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STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1973

ENROLLED

SENATE BILL NO. 165 *Com. Sub.*

(By Mr. Palumbo and Mr. Deem)

PASSED April 13, 1973

In Effect 90 Days from Passage



FILED IN THE OFFICE
EDGAR F. HEISKELL III
SECRETARY OF STATE
THIS DATE 5/3/73

Veto - 165

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 165

(Mr. Palumbo and Mr. Deem, *original sponsors*)

[Passed April 13, 1973; in effect ninety days from passage.]

AN ACT to amend and reenact sections two, four, five, six, seven, seven-a, eight, nine, ten, eleven, twelve, thirteen, fourteen and fifteen, article fifteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia industrial development authority; increasing the powers thereof; setting forth legislative findings; defining terms; relating to membership on the industrial development authority; relating to the appointment of and terms of its members; relating to vacancies on the authority; authorizing the delegation of authority by certain members; relating to voting, compensation, expenses and general powers of the authority; relating to loans to industrial development agencies for industrial development projects and industrial subdivision project acquisition and improvements; relating to conditions in connection with such loans; relating to liens; relating to loan application requirements; providing for hearings; relating to the industrial development fund and requisitions therefrom; relating to excess moneys in such fund; relating to the governing body of the authority; relating to the organization, officers, meetings, quorum, voting and powers of such governing body; relating to the money of the authority; relating to conflict of interest; making certain contracts void; providing an agreement with federal agencies not to alter or limit rights and powers of the authority; giving the legislative auditor the authority to audit the accounts and

books of such authority; providing a rule of construction; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

That sections two, four, five, six, seven, seven-a, eight, nine, ten, eleven, twelve, thirteen, fourteen and fifteen, article fifteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

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

§31-15-2. Legislative findings.

1 The Legislature hereby finds and declares: (a) That
2 unemployment exists in many areas of the state and may
3 well come about from time to time in other areas of the
4 state; (b) that in some areas of the state unemployment
5 is a serious problem and has been for so long a period of
6 time that, without remedial measures, it may become so
7 in other areas of the state; (c) that economic insecurity due
8 to unemployment is a serious menace to the health, safety,
9 morals and general welfare of the people of the entire
10 state; (d) that widespread industry unemployment pro-
11 duces indigency which falls with crushing force upon all
12 unemployed workers and ultimately upon the state in the
13 form of welfare and unemployment compensation; (e) that
14 the absence of employment and business opportunities for
15 youth is a serious threat to the strength and permanence of
16 their faith in American political and economic institutions
17 and the philosophy of freedom on which those institutions
18 are based; (f) that lack of employment and business oppor-
19 tunities has resulted in thousands of workers and their
20 families leaving the state to find such opportunities else-
21 where and that this exodus has adversely affected the tax
22 base of counties and municipalities, resulting in an impair-
23 ment of their financial ability to support education and
24 other local government services; (g) that security against
25 unemployment, the spread of indigency and economic stag-
26 nation can best be provided by the promotion, attraction,
27 stimulation, rehabilitation and revitalization of commerce,
28 industry and manufacturing; (h) that the present and future
29 health, safety, morals, right to gainful employment and
30 general welfare of the people of the state require as a public

31 purpose the promotion and development of new and ex-
 32 panded industrial, tourist and manufacturing enterprises
 33 within this state; (i) that the device under which private
 34 community industrial development organizations in the
 35 state acquire or build industrial buildings or sites with
 36 funds raised through popular subscription, loans or other-
 37 wise for lease and sale to new or expanding industries has
 38 proven effective in creating new employment and business
 39 opportunities locally, is in accord with the American tradi-
 40 tion of community initiative and enterprise and requires
 41 and deserves encouragement and support from the state as
 42 a means toward alleviation of unemployment and economic
 43 distress; (j) that community industrial development cor-
 44 porations in the state have invested substantial funds in
 45 successful industrial development projects and are exper-
 46 iencing difficulty in undertaking additional projects by
 47 reason of the partial inadequacy of their own funds potenti-
 48 ally available from local subscription sources and by reason
 49 of limitations of local financial institutions in providing
 50 additional and sufficiently sizeable first deed of trust or
 51 mortgage loans; (k) that an urgent need exists to stimulate
 52 a larger flow of private investment funds from banks,
 53 investment houses, insurance companies and other finan-
 54 cial institutions into community industrial building pro-
 55 grams, and (l) that by increasing the number of community
 56 industrial building projects presenting attractive opportuni-
 57 ties for private investment, a larger portion of the private
 58 capital available in this state for investment can be put
 59 to use for the general economic development of the state.

