WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1985

ENROLLED
Com. Sub. for Com. Sub. for
SENATE BILL NO. 190

(By Mr. Torkovich, Mr. President, et al.)

PASSED April 13, 1985
In Effect July 1, 1985
ENROLLED
FINANCE
COMMITTEE SUBSTITUTE
FOR
SELECT COMMITTEE ON ECONOMIC DEVELOPMENT
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 196
(BY MR. TONKOVICH, MR. PRESIDENT, MR. BOETTNER, MR. R. WILLIAMS, MR. TOMBLIN, MR. ASH, MR. CHERNENKO, MR. KARRAS, MR. WHITLOW, MR. CHAFIN, MR. SHARPE, MR. PARKER, MR. JARRELL, MS. TUCKER AND MR. B. WILLIAMS)

(Originating in the Committee on Finance.)

[Passed April 15, 1985; to take effect July 1, 1985.]

AN ACT to repeal section twenty-seven, article one, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section nineteen, article one and all of article four, chapter twenty of said code; to repeal article one-c, chapter twenty-one of said code; and to repeal article seven, chapter twenty-six of said code; to amend said code by adding thereto three new chapters, designated chapters five-b, five-c, and five-d; to amend chapter twelve of said code by adding thereto a new article, designated article one-a; to amend chapter nineteen of said
code by adding thereto a new article, designated article one-a; to amend and reenact sections nine and fourteen, article one of chapter twenty, and to amend and reenact section one, article seven of said chapter twenty; to amend and reenact sections six, nine and twenty-one, article fifteen, chapter thirty-one of said code, and to further amend article fifteen of said chapter thirty-one by adding thereto sixteen new sections, designated sections seven-b, seven-c, seven-d, seven-e, seven-f, seven-g, seven-h, seven-i, seven-j, seven-k, seven-l, seven-m, seven-n, seven-o, seven-p and seven-q, all relating to economic development generally; establishing "The Economic Development Act of 1985"; setting forth legislative findings; construction of chapter; creating the department of commerce; providing for a commissioner of commerce, division directors and deputy commissioners; setting forth general powers of the department; creating the various divisions within said department; authorizing the commissioner to establish additional divisions; authorizing the governor to transfer divisions, duties, functions and appropriations between the department of commerce and the office of community and industrial development; providing for an expiration date of such authority; assigning or transferring certain employees to the department of commerce or the office of community and industrial development; protecting the employment, employment classification and other employment conditions of certain persons; providing for exceptions; requiring the department to submit an annual program and policy action statement to the joint committee on government and finance; providing for the division of tourism; and setting forth its purpose, powers and general duties; providing for the division of advertising and promotion, and setting forth its purpose, powers and general duties; providing for the division of research and strategic planning, and setting forth its purpose, powers and general duties; providing for the division of product marketing, and setting forth its purpose, powers and general duties; providing for the division of small business development, and setting forth its purpose, powers and general duties; establishing small business innovation centers; creating the state small business innovation network center board; setting forth the functions and duties of regional small
business innovation centers; confidentiality of certain information; mandating the director to adopt certain rules and regulations; transferring the duties, powers, functions and all documents and equipment of the division of parks and recreation within the department of natural resources to the department of commerce; retaining legal title to such properties within the department of natural resources; transferring existing contractual obligations and remaining appropriations to the department of commerce; requiring the commissioner of commerce and the director of natural resources to cooperate in effectuating such transfer; providing for the division of parks and recreation, and setting forth its purpose, powers and general duties; law enforcement duties to remain the responsibility and function of the department of natural resources; continuing the Berkeley Springs sanitarium as a state recreational facility within the department of commerce; transferring the Washington Carver camp to the jurisdiction of the commissioner of commerce; requirements of commissioner; providing definitions; providing for the issuance of park development revenue bonds; duties and authority of commissioner; authorizing the commissioner to promulgate rules and regulations, in accordance with the provisions of chapter twenty-nine-a, to control uses of the parks and recreation system; prohibiting public hunting, the exploitation of minerals or harvesting of timber for commercial purposes in any state park; preserving the authority of the director of the department of natural resources with respect to public lands; limitations on expenditure of revenues; authorizing the commissioner to issue park development revenue bonds and setting forth other powers of the commissioner; exempting park development projects, certain properties and income from taxation, except inheritance taxation; providing for the investment in notes, bonds and security interests; disclaimer of state liability; providing for a trustee for bondholders; proceeds of park development revenue bonds, grants and gifts; authorizing the commissioner to pledge revenue as security for any bonds issued; setting forth duties of the department with respect to the maintenance and control of projects; requiring observation of the constitution and other laws; authorizing the commissioner to operate
