WEST VIRGINIA CODE CHAPTER 7 ARTICLE 12

WV Legislature

§7-12-1. Establishment authorized; name; exceptions.

Except as hereinafter provided, the governing body of every municipality and the county commission of every county is hereby authorized to create and establish a public agency to be known as a development authority. The name of the authority shall contain the words "development authority," together with the designation of the municipality or the county within which such authority is intended to operate. Nothing in this article contained, however, shall be construed as permitting the governing body of any municipality or county commission of any county in which there exists, on the date on which this article becomes effective, one or more public development authorities, corporations or commissions, organized and existing pursuant to an act or acts of the Legislature, either local or general, and performing substantially the same or similar functions as the development authorities herein authorized, to create and establish such a development authority until such time as all such other public development authorities, corporations and commissions cease operations in such municipality or county: Provided, That nothing herein shall be construed to prohibit the creation and establishment of a municipal development authority when a county or regional development authority exists, and any municipal development authority shall have the exclusive right to exercise its powers granted pursuant to this article within the boundaries of the municipality.

WV Legislature

§7-12-2. Purposes.

The purposes for which the authority is created are to promote, develop and advance the business prosperity and economic welfare of the municipality or county for which it is created, its citizens and its industrial complex; to encourage and assist through loans, investments or other business transactions in the locating of new business and industry within the municipality or county and to rehabilitate and assist existing businesses and industries therein; to stimulate and promote the expansion of all kinds of business and industrial activity which will tend to advance business and industrial development and maintain the economic stability of the municipality or county, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the citizens of the county; to cooperate and act in conjunction with other organizations, federal, state or local, in the promotion and advancement of industrial, commercial, agricultural, and recreational developments within the municipality or county; and to furnish money and credit, land and industrial sites, technical assistance and such other aid as may be deemed requisite to approved and deserving applicants for the promotion, development and conduct of all kinds of business activity within the municipality or county.

WV Legislature

§7-12-3. Management and control of county authority vested in board; appointment and terms of members; vacancies; removal of members.

The management and control of a county authority, its property, operations, business, and affairs shall be lodged in a board of not fewer than seven nor more than 21 persons who shall be appointed by the county commission and be known as members of the authority. The county commission shall appoint one member to represent the county commission on the board. Members of the board shall be appointed by the county commission. The members of the authority first appointed shall serve respectively for terms of one year, two years and three years, divided equally or as nearly equal as possible between these terms. Thereafter, members shall be appointed for terms of three years each. A member may be reappointed for such additional term or terms as the county commission may deem proper. If a member resigns, is removed or for any other reason his or her membership terminates during his or her term of office, a successor shall be appointed by the county commission to fill out the remainder of his or her term. Members in office at the expiration of their respective terms shall continue to serve until their successors have been appointed and have qualified. The county commission may at any time remove any member of the board by an order duly entered of record and may appoint a successor member for any member so removed.

Other persons, firms, unincorporated associations, and corporations, who reside, maintain offices, or have economic interests in the county, are eligible to participate in and request the county commission to appoint members to the development authority as the said authority shall by its bylaws provide.

WV Legislature

§7-12-3a. Management and control of municipal authority vested in board; appointment and terms of members; vacancies; removal of members.

The management and control of a municipal authority, its property, operations, business and affairs shall be lodged in a board of not fewer than twelve nor more than twenty-one persons who shall be appointed by the governing body and be known as members of the authority. One member of the authority shall also be a member of the governing body appointed to represent it on the board. Other members shall be appointed by the governing body and shall include representatives of business, industry and labor. The members of the authority first appointed shall serve respectively for terms of one year, two years and three years, divided equally or as nearly equal as possible between these terms. Thereafter, members shall be appointed for terms of three years each. A member may be reappointed for such additional term or terms as the appointing agency may deem proper. If a member resigns, is removed or for any other reason his membership terminates during his term of office, a successor shall be appointed by the appointing agency to fill out the remainder of his term. Members in office at the expiration of their respective terms shall continue to serve until their successors have been appointed and have qualified. The appointing agency may at any time remove its appointed member of the authority by an order duly entered of record or by other action appropriate for such appointing agency and may appoint a successor member for any member so removed.

In addition to the appointing agencies hereinbefore named, such other persons, firms, unincorporated associations, and corporations, who reside, maintain offices, or have economic interests, as the case may be, in the municipality, are eligible to participate in and request the governing body to appoint members to the development authority as the said authority by its bylaws provides.

