WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1971

ENROLLED
SENATE BILL NO. 344

(By Mr. CARRIGAN)

PASSED MARCH 12, 1971

In Effect NINETY DAYS FROM PASSAGE

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[Passed March 12, 1971; in effect ninety days from passage.]

AN ACT to amend article fifteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven-a; and to amend and reenact sections four, six, seven, eight, nine and thirteen of said article fifteen, chapter thirty-one of said code, all relating to additional powers given to the West Virginia industrial development authority authorizing the granting of loans to industrial development agencies for industrial subdivision project improvements; defining industrial subdivision project, industrial subdivision project improvements and cost of industrial subdivision project improve-
ments; such loans not to be in excess of fifty percent of the cost or estimated cost of such improvements; prescribing the conditions to be met by loan applicants and the requirements to be made by the authority on account of such loans; prescribing the security and protection for such loans on behalf of the authority; permitting the deferment of principal and interest on industrial subdivision project improvement loans for a period not in excess of five years; limiting in any single fiscal year the aggregate amount which can be loaned to all applicants for industrial subdivision project improvements; providing that, when an agency of the federal government has made a loan or participated in a loan for, or has constructed industrial subdivision project improvements, the state will not alter or limit the powers of the authority in a manner inconsistent with the performance of any agreements between the authority and such agency; permitting loans to industrial development agencies for industrial development projects not in excess of fifty percent of the cost or estimated cost of such project in instances where federal agencies may not participate in such loans because
of relocation restrictions; providing for the assignment by industrial development agencies of deeds of trust, notes and other security to the authority on loans to such agencies for industrial development projects; and elimination of the term “bond” as security on loans for industrial development projects and the substitution, in lieu thereof, the term “negotiable promissory note”.

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

That article fifteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section seven-a; and that sections four, six, seven, eight, nine and thirteen of said article fifteen, chapter thirty-one of said code be amended and reenacted, all to read as follows:

**ARTICLE 15. WEST VIRGINIA INDUSTRIAL DEVELOPMENT AUTHORITY.**


1 The following terms, whenever used or referred to in this article, shall have the following meanings:

3 (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, department of natural resources, department of welfare 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. 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, association 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, manufacturing and tourist facility enterprises in a critical economic area.
(h) The term "industrial development fund" shall mean the account created by section nine of this article.

(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, manufacturing or tourist facility enterprise established or to be established by an industrial development agency in a critical economic area.

(j) The term "industrial subdivision project" shall mean any tract of land located within a critical economic area, together with utilities, services and access roads, the clear, unencumbered and marketable legal title to which tract of land is held by an industrial development agency for sale or lease for an industrial development project.

(k) The terms "industrial subdivision project improvements" and "improvements to industrial subdivision projects" shall embrace any or all of the following: Site preparation and grading, installation of utilities and sewage disposal facilities upon, and preparation of access roads to, an industrial subdivision project.
(1) The term "municipality" shall mean any city or town of the state.

(m) 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.

(n) 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.

(o) 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 in cases of demonstrated need, machinery and equipment, if said demonstrated need shall have been shown to the satisfaction of the authority, 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.

(p) The words “cost of industrial subdivision project improvements” shall embrace any or all of the following: construction cost of site preparation and grading, construction cost of utilities, sewage disposal facilities and access roads; cost of acquiring easements and property rights in other lands, in connection therewith, financing charges, interest prior to and during the construction of such improvements, cost of engineering and legal
services, preparation of plans, specifications, surveys and estimates of costs, together with such other expenses as may be reasonably necessary or incidental to the financing and the construction of improvements to industrial subdivision projects.


The authority, as a public corporation and governmental instrumentality exercising public powers of the state, is hereby granted and shall have and may exercise all powers necessary or appropriate to carry out and effectuate the purposes of this article, 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 the efforts to promote the expansion of industrial and manufacturing activity in critical economic areas.

(c) To determine, upon proper application of industrial development agencies, whether the declared public purpose of this article has been accomplished or will be accomplished by the establishment by such industrial
development agencies of an industrial development project in a critical economic area.