commissaries, restaurants and other facilities; authorizing the commissioner to enter into certain contracts; providing for the acquisition, development, protection, operation and maintenance of the Greenbrier river trail; providing certain limitations thereof; requiring the correlation of projects and services; sunset provision; abolishing the office of economic and community development; mandating the governor to transfer the functions, personnel, property and relative liens thereto, from said office to the office of community and industrial development or to the department of commerce; existing contracts to remain in full force and effect; creating the office of community and industrial development; providing for a director thereof; authorizing the director to promulgate rules and regulations; exempting such rules and regulations from the provisions of chapter twenty-nine-a; creating divisions within said office; authorizing the governor to transfer duties, functions or appropriations to the department of commerce; authorizing the governor, at the director's request, to create additional or abolish existing divisions; providing for a limit on such gubernatorial authority; requiring the office to conduct certain feasibility studies and report to the Legislature; defining certain terms; providing for the West Virginia export development authority; setting forth legislative findings; definitions; creating the said authority and setting forth its purpose; providing for a board of directors: qualifications and duties of board members; setting forth general powers of the authority; empowering the authority to provide guaranteed funding for eligible export loans; setting forth qualifications for such loans; providing for participating banking organizations and setting forth qualifications thereof; requiring the submission of an annual report and an annual audit; interpretation of powers; exempting authority from taxation; setting forth when conflict of interest exists with respect to members, officers, agents or employees of the authority; consequences of any such conflicts; exempting members or any persons acting on behalf of the authority from personal liability; authorizing the authority to issue bonds; such bonds to be payable solely from revenues; providing for the execution, form, delivery, conditions and sale of such bonds; exempting such bonds from certain taxation; exempting security agreements and
financing agreements from stamp and transfer taxes; authorizing the authority to create an insurance fund; setting forth requirements of such funds; permitting the authority to use bond funds to purchase such insurance; when insurance may be pledged as security; providing that bonds, debenture, notes or other evidence of indebtedness of the authority are securities which may be invested or deposited by the appropriate persons or entities; exempting certain confidential information from disclosure; provisions to be cumulative; severability; of provisions; continuing the West Virginia labor-management advisory council; renaming said council; increasing the membership of said council; present members to complete terms of office; providing that additional organizations should submit recommendations for membership to the governor; increasing the minimum number of meetings each year and the number of members constituting a quorum; setting forth objectives of the council; enumerating the powers, duties and functions thereof; requiring the council to submit an annual report to the joint committee on government and finance; setting forth authorizations and restrictions with respect to appropriations, gifts, bequests or grants; funds to be deposited with state treasurer; requiring the council to designate regions and to establish regional advisory councils therein; setting forth duties and requirements of such councils; providing for the compensation of members and employment of staff; duration of council; creating the “West Virginia Basic Assistance for Industry and Trade Act”; setting forth legislative purpose and intent; definitions; severability; creating the West Virginia automobile industry assistance corporation; powers and duties generally; providing for a board of directors of such corporation; setting forth qualifications and duties of the board; requiring the board to manage and control the corporation; exempting directors and officers from personal liability; authorizing the board to employ certain persons; restricting the salary of employees; requiring all contracts of employment to contain prevailing rate of wages; how prevailing rate of wages determined; specifying powers of the corporation; authorizing the governor to provide for the transfer of the use, possession and control of real or personal property of the state to the corporation; providing for a
principal office; requiring the maintenance of records; requiring board members to take oath of office; providing that the board of investments shall be ex officio a board of investments for public employees retirement system funds for purposes of article; authorizing the board of investments to invest moneys, securities and other assets of such system in the form of interest bearing loans; setting forth restrictions on such loan authority; specifying requirements of such loans; setting forth limitation on loan authority; specifying terms and conditions of loans; requiring an annual audit of a borrower’s account; authorizing the board to request a report of an independent audit; prohibiting the making of loans without a written agreement of the borrower to provide the board with such reports; authorizing the board to take necessary action to enforce rights; providing certain tax credits to borrowers; limitations thereof; requiring the board of investments to make an annual report to the Legislature; setting forth requirements of such reports; providing a termination date for the board’s authority to make such loans; creating the West Virginia industrial and trade jobs development corporation; definitions; purposes of corporation; providing for a board of directors; number, appointment, terms of office, qualifications and compensation of members; prohibiting members from having certain financial interests; providing for criminal penalties; specifying the duties of the board; exempting corporate directors and officers from personal liability; authorizing the board to employ staff personnel; limitation on salaries; requiring all contracts to contain minimum wage provisions; determination of minimum wage; specifying the powers of such corporation; creating an investment fund; providing how such fund must be administered by the board; setting forth sources of the fund; authorizing the corporation to invest in qualified securities; setting forth requirements for such investment; limiting the amount of total investment; exceptions; exempting such transactions from the provisions of the uniform securities act; authorizing the corporation to finance development projects; setting forth restrictions on such financing; limiting the amount of financing; exceptions; requiring security for such investments; exempting such transactions from the
