

# **WEST VIRGINIA LEGISLATURE**

**2016 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 293**

BY SENATORS WALTERS, BOSO AND SYPOLT

[Originating in the Committee on Finance;

reported on February 16, 2016.]



1 A BILL to amend and reenact §11-13J-3, §11-13J-4, §11-13J-4a, §11-13J-10 and §11-13J-12 of  
2 the Code of West Virginia, 1931, as amended, all relating generally to Neighborhood  
3 Investment Program Act; reauthorizing act until July 1, 2021; defining terms “community  
4 based” and “emergency assistance”; modifying definition of “economically disadvantaged  
5 area”; reducing frequency of required project transferee reports; reducing number of  
6 required advisory board meetings; reducing required number of West Virginia  
7 Development Office reports to the board; eliminating guidance on what a community  
8 based project is when the board is evaluating a project; removing requirement that Tax  
9 Commissioner annually publish addresses of taxpayers who claim the credit; and reducing  
10 frequency of program assessments by the director.

*Be it enacted by the Legislature of West Virginia:*

1 That §11-13J-3, §11-13J-4, §11-13J-4a, §11-13J-10 and §11-13J-12 of the Code of West  
2 Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 13J. NEIGHBORHOOD INVESTMENT PROGRAM.**

**§11-13J-3. Definitions.**

1 (a) *General.* — When used in this article, or in the administration of this article, terms  
2 defined in subsection (b) of this section have the meanings ascribed to them by this section,  
3 unless a different meaning is clearly required by either the context in which the term is used, or  
4 by specific definition in this article.

5 (b) *Terms defined.* —

6 (4) “Affiliate” includes all business entities which are affiliates of each other when either  
7 directly or indirectly:

8 (A) One business entity controls or has the power to control the other business entity; or

9 (B) A third party or third parties control or have the power to control both affiliates. In

10 determining whether business entities are independently owned and operated and whether or not

11 affiliation exists, consideration shall be given to all appropriate factors, including common  
12 ownership, common management and contractual relationships.

13 ~~(2)~~ "Capacity building" means to generally enhance the capacity of the community to  
14 achieve improvements and to obtain the community services described in subparagraphs (i)  
15 through (v), inclusive, of the definition of that term, as set forth in ~~subdivision (4)~~ of this subsection.

16 Capacity building includes, but is not limited to, improvement of the means, or capacity, to:

17 (i) Access, obtain and use private, charitable and governmental assistance programs,  
18 administrative assistance and private, charitable and governmental resources or funds;

19 (ii) Fulfill legal, bureaucratic and administrative requirements and qualifications for  
20 accessing assistance, resources or funds; and

21 (iii) Attract and direct political and community attention to needs of the community for the  
22 purpose of increasing access to and use of assistance, resources or funds for a given purpose,  
23 goal or need.

24 ~~(3)~~ "Commissioner or Tax Commissioner" are used interchangeably in this article and  
25 mean the Tax Commissioner of the State of West Virginia, or his or her delegate.

26 ~~(4)~~ "Community services" means services, provided at no charge whatsoever, of:

27 (i) Providing any type of health, personal finance, psychological or behavioral, religious,  
28 legal, marital, educational or housing counseling and advice to economically disadvantaged  
29 citizens or a specifically designated group of economically disadvantaged citizens or in an  
30 economically disadvantaged area;

31 (ii) Providing emergency assistance or medical care to economically disadvantaged  
32 citizens or to a specifically designated group of economically disadvantaged citizens or in an  
33 economically disadvantaged area;

34 (iii) Establishing, maintaining or operating recreational facilities, or housing facilities for  
35 economically disadvantaged citizens or a specifically designated group of economically  
36 disadvantaged citizens or in an economically disadvantaged area;

37 (iv) Providing economic development assistance to economically disadvantaged citizens  
38 or a specifically designated group of economically disadvantaged citizens; without regard to  
39 whether they are located in an economically disadvantaged area, or to individuals, groups or  
40 neighborhood or community organizations, in an economically disadvantaged area; or

41 (v) Providing community technical assistance and capacity building to economically  
42 disadvantaged citizens or a specifically designated group of economically disadvantaged citizens,  
43 or to individuals, groups or neighborhood or community organizations in an economically  
44 disadvantaged area.

45 ~~(5)~~ "Compensation" means wages, salaries, commissions and any other form of  
46 remuneration paid to employees for personal services.

47 "Community-based" means:

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

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

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

54 ~~(6)~~ "Corporation" means any corporation, joint-stock company or association and any  
55 business conducted by a trustee or trustees in which interest or ownership is evidenced by a  
56 certificate of interest or ownership or similar written instrument.

