WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1981

SENATE BILL NO. 335

Registered Senate 1-29-81

No: 335

Passed Senate 1-29-81

In Effect: July 1, 1981

(Passed Senate, Mr. President)

RECEIVED
By Max. 1:11:13

SECE. OF STATE
OFFICE
AN ACT to amend and reenact article fifteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia economic development authority, providing for certain legislative findings and purposes with respect thereto; the definition of terms used; composition of such authority and providing for the appointment of the members thereof and their respective terms; permitting certain members of the authority to designate the person to act in their stead; rules with respect to voting by such members; the compensation and expenses of such members; establishing the general powers of the authority; permitting the authority to make certain loans to industrial development agencies for industrial development projects and industrial subdivision projects, acquisitions and improvements; establishing certain requirements with certain loan applications and for hearings thereon; providing for equipment loans and security interests incidental to loans; establishing the economic development fund; permitting the authority to borrow money; providing that the notes, security interests and bonds of the authority are general obligations of the authority but not of the state; providing that such notes, security interests and bonds are negotiable instruments; providing for the redemption of such notes, security interests or bonds; providing a disclaimer of any liability of the state of West Virginia with respect thereto; creating a trust for the holders of such notes, security interests and bonds issued by the authority; providing for certain rules with respect to defalcation by the authority in the payment of principal or
interest upon any note, security interest or bond issued by the
authority; authorizing certain governmental agency, banks and
other financial institutions to invest in the notes, security
interests and bonds issued by the authority and providing
certain limits with respect thereto; extend tax exemption
status to such notes, security interests and bonds issued by
such authority and providing certain exemptions with respect
thereto; placing certain limits upon the authority with respect
to its borrowing powers; providing for the validity of any
pledge contained in any mortgage, deed of trust or security
interest for the benefit of the authority; establishing a
governing body for the authority and providing for its powers;
establishing certain rules with respect to the meetings,
organizations and for quorum of such governing body;
providing for deposit into the state treasury of all moneys
received by the authority and for crediting such money to the
economic development fund; providing for certain rules with
respect to agreements entered into by various state agencies
with the federal government and its agencies; voiding certain
contracts or agreements approved by the board where conflicts
of interest exist with respect to any member of such board;
establishing rules for the auditing of the accounts, books and
records of the authority; and providing certain rules of
construction with respect to the provisions of the article.

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 and reenacted, to read as follows:

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

This article shall be known and may be cited as "The West
Virginia Economic Development Authority Act."

§31-15-2. Legislative findings.
1 It is hereby determined and declared as a matter of
2 legislative finding: (a) That unemployment exists in many
3 areas of the state and may well come about, from time to time,
4 in other areas of the state; (b) that in some areas of the state,
5 unemployment is a serious problem and has been for so long
6 a period of time that, without remedial measures, it may
7 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 welfare and unemployment compensation; (e) that the absence of employment and business opportunities for youth 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 opportunities has resulted in thousands of workers and their families leaving the state to find such opportunities elsewhere, and that this exodus has adversely affected the tax base of counties and municipalities resulting in an impairment of their financial ability to support education and other local government services; (g) that security against unemployment and the spread of indigency and economic stagnation can best be provided by the promotion, attraction, stimulation, rehabilitation and revitalization of commerce, tourism, industry and manufacturing; (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 development of new and expanded coal production, industrial, commercial, tourist and manufacturing enterprises within this state; (i) that the device under which private community industrial development organizations in the state acquire or build industrial buildings or sites and equip the same 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 economic distress; (j) that community industrial development corporations in the state have invested substantial funds in successful coal production, 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 community industrial building programs; (l) that by increasing the number of community industrial building projects presenting attractive opportunities for private investment, a larger portion of the private capital available in this state for investment can be put to use for the general economic development of the state; and (m) that it is in the public interest, in order to address the needs aforesaid, that a state instrumentality be created as a public body corporate with full powers to accept grants, gifts and appropriations, to generate revenues, to borrow money and issue its bonds, notes and security interests to the end that funds obtained thereby may be used to furnish money and credit to approved industrial development agencies.


