WEST VIRGINIA CODE CHAPTER 13 ARTICLE 2C

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§13-2C-1. Short title.

This article may be known as and may be cited as the "Industrial Development and Commercial Development Bond Act."

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§13-2C-2. Legislative findings.

It is hereby determined and declared as a matter of legislative finding (a) that critical conditions of unemployment exist in many areas of this state; (b) that lack of employment and business opportunities have resulted in thousands of people leaving this state to find employment elsewhere, and this exodus has adversely affected the tax base of counties and municipalities within this state, resulting in an impairment of their ability to support local government; (c) that the development of new commercial, mining, industrial and manufacturing projects are essential to relieve unemployment and establish a balanced economy within the state; (d) that the present and prospective health, happiness, safety, right of gainful employment and general welfare of the citizens of each of the counties and municipalities of this state will be promoted by the establishment of industrial projects and commercial projects as herein provided; (e) that the means and measures herein authorized for the promotion of industrial projects and commercial projects are, as a matter of public policy, for the public purpose of the several counties, municipalities and the State of West Virginia; (f) that the abatement or control of pollution of the environment of the state is necessary to protect the health and welfare of the citizens of the state, to protect the natural resources of the state and to encourage the economic development of the state; and (g) that in addition to the development of new industrial projects and commercial projects the retention of existing industrial projects and commercial projects within the state through the means and measures herein authorized is vital to the maintenance of a balanced economy and for the preservation of employment within the state and is for the public purpose of the several counties, municipalities and the State of West Virginia.

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§13-2C-3. Definitions.

Unless the context clearly indicates otherwise, as used in this article:

(a) "Commercial project" means real or personal property or both, including any buildings, improvements, additions, extensions, replacements, appurtenances, lands, rights in land, water rights, franchises, machinery, equipment, furnishings, landscaping, utilities, railroad spurs and sidings, parking facilities, farms, parking wharfs, approaches and roadways or any number or combination of the foregoing necessary or desirable in connection with a commercial enterprise or incidental thereto and includes, without limiting the generality of the foregoing, hotels and motels and related facilities, nursing homes and other health care facilities, facilities for participatory or spectator sports, conventions or trade show facilities, airport facilities, shopping centers, office buildings, residential real property for family units, and mass commuting facilities, dormitories, apartments and other housing facilities for the students and faculties of institutions of higher education, instructional buildings and other facilities used in connection with nonpublic institutions of higher education, facilities providing housing for the elderly, including, but not limited to, life care facilities, congregate living facilities and adult residential facilities.

(b) "Committee" means the industrial revenue bond allocation committee created by section three-a of this article.

(c) "County commission" means the governmental body created by section twenty-two, article VIII of the West Virginia Constitution.

(d) "Governmental body" means any city, town, village, county, public service district, sanitary district, political subdivision or any other similar public entity now or hereafter created, having power to issue revenue bonds, and the West Virginia public energy authority.

(e) "Industrial project" means any site, structure, building, industrial park, water dock, wharf or port facilities, fixtures, machinery, equipment and related facility, including real and personal property, or any combination thereof, suitable as a factory, mill or shop, or processing, assembly, manufacturing or fabricating project, or warehouse or distribution facility, or facilities for the extraction, production or distribution of mineral resources and related facilities, or sewage or solid waste disposal facilities, or facilities for the local furnishing of electric energy or gas, or facilities for the furnishing of water, if available on reasonable demand to members of the general public, or storage or training facilities related to any of the foregoing, or research or development facility or pollution abatement or control facility and includes the reconstruction, modernization and modification of any existing industrial project for the abatement or control of industrial pollution.

(f) "Industrial pollution" means any gaseous, liquid or solid waste substances or adverse thermal effects or combinations thereof resulting from any process of industry, manufacturing, trade or business or from the development, processing or recovery of any

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natural resources which pollute the land, water or air of this state.

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§13-2C-3a. Continuation of industrial revenue bond allocation review committee; appointment, terms of members; voting; expenses; duties.