provisions of the uniform securities act; authorizing the governor to transfer to the corporation the use, possession and control of real or personal property of the state; providing the location of a principal office; maintaining records; requiring board members to subscribe to an oath of office; authorizing the board of investments to be ex officio a board of investments for public employees retirement system funds for investment in accordance with the provisions of this article; setting forth the authority of the board of investments to invest moneys; requirements of loans limitations on such loan authority; setting forth terms and conditions of loans; authorizing the board of investments to take necessary action to enforce certain rights; permitting a tax credit for borrowers; limitations thereof; requiring the board of investments to make an annual report to the legislature; setting forth requirements of such report; providing for the termination of the board's authority to make such loans; authorizing certain inspections, audits and investigations; creating the public energy authority; providing for a short title; setting forth purposes and intent; legislative findings; definitions; creating the West Virginia public energy authority board; providing for the appointment, terms of office, qualifications, compensation, duties and expenses of board members; providing for a director; requiring the board to report annually to the governor and the Legislature; audit; setting forth powers of the authority; providing for general powers, duties, authority and responsibilities of authority; expenses of authority; restrictions on use of funds; authorizing the board to invest funds in specified securities; providing for the maintenance, operation and repair of projects; providing that bonds shall be lawful investments; exempting the operation and maintenance of projects from taxation; empowering the authority to acquire property; authorizing other governmental agencies to lease, lend, grant or convey property to the authority; setting forth terms thereof; authorizing the authority to acquire property or property rights of other property owners; authorizing governmental agencies to lease, lend, grant or convey property to the authority; authority not to be deemed a public utility; authority exempted from jurisdiction of the public service commission; authority subject to provisions
governing gas pipeline safety; providing for the transportation of gas from natural gas transportation projects by gas utility pipelines as common carriers; prohibiting officers, members or employees of the authority from having financial interests; exceptions; criminal penalty; exempting directors or other persons acting on behalf of the authority from personal liability; requiring meetings and records of authority to be public; exceptions; liberal construction to be given; severability; creating a linked deposit program; definitions; legislative findings; limitations on investments in linked deposits; applications for loan priority; loan package to be submitted to state treasurer; authorizing the state treasurer to accept or reject such loan package; requiring a deposit agreement between the lending institution and state treasurer; specifications of the deposit agreement; providing for the loan rate; certification of compliance; monitoring of compliance by the state treasurer; setting forth duties of the state treasurer and the industrial development authority; requiring the state treasurer to report quarterly to the governor and the joint committee on government and finance; contents of reports; exempting the state and the state treasurer from liability; division of forestry; legislative findings; purposes; transferring the division of forestry from the department of natural resources to the department of agriculture; division director; duties, powers, lands, records, equipment, appropriations and personnel transferred; creation of a special revenue account; additional duties of director; creating a forestry commission; qualifications and appointment of director; powers and duties generally; providing for the fiscal management of the department of natural resources; removing the requirements that the director of natural resources establish and maintain bookkeeping and internal auditing systems for all state parks; removing specifications thereof; setting forth divisions within the department of natural resources; removing the division of parks and recreation as a division within said department; authorizing the chief conservation officer of the department of natural resources to supervise and direct the department's law-enforcement policies, practices and programs; duties and authorities of such chief conservation officer; providing for other conservation
officers, including emergency conservation officers; selection of such officers; authorizing the chief conservation officer to select and appoint full-time civil service employees as special conservation officers; removing requirement that such officers be chosen from among employees of the department of natural resources; setting forth powers and duties of special conservation officers; limitation on jurisdiction; specifying other authorities and jurisdiction of the chief conservation officer; setting forth the general powers of the economic development authority; providing the authority with additional power to issue bonds, at the request of the governor or an appropriate state agency or authority, for the construction of electrical power generating facilities, natural gas transmission lines, coal processing plants, other energy projects, or for export development, farm development, jobs development or forest development, or for the West Virginia automobile assistance corporation or the West Virginia industrial and trade jobs development corporation; requiring that any such bonds issued for the construction of electrical power generating facilities, natural gas transmission lines or other energy projects be first approved by an act of general law, after public notice and hearing; loans for construction of facilities and projects; issuance of bonds and notes; trustee for bondholders; contents of trust agreement; relating to bonds issued; use of funds by authority; restrictions; relating to certain projects; security for bonds and notes issued; enforcement of payment and validity of bonds and notes issued; pledges; time; liens; recordation; refunding; bond; purchase and cancellation of notes or bonds; vested rights; impairment; providing that bonds shall not be debts; expenses; negotiability of bonds and notes; legal investments; exemption from taxation; exemption from personal liability; cumulative authority; applicability of other statutes and charters; authorizing the authority to make equipment loans; qualifications of such loans; permitting the authority to make such loans based on an unconditional letter of credit; real estate as a security interest; permitting the authority to determine the necessity, terms and amount of additional security; and increasing the economic development authority’s authorized limit on borrowing and the board of investment’s authorized limit on investments.
Be it enacted by the Legislature of West Virginia:

