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SENATE BILL NO. 40

(By Mr. Carson, Mr. President)

PASSED March 8th, 1961

In Effect July 1st, 1961

Filed in Office of the Secretary of State of West Virginia MAR 17 1961

JOE F. BURDETT
SECRETARY OF STATE
ENROLLED

Senate Bill No. 40
(By Mr. CARSON, Mr. PRESIDENT)

[Passed March 8, 1961; in effect July 1, 1961.]

AN ACT to amend chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article designated article fifteen, relating to the promotion and expansion of industrial developments in the state of West Virginia and the creation of a public corporation to be known as the West Virginia industrial development authority to allocate funds for and make secured loans to industrial development agencies for the payment of a part of the cost of industrial development projects in the state of West Virginia; authorizing the authority to enter into agreement with the government of the United States or any federal agency or industrial development agency; empowering the authority to take title
to, sell, convey and lease industrial development projects where necessary to protect loans made by the West Virginia industrial development authority on industrial development projects; providing for the establishment of industrial development projects in the state of West Virginia; providing that no debt of the state, its municipalities and political subdivisions shall be incurred in the exercise of any powers granted by this act; and providing for the examination of the accounts and affairs of the authority; and the authorization for appropriations for the establishment of an industrial development fund.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article designated article fifteen, to read as follows:

Article 15. The West Virginia Industrial Development Authority Act.

Section 1. Short Title.—This act shall be known and may be cited as the “West Virginia Industrial Development Authority Act.”
Sec. 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 the state and that such conditions may well come about, from time to time, in other areas of the state; (b) that in some areas of the state such conditions are chronic and have been so for so long a period of time that, without remedial measures, they may become so in other areas of the state; (c) that economic insecurity due to unemployment is a serious menace to the health, safety, morals and general welfare of the people of the entire state; (d) that widespread industry unemployment produces indigency which falls with crushing force upon all unemployed workers and ultimately upon the state in the form of public assistance and unemployment compensation; (e) that the absence of employment and business opportunities for the youth of such areas is a serious threat to the strength and permanence of their faith in our American political and economic institutions and the philosophy of freedom on which those institutions are based; (f) that lack of employment and business oppor-
opportunities in such areas has resulted in thousands of workers
and their families leaving the state to find such oppor-
tunities, and that this exodus has adversely affected the
tax base of counties and municipalities within such areas
resulting in an impairment of their financial ability to
support education and other local government services;
(g) that security against unemployment and the resulting
spread of indigency and economic stagnation in affected
areas can best be provided by the promotion, attraction,
stimulation, rehabilitation and revitalization of commerce,
industry and manufacturing in such areas; (h) that the
present and future health, safety, morals, right to gainful
employment and general welfare of the people of the state
require as a public purpose the promotion and develop-
ment of new and expanded industrial and manufacturing
enterprises within areas of critical unemployment; (i)
that the device under which private community industrial
development organizations in the state acquire or build
industrial buildings with funds raised through popular
subscription, loans, or otherwise for lease and sale to new
or expanding industries has proven effective in creating
new employment and business opportunities locally, is in accord with the American tradition of community initiative and enterprise, and requires and deserves encouragement and support from the state, as a means toward alleviation of unemployment and chronic economic distress; (j) that community industrial development corporations in the state have invested substantial funds in successful industrial development projects and are experiencing difficulty in undertaking additional projects by reason of the partial inadequacy of their own funds potentially available from local subscription sources and by reason of limitations of local financial institutions in providing additional and sufficiently sizeable first deed of trust or mortgage loans; (k) that an urgent need exists to stimulate a larger flow of private investment funds from banks, investment houses, insurance companies and other financial institutions into such community industrial building programs in areas of chronic and critical distress; and (l) that by increasing the number of community industrial building projects presenting attractive opportunities for private investment in such areas, a
larger portion of the private capital available in this state for investment can be put to use in the general economic development of the state.

Sec. 3. *Purposes.*—The purposes of this article shall be to provide for the formation of a public industrial development authority to promote, assist, encourage and, in conjunction with such banking corporations or institutions, trust companies, savings banks, building and loan associations, insurance companies, or related corporations, partnerships, foundations, or other institutions to develop and advance the business prosperity and economic welfare of the state of West Virginia; to encourage and assist in the location of new business and industry; to stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the economic stability of this state, provide maximum opportunities for employment, encourage thrift and improve the standard of living of the citizens of this state; to cooperate and act in conjunction with other organizations, public or private, the objects of which are the promotion and advancement of
industrial, commercial or manufacturing developments in this state; to furnish money and credit to approved industrial development agencies in this state, thereby establishing a source of credit not otherwise available therefor. Such purposes are hereby declared to be public purposes for which public money may be spent and are purposes which will promote the health, safety, morals, right to gainful employment, business opportunities and general welfare of the inhabitants of the state.