The purposes of this article shall be to provide for the formation of a public economic 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, tourist or manufacturing developments in this state; to borrow moneys and to issue its bonds, notes and security interests; 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.

1 Unless the context clearly indicates otherwise, as used in this article:
2 (a) “Authority” means the West Virginia economic development authority.
3 (b) “Board” means the governing body of the authority.
4 (c) “Bonds” means bonds of the authority issued under this article.
5 (d) “Cost of establishing an industrial development project” means the cost of equipment or the cost of construction, cost of all lands, water areas, property rights and easements, financing charges, interest prior to and during construction, cost of engineering and legal services, plans, specifications and surveys, estimates of costs and any 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.
6 (e) “Cost of industrial subdivision project improvements” means equipment or construction cost of site preparation, cost of grading and planting, construction cost of utilities, sewage disposal facilities, storm drains, access roads and dock facilities, construction cost of internal streets and roads, curbs, walks, parking areas, lighting, shell buildings and rail spurs, cost of acquiring easements and property rights in other lands and, 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 necessary or incidental to the financing and construction of industrial subdivision project improvements.
7 (f) “County” means any county of this state.
8 (g) “Federal agency” means the United States of America and any department, corporation, agency or instrumentality
created, designated or established by the United States of America.

(h) "Fund" means the economic development fund provided for in section ten of this article.

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

(j) "Industrial development agency" means any incorporated organization, foundation, association or agency to whose members or shareholders no profit inures, which has as its primary function the promotion, encouragement and development of industrial, commercial, manufacturing and tourist facility enterprises in this state.

(k) "Industrial development project" means any land or water site, structure, facility, equipment or undertaking comprising or being connected with or a part of an industrial, commercial, manufacturing or tourist facility enterprise established, to be established or proposed to be acquired by an industrial development agency in this state.

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

(m) "Industrial subdivision project improvements" means site preparation, grading, planting and the installation of utilities, sewage disposal facilities, storm drains, dock facilities, internal streets and roads, curbs, walks, parking areas, lighting, shell buildings, equipment and rail spurs upon an industrial subdivision project.

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

(o) "Notes" means any notes of the authority issued under this article.

(p) "Responsible buyer" means government and 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 it in the acquisition of an industrial development project from an industrial development agency and in the operation of an industrial, commercial, manufacturing or tourist facility enterprise thereon.
(q) "Responsible tenant" means government and 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 other obligations prescribed by it in the leasing of an industrial development project and in the operation of an industrial, commercial, manufacturing or tourist facility enterprise thereon.

(r) "Revenues" means all fees, charges, moneys, profits, payments or principal of, or interest on, loans and other investments, gifts, grants, appropriations, contributions and all other income derived or to be derived by the authority under this article.

(s) "Security interest" means an interest in the loan portfolio of the authority which interest is secured by an underlying loan or loans and is evidenced by a note issued by the authority.

§31-15-5. West Virginia economic development authority; composition; appointment; terms; delegation of authority by certain members; voting; compensation and expenses.

The West Virginia industrial development authority heretofore created is hereby continued as a body corporate and politic, constituting a public corporation and government instrumentality, but shall hereafter be known as the West Virginia economic development authority.

The authority shall be composed of a board of members consisting of a chairman, who shall be the governor or his designated representative, the state treasurer, the tax commissioner, the commissioner of banking and five appointed members who shall be broadly representative of the geographic regions of the state.

The governor shall nominate and, by and with the advice and consent of the Senate, appoint five members of the commission for staggered terms of four years. Of the members of the commission first appointed, one shall be appointed for a term ending the thirtieth day of June, one thousand nine hundred seventy-eight, and one each for terms ending one, two, three and four years thereafter: Provided, That each person serving as a member of the West Virginia industrial development authority, for a term which has not expired on the effective date of this article, shall be appointed by the
governor without Senate confirmation to the West Virginia economic development authority as one of the five appointed members, for the term ending the thirtieth day of June in the year in which his term would expire as a member of the West Virginia industrial development authority. As these original appointments expire, each subsequent appointment shall be for a full four-year term. Any member whose term has expired shall serve until his successor has been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term. Any member shall be eligible for reappointment.