(a) There is continued the West Virginia industrial revenue bond allocation review committee consisting of the members of the board of the West Virginia economic development authority created by article fifteen, chapter thirty-one of this code.

(b) Members are not entitled to compensation for services performed as members, but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties: Provided, That no member may be eligible for expenses for meetings of both the board of the West Virginia economic development authority and the West Virginia industrial revenue bond allocation review committee when the meetings are held on the same day.

(c) A majority of the members of the committee constitutes a quorum for the purpose of conducting business. The affirmative vote of at least the majority of the members present is necessary for any action taken by vote of the committee. No vacancy in the membership of the committee impairs the right of a quorum to exercise all the rights and perform all the duties of the committee.

(d) The committee shall review and evaluate all applications for reservation of funds submitted to the Development Office by a governmental body pursuant to the provisions of subsections (d) and (e), section twenty-one of this article, and shall make reservations of the state allocation (as defined in subdivision (2), subsection (b) of section twenty-one of this article) pursuant to subdivision (3), subsection (b) and subsection (c) of section twenty-one of this article.

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§13-2C-4. Powers conferred on counties and municipalities.

In addition to any other powers which a county or municipality may now have, each county, by and through its county commission, and each municipality, by and through its council or other governing body in lieu thereof, shall have the following powers: (1) To acquire, whether by purchase, construction, gift, lease or otherwise, one or more industrial projects or commercial projects, or additions thereto, which shall be located within this state; (2) to lease, lease with an option to purchase, sell, by installment sale or otherwise, or otherwise dispose of, to others any or all of its industrial projects or commercial projects for such rentals or amounts and upon such terms and conditions as the governing body may deem advisable; (3) to finance one or more industrial projects or commercial projects by making secured or unsecured loans to others to provide funds for the acquisition, by purchase, construction, lease or otherwise, of any such project or projects; (4) to issue revenue bonds for the purpose of defraying the cost of acquisition, by construction, purchase, lease or otherwise, by the county, municipality or others, of an industrial project or commercial project or an addition, extension, or improvement thereto, and to secure the payment of such bonds, all as hereinafter provided; and (5) to issue and deliver revenue bonds in exchange for an industrial project or commercial project.

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§13-2C-5. Location of industrial projects or commercial projects.

Any industrial project or commercial project acquired by construction and purchase, or by either, or financed by a county, shall be located within the county issuing such revenue bonds and any industrial project or commercial project acquired by construction and purchase, or by either, or financed by a municipality, may be situated without or within the corporate bounds of such municipality, but it shall be located within the county in which said municipality is situated, except where a part of such municipality is situated within two or more counties, then said industrial project or commercial project may be located within either county of which said municipality forms a part and when an industrial project or commercial project is so acquired or financed by a municipality the same shall not be located within the corporate bounds of another municipality without the consent of the governing body of such municipality.

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§13-2C-6. Joint establishment by two or more governmental bodies.

Any two or more governmental bodies may jointly acquire by construction and purchase, or by either, or finance one or more industrial projects or commercial projects or additions thereto by the issuance and delivery of revenue bonds in which case such governmental bodies shall jointly exercise all the rights, authority, power and duties herein conferred upon a county commission or a municipality when acting singly and they shall also be subject to the same limitations, restrictions and conditions as are herein imposed on a single governmental body in connection with the acquisition or financing of an industrial project or commercial project: Provided, That notwithstanding the signing and sealing requirements set forth in section seven of this article, the respective governing bodies may provide by agreement among themselves, approved by resolution, that any one of such governing bodies may sign and seal bonds issued pursuant to this article on both its own behalf and on behalf of all other participating governing bodies, and signature in the manner set forth in the said section seven by one governing body shall be effective as to all other participating governing bodies. The respective governing bodies, acting jointly, may also provide by agreement among themselves, any other terms and conditions of such joint participation.

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§13-2C-7. Bonds issued to finance industrial project or commercial project.

