

APPROVED AND SIGNED BY THE GOVERNOR

Date 4-29-81

Time _____

No: 335

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1981



ENROLLED

SENATE BILL NO. 335

(By Mr. McGraw, Mr. President)



PASSED April 16 1981

In Effect July 1, 1981 ~~Page~~

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SECY. OF STATE

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ENROLLED
Senate Bill No. 335
(By MR. MCGRAW, MR. PRESIDENT)

[Passed April 11, 1981; in effect July 1, 1981.]

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.

§31-15-1. Short title.

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

8 insecurity due to unemployment is a serious menace to the
9 health, safety, morals and general welfare of the people of the
10 entire state; (d) that widespread industry unemployment
11 produces 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 our American political and economic
17 institutions and the philosophy of freedom on which those
18 institutions are based; (f) that lack of employment and
19 business opportunities has resulted in thousands of workers
20 and their families leaving the state to find such opportunities
21 elsewhere, and that this exodus has adversely affected the tax
22 base of counties and municipalities resulting in an
23 impairment of their financial ability to support education and
24 other local government services; (g) that security against
25 unemployment and the spread of indigency and economic
26 stagnation can best be provided by the promotion, attraction,
27 stimulation, rehabilitation and revitalization of commerce,
28 tourism, industry and manufacturing; (h) that the present and
29 future 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
32 expanded coal production, industrial, commercial, tourist
33 and manufacturing enterprises within this state; (i) that the
34 device under which private community industrial
35 development organizations in the state acquire or build
36 industrial buildings or sites and equip the same with funds
37 raised through popular subscription, loans or otherwise for
38 lease and sale to new or expanding industries has proven
39 effective in creating new employment and business
40 opportunities locally, is in accord with the American tradition
41 of community initiative and enterprise, and requires and
42 deserves encouragement and support from the state, as a
43 means toward alleviation of unemployment and economic
44 distress; (j) that community industrial development
45 corporations in the state have invested substantial funds in
46 successful coal production, industrial development projects
47 and are experiencing difficulty in undertaking additional
48 projects by reason of the partial inadequacy of their own
49 funds potentially available from local subscription sources

50 and by reason of limitations of local financial institutions in
51 providing additional and sufficiently sizeable first deed of
52 trust or mortgage loans; (k) that an urgent need exists to
53 stimulate a larger flow of private investment funds from
54 banks, investment houses, insurance companies and other
55 financial institutions into community industrial building
56 programs; (l) that by increasing the number of community
57 industrial building projects presenting attractive
58 opportunities for private investment, a larger portion of the
59 private capital available in this state for investment can be
60 put to use for the general economic development of the state;
61 and (m) that it is in the public interest, in order to address the
62 needs aforesaid, that a state instrumentality be created as a
63 public body corporate with full powers to accept grants, gifts
64 and appropriations, to generate revenues, to borrow money
65 and issue its bonds, notes and security interests to the end
66 that funds obtained thereby may be used to furnish money
67 and credit to approved industrial development agencies.

§31-15-3. Purposes of article.

1 The purposes of this article shall be to provide for the
2 formation of a public economic development authority to
3 promote, assist, encourage and, in conjunction with such
4 banking corporations or institutions, trust companies,
5 savings banks, building and loan associations, insurance
6 companies or related corporations, partnerships, foundations
7 or other institutions to develop and advance the business
8 prosperity and economic welfare of the state of West Virginia;
9 to encourage and assist in the location of new business and
10 industry; to stimulate and assist in the expansion of all kinds
11 of business activity which will tend to promote the business
12 development and maintain the economic stability of this
13 state, provide maximum opportunities for employment,
14 encourage thrift and improve the standard of living of the
15 citizens of this state; to cooperate and act in conjunction with
16 other organizations, public or private, the objects of which are
17 the promotion and advancement of industrial, commercial,
18 tourist or manufacturing developments in this state; to
19 borrow moneys and to issue its bonds, notes and security
20 interests; to furnish money and credit to approved industrial
21 development agencies in this state, thereby establishing a
22 source of credit not otherwise available therefor. Such
23 purposes are hereby declared to be public purposes for which

24 public money may be spent and are purposes which will
25 promote the health, safety, morals, right to gainful
26 employment, business opportunities and general welfare of
27 the inhabitants of the state.