(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 and industrial subdivision project improvements, in critical economic areas, and to provide for the repayment and redeposit of such allocations and loans in the manner hereinafter 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 bylaws 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 development project or any industrial subdivision project where such acquisition is necessary to protect any loan previously made by the authority on account of such industrial development project or improvements to such industrial subdivision project and to sell, transfer and convey any such industrial development project or industrial subdivision 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 or industrial subdivision project to a responsible tenant or tenants; the authority shall not lease industrial development projects or industrial subdivision projects except under the conditions and for the purposes cited in this section: Provided, 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 municipalities or political subdivisions, nor shall any of its obligations be deemed to be obligations of the state or any of its political subdivisions.
(q) To participate in any reorganization proceeding pending pursuant to Title II of the United States Bankruptcy Act or in any receivership proceeding had in a state or United States court for the purpose of reorganization or liquidation of a responsible buyer or responsible tenant. It may file its claim against any such responsible buyer or responsible tenant in any of the foregoing proceedings, vote upon any question pending therein which requires the approval of the creditors participating in any reorganization proceeding or receivership, exchange any evidence of said indebtedness for any property, security or evidence of indebtedness offered as a part of the reorganization of said responsible buyer or responsible tenant or of any other entity formed to acquire the assets thereof, and may compromise or reduce the amount of any indebtedness owing to it as a part of any such reorganization.

§31-15-7. Loans to industrial development agencies for industrial development projects.

1 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 accom-
plish the public purposes of this article, the authority
may contract to loan such industrial development agency
an amount not in excess of thirty percent (or, in the
event that agencies of the federal government may not
participate in such loan because of relocation restrictions,
an amount not in excess of fifty 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 percent 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
24 2. The authority shall have also determined that the
25 industrial development agency has obtained from other
26 independent and responsible sources, such as banks and
27 insurance companies or otherwise, a firm commitment
28 for all other funds, over and above the loan of the au-
29 thority and such funds or property as the industrial de-
30 velopment agency may hold, necessary for payment of
31 all the estimated cost of establishing the industrial de-
32 velopment project, and that the sum of all these funds
33 is adequate to insure completion and operation of the
34 industrial development project.
35 (B) Industrial development projects established with
36 initial authority loan participation.
37 1. The authority shall have first determined that the
38 industrial development agency has expended funds in
39 an amount equal to, or has applied property of a value
40 equal to, not less than twenty percent of the cost of
41 establishing the industrial development project; and
42 2. The authority shall have also determined that the
43 industrial development agency obtained from other inde-
44 pendent and responsible sources, such as banks and in-
surance companies or otherwise, other funds necessary
for payment of all the cost of establishing the industrial
development project, and that the industrial develop-
ment agency participation and these funds, has been
adequate to insure completion and operation of the in-
dustrial development project: Provided, That the pro-
ceeds of any loan made by the authority to the industrial
development agency pursuant to this subsection (B) shall
be used only for the establishment of additional indus-
trial development projects in furtherance of the public
purposes of this article.

Any such loan of the authority shall be for such period
of time and shall bear interest at such rate as shall be
determined by the authority and shall be secured by
the negotiable promissory note of the industrial develop-
ment agency and by deed of trust on the industrial de-
velopment project for which such loan was made, or by
assignment of any deed of trust and negotiable promissory
note and other security taken by the industrial develop-
ment agency on the industrial development project,
such deed of trust and note, assignment of deed of trust,
and note and other security to be second and subordinate only to the deed of trust securing the first lien obliga-
tion issued to secure the commitment of funds from the aforesaid independent and responsible sources and used in the financing of the industrial development project.

Moneys so loaned by the authority to industrial de-
velopment agencies shall be withdrawn from the indus-
trial development fund and paid over to the industrial development agency in such manner as shall be provided and prescribed by the rules and regulations of the au-
authority.

All payments of interest on said loans and the principal thereof shall be deposited by the authority in the indus-
trial development fund.

