

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4259

FISCAL
NOTE

BY DELEGATES HANSHAW (MR. SPEAKER) AND SKAFF

[Introduced January 19, 2022; Referred to the
Committee on Finance]

1 A BILL to amend the Code of West Virginia 1931, as amended, by adding thereto a new article,
 2 designated §31-15D-1, §31-15D-2, §31-15D-3, §31-15D-4, §31-15D-5, §31-15D-6, §31-
 3 15D-7, §31-15D-8, §31-15D-9, §31-15D-10, §31-15D-11, §31-15D-12, §31-15D-13, §31-
 4 15D-14, §31-15D-15, §31-15D-16, §31-15D-17, §31-15D-18, §31-15D-19, §31-15D-20,
 5 and §31-15D-21, all relating to promoting investment and future growth in small
 6 businesses in West Virginia; creating the Small Business Jumpstart Act; defining terms;
 7 establishing the transferability of tax credits; establishing the application requirements for
 8 small business growth funds; establishing process for approval of the application;
 9 providing grounds for the denial of an application; allowing submission of additional
 10 information to complete an application following denial; establishing process for
 11 Development Office to notify applicant of approval; creating duties of the fund following
 12 approval of application; establishing how an approval may lapse; providing for a tax credit
 13 against an entity's state insurance premium tax liability; limiting amount of tax credit;
 14 providing for the carryforward of tax credits; prohibiting assignments of tax credit;
 15 establishing that entity participating in program not required to pay retaliatory tax;
 16 establishing when revocation of tax credit occurs; requiring reporting by small business
 17 growth funds; requiring small business growth fund pay fee to Development Office;
 18 establishing process for exiting the program; clarifying that the Development Office cannot
 19 revoke tax credit following the fund's exit; and allowing for the Development Office to
 20 provide opinions to small business growth fund regarding investment of a small business
 21 concern.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15D. WEST VIRGINIA SMALL BUSINESS JUMPSTART ACT.

§31-15D-1. Title.

1 The provisions of this article shall be known as, and may be cited as, the "West Virginia
 2 Small Business Jumpstart Act".

§31-15D-2. Definitions.

1 (a) Any term used in this article has the meaning ascribed by this section unless a different
2 meaning is clearly required by the context of its use or by definition in this article.

3 (b) For purposes of this article, the term:

4 (1) "Affiliate" means a person that directly, or indirectly through one or more intermediaries,
5 controls, is controlled by, or is under common control with another person. For the purposes of
6 this division, a person is "controlled by" another person if the controlling person holds, directly or
7 indirectly, the majority voting or ownership interest in the controlled person or has control over the
8 day-to-day operations of the controlled person by contract or by law.

9 (2) "Closing date" means the date on which a small business growth fund has collected all
10 of the amounts specified by §31-15D-9 of this code.

11 (3) "Credit-eligible capital contribution" means an investment of cash by a person subject
12 to the tax imposed by §33-3-14, §33-3-14a, §33-3-15, §33-3-16, or §33-3-17 of this code in a
13 small business growth fund that equals the amount specified on a notice of tax credit allocation
14 issued by the commissioner under §31-15D-4 of this code. For the investment to be deemed a
15 "credit-eligible capital contribution", it must purchase an equity interest in the fund or purchase, at
16 par value or premium, a debt instrument issued by the fund that meets all of the following criteria:

17 (A) The debt instrument must have an original maturity date of at least five years after the
18 date of issuance;

19 (B) The debt instrument must have a repayment schedule and amortization period no less
20 than five years; and

21 (C) The debt instrument must have no interest, distribution, or payment features
22 dependent on the fund's profitability or the success of the fund's growth investments.

23 (4) "Development Office" means the West Virginia Economic Development Office as
24 provided in §5B-2-1 of this code;

25 (5) "Full-time equivalent employee" means the quotient obtained by dividing the total

26 number of hours for which employees were compensated for employment over the preceding 12
27 month period by 2,080;

28 (6) "Growth investment" means any capital or equity investment in a small business
29 concern or any loan to a small business concern with a stated maturity of at least one year;

30 (7) "Insurance Commissioner" or "Commissioner" means the Insurance Commissioner of
31 West Virginia or his or her designee as provided in §33-2-1 of this code;