The governor, state treasurer, tax commissioner and commissioner of banking may, by written notice filed with the secretary of the authority, from time to time, delegate to any subordinate the power to represent them at any meeting of the authority. In such case, the subordinate shall have the same power and privileges as the official he represents and may vote on any question.

Members of the authority shall not be entitled to compensation for services performed as members, but shall be entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties.


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

(a) To cooperate with industrial development agencies in efforts to promote the expansion of industrial, commercial, manufacturing and tourist activity in this state.

(b) To determine, upon the proper application of an industrial development agency, whether the declared public purposes of this article have been or will be accomplished by the establishment by such agency of an industrial development project in this state.

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

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

e) To apply to the circuit court having venue of such offense to have punished for contempt any witness who refuses to obey a subpoena, to be sworn or affirmed or to testify or who commits any contempt after being summoned to appear.

f) To authorize any member of the authority to conduct hearings, administer oaths, take affidavits and issue subpoenas.

g) To make, upon proper application of any industrial development agency, loans to such agency for industrial development projects, industrial subdivision projects and industrial subdivision project improvements and to provide for the repayment and redeposit of such loans in the manner provided in this article.

h) To sue and be sued, implead and be impleaded, and complain and defend in any court.

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

j) To make bylaws for the management and regulation of its affairs.

k) To appoint officers, agents, employees and servants.

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

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

n) To take title by foreclosure to any industrial development project or any industrial subdivision project where acquisition is necessary to protect any loan previously made by the authority and to sell, transfer and convey such 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 the project to a responsible tenant. The authority shall not lease an industrial development project or industrial subdivision project, except under the conditions and for the purposes cited in this section.

o) To participate in any reorganization proceeding pending pursuant to the United States Code (being the act of
Congress establishing a uniform system of bankruptcy throughout the United States, as amended) or in any receivership proceeding in a state or federal court for the reorganization or liquidation of a responsible buyer or responsible tenant. The authority 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 such indebtedness for any property, security or evidence of indebtedness offered as a part of the reorganization of such 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.

(p) To borrow money and to issue its negotiable bonds, security interests or notes and to provide for and secure the payment thereof, and to provide for the rights of the holders thereof, and to purchase, hold and dispose of any of its bonds, security interests or notes.

(q) To sell, at public or private sale, any bond or other negotiable instrument, security interests or obligation of the authority in such manner and upon such terms as the authority deems would best serve the purposes of this article.

(r) To issue its bonds, security interests and notes payable solely from the revenues or funds available to the authority therefor; and the authority may issue its bonds, security interests or notes in such principal amounts as it shall deem necessary to provide funds for any purposes under this article, including:

(i) The making of loans to approved industrial development agencies.

(ii) The payment, funding or refunding of the principal of, interest on, or redemption premiums on, any bonds, security interests or notes issued by it whether the bonds, security interests, notes or interest to be funded or refunded have or have not become due.

(iii) The establishment or increase of reserves to secure or to pay bonds, security interests, notes or the interest thereon and all other costs or expenses of the authority incident to and necessary or convenient to carry out its corporate
purposes and powers. Any bonds, security interests or notes may be additionally secured by a pledge of any revenues, funds, assets or moneys of the authority from any source whatsoever.

(s) To issue renewal notes, or security interests, to issue bonds to pay notes or security interests and, whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured except that no such renewal notes shall be issued to mature more than ten years from date of issuance of the notes renewed and no such refunding bonds shall be issued to mature more than twenty-five years from the date of issuance.

(t) To apply the proceeds from the sale of renewal notes, security interests or refunding bonds to the purchase, redemption or payment of the notes, security interests or bonds to be refunded.

(u) To accept gifts or grants of property, funds, security interests, money, materials, labor, supplies or services from the United States of America or from any governmental unit or any person, firm or corporation, and to carry out the terms or provisions of, or make agreements with respect to, or pledge, any gifts or grants, and to do any and all things necessary, useful, desirable or convenient in connection with the procuring, acceptance or disposition of gifts or grants.

(v) To the extent permitted under its contracts with the holders of bonds, security interests or notes of the authority, to consent to any modification of the rate of interest, time of payment of any installment of principal or interest, security or any other term of any bond, security interests, note or contract or agreement of any kind to which the authority is a party.