§31-15-4. Definitions.

- 1 Unless the context clearly indicates otherwise, as used
- 2 in this article:
- 3 (a) "Authority" means the West Virginia industrial
- 4 development authority.
- 5 (b) "Board" means the governing body of the authority.
- 6 (c) "County" means any county of this state.
- 7 (d) "Federal agency" means the United States of
- 8 America, and any department, corporation, agency or
- 9 instrumentality created, designated or established by the
- 10 United States of America.

11 (e) "Government" means state and federal government,
12 and any political subdivision, agency or instrumentality
13 thereof, corporate or otherwise.

14 (f) "Industrial development agency" means any incorpo-
15 rated organization, foundation, association or agency to
16 whose members or shareholders no profit inures, which has
17 as its primary function the promotion, encouragement and
18 development of industrial, manufacturing and tourist
19 facility enterprises in this state.

20 (g) "Fund" means the industrial development fund
21 provided for in section nine of this article.

22 (h) "Industrial development project" means any land or
23 water site, structure, facility or undertaking comprising or
24 being connected with or a part of an industrial, manufactur-
25 ing or tourist facility enterprise established, to be establish-
26 ed or proposed to be acquired by an industrial development
27 agency in this state.

28 (i) "Industrial subdivision project" means any tract of
29 land or area of water and includes, where appropriate,
30 related utilities, services and access roads, the clear and
31 marketable legal title to which is held or is proposed to
32 be acquired by an industrial development agency for sale
33 or lease for an industrial development project.

34 (j) "Industrial subdivision project improvements" means
35 site preparation, grading, planting and the installation of
36 utilities, sewage disposal facilities, dock facilities, internal
37 driveways, curbs, walks, parking areas, lighting, shell
38 buildings and rail spurs upon an industrial subdivision
39 project.

40 (k) "Municipality" means any city or town in this state.

41 (l) "Responsible buyer" means government and any
42 person, partnership, firm, company or corporation organiz-
43 ed for profit deemed by the authority, after proper investi-
44 gation, to be financially responsible to assume all obli-
45 gations prescribed by it in the acquisition of an industrial
46 development project from an industrial development agen-
47 cy and in the operation of an industrial, manufacturing or
48 tourist facility enterprise thereon.

49 (m) "Responsible tenant" means government and any

50 person, partnership, firm, company or corporation organiz-
 51 ed for profit deemed by the authority, after proper investi-
 52 gation, to be financially responsible to assume all rental
 53 and other obligations prescribed by it in the leasing of an
 54 industrial development project and in the operation of an
 55 industrial, manufacturing or tourist facility enterprise
 56 thereon.

57 (n) "Cost of establishing an industrial development
 58 project" means cost of construction, cost of all lands, water
 59 areas, property rights and easements, financing charges,
 60 interest prior to and during construction, cost of engineer-
 61 ing and legal services, plans, specifications and surveys,
 62 estimates of costs and any other expenses necessary or
 63 incident to determining the feasibility or practicability of
 64 any industrial development project, together with such
 65 other expenses as may be necessary or incidental to the
 66 financing and the construction of the industrial develop-
 67 ment project and the placing of the same in operation.

