office pursuant to section four of this article.

(B) Only projects sponsored by qualified charitable organizations, as defined in section three of this article, may be approved by the board or certified by the Director of the West Virginia Development Office. An applicant that does not hold current status as a charitable organization under Section 501(c)(3) of the Internal Revenue Code may not receive project approval from the board, or project certification from the Director of the West Virginia Development Office, for any proposed project. Failure of any applicant to provide convincing documentation proving such status as a charitable organization under Section 501(c)(3) of the Internal Revenue Code shall result in automatic denial of project approval and denial of project certification under this article.

(3) Criteria for evaluation. — In evaluating projects for approval, the board shall give priority to projects based upon the following criteria. A proposed project shall be favored if:

(A) The project is community based. A project is community based if:

(i) The project is to be managed locally, without national, state, multistate or international affiliations;

(ii) The project will benefit local citizens in the immediate geographic area where the project is to operate; and

(iii) The sponsor of the project is a local entity, rather than a statewide, national or international organization or an affiliate of a statewide, national or international organization.

(B) The proposed project will primarily serve low income persons.
(C) The proposed project will serve highly distressed neighborhoods or communities.

(D) The project plan incorporates collaborative partnerships among nonprofit groups, businesses, government organizations and other community organizations.

(E) The applicant or sponsor of the project has demonstrated a proven capacity to deliver the proposed services.

(F) The applicant or sponsor of the project historically maintains low administrative costs.

(G) The applicant produces a strong showing of need for the services which the proposed project would provide, and produces convincing documentation of that need.

(H) The proposed project is innovative, novel, creative or unique in program approach.

(4) If an applicant is directly or indirectly affiliated with one or more board members, those members shall not discuss the proposals with one or more board members, and shall not have a vote when that project is considered for final approval or disapproval.

(5) Project approval by the board. — Proposed projects shall be approved or denied approval by a majority vote of the board after competitive comparison with proposed projects of other applicants.

(h) Project certification by the Director of the West Virginia Development Office. —

(1) Upon issuance of approval for a project by the board, the approved project shall be certified by the Director of the West Virginia Development Office: Provided, That no certification may issue for any project, even though the project may have been approved by the board, if the issuance of certification for such project will cause the aggregate amount of tax credits certified to exceed the limitation set forth in this article. No certification may be issued by the
Director of the West Virginia Development Office for any project which has not been approved by the board.

(2) The West Virginia Development Office shall promptly notify applicants of the issuance of certification for their projects, and shall issue tax credit vouchers to certified project applicants in the amount of the tax credit represented by the project.

(3) The West Virginia Development Office may provide incidental technical support and guidance to projects certified under this article and may monitor the progress of the projects. The West Virginia Development Office shall make a quarterly report to the board on the progress of certified projects and the program generally.

§11-13J-6. Application of annual credit allowance.

(a) In general. — The aggregate annual credit allowance for a current tax year is an amount equal to the sum of the following:

(1) The portion allowed under section five of this article for an eligible contribution placed into service or use during a prior tax year; plus

(2) The portion allowed under section five of this article for an eligible contribution placed into service or use during the current tax year.

(b) Application of credit allowance. — The amount determined under subsection (a) of this section shall be allowed as a credit for tax years ending on and after July 1, 1996, as follows:

(1) Business franchise taxes. —

The amount determined under subsection (a) of this section shall be applied to reduce up to fifty percent of the taxes imposed by article twenty-three of this chapter for the tax year determined after application of the credits against tax provided in section seventeen of said article, but before application of any other allowable credits against tax.
(2) Corporation net income taxes. — After application of subdivision (1) of this subsection, any unused credit shall next be applied to reduce up to fifty percent of the taxes imposed by article twenty-four of this chapter, for the tax year determined before application of allowable credits against tax.