All bonds issued by a county commission or by a municipality under the authority of this article shall be limited obligations of the county, or of the municipality. The principal and interest on such bonds shall be payable out of the revenues derived from the lease, sale, financing or other disposition of the industrial project or commercial project for which the bonds are issued, or any other revenue derived from such industrial project or commercial project. The bonds and interest coupons issued under the authority of this article shall never constitute an indebtedness of the county, or of the municipality issuing the same, within the meaning of any Constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the county, or of the municipality issuing the same. Neither shall such bond nor interest thereon be a charge against the general credit or taxing powers of the county, or the municipality and such fact shall be plainly stated on the face of each such bond. Such bonds may be executed, issued and delivered at any time and from time to time; may be in such form and denomination; may be of such tenor, must be negotiable but may be registered as to the principal thereof or as to the principal and interest thereof; may be payable in such amounts and at such time or times; may be payable at such place or places; may bear interest at such rate or rates payable at such place or places and evidenced in such manner; and may contain such provisions therein not inconsistent herewith, all as shall be provided in the proceedings of the governing body whereunder the bonds shall be authorized to be issued. Said bonds may be sold by the governing body at public or private sale at, above or below par, as the governing body shall authorize. The said bounds may also be issued and delivered to the owner of an industrial project or commercial project in exchange therefor and in partial or complete payment of the purchase price thereof.

The bonds issued pursuant to this article by a county commission shall be signed by the president and attested by the clerk of the county commission under the seal of the commission and the bonds issued by a municipality shall be signed by the mayor or other chief officer thereof and attested by the clerk, recorder or other official custodian of the records of said municipality and under the seal of the municipality. The coupons attached thereto shall bear the facsimile signature of the president of the county commission or the mayor or other chief officer of the municipality. In case any of the officials whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes to the same extent as if they had remained in office until such delivery.

If the proceeds of such bonds, by error of calculation or otherwise, shall be less than the cost of the industrial project or commercial project, or if additional real or personal property is to be added to the industrial project or commercial project, additional bonds may in like manner be issued to provide the amount of the deficiency, or to defray the cost of acquiring or financing such additional real or personal property, and unless otherwise provided for in the trust agreement, mortgage or deed of trust, shall be deemed to be of the same issue, and shall be entitled to payment from the same fund, without preference or priority, and shall be of equal priority as to any security.

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§13-2C-8. Security for bonds.

Unless the governmental body shall otherwise determine in the resolution authorizing the issuance of the revenue bonds under the authority of this article, there is hereby created a statutory mortgage lien upon all real estate, buildings, structures, improvements and personal property included as a part of an industrial project or commercial project which was acquired, purchased, constructed, or built or improved, or financed with the proceeds of said bonds, for the purpose of securing the principal of said bonds and the interest thereon. The principal of and interest on any bonds issued under the authority of this article shall be secured by a pledge of the income and revenues derived from the lease, sale, financing or other disposition of the industrial project or commercial project, by the governmental body issuing such bonds. In the discretion and at the option of the county commission or municipality, such revenue bonds may also be secured by a trust indenture by and between the county commission or the municipality and a corporate trustee, which may be a trust company or bank having trust powers, within or without the State of West Virginia. The governing body may authorize the issuance of such revenue bonds by resolution. The resolution authorizing the revenue bonds and fixing the details thereof may provide that such trust indenture may contain such provisions for the protection and enforcing the rights and remedies of the bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the county commission or the municipality in relation to the construction, acquisition or financing of an industrial project or commercial project, or part thereof, or an addition thereto, and the improvement, repair, maintenance and insurance thereof, and for the custody, safeguarding and application of all moneys, and may provide that the industrial project or commercial project shall be constructed and paid for under the supervision and approval of the consulting engineers or architects employed and designated by the governing body and satisfactory to the purchasers of the bonds, their successors, assigns or nominees, and the entity which leases, purchases or will own the project or either thereof, who may require the security given by any contractor or any depository of the proceeds of the bonds or the revenues received from the lease, sale, financing or other disposition of the industrial project or commercial project be satisfactory to such purchasers, their successors, assigns or nominees, or be satisfactory to the entity which leases, purchases or will own the industrial project or commercial project. Such indenture may set forth the rights and remedies of the bondholders, the county or municipality or such trustee, and said indenture may provide for accelerating the maturity of the revenue bonds, at the option of the bondholders or the governmental body issuing the same, upon default in the payment of rentals, or amounts due from the entity which leases, purchases, or will own the project or for other cause. The governing body may also provide by resolution and in such trust indenture for the payment of the proceeds of the sale of the bonds and the revenues from the industrial project or commercial project to such depository as it may determine, for the custody and investment thereof and for the method of distribution thereof, with such safeguards and restrictions as it may determine to be necessary or advisable for the protection thereof and upon the filing of a certified copy of such resolution or of the indenture for record in the office of the clerk of the county commission of the county in which an industrial project or commercial project is located, the

