

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:

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

ARTICLE 13J. NEIGHBORHOOD INVESTMENT PROGRAM.

§11-13J-3. Definitions.

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

17 (b) *Terms defined.* —

18 (4) AAffiliate@ includes all business entities which are affiliates of each other when either
19 directly or indirectly:

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

21 (B) A third party or third parties control or have the power to control both affiliates. In
22 determining whether business entities are independently owned and operated and whether or not

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

25 ~~(2)~~ ACapacity building@ means to generally enhance the capacity of the community to
26 achieve improvements and to obtain the community services described in subparagraphs (i)
27 through (v), inclusive, of the definition of that term, as set forth in ~~subdivision (4)~~ of this subsection.

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

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

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

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

36 ~~(3)~~ ACommissioner or Tax Commissioner@ are used interchangeably in this article and
37 mean the Tax Commissioner of the State of West Virginia, or his or her delegate.

38 ~~(4)~~ ACommunity services@ means services, provided at no charge whatsoever, of:

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

43 (ii) Providing emergency assistance or medical care to economically disadvantaged
44 citizens or to a specifically designated group of economically disadvantaged citizens or in an
45 economically disadvantaged area;

46 (iii) Establishing, maintaining or operating recreational facilities, or housing facilities for
47 economically disadvantaged citizens or a specifically designated group of economically

48 disadvantaged citizens or in an economically disadvantaged area;

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

53 (v) Providing community technical assistance and capacity building to economically
54 disadvantaged citizens or a specifically designated group of economically disadvantaged citizens,
55 or to individuals, groups or neighborhood or community organizations in an economically
56 disadvantaged area.

57 ~~(5)~~ ACompensation@ means wages, salaries, commissions and any other form of
58 remuneration paid to employees for personal services.

59 "Community-based" means:

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

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

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

66 ~~(6)~~ ACorporation@ means any corporation, joint-stock company or association and any
67 business conducted by a trustee or trustees in which interest or ownership is evidenced by a
68 certificate of interest or ownership or similar written instrument.

69 ~~(7)~~ ACrime prevention@ means any activity which aids in the reduction of crime.

70 ~~(8)~~ ADelegate@ in the phrase "or his or her delegate", when used in reference to the Tax
71 Commissioner, means any officer or employee of the Tax Division of the Department of Revenue
72 duly authorized by the Tax Commissioner directly, or indirectly by one or more redelegations of

73 authority, to perform the functions mentioned or described in this article.

74 ~~(9) A Director or Director of the West Virginia Development Office@ means the Director of~~
75 ~~the West Virginia Development Office.~~

76 ~~(10) A Economically disadvantaged area@ means~~

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

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

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

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

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

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

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

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

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

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

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

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

114 ~~(11) An economically disadvantaged citizen@ means a natural person, who during the~~
115 ~~current taxable year has, or during the immediately preceding taxable year had, an annual gross~~
116 ~~personal income not exceeding one hundred twenty-five percent of the federal designated poverty~~
117 ~~level for personal incomes, and who is a domiciliary and resident of this state.~~

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

123 ~~(13) An eligible contribution@ consists of:~~

124 (A)(i) Cash;
125 (ii) Tangible personal property, valued at its fair market value;
126 (iii) Real property, valued at its fair market value;
127 (iv) In-kind professional services, valued at seventy-five percent of fair market value; and
128 (v) Publicly traded common or preferred stock representing ownership in a corporation,
129 valued at its fair market value in accordance with the regulations of the Internal Revenue Service:
130 *Provided*, That contributed stock shall be sold by the project transferee within one hundred eighty
131 days of its receipt.