(w) To sell security interests in the loan portfolio of the authority. Such security interests shall be evidenced by instruments issued by the authority. Proceeds from the sale of security interests may be used in the same manner and for the same purposes as bond and note revenues.

(x) To procure insurance against any losses in connection with its property, operations or assets in such amounts and from such insurers as the authority deems desirable.

(y) To take and hold security interests for equipment loans as prescribed in this article.
§31-15-7. Loans to industrial development agencies for industrial development projects.

1 When it has determined upon application of an industrial development agency and upon hearing in the manner hereinafter provided that the establishment or acquisition of a particular industrial development project has accomplished or will accomplish the public purposes of this article, the authority may contract to loan such agency an amount not in excess of fifty percent of the cost or estimated cost of such project, as established, to be established or proposed to be acquired, subject to the following conditions:

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

(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 ten percent of the estimated cost of establishing or acquiring the industrial development project, which funds or property are available for and shall be applied to the establishment or acquisition of the project.

(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, a firm commitment for all other funds over and above the loan of the authority and such funds or property as the agency may hold, necessary for payment of all the estimated cost of establishing or acquiring the industrial development project and that the sum of all these funds is adequate to ensure completion and operation of the industrial development project.

(b) Industrial development projects established or acquired 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 ten percent of the cost of establishing or acquiring the industrial development project.

(2) The authority shall have also determined that the industrial development agency obtained from other independent and responsible sources, such as banks and insurance companies, other funds necessary for payment of all the cost of establishing or acquiring the industrial development project.
development project and that the industrial development
agency participation and these funds have been adequate to
ensure completion and operation or acquisition of the
industrial development project. The proceeds of any loan
made by the authority to the industrial development agency
pursuant to this subdivision (b) shall be used only for the
establishment or acquisition of industrial development
projects in furtherance of the public purposes of this article.
The loan of the authority shall be for such period of time
and shall bear interest at such rate as the authority
determines and it shall be secured by the negotiable
promissory note of the industrial development agency and by
deed of trust on the industrial development project for which
the loan was made or by assignment of any deed of trust and
negotiable promissory note and other security taken by the
industrial development 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
obligation issued to secure the commitment of funds from the
independent and responsible sources and used in the
financing of the industrial development project.
Money loaned by the authority to an industrial
development agency shall be withdrawn from the fund and
paid over to the agency in such manner as is provided by
rules and regulations of the authority.
The authority shall deposit all payments of interest on loans
and the principal thereof in the fund. When any federal
agency participates, 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 ensure the maximum benefit available to
the industrial development agency, the authority, or both, by
the participation of the federal agency. When ratios are
adjusted as aforesaid, no such adjustment shall be made
which shall cause the authority to grant a loan to the
industrial development agency 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 may 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 acquisitions and
improvements.

When it has been determined upon application of an
industrial development agency and upon hearing in the
manner hereinafter provided that the acquisition or
improvement of a particular industrial subdivision project by
such agency 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 acquisition or improvement, except as to shell
buildings, in which case the agency may contract to loan an
amount not in excess of ninety percent of the cost of such
shell building, subject 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, 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
acquisition or improvement and that the sum of all these
funds is adequate to ensure completion of the project
acquisition or improvement.

(2) The authority shall have also determined that the
industrial development agency has or proposes to acquire
clear and marketable legal title to the industrial subdivision
project to be improved or acquired.

(3) The industrial development agency shall convenant in
writing with the authority that, as long as any loan made by
the authority to the agency for the acquisition or
improvement of any industrial subdivision project remains
unpaid, no portion of such industrial subdivision project shall
be sold, leased or otherwise encumbered except for the
purpose of establishing an industrial development project on
such land by the agency.
(4) In the case of a contract to loan more than fifty percent of the cost of a shell building, subject to the maximum limitation of ninety percent as aforesaid, the industrial development agency shall furnish to the authority evidence that such industrial development agency has entered into a contract whereby a responsible buyer or responsible tenant is legally obligated to acquire or lease such shell building. The Legislature finds and declares that it does not believe it would be in the best interest of the state for the authority to contract to loan more than fifty percent of the cost of a shell building, subject to the maximum limitation of ninety percent as aforesaid, unless it is clear that the use to be made of such shell building will result in the employment of a reasonably substantial work force.