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same shall have the same effect, as to notice, as the recordation of a deed of trust or other recordable instrument.

In lieu of the indenture provided for hereinabove the principal of and interest on said bonds may be secured by a mortgage or deed of trust covering all or any part of the industrial project or commercial project from which the revenues so pledged may be derived, and the same may be secured by an assignment of the lease on or sale or financing agreement with respect to said industrial project or commercial project and by assignment or pledge of the income received by virtue of said lease, sale or financing agreement. The proceedings under which such bonds are authorized to be issued, when secured by a mortgage or deed of trust, may contain the same terms, conditions and provisions provided for herein when an indenture is entered into between the governing body and a trustee and any such mortgage or deed of trust may contain any agreements and provisions customarily contained in instruments securing bonds, including, without limiting the generality of the foregoing, provisions respecting the fixing and collection of rental, purchase or other payments for any industrial project or commercial project covered by such proceedings or mortgage, the terms to be incorporated in the lease, sale or financing agreement with respect to such industrial project or commercial project, the improvement, repair, maintenance and insurance of such industrial project or commercial project, the creation and maintenance of special funds from the revenues received from the lease, sale or financing of such industrial project or commercial project and the rights and remedies available in event of default to the bondholders, the governmental body, or to the trustee under an agreement, indenture, mortgage or deed of trust, all as the governing body shall deem advisable and as shall not be in conflict with the provisions of this article or any existing law: Provided, That in making any such agreements or provisions a county or municipality shall not have the power to obligate itself by indenture, ordinance, resolution, mortgage or deed of trust, except with respect to the industrial project or commercial project and the application of the revenues therefrom, and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers. The proceedings authorizing any bonds hereunder and any indenture, mortgage or deed of trust securing such bonds may provide that, in the event of default in payment of the principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings, indenture, mortgage or deed of trust, such payment and performance may be enforced by the appointment of a receiver in equity with power to charge and collect rents or other amounts and to apply the revenues from the industrial project or commercial project in accordance with such proceedings or the provisions of such agreement, indenture, mortgage or deed of trust. Any such agreement, indenture, mortgage or deed of trust may provide also that in the event of default in such payment or the violation of any agreement contained in the mortgage or deed of trust, the agreement, indenture, mortgage or deed of trust may be foreclosed either by sale at public outcry or by proceedings in equity and may provide that the holder or holders of any of the bonds secured thereby may become the purchaser at any foreclosure sale, if the highest bidder therefor. No breach of any such agreement, indenture, mortgage or deed of trust shall impose any pecuniary liability upon a county or municipality or any charge upon its general credit or against its taxing powers.

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§13-2C-9. Requirements respecting lease, sale or financing of an industrial project or commercial project.