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

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

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

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

140 (C) AProfessional services@ means only those services provided directly by a physician
141 licensed to practice in this state, those services provided directly by a dentist licensed to practice
142 in this state, those services provided directly by a lawyer licensed to practice in this state, those
143 services provided directly by a registered nurse, licensed practical nurse, dental hygienist or other
144 health care professional licensed to practice in this state, those services provided directly by a
145 certified public accountant or public accountant licensed to practice in this state, and those
146 services provided directly by an architect licensed to practice in this state;

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

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

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

156 ~~(14)~~ *Eligible taxpayer.* —

157 (A) ~~A~~Eligible taxpayer@ means any person subject to the taxes imposed by article twenty-
158 one, twenty-three or twenty-four of this chapter which makes an eligible contribution to a qualified
159 charitable organization pursuant to the terms of a certified project plan for the purpose of providing
160 neighborhood assistance, community services or crime prevention, or for the purpose of providing
161 job training or education for individuals not employed by the contributing taxpayer or an affiliate
162 of the contributing taxpayer or a person related to the contributing taxpayer;

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

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

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

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

174 ~~(17)~~ ~~A~~Natural person or individual@ means a human being. The terms “natural person”

175 and “individual” do not mean, and specifically exclude, any corporation, limited liability company,
176 partnership, joint venture, trust, organization, association, agency, governmental subdivision,
177 syndicate, affiliate or affiliation, group, unit or any entity other than a human being.

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

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

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

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

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

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

187 ~~(20)~~ APartnership and partner@ includes a syndicate, group, pool, joint venture or other
188 unincorporated organization through or by means of which any business, financial operation or
189 venture is carried on, and which is not a trust or estate, a corporation or a sole proprietorship. The
190 term “partner” includes a member in a syndicate, group, pool, joint venture or organization.

191 ~~(21)~~ APerson@ includes any natural person, corporation, limited liability company or
192 partnership.

193 ~~(22)~~ AProject transferee@ means any neighborhood organization, qualified charitable
194 organization, charitable organization or other organization, entity or person that receives an
195 eligible contribution or part of an eligible contribution from an eligible taxpayer for the purpose of
196 directly or indirectly providing neighborhood assistance, community services or crime prevention,
197 or for the purpose of providing job training or education or other services or assistance pursuant
198 to a project plan. The project transferee is typically the first entity or person receiving eligible
199 contributions from eligible taxpayers under a project plan. However, in the case of eligible

200 contributions of in-kind services or other eligible contributions or portions of those contributions
201 made pursuant to a certified project plan directly to indigent, disadvantaged or needy persons,
202 economically disadvantaged citizens or other persons or organizations under the sponsorship or
203 auspices of any neighborhood organization, qualified charitable organization, charitable
204 organization or other organization, entity or person as a certified project participant, the eligible
205 contributions shall be considered to have been made to the entity, organization or person under
206 whose sponsorship or auspices the eligible contributions are made, and that entity, organization
207 or person is considered to be the project transferee with relation to those eligible contributions.
208 The project transferee is the entity, organization or person that is liable under this article for
209 payment of the project certification fee to the West Virginia Development Office. The term "project
210 transferee" means and includes any considered project transferee, considered as such under the
211 provisions of this article.

212 ~~(23)~~ AQualified charitable organization@ means a neighborhood organization, as defined
213 in this section, which is the sponsor of a project which has received certification by the Director of
214 the West Virginia Development Office pursuant to the requirements of this article: *Provided*, That
215 no organization may qualify as a qualified organization for purposes of this article if the
216 organization is not registered with this state as required under the Solicitation of Charitable Funds
217 Act.

218 ~~(24)~~ ARelated person@ or Aperson related to@ a stated taxpayer means:

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

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

223 (C) An individual, corporation, partnership, affiliate, association or trust or any combination
224 or group thereof controlled by an individual, corporation, partnership, affiliate, association or trust

225 or any combination or group thereof that is in control of the taxpayer; or

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

227 For purposes of this article, "control", with respect to a corporation means ownership,
228 directly or indirectly, of stock possessing fifty percent or more of the total combined voting power
229 of all classes of the stock of the corporation which entitles its owner to vote. "Control", with respect
230 to a trust, means ownership, directly or indirectly, of fifty percent or more of the beneficial interest
231 in the principal or income of the trust. The ownership of stock in a corporation, of a capital or
232 profits interest in a partnership or association or of a beneficial interest in a trust shall be
233 determined in accordance with the rules for constructive ownership of stock provided in Section
234 267(c), other than paragraph (3) of that section, of the United States Internal Revenue Code, as
235 amended.