Sec. 4. Definitions.—The following terms, whenever used or referred to in this article, shall have the following meanings:

(a) The term “authority” shall mean the public corporation created by this article.

(b) The term “board” shall mean the governing body of the authority.

(c) The term “county” shall mean any county of this state.

(d) The term “critical economic area” shall mean the area encompassing any municipality or group of municipalities, county, group of counties or region of the state
reasonably defined by the authority wherein critical conditions of unemployment, economic depression, widespread reliance on public assistance and unemployment compensation are found to exist by the authority. Prior to determination and designation of any area of the state as a critical economic area the authority shall conduct such investigations of the area and of the records and statistical indices of the department of employment security, department of labor, conservation commission, department of public assistance and other applicable state agencies, as well as the declarations and statistics of any federal agencies as shall be necessary to establish the existence of the above conditions in such area and to establish that an average of not less than six per cent of the labor force of such area has been unemployed for a period of not less than three years, or an average of not less than nine per cent of the labor force of such area has been unemployed for a period of not less than eighteen months, immediately prior to the date of such investigations and findings. No area of the state shall be designated a critical economic area without such investigations and findings.
having been first made and certified to the permanent
records of the authority.

(e) The term "federal agency" shall mean and include
the United States of America, the president of the United
States of America, and any department of, or corporation,
agency or instrumentality heretofore or hereafter created,
designated or established by the United States of America.

(f) The term "government" shall mean the state and
federal governments, or any political subdivision, agency
or instrumentality, corporate or otherwise, of either of
them.

(g) The term "industrial development agency" shall
mean any incorporated organization, foundation, associa-
tion or agency, regardless of the particular name, and to
whose members or shareholders no profit shall inure,
which shall have as its primary function the promotion,
encouragement and development of industrial and manu-
facturing enterprises in a critical economic area.

(h) The term "industrial development fund" shall
mean the account created by section nine of this act.

(i) The term "industrial development project" shall
mean any site, structure, facility or undertaking comprising or being connected with or being a part of an industrial or manufacturing enterprise established or to be established by an industrial development agency in a critical economic area.

(j) The term "municipality" shall mean any city or town of the state.

(k) The term "responsible buyer" shall mean any person, partnership, firm, company or corporation organized for profit deemed by the authority, after proper investigation, to be financially responsible to assume all obligations prescribed by the authority in the acquisition of an industrial development project from an industrial development agency, and in the operation of an industrial or manufacturing enterprise therein or thereon.

(l) The term "responsible tenant" shall mean any person, partnership, firm, company or corporation organized for profit deemed by the authority, after proper investigation, to be financially responsible to assume all rental and all other obligations prescribed by the authority in the leasing of an industrial development project and in
the operation of an industrial or manufacturing enterprise therein or thereon.

(m) The words "cost of establishing an industrial development project" shall embrace any or all of the following: The cost of construction, the cost of all lands, property rights, easements and franchises acquired which are deemed necessary for such construction, financing charges, interest prior to and during construction, cost of engineering and legal expense, plans, specifications, surveys, estimates of costs and other expenses necessary or incident to determining the feasibility or practicability of any industrial development project, together with such other expenses as may be necessary or incidental to the financing and the construction of the industrial development project and the placing of the same in operation; the cost of all machinery and equipment and its installation and maintenance shall not be included in the cost of establishing an industrial development project, but shall be provided by the responsible buyer.

Sec. 5. *The West Virginia Industrial Development Authority.*—There is hereby created a body corporate and
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politically, constituting a public corporation and government instrumentality by the name of "The West Virginia Industrial Development Authority", the board of members of which shall be composed of the following: The commissioner of commerce, who shall serve as chairman, the state tax commissioner, the state banking commissioner and the director of the conservation commission, and their respective successors in office, and five additional members who shall be appointed by the governor with the advice and consent of the senate who shall represent the general public and the public interest. The members of the authority initially appointed by the governor shall continue in office for terms of one to five years, respectively, from the date of their appointment and until their respective successors shall be duly appointed and qualified, the term of each appointed member to be designated by the governor at the time of his appointment; but their successors shall each be appointed for a term of five years, except that any person appointed to fill a vacancy shall serve only for the unexpired term, and any appointed member of the authority shall be eligible for reappointment. Said
members of the authority shall be entitled to no compen-
sation for their services as members, but shall be entitled
to reimbursement for all necessary expenses incurred in
connection with the performance of their duties as mem-
bers.