32 (8) "Investment authority" means the amount stated on the notice issued under §31-15D-
33 8 of this code approving the small business growth fund. At least 64 percent of a small business
34 growth fund's investment authority must consist of credit-eligible capital contributions;

35 (9) "Investor allocation" means the allocation of tax credits to insurance companies
36 pursuant to §31-15D-3 of this code;

37 (10) "Small Business Concern" means any business that has its principal business
38 operations in this state and fewer than 200 employees. A business's "principal business
39 operations" are in this state if at least 80 percent of the business's employees reside in this state,
40 the individuals who receive 80 percent of the business's payroll reside in this state, or the business
41 has agreed to use the proceeds of a growth investment to relocate at least 80 percent of its
42 employees to this state or pay at least 80 percent of its payroll to individuals residing in this state.
43 An out-of-state business that agrees to relocate or hire new employees using the proceeds of a
44 growth investment to establish principal business operations in this state qualifies as a small
45 business concern provided it satisfies this definition within 180 days after receiving the growth
46 investment, unless the Development Office agrees to a later date. The amount of growth
47 investments that a small business recovery fund may count with respect to a small business
48 concern, including any amount invested in an affiliate of the small business concern, may not
49 exceed \$5 million;

50 (11) "Small Business Growth Fund" means an entity approved by the Development Office
51 as a small business growth fund;

52 (12) “State premium tax liability” means any liability incurred by any entity under §33-3-
 53 14, §33-3-14a, §33-3-15, §33-3-16, or §33-3-17 of this code: *Provided*, That if the tax liability
 54 imposed under these sections is eliminated or reduced, the term “state premium tax liability” shall
 55 also include any tax liability imposed by this state on an insurance company or other person that
 56 had premium tax liability under the laws of this state for the purpose of making up tax revenue
 57 lost by the state as a result of the elimination or reduction of the taxes imposed under these
 58 sections: *Provided, however*, That the issuance of tax credits pursuant to §33-3-14e of this code
 59 shall in no way affect the funding of any fire department or volunteer fire department that receives
 60 any moneys from revenues generated by any of the taxes for which credits are issued pursuant
 61 to §33-3-14e of this code.

§31-15D-3. Transferability.

1 No tax credit earned under this article is transferrable to any entity other than an affiliate
 2 of the entity who originally earned the tax credit, which is also subject to state premium tax liability,
 3 nor are tax credits earned under this article saleable on the open market.

§31-15D-4. Small Business Growth Fund Application.

1 The Development Office shall begin accepting applications on July 1, 2022, from entities
 2 seeking approval as small business growth funds. An application must include:

3 (1) The total investment authority sought by the applicant under the applicant’s business
 4 plan;

5 (2) Evidence sufficient to prove to the Development Office’s satisfaction that, as of the
 6 date the applicant submits the application:

7 (A) The applicant or affiliates of the applicant have invested, in the aggregate, at least
 8 \$125 million in nonmetropolitan (rural) counties as defined by the U.S. Office of Management and
 9 Budget; and

10 (B) At least one principal in a rural business investment company licensed under 7 U.S.C.
 11 Section 2009cc *et seq.* or a small business investment company licensed under 15 U.S.C. Section

12 681 is, or who has been, an officer or employee of the applicant or of an affiliate of the applicant
13 for at least four years prior to the date the application is submitted.

14 (3) A copy of the rural business investment company license or small business investment
15 company license described by subdivision (2)(B);

16 (4) A business plan that includes a revenue impact assessment that:

17 (A) Projects state and local tax revenue to be generated by the applicant's proposed
18 growth investments;

19 (B) Is prepared by a nationally recognized third party independent economic forecasting
20 firm using a REMI® or IMPLAN® dynamic economic forecasting model that analyzes the
21 applicant's business plan for the 10-year period following the date the applicant submits the
22 application and demonstrates a minimum 1:1 return on investment to the state over the life of the
23 fund.

24 (5) A signed certificate from an authorized officer of each committed investor stating the
25 amount of credit-eligible capital contributions the investor commits to making; and

26 (6) A nonrefundable application fee of \$5,000.

§31-15D-5. Small Business Growth Fund Determination.

1 (a) Within 30 days of receipt of a completed application containing the information set forth
2 in §31-15D-4 of this code the Development Office shall grant or deny the application in full or in
3 part. The Development Office shall make application determinations in the order in which
4 applications are received and shall consider applications received on the same day to be received
5 simultaneously.