WV Legislature

§7-12-4. Qualifications of members.

(a) In addition to the appointing agencies as provided for in section three of this article, such other persons, firms, unincorporated associations and corporations, which reside or maintain offices in the county of the development authority, are eligible to participate in and request the governing body to appoint members to the development authority as the said authority by its bylaws provides. Members can also be drawn from citizens of a county contiguous to the county in which the county development authority is located regardless of their state of residence.

(b) Any person employed by, owning an interest in, or otherwise associated with a public utility company as defined in section two, article one, chapter twenty-four of this code or bank as defined in section two, article one, chapter thirty-one-a of this code may serve as a board member and shall not be disqualified from serving as a board member because of conflict of interest as defined in section fifteen, article ten, chapter sixty-one of this code and shall not be subject to prosecution under the provisions of said section when the violation is created solely as a result of his or her relationship with the bank or public utility. This member must recuse himself or herself from board participation regarding the conflicting issue as provided for in section five of this article.

WV Legislature

§7-12-5. Compensation of members; expenses; recusal of member from voting where conflict of interest involved.

(a) No member of the authority shall receive any compensation, whether in formal salary, per diem allowance or otherwise, in connection with his or her services as such member: *Provided*, That each member shall, however, be entitled to reimbursement by the authority for any necessary expenditures in connection with the performance of his or her general duties as such member: *Provided however*, That each member may be reimbursed for his or her reasonable and necessary expenses, including but not limited to compensation, in connection with his or her performance of other duties as assigned by the authority in connection with the June 2016 flooding event in West Virginia, if such duties and such reimbursement is first approved by a vote of the authority, with the member to be reimbursed being recused from voting upon the question.

(b) Whenever a person associated with a public utility or bank as set out in section four of this article has a conflict of interest between the board and that public utility or bank, then he or she must recuse himself or herself from any vote, discussion or other activity associated with the board or its members that creates the conflict of interest.

WV Legislature

§7-12-6. Authority to be a public corporation.

The authority and the members thereof shall constitute and be a public corporation under the name provided for in section one, and as such shall have perpetual succession, may contract and be contracted with, sue and be sued, plead and be pleaded, and have and use a common seal.

WV Legislature

§7-12-7. Powers generally.

(a) The development authority is hereby given power and authority as follows: (1) To make and adopt all necessary bylaws and rules for its organization and operations not inconsistent with laws; (2) to elect its own officers, to appoint committees and to employ and fix compensation for personnel necessary for its operation; (3) to enter into contracts with any person, agency, governmental department, firm or corporation, including both public and private corporations, and generally to do any and all things necessary or convenient for the purpose of promoting, developing and advancing the business prosperity and economic welfare of the county in which it is intended to operate, its citizens and industrial complex, including, without limiting any of the foregoing, the construction of any building or structure for lease to the federal government or any of its agencies or departments, and in connection therewith to prepare and submit bids and negotiate with the federal government or such agencies or departments in accordance with plans and specifications and in the manner and on the terms and conditions and subject to any requirements, regulations, rules and laws of the United States of America for the construction of said buildings or structures and the leasing thereof to the federal government or such agencies or departments; (4) to amend or supplement any contracts or leases or to enter into new, additional or further contracts or leases upon such terms and conditions, for such consideration and for such term of duration, with or without option of renewal, as may be agreed upon by the authority and such person, agency, governmental department, firm or corporation; (5) unless otherwise provided for in, and subject to the provisions of, such contracts, or leases, to operate, repair, manage and maintain such buildings and structures and provide adequate insurance of all types and in connection with the primary use thereof and incidental thereto to provide such services, such as barber shops, newsstands, drugstores and restaurants, and to effectuate such incidental purposes, grant leases, permits, concessions or other authorizations to any person or persons, upon such terms and conditions, for such consideration and for such term of duration as may be agreed upon by the authority and such person, agency, governmental department, firm or corporation; (6) to delegate any authority given to it by law to any of its officers, committees, agents or employees; (7) to apply for, receive and use grants-in-aid, donations and contributions from any source or sources and to accept and use bequests, devises, gifts and donations from any person, firm or corporation; (8) to acquire real property by gift, purchase or construction, or in any other lawful manner, and hold title thereto in its own name and to sell, lease or otherwise dispose of all or part of such real property which it may own, either by contract or at public auction, upon the approval by the board of directors of the development authority: Provided, That the funds received by the authority as a result of selling, leasing or otherwise disposing of all or part of such real property owned by the authority may be invested by the authority in a manner determined by the authority's board of directors to be in the best interest of the authority under an investment policy adopted and maintained by the board that is consistent with the standards of the Uniform Prudent Investor Act set forth in article six-c, chapter forty-four of this code: Provided, however, That for short-term investments the board of directors shall consult with the State Treasurer prior to investing funds; for long-term investments, the board shall consult with the Investment Management Board and compare the rate of return on