Sec. 6. *Powers of Authority.*—The authority, as a pub-
lic corporation and governmental instrumentality exer-
cising public powers of the state, is hereby granted and
shall have and may exercise all powers necessary or ap-
propriate to carry out and effectuate the purposes of this
act, including the following powers, in addition to others
herein granted:

(a) To make determination and designation of critical
economic areas.

(b) To cooperate with industrial development agencies
in their efforts to promote the expansion of industrial and
manufacturing activity in critical economic areas.

(c) To determine, upon proper application of indus-
trial development agencies, whether the declared public
purpose of this act has been accomplished or will be ac-
complished by the establishment by such industrial de-
(d) To conduct examinations and investigations and to hear testimony and take proof, under oath or affirmation, at public or private hearings, on any matter material for its information and necessary to the determination and designation of critical economic areas and the establishment of industrial development projects therein.

(e) To issue subpoenas requiring the attendance of witnesses and the production of books and papers pertinent to any hearing before such authority, or before one or more members of the authority appointed by it to conduct such hearings.

(f) To apply to any court, having territorial jurisdiction of the offense, to have punished for contempt any witness who refuses to obey a subpoena, or who refuses to be sworn or affirmed or to testify, or who is guilty of any contempt after summons to appear.

(g) To authorize any member or members of such authority to conduct hearings and to administer oaths, take affidavits and issue subpoenas.
(h) To make, upon proper application of industrial development agencies, loans to such industrial development agencies of moneys held in the industrial development fund for industrial development projects in critical economic areas and to provide for the repayment and redeposit of such allocations and loans in the manner herein-after provided.

(i) To have existence for a term of fifty years.

(j) To sue and be sued, implead and be impleaded, complain and defend in all courts.

(k) To adopt, use and alter at will a corporate seal.

(l) To make by-laws for the management and regulation of its affairs.

(m) To appoint officers, agents, employees and servants.

(n) To make contracts of every name and nature and to execute all instruments necessary or convenient for carrying on its business.

(o) Without limitation of the foregoing, accept grants from and enter into contracts or other transactions with any federal agency.

(p) To take title by foreclosure to any industrial devel-
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opment project where such acquisition is necessary to protect any loan previously made therefor by the au-

thority and to sell, transfer and convey any such industrial development project to any responsible buyer; in the event such sale, transfer and conveyance cannot be effected with reasonable promptness, the authority may, in order to minimize financial losses and sustain employment, lease such industrial development project to a re-

sponsible tenant or tenants; the authority shall not lease industrial development project except under the condi-

tions and for the purposes cited in this section: Provided,

however, That the authority shall have no power at any time to borrow money or in any manner to pledge the credit or taxing power of the state or any of its munici-

palities or political subdivisions, nor shall any of its oblig-

ations be deemed to be obligations of the state or any of its political subdivisions.

Sec. 7. Loans.—Loans to industrial development agen-

cies: When it has been determined by the authority upon application of an industrial development agency and upon hearing thereon in the manner hereinafter provided that
the establishment of a particular industrial development project (of such industrial development agency) in a critical economic area has accomplished or will accomplish the public purposes of this act, the authority may contract to loan such industrial development agency an amount not in excess of thirty percent of the cost, or estimated cost, of such industrial development project, as established or to be established, subject, however, to the following conditions:

(A) Industrial development projects to be established.

1. The authority shall have first determined that the industrial development agency holds funds in an amount equal to, or property of a value equal to, not less than twenty per cent of the estimated cost of establishing the industrial development project, which funds or property are available for and shall be applied to the establishment of such project; and

2. The authority shall have also determined that the industrial development agency has obtained from other independent and responsible sources, such as banks and insurance companies or otherwise, a firm commitment for
all other funds, over and above the loan of the authority
and such funds or property as the industrial development
agency may hold, necessary for payment of all the esti-
mated cost of establishing the industrial development
project, and that the sum of all these funds together with
machinery and equipment to be provided by the responsi-
ble tenant or responsible buyer is adequate to insure com-
pletion and operation of the plant or facility.

(B) Industrial development projects established with
initial authority loan participation.