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 provided, except, however, in those instances wherein an agency of the federal government participates in the financing of an industrial development project by
87 loan, grant, or otherwise, or in those instances where
88 any bank, insurance company, lending agency, or com-
89 bination thereof, participates in any industrial develop-
90 ment project in an amount equal to sixty percent of the
91 cost of the project. Where any bank, insurance company,
92 lending agency, or combination thereof, participates in
93 an amount equal to sixty percent of the cost of the indus-
94 trial development project, the authority may adjust the
95 required ratios of financial participation by the local in-
96 dustrial development agency to an amount not less than
97 ten percent of the estimated cost of establishing the in-
98 dustrial development project. When any federal agency
99 participates, the authority may adjust the required ratios
100 of financial participation by the industrial development
101 agency, the source of independent funds and the authority
102 in such manner as to insure the maximum benefit avail-
103 able to the industrial development agency, the authority,
104 or both, by the participation of the federal agency. When
105 ratios are adjusted in the manner set forth above, no
106 such adjustment shall be made which shall cause the
107 authority to grant a loan to the industrial development
agency in excess of thirty percent (or in the event that agencies of the federal government may not participate in such loan because of relocation restrictions, an amount not in excess of fifty 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 or assignment of deed of trust and other security the lien of which is junior to the deed of trust or assignment of deed of trust and other security 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 or assignment of deed of trust and other security junior in lien to that of the federal agency.

§31-15-7a. Loans to industrial development agencies for industrial subdivision project improvements.

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 improvement by such industrial development agency of a particular industrial subdivision project, owned by such industrial development agency, which industrial subdivision project shall be located in a critical economic area, will accomplish the public purposes of this article, the authority may contract to loan such industrial development agency an amount not in excess of fifty percent of the cost, or estimated cost, of such industrial subdivision project improvements, subject, however, to the following conditions:

1. The authority shall have 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, necessary for payment of all the estimated cost of the industrial subdivision project improvements, and that the sum of all these funds is adequate to insure completion of the improvements to the industrial subdivision project; and

2. The authority shall have also determined that the
25 industrial development agency has clear, unencumbered
26 and marketable legal title to the industrial subdivision
27 project to be improved; and
28 3. The industrial development agency shall covenant
29 in writing to and with the authority that as long as any
30 loan made by the authority to the industrial development
31 agency for the improvement of any industrial subdivision
32 project shall remain unpaid, such industrial subdivision
33 project, or any portion thereof, shall not be sold, leased
34 or otherwise encumbered except for the purpose of
35 establishing an industrial development project or projects
36 on such land by the industrial development agency.
37 Any such loan of the authority shall be for such period
38 of time and shall bear interest at such rate as shall be
39 determined by the authority and shall be secured by the
40 negotiable, promissory note of the industrial develop-
41 ment agency and by deed of trust on the industrial sub-
42 division project for which such loan was made, such
43 deed of trust to be second and subordinate only to the
44 deed of trust securing the first lien obligation issued
45 to secure the commitment of funds from the aforesaid
independent and responsible sources and used in the financing of the industrial subdivision project improvements.

In its discretion the authority may, in a proper case, defer the payment of principal and interest, or principal only, or interest only, upon any loan made by the authority to an industrial development agency for the improvement of any industrial subdivision project, such deferment to be for such period as may be determined by the authority, not to exceed five years from the date of the deed of trust securing the authority for the loan, and, in the event that such industrial subdivision project, or any portion thereof, is sold or leased by the industrial development agency prior to the expiration of said five-year period, all deferred installments of the principal of the loan accrued on the date of such sale or lease, or the proportionate part of such deferred principal which the sold or leased portion of the industrial subdivision project shall bear to the total acreage thereof, together with all unpaid interest accrued thereon on the date of such sale or lease shall, at the option of the authority,
be and become immediately due and payable or, become
subject to re-negotiation by either increasing or decreas-
ing the number of and the amount of each installment
of principal and interest, without, however, effecting any
change in the amount of principal of the original loan or
the rate of interest as originally fixed by the authority
in said deed of trust and note.