§31-15-4. Definitions.

1 Unless the context clearly indicates otherwise, as used in
2 this article:

3 (a) "Authority" means the West Virginia economic
4 development authority.

5 (b) "Board" means the governing body of the authority.

6 (c) "Bonds" means bonds of the authority issued under
7 this article.

8 (d) "Cost of establishing an industrial development
9 project" means the cost of equipment or the cost of
10 construction, cost of all lands, water areas, property rights and
11 easements, financing charges, interest prior to and during
12 construction, cost of engineering and legal services, plans,
13 specifications and surveys, estimates of costs and any other
14 expenses necessary or incident to determining the feasibility
15 or practicability of any industrial development project,
16 together with such other expenses as may be necessary or
17 incidental to the financing and the construction of the
18 industrial development project and the placing of the same in
19 operation.

20 (e) "Cost of industrial subdivision project improvements"
21 means equipment or construction cost of site preparation,
22 cost of grading and planting, construction cost of utilities,
23 sewage disposal facilities, storm drains, access roads and
24 dock facilities, construction cost of internal streets and roads,
25 curbs, walks, parking areas, lighting, shell buildings and rail
26 spurs, cost of acquiring easements and property rights in
27 other lands and, in connection therewith, financing charges,
28 interest prior to and during the construction of such
29 improvements, cost of engineering and legal services,
30 preparation of plans, specifications, surveys and estimates of
31 costs, together with such other expenses as may be necessary
32 or incidental to the financing and construction of industrial
33 subdivision project improvements.

34 (f) "County" means any county of this state.

35 (g) "Federal agency" means the United States of America
36 and any department, corporation, agency or instrumentality

37 created, designated or established by the United States of
38 America.

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

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

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

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

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

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

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

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

71 (p) "Responsible buyer" means government and any
72 person, partnership, firm, company or corporation organized
73 for profit deemed by the authority, after proper investigation,
74 to be financially responsible to assume all obligations
75 prescribed by it in the acquisition of an industrial
76 development project from an industrial development agency
77 and in the operation of an industrial, commercial,
78 manufacturing or tourist facility enterprise thereon.

79 (q) "Responsible tenant" means government and any
 80 person, partnership, firm, company or corporation organized
 81 for profit deemed by the authority, after proper investigation,
 82 to be financially responsible to assume all rental and other
 83 obligations prescribed by it in the leasing of an industrial
 84 development project and in the operation of an industrial,
 85 commercial, manufacturing or tourist facility enterprise
 86 thereon.

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

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

**§31-15-5. West Virginia economic development authority;
 composition; appointment; terms; delegation of
 authority by certain members; voting;
 compensation 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 government
 4 instrumentality, but shall hereafter be known as the West
 5 Virginia economic development authority.

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

12 The governor shall nominate and, by and with the advice and
 13 consent of the Senate, appoint five members of the
 14 commission for staggered terms of four years. Of the members
 15 of the commission first appointed, one shall be appointed for a
 16 term ending the thirtieth day of June, one thousand nine
 17 hundred seventy-eight, and one each for terms ending one,
 18 two, three and four years thereafter: *Provided*, That each
 19 person serving as a member of the West Virginia industrial
 20 development authority, for a term which has not expired on
 21 the effective date of this article, shall be appointed by the

22 governor without Senate confirmation to the West Virginia
23 economic development authority as one of the five appointed
24 members, for the term ending the thirtieth day of June in the
25 year in which his term would expire as a member of the West
26 Virginia industrial development authority. As these original
27 appointments expire, each subsequent appointment shall be
28 for a full four-year term. Any member whose term has expired
29 shall serve until his successor has been duly appointed and
30 qualified. Any person appointed to fill a vacancy shall serve
31 only for the unexpired term. Any member shall be eligible for
32 reappointment.

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

40 Members of the authority shall not be entitled to
41 compensation for services performed as members, but shall
42 be entitled to reimbursement for all reasonable and necessary
43 expenses actually incurred in the performance of their 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 to
4 carry out the purposes of this article, including the power:

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

8 (b) To determine, upon the proper application of an
9 industrial development agency, whether the declared public
10 purposes of this article have been or will be accomplished by
11 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, at
15 public or private hearings, on any matter relevant to this
16 article and necessary for information on the establishment of
17 any industrial development project.