The loan of the authority shall be for such period of time and shall bear interest at such rate as the authority determines and it shall be secured by the negotiable promissory note of the industrial development agency and by deed of trust on the industrial subdivision project for which the 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 independent and responsible sources and used in the financing of the industrial subdivision project acquisition or improvement.

The authority may, in its discretion, defer the payment of principal and interest, or principal only, or interest only, upon any loan made to an industrial development agency for any industrial subdivision project acquisition or improvement, such deferment to be for such period as the authority determines, not to exceed five years from the date of the deed of trust securing the loan. If any portion of such industrial subdivision project is sold or leased by the agency prior to the expiration of the 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 project bears to its total acreage, together with all unpaid interest accrued on the date of such sale or lease, shall, at the option of the authority, become due and payable immediately or subject to renegotiation by either increasing or decreasing the number and amount of each installment of principal and interest,
without effecting any change in the amount of principal of the
original loan or the rate of interest as originally fixed by the
authority in the deed of trust and note.
Money loaned by the authority to an industrial
development agency shall be withdrawn from the fund and
paid over to the agency in such manner as is provided by
rules and regulations of the authority.
The authority shall deposit all payments of interest on any
loans and the principal thereof in the fund.
Money loaned by the authority to an industrial
development agency shall be withdrawn from the fund and
paid over to the agency in such manner as is provided by
rules and regulations of the authority.

§31-15-8. Loan application requirements; hearings.
Prior to the loaning of any funds to an industrial
development agency for an industrial development project or
for an industrial subdivision project acquisition or
improvement, the authority shall receive from such agency a
loan application in such form as adopted by the authority.
(1) If the loan application is for an industrial development
project, the form shall contain at least the following:
(a) A general description of the project and a general
description of the industrial, commercial, manufacturing or
tourist enterprise for which the project has been or will be
established.
(b) A legally sufficient description of all real estate
necessary for the project.
(c) Such plans and other documents as may be required to
show the type, structure and general character of the project.
(d) A general description of the type, classes and number
of employees employed or to be employed in the operation of
the project.
(e) Cost or estimates of cost of establishing the 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
project.
(g) A statement of cash funds previously applied, or held by the industrial development agency, which are available for and are to be applied to the establishment of the project.

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

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

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

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

(a) A general description of the industrial subdivision project and a general description of its adaptability to industrial, commercial, manufacturing or tourist purposes, including the type of industrial development project which may be established thereon upon completion of the acquisition or improvement for which the loan is requested.

(b) A legally sufficient description of the industrial subdivision project.

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

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

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

(f) Evidence that the establishment of the project to be acquired or improved will not cause the removal of an industrial, commercial, manufacturing or tourist facility from one area of the state to another area of the state.
The board of the authority shall hold such hearings and examinations on each loan application as shall be necessary to determine whether the public purposes of this article will be accomplished by the granting of such loan.

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


The authority may make loans for equipment as part of industrial development projects or industrial subdivision projects or improvement thereto subject to the same application and loan procedures and limitations as usually apply to loans for industrial development projects or industrial subdivision projects or improvements thereto: Provided, That such loans shall be secured by a first lien on the equipment financed by the loan and shall be additionally secured by a deed of trust in real property and any improvement thereto; such additional security shall be upon such terms and in such amount satisfactory to the authority.


The industrial development fund, to which shall be credited any appropriation made by the Legislature to the authority and such other deposits as are provided for in this section, is hereby continued in the state treasury as a special account, but shall hereafter be known as the economic development fund.