Prior to the issuance of any bonds, the county commission or the municipality shall enter into an agreement to lease, sell or finance the industrial project or commercial project to a lessee, purchaser or owner, which agreement provides for payment to the county commission or municipality or designated depository of such rentals or amounts as will be sufficient (a) to pay the principal of and interest on the bonds issued to finance the project as such principal and interest respectively mature, (b) to build up and maintain any reserves deemed by the governing body to be advisable in connection therewith, and (c) unless the agreement obligates the lessee, purchaser or owner to pay for the cost of maintaining, repairing and insuring of the project, to pay the costs of maintaining the project in good repair and keeping it properly insured. The said agreement shall contain a provision for the revision thereof from time to time, so as to produce sufficient revenue to pay the interest and create a sinking fund sufficient to pay the principal of said bonds when due and to provide for the maintenance, repair and insurance of the industrial project or commercial project unless the latter be assumed by the lessee, purchaser or owner. The said agreement shall also contain such other provisions relating to the industrial project or commercial project and the operation, maintenance and improvement thereof and as to the rights of the parties to said agreement as shall be deemed necessary and advisable by the governmental body.

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§13-2C-10. Redemption of bonds.

The revenue bonds issued pursuant to this article may contain a provision therein to the effect that they, or any of them, may be called for redemption at any time prior to maturity by the governmental body, and at such redemption prices, or premiums, which terms shall be stated in the bond.

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§13-2C-11. Refunding bonds.

Any bonds issued hereunder and at any time outstanding may at any time and from time to time be refunded by a county or municipality by the issuance of its refunding bonds in such amount as the governing body may deem necessary to refund the principal of the bonds so to be refunded, together with any unpaid interest thereon; to make any improvements or alterations in the industrial project or commercial project; and any premiums and commissions necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the redemption of the bonds to be refunded thereby, or by exchange of the refunding bonds for the bonds to be refunded thereby: Provided, That the holders of any bonds so to be refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption. Any refunding bonds issued under the authority of this article shall be payable from revenues derived from the lease, sale, financing, refinancing, or other disposition of or realization from or upon the industrial project or the commercial project which was acquired, purchased, constructed, built or improved, or financed with the proceeds of the bonds to be refunded, or from other moneys or the principal of and interest on or other investment yield from investments or proceeds of bonds or other applicable funds and moneys, including investments of proceeds of any refunding bonds, and shall be subject to the provisions contained in section seven of this article and shall be secured in accordance with the provisions of section eight of this article.

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§13-2C-12. Use of proceeds from sale of bonds.

The proceeds from the sale of any bonds issued under authority of this article shall be applied only for the purpose for which the bonds were issued: Provided, That any accrued interest and premium received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold: Provided, however, That if for any reason any portion of such proceeds shall not be needed for the purpose for which the bonds were issued, then such unneeded portion of said proceeds shall be applied to the purchase of bonds for cancellation or payment of the principal of or the interest on said bonds, or held in reserve for the payment thereof. The cost of acquiring any industrial project or commercial project shall be deemed to include the following: The cost of acquiring any real estate deemed necessary, the actual cost of the construction of any part of an industrial project or commercial project which may be constructed, including architects', engineers', financial or other consultants' and legal fees, the purchase price or rental of any part of a project that may be acquired by purchase or lease, all expense incurred in connection with the authorization, sale and issuance of the bonds to finance such acquisition, and the interest on such bonds for a reasonable time prior to construction, during construction, and for not exceeding twelve months after completion of construction and any other costs and expenses reasonably necessary in the establishment and acquisition of such industrial project or commercial project and the financing thereof.

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§13-2C-13. No contribution by county or municipality.

No county commission or municipality shall have the power to pay out of its general funds, or otherwise contribute, any of the costs of acquiring, constructing or financing an industrial project or commercial project, to be acquired, constructed or financed out of the proceeds from the sale of revenue bonds issued under the authority of this article: Provided, That this provision shall not be construed to prevent a county or municipality from accepting donations of property to be used as a part of an industrial project or commercial project or to be used for defraying any part of the cost of any such project. The bonds issued pursuant to this article shall be payable solely from the revenue derived from the industrial project or commercial project or the financing thereof and shall not constitute an indebtedness of the county or of the municipality within the meaning of any Constitutional provision and it shall be plainly stated on the face of each bond that it has been issued under the provisions of this article and that it does not constitute an indebtedness of the county or municipality within the meaning of the Constitution of West Virginia.