57 ~~(7)~~ "Crime prevention" means any activity which aids in the reduction of crime.

58 ~~(8)~~ "Delegate" in the phrase "or his or her delegate", when used in reference to the Tax  
59 Commissioner, means any officer or employee of the Tax Division of the Department of Revenue  
60 duly authorized by the Tax Commissioner directly, or indirectly by one or more redelegations of  
61 authority, to perform the functions mentioned or described in this article.

62           ~~(9)~~ “Director or Director of the West Virginia Development Office” means the Director of  
63 the West Virginia Development Office.

64           ~~(10)~~ “Economically disadvantaged area” means

65           ~~(A) In a municipality. — Any area not exceeding fifteen square miles in West Virginia which~~  
66 ~~contains any portion of an incorporated municipality;~~

67           ~~(i) In which area the aggregate poverty rate of persons residing in the area, based upon~~  
68 ~~the most recent decennial census of population, is at least one hundred twenty-five percent of the~~  
69 ~~statewide poverty rate; and~~

70           ~~(ii) That is certified as an economically disadvantaged area by the West Virginia~~  
71 ~~Development Office;~~

72           ~~(B) In a rural area. — Any area not exceeding twenty-five square miles in West Virginia:~~

73           ~~(i) Which area is located in a rural area and which contains no incorporated municipalities~~  
74 ~~or portions thereof;~~

75           ~~(ii) In which area the aggregate poverty rate of persons residing in the area, based upon~~  
76 ~~the most recent decennial census of population, is at least one hundred twenty-five percent of the~~  
77 ~~statewide poverty rate; and~~

78           ~~(iii) That is certified as an economically disadvantaged area by the West Virginia~~  
79 ~~Development Office;~~

80           ~~(C) An economically disadvantaged area qualifies only pursuant to a certification issued~~  
81 ~~by the West Virginia Development Office. The certifications issued by the West Virginia~~  
82 ~~Development Office expire after the passage of five calendar years, unless specifically limited to~~  
83 ~~a shorter time by specific order of the West Virginia Development Office, and no area shall hold~~  
84 ~~the status of a certified economically disadvantaged area for a period of time greater than ten~~  
85 ~~years, either consecutively or in the aggregate;~~

86           ~~(D) The certification of an economically disadvantaged area shall be made on the basis of~~  
87 ~~a determination by the Development Office that an area meets the poverty criteria established in~~  
88 ~~paragraphs (A) and (B) of this subdivision;~~

89 ~~(E) No economically disadvantaged area may be certified within twenty-five miles of any~~  
90 ~~other certified economically disadvantaged area. Not more than six economically disadvantaged~~  
91 ~~areas may hold the status of certified economically disadvantaged areas at any one time in this~~  
92 ~~state;~~

93 ~~(F) At least a majority of all economically disadvantaged areas holding designations as~~  
94 ~~economically disadvantaged areas at any one time shall be located in rural areas; and~~

95 ~~(G) The certification shall be filed with the Secretary of State and shall specifically set forth~~  
96 ~~the boundaries of the economically disadvantaged area by both description and map, the date of~~  
97 ~~certification of the area as an economically disadvantaged area, the date on which the certification~~  
98 ~~will terminate and a statement of the director's findings as to the aggregate poverty rate of persons~~  
99 ~~living in the certified economically disadvantaged area. any region of the state with a poverty rate~~  
100 ~~greater than the average statewide poverty rate as determined by the U. S. Census Bureau's~~  
101 ~~most recently published data.~~

102 ~~(11) "Economically disadvantaged citizen" means a natural person, who during the current~~  
103 ~~taxable year has, or during the immediately preceding taxable year had, an annual gross personal~~  
104 ~~income not exceeding one hundred twenty-five percent of the federal designated poverty level for~~  
105 ~~personal incomes, and who is a domiciliary and resident of this state.~~

106 ~~(12) "Education" means any type of scholastic instruction to, or scholarship by, an~~  
107 ~~individual that enables that individual to prepare for better life opportunities. Education does not~~  
108 ~~include courses in physical training, physical conditioning, physical education, sports training,~~  
109 ~~sports camps and similar training or conditioning courses, except for physical therapy prescribed~~  
110 ~~by a physician or other person licensed to prescribe courses of medical treatment under this code.~~

111 ~~(13) "Eligible contribution" consists of:~~

112 ~~(A)(i) Cash;~~

113 ~~(ii) Tangible personal property, valued at its fair market value;~~

114 ~~(iii) Real property, valued at its fair market value;~~

115 (iv) In-kind professional services, valued at seventy-five percent of fair market value; and  
116 (v) Publicly traded common or preferred stock representing ownership in a corporation,  
117 valued at its fair market value in accordance with the regulations of the Internal Revenue Service:  
118 *Provided*, That contributed stock shall be sold by the project transferee within one hundred eighty  
119 days of its receipt.