68 (o) "Cost of industrial subdivision project improve-
 69 ments" means construction cost of site preparation, cost of
 70 planting and grading, construction cost of utilities, sewage
 71 disposal facilities, access roads and dock facilities, con-
 72 struction cost of internal streets and roads, curbs, walks,
 73 parking areas, lighting, shell buildings and rail spurs,
 74 cost of acquiring easements and property rights in other
 75 lands and, in connection therewith, financing charges,
 76 interest prior to and during the construction of such im-
 77 provements, cost of engineering and legal services, pre-
 78 paration of plans, specifications, surveys and estimates of
 79 costs, together with such other expenses as may be neces-
 80 sary or incidental to the financing and construction of
 81 industrial subdivision project improvements.

**§31-15-5. West Virginia industrial development authority;
 composition; appointment; terms; delegation of
 authority by certain members; voting; compensa-
 tion and expenses.**

1 The West Virginia industrial development authority
 2 heretofore created is hereby continued as a body corporate
 3 and politic, constituting a public corporation and govern-
 4 ment instrumentality. The authority shall be composed of
 5 a board of members consisting of the commissioner of com-

6 merce, state treasurer, tax commissioner, commissioner of
7 banking, director of the department of natural resources
8 and eight additional members who shall be appointed by
9 the governor, by and with the advice and consent of the
10 Senate. Four of these additional members shall come from
11 the general public and shall represent the public interest,
12 and of these four members, one shall be appointed from
13 each of the congressional districts. The four other addition-
14 al members shall be full-time industrial development
15 consultants and shall represent industrial development
16 within the state. The terms of the five members of the
17 board heretofore appointed by the governor to represent
18 the public interest and now in office shall expire on the
19 thirtieth day of June, one thousand nine hundred seventy-
20 three, and on or before that date, the governor shall appoint
21 eight members of the board, as aforesaid, for terms of four
22 years, commencing on the first day of July, one thousand
23 nine hundred seventy-three, except that as to the original
24 appointments, the terms shall be staggered so that the term
25 of one public interest member and the term of one
26 industrial development member shall expire each year.
27 As these original appointments expire, each subsequent
28 appointment shall be for a full four-year term. Any mem-
29 ber whose term has expired shall serve until his successor
30 has been duly appointed and qualified. Any person appoint-
31 ed to fill a vacancy shall serve only for the unexpired term.
32 Any member shall be eligible for reappointment.

33 The commissioner of commerce, state treasurer, tax
34 commissioner, commissioner of banking and director of
35 the department of natural resources may, by written notice
36 filed with the secretary of the authority, from time to time,
37 delegate to any subordinate the power to represent them at
38 any meeting of the authority. In such case, the subordinate
39 shall have the same power and privileges as the official
40 he represents and may vote on any question. No member of
41 the authority who is a full-time industrial development
42 consultant shall vote on any matter of policy or otherwise
43 participate in the making of any decision relating to any
44 matter on which he has worked or been involved with in
45 any way in the course of his regular employment.

46 Members of the authority shall not be entitled to com-
47 pensation for services performed as members, but shall be

48 entitled to reimbursement for all reasonable and necessary
49 expenses actually incurred in the performance of their
50 duties.

§31-15-6. General powers of authority.

1 The authority, as a public corporation and governmental
2 instrumentality exercising public powers of the state, shall
3 have and may exercise all powers necessary or appropriate
4 to carry out the purposes of this article, including the power :

5 (a) To cooperate with industrial development agencies
6 in efforts to promote the expansion of industrial, manu-
7 facturing and tourist activity in this state.

8 (b) To determine, upon the proper application of an
9 industrial development agency, whether the declared
10 public purposes of this article have been or will be accomp-
11 lished by the establishment by such agency of an industrial
12 development project in this state.

13 (c) To conduct examinations and investigations and to
14 hear testimony and take proof, under oath or affirmation,
15 at public or private hearings, on any matter relevant to
16 this article and necessary for information on the establish-
17 ment of any industrial development project.