The authority may not lend in any single fiscal year,
upon the aggregate of all of the applications made for
loans for improvements to industrial subdivision projects,
a total sum in excess of two hundred fifty thousand
dollars.

Moneys so loaned by the authority to industrial de-
velopment agencies shall be withdrawn from the indus-
trial development fund and paid over to the industrial
development agency in such manner as shall be provided
and prescribed by the rules and regulations of the au-
thority.

All payments of interest on said loans and the principal
thereof shall be deposited by the authority in the indus-
trial development fund.
Where any federal agency participating in the financing of improvements to industrial subdivision projects is not permitted to take as security for such participation a deed of trust the lien of 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.

§31-15-8. Loan application requirements; hearings upon applications.

1 Prior to the loaning of any funds to an industrial development agency for an industrial development project or for industrial subdivision project improvements, in a critical economic area, the authority shall receive from such industrial development agency a loan application in form adopted by the authority.

1. If the loan application is for an industrial development project the form 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
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 re-
quired 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 in-
dustrial development project.

(f) A general description and statement of value of
any property, real or personal, of the industrial develop-
ment 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 estab-
ishment of the industrial development project.

(h) Evidence of the arrangement made by the in-
(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.

2. If the loan application is for industrial subdivision project improvements the form shall contain, without being limited to, the following provisions:

(a) A general description of the industrial subdivision project and a general description of its adaptability to
industrial or manufacturing purposes, including the kinds
or types of industrial development project which may
be established thereon upon completion of the improve-
ments for which the loan is requested.
(b) A legal description of the industrial subdivision
project.
(c) Such plans and other documents as may be re-
quired to show the type, structure and general character
of the proposed improvements to the industrial sub-
division project.
(d) Cost or estimates of cost of the proposed improve-
ments to the industrial subdivision project.
(e) Evidence of the arrangement made by the indus-
trial development agency for the financing of all cost of
the industrial subdivision project improvements over and
above the participation by the authority.
(f) Evidence that the establishment of an industrial
development project upon the industrial subdivision proj-
ect to be improved 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 article will be accomplished by the granting of loans within such applications requested.

When the board shall have determined said facts favorable 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 article provided.


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 any 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
article. And whenever the authority determines it to be necessary to purchase, at a foreclosure sale, any industrial development project or industrial subdivision project pursuant to section six (p) of this article, in order to protect any loan theretofore made by the authority, the authority may requisition from the industrial development fund such amount as may be necessary to pay the purchase price thereof, notwithstanding the fact that the purchase price, in the instance of the foreclosure sale of any industrial development project, may exceed thirty percent (or in the event that no agency of the federal government participated in the loan because of relocation restrictions, fifty percent) of the original cost of the industrial development project, or in the instance of the foreclosure sale of any industrial subdivision project, the purchase price may exceed fifty percent of the original cost of the industrial subdivision project improvements.

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 and for industrial subdivision project improvements. When and as the amounts so allocated and appropriated by the authority as loans to industrial development agencies are repaid to the authority pursuant to the terms of the mortgages and other agreements made and entered into by the authority, the authority shall pay such amounts into the industrial development fund, it being the intent of this article that the industrial 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 article.

Whenever the authority shall determine that the balance in the industrial development fund is in excess of the immediate requirements for loan purposes it may request that such excess funds be invested until needed for loan purposes, in which case such excess funds shall be invested in the manner provided for the investment of other temporary state funds. All interest earned on the money invested pursuant to this section shall be credited to the industrial development fund.

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 article, 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.

§31-15-13. Agreement with federal agencies not to alter or limit powers of authority.

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, or construct improvements to any industrial subdivision project or loan or contribute any funds for the construction, extension or enlargement of improvements to any industrial subdivision 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 con-
tinue 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 article.
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.

To take effect 90 days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 1st day of April, 1971.

Governor
PRESENTED TO THE
GOVERNOR

Date 3/17/71
Time 11:50 a.m.