18 (d) To issue subpoenas requiring the attendance of
19 witnesses and the production of books and papers relevant to

20 any hearing before such authority or one or more members
21 appointed by it to conduct any hearing.

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

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

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

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

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

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

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

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

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

48 (n) To take title by foreclosure to any industrial
49 development project or any industrial subdivision project
50 where acquisition is necessary to protect any loan previously
51 made by the authority and to sell, transfer and convey such
52 project to any responsible buyer. In the event such sale,
53 transfer and conveyance cannot be effected with reasonable
54 promptness, the authority may, in order to minimize financial
55 losses and sustain employment, lease the project to a
56 responsible tenant. The authority shall not lease an industrial
57 development project or industrial subdivision project, except
58 under the conditions and for the purposes cited in this
59 section.

60 (o) To participate in any reorganization proceeding
61 pending pursuant to the United States Code (being the act of

62 Congress establishing a uniform system of bankruptcy
63 throughout the United States, as amended) or in any
64 receivership proceeding in a state or federal court for the
65 reorganization or liquidation of a responsible buyer or
66 responsible tenant. The authority may file its claim against
67 any such responsible buyer or responsible tenant in any of
68 the foregoing proceedings, vote upon any question pending
69 therein which requires the approval of the creditors
70 participating in any reorganization proceeding or
71 receivership, exchange any evidence of such indebtedness
72 for any property, security or evidence of indebtedness offered
73 as a part of the reorganization of such responsible buyer or
74 responsible tenant or of any other entity formed to acquire
75 the assets thereof and may compromise or reduce the
76 amount of any indebtedness owing to it as a part of any such
77 reorganization.

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

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

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

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

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

100 (iii) The establishment or increase of reserves to secure or
101 to pay bonds, security interests, notes or the interest thereon
102 and all other costs or expenses of the authority incident to
103 and necessary or convenient to carry out its corporate

104 purposes and powers. Any bonds, security interests or notes
105 may be additionally secured by a pledge of any revenues,
106 funds, assets or moneys of the authority from any source
107 whatsoever.

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

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

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

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

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

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

144 (y) To take and hold security interests for equipment loans
145 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
2 development agency and upon hearing in the manner
3 hereinafter provided that the establishment or acquisition of
4 a particular industrial development project has accomplished
5 or will accomplish the public purposes of this article, the
6 authority may contract to loan such agency an amount not in
7 excess of fifty percent of the cost or estimated cost of such
8 project, as established, to be established or proposed to be
9 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 the
16 industrial development project, which funds or property are
17 available for and shall be applied to the establishment or
18 acquisition of the 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 or
24 property as the agency may hold, necessary for payment of all
25 the estimated cost of establishing or acquiring the industrial
26 development project and that the sum of all these funds is
27 adequate to ensure completion and operation of the industrial
28 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 to,
34 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
38 independent and responsible sources, such as banks and
39 insurance companies, other funds necessary for payment of
40 all the cost of establishing or acquiring the industrial

41 development project and that the industrial development
42 agency participation and these funds have been adequate to
43 ensure completion and operation or acquisition of the
44 industrial development project. The proceeds of any loan
45 made by the authority to the industrial development agency
46 pursuant to this subdivision (b) shall be used only for the
47 establishment or acquisition of industrial development
48 projects in furtherance of the public purposes of this article.

49 The loan of the authority shall be for such period of time
50 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 which
54 the loan was made or by assignment of any deed of trust and
55 negotiable promissory note and other security taken by the
56 industrial development agency on the industrial
57 development project, such deed of trust and note, assignment
58 of deed of trust, and note and other security to be second and
59 subordinate only to the deed of trust securing the first lien
60 obligation issued to secure the commitment of funds from the
61 independent and responsible sources and used in the
62 financing of the industrial development project.

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

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

80 Where any federal agency participating in the financing of
81 an industrial development project is not permitted to take as
82 security for such participation a deed of trust or assignment

83 of deed of trust and other security the lien of which is junior
84 to the deed of trust or assignment of deed of trust and other
85 security of the authority, the authority may take as security
86 for its loan to the industrial development agency a deed of
87 trust or assignment of deed of trust and other security junior
88 in lien to that of the federal agency.