6 (b) The Development Office may approve not more than \$125 million of investment
7 authority and \$80 million of credit-eligible capital contributions under this code.

8 (c) If a request for investment authority exceeds the limit under subsection (b) of this
9 section, the Development Office shall reduce the investment authority and the credit-eligible
10 capital contributions for that application as necessary to avoid exceeding the limit. If multiple

11 applications received on the same day request a combined investment authority that exceeds the
12 limit under subsection (b), the Development Office shall proportionally reduce the investment
13 authority and the credit-eligible capital contributions for those applications as necessary to avoid
14 exceeding the limit. The Development Office may not reduce an applicant's investment authority
15 for any reason other than as authorized by this subsection.

§31-15D-6. Grounds for Denial.

1 If the Development Office denies any part of the application, the Development Office shall
2 inform the applicant of the grounds for the denial. The Development Office may deny an
3 application under this section only if:

- 4 (1) The application is incomplete, or the application fee is not paid in full;
5 (2) The applicant fails to satisfy the requirements of §31-15D-4 of this code;
6 (3) The revenue impact assessment submitted under §31-15D-4 of this code does not
7 demonstrate that the applicant's business plan will result in a positive economic impact on
8 combined state and local revenue during the 10-year period covered by the assessment that
9 exceeds the cumulative amount of tax credits that would be issued to the applicant's investors
10 under Chapter 33, West Virginia Insurance Code, if the application were approved;
11 (4) The credit-eligible capital contributions described in affidavits submitted under §31-
12 15D-4 of this code do not equal at least 64 percent of the total amount of investment authority
13 sought under the applicant's business plan; or
14 (5) The office has already approved the maximum amount of investment authority allowed
15 §31-15D-5 of this code.

§31-15D-7. Submission of Additional Information Following Denial.

1 (a) If the Development Office denies an application the applicant may, not later than the
2 15th day after the date the Development Office provides notice of denial, provide additional
3 information to the authority to complete, clarify, or cure defects in the application identified by the
4 Development Office.

5 (b) If the applicant completes, clarifies, or cures the defects in its application during the
6 period prescribed by subsection (a), the application is considered complete as of the original
7 submission date.

8 (c) If the applicant fails to complete, clarify, or cure the defects in its application during the
9 period prescribed by subsection (a), the application is finally denied. An applicant who wishes to
10 reapply must resubmit an application in full, which shall be assigned a new submission date.

11 (d) The Development Office shall review and reconsider an application described by
12 subsection (a) for which the applicant provides additional information not later than the 30th day
13 after the date the applicant provides the information. The Development Office shall consider that
14 application before any pending applications submitted after the date that application was originally
15 submitted.

§31-15D-8. Certification.

1 On approval of an application, the commissioner shall provide:

2 (1) Written notice to the applicant of the applicant's approval as a small business growth
3 fund, including the amount of the fund's investment authority; and

4 (2) A tax credit certificate to each investor whose certificate was included in the application
5 and include on the certificate the amount of the investor's credit-eligible capital contribution and
6 utilization schedule of the tax credits allocated to that investor as a result of its credit-eligible
7 capital contribution.

§31-15D-9. Duties of Fund Following Approval.

1 (a) A small business growth fund shall perform the following duties not later than the 60th
2 day after the date the fund receives the approval notice under §31-15D-8 of this code:

3 (1) (A) Collect the credit-eligible capital contribution from each investor issued a tax credit
4 certificate under §31-15D-8 of this code; and

5 (B) Collect one or more investments of cash that, when added to the contributions
6 collected under paragraph (A), equal the fund's investment authority; and

7 (2) Not later than the 65th day after the date the fund receives the approval notice under
8 §31-15D-8 of this code, send to the authority documentation sufficient to prove that the fund has
9 collected the amounts described in subdivision (1).

10 (b) At least 10 percent of the small business recovery fund's investment authority must
11 consist of equity investments contributed directly or indirectly by affiliates of the fund, including
12 employees, officers, and directors of those affiliates.

§31-15D-10. Lapse of Approval.

1 (a) If a small business growth fund fails to comply with the requirements of §31-15D-9 of
2 this code, the fund's approval lapses and the corresponding investment authority described by
3 §31-15D-5 of this code does not count toward the limit prescribed by §31-15D-5 of this code.