The authority shall requisition from the fund such amounts as are necessary to provide for the payment of the administrative expenses of this article. Notwithstanding section seven-a of this article, whenever the authority determines it to be necessary to purchase at a foreclosure sale any industrial development project or industrial subdivision project pursuant to subdivision (o), section six of this article, it may requisition from the fund such amount as is necessary to pay the purchase price thereof, notwithstanding that the purchase price in the foreclosure sale of any industrial development project may exceed fifty percent of the original cost of the project, or that in the foreclosure sale of any industrial subdivision project the purchase price may exceed fifty percent of the original cost of the project or improvement thereon.
The authority shall requisition from the fund such amounts as are allocated and appropriated for loans to industrial development agencies for industrial development projects, industrial subdivision projects and industrial subdivision project acquisitions or improvements. As loans to industrial development agencies are repaid to the authority pursuant to the terms of mortgages and other agreements, the authority shall pay such amounts into the fund, consistent with the intent of this article that the fund shall operate as a revolving fund whereby all appropriations and payments made thereto may be applied and reapplied for the purposes of this article. Revenues deposited into the fund may be used to make payments of interest and principal and may be pledged as security for bonds, security interests, or notes issued by the authority pursuant to this article.

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

If the authority determines that funds held in the fund are in excess of the amount needed to carry out the purposes of this article, it shall take such action as is necessary to release such excess and transfer it to the general fund of the state treasury.


The borrowing of money and the notes, bonds and security interests evidencing any such borrowing shall be authorized by resolution approved by the board, shall bear such date or dates, and shall mature at such time or times, in the case of any such bonds, not exceeding twenty-five years from the date of issue, as such resolution or resolutions may provide. The notes, bonds and security interests shall bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms or conditions of redemption as such resolution or resolutions may provide.
§31-15-12. Notes, security interests, and bonds as general obligations of authority.
1 Except as may otherwise be provided by the authority,
2 every issue of its notes, security interests and bonds shall be
3 general obligations of the authority payable out of any
4 revenues or moneys of the authority, subject only to any
5 agreements with the holders of particular notes, security
6 interests or bonds pledging any particular revenues.

1 The notes, security interests and bonds issued by the
2 authority shall be and hereby are made negotiable
3 instruments under the provisions of article eight, chapter
4 forty-six of this code, subject only to the provisions of the
5 notes, security interests or bonds for registration.

1 Any resolution or resolutions authorizing any notes, bonds
2 or security interests or any issue thereof, may contain
3 provisions, which shall be a part of the contract with holders,
4 as to:
5 (1) Pledging all or part of the revenues of the authority to
6 secure the payment of the notes, security interests or bonds
7 or any issue thereof, subject to such agreements with
8 bondholders, holders of security interests or noteholders as
9 may then exist;
10 (2) Pledging all or any part of the assets of the authority to
11 secure the payment of the notes, security interests or bonds or
12 any issue thereof, subject to such agreements with
13 bondholders, holders of security interests or noteholders as
14 may then exist;
15 (3) The setting aside of reserves or sinking funds and the
16 regulation and disposition thereof;
17 (4) Limitations on the purposes to which the proceeds of
18 sale of notes, security interests or bonds may be applied and
19 pledging such proceeds to secure the payment of the notes,
20 security interests or bonds or of any issue thereof;
21 (5) Limitations on the issuance of additional notes, security interests or bonds; the terms upon which additional
22 notes, security interests or bonds may be issued and secured;
23 and the refunding of outstanding or other notes, security
24 interests or bonds;

The authority, subject to such agreements with noteholders, holders of security interests or bondholders as may then exist, shall have power, out of any funds available therefor, to purchase notes, security interests or bonds of the authority.

If the notes, security interests or bonds are then redeemable, the price of such purchase shall not exceed the redemption price then applicable plus accrued interest to the next interest payment date thereon. If the notes, security interests or bonds are not then redeemable, the price of such purchase shall not exceed the redemption price applicable on the first date after such purchase upon which the notes, security interests or bonds become subject to redemption plus accrued interest to such date. Upon such purchase such notes, security interests or bonds shall be canceled.


The state of West Virginia shall not be liable on notes, security interests or bonds or other evidences of indebtedness of the authority and such notes, security interests or bonds or other evidence of indebtedness shall not be a debt of the state of West Virginia, and such notes, security interests or bonds or other evidence of indebtedness shall contain on the face thereof a statement to such effect.
§31-15-17. Trust existing in favor of existing holders of notes, security interests or bonds.