That section twenty-seven, article one, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section nineteen, article one, and all of article four, chapter twenty of said code be repealed; that article one-c, chapter twenty-one of said code be repealed; and that article seven, chapter twenty-six of said code be repealed; that said code be amended by adding thereto three new chapters, designated chapters five-b, five-c and five-d; that chapter twelve of said code be amended by adding thereto a new article, designated article one-a; that chapter nineteen of said code be amended by adding thereto a new article, designated article one-a; that sections nine and fourteen, article one and section one, article seven, all of chapter twenty be amended and reenacted; that sections six, nine and twenty-one, article fifteen of chapter thirty-one be amended and reenacted, and that said article fifteen of chapter thirty-one be further amended by adding thereto sixteen new sections, designated section seven-b, seven-c, seven-d, seven-e, seven-f, seven-g, seven-h, seven-i, seven-j, seven-k, seven-l, seven-m, seven-n, seven-o, seven-p and seven-q, all to read as follows:

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 1. DEPARTMENT OF COMMERCE.

§5B-1-1. Short title.

This chapter shall be known and may be cited as “The Economic Development Act of 1985.”

§5B-1-2. Legislative findings.

It is hereby determined and declared as a matter of legislative finding:

(a) That seriously high unemployment exists in many areas of the state;

(b) That economic insecurity due to unemployment undermines the health, safety and general welfare of the people of the entire state;

(c) That the absence of employment and business opportunities for youth is a serious threat and has resulted in families leaving the state to find opportunities elsewhere, adversely affecting the tax base of the state, counties and municipalities;
(d) That the present and future welfare of the people of the state require as a public purpose a renewed effort toward the promotion and development of business enterprises with potential to help;

(e) That the legislative and executive branches of state government must seek out and recruit exceptionally qualified individuals and organizations to administer, advise and manage the state's economic development programs;

(f) That the state's leaders of business, labor, education and government must cooperate and advance together on common ground, with the common purpose of the economic revitalization of our state; and

(g) That the industrial products and natural resources of the state need to be more thoroughly managed, developed and promoted and the various industries better coordinated and developed to provide a healthy industry environment that will decrease unemployment, promote the use of, while also protecting the renewable natural resources of West Virginia, and otherwise provide for the economic revitalization of our state.

In recognition of these findings, it is in the best interest of the citizens of this state to transfer the management and responsibility of the division of parks and recreation to the department of commerce and to unite the management and responsibility for renewable forest resources by transferring the division of forestry from the department of natural resources to the department of agriculture. These transfers of divisions' management and responsibility will unite and realign the various governmental activities in the areas of commercial, industrial, recreational and forestry management and development so as to promote the expansion of industry and the use of renewable forestry resources and enhance the development of nonrenewable resources to assure the greatest benefits to the people of West Virginia.

§5B-1-3. Construction of chapter.

The provisions of this chapter being remedial in nature and designed for the benefit and well being of the people of the state, such provisions shall be given a liberal construction to ensure the fulfillment of the purposes and intent of this chapter.
§5B-1-4. Department created; appointment, compensation and qualifications of commissioner.

Effective the first day of July, one thousand nine hundred eighty-five, there is hereby created in the executive branch of state government a department of commerce and the office of commissioner of commerce. The commissioner shall be the chief executive officer of the department with control and supervision of its operations and shall be appointed by the governor with the advice and consent of the senate and shall be paid a salary of sixty-five thousand dollars a year. The commissioner of commerce shall have control and supervision of the department of commerce and shall be responsible for the work of each of its divisions. Under the control and supervision of the commissioner of commerce, each division director shall be responsible for the work of his division. The commissioner of commerce shall have the authority to employ such assistants as may be necessary for the efficient operation of the department. The commissioner may appoint such deputy commissioners and assign them such duties as may be necessary for the efficient management and operation of the department.

§5B-1-5. General powers of the department.

(a) The department of commerce shall have the authority and the duty to:

(1) Promote, encourage and facilitate the expansion and development of markets for West Virginia products and services and the state's national and international image and prestige by any and all reasonable methods;

(2) Promote and encourage the location and development of new business in the state and the maintenance and expansion of existing business;

(3) Investigate and study conditions affecting West Virginia business, industry and commerce; collect and disseminate information, and engage in technical studies, scientific investigations, statistical research and educational activities necessary or useful for the proper execution of the powers and duties of the department;

(4) Plan and develop an effective economic information service that will directly assist business, education and
labor and also encourage businesses outside the state to use
industrial office facilities, professional, labor, financial and
recreational facilities, services and products from within
the state;
(5) Encourage and develop commerce with other states
and nations and devise methods of removing trade barriers
that hamper the free flow of commerce between this and
other states and nations and for these purposes cooperate
with governmental, quasi-public and private organizations
in formulating and promoting the adoption of compacts and
agreements helpful to commerce and labor;
(6) Conduct or encourage research designed to further
new and more extensive uses of the natural, human,
professional, technical and other resources of the state with
a view to the development of new products, industrial
processes, services and markets;
(7) Compile periodically a census of business and
industry in the state, in cooperation with other agencies,
and analyze and publish the information in such form as to
be most valuable to business and industry;
(8) Compile periodically a census of the crafts, trades,
skills and occupations of all adult persons in the state, in
cooperation with other agencies, and analyze and publish
the information in such form as to be most valuable to
business and industry;
(9) Study long-range trends and developments in the
industries, commerce and economic health of the state, and
analyze the reasons underlying such trends; study costs and
other factors affecting successful operation and location of
businesses within the state;
(10) Advertise and publicize the material, economic
quality of life, recreational and other advantages of the
state which render it a desirable place for commerce and
residence;
(11) Collect, compile and distribute information and
literature concerning the advantages and attractions of the
state, its historic and scenic points of interest and the
highway, transportation and other facilities of the state;
(12) Plan and carry out a program of information and
publicity designed to attract to West Virginia tourists,
visitors and other interested persons from outside the state;
(13) Initiate, promote and conduct, or cause to be
conducted, research designed to further new and more extensive uses and consumption of natural and other resources and their by-products; and for such purposes, to enter into contracts and agreements with research laboratories maintained by educational or endowed institutions in this state;

(14) Manage the state's park and recreation system for the benefit of the people of this state, and effectively promote and advertise the same to increase public knowledge and use thereof;

(15) Make recommendations to the governor and the Legislature of any legislation deemed necessary to facilitate the carrying out of any of the foregoing powers and duties. and to exercise any other power that may be necessary or proper for the orderly conduct of the business of the department and the effective discharge of the duties of the department; and

(16) To cooperate and assist in the production of motion pictures and television and other communications.