120 (B) For purposes of this definition, the value of in-kind professional services will not qualify  
121 as an eligible contribution unless the services are:

122 (i) Reasonably priced and valued, and reasonably necessary services customarily and  
123 normally provided by the contributor in the normal course of business to customers, clients or  
124 patients other than those encompassed by the project plan;

125 (ii) Not reimbursable, in whole or in part, from sources other than the tax credit provided  
126 under this article; and

127 (iii) Services which are not available without cost elsewhere in the community;

128 (C) "Professional services" means only those services provided directly by a physician  
129 licensed to practice in this state, those services provided directly by a dentist licensed to practice  
130 in this state, those services provided directly by a lawyer licensed to practice in this state, those  
131 services provided directly by a registered nurse, licensed practical nurse, dental hygienist or other  
132 health care professional licensed to practice in this state, those services provided directly by a  
133 certified public accountant or public accountant licensed to practice in this state, and those  
134 services provided directly by an architect licensed to practice in this state;

135 (D) *Minimum contribution.* — No contribution of cash, stock, property or professional  
136 services or any combination thereof contributed in any tax year by any taxpayer having a fair  
137 market value of less than \$500 qualifies as an eligible contribution;

138 (E) *Maximum contribution.* — No contribution of cash, stock, property or professional  
139 services or any combination thereof contributed in any tax year by any taxpayer having a fair  
140 market value in excess of \$200,000 qualifies as an eligible contribution; and



141 (F) *Limitations.* — Not more than twenty-five percent of total eligible contributions to a  
142 certified project may be in-kind contributions. Not more than twenty-five percent of total eligible  
143 contributions made by any taxpayer to any certified project may be in-kind contributions.

144 ~~(14)~~ *Eligible taxpayer.* —

145 (A) “Eligible taxpayer” means any person subject to the taxes imposed by article twenty-  
146 one, twenty-three or twenty-four of this chapter which makes an eligible contribution to a qualified  
147 charitable organization pursuant to the terms of a certified project plan for the purpose of providing  
148 neighborhood assistance, community services or crime prevention, or for the purpose of providing  
149 job training or education for individuals not employed by the contributing taxpayer or an affiliate  
150 of the contributing taxpayer or a person related to the contributing taxpayer;

151 (B) “Eligible taxpayer” also includes an affiliated group of taxpayers if the group elects to  
152 file a consolidated corporation net income tax return under article twenty-four of this chapter and  
153 if one or more affiliates included in the affiliated group would qualify as an eligible taxpayer under  
154 paragraph (A) of this subdivision.

155 “Emergency assistance” means the provision of basic needs including shelter, clothing,  
156 food, water, medical attention or supplies, personal safety, or funds to obtain these to an individual  
157 facing circumstances that prevent him or her from securing or maintaining these basic needs.

158 ~~(15)~~ “Includes and including”, when used in a definition contained in this article, shall not  
159 be considered to exclude other things otherwise within the meaning of the term defined.

160 ~~(16)~~ “Job training” means instruction to an individual that enables the individual to acquire  
161 vocational skills to become employable or able to seek a higher grade of employment.

162 ~~(17)~~ “Natural person or individual” means a human being. The terms “natural person” and  
163 “individual” do not mean, and specifically exclude, any corporation, limited liability company,  
164 partnership, joint venture, trust, organization, association, agency, governmental subdivision,  
165 syndicate, affiliate or affiliation, group, unit or any entity other than a human being.

166 ~~(18)~~ “Neighborhood assistance” means either:

167 (A) Furnishing financial assistance, labor, material and technical advice to aid in the  
168 physical or economic improvement of any part or all of an economically disadvantaged area; or

169 (B) Furnishing technical advice to promote higher employment in an economically  
170 disadvantaged area.

171 ~~(19)~~ “Neighborhood organization” means any organization:

172 (A) Which is performing community services, as defined in this section; and

173 (B) Which is exempt from income taxation under Section 501(c)(3) of the Internal Revenue  
174 Code.

175 ~~(20)~~ “Partnership and partner” includes a syndicate, group, pool, joint venture or other  
176 unincorporated organization through or by means of which any business, financial operation or  
177 venture is carried on, and which is not a trust or estate, a corporation or a sole proprietorship. The  
178 term “partner” includes a member in a syndicate, group, pool, joint venture or organization.