1 The properties and interests in properties, real, personal and mixed, tangible and intangible, standing or held in the name of or for and in behalf of, or for the benefit of, the authority, or the state of West Virginia to the extent that the same are or were acquired or improved by the expenditure of the proceeds of notes, security interests or bonds heretofore or hereafter issued by the authority, and the moneys, deposits, securities and choses in action and other rights held in the name of or for and in behalf of, or for the benefit of, the authority, other than moneys, deposits, securities, choses in action and other rights which are, or which are investments of, (1) proceeds of bonds heretofore issued by the authority held for expenditure for completion of now existing projects of the authority, or (2) revenues of the authority from existing projects of the authority which, after provision for operation and maintenance expenses and coverage requirements not otherwise provided for, are in excess of sums required to pay the principal of and interest on the bonds of the commission heretofore issued, as and when due and payable, or (3) proceeds of bonds of the authority issued hereafter, or (4) revenues of the authority from projects hereafter financed by or participated in by the authority, are declared to be subject to and shall be held by the authority in trust for the satisfaction of the obligations evidenced by the bonds heretofore issued by the authority and the interest coupons thereon: Provided, That nothing in this article shall be taken to validate or to attempt to validate any agreement which provides for payments from general tax revenues of the state. Until the satisfaction in full of the obligations evidenced by bonds heretofore issued by the authority, the authority shall hold, manage and operate the aforesaid trust properties and interests in properties, moneys, deposits, securities and choses in action and other rights, separate from all other properties and interests in properties, moneys, deposits, securities and choses in action and other rights that may hereafter be held and owned by the authority. Upon the satisfaction of all of the aforesaid obligations of the authority, all of the aforesaid trust properties and interests in properties, moneys, deposits, securities and choses in action and other rights shall become and be free and clear of the aforesaid trust.
§31-15-18. Default in payment of principal or interest.

1 In the event the authority shall default in the payment of principal of or interest on any issue of its notes, security interests or bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event the authority shall fail to refuse to comply with the provisions of this article or shall default in any agreement made with the holders of any issue of notes, security interests or bonds, the holders of twenty-five percent in aggregate principal amount of the notes, security interests or bonds of such issue then outstanding, by instrument or instruments filed in the office of the clerk of the county commission of any county in which the authority operates and has an office and acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such notes, security interests or bonds for the purposes herein provided:

(1) Any such trustee, upon the written request of the holders of twenty-five percent in principal amount of such notes, security interests or bonds of the authority then outstanding, shall, in his or its own name, do any one or more of the following:

(i) By civil action or other proceeding, enforce all rights of the noteholders, holders of security interests or bondholders, including the right to require the authority to perform its duties under this article;

(ii) Bring a civil action upon such notes, security interests or bonds;

(iii) By civil action or other proceeding, require the authority to account as if it were the trustee of an express trust for the holders of such notes, security interests or bonds;

(iv) By civil action or other proceeding, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such notes, security interests or bonds;

(v) Declare all such notes, security interests or bonds due and payable, and if all defaults shall be made good, then annul such declaration and its consequences.

(2) In addition to the foregoing, such trustee shall have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the general representation of holders of notes, security interests or bonds of the authority in the enforcement and protection of their rights.
Before declaring the principal of any notes, security interests or bonds due and payable, the trustee shall first give thirty days' notice in writing to the authority.


1 The notes, bonds and security interests of the authority are hereby made securities in which the state board of investments, all insurance companies and associations, and other persons carrying on an insurance business, all banking institutions, trust companies, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking business, and other persons, except administrators, guardians, executors, trustees and fiduciaries, who are now or who may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds including capital in their control or belonging to them; Provided, That the state board of investments, prior to investing funds, including capital in such notes, security interests or bonds of the authority shall first inquire fully into the integrity and sufficiency of the collateral securing such investment and shall be fully satisfied as to the sufficiency and integrity thereof; and may only so invest if the yield therefrom is at least equal to or greater than the prevailing market yield from similar United States twenty-six week treasury bills: Provided, however, That the state board of investments shall not purchase evidences of indebtedness having terms in excess of eighteen months from date of purchase to date of maturity.