§5B-1-6. Divisions created; continuation of civil service coverage for persons employed in the former office of economic and community development and the department of natural resources.

There is hereby created within the department of commerce:

(1) The division of tourism;

(2) The division of advertising and promotion;

(3) The division of research and strategic planning;

(4) The division of product marketing;

(5) The division of small business development; and

(6) The division of parks and recreation.

Each said division shall be under the control of a director to be appointed by the commissioner who shall be qualified by reason of exceptional training and experience in the field of activities of his respective division and shall serve at the will and pleasure of the commissioner. The commissioner shall have authority to establish such additional divisions as may be determined necessary to carry out the purposes of this chapter.

The governor may, by executive order, transfer any of the divisions, duties, functions or appropriations of the
department of commerce to the office of community and industrial development created by article two of this chapter; and, he may, by executive order, transfer any of the divisions, duties, functions or appropriations of the office of community and industrial development to the department of commerce, as he, from time to time, deems necessary to carry out the purposes of this chapter. The authority to make such transfers, as provided by this section, shall expire on January first, one thousand nine hundred eighty-six.

All persons employed on the effective date of this chapter in the governor's office of economic and community development and the division of parks and recreation in the department of natural resources, the duties and functions of which have been transferred either to the department of commerce or the office of community and industrial development created by virtue of the provisions of the economic development act of one thousand nine hundred eighty-five, are hereby assigned and transferred to either the department of commerce or the office of community and industrial development, as the case may be, and no person's employment shall be eliminated, nor shall any person's salary, benefits or position classification be reduced or diminished by reason of the provisions of this chapter. All persons affected shall retain their coverage under the civil service system and all matters relating to job classification, job tenure, salary and conditions of employment shall remain in force and effect from and after the effective date of this chapter. Provided, That nothing herein shall prohibit the disciplining or dismissal of any employee for cause, or the dismissal of any nonclassified supervising employees appointed by the governor and serving at the will and pleasure of the governor.

§5B-1-6a. Program and policy action statement; submission to joint committee on government and finance.

The department of commerce shall prepare and submit to the joint committee on government and finance on/or before the first day of December, one thousand nine hundred eighty-five, and each year thereafter, a program and policy action statement which shall outline in specific detail according to the purpose, powers and duties of the
office or division, its procedure, plan and program to be
used in accomplishing its goals and duties as required under
this article.

The joint committee on government and finance shall
prescribe the content and the form of such statements
required under this section.

§5B-1-7. Division of tourism; purpose; powers and duties
generally.

It shall be the duty of the division of tourism:
(a) To promote and enhance the tourist industry and
improve tourist facilities and attractions;
(b) To compile a listing of all tourist facilities in this
state, whether public or private, including, but not limited
to, state parks and forests, camping grounds, back-packing
and hiking trails, public and private hunting areas
(including the game or fowl indigenous thereto) fishing
lakes, ponds, rivers and streams (including the type of fish
indigenous thereto; and the dates of the stocking thereof),
ski resorts and areas, ice skating rinks or facilities, rifle and
pistol target practice areas, skeet and other shooting
facilities, archery ranges, swimming pools, lakes, ponds,
rivers and streams, hotels, motels, resorts and lodges
(including any attendant restaurant, banquet, meeting or
convention facilities or services) health spas or mineral
water or spring water health facilities, museums, cultural
centers, live-performance theaters, colleges, schools,
universities, technical centers, airports, railroad stations,
bus stations, river docks, boating areas, government or
military installations (which are not restricted to public
access), historical places, markers or places of events,
birthplaces of famous West Virginians, or any other thing of
like kind and nature, and to develop relative thereto a series
of films, videotapes, pamphlets, brochures, and other
advertising or promotional media, and to distribute the
same in such a manner as to enhance the public's knowledge
about West Virginia and its many attractions;
(c) Develop a plan for tourist facility expansion and new
development, including financing;
(d) To develop a system, means and mechanism to
distribute the promotional media described in subdivision
(a) of this section, both nationally and internationally; and
to make the same available to travel agents, tour groups, senior citizen organizations, airlines, railroads, bus companies, newspapers, magazines, radio and television stations, and the travel editors thereof; to develop, in cooperation with the department of highways, a series of information stations along interstate and other major highways of this state, utilizing existing rest stop areas and other areas at or near the main points of egress and ingress of this state for the purpose of making said information available to the public at large;

(e) To develop and implement a marketing strategy, employing radio, television, magazine and newspaper advertising, or any combination thereof, in those major metropolitan areas of the nation, in order to attract the residents thereof to visit and enjoy the tourists facilities of this state;