(3) Personal income taxes. —

(A) If the eligible taxpayer is an electing small business corporation as defined in Section 1361 of the United States Internal Revenue Code, a limited liability company treated as a partnership for purposes of the federal income tax, a partnership or a sole proprietorship, then any unused credit, after application of subdivisions (1) and (2) of this subsection, shall be allowed as a credit against up to fifty percent of the taxes imposed by article twenty-one of this chapter on income of proprietors, partners or shareholders, subject to the limitations set forth in paragraphs (B) and (C) of this subdivision.

(B) Electing small business corporations, partnerships and other unincorporated organizations shall allocate the credit allowed by this article among the members thereof in the same manner as profits and losses are allocated for the tax year.

(C) Any taxpayer subject to the personal income tax under article twenty-one of this chapter, who makes an eligible contribution to a qualified charitable organization, and receives back from that organization a properly completed neighborhood investment program tax credit voucher, is eligible to claim the credit. The credit shall be allowed without regard to the source of that income, whether it is from wages, passive investment or retirement income, income from a trade or business or any other source.

(c) Unused credit forfeited. — If any credit to an eligible taxpayer remains after application of subsections (a) and (b) of this section, the amount thereof may be carried forward no more than four years from the tax year in which the contrib-
Unused credits of an eligible taxpayer may not be carried forward beyond the time limits imposed under section five of this article and the total maximum aggregate tax credits certified in any state fiscal year may not exceed $3,000,000.

(d) Addition of deductions, decreasing adjustments or decreasing modifications taken in determining taxable income for which credit is taken. — Any deduction, decreasing adjustment or decreasing modification taken by any taxpayer in determining federal taxable income which affects West Virginia taxable income or in determining West Virginia taxable income under article twenty-one or twenty-four of this chapter for the taxable year for any charitable contribution, or payment or portion thereof, which qualifies as an eligible contribution under this article and for which credit is claimed, shall be added to West Virginia taxable income in determining the tax liability of the taxpayer under article twenty-one or twenty-four of this chapter, as appropriate, before application of the credit allowed under this article for the taxable year.

(e) Annual limit. — The aggregate annual credit allowance to any taxpayer may not exceed $100,000 in any tax year.

§11-13J-8. Total maximum aggregate tax credit amount.

(a) The amount of tax credits allowed under this article may not exceed $3,000,000 in any state fiscal year.

(b) Applications for project certification shall be filed with the West Virginia Development Office. The West Virginia Development Office shall record the date each application is filed. All complete and valid applications shall be considered for approval or disapproval in a timely manner by the neighborhood assistance advisory board. The board may, in its discretion, consider applications for approval or disapproval at special or interim meetings for expedited processing.

(c) When the total amount of tax credits certified under this article equals the maximum amount of tax credits...
allowed, as specified in subsection (a) of this section, in any
state fiscal year, no further certifications shall be issued in
that same fiscal year. Upon approval of a project by the
board, the Director of the West Virginia Development Office
shall certify the approved project unless certification is
prohibited by the limitations and requirements set forth in
this article.

(d) All applications filed in any state fiscal year and not
certified during the state fiscal year in which they are filed
shall be null and void by operation of law on the last day of
the state fiscal year in which they are filed, and all appli-
cants which elect to seek certification of a project plan shall
file anew on and after the first day of the succeeding state
fiscal year.

§11-13J-12. Program evaluation; expiration of credit; preservation
of entitlement.

Beginning on December 15, 2005, and every second year
thereafter, the director shall secure an independent review
of the neighborhood investment program created by this
article and present the findings to the Joint Committee on
Government and Finance. Unless sooner terminated by law,
the Neighborhood Investment Program Act terminates on
July 1, 2016. There is no entitlement to the tax credit under
this article for a contribution made to a certified project
after July 1, 2016, and no credit is available to any taxpayer
for any contribution made after that date. Taxpayers which
have gained entitlement to the credit pursuant to eligible
collections made to certified projects prior to July 1, 2016,
shall retain that entitlement and apply the credit in due
course pursuant to the requirements and limitations 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.

To take effect July 1, 2011.

Clerk of the Senate

Clerk of the House of Delegates

Acting President of the Senate

Speaker of the House of Delegates

The within is approved this the...

Day of... 2011.

Governor