No county commission or municipality shall have the authority under this article to levy any taxes for the purpose of paying any part of the cost of acquiring, constructing or financing an industrial project or commercial project. However, all necessary preliminary expenses actually incurred by a county commission or a municipality in the making of surveys, taking options, preliminary planning, and all other expenses necessary to be paid prior to the issuance, sale and delivery of the revenue bonds, may be paid by such governmental body out of any surplus contained in any item of budgetary appropriation or any revenues collected in excess of anticipated revenues, which shall be reimbursed and repaid out of the proceeds of the sale of the revenue bonds.

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§13-2C-14. Bonds made legal investments.

Bonds issued under the provisions of this article shall be legal investments for banks, building and loan associations, and insurance companies organized under the laws of this state and for a business development corporation organized pursuant to chapter thirty-one, article fourteen of the Code of West Virginia.

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§13-2C-15. Exemption from taxation.

The revenue bonds issued pursuant to this article and the income therefrom shall be exempt from taxation except inheritance, estate and transfer taxes; and the real and personal property which a county commission or a municipality may acquire to be leased, sold or otherwise disposed of, according to the provisions of this article, shall be exempt from taxation by the state, or any county, municipality, or other levying body, as public property, so long as the same is owned by such county or municipality.

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§13-2C-16. Construction of article.

Neither this article nor anything herein contained shall be construed as a restriction or limitation upon any powers which a county or municipality might otherwise have under any laws of this state, but shall be construed as alternative or additional; and this article shall not be construed as requiring an election by the voters of a county or municipality prior to the issuance of bonds hereunder by such county or municipality, and same shall not be construed as requiring any proceeding under any law or laws, other than that which is required by this article.

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§13-2C-17. No notice, consent or publication required.

No notice to or consent or approval by any other governmental body or public officer shall be required as a prerequisite to the issuance or sale of any bonds or the making of any agreement, a mortgage or deed of trust under the authority of this article. No publication or notice shall be necessary to the validity of any resolution or proceeding had under this article.

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§13-2C-18. Severability.

If any section, clause, provision or portion of this article shall be held to be invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect any other section, clause or provision of this article which is not in and of itself unconstitutional.

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§13-2C-19. Public officials exempt from personal liability.

No official or member of a municipality or of a county court shall be personally liable on any contract, or obligation executed pursuant to the authority herein contained, nor shall the issuance of bonds hereunder be considered as misfeasance in office.

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§13-2C-20. Prohibition of financial interest of public officials.

No member of a county commission or the governing body of a municipality issuing revenue bonds under the provisions of this article shall have any financial interest, directly or indirectly, in the leasing, sale or other disposition of an industrial project or commercial project acquired, constructed or financed pursuant to this article.

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§13-2C-21. Ceiling on issuance of private activity bonds; establishing procedure for allocation and disbursements; reservation of funds; limitations; unused allocation; expirations and carryovers.

(a) Private activity bonds (as defined in Section 141(a) of the United States Internal Revenue Code of 1986, other than those described in Section 146(g) of the Internal Revenue Code) issued pursuant to this article, including bonds issued by the West Virginia public energy authority pursuant to subsection (11), section five, article one, chapter five-d of this code or under article eighteen, chapter thirty-one of this code, during any calendar year may not exceed the ceiling established by Section 146(d) of the United States Internal Revenue Code. It is hereby determined and declared as a matter of legislative finding: (i) That, in an attempt to promote economic revitalization of distressed urban and rural areas, certain special tax incentives will be provided for empowerment zones and enterprise communities to be designated from qualifying areas nominated by state and local governments, all as set forth by Section 1391, et seq., of the United States Internal Revenue Code; (ii) that qualified businesses operating in enterprise communities and empowerment zones will be eligible to finance property and provide other forms of financial assistance as provided for in Section 1394 of the United States Internal Revenue Code; and (iii) that it is in the best interest of this state and its citizens to facilitate the acquisition, construction and equipping of projects within designated empowerment zones and enterprise communities by providing an orderly mechanism for the commitment of the annual ceiling for private activity bonds for these projects. It is hereby further determined and declared as a matter of legislative finding: (i) That the production of bituminous coal in this state has resulted in coal waste which is stored in areas generally referred to as gob piles; (ii) that gob piles are unsightly and have the potential to pollute the environment in this state; (iii) that the utilization of the materials in gob piles to produce alternative forms of energy needs to be encouraged; (iv) that Section 142(a)(6) of the United States Internal Revenue Code of 1986 permits the financing of solid waste disposal facilities through the issuance of private activity bonds; and (v) that it is in the best interest of this state and its citizens to facilitate the construction of facilities for the generation of power through the utilization of coal waste by providing an orderly mechanism for the commitment of the annual ceiling for private activity bonds for these projects.