4 (b) The Development Office shall first award lapsed investment authority pro rata to each
5 small business growth fund whose requested investment authority was reduced under §31-15D-
6 5 of this code. The small business growth fund may allocate the investment authority awarded
7 under this subsection to the fund's investors in the fund's discretion. The Development Office may
8 award any remaining investment authority to new applicants.

9 (c) The Development Office must notify the commissioner of the names of the entities that
10 are eligible to use tax credits provided under §31-15D-3 of this code, pursuant to an allocation of
11 tax credits or change in allocation of tax credits.

§31-15D-11. Eligibility for Credit.

1 An entity is eligible for a credit against the entity's state insurance premium tax liability in
2 the amount and under the conditions and limitations provided by this code.

§31-15D-12. Qualification.

1 An entity is eligible for a credit for a tax year if:

2 (1) The entity holds a tax credit certificate issued under §31-15D-8 of this code and the
3 fourth, fifth, sixth, or seventh anniversary of the closing date in connection with which the
4 certificate was issued occurs during the tax year; or

5 (2) The entity holds a tax credit certificate issued under §31-15D-8 of this code in
6 connection with which a credit under this code has not previously been claimed.

§31-15D-13. Amount of Credit; Limitation.

1 (a) The total amount of tax credits that can be utilized is capped at \$20 million per annum
2 during years four, five, six, and seven of the program. The Development Office shall not authorize
3 more than \$80 million in tax credits for the life of the program.

4 (b) The total credit claimed for a tax year, including the amount of any carryforward under
5 §31-15D-14 of this code may not exceed the amount of state insurance premium tax liability due
6 for the entity for the tax year after applying all other applicable tax credits.

§31-15D-14. Carryforward.

1 If an entity is eligible for a credit that exceeds the limitation under §31-15D-13 of this code,
2 the entity may carry the unused credit forward and apply the credit to a subsequent tax report.

§31-15D-15. Assignment Prohibited.

1 (a) Except as provided by subsection (b), an entity may not convey, assign, or transfer the
2 credit allowed under this code to another entity.

3 (b) An entity may convey, assign, or transfer the credit allowed under this code to an
4 affiliate of the entity that is subject to state insurance premium tax liability.

§31-15D-16. Retaliatory Tax.

1 An entity claiming a credit under this code is not required to pay any additional retaliatory
2 tax levied under §33-3-16 of this code as a result of claiming that credit.

§31-15D-17. Revocation of Tax Credit Certification.

1 (a) The authority shall revoke a tax credit certificate issued under §31-15D-8 of this code
2 in connection with an investment in a small business growth fund if, before the fund exits the
3 program under §31-15D-19 of this code, the fund:

4 (1) Fails to invest 100 percent of the fund's investment authority in growth investments in
5 this state on or before the third anniversary of the closing date;

6 (2) Subject to subsection (a)(1) of this section, fails to maintain growth investments equal
7 to 100 percent of the fund's investment authority until the seventh anniversary of the closing date.
8 For the purposes of this division, an investment is maintained even if the investment is sold or
9 repaid so long as the fund reinvests an amount equal to the capital returned or recovered by the
10 fund from the original investment, exclusive of any profits realized, in other growth investments in
11 this state within one year of the receipt of such capital;

12 (3) Makes a distribution or payment that results in the fund having less than 100 percent
13 of its investment authority;

14 (A) Invested in growth investments in this state; or

15 (B) Available for investment in growth investments and held in:

16 (i) Cash;

17 (ii) United States Treasury securities;

18 (iii) Bonds or notes issued by this state or an agency or political subdivision of this state;

19 or

20 (iv) A deposit account with a depository institution headquartered or chartered in this state;

21 or

22 (4) Makes a growth investment in a small business concern that directly or indirectly
23 through an affiliate owns, has the right to acquire an ownership interest in, makes a loan to, or
24 makes an investment in the fund, an affiliate of the fund, or an investor in the fund; or

25 (5) Makes a growth investment in a noneligible small business concern.

26 (b) Subsection (a)(4) does not apply to investments in publicly traded securities by a small
27 business concern or an owner or affiliate of the small business concern. For purposes of
28 Subsection (a)(4), a small business growth fund is not considered an affiliate of an eligible small
29 business concern solely as a result of the fund's growth investment in the small business concern.