18 (d) To issue subpoenas requiring the attendance of
19 witnesses and subpoenas duces tecum requiring the pro-
20 duction of books and papers relevant to any hearing before
21 such authority or one or more members appointed by it to
22 conduct any hearing.

23 (e) To apply to the circuit court having venue of such
24 offense to have punished for contempt any witness who
25 refuses to obey a subpoena, to be sworn or affirmed or to
26 testify, or who commits any contempt after being summon-
27 ed to appear.

28 (f) To authorize any member of the authority to conduct
29 hearings, administer oaths, take affidavits and issue sub-
30 poenas and subpoenas duces tecum.

31 (g) To make, upon proper application of any industrial
32 development agency, loans to such agency for industrial
33 development projects, industrial subdivision projects and
34 industrial subdivision project improvements, and to provide

Enr. Com. Sub. for S. B. No. 165] 8

35 for the repayment and redeposit of such loans in the man-
36 ner provided in this article.

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

38 (i) To sue and be sued, implead and be impleaded, com-
39 plain and defend in any court.

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

41 (k) To make bylaws for the management and regulation
42 of its affairs.

43 (l) To appoint officers, agents, employees and servants.

44 (m) To make contracts of every kind and nature and to
45 execute all instruments necessary or convenient for carry-
46 ing on its business.

47 (n) Without in any way limiting any other subdivision of
48 this section, to accept grants from and enter into contracts
49 and other transactions with any federal agency.

50 (o) To take title by foreclosure to any industrial develop-
51 ment project or any industrial subdivision project where
52 acquisition is necessary to protect any loan previously
53 made by the authority and to sell, transfer and convey such
54 project to any responsible buyer. In the event such sale,
55 transfer and conveyance cannot be effected with reasonable
56 promptness, the authority may, in order to minimize finan-
57 cial losses and sustain employment, lease such project to a
58 responsible tenant. The authority shall not lease an indus-
59 trial development project or industrial subdivision project,
60 except under the conditions and for the purposes cited in
61 this section: *Provided*, That the authority shall have no
62 power at any time to borrow money or in any manner
63 pledge the credit or taxing power of the state or any munic-
64 ipality or political subdivision thereof and none of its
65 obligations shall be deemed to be an obligation of the state
66 or any municipality or political subdivision thereof.

67 (p) To participate in any reorganization proceeding
68 pending pursuant to Title 11 of the United States Code
69 (being the act of Congress entitled "An act to establish
70 a uniform system of bankruptcy throughout the United
71 States," approved July 1, 1898, as amended) or in any
72 receivership proceeding in a state or federal court for the
73 reorganization or liquidation of a responsible buyer or

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74 responsible tenant. The authority may file its claim against
 75 any such responsible buyer or responsible tenant in any of
 76 the foregoing proceedings, vote upon any question pending
 77 therein which requires the approval of the creditors partici-
 78 pating in any reorganization proceeding or receivership,
 79 exchange any evidence of said indebtedness for any proper-
 80 ty, security or evidence of indebtedness offered as a part
 81 of the reorganization of such responsible buyer or
 82 responsible tenant or of any other entity formed to acquire
 83 the assets thereof and may compromise or reduce the
 84 amount of any indebtedness owing to it as a part of any
 85 such reorganization.

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

1 When it has determined upon application of an industrial
 2 development agency and upon hearing in the manner
 3 hereinafter provided that the establishment or acquisition
 4 of a particular industrial development project has accomp-
 5 lished or will accomplish the public purposes of this article,
 6 the authority may contract to loan such agency an amount
 7 not in excess of forty percent of the cost or estimated cost
 8 of such project, as established, to be established or pro-
 9 posed to be acquired, subject to the following conditions:

10 (a) Industrial development projects to be established or
 11 acquired.