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

1 When it has been determined upon application of an
2 industrial development agency and upon hearing in the
3 manner hereinafter provided that the acquisition or
4 improvement of a particular industrial subdivision project by
5 such agency will accomplish the public purposes of this
6 article, the authority may contract to loan such industrial
7 development agency an amount not in excess of fifty percent
8 of the cost or estimated cost of such industrial subdivision
9 project acquisition or improvement, except as to shell
10 buildings, in which case the agency may contract to loan an
11 amount not in excess of ninety percent of the cost of such
12 shell building, subject to the following conditions:

13 (1) The authority shall have determined that the industrial
14 development agency has obtained from other independent
15 and responsible sources, such as banks and insurance
16 companies, a firm commitment for all other funds, over and
17 above the loan of the authority, necessary for payment of all
18 the estimated cost of the industrial subdivision project
19 acquisition or improvement and that the sum of all these
20 funds is adequate to ensure completion of the project
21 acquisition or improvement.

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

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

34 (4) In the case of a contract to loan more than fifty percent
35 of the cost of a shell building, subject to the maximum
36 limitation of ninety percent as aforesaid, the industrial
37 development agency shall furnish to the authority evidence
38 that such industrial development agency has entered into a
39 contract whereby a responsible buyer or responsible tenant is
40 legally obligated to acquire or lease such shell building. The
41 Legislature finds and declares that it does not believe it
42 would be in the best interest of the state for the authority to
43 contract to loan more than fifty percent of the cost of a shell
44 building, subject to the maximum limitation of ninety
45 percent as aforesaid, unless it is clear that the use to be made
46 of such shell building will result in the employment of a
47 reasonably substantial work force.

48 The loan of the authority shall be for such period of time
49 and shall bear interest at such rate as the authority
50 determines and it shall be secured by the negotiable
51 promissory note of the industrial development agency and by
52 deed of trust on the industrial subdivision project for which
53 the loan was made, such deed of trust to be second and
54 subordinate only to the deed of trust securing the first lien
55 obligation issued to secure the commitment of funds from the
56 independent and responsible sources and used in the
57 financing of the industrial subdivision project acquisition or
58 improvement.

59 The authority may, in its discretion, defer the payment of
60 principal and interest, or principal only, or interest only, upon
61 any loan made to an industrial development agency for any
62 industrial subdivision project acquisition or improvement,
63 such deferment to be for such period as the authority
64 determines, not to exceed five years from the date of the deed
65 of trust securing the loan. If any portion of such industrial
66 subdivision project is sold or leased by the agency prior to the
67 expiration of the five-year period, all deferred installments of
68 the principal of the loan accrued on the date of such sale or
69 lease, or the proportionate part of such deferred principal
70 which the sold or leased portion of the project bears to its
71 total acreage, together with all unpaid interest accrued on the
72 date of such sale or lease, shall, at the option of the authority,
73 become due and payable immediately or subject to
74 renegotiation by either increasing or decreasing the number
75 and amount of each installment of principal and interest,

76 without effecting any change in the amount of principal of the
77 original loan or the rate of interest as originally fixed by the
78 authority in the deed of trust and note.

79 Money loaned by the authority to an industrial
80 development agency shall be withdrawn from the fund and
81 paid over to the agency in such manner as is provided by
82 rules and regulations of the authority.

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

85 Where any federal agency participating in the financing of
86 industrial subdivision project acquisition or improvement is
87 not permitted to take as security for such participation a deed
88 of trust or assignment of deed of trust and other security the
89 lien of which is junior to the deed of trust or assignment of
90 deed of trust and other security of the authority, the authority
91 may take as security for its loan to the industrial development
92 agency a deed of trust or assignment of deed of trust and
93 other security 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
2 development agency for an industrial development project or
3 for an industrial subdivision project acquisition or
4 improvement, the authority shall receive from such agency a
5 loan application in such form as adopted by the authority.

6 (1) If the loan application is for an industrial development
7 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, commercial, manufacturing or
10 tourist enterprise for which the project has been or will be
11 established.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§31-15-9. Equipment loans; security interests.

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

§31-15-10. Economic development fund.