179 ~~(21)~~ “Person” includes any natural person, corporation, limited liability company or  
180 partnership.

181 ~~(22)~~ “Project transferee” means any neighborhood organization, qualified charitable  
182 organization, charitable organization or other organization, entity or person that receives an  
183 eligible contribution or part of an eligible contribution from an eligible taxpayer for the purpose of  
184 directly or indirectly providing neighborhood assistance, community services or crime prevention,  
185 or for the purpose of providing job training or education or other services or assistance pursuant  
186 to a project plan. The project transferee is typically the first entity or person receiving eligible  
187 contributions from eligible taxpayers under a project plan. However, in the case of eligible  
188 contributions of in-kind services or other eligible contributions or portions of those contributions  
189 made pursuant to a certified project plan directly to indigent, disadvantaged or needy persons,  
190 economically disadvantaged citizens or other persons or organizations under the sponsorship or  
191 auspices of any neighborhood organization, qualified charitable organization, charitable  
192 organization or other organization, entity or person as a certified project participant, the eligible

193 contributions shall be considered to have been made to the entity, organization or person under  
194 whose sponsorship or auspices the eligible contributions are made, and that entity, organization  
195 or person is considered to be the project transferee with relation to those eligible contributions.  
196 The project transferee is the entity, organization or person that is liable under this article for  
197 payment of the project certification fee to the West Virginia Development Office. The term “project  
198 transferee” means and includes any considered project transferee, considered as such under the  
199 provisions of this article.

200 ~~(23)~~ “Qualified charitable organization” means a neighborhood organization, as defined in  
201 this section, which is the sponsor of a project which has received certification by the Director of  
202 the West Virginia Development Office pursuant to the requirements of this article: *Provided*, That  
203 no organization may qualify as a qualified organization for purposes of this article if the  
204 organization is not registered with this state as required under the Solicitation of Charitable Funds  
205 Act.

206 ~~(24)~~ “Related person” or “person related to” a stated taxpayer means:

207 (A) An individual, corporation, partnership, affiliate, association or trust or any combination  
208 or group thereof controlled by the taxpayer;

209 (B) An individual, corporation, partnership, affiliate, association or trust or any combination  
210 or group thereof that is in control of the taxpayer;

211 (C) An individual, corporation, partnership, affiliate, association or trust or any combination  
212 or group thereof controlled by an individual, corporation, partnership, affiliate, association or trust  
213 or any combination or group thereof that is in control of the taxpayer; or

214 (D) A member of the same controlled group as the taxpayer.

215 For purposes of this article, “control”, with respect to a corporation means ownership,  
216 directly or indirectly, of stock possessing fifty percent or more of the total combined voting power  
217 of all classes of the stock of the corporation which entitles its owner to vote. “Control”, with respect  
218 to a trust, means ownership, directly or indirectly, of fifty percent or more of the beneficial interest

219 in the principal or income of the trust. The ownership of stock in a corporation, of a capital or  
220 profits interest in a partnership or association or of a beneficial interest in a trust shall be  
221 determined in accordance with the rules for constructive ownership of stock provided in Section  
222 267(c), other than paragraph (3) of that section, of the United States Internal Revenue Code, as  
223 amended.

224 ~~(25)~~ "State fiscal year" means a twelve-month period beginning on July 1 and ending on  
225 June 30.

226 ~~(26)~~ "Taxpayer" means any person subject to the tax imposed by article twenty-one,  
227 twenty-three or twenty-four of this chapter, or any one or combination of the articles of this chapter.

228 ~~(27)~~ "Technical assistance" means:

229 (A) Assistance in understanding, using and fulfilling the legal, bureaucratic and  
230 administrative requirements and qualifications which must be negotiated for the purpose of  
231 effectively accessing, obtaining and using private, charitable, not-for-profit or governmental  
232 assistance, resources or funds, and maximizing the value of the assistance, resources or fund;

233 (B) Assistance provided by any person holding a license under West Virginia law to  
234 practice any licensed profession or occupation, by which the person, in the practice of the  
235 profession or occupation, assists economically disadvantaged citizens or the persons in an  
236 economically disadvantaged area by:

237 (i) Providing any type of health, personal finance, psychological or behavioral, religious,  
238 legal, marital, educational or housing counseling and advice to economically disadvantaged  
239 citizens or a specifically designated group of economically disadvantaged citizens or in an  
240 economically disadvantaged area;

241 (ii) Providing emergency assistance or medical care to economically disadvantaged  
242 citizens or to a specifically designated group of economically disadvantaged citizens or in an  
243 economically disadvantaged area;