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

238 ~~(26)~~ ATaxpayer@ means any person subject to the tax imposed by article twenty-one,
239 twenty-three or twenty-four of this chapter, or any one or combination of the articles of this chapter.

240 ~~(27)~~ ATechnical assistance@ means:

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

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

249 (i) Providing any type of health, personal finance, psychological or behavioral, religious,

250 legal, marital, educational or housing counseling and advice to economically disadvantaged
251 citizens or a specifically designated group of economically disadvantaged citizens or in an
252 economically disadvantaged area;

253 (ii) Providing emergency assistance or medical care to economically disadvantaged
254 citizens or to a specifically designated group of economically disadvantaged citizens or in an
255 economically disadvantaged area;

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

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

263 (v) Providing community technical assistance and capacity building to economically
264 disadvantaged citizens or a specifically designated group of economically disadvantaged citizens
265 or to individuals, groups or neighborhood or community organizations in an economically
266 disadvantaged area.

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

267 (a) A neighborhood organization which seeks to sponsor a project and have that project
268 certified pursuant to this article shall submit to the Director of the West Virginia Development
269 Office an application for certification of a project plan, in such form as the director shall prescribe,
270 setting forth the project to be implemented, the identity of all project participant organizations, the
271 economically disadvantaged citizens or a specifically designated group of economically
272 disadvantaged citizens, to be assisted by the project, or the economically disadvantaged area or
273 areas selected for assistance by the project, the amount of total tax credits to be created by the

274 proposed project pursuant to the receipt of eligible contributions from eligible taxpayers under this
275 article, the amount of the total estimated eligible contributions to be received pursuant to the
276 project and the schedule for implementing the project.

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

278 (1) (A) *Project certification fee.* — Any project transferee that receives eligible
279 contributions under or pursuant to a certified project plan shall pay to the West Virginia
280 Development Office a project certification fee in the amount of three percent of the amount of the
281 total eligible contributions received by such project transferee pursuant to the certified project
282 plan. The project certification fee shall be paid to the West Virginia Development Office within
283 thirty days of the receipt of any eligible contribution, or portion thereof.

284 (B) *Eligible contributions made through direct service to end users or recipients, or*
285 *contributions to end users or recipients.* — In the case of eligible contributions of in-kind services
286 or other eligible contributions or portions thereof made pursuant to a certified project plan and
287 contributed or provided directly to indigent, disadvantaged or needy persons, economically
288 disadvantaged citizens or other persons or organizations made under the sponsorship or
289 auspices of any neighborhood organization, qualified charitable organization, charitable
290 organization or other organization, entity or person as a certified project participant, such eligible
291 contributions shall be deemed to have been made to the entity, organization or person under
292 whose sponsorship or auspices such eligible contributions are made, and that entity, organization
293 or person is deemed to be the project transferee with relation to those eligible contributions. Such
294 deemed project transferee shall be liable for the project certification fee due for such eligible
295 contributions.

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

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

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

305 No tax credit shall be allowed for any project for which certification has been revoked for
306 periods subsequent to the effective date of revocation. Credit taken by any taxpayer in
307 accordance with this article pursuant to the making of an eligible contribution to a project
308 transferee pursuant to a certified project plan prior to the effective date of revocation of project
309 certification shall not be subject to recapture by reason of revocation of the certification. However,
310 such credit shall otherwise be subject to audit and adjustment or recapture in accordance with
311 the requirements of this article.