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investment for the previous three years and compare the expense loads for the past three years; if the comparison for the Investment Management Board is more favorable, the Board must invest the funds with the Investment Management Board; (9) to purchase or otherwise acquire, own, hold, sell, lease and dispose of all or part of any personal property which it may own, either by contract or at public auction: Provided further, That the funds received by the authority as a result of selling, leasing or otherwise disposing of all or part of such personal property owned by the authority may be invested by the authority in a manner determined by the authority's board of directors to be in the best interest of the authority under an investment policy adopted and maintained by the board that is consistent with the standards of the Uniform Prudent Investor Act set forth in article six-c, chapter forty-four of this code: And provided further, That for short-term investments the board of directors shall consult with the State Treasurer prior to investing funds; for long-term investments, the board shall consult with the Investment Management Board and compare the rate of return on investment for the previous three years and compare the expense loads for the past three years; if the comparison for the Investment Management Board is more favorable, the board must invest the funds with the Investment Management Board; (10) pursuant to a determination by the board that there exists a continuing need for programs to alleviate and prevent unemployment within the county in which the authority is intended to operate or aid in the rehabilitation of areas in said county which are underdeveloped, decaying or otherwise economically depressed and that moneys or funds of the authority are necessary therefor, to borrow money and execute and deliver the authority's negotiable notes, mortgage bonds, other bonds, debentures and other evidences of indebtedness therefor, on such terms as the authority shall determine and give such security therefor as shall be requisite, including giving a mortgage or deed of trust on its real or personal property and facilities in connection with the issuance of mortgage bonds; (11) to raise funds by the issuance and sale of revenue bonds in the manner provided by the applicable provisions of article sixteen, chapter eight of this code, it being hereby expressly provided that a development authority created under this article is a governing body within the definition of that term as used in article sixteen, chapter eight of this code; and (12) to expend its funds in the execution of the powers and authority herein given, which expenditures, by the means authorized herein, are hereby determined and declared as a matter of legislative finding to be for a public purpose and use, in the public interest, and for the general welfare of the people of West Virginia, to alleviate and prevent economic deterioration and to relieve the existing critical condition of unemployment existing within the state.

(b) The amendment of this section enacted in the year 1998 is intended to clarify the intent of the Legislature as to the manner in which an authority may sell, lease or otherwise dispose of real and personal property owned by an authority and shall be retroactive to the date of the prior enactment of this section.

(c) Notwithstanding any provision of this code to the contrary, any development authority participating in the Appalachian Region Interstate Compact pursuant to chapter seven-a of this code may agree to a revenue and economic growth-sharing arrangement with respect to tax revenues and other income and revenues generated by any facility owned by an

authority. Any development authority or member locality may be located in any jurisdiction participating in the Appalachian Region Interstate Compact or a similar agreement for interstate cooperation for economic and workforce development authorized by law. The obligations of the parties to any such agreement shall not be debt within the meaning of section eight, article X of the Constitution of West Virginia. Any such agreement shall be approved by a majority vote of the governing bodies of the member localities reaching such an agreement but does not require any other approval.

(d) "Member localities" means the counties, municipalities or combination thereof which are members of an authority.

WV Legislature

§7-12-7a. Findings respecting necessity for exercise of right of eminent domain; authorization to exercise right of eminent domain.

(a) It is hereby found and determined by the Legislature that in fulfilling their prescribed purposes and exercising their powers, including the purpose of promoting, developing and advancing the business prosperity and economic welfare of the county for which created by acquiring lands and other real property to be furnished by lease, sale or other disposition as industrial sites, county development authorities are performing essential public purposes; that the performance of such essential public purposes are frequently impeded, unduly delayed, or wholly frustrated by imperfections in the title to essential land and other real properties, by lost heirs or widely scattered owners of undivided interests in essential lands and other real properties and by owners of relatively small but essential parcels of a proposed land development site who refuse to sell their land or other real property to the county; and, that the exercise by county development authorities of the right of eminent domain within the limitations herein provided is therefore necessary and appropriate to achieve the said public purposes of county development authorities.