244 (iii) Establishing, maintaining or operating recreational facilities, or housing facilities for  
245 economically disadvantaged citizens or a specifically designated group of economically  
246 disadvantaged citizens or in an economically disadvantaged area;

247 (iv) Providing economic development assistance to economically disadvantaged citizens  
248 or a specifically designated group of economically disadvantaged citizens, without regard to  
249 whether they are located in an economically disadvantaged area, or to individuals, groups or  
250 neighborhood or community organizations, in an economically disadvantaged area; or

251 (v) Providing community technical assistance and capacity building to economically  
252 disadvantaged citizens or a specifically designated group of economically disadvantaged citizens  
253 or to individuals, groups or neighborhood or community organizations in an economically  
254 disadvantaged area.

**§11-13J-4. Eligibility for tax credits; creation of neighborhood investment fund;  
certification of project plans by the West Virginia Development Office.**

1 (a) A neighborhood organization which seeks to sponsor a project and have that project  
2 certified pursuant to this article shall submit to the director of the West Virginia Development Office  
3 an application for certification of a project plan, in such form as the director shall prescribe, setting  
4 forth the project to be implemented, the identity of all project participant organizations, the  
5 economically disadvantaged citizens or a specifically designated group of economically  
6 disadvantaged citizens, to be assisted by the project, or the economically disadvantaged area or  
7 areas selected for assistance by the project, the amount of total tax credits to be created by the  
8 proposed project pursuant to the receipt of eligible contributions from eligible taxpayers under this  
9 article, the amount of the total estimated eligible contributions to be received pursuant to the  
10 project and the schedule for implementing the project.

11 (b) *Project certification fee; payment of costs; revolving fund.* —

12 (1) (A) *Project certification fee.* — Any project transferee that receives eligible  
13 contributions under or pursuant to a certified project plan shall pay to the West Virginia

14 Development Office a project certification fee in the amount of three percent of the amount of the  
15 total eligible contributions received by such project transferee pursuant to the certified project  
16 plan. The project certification fee shall be paid to the West Virginia Development Office within  
17 thirty days of the receipt of any eligible contribution, or portion thereof.

18 (B) *Eligible contributions made through direct service to end users or recipients, or*  
19 *contributions to end users or recipients.* — In the case of eligible contributions of in-kind services  
20 or other eligible contributions or portions thereof made pursuant to a certified project plan and  
21 contributed or provided directly to indigent, disadvantaged or needy persons, economically  
22 disadvantaged citizens or other persons or organizations made under the sponsorship or  
23 auspices of any neighborhood organization, qualified charitable organization, charitable  
24 organization or other organization, entity or person as a certified project participant, such eligible  
25 contributions shall be deemed to have been made to the entity, organization or person under  
26 whose sponsorship or auspices such eligible contributions are made, and that entity, organization  
27 or person is deemed to be the project transferee with relation to those eligible contributions. Such  
28 deemed project transferee shall be liable for the project certification fee due for such eligible  
29 contributions.

30 (C) *Computation of fee based on fair market value.* — In the case of eligible contributions  
31 consisting of in-kind services, tangible personal property or realty, the project transferee shall pay  
32 to the West Virginia Development Office a project certification fee in the amount of three percent  
33 of the fair market value of eligible contributions received pursuant to the certified project plan.

34 (2) *Sanctions for failure to timely pay the project certification fee.* — Failure to timely pay  
35 the project certification fee imposed by this section shall be grounds for imposition of any of the  
36 following sanctions, to be imposed by the Director of the West Virginia Development Office at the  
37 discretion of the director:

38 (A) *Prospective revocation of the project certification.* —

39 No tax credit shall be allowed for any project for which certification has been revoked for  
40 periods subsequent to the effective date of revocation. Credit taken by any taxpayer in  
41 accordance with this article pursuant to the making of an eligible contribution to a project  
42 transferee pursuant to a certified project plan prior to the effective date of revocation of project  
43 certification shall not be subject to recapture by reason of revocation of the certification. However,  
44 such credit shall otherwise be subject to audit and adjustment or recapture in accordance with  
45 the requirements of this article.

46 (B) *Retroactive withdrawal of the project certification.* —

47 No tax credit shall be allowed for any project for which certification has been withdrawn.  
48 Credit taken by any taxpayer in accordance with this article pursuant to the making of an eligible  
49 contribution to a project transferee pursuant to a certified project plan for which certification is  
50 later withdrawn pursuant to the provisions of this section shall be subject to recapture upon  
51 withdrawal of the certification.