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

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

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

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

325 (D) *Temporary or permanent disqualification of one or more project transferees,*

326 *neighborhood organizations, qualified charitable organizations, charitable organizations or other*
327 *organizations, entities or persons from participation in a particular specified certified project. —*

328 No tax credit shall be allowed under this article for any contribution made during the
329 disqualification period to any project transferee, neighborhood organization, qualified charitable
330 organization, charitable organization or other organization, entity or person disqualified under this
331 section from participation in a certified project. Tax credit taken by any taxpayer in accordance
332 with this article pursuant to the making of an eligible contribution to any project transferee,
333 neighborhood organization, qualified charitable organization, charitable organization or other
334 organization, entity or person pursuant to a certified project plan prior to or subsequent to the
335 disqualification period shall not be subject to recapture by reason of the disqualification of the
336 recipient thereof. However, such credit shall otherwise be subject to audit and adjustment or
337 recapture in accordance with the requirements of this article.

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

342 (i) No tax credit shall be allowed under this article for any contribution made during the
343 disqualification period to any project transferee, neighborhood organization, qualified charitable
344 organization, charitable organization or other organization, entity or person disqualified under this
345 section from participation in any and all certified projects under this article. Tax credit taken by
346 any eligible taxpayer in accordance with this article pursuant to the making of an eligible
347 contribution to the project transferee, neighborhood organization, qualified charitable
348 organization, charitable organization or other organization, entity or person disqualified from
349 participation in any and all certified projects under this article, pursuant to a certified project plan
350 prior to or subsequent to the disqualification period shall not be subject to recapture by reason of
351 the disqualification. However, such credit shall otherwise be subject to audit and adjustment or

352 recapture in accordance with the requirements of this article; and

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

357 (F) Any combination of the aforementioned sanctions.

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

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

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

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

374 Failure of the project transferee to pay any project certification fee due, with interest and
375 penalties, as stated in the written demand for payment of the project certification fee, within thirty
376 days of service of such demand, and failure of the project transferee to prove to the satisfaction
377 of the Director of the West Virginia Development Office that the fee imposed by this section is not

378 due and owing, shall result in a determination by the Director of the West Virginia Development
379 Office that sanctions shall apply.

380 (C) *Notice of pending sanctions.* — Upon the making of a determination by the Director of
381 the West Virginia Development Office that sanctions for failure to pay the project certification fee
382 apply, the Director of the West Virginia Development Office shall serve upon the project transferee
383 from which the project certification fee, or some portion thereof, is due and owing, a notice of
384 pending sanctions. If the project transferee from which the certified project fee, or some portion
385 thereof, is due and owing is not the applicant for project certification, then an informational copy
386 of the notice of pending sanctions shall also be served upon the applicant for project certification.

387 (D) *Service of notice, content of notice.* — The notice of pending sanctions shall be served
388 upon the delinquent project transferee in the same manner as an assessment of tax in accordance
389 with article ten of this chapter. Such notice of pending sanctions shall state the sanctions to be
390 applied in accordance with this section, the effective date or dates of such sanctions, with specific
391 statements of whether any sanction is to be applied retroactively or in part retroactively, and the
392 commencement and termination dates for any suspensions of certification or temporary
393 disqualifications of any program transferee, neighborhood organization, qualified charitable
394 organization, charitable organization or other organization, entity or person to be disqualified
395 under this section from participation in certified projects. The notice of pending sanctions shall
396 state that sanctions shall be imposed sixty days after service of the notice of pending sanctions
397 upon the delinquent project transferee, unless the delinquent project transferee pays the amount
398 of the project certification fee due and owing, plus interest and penalties.

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

404 limited to:

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

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

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

411 (F) *Statutory confidentiality.* — No information, document or proceeding brought pursuant
412 to this section, relating to the liability of any project transferee for the project certification fee,
413 interest or penalties imposed under this section is subject to the confidentiality provisions of article
414 ten of this chapter or any other confidentiality provision of this code. However, any proceeding
415 relating to any amount of tax due or the recapture of tax credit taken under this article or any
416 adjustment of the amount of tax credit taken under this article is subject to the provisions of article
417 ten of this chapter, including all statutory confidentiality provisions, and shall be subject to all other
418 applicable statutory tax confidentiality provisions of this code.