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

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

22 The authority shall requisition from the fund such amounts
23 as are allocated and appropriated for loans to industrial
24 development agencies for industrial development projects,
25 industrial subdivision projects and industrial subdivision
26 project acquisitions or improvements. As loans to industrial
27 development agencies are repaid to the authority pursuant to
28 the terms of mortgages and other agreements, the authority
29 shall pay such amounts into the fund, consistent with the
30 intent of this article that the fund shall operate as a revolving
31 fund whereby all appropriations and payments made thereto
32 may be applied and reapplied for the purposes of this article.
33 Revenues deposited into the fund may be used to make
34 payments of interest and principal and may be pledged as
35 security for bonds, security interests, or notes issued by the
36 authority pursuant to this article.

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

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

§31-15-11. Borrowing of money.

1 The borrowing of money and the notes, bonds and security
2 interests evidencing any such borrowing shall be authorized
3 by resolution approved by the board, shall bear such date or
4 dates, and shall mature at such time or times, in the case of
5 any such bonds, not exceeding twenty-five years from the
6 date of issue, as such resolution or resolutions may provide.
7 The notes, bonds and security interests shall bear interest at
8 such rate or rates, be in such denominations, be in such form,
9 either coupon or registered, carry such registration privileges,
10 be executed in such manner, be payable in such medium of
11 payment, at such place or places, and be subject to such terms
12 or conditions of redemption as such resolution or resolutions
13 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.

§31-15-13. Notes, security interests, and bonds as negotiable instruments.

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.

§31-15-14. Authorizing resolutions.

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,
22 security interests or bonds; the terms upon which additional
23 notes, security interests or bonds may be issued and secured;
24 and the refunding of outstanding or other notes, security
25 interests or bonds;

26 (6) The procedure, if any, by which the terms of any
27 contract with noteholders, holders of security interests or
28 bondholders may be amended or abrogated, the amount of
29 notes, security interests or bonds the holders of which must
30 consent thereto, and the manner in which such consent may be
31 given;

32 (7) Limitations on the amount of moneys to be expended
33 by the authority for operating, administrative or other
34 expenses of the authority;

35 (8) Vesting in a trustee or trustees the property, rights,
36 powers and duties of a trustee appointed by the bondholders
37 pursuant to section eighteen of this article, and limiting or
38 abrogating the right of the bondholders to appoint a trustee
39 under section eighteen of this article or limiting the rights,
40 powers and duties of such trustees; and

41 (9) Any other matters, of like or different character, which
42 in any way affect the security or protection of the notes,
43 security interests or bonds.

§31-15-15. Redemption of notes, security interests or bonds.

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

6 If the notes, security interests or bonds are then
7 redeemable, the price of such purchase shall not exceed the
8 redemption price then applicable plus accrued interest to the
9 next interest payment date thereon. If the notes, security
10 interests or bonds are not then redeemable, the price of such
11 purchase shall not exceed the redemption price applicable on
12 the first date after such purchase upon which the notes,
13 security interests or bonds become subject to redemption
14 plus accrued interest to such date. Upon such purchase such
15 notes, security interests or bonds shall be canceled.

§31-15-16. Disclaimer of any liability of state of West Virginia.

1 The state of West Virginia shall not be liable on notes,
2 security interests or bonds or other evidences of
3 indebtedness of the authority and such notes, security
4 interests or bonds or other evidence of indebtedness shall not
5 be a debt of the state of West Virginia, and such notes,
6 security interests or bonds or other evidence of indebtedness
7 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
2 and mixed, tangible and intangible, standing or held in the
3 name of or for and in behalf of, or for the benefit of, the
4 authority, or the state of West Virginia to the extent that the
5 same are or were acquired or improved by the expenditure of
6 the proceeds of notes, security interests or bonds heretofore
7 or hereafter issued by the authority, and the moneys,
8 deposits, securities and choses in action and other rights held
9 in the name of or for and in behalf of, or for the benefit of, the
10 authority, other than moneys, deposits, securities, choses in
11 action and other rights which are, or which are investments
12 of, (1) proceeds of bonds heretofore issued by the authority
13 held for expenditure for completion of now existing projects
14 of the authority, or (2) revenues of the authority from existing
15 projects of the authority which, after provision for operation
16 and maintenance expenses and coverage requirements not
17 otherwise provided for, are in excess of sums required to pay
18 the principal of and interest on the bonds of the commission
19 heretofore issued, as and when due and payable, or (3)
20 proceeds of bonds of the authority issued hereafter, or (4)
21 revenues of the authority from projects hereafter financed by
22 or participated in by the authority, are declared to be subject
23 to and shall be held by the authority in trust for the
24 satisfaction of the obligations evidenced by the bonds
25 heretofore issued by the authority and the interest coupons
26 thereon: *Provided*, That nothing in this article shall be taken
27 to validate or to attempt to validate any agreement which
28 provides for payments from general tax revenues of the state.
29 Until the satisfaction in full of the obligations evidenced by
30 bonds heretofore issued by the authority, the authority shall
31 hold, manage and operate the aforesaid trust properties and
32 interests in properties, moneys, deposits, securities and
33 choses in action and other rights, separate from all other
34 properties and interests in properties, moneys, deposits,
35 securities and choses in action and other rights that may
36 hereafter be held and owned by the authority. Upon the
37 satisfaction of all of the aforesaid obligations of the authority,
38 all of the aforesaid trust properties and interests in properties,
39 moneys, deposits, securities and choses in action and other
40 rights shall become and be free and clear of the aforesaid
41 trust.