52 (C) *Suspension of the project certification for a stated period of time.* —

53 No tax credit shall be allowed for contributions made during the suspension period for a  
54 project. Credit taken by any taxpayer in accordance with this article pursuant to the making of an  
55 eligible contribution to a project transferee pursuant to a certified project plan prior to or  
56 subsequent to the suspension period shall not be subject to recapture by reason of the  
57 suspension. However, such credit shall otherwise be subject to audit and adjustment or recapture  
58 in accordance with the requirements of this article.

59 (D) *Temporary or permanent disqualification of one or more project transferees,  
60 neighborhood organizations, qualified charitable organizations, charitable organizations or other  
61 organizations, entities or persons from participation in a particular specified certified project.* —

62 No tax credit shall be allowed under this article for any contribution made during the  
63 disqualification period to any project transferee, neighborhood organization, qualified charitable  
64 organization, charitable organization or other organization, entity or person disqualified under this

65 section from participation in a certified project. Tax credit taken by any taxpayer in accordance  
66 with this article pursuant to the making of an eligible contribution to any project transferee,  
67 neighborhood organization, qualified charitable organization, charitable organization or other  
68 organization, entity or person pursuant to a certified project plan prior to or subsequent to the  
69 disqualification period shall not be subject to recapture by reason of the disqualification of the  
70 recipient thereof. However, such credit shall otherwise be subject to audit and adjustment or  
71 recapture in accordance with the requirements of this article.

72 (E) *Temporary or permanent disqualification of any project transferee, neighborhood*  
73 *organization, qualified charitable organization, charitable organization or other organization, entity*  
74 *or person, or group thereof, from participation in any and all certified projects currently in existence*  
75 *or to be formed, proposed or certified under this article. —*

76 (i) No tax credit shall be allowed under this article for any contribution made during the  
77 disqualification period to any project transferee, neighborhood organization, qualified charitable  
78 organization, charitable organization or other organization, entity or person disqualified under this  
79 section from participation in any and all certified projects under this article. Tax credit taken by  
80 any eligible taxpayer in accordance with this article pursuant to the making of an eligible  
81 contribution to the project transferee, neighborhood organization, qualified charitable  
82 organization, charitable organization or other organization, entity or person disqualified from  
83 participation in any and all certified projects under this article, pursuant to a certified project plan  
84 prior to or subsequent to the disqualification period shall not be subject to recapture by reason of  
85 the disqualification. However, such credit shall otherwise be subject to audit and adjustment or  
86 recapture in accordance with the requirements of this article; and

87 (ii) No certification shall be issued during the disqualification period for any proposed  
88 project in which a project transferee, neighborhood organization, qualified charitable organization,  
89 charitable organization or other organization, entity or person disqualified under this section from  
90 participation in any and all certified projects is listed as a proposed project participant.



91 (F) Any combination of the aforementioned sanctions.

92 (3) *Audits and investigations.* — The West Virginia Development Office or the Department  
93 of Revenue, or both, may initiate and carry out investigations or audits of any recipient of any  
94 eligible contribution under this article, any eligible taxpayer or any project transferee to determine  
95 whether the project certification fee imposed by this section has been paid in accordance with the  
96 requirements of this article.

97 (4) *Procedures, failure to timely pay the project certification fee upon written demand.* —

98 (A) *Written demand.* — The Director of the West Virginia Development Office shall, upon  
99 a reasonable belief that a project transferee has failed to timely pay the fee imposed by this  
100 section, issue a written demand for payment thereof, plus interest determined at the interest rate  
101 prescribed under section seventeen, article ten of this chapter, in such form as the Director of the  
102 West Virginia Development Office may specify. The Director of the West Virginia Development  
103 Office may also impose a penalty for failure to timely pay the project certification fee in the amount  
104 of twenty percent of the amount of the project certification fee due and interest due. Such demand  
105 shall notify the project transferee of the opportunity to show that the project certification fee is not  
106 due and owing.

107 (B) *Failure to pay pursuant to written demand.* —

108 Failure of the project transferee to pay any project certification fee due, with interest and  
109 penalties, as stated in the written demand for payment of the project certification fee, within thirty  
110 days of service of such demand, and failure of the project transferee to prove to the satisfaction  
111 of the Director of the West Virginia Development Office that the fee imposed by this section is not  
112 due and owing, shall result in a determination by the Director of the West Virginia Development  
113 Office that sanctions shall apply.