(b) Any county development authority heretofore or hereafter created by a county commission pursuant to the authority of this article is hereby authorized and empowered to exercise the right of eminent domain if an order of such county commission authorizing exercise of the right of eminent domain as to any proposed acquisition is first made and entered and at least three fourths of the entire tract has either been purchased, optioned, or is under contract to be purchased: Provided, That prior to the issuance of the order by the county commission, it shall hold a public hearing on the public necessity of the exercise of eminent domain and shall cause a Class II legal advertisement to be published in accordance with the provisions of section two, article three, chapter fifty-nine, prior to the hearing: Provided, however, That a separate hearing must be held and a separate order promulgated for each parcel over which the authority wishes to exercise the power of eminent domain: Provided further, That the right of eminent domain shall not be exercised to acquire real property which exceeds one fourth of any land development site proposed by the county development authority, and the aforesaid order of a county commission shall specifically state the anticipated size of the entire site with respect to which the exercise by a county development authority of the right of eminent domain is authorized.

WV Legislature

§7-12-8. Incurring indebtedness; rights of creditors.

The authority may incur any proper indebtedness and issue any obligations and give any security therefor which it may deem necessary or advisable in connection with carrying out its purposes as hereinbefore mentioned. No statutory limitation with respect to the nature, or amount, interest rate or duration of indebtedness which may be incurred by municipalities or other public bodies shall apply to indebtedness of the authority. No indebtedness of any nature of the authority shall constitute an indebtedness of the governing body of the municipality or county commission of the municipality or county in which the commission is intended to operate or any municipality situated therein, or a charge against any property of said county commission, municipalities, or other appointing agencies. The rights of creditors of the authority shall be solely against the authority as a corporate body and shall be satisfied only out of property held by it in its corporate capacity.

WV Legislature

§7-12-9. Agreements in connection with obtaining funds.

The authority may, in connection with obtaining funds for its purposes, enter into any agreement with any person, firm or corporation, including the federal government; or any agency or subdivision thereof, containing such provisions, covenants, terms and conditions as the authority may deem advisable.

WV Legislature

§7-12-9a. Joint undertakings by municipal and county development authorities.

(a) The Legislature hereby finds and declares that the citizens of the state would benefit from coordinated economic development efforts and that to encourage cooperation and coordination, county and municipal economic development authorities should share in the tax revenues derived from joint programs regardless of the jurisdiction in which they are located.

(b) Any three or more county or municipal development authorities may contract to share expenses for and revenues derived from joint economic development projects within their respective geographic territories. Notwithstanding any other section of the code to the contrary, county and municipal development authorities may contract to distribute on a pro rata basis proceeds derived from joint economic development projects.

(c) Each county or municipal development authority participating in a joint economic development project contract must contribute at least $15,000 in cash to the project.

(d) In the event that a county or municipal development authority desires to withdraw from participation, then the remaining participants may jointly choose a successor. No withdrawing county development authority shall be entitled to the return of any money or property advanced to the project, unless specifically provided for in the contract.

(e) In the event that a joint economic development project is terminated, all funds, property and other assets shall be returned to the county or municipal development authorities in the same proportion as contributions of funds, property and other assets were made by the county or municipal development authorities.

(f) A grant, which may not exceed $100,000, may be made by the West Virginia Development Office to any county or municipal economic development authority which enters into such contracts.

WV Legislature

§7-12-9b. Joint development entities.

(a) The Legislature hereby finds and declares that the citizens of this state would benefit from coordinated economic development efforts and that to encourage cooperation and coordination, county governing bodies, municipal governing bodies and county and municipal development authorities should be authorized to organize and jointly own all of the partnership, ownership and membership interests in a partnership, corporation or limited liability company for the sole purpose of undertaking jointly through their joint ownership of or membership in the partnership, corporation or limited liability company any project or projects that an authority established pursuant to this article would be permitted to undertake.

(b) Any combination of two or more county governing bodies, municipal governing bodies, municipal development authorities or county development authorities may jointly form and hold all of the partnership, ownership or membership interests in a partnership, corporation or limited liability company, the sole purpose of which is to develop and own one or more joint economic development projects (for purposes of this section, a "joint development entity"). No person or entity other than a county governing body, municipal governing body, municipal development authority or county development authority may own any ownership or membership interest in a joint development entity. Any existing partnership, corporation or limited liability company is a joint development entity on and after the effective date of this section if: (i) It was organized for the purposes described in this subsection prior to the effective date of this section; and (ii) the partnership, ownership or membership interests in it meet the requirements of this subsection on and after the effective date of this section.