1. The authority shall have first determined that the
industrial development agency has expended funds in an
amount equal to, or has applied property of a value equal
to, not less than twenty percent of the cost of establishing
the industrial development project; and

2. The authority shall have also determined that the
industrial development agency obtained from other inde-
dendent and responsible sources, such as banks and insur-
ance companies or otherwise, other funds necessary for
payment of all the cost of establishing the industrial de-
velopment project, and that the industrial development
agency participation and these funds, together with the 
machinery and equipment provided by the responsible 
tenant or responsible buyer, has been adequate to insure 
completion and operation of the plant or facility:  Pro-
vided, however, That the proceeds of any loan made by 
the authority to the industrial development agency pur-
suant to this subsection (B) shall be used only for the 
establishment of additional industrial development proj-
ects in furtherance of the public purposes of this act.

Any such loan of the authority shall be for such period 
of time and shall bear interest at such rate as shall be de-
termined by the authority and shall be secured by bond 
of the industrial development agency and by deed of trust 
on the industrial development project for which such loan 
was made, such deed of trust to be second and subordinate 
only to the deed of trust securing the first lien obligation 
issued to secure the commitment of funds from the afore-
said independent and responsible sources and used in the 
financing of the industrial development project.

Moneys so loaned by the authority to industrial develop-
ment agencies shall be withdrawn from the industrial de-
Loans by the authority to an industrial development agency for an industrial development project shall be made only in the manner and to the extent as in this section seven provided, except, however, in those instances wherein an agency of the federal government participates in the financing of an industrial development project by loan, grant or otherwise of federal funds. When any federal agency does so participate the authority may adjust the required ratios of financial participation by the industrial development agency, the source of independent funds, and the authority in such manner as to insure the maximum benefit available to the industrial development agency, the authority, or both, by the participation of the federal agency: Provided, however, That no such adjustment of such ratios shall cause the authority to grant a
loan to the industrial development agency in excess of thirty percent of the cost or estimated cost of the industrial development project.

Where any federal agency participating in the financing of an industrial development project is not permitted to take as security for such participation a deed of trust which is junior to the deed of trust of the authority, the authority shall, in such instances, be authorized to take as security for its loan to the industrial development agency a deed of trust junior in lien to that of the federal agency.

Sec. 8. Loan Application Requirements.—Prior to the loaning of any funds to an industrial development agency for an industrial development project in a critical economic area, the authority shall receive from such industrial development agency a loan application in form adopted by the authority which shall contain, without being limited to, the following provisions:

(a) A general description of the industrial development project and a general description of the industrial or manufacturing enterprise for which the industrial de-
An industrial development project has been or is to be established.

(b) A legal description of all real estate necessary for the industrial development project.

(c) Such plans and other documents as may be required to show the type, structure and general character of the industrial development project.

(d) A general description of the type, classes and number of employees employed or to be employed in the operation of the industrial development project.

(e) Cost or estimates of cost of establishing the industrial development project.

(f) A general description and statement of value of any property, real or personal, of the industrial development agency applied or to be applied to the establishment of the industrial project.

(g) A statement of cash funds previously applied, or then held by the industrial development agency which are available for and are to be applied, to the establishment of the industrial development project.

(h) Evidence of the arrangement made by the industrial development agency for the financing of all cost of
the industrial development project over and above the participation of the industrial agency.

(i) A general description of the responsible tenant to which the industrial development agency has leased or will lease the industrial development project or of the responsible buyer to which the industrial development agency has sold or will sell the project.

(j) A general description of the form of lease or sales agreement entered into or to be entered into by and between the industrial development agency and its responsible tenant or responsible buyer.

(k) Evidence that the establishment of the industrial development project will not cause the removal of an industrial or manufacturing plant or facility from one area of the state to another area of the state.

The board of the authority shall hold such hearings and examinations as to each loan application received as shall be necessary to determine whether the public purposes of this act will be accomplished by the granting of loans within such applications requested.

When the board shall have determined said facts favor-
able as to any application, it is authorized and empowered, having due regard to the promotion of the public purposes herein declared, to grant a loan to an industrial development agency in the manner and to the extent as in this act provided.

Sec. 9. *Industrial Development Fund.*—There is hereby created a special account in the treasury of the state to be known as the industrial development fund to which shall be accredited the above provided appropriation and any subsequent appropriation made by the Legislature to the authority, as well as such other deposits as in this section provided.

As often as may be necessary, the authority shall requisition from the industrial development fund such amounts as may be necessary to provide adequate funds for the payment of the administration of the purposes of this act.

The authority shall also requisition, from time to time, from the industrial development fund such amounts as shall be allocated and appropriated by the authority for loans to industrial development agencies for industrial development projects. When and as the amounts so al-
located and appropriated by the authority as loans to in-
dustrial development agencies are repaid to the authority
pursuant to the terms of the mortgages and other agree-
ments made and entered into by the authority, the au-
thority shall pay such amounts into the industrial devel-
opment fund, it being the intent of this act that the in-
dustrial development fund shall operate as a revolving
fund whereby all appropriations and payments made
thereto may be applied and reapplied to the purposes of
this act.