114 (C) *Notice of pending sanctions.* — Upon the making of a determination by the Director of  
115 the West Virginia Development Office that sanctions for failure to pay the project certification fee  
116 apply, the Director of the West Virginia Development Office shall serve upon the project transferee

117 from which the project certification fee, or some portion thereof, is due and owing, a notice of  
118 pending sanctions. If the project transferee from which the certified project fee, or some portion  
119 thereof, is due and owing is not the applicant for project certification, then an informational copy  
120 of the notice of pending sanctions shall also be served upon the applicant for project certification.

121 (D) *Service of notice, content of notice.* — The notice of pending sanctions shall be served  
122 upon the delinquent project transferee in the same manner as an assessment of tax in accordance  
123 with article ten of this chapter. Such notice of pending sanctions shall state the sanctions to be  
124 applied in accordance with this section, the effective date or dates of such sanctions, with specific  
125 statements of whether any sanction is to be applied retroactively or in part retroactively, and the  
126 commencement and termination dates for any suspensions of certification or temporary  
127 disqualifications of any program transferee, neighborhood organization, qualified charitable  
128 organization, charitable organization or other organization, entity or person to be disqualified  
129 under this section from participation in certified projects. The notice of pending sanctions shall  
130 state that sanctions shall be imposed sixty days after service of the notice of pending sanctions  
131 upon the delinquent project transferee, unless the delinquent project transferee pays the amount  
132 of the project certification fee due and owing, plus interest and penalties.

133 (E) *Appeals.* — The project transferee may file an appeal of pending sanctions as if the  
134 notice of pending sanctions were an assessment of tax under article ten of this chapter, and the  
135 matter on appeal shall be subject to the procedures set forth in article ten of this chapter. On  
136 appeal, the burden of proof shall be on the project transferee to prove that the project certification  
137 fee and associated interest and penalties are not due and owing. The review on appeal shall be  
138 limited to:

139 (i) The issue of whether a failure to timely pay the project certification fee or any portion  
140 thereof has occurred, the time period or periods over which such failure occurred, and whether  
141 such failure continues to occur;

142 (ii) The amount of the project certification fee and interest due; and

143 (iii) The mathematical and methodological accuracy of the computation of the project  
144 certification fee, interest and penalties.

145 (F) *Statutory confidentiality.* — No information, document or proceeding brought pursuant  
146 to this section, relating to the liability of any project transferee for the project certification fee,  
147 interest or penalties imposed under this section is subject to the confidentiality provisions of article  
148 ten of this chapter or any other confidentiality provision of this code. However, any proceeding  
149 relating to any amount of tax due or the recapture of tax credit taken under this article or any  
150 adjustment of the amount of tax credit taken under this article is subject to the provisions of article  
151 ten of this chapter, including all statutory confidentiality provisions, and shall be subject to all other  
152 applicable statutory tax confidentiality provisions of this code.

153 (G) *Effect of a final determination, waiver of penalties or sanctions.* — The notice of  
154 pending sanctions shall become final sixty days after service, unless an appeal is filed under this  
155 section, and shall not be subject to further appeal by the recipient thereof. When a determination  
156 has become final that a project transferee has failed to timely pay the project certification fee, or  
157 any part thereof, the sanctions described in the notice of pending sanctions shall apply, effective  
158 as of the date set forth in that notice, unless the project certification fee, interest and penalties  
159 due are paid to the West Virginia Development Office within thirty days of the date on which the  
160 determination has become final. The twenty percent penalty authorized under this section may  
161 be imposed, adjusted, withdrawn or waived, in whole or in part, at the discretion of the Director of  
162 the West Virginia Development Office. However, payment of the project certification fee and  
163 interest due shall not be subject to waiver. The sanctions for failure to pay the project certification  
164 fee authorized under this section may be imposed, adjusted, withdrawn or waived, in whole or in  
165 part, at the discretion of the Director of the West Virginia Development Office.

166 (c) Within sixty days after the close of the regular meeting of the Neighborhood Investment  
167 Advisory Board at which a complete application for approval of a proposed project is considered  
168 by the board, the Director of the West Virginia Development Office shall certify, or deny

169 certification of, the proposed project for which such application has been filed: *Provided*, That  
170 applications for which the board requires additional information may be considered at the next  
171 regular meeting of the board. Those applications not approved by the director within sixty days of  
172 final action of the board shall be deemed disapproved by operation of law.

173 (d) The West Virginia Development Office shall promptly notify an applicant as to whether  
174 an application for certification of a project plan has been approved or disapproved.