(f) To encourage, cooperate with, and participate in, any group or organization, including regional travel councils, the purpose of which is to promote and advertise, or encourage the use of, tourist facilities in West Virginia;

(g) To provide professional assistance, technical advice or marketing strategies to any privately owned facility or attraction, as described in subdivision (a) of this section, which is open and available to the general public, which has developed or is attempting to develop its own advertising program;

(h) To employ, train and supervise a corps of information specialists or tour guides who possess, or through their employment and training will possess, specific knowledge and information about the historic, scenic, cultural, industrial, educational, governmental, recreational and geographical significance of the state and the various facilities or attractions described in subdivision (a) of this section. In hiring the information specialists herein provided, special preference shall be given to senior citizens (those over sixty-two years of age) and college students who are bona fide residents of the state and enrolled in any college or university of this state, whether public or private, all of whom shall be hired on a part-time basis and whose periods of employment may be seasonable;

(i) To provide to any tour group, travel agency, public carrier or other entity of like kind or nature, who is or which
is offering tours, visits or vacations in West Virginia the
services of the information specialists provided for in
subdivision (f) of this section, without cost or fee to said
entity requesting said service;

(j) To assist tour groups, travel agencies, public carriers
or other entities of like kind or nature in developing a
program of pre-planned tours, visits or vacations in West
Virginia; and, in conjunction therewith, to coordinate the
activities of said tour groups, travel agencies, public
carriers or other entities with the services offered by any of
the facilities set forth in subdivision (a) of this section; and
to encourage said facilities to offer special or discount rates
to any party traveling with said tour groups, travel
agencies, public carriers or other entities of like kind or
nature; and

(k) To cooperate with the department of highways, in
developing a system of informational highway signing
relating to the recreational, scenic, historic and
transportational facilities and attractions of the state that
comply with the current federal and state regulations as
related to outdoor advertising and signing as required by
the Manual of Uniform Traffic Control Devices.

§5B-1-8. Division of advertising and promotion; purpose;
powers and duties generally.

It shall be the duty of the division of advertising and
promotion:

(a) Based upon the information, statistics, facts, studies
and conclusion produced by or for the division of strategic
planning, to develop a program of advertising strategies
and plans to inform the public at large and specific target
groups about various aspects of the state of West Virginia,
including, but not limited to, agriculture, natural resources,
timber and timber byproducts, coal, oil, gas and their
byproducts, existing industries and existing and proposed
industrial sites, educational, research and technical
institutions, the labor force, transportation, public utilities,
navigable waterways, rivers, lakes and streams, taxation,
revenue bonding availability and assistance, governmental
rules and regulations relative to business and industry, and
any other fact, statistic or item of information which is or
may be helpful to or of interest to any corporation,
partnership, association, individual or individuals who or which is or may be interested in engaging in business in the
state of West Virginia;
(b) To develop such films, videotapes, computer software, phonograph records, tape recordings, pamphlets, brochures, booklets, information sheets, radio, television or newspaper advertising, magazine inserts, advertisements or supplements, billboards or any other thing of like kind or nature which is, or may be, likely to inform the public at large or any specifically targeted group or industry about the benefits of living in, investing in, producing in, buying from, contracting with, or in any other way related to, the state of West Virginia or any business, industry, agency, institution or other entity therein;
(c) To employ or contract with such professional or technical experts or consultants as may be necessary to create and produce the items set forth in subdivision (b) of this section;
(d) To spend such sums of money as may be necessary, within legislative appropriation therefor, to purchase advertising time or space in or upon any medium generally engaged or employed for said purpose to distribute or disseminate the items of advertising described in subdivision (b) of this section;
(e) To provide professional assistance, technical advice or marketing strategies to any privately owned business or industry in this state which has developed or is attempting to develop its own advertising program;
(f) To cooperate with, or participate in, any group or organization, whether public or private, the purpose of which is to promote, enhance or develop a positive image of the state of West Virginia or any business, industry, institution or facility therein;
(g) To use such resources as are available to it to distribute the items of advertising and promotion described in subdivision (b) of this section, to such group or groups, audience or audiences, corporations, partnerships, associations, including public and private colleges and universities, and to individuals, who or which are, or may be, interested in some aspect of the state of West Virginia;
(h) To engage in, participate in, promote or sponsor, such trade shows, fairs, information seminars or
symposiums, or other event or events of like kind and nature, including privately funded trade shows, fairs, information seminars or symposiums, or other event or events of like kind and nature, whether located within or without this state, or beyond the borders of the United States, to promote generally the state of West Virginia or to assist any business, industry or other entity, whether public or private, in promoting, advertising or advancing the reputation of the state of West Virginia or any corporation, association, partnership, institution, business, industry or other entity which is, or may be, likely to produce additional employment or employment opportunities, business or business opportunities in the state of West Virginia; and
(i) To perform such other duties or functions, or to engage in such other activities, as the commissioner may from time to time direct.

§5B-1-9. Division of research and strategic planning; purpose; powers and duties generally.