§31-15-18. Default in payment of principal or interest.

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

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

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

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

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

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

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

37 (2) In addition to the foregoing, such trustee shall have
38 and possess all of the powers necessary or appropriate for the
39 exercise of any functions specifically set forth herein or
40 incident to the general representation of holders of notes,
41 security interests or bonds of the authority in the
42 enforcement and protection of their rights.

43 (3) Before declaring the principal of any notes, security
44 interests or bonds due and payable, the trustee shall first give
45 thirty days' notice in writing to the authority.

§31-15-19. Investment in notes, bond and security interests.

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

§31-15-20. Tax exemption.

1 The exercise of the powers granted to the authority by this
2 article will be in all respects for the benefit of the people of
3 the state, for the improvement of their health, safety,
4 convenience and welfare and for the enhancement of their
5 residential, agricultural, recreational, economic, commercial
6 and industrial opportunities and is a public purpose. As the
7 operation and maintenance of economic development
8 projects will constitute the performance of essential
9 governmental functions, the authority shall not be required to
10 pay any taxes or assessments upon any economic
11 development project or upon any property acquired or used
12 by the authority or upon the income therefrom. Such bonds

13 and notes and all interest and income thereon shall be exempt
14 from all taxation by this state, or any county, municipality,
15 political subdivision or agency thereof, except inheritance
16 taxes.

§31-15-21. Authorized limit on borrowing.

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

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

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

§31-15-23. 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 governor or his designated representative shall be
5 chairman of the board and its chief executive officer. On the
6 second Monday of July of each year, the board shall meet to
7 elect a secretary and a treasurer from among its own
8 members.

9 A majority of the members shall constitute a quorum for
10 the purpose of conducting business. Except in the case of a
11 loan application or unless the bylaws require a larger number,
12 action may be taken by majority vote of the members present.
13 Approval or rejection of a loan application shall be made by
14 majority vote of the full membership of the board.

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

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

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

§31-15-24. 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 pay it
4 into the state treasury in the manner required by section two,
5 article two, chapter twelve of this code, which shall be
6 credited to the fund.

§31-15-25. 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 any
3 manner in any contract or agreement with the authority
4 whereby liability or indebtedness against or to the authority
5 is in any manner created. Any contract or agreement made in
6 violation of the provisions of this section shall be void and no
7 action thereon shall be maintained against the authority.

§31-15-26. 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 contributes
3 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 or
7 limit the rights and powers of the authority in any manner
8 which would be inconsistent with the due performance of any
9 agreement between the authority and such federal agency
10 and that the authority shall continue to have and exercise all
11 powers granted for carrying out the purposes of this article
12 for so long as necessary.

§31-15-27. Audits.

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

§31-15-28. Construction.

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

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

R. P. Bayler
Chairman Senate Committee

Tony E. Whitlow
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1981.

Judd C. Wells
Clerk of the Senate

W. Blankenship
Clerk of the House of Delegates

Walter F. McLean
President of the Senate

Walter A. See, Jr.
Speaker House of Delegates

The within *is approved* this the *29*

day of *April*, 1981.

Paul R. Ryan
Governor

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