12 (1) The authority shall have first determined that the
 13 industrial development agency holds funds in an amount
 14 equal to or property of a value equal to not less than ten
 15 percent of the estimated cost of establishing or acquiring
 16 the industrial development project, which funds or property
 17 are available for and shall be applied to the establishment
 18 or acquisition of such project.

19 (2) The authority shall have also determined that the
 20 industrial development agency has obtained from other
 21 independent and responsible sources, such as banks and
 22 insurance companies, a firm commitment for all other funds
 23 over and above the loan of the authority and such funds
 24 or property as the agency may hold, necessary for payment
 25 of all the estimated cost of establishing or acquiring the
 26 industrial development project, and that the sum of all

27 these funds is adequate to insure completion and operation
28 of the industrial development project.

29 (b) Industrial development projects established or
30 acquired with initial authority loan participation.

31 (1) The authority shall have first determined that the
32 industrial development agency has expended funds in an
33 amount equal to, or has applied property of a value equal
34 to, not less than ten percent of the cost of establishing or
35 acquiring the industrial development project.

36 (2) The authority shall have also determined that the
37 industrial development agency obtained from other inde-
38 pendent and responsible sources, such as banks and insur-
39 ance companies, other funds necessary for payment of all
40 the cost of establishing or acquiring the industrial develop-
41 ment project and that the industrial development agency parti-
42 cipation and these funds have been adequate to insure com-
43 pletion and operation or acquisition of the industrial develop-
44 ment project: *Provided*, That the proceeds of any loan made
45 by the authority to the industrial development agency pur-
46 suant to this subdivision (b) shall be used only for the es-
47 tablishment or acquisition of industrial development projects
48 in furtherance of the public purposes of this article.

49 The loan of the authority shall be for such period of
50 time and shall bear interest at such rate as the authority
51 determines and it shall be secured by the negotiable
52 promissory note of the industrial development agency and by
53 deed of trust on the industrial development project for
54 which the loan was made or by assignment of any deed of
55 trust and negotiable promissory note and other security
56 taken by the industrial development agency on the indus-
57 trial development project, such deed of trust and note,
58 assignment of deed of trust, and note and other security
59 to be second and subordinate only to the deed of trust
60 securing the first lien obligation issued to secure the
61 commitment of funds from the independent and respon-
62 sible sources and used in the financing of the industrial
63 development project.

64 Money loaned by the authority to an industrial develop-
65 ment agency shall be withdrawn from the fund and paid
66 over to the agency in such manner as is provided for by
67 rules and regulations of the authority.

68 The authority shall deposit all payments of interest on
69 loans and the principal thereof in the fund. When any
70 federal agency participates, the authority may adjust the
71 required ratios of financial participation by the industrial
72 development agency, the source of independent funds and
73 the authority in such manner as to insure the maximum
74 benefit available to the industrial development agency,
75 the authority, or both, by the participation of the federal
76 agency. When ratios are adjusted as aforesaid, no such
77 adjustment shall be made which shall cause the authority
78 to grant a loan to the industrial development agency in
79 excess of forty percent of the cost or estimated cost of the
80 industrial development project.

81 Where any federal agency participating in the financing
82 of an industrial development project is not permitted to
83 take as security for such participation a deed of trust or
84 assignment of deed of trust and other security the lien of
85 which is junior to the deed of trust or assignment of deed
86 of trust and other security of the authority, the authority is
87 authorized to take as security for its loan to the industrial
88 development agency a deed of trust or assignment of deed
89 of trust and other security junior in lien to that of the
90 federal agency.

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

1 When it has determined upon application of an industrial
2 development agency and upon hearing in the manner here-
3 inafter provided that the acquisition or improvement
4 of a particular industrial subdivision project by such agency
5 will accomplish the public purposes of this article, the
6 authority may contract to loan such industrial development
7 agency an amount not in excess of fifty percent of the cost
8 or estimated cost of such industrial subdivision project
9 acquisition or improvement, subject to the following condi-
10 tions:

11 (1) The authority shall have determined that the indus-
12 trial development agency has obtained from other indepen-
13 dent and responsible sources, such as banks and insurance
14 companies, a firm commitment for all other funds, over and
15 above the loan of the authority, necessary for payment of

16 all the estimated cost of the industrial subdivision project
17 acquisition or improvement, and that the sum of all these
18 funds is adequate to insure completion of the project
19 acquisition or improvement.