(b) On or before the first day of each calendar year, the Executive Director of the Development Office shall determine the state ceiling for the year based on the criteria of the United States Internal Revenue Code. The annual ceiling shall be allocated among the several issuers of bonds under this article or under article eighteen, chapter thirty-one of this code as follows:

(1) For the calendar year two thousand one, $50 million and for each subsequent calendar year, forty percent of the state ceiling for that year shall be allocated to the West Virginia Housing Development Fund for the purpose of issuing qualified mortgage bonds, qualified mortgage certificates or bonds for qualified residential rental projects;

(2) The amount remaining after the allocation to the West Virginia Housing Development Fund described in subdivision (1) of this subsection shall be retained by the West Virginia

Development Office and shall be referred to in this section as the "state allocation";

(3) Thirty-five percent of the state allocation shall be set aside by the Development Office to be made available for lessees, purchasers or owners of proposed projects, hereafter in this section referred to as "nonexempt projects", which do not qualify as exempt facilities as defined by United States Internal Revenue Code. All reservations of private activity bonds for nonexempt projects shall be approved and awarded by the committee based upon an evaluation of general economic benefit and any rule that the Development Office promulgates pursuant to section two, article two, chapter five-b of this code: Provided, That all requests or reservations of funds from projects described in this subsection are submitted to the Development Office on or before November 1, of each calendar year: Provided, however, That on November 15, of each calendar year, the uncommitted portion of this part of the state allocation shall revert to and become part of the state allocation portion described in subsection (g) of this section; and

(4) Ten percent of the state allocation shall be made available for lessees, purchasers or owners of proposed commercial or industrial projects which qualify as exempt facilities under Section 1394 of the United States Internal Revenue Code. All reservations of private activity bonds for the projects shall be approved and awarded by the committee based upon an evaluation of general economic benefit and any rule that the Development Office promulgates pursuant to section two, article two, chapter five-b of this code: Provided, That all requests for reservations of funds from projects described in this subsection shall be submitted to the Development Office on or before November 1, of each calendar year: Provided, however, That on November 15, of each calendar year the uncommitted portion of this part of the state allocation shall revert to and become part of the state allocation portion described in subsection (g) of this section.

(c) The remaining fifty-five percent of the state allocation shall be made available for lessees, purchasers or owners of proposed commercial or industrial projects which qualify as exempt facilities as defined by Section 142(a) of the United States Internal Revenue Code. All reservations of private activity bonds for exempt facilities shall be approved and awarded by the committee based upon an evaluation of general economic benefit and any rule that the Development Office promulgates pursuant to section two, article two, chapter five-b of this code: Provided, That no reservation may be in an amount in excess of fifty percent of this portion of the state allocation: Provided, however, That all requests for reservations of funds from projects described in this subsection shall be submitted to the Development Office on or before November 1, of each calendar year: Provided further, That on November 15, of each calendar year the uncommitted portion of this part of the state allocation shall revert to and become part of the state allocation portion described in subsection (g) of this section.