175 (e) Those prospective qualified charitable organizations which receive certification of a  
176 project plan, and which otherwise comply with the requirements of this article so as to become  
177 qualified charitable organizations, as defined in section three of this article, may receive eligible  
178 contributions, as defined in said section. Eligible taxpayers which make eligible contributions shall  
179 receive a tax credit as provided in section five of this article. No tax credit may be granted under  
180 this article for any contribution except eligible contributions made to a project which has been  
181 certified in accordance with the requirements of this article prior to the making of the contribution.  
182 No tax credit may be granted under this article for any contribution which, if allowed, would cause  
183 the amount of tax credit generated by the project to exceed the maximum amount of tax credit for  
184 which the project was certified as stated in the application for project certification filed with the  
185 West Virginia Development Office.

186 (f) All applications for certification of a project filed with the West Virginia Development  
187 Office, whether such project is certified or denied certification, are public information which may  
188 be viewed and copied by the public and, at the discretion of the West Virginia Development Office,  
189 published by the West Virginia Development Office.

190 (g) Project transferees shall file ~~quarterly~~ biannual reports with the West Virginia  
191 Development Office on the progress of the certified project. The ~~quarterly~~ biannual reports shall  
192 be filed in a form approved by the director.

193 (h) *Revolving fund.* —

194 (1) For the purpose of permitting payments to be made and costs to be met for operation  
195 of the program established by this article, there is hereby created a revolving fund for the West  
196 Virginia Development Office, which shall be known as the Neighborhood Investment Fund. All  
197 money received by the West Virginia Development Office under this article shall be paid into the  
198 State Treasury, and shall be deposited to the credit of the Neighborhood Investment Fund, and  
199 shall be expended only for the purposes of defraying the costs of the Neighborhood Investment  
200 Program Advisory Board and the West Virginia Development Office in administering the program  
201 established pursuant to this article, unless otherwise directed by the Legislature.

202 (2) The Neighborhood Investment Fund shall be accumulated and administered as  
203 follows:

204 (A) Payments received under this article shall be deposited into the Neighborhood  
205 Investment Fund.

206 (B) Any appropriations made to the Neighborhood Investment Fund shall not be deemed  
207 to have expired at the end of any fiscal period.

**§11-13J-4a. Neighborhood Investment Program Advisory Board.**

1 (a) There is hereby created a Neighborhood Investment Program Advisory Board, which  
2 shall consist of twelve voting members and the chairperson.

3 (b) *Chairperson.* —

4 (1) The Director of the West Virginia Development Office, or the designee of the Director  
5 of the West Virginia Development Office, shall be the ex officio chairperson of the Neighborhood  
6 Investment Program Advisory Board.

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

9 (c) *Board members.* —

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

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

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

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

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

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

34           (2) *Appointment terms.* —

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

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

41 (3) *Selection of members.* —

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

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

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

49 (e) *Quorum; meetings; funding.* —

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

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

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

60 (f) *Annual report.* — The board shall make a report to the Governor and the Legislature  
61 within thirty days of the close of each fiscal year. The report shall include summaries of all  
62 meetings of the board, an analysis of the overall progress of the program, fiscal concerns, the  
63 relative impact the program is having on the state and any suggestions and policy

64 recommendations that the board may have. The report shall be public information made available  
65 to the general public for examination and copying. The board is authorized to publish the annual  
66 report, should the board elect to do so.

67 (g) *Duties of the board.* —

68 (1) *Administrative duties.* — The board shall be responsible for advising the West Virginia  
69 Development Office concerning the administrative obligations of the program.

70 (2) *Project evaluation and approval; prohibition on project promotion.* —

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

**§11-13J-10. Public information relating to tax credit.**

1 The Tax Commissioner shall annually publish in the State Register the name ~~and address~~  
2 of every taxpayer asserting this credit on a tax return, and the amount of any credit asserted on  
3 a tax return under this article by each such taxpayer, and the confidentiality provisions of section  
4 four-a, article one of this chapter or section five-d, article ten of this chapter, or of any other  
5 provision of this code, do not apply to such information.

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

1 Beginning on December 15, 2005, and every ~~second~~ third year thereafter, the director  
2 shall secure an independent review of the Neighborhood Investment Program created by this  
3 article and present the findings to the Joint Committee on Government and Finance. Unless  
4 sooner terminated by law, the Neighborhood Investment Program Act terminates on July 1, ~~2016~~  
5 2021. There is no entitlement to the tax credit under this article for a contribution made to a  
6 certified project after July 1, ~~2016~~ 2021, and no credit is available to any taxpayer for any  
7 contribution made after that date. Taxpayers which have gained entitlement to the credit pursuant  
8 to eligible contributions made to certified projects prior to July 1, ~~2016~~ 2021, shall retain that  
9 entitlement and apply the credit in due course pursuant to the requirements and limitations of this  
10 article.