20 (2) The authority shall have also determined that the
21 industrial development agency has or proposes to acquire
22 clear and marketable legal title to the industrial subdivi-
23 sion project to be improved or acquired.

24 (3) The industrial development agency shall covenant in
25 writing with the authority that, as long as any loan made by
26 the authority to the agency for the acquisition or improve-
27 ment of any industrial subdivision project remains unpaid,
28 no portion of such industrial subdivision project shall be
29 sold, leased or otherwise encumbered except for the purpose
30 of establishing an industrial development project on such
31 land by the agency.

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32 The loan of the authority shall be for such period of
33 time and shall bear interest at such rate as the authority
34 determines and it shall be secured by the negotiable pro-
35 missory note of the industrial development agency and by
36 deed of trust on the industrial subdivision project for which
37 the loan was made, such deed of trust to be second and sub-
38 ordinate only to the deed of trust securing the first lien
39 obligation issued to secure the commitment of funds from
40 the independent and responsible sources and used in the
41 financing of the industrial subdivision project acquisition
42 or improvement.

43 The authority may, in its discretion, defer the payment
44 of principal and interest, or principal only, or interest only,
45 upon any loan made to an industrial development agency
46 for any industrial subdivision project acquisition or im-
47 provement, such deferment to be for such period as the
48 authority determines, not to exceed five years from the date
49 of the deed of trust securing the loan. If any portion of such
50 industrial subdivision project is sold or leased by the
51 agency prior to the expiration of the five-year period, all
52 deferred installments of the principal of the loan accrued
53 on the date of such sale or lease, or the proportionate part
54 of such deferred principal which the sold or leased portion
55 of the project bears to its total acreage, together with all
56 unpaid interest accrued on the date of such sale or lease,

57 shall, at the option of the authority, become due and pay-
58 able immediately or subject to renegotiation by either
59 increasing or decreasing the number and amount of each
60 installment of principal and interest, without effecting
61 any change in the amount of principal of the original loan
62 or the rate of interest as originally fixed by the authority
63 in the deed of trust and note.

64 Money loaned by the authority to an industrial develop-
65 ment agency shall be withdrawn from the fund and paid
66 over to the agency in such manner as is provided for by
67 rules and regulations of the authority.

68 The authority shall deposit all payments of interest on
69 any loans and the principal thereof in the fund.

70 Where any federal agency participating in the financing
71 of industrial subdivision project acquisition or improvement
72 is not permitted to take as security for such participation a
73 deed of trust or assignment of deed of trust and other
74 security the lien of which is junior to the deed of trust
75 or assignment of deed of trust and other security of the
76 authority, the authority is authorized to take as security
77 for its loan to the industrial development agency a deed of
78 trust or assignment of deed of trust and other security
79 junior in lien to that of the federal agency.

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

1 Prior to the loaning of any funds to an industrial develop-
2 ment agency for an industrial development project or for an
3 industrial subdivision project acquisition or improvement, the
4 authority shall receive from such agency a loan application
5 in form adopted by the authority.

6 (1) If the loan application is for an industrial develop-
7 ment project, the form shall contain at least the following:

8 (a) A general description of the project and a general
9 description of the industrial, manufacturing or tourist enter-
10 prise for which the project has been or will be established.

11 (b) A legally sufficient description of all real estate
12 necessary for the project.

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

15 (d) A general description of the type, classes and number

16 of employees employed or to be employed in the operation
17 of the project.

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

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

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

26 (h) Evidence of the arrangement made by the industrial
27 development agency for the financing of all cost of the pro-
28 ject over and above its own participation.

