

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-29-82

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1982

ENROLLED

SENATE BILL NO. 408

(By Mr. McShaw, Mr. President)

PASSED March 13, 1982

In Effect ninety days from Passage

ENROLLED

Senate Bill No. 408

(By MR. MCGRAW, MR. PRESIDENT, *original sponsor*)

[Passed March 13, 1982; in effect ninety days from passage.]

AN ACT to amend and reenact sections seven and seven-a, article fifteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to loans to industrial development agencies for industrial development projects and for industrial subdivision project acquisitions and improvements.

Be it enacted by the Legislature of West Virginia:

That sections seven and seven-a, 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.

§31-15-7. 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 up to one
7 hundred percent of the estimated cost of such project when
8 financed by bonds issued by the authority, or the authority
9 may contract to loan such agency an amount not in excess of
10 fifty percent of the cost or estimated cost of such project, as

11 established, to be established or proposed to be acquired,
12 when the project is not financed by bonds issued by the
13 authority, subject to the following conditions:

14 (a) The West Virginia economic development authority
15 shall make every reasonable effort to ensure that West
16 Virginia firms and West Virginia workers are used in such
17 projects.

18 (b) Industrial development projects to be established or
19 acquired.

20 (1) The authority shall have first determined that the
21 industrial development agency holds funds in an amount
22 equal to or property of a value equal to not less than ten
23 percent of the estimated cost of establishing or acquiring the
24 industrial development project, which funds or property are
25 available for and shall be applied to the establishment or
26 acquisition of the project.

27 (2) The authority shall have also determined that the
28 industrial development agency has obtained from other
29 independent and responsible sources, such as banks and
30 insurance companies, a firm commitment for all other funds
31 over and above the loan of the authority and such funds or
32 property as the agency may hold, necessary for payment of all
33 the estimated cost of establishing or acquiring the industrial
34 development project and that the sum of all these funds is
35 adequate to ensure completion and operation of the industrial
36 development project.

37 (c) Industrial development projects established or
38 acquired with initial authority loan participation.

39 (1) The authority shall have first determined that the
40 industrial development agency has expended funds in an
41 amount equal to, or has applied property of a value equal to,
42 not less than ten percent of the cost of establishing or
43 acquiring the industrial development project.

44 (2) The authority shall have also determined that the
45 industrial development agency obtained from other
46 independent and responsible sources, such as banks and
47 insurance companies, other funds necessary for payment of
48 all the cost of establishing or acquiring the industrial
49 development project and that the industrial development
50 agency participation and these funds have been adequate to
51 ensure completion and operation or acquisition of the
52 industrial development project. The proceeds of any loan
53 made by the authority to the industrial development agency

54 pursuant to this subdivision (b) shall be used only for the
55 establishment or acquisition of industrial development
56 projects in furtherance of the public purposes of this article.

57 The loan of the authority shall be for such period of time
58 and shall bear interest at such rate as the authority
59 determines and it shall be secured by the negotiable
60 promissory note of the industrial development agency and by
61 deed of trust on the industrial development project for which
62 the loan was made or by assignment of any deed of trust and
63 negotiable promissory note and other security taken by the
64 industrial development agency on the industrial
65 development project, such deed of trust and note, assignment
66 of deed of trust, and note and other security to be second and
67 subordinate only to the deed of trust securing the first lien
68 obligation issued to secure the commitment of funds from the
69 independent and responsible sources and used in the
70 financing of the industrial development project.

71 Money loaned by the authority to an industrial
72 development agency shall be withdrawn from the fund and
73 paid over to the agency in such manner as is provided by
74 rules and regulations of the authority.

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

88 Where any federal agency participating in the financing of
89 an industrial development project is not permitted to take as
90 security for such participation a deed of trust or assignment
91 of deed of trust and other security the lien of which is junior
92 to the deed of trust or assignment of deed of trust and other
93 security of the authority, the authority may take as security
94 for its loan to the industrial development agency a deed of
95 trust or assignment of deed of trust and other security junior
96 in lien to that of the federal agency.

§31-15-7a. Loans to industrial development agencies of 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 up to one hundred percent of the
8 estimated cost of such project when financed by bonds issued
9 by the authority or, when the project is not financed by bonds
10 issued by the authority, the authority may contract to loan
11 such industrial development agency an amount not in excess
12 of fifty percent of the cost or estimated cost of such industrial
13 subdivision project acquisition or improvement, except as to
14 shell buildings, in which case the agency may contract to loan
15 an amount not in excess of ninety percent of the cost of such
16 shell building, subject to the following conditions:

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

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

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

38 (4) In the case of a contract to loan more than fifty percent
39 of the cost of a shell building, subject to the maximum
40 limitation of ninety percent as aforesaid, the industrial

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

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

63 The authority may, in its discretion, defer the payment of
64 principal and interest, or principal only, or interest only, upon
65 any loan made to an industrial development agency for any
66 industrial subdivision project acquisition or improvement,
67 such deferment to be for such period as the authority
68 determines, not to exceed five years from the date of the deed
69 of trust securing the loan. If any portion of such industrial
70 subdivision project is sold or leased by the agency prior to the
71 expiration of the five-year period, all deferred installments of
72 the principal of the loan accrued on the date of such sale or
73 lease, or the proportionate part of such deferred principal
74 which the sold or leased portion of the project bears to its
75 total acreage, together with all unpaid interest accrued on the
76 date of such sale or lease, shall, at the option of the authority,
77 become due and payable immediately or subject to
78 renegotiation by either increasing or decreasing the number
79 and amount of each installment of principal and interest,
80 without effecting any change in the amount of principal of the
81 original loan or the rate of interest as originally fixed by the
82 authority in the deed of trust and note.

83 Money loaned by the authority to an industrial
84 development agency shall be withdrawn from the fund and
85 paid over to the agency in such manner as is provided by
86 rules and regulations of the authority.

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

89 Where any federal agency participating in the financing of
90 industrial subdivision project acquisition or improvement is
91 not permitted to take as security for such participation a deed
92 of trust or assignment of deed of trust and other security the
93 lien of which is junior to the deed of trust or assignment of
94 deed of trust and other security of the authority, the authority
95 may take as security for its loan to the industrial development
96 agency a deed of trust or assignment of deed of trust and
97 other security junior in lien to that of the federal agency.

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

R. P. Bayler

Chairman Senate Committee

Joseph E. Whitlow

Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

Todd C. Vail

Clerk of the Senate

C. A. Blankenship

Clerk of the House of Delegates

Warren R. McAnaw

President of the Senate

Walter H. Steele

Speaker House of Delegates

The within *is approved* this the *29*
day of *March*, 1982.

Paul R. Taylor
Governor



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