

H. B. 2836

(By Mr. Speaker, (Mr. Thompson) and Delegate Armstead)
[By Request of the Executive]
[Introduced January 25, 2011; referred to the
Committee on Finance.]

A BILL 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 clean-up.

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.

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

4 (b) *Chairperson.* --

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

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

12 (c) *Board members.* --

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

17 (2) Four members shall be executive directors, officers or
18 members of the boards of directors of unrelated not-for-profit
19 organizations which are not affiliated with one another which
20 currently hold charitable organization status under Section
21 501(c)(3) of the Internal Revenue Code and which are currently
22 licensed to do business in West Virginia.

23 (3) Four members shall be economically disadvantaged citizens
24 of the state that, for the taxable year immediately preceding the
25 year of appointment to the board, had an annual gross personal
26 income that was not more than one hundred twenty-five percent of

1 the federal designated poverty level for personal incomes, and who
2 has been a domiciliary and resident of this state for at least one
3 year at the time of appointment.

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

14 (d) *Limitations; terms of members; appointments.* --

15 (1) Not more than four members, exclusive of the chairperson,
16 shall be appointed from any one congressional district. Not more
17 than seven of the members, exclusive of the chairperson, may belong
18 to the same political party. Members shall be eligible for
19 reappointment. However, no member may serve for more than three
20 consecutive terms.

21 (2) *Appointment terms.* --

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

26 (B) Except for midterm special appointments made to fill

1 irregular vacancies on the board, appointment terms shall begin on
2 July 1, of the beginning year. All appointment terms, special and
3 regular, shall end on June 30 of the ending year.

4 (3) *Selection of members.* --

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

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

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

15 (e) *Quorum; meetings; funding.* --

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

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

25 (3) Board members shall be reimbursed by the West Virginia
26 Development Office for sums necessary to carry out responsibilities

1 of the board and for reasonable travel expenses to attend board
2 meetings.

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

13 (g) *Duties of the board.* --

14 (1) *Administrative duties.* -- The board shall be responsible
15 for advising the West Virginia Development Office concerning the
16 administrative obligations of the program.

17 (2) *Project evaluation and approval; prohibition on project*
18 *promotion.* --

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

22 (B) Only projects sponsored by qualified charitable
23 organizations, as defined in section three of this article, may be
24 approved by the board or certified by the Director of the West
25 Virginia Development Office. An applicant that does not hold
26 current status as a charitable organization under Section 501(c)(3)

1 of the Internal Revenue Code may not receive project approval from
2 the board, or project certification from the Director of the West
3 Virginia Development Office, for any proposed project. Failure of
4 any applicant to provide convincing documentation proving such
5 status as a charitable organization under Section 501(c)(3) of the
6 Internal Revenue Code shall result in automatic denial of project
7 approval and denial of project certification under this article.

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

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

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

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

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

20 (B) The proposed project will primarily serve low income
21 persons.

22 (C) The proposed project will serve highly distressed
23 neighborhoods or communities.

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

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

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

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

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

10 (4) ~~In the event that~~ If an applicant is directly or
11 indirectly affiliated with one or more board members, those members
12 and may not discuss the proposals with the board, but may not have
13 a vote when that project is considered for final approval or
14 disapproval.

15 (5) *Project approval by the board.* -- Proposed projects shall
16 be approved or denied approval by a majority vote of the board
17 after competitive comparison with proposed projects of other
18 applicants.

19 (h) *Project certification by the Director of the West Virginia*
20 *Development Office.* --

21 (1) Upon issuance of approval for a project by the board, the
22 approved project shall be certified by the Director of the West
23 Virginia Development Office: *Provided*, That no certification may
24 issue for any project, even though the project may have been
25 approved by the board, if the issuance of certification for such
26 project will cause the aggregate amount of tax credits certified to

1 exceed the limitation set forth in this article. No certification
2 may be issued by the Director of the West Virginia Development
3 Office for any project which has not been approved by the board.

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

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

14 **§11-13J-6. Application of annual credit allowance.**

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

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

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

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

26 (1) *Business franchise taxes.* --

1 The amount determined under subsection (a) of this section
2 shall be applied to reduce up to fifty percent of the taxes imposed
3 by article twenty-three of this chapter for the tax year ~~as~~
4 determined after application of the credits against tax provided in
5 section seventeen of said article, but before application of any
6 other allowable credits against tax.

7 (2) *Corporation net income taxes.* -- After application of
8 subdivision (1) of this subsection, any unused credit shall next be
9 applied to reduce up to fifty percent of the taxes imposed by
10 article twenty-four of this chapter, for the tax year determined
11 before application of allowable credits against tax.

12 (3) *Personal income taxes.* --

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

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

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

10 (c) *Unused credit forfeited.* -- If any credit to an eligible
11 taxpayer remains after application of subsections (a) and (b) of
12 this section, the amount thereof may be carried forward no more
13 than four years from the tax year in which the contribution was
14 made. Unused credits of an eligible taxpayer may not be carried
15 forward beyond the time limits imposed under section five of this
16 article and the total maximum aggregate tax credits certified in
17 any state fiscal year may not exceed ~~\$2,000,000~~ \$3,000.000.

18 (d) *Addition of deductions, decreasing adjustments or*
19 *decreasing modifications taken in determining taxable income for*
20 *which credit is taken.* -- Any deduction, decreasing adjustment or
21 decreasing modification taken by any taxpayer in determining
22 federal taxable income which affects West Virginia taxable income
23 or in determining West Virginia taxable income under article
24 twenty-one or twenty-four of this chapter for the taxable year for
25 any charitable contribution, or payment or portion thereof, which
26 qualifies as an eligible contribution under this article and for

1 which credit is claimed, shall be added to West Virginia taxable
2 income in determining the tax liability of the taxpayer under
3 article twenty-one or twenty-four of this chapter, as appropriate,
4 before application of the credit allowed under this article for the
5 taxable year.

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

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

9 (a) The amount of tax credits allowed under this article may
10 not exceed ~~two million five hundred thousand dollars~~ \$3,000,000 in
11 any state fiscal year.

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

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

1 requirements set forth in this article.

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

8 **§11-13J-12. Program evaluation; expiration of credit;**
 9 **preservation of entitlement.**

10 Beginning on December 15, 2005, and every second year
 11 thereafter, the director shall secure an independent review of the
 12 neighborhood investment program created by this article and present
 13 the findings to the Joint Committee on Government and Finance.
 14 Unless sooner terminated by law, the Neighborhood Investment
 15 Program Act terminates on ~~July 1, 2011~~ July 1, 2016. There is no
 16 entitlement to the tax credit under this article for a contribution
 17 made to a certified project after ~~July 1, 2011~~ July 1, 2016, and no
 18 credit is available to any taxpayer for any contribution made after
 19 that date. Taxpayers which have gained entitlement to the credit
 20 pursuant to eligible contributions made to certified projects prior
 21 to ~~July 1, 2011~~ July 1, 2016, shall retain that entitlement and
 22 apply the credit in due course pursuant to the requirements and
 23 limitations of this article.

NOTE: The purpose of this bill is to change the termination date for the Neighborhood Investment Program from July 1, 2011 to

July 1, 2016, to prevent board members affiliated with applicants from discussing or voting on proposals put forth by those applicants, to increase the amount of total aggregate tax credit certified each year from \$2 million to \$3 million and to increase the amount of total aggregate tax credit allowed each year from \$2.5 million to \$3 million.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.