(d) No reservation may be made for any project until the governmental body seeking the reservation submits a notice of reservation of funds as provided in subsection (e) of this section. The governmental body shall first adopt an inducement resolution approving the prospective issuance of bonds and setting forth the maximum amount of bonds to be issued. Each governmental body seeking a reservation of funds following the adoption of the

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inducement resolution shall submit a notice of inducement signed by its clerk, secretary or recorder or other appropriate official to the Development Office. The notice shall include information required by the Development Office pursuant to any rule of the Development Office. Notwithstanding the foregoing, when a governmental body proposes to issue bonds for the purpose of: (i) Constructing, acquiring or equipping a project described in subdivision (3) or (4), subsection (b) of this section; or (ii) constructing an energy producing project which relies, in whole or in part, upon coal waste as fuel, to the extent the project qualifies as a solid waste facility under Section 142(a)(6) of the United States Internal Revenue Code of 1986, the project may be awarded a reservation of funds from the state allocation available for three years subsequent to the year in which the notice of reservation of funds is submitted, at the discretion of the Executive Director of the Development Office: Provided, That no discretionary reservation may be made for any single project described in this subsection in an amount in excess of thirty-five percent of the state allocation available for the year subsequent to the year in which the request is made.

(e) Currently with or following the submission of its notice of inducement, the governmental body at any time considered expedient by it may submit its notice of reservation of funds which shall include the following information:

(1) The date of the notice of reservation of funds;

(2) The identity of the governmental body issuing the bonds;

(3) The date of inducement and the prospective date of issuance;

(4) The name of the entity for which the bonds are to be issued;

(5) The amount of the bond issue or, if the amount of the bond issue for which a reservation of funds has been made has been increased, the amount of the increase;

(6) The type of issue; and

(7) A description of the project for which the bonds are to be issued.

(f) The Development Office shall accept the notice of reservation of funds no earlier than the first calendar workday of the year for which a reservation of funds is sought: Provided, That a notice of reservation of funds with respect to a project described in subdivision (4), subsection (b) of this section or an energy producing project that is eligible for a reservation of funds for a year subsequent to the year in which the notice of reservation of funds is submitted may contain an application for funds from a subsequent year's state allocation. Upon receipt of the notice of reservation of funds, the Development Office shall immediately note upon the face of the notice the date and time of reception.

(g) If the bond issue for which a reservation has been made has not been finally closed within one hundred twenty days of the date of the reservation to be made by the committee, or the thirty-first of December following the date of reservation if sooner and a statement of

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bond closure which has been executed by the clerk, secretary, recorder or other appropriate official of the governmental body reserving the bond issue has not been received by the Development Office within that time, then the reservation shall expire and be considered to have been forfeited and the funds reserved shall be released and revert to the portion of the state allocation from which the funds were originally reserved and shall then be made available for other qualified issues in accordance with this section and the Internal Revenue Code: Provided, That as to any reservation for a nonexempt project or any reservation for a project described in subdivision (4), subsection (b) of this section that is forfeited on or after November 1, in any calendar year, the reservation shall revert to the state allocation for allocation by the industrial revenue bond allocation review committee: Provided, however, That as to any notice of reservation of funds received by the Development Office during the month of December in any calendar year with respect to any project qualifying as an elective carry forward pursuant to Section 146(f)(5) of the Internal Revenue Code, the notice of reservation of funds and the reservation to which the notice relates may not expire or be subject to forfeiture: Provided further, That any unused state ceiling as of December 31, in any year not otherwise subject to a carry forward pursuant to Section 146(f) of the Internal Revenue Code shall be allocated to the West Virginia Housing Development Fund which shall be considered to have elected to carry forward the unused state ceiling for the purpose of issuing qualified mortgage bonds, qualified mortgage credit certificates or bonds for qualified residential rental projects, each as defined in the Internal Revenue Code. All requests for subsequent reservation of funds upon loss of a reservation pursuant to this section shall be treated in the same manner as a new notice of reservation of funds in accordance with subsections (d) and (e) of this section.

(h) Once a reservation of funds has been made for a project described in subdivision (4), subsection (b) of this section, notwithstanding the language of subsection (g) of this section, the reservation shall remain fully available with respect to the project until October 1, in the year from which the reservation was made at which time, if the bond issue has not been finally closed, the reservation shall expire and be considered forfeited and the funds reserved are released as provided in said subsection.

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