(a) The division of research and strategic planning shall have the following powers and duties with respect to research:
(1) To establish, in cooperation with the appropriate college or colleges, school or schools, of West Virginia University, a center for economic analysis and statistics. The center shall be under the control and supervision of a director, who shall be appointed by the president of West Virginia University. The center shall employ such staff economists or statisticians, such research assistants and secretaries, each of whom shall serve on a part-time basis and may be members of the faculty or staff of West Virginia University. In addition, the center may employ student interns.
(2) The center shall provide the commissioner of commerce, the director of the division of strategic planning, and the Legislature, with an analysis of the quality of economic data pertaining to West Virginia. The center shall recommend ways to obtain additional information necessary to better understand the state's economy and to devise better economic development strategies. The center shall publish results of its research, maintain a
comprehensive library with supporting computer data bases and shall, upon request, provide a review of the economy and major policy issues to the joint committee on government and finance.

(3) During its first year of operation, the center shall include in its research topics the desirability of establishing a detailed gross state product series, modeled after the national income and products accounts and the desirability of constructing a periodic input/output table for the state. It shall renew the quality of current statistics relating to employment and prices and statistics relating to poverty and the distribution of income and wealth. The center may study the feasibility of, and based upon such study establish, a West Virginia econometric model project.

(4) Where deficiencies are found in existing data sources, the center shall publish conclusions regarding the benefits to be derived from gathering additional or better information and shall make operational recommendations on the best possible methods for obtaining the desired information.

(5) The director of the center or members of its staff shall meet on a regular basis with the commissioner of the department of commerce, other officials of the department and members of the Legislature to provide the results of its research and to provide policy advice and analysis.

(6) The center shall cooperate with and maintain an inventory of research efforts of universities and colleges and other institutions or businesses within the state and a register of scientific and technological research facilities in the state.

(b) The division of research and strategic planning shall develop a strategic plan for the economic development of the state, its regions and specific industries including tourism, manufacturing, timber, agriculture and other rural development, coal, oil, gas and other extractive resources, retail, service, distribution and small businesses. Such a plan shall emphasize a coordinated effort of the public and private sector toward balanced growth for the state. Such plan shall include, but is not limited to, the following:

(1) Assessing the state’s economic strengths and weaknesses;
(2) Developing and recommending short, intermediate and long-term economic goals and plans, together with options;

(3) Identifying barriers to economic growth and diversification in the state;

(4) Recommending implementation procedures and options utilizing and maximizing existing public and private mechanism;

(5) Fostering and supporting scientific and technological research in this state in cooperation with the federal government, the various offices and divisions of the department of commerce and other state and local government agencies, educational institutions, nonprofit institutions and organizations, business enterprises and others concerned with scientific and technological research development;

(6) Developing a program to attract investment in research and development in high technology industries;

(7) Conducting a series of studies to determine the feasibility of constructing natural gas transmission lines, electric power generating facilities and coal processing plants to be owned, either in whole or in part, or to be operated, either in whole or in part, by the state of West Virginia; and

(8) Maintaining a library of research materials, including computer data bases, to accomplish the goals of the division.

The division shall, based upon the data it collects and analyzes as set forth in subdivisions (1) through (8) of this section, and in cooperation with the other divisions of the department, develop a set of specific plans and programs, and recommend to the Legislature, on an annual basis, appropriate legislation to implement and carry out such plans, for the purpose of effectuating the purposes of this article.

§5B-1-10. Division of product marketing; purpose; powers and duties generally.

It shall be the duty of the division of product marketing:

(a) To develop such programs as are necessary for the promotion and marketing of West Virginia arts, crafts and
products, and to implement said program in this state, in
the United States and in other countries;
(b) To design, develop and create, or to provide for the
design, development and creation of, such films,
videotapes, pamphlets, brochures, and other advertising
and promotional media, and to distribute the same in such a
manner as to enhance the public's knowledge of West
Virginia arts, crafts and products;
(c) To sponsor or participate in trade shows, trade fairs
or other events the purpose of which is to display, sell, or
increase public awareness of, West Virginia arts, crafts and
products;
(d) To design and implement a program of direct sales of
West Virginia arts, crafts and products; and to provide for
the publication and distribution of a catalog which
adequately displays and describes the arts, crafts and
products being offered for sale, employing such direct mail
or other means of distribution as the director deems
appropriate;
(e) To cooperate with artists, craftsmen, guilds,
cooperatives, and other organizations, the purposes of
which are to enhance or promote West Virginia arts, crafts
and products, and to assist said artists, craftsmen, guilds,
cooperatives and organizations in the development of their
own marketing programs;
(f) To develop markets in West Virginia, other states and
other nations for said arts, crafts and products by
employing persons who shall act as sales agents for said
arts, crafts and products;
(g) To cooperate with other governmental departments,
and with other groups, guilds, cooperatives, or other
entities, whether public or private, the purpose of which is
to further enhance and promote the sale, use, distribution or
public knowledge of West Virginia arts, crafts and
products; and
(h) To perform such other duties or functions, or to
engage in such other activities, as the director may from
time to time direct.
§5B-1-11. Division of small business development; purposes:
powers and duties generally.

It shall be the duty of the division of small business
development to establish a statewide small business
innovation center network to be located on the campuses or
operated in conjunction with the colleges and universities
of West Virginia.

The director shall be responsible for the management and
operation of the center network, subject to the program
policies adopted by the center network board of directors.