At any time that the authority shall determine that
funds held for the credit of the industrial development
fund are in excess of the amount needed by the authority
to carry out the purposes of this act, the authority shall
take such action as shall be required to release such excess
from the industrial development fund and transfer the
same to the general fund of the state treasury.

Sec. 10. *Governing Body.*—The powers of the authority
shall be exercised by a governing body consisting of the
members of the authority acting as a board. Within
ninety (90) days after this act shall become effective the
board shall meet and organize. The commissioner of commerce and his successor in office shall be the chairman and chief executive officer and the board shall elect a secretary and a treasurer from their number. At the first meeting in each year thereafter they shall elect from their number a secretary and treasurer.

A majority of the members shall constitute a quorum of the board for the purpose of organizing the authority and conducting the business thereof, and, except in the instance of loan applications, all action may be taken by a vote of a majority of the members present, unless in any case the by-laws shall require a larger number; approval or rejection of loan applications shall be by a majority vote of the full membership of the board.

The board shall have full authority to manage the properties and business of the authority, and to prescribe, amend and repeal by-laws, rules and regulations governing the manner in which the business of the authority may be conducted, and the powers granted to it may be exercised and embodied.

The department of commerce shall provide staff serv-
ices to the authority for its administration of the act, in-
cluding liaison between the authority and industrial de-
velopment agencies and related organizations, and be-
tween the authority and other agencies of the state whose
facilities and services may be useful to the authority in
its work.

The authority is authorized to make reimbursement to
any agency of the state for such special expenses as may
be incurred in the provision of any services or the use of
any facilities required by the authority.

In addition, the authority may employ an executive di-
rector, appoint its own counsel and legal staff, and, as re-
quired for special studies and surveys, retain such temp-
orary engineering, finance and other consultants and tech-
nicians as it may require.

Sec. 11. Moneys of the Authority.—All moneys of the
authority, from whatever source derived, shall be paid to
the treasurer of the authority. Said moneys shall be de-
posited in the first instance by the treasurer in one or
more banks or trust companies, in one or more special ac-
counts, and each of such special accounts shall be con-
continuously secured by a pledge of direct obligations of the United States of America or of the state, having an aggregate market value, exclusive of accrued interest, at all times at least equal to the balance on deposit in such account. Such securities shall either be deposited with the treasurer or be held by a trustee or agent satisfactory to the authority. All banks and trust companies are authorized to give such security for such deposits. The moneys in said accounts shall be paid out on the warrant or other order of the treasurer of the authority, or of such other person or persons as the authority may authorize to execute such warrants or orders.

Sec. 12. Conflict of Interest.—No member of the authority or officer or employee thereof shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with the authority for any matter, cause or thing whatsoever by reason thereof any liability or indebtedness shall in any way be created against such authority. If any contract or agreement shall be made in violation of the provisions of this section
the same shall be null and void and no action shall be maintained thereon against such authority.

Sec. 13. *Limitation of Powers.*—The state does hereby pledge to and agree with the United States and any other federal agency that in the event any federal agency shall construct or loan or contribute any funds for the construction, extension, improvement or enlargement of any industrial development project, or any portion thereof, the state will not alter or limit the rights and powers of the authority in any manner which would be inconsistent with the due performance of any agreements between the authority and any such federal agency, and the authority shall continue to have and may exercise all powers herein granted, so long as the same shall be necessary or desirable for the carrying out of the purposes of this act.

Sec. 14. *Audit.*—The accounts and books of the authority, including its receipts, disbursement, contracts, mortgages and/or deeds of trust, investments and other matters relating to its finances, operation and affairs, shall be examined and audited from time to time by the state tax
6 commissioner in accordance with statutes applicable to
7 audits of other state agencies.

Sec. 15. Severability and Construction.—The provisions
2 of this article are considered remedial and shall be lib-
3 erally construed and interpreted so as to effect the gen-
4 eral purposes and objectives hereof. The provisions of the
5 article shall be severable, and if any of the provisions
6 thereof shall be held unconstitutional, such decisions shall
7 not affect the validity of any of the remaining provisions
8 of this article. It is hereby declared as the legislative in-
9 tent that this article would have been adopted had such
10 unconstitutional provisions not been included herein.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

Takes effect July 1st, 1961 passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 17th day of March, 1961.

Governor

Filed in Office of the Secretary of State of West Virginia MAR 17 1961

JOE F. BURDETT
SECRETARY OF STATE