

# WEST VIRGINIA LEGISLATURE

## 2021 REGULAR SESSION

Introduced

### Senate Bill 446

FISCAL  
NOTE

BY SENATORS WELD, STOLLINGS, LINDSAY, WOELFEL,

BALDWIN, TAKUBO, AND GRADY

[Introduced February 25, 2021; referred  
to the Committee on Finance]

1 A BILL to amend and reenact §11-13J-6, §11-13J-8, and §11-13J-12 of the Code of West Virginia,  
 2 1931, as amended, all relating to extending the Neighborhood Investment Program Act;  
 3 increasing the aggregate limit for the tax credit authorized under the program; and  
 4 extending duration of the program until July 1, 2026.

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

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

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

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

3 (1) The portion allowed under §11-13J-5 of this code for an eligible contribution placed  
 4 into service or use during a prior tax year; plus

5 (2) The portion allowed under §11-13J-5 of this code for an eligible contribution placed  
 6 into service or use during the current tax year.

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

9 (1) *Business franchise taxes.* —

10 The amount determined under subsection (a) of this section shall be applied to reduce up  
 11 to 50 percent of the taxes imposed by §11-23-1 *et seq.* of this code for the tax year determined  
 12 after application of the credits against tax provided in §11-23-17 of this code, but before  
 13 application of any other allowable credits against tax.

14 (2) *Corporation net income taxes.* — After application of subdivision (1) of this subsection,  
 15 any unused credit shall next be applied to reduce up to 50 percent of the taxes imposed by §11-  
 16 24-1 *et seq.* of this code, for the tax year determined before application of allowable credits against  
 17 tax.

18 (3) *Personal income taxes.* —

19 (A) If the eligible taxpayer is an electing small business corporation as defined in Section

20 1361 of the United States Internal Revenue Code, a limited liability company treated as a  
21 partnership for purposes of the federal income tax, a partnership or a sole proprietorship, then  
22 any unused credit, after application of subdivisions (1) and (2) of this subsection, shall be allowed  
23 as a credit against up to 50 percent of the taxes imposed by §11-21-1 *et seq.* of this code on  
24 income of proprietors, partners or shareholders, subject to the limitations set forth in paragraphs  
25 (B) and (C) of this subdivision.

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

29 (C) Any taxpayer subject to the personal income tax under §11-21-1 *et seq.* of this code,  
30 who makes an eligible contribution to a qualified charitable organization and receives back from  
31 that organization a properly completed neighborhood investment program tax credit voucher, is  
32 eligible to claim the credit. The credit shall be allowed without regard to the source of that income,  
33 whether it is from wages, passive investment or retirement income, income from a trade or  
34 business or any other source.

35 (c) *Unused credit forfeited.* — If any credit to an eligible taxpayer remains after application  
36 of subsections (a) and (b) of this section, the amount thereof may be carried forward no more  
37 than four years from the tax year in which the contribution was made. Unused credits of an eligible  
38 taxpayer may not be carried forward beyond the time limits imposed under §11-13J-5 of this code  
39 and the total maximum aggregate tax credits certified in any state fiscal year may not exceed  
40 ~~\$3,000,000~~ \$5,000,000.

41 (d) *Addition of deductions, decreasing adjustments or decreasing modifications taken in*  
42 *determining taxable income for which credit is taken.* — Any deduction, decreasing adjustment or  
43 decreasing modification taken by any taxpayer in determining federal taxable income which  
44 affects West Virginia taxable income or in determining West Virginia taxable income under §11-  
45 21-1 *et seq.* or §11-24-1 *et seq.* of this code for the taxable year for any charitable contribution,

46 or payment or portion thereof, which qualifies as an eligible contribution under this article and for  
47 which credit is claimed, shall be added to West Virginia taxable income in determining the tax  
48 liability of the taxpayer §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code, as appropriate, before  
49 application of the credit allowed under this article for the taxable year.

50 (e) *Annual limit.* — The aggregate annual credit allowance to any taxpayer may not exceed  
51 \$100,000 in any tax year.

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

1 (a) The amount of all tax credits allowed under this article may not exceed ~~\$3,000,000~~  
2 \$5,000,000 in any state fiscal year.

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

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

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

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

1 Beginning on December 15, 2005, and every third year thereafter, the director shall secure  
2 an independent review of the Neighborhood Investment Program created by this article and

3 present the findings to the Joint Committee on Government and Finance. Unless sooner  
4 terminated by law, the Neighborhood Investment Program Act terminates on July 1, ~~2024~~ 2026.  
5 There is no entitlement to the tax credit under this article for a contribution made to a certified  
6 project after July 1, ~~2024~~ 2026, and no credit is available to any taxpayer for any contribution  
7 made after that date. Taxpayers which have gained entitlement to the credit pursuant to eligible  
8 contributions made to certified projects prior to July 1, ~~2024~~ 2026, shall retain that entitlement and  
9 apply the credit in due course pursuant to the requirements and limitations of this article.

NOTE: The purpose of this bill is to extend the Neighborhood Investment Program Act to July 1, 2026 and to increase the program's aggregate limit for the tax credit from \$3,000,000 to \$5,000,000.

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