(c) To the extent consistent with and not prohibited by or in conflict with the restrictions and limitations on, or the rights and attributes of, a joint development entity set forth in this section, the applicable general law governing partnerships, corporations or limited liability companies govern the organization, existence, duration, powers, governance and dissolution of a joint development entity and the rights and responsibilities of the partners, owners or members of a joint development entity.

(d) A joint development entity is a public corporation and a political subdivision and instrumentality of its partners, owners or members and has the powers, rights and privileges of an authority set forth in sections seven, eight, nine, ten, eleven, twelve and fourteen of this article in addition to those granted to partnerships, corporations and limited liability companies under applicable general law.

(e) For West Virginia tax purposes, a joint development entity is a political subdivision of the State of West Virginia and is exempt from all state and local taxation and all real and personal property owned by a joint development entity, or which the joint development entity may acquire to be leased, sold or otherwise disposed of, is exempt from taxation by the state or any county, municipality or other levying body as public property.

WV Legislature

§7-12-10. Property, bonds and obligations of authority exempt from taxation.

The authority shall be exempt from the payment of any taxes or fees to the state or any subdivision thereof or to any officer or employee of the state or other subdivision thereof. The property of the authority shall be exempt from all local and municipal taxes. Bonds, notes, debentures and other evidence of indebtedness of the authority are declared to be issued for a public purpose and to be public instrumentalities, and shall be exempt from taxes.

WV Legislature

§7-12-11. Participation and appropriations authorized; transfers and conveyances of property.

The governing body of a municipality and county commission are hereby authorized and empowered to appoint members of the said authority and the county commission and any municipality therein, or any one or more of them, jointly and severally, are hereby authorized and empowered to contribute by appropriation from their respective general funds not otherwise appropriated to the cost of the operation and projects of the authority.

The county commission of the county or municipal corporations therein are hereby authorized and empowered to transfer and convey to the said authority property of any kind acquired by said county commission or municipal corporation for or adaptable to use in industrial, economic and recreational development, such transfers or conveyances to be without consideration or for such price and upon such terms and conditions as the said county commission or municipal corporation deems proper.

WV Legislature

§7-12-12. Contributions by county commissions, municipalities and others; funds and accounts; reports; audit and examination of books, records and accounts.

Contributions may be made to the authority from time to time by the county commission of the county or any municipal corporation therein, and by any persons, firms or corporations which shall desire to do so. All such funds and all other funds received by the authority shall be deposited in such bank or banks as the authority may direct and shall be withdrawn therefrom in such manner as the authority may direct. The authority shall keep strict account of all its receipts and expenditures and shall each quarter make a quarterly report to the county commission and municipalities containing an itemized statement of its receipts and disbursements during the preceding quarter. Within sixty days after the end of each fiscal year, the authority shall make an annual report containing an itemized statement of its receipts and disbursements for the preceding year, and such annual report shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the development authority is located. The books, records and accounts of the authority shall be subject to audit and examination by the office of the State Tax Commissioner of West Virginia and by any other proper public official or body in the manner provided by law.

WV Legislature

§7-12-13. Sale or lease of property; reversion of assets upon dissolution.

In the event the board of the authority shall so determine, the authority may lease or sell all of its property and equipment, either by contract or at public auction, on such terms and conditions as the authority may fix and determine. Upon the dissolution of the authority, all of its assets and property shall revert to and become the property of the county or municipality for which said authority was created.

The amendment of this section in the year one thousand nine hundred ninety-eight, is intended to clarify the intent of the Legislature as to the manner in which an authority may sell, lease or otherwise dispose of real and personal property owned by an authority, and shall be retroactive to the date of the prior enactment of this section.

WV Legislature

§7-12-14. Employees to be covered by workers' compensation.

All employees of the authority eligible thereto are deemed to be within the Workers' Compensation Act of West Virginia, and premiums on their compensation shall be paid by the authority as required by law.

WV Legislature

§7-12-15. Liberal construction of article.

It is the purpose of this article to provide for promotion, development and advancement of the business prosperity and economic welfare of the municipality or county, its citizens and its industrial complex, and this article shall be liberally construed as giving to the authority full and complete power reasonably required to give effect to the purposes hereof.

WV Legislature

§7-12-16. Provisions severable.

The several sections and provisions of this article are severable, and if any section or provisions hereof shall be held unconstitutional, all the remaining sections and provisions of this article shall nevertheless remain valid.

WV Legislature