30 (c) The Development Office shall:

31 (1) Notify the controller when the Development Office revokes a tax credit certificate; and

32 (2) Provide the controller with lists of valid and revoked tax credit certificates.

33 (d) Before revoking a tax credit certificate under this subchapter, the Development Office
34 shall notify the small business growth fund of the reasons for the pending revocation.

35 (e) The small business growth fund may, not later than the 90th day after the date the
36 notice is received, correct any violation outlined in the notice to the satisfaction of the authority
37 and avoid revocation of the tax credit certificate.

38 (f) If a tax credit certificate is revoked under this section, the associated investment
39 authority does not count toward the limit on total investment authority described in §31-15D-5 of
40 this code.

41 (g) The Development Office shall first award revoked investment authority pro rata to each
42 small business growth fund whose requested investment authority was reduced under §31-15D-
43 5 of this code. The Development Office may award any remaining investment authority to new
44 applicants.

§31-15D-18. Annual Reporting and Fees.

1 Small business growth funds shall submit a report to the Development Office on or before
2 the fifth business day after each anniversary of the closing date until the fund has exited the
3 program under §31-15D-19 of this code. The report must document the small business growth
4 fund's investments and include:

5 (1) A bank statement showing each growth investment;

6 (2) The name, location, and industry of each business receiving a growth investment,
7 including either the determination notice described by §31-15D-21 of this code or evidence that
8 the business qualified as a small business concern at the time the investment was made;

9 (3) The number of employment positions that existed at each small business concern
10 business on the date the business received the growth investment;

11 (4) The number of new full-time equivalent employees resulting from each of the fund's
12 growth investments made or maintained in the preceding calendar year;

13 (5) Any other information required by the authority;

14 (6) Each growth fund shall pay the Development Office an annual fee equal to 0.05 percent
15 of its investment authority with each annual report submission and concluding upon program exit.

§31-15D-19. Application to Exit Program.

1 (a) On or after the seventh anniversary of the closing date, a small business growth fund
2 may apply to the Development Office to exit the program and no longer be subject to regulation
3 under this code. A small business growth fund shall include with its application to exit, a revenue
4 impact assessment of the small business growth fund.

5 (b) The Development Office shall respond to the application not later than the 30th day
6 after receipt.

7 (c) A small business growth fund is eligible to exit the program under this section if no tax
8 credit certificates related to investments in the fund have been revoked, and the fund has not
9 received any revocation notice that has not been corrected under §31-15D-17 of this code.

10 (d) The Development Office may not unreasonably deny an application under this section.
11 The Development Office shall give the small business growth fund notice of a denial and include
12 in the notice the reasons for the denial.

§31-15D-20. No Revocation Following Exit.

1 The Development Office may not revoke a tax credit certificate related to an investment in
2 a small business growth fund after the fund's exit from the program.

§31-15D-21. Evaluation of Proposed Small Business Investment.

1 (a) A small business growth fund, before making a growth investment, may request from
2 the Development Office a written opinion as to whether the business in which the fund proposes
3 to invest qualifies as a small business concern.

4 (b) Not later than the 15th business day after receiving the request, the Development
5 Office shall notify the small business growth fund of its determination.

6 (c) If the Development Office fails to notify the small business growth fund of its

- 7 determination on or before the 15th business day after receiving the request, the business in
8 which the fund proposes to invest is considered to be a small business concern for purposes of
9 this code.

NOTE: The purpose of this bill is to create the Small Business Jumpstart Act; define terms; establish the transferability of tax credits; establish the application requirements for small business growth funds; establish process for approval of the application; provide grounds for the denial of application; allow the applicant submit additional information to complete application following denial; establish what Development Office required to provide applicant upon approval; create duties of the fund following approval of application; establish how an approval may lapse; provide tax credit against entity's state insurance premium tax liability; set limit on tax credit amount; provide for the carryforward of tax credits; prohibit assignments of tax credit; establish that entity not required to pay retaliatory tax; establish when revocation of tax credit occurs; require reporting by small business growth funds; require small business growth fund pay fee to Development Office; establish process for exiting the program; clarify that the Development Office cannot revoke tax credit following the fund's exit; and allow for the Development Office to provide opinions to small business growth fund regarding investment being a small business concern.

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