419 (G) *Effect of a final determination, waiver of penalties or sanctions.* — The notice of
420 pending sanctions shall become final sixty days after service, unless an appeal is filed under this
421 section, and shall not be subject to further appeal by the recipient thereof. When a determination
422 has become final that a project transferee has failed to timely pay the project certification fee, or
423 any part thereof, the sanctions described in the notice of pending sanctions shall apply, effective
424 as of the date set forth in that notice, unless the project certification fee, interest and penalties
425 due are paid to the West Virginia Development Office within thirty days of the date on which the
426 determination has become final. The twenty percent penalty authorized under this section may
427 be imposed, adjusted, withdrawn or waived, in whole or in part, at the discretion of the Director of
428 the West Virginia Development Office. However, payment of the project certification fee and
429 interest due shall not be subject to waiver. The sanctions for failure to pay the project certification

430 fee authorized under this section may be imposed, adjusted, withdrawn or waived, in whole or in
431 part, at the discretion of the Director of the West Virginia Development Office.

432 (c) Within sixty days after the close of the regular meeting of the Neighborhood Investment
433 Advisory Board at which a complete application for approval of a proposed project is considered
434 by the board, the Director of the West Virginia Development Office shall certify, or deny
435 certification of, the proposed project for which such application has been filed: *Provided*, That
436 applications for which the board requires additional information may be considered at the next
437 regular meeting of the board. Those applications not approved by the director within sixty days of
438 final action of the board shall be deemed disapproved by operation of law.

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

441 (e) Those prospective qualified charitable organizations which receive certification of a
442 project plan, and which otherwise comply with the requirements of this article so as to become
443 qualified charitable organizations, as defined in section three of this article, may receive eligible
444 contributions, as defined in said section. Eligible taxpayers which make eligible contributions shall
445 receive a tax credit as provided in section five of this article. No tax credit may be granted under
446 this article for any contribution except eligible contributions made to a project which has been
447 certified in accordance with the requirements of this article prior to the making of the contribution.
448 No tax credit may be granted under this article for any contribution which, if allowed, would cause
449 the amount of tax credit generated by the project to exceed the maximum amount of tax credit for
450 which the project was certified as stated in the application for project certification filed with the
451 West Virginia Development Office.

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

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

459 (h) *Revolving fund.* —

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

468 (2) The Neighborhood Investment Fund shall be accumulated and administered as
469 follows:

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

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

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

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

476 (b) *Chairperson.* —

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

480 (2) The chairperson shall vote on actions of the board only in the event of a tie vote, in

481 which case the chairperson's vote shall be the deciding vote.

482 (c) *Board members.* —

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

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

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

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

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

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

507 (2) *Appointment terms.* —

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

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

514 (3) *Selection of members.* —

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

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

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

522 (e) *Quorum; meetings; funding.* —

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

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

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

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

540 (g) *Duties of the board.* —

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

599 Beginning on December 15, 2005, and every ~~second~~ third year thereafter, the director
600 shall secure an independent review of the Neighborhood Investment Program created by this
601 article and present the findings to the Joint Committee on Government and Finance. Unless
602 sooner terminated by law, the Neighborhood Investment Program Act terminates on July 1, ~~2016~~
603 2021. There is no entitlement to the tax credit under this article for a contribution made to a
604 certified project after July 1, ~~2016~~ 2021, and no credit is available to any taxpayer for any
605 contribution made after that date. Taxpayers which have gained entitlement to the credit pursuant
606 to eligible contributions made to certified projects prior to July 1, ~~2016~~ 2021, shall retain that
607 entitlement and apply the credit in due course pursuant to the requirements and limitations of this
608 article.