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

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

37 (k) Evidence that the establishment of the project will
38 not cause the removal of an industrial, manufacturing or
39 tourist facility from one area of the state to another area of
40 the state.

41 (2) If the loan application is for an industrial subdivision
42 project acquisition or improvement, the form shall contain
43 at least the following:

44 (a) A general description of the industrial subdivision
45 project and a general description of its adaptability to
46 industrial, manufacturing or tourist purposes, including the
47 type of industrial development project which may be estab-
48 lished thereon upon completion of the acquisition or
49 improvement for which the loan is requested.

50 (b) A legally sufficient description of the industrial sub-
51 division project.

52 (c) Such plans and other documents as may be required
53 to show the type, structure and general character of the

54 proposed industrial subdivision project acquisition or
55 improvement.

56 (d) Cost or estimates of cost of the proposed industrial
57 subdivision project acquisition or improvement.

58 (e) Evidence of the arrangement made by the industrial
59 development agency for the financing of all cost of the
60 industrial subdivision project acquisition or improvement
61 over and above its own participation.

62 (f) Evidence that the establishment of the project to be
63 acquired or improved will not cause the removal of an
64 industrial, manufacturing or tourist facility from one area of
65 the state to another area of the state.

66 The board of the authority shall hold such hearings and
67 examinations on each loan application as shall be necessary
68 to determine whether the public purposes of this article will
69 be accomplished by the granting of such loan.

70 When the board determines that a loan will accomplish
71 the public purposes of this article, it shall grant such
72 loan in accordance with the provisions of this article.

§31-15-9. Industrial development fund.

1 The industrial development fund, to which shall be credited
2 any appropriation made by the Legislature to the authority
3 and such other deposits as are provided for in this section,
4 is hereby continued in the state treasury as a special ac-
5 count.

6 The authority shall requisition from the fund such amounts
7 as are necessary to provide for the payment of the adminis-
8 trative expenses of this article. Whenever the authority de-
9 termines it to be necessary to purchase, at a foreclosure
10 sale, any industrial development project or industrial sub-
11 division project pursuant to subdivision (o), section six of this
12 article, it may requisition from the fund such amount as is
13 necessary to pay the purchase price thereof, notwithstanding
14 that the purchase price in the foreclosure sale of any in-
15 dustrial development project may exceed forty percent of
16 the original cost of the project or that in the foreclosure
17 sale of any industrial subdivision project the purchase price
18 may exceed fifty percent of the original cost of the project
19 or improvement thereon.

20 The authority shall requisition from the fund such
21 amounts as are allocated and appropriated for loans to in-
22 dustrial development agencies for industrial development
23 projects, industrial subdivision projects and industrial sub-
24 division project acquisitions or improvements. As loans to
25 industrial development agencies are repaid to the authority
26 pursuant to the terms of mortgages and other agreements,
27 the authority shall pay such amounts into the fund, con-
28 sistent with the intent of this article that the fund shall
29 operate as a revolving fund whereby all appropriations
30 and payments made thereto may be applied and reapplied
31 for the purposes of this article.

32 Whenever the authority determines that the balance in
33 the fund is in excess of the immediate requirements for
34 loans, it may request that such excess be invested until
35 needed for loan purposes, in which case such excess shall
36 be invested in a manner consistent with the investment of
37 other temporary state funds. Interest earned on any money
38 invested pursuant to this section shall be credited to the
39 fund.

40 If the authority determines that funds held in the fund
41 are in excess of the amount needed to carry out the pur-
42 poses of this article, it shall take such action as is necessary
43 to release such excess and transfer it to the general fund
44 of the state treasury.

**§31-15-10. Governing body; organization and meetings,
quorum; powers.**

1 The governing body of the authority shall consist of the
2 members of the authority acting as a board, which shall
3 exercise all the powers given to the authority in this article.
4 The commissioner of commerce shall be chairman of the
5 board and its chief executive officer. On the second Monday
6 of July of each year, the board shall meet to elect a secre-
7 tary and a treasurer from among its own membership.