1 The exercise of the powers granted to the authority by this article will be in all respects for the benefit of the people of the state, for the improvement of their health, safety, convenience and welfare and for the enhancement of their residential, agricultural, recreational, economic, commercial and industrial opportunities and is a public purpose. As the operation and maintenance of economic development projects will constitute the performance of essential governmental functions, the authority shall not be required to pay any taxes or assessments upon any economic development project or upon any property acquired or used by the authority or upon the income therefrom. Such bonds
and notes and all interest and income thereon shall be exempt
from all taxation by this state, or any county, municipality,
political subdivision or agency thereof, except inheritance
taxes.


The aggregate principal amount of notes, security interests
and bonds issued by the authority shall not exceed one
hundred million dollars outstanding at any one time:
Provided, That in computing the total amount of notes,
security interests and bonds which may at any one time be
outstanding, the principal amount of any outstanding notes,
security interests and bonds refunded or to be refunded
either by application of the proceeds of the sale of any
refunding bonds, security interests or notes of the authority
or by exchange for any such refunding bonds, security
interests or notes shall be excluded. The provisions of section
nineteen of this article notwithstanding, the state board of
investments shall have invested no more than a total
aggregate principal amount of fifteen million dollars at any
one time in such notes, security interests or bonds.

§31-15-22. Validity of any pledge, mortgage, deed of trust or
security instrument.

It is the intention hereof that any pledge, mortgage, deed of
trust or security instrument made by or for the benefit of the
authority shall be valid and binding between the parties from
the time the pledge, mortgage, deed of trust or security
instrument is made; and that the moneys or property so
pledged, encumbered, mortgaged or entrusted shall
immediately be subject to the lien of such pledge, mortgage,
deed of trust or security instrument without any physical
delivery thereof or further act.

§31-15-23. Governing body; organization and meetings; quorum;
powers.

The governing body of the authority shall consist of the
members of the authority acting as a board, which shall
exercise all the powers given to the authority in this article.
The governor or his designated representative shall be
chairman of the board and its chief executive officer. On the
second Monday of July of each year, the board shall meet to
elect a secretary and a treasurer from among its own
members.
A majority of the members shall constitute a quorum for the purpose of conducting business. Except in the case of a loan application or unless the bylaws require a larger number, action may be taken by majority vote of the members present. Approval or rejection of a loan application shall be made by majority vote of the full membership of the board.

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

The governor shall provide staff services to the authority for administration of this article, including liaison between the authority and industrial development agencies and related organizations and between the authority and other state agencies whose facilities and services may be useful to the authority in its work. The authority may reimburse any state spending unit for any special expense actually incurred in providing any service or the use of any facility to the authority.

The authority shall employ one executive director and any other personnel it determined necessary, and may appoint its own counsel and legal staff, and retain such temporary engineering, financial and other consultants or technicians as may be required for any special study or survey consistent with the provisions of this article.


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

§31-15-25. Conflict of interest; when contracts void.

No member, officer or employee of the authority shall either directly or indirectly be a party to or interested in any manner in any contract or agreement with the authority whereby liability or indebtedness against or to the authority is in any manner created. Any contract or agreement made in violation of the provisions of this section shall be void and no action thereon shall be maintained against the authority.
§31-15-26. Agreement with federal agencies not to alter or limit powers of authority.

The state hereby pledges to and agrees with each federal agency that, if such agency constructs or loans or contributes any funds for the acquisition, construction, extension, improvement or enlargement of any industrial development project or industrial subdivision project or for industrial subdivision project improvements, 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 agreement between the authority and such federal agency and that the authority shall continue to have and exercise all powers granted for carrying out the purposes of this article for so long as necessary.


As soon as possible after the close of each fiscal year, the authority shall make an annual report of its activities for the preceding fiscal year to the governor and the Legislature. Each such report shall set forth a complete operating and financial statement covering the authority’s operations during the preceding fiscal year. The authority shall cause an audit of its books and accounts to be made at least once each fiscal year by certified public accountants and the cost thereof may be treated as a part of the cost of construction or of operations of its projects.


The provisions of this article are remedial and shall be liberally construed and applied so as to promote the purposes set out in section three 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 July 1, 1981.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within in approved this the 29 day of April, 1981.

Governor