8 A majority of the members shall constitute a quorum for
9 the purpose of conducting business. Except in the case of a
10 loan application, or unless the bylaws require a larger num-
11 ber, action may be taken by majority vote of the members
12 present. Approval or rejection of a loan application shall
13 be by majority vote of the full membership of the board.
14 A member of the board who is an industrial development

15 consultant ineligible to vote or otherwise participate on a
16 certain matter shall be counted for the purpose of consti-
17 tuting a quorum but shall not be counted as a member of
18 the board for any other purpose while such matter is being
19 considered.

20 The board shall manage the property and business of the
21 authority and prescribe, amend and repeal bylaws and rules
22 and regulations governing the manner in which the business
23 of the authority is conducted.

24 The department of commerce shall provide staff services
25 to the authority for administration of this article, including
26 liaison between the authority and industrial development
27 agencies and related organizations and between the author-
28 ity and other state agencies whose facilities and services
29 may be useful to the authority in its work. The authority
30 may reimburse any state agency for any special expense
31 actually incurred in providing any service or the use of
32 any facility to the authority.

33 The authority may employ a director of acquisition loans
34 and a director of project and improvement loans, appoint
35 its own counsel and legal staff, permit one or both direc-
36 tors to employ such assistant or assistants as necessary
37 and retain such temporary engineering, financial and other
38 consultants or technicians as may be required for any
39 special study or survey consistent with the provisions of
40 this article.

§31-15-11. Money of the authority.

1 All money accruing to the authority from whatever source
2 derived, except legislative appropriations, shall be collected
3 and received by the treasurer of the authority, who shall
4 pay it into the state treasury in the manner required by
5 section two, article two, chapter twelve of this code, which
6 shall be credited to the fund.

§31-15-12. Conflict of interest; when contracts void.

1 No member, officer or employee of the authority shall
2 either directly or indirectly be a party to or interested in
3 any manner in any contract or agreement with the authority
4 whereby liability or indebtedness against the authority is
5 in any manner created. Any contract or agreement made in
6 violation of the provisions of this section shall be void and

7 and no action thereon shall be maintained against the
8 authority.

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

1 The state hereby pledges to and agrees with each federal
2 agency that if such agency constructs or loans or con-
3 tributes any funds for the acquisition, construction, extension,
4 improvement or enlargement of any industrial development
5 project or industrial subdivision project or for industrial
6 subdivision project improvements, the state will not alter
7 or limit the rights and powers of the authority in any man-
8 ner which would be inconsistent with the due performance
9 of any agreement between the authority and such federal
10 agency and that the authority shall continue to have and
11 exercise all powers granted for carrying out the purposes
12 of this article for so long as necessary.

§31-15-14. Audits.

1 The accounts and books of the authority, including receipts,
2 disbursements, contracts, mortgages, deeds of trust, invest-
3 ments and all other matters relating to its operation, finan-
4 ces and affairs, shall be examined and audited from time
5 to time by the legislative auditor in accordance with the
6 provisions of article two, chapter four of this code.

§31-15-15. Construction; severability.

1 The provisions of this article are remedial and shall be
2 liberally construed and applied so as to promote the pur-
3 poses set out in section three of this article. If any provi-
4 sion of this article or the application thereof to any person
5 or circumstance is held invalid, such invalidity shall not
6 affect other provisions or applications of this article, and
7 to this end the provisions of this article are declared to be
8 severable.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

H. David Larty
Chairman Senate Committee

Clarence C. Christian Jr.
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

Howard W. Carson
Clerk of the Senate

C. G. Blankenship
Clerk of the House of Delegates

W. T. Brotherton Jr.
President of the Senate

Lewis F. M. Thomas
Speaker House of Delegates

The within disapproved this the 27th
day of April, 1973.
Arch A. Pura Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 4/27/73

Time 2:05 p.m.