The center network shall:

(a) Serve as a liaison between the department of
commerce and the state regional small business innovation
center board;

(b) Provide direction, guidance and assistance to
regional small business innovation centers;

(c) Conduct feasibility studies regarding the
establishment or certification of new regional small
business innovation centers;

(d) Conduct conferences and seminars for regional
small business innovation centers to promote and
encourage the utilization of sound and innovative
approaches to the discharge of the functions and duties of
the regional small business innovation centers; and

(e) Prepare and submit such reports, plans, suggestions
and recommendations to the department on jobs and
economic development as may from time to time be
required.

To the extent practicable, the director shall utilize
student interns and qualified new and innovative business
vendors, including, but not limited to, private management
consultants, private consulting engineers and private
testing laboratories, to provide services described in this
section.

The director is further authorized and empowered to
apply for and receive appropriations, gifts, bequests or
grants of money, services, material, real estate or other
things of value from any agency of the United States
government, any agency of the state of West Virginia, any
municipality or county within this state, any school board
or college or university supported in whole, or in part, by
this state or any other person, firm, partnership, association
or corporation, within or without this state, and any agency
of the state of West Virginia, any municipality or county
within this state, or any school board or college or
44 university supported in whole, or in part, by this state and is
45 hereby authorized and empowered to make appropriations
46 or grants to the regional small business innovation centers,
47 to assist in achieving the public purpose of this section. All
48 funds received by the director to carry out the provisions
49 herein shall be deposited with the state treasurer and
50 disbursed by the director to be used exclusively for carrying
51 out the provisions herein. Any appropriations, gifts,
52 bequests or grants received by the director with any
53 restriction or restrictions on the use thereof shall be
54 expended by the director in accordance with such
55 restriction or restrictions.
56 The director of the state business innovation center in
57 addition to such reports as may be required by the
58 department of commerce shall publish an annual report by
59 the first day of December of each year for distribution to the
60 governor, the Legislature, the department and the general
61 public. Such report shall describe the activities undertaken
62 by the state center and the regional centers pursuant to
63 these provisions in the preceding year.

§5B-1-11a. Regional small business innovation centers;
locations; authority.

1 (a) Upon the recommendation of the state director and a
demonstration for the need thereof, the state board of
directors may certify and provide funding for such number
of regional small business innovation centers as it may
consider necessary or desirable and within available
appropriations. Such regional small business innovation
centers shall be affiliated with institutions of higher
education, either public or private, and may be located at
such places where need exists for such centers.

(b) It is recognized that there exists at the present time
programs for the development of and assistance to small
businesses in the statewide network of the West Virginia
Small Business Development Center with regional centers
operating at the University of Charleston, West Virginia
University, West Virginia Northern Community College,
Parkersburg Community College, Southern Community
College of West Virginia, Concord College, Salem College,
Alderson-Broaddus College, College of Graduate Studies,
and West Virginia Institute of Technology. These existing
programs are hereby established as regional small business innovation centers.

(c) Each regional business innovation center shall be authorized and permitted to employ such strategies, techniques and innovations as it shall deem desirable in accomplishing the purposes of sections twelve through twelve-e of this article.

(d) The president of each institution of higher education establishing a regional small business innovation center shall appoint a director for such center who shall serve at the will and pleasure of such president.

§5B-1-11b. State small business innovation center board created; membership; regional center directors.

There is hereby created the state small business innovation network board which shall be composed of one member representing each of the regional centers to be named by the president of the respective colleges or universities, and the state director of the small business innovation center network who shall serve as chairman of the board.

§5B-1-11c. Functions and duties of regional centers.

It shall be the function of regional small business innovation centers to:

(a) Establish programs to identify entrepreneurs with marketable ideas and to support the organization and development of new business and innovative businesses, including technologically oriented enterprises;

(b) Conduct conferences and seminars to provide new and innovative businesses with access to individuals and organizations with specialized expertise;

(c) Develop and maintain a source file and an information program to establish a statewide network of public, private and educational resources to assist the organization and development of new and innovative businesses, and to furnish centralized services with regard to public services and governmental programs;

(d) Provide new and innovative businesses with access to managerial and technical expertise and to provide assistance in resolving problems encountered by such businesses;
20 (e) Conduct planning and research, including feasibility
21 studies and market research in cooperation with the
22 department;
23 (f) Assist in the identification and development of new
24 and innovative business opportunities;
25 (g) Foster the establishment and strengthening of business
26 service agencies, including trade associations and
27 cooperatives, which provide services to new and innovative
28 businesses;
29 (h) Implement the furnishing of business counseling,
30 management training and other related services, with
31 special emphasis on the development of management
32 training programs using the resources of the business
33 community, the state labor-management council and state
34 and private colleges and universities, and with emphasis
35 upon providing management training of sufficient scope
36 and duration to develop entrepreneurial and managerial
37 self-sufficiency on the part of the new and innovative
38 businesses served;
39 (i) Provide access to business analysts who can refer
40 new and innovative businesses to available experts;
41 (j) Conduct studies, research and counseling concerning
42 the managing, financing and operation of new and
43 innovative businesses;
44 (k) Foster and support scientific and technological
45 research for the development and application of new
46 technologies identified as having significant potential for
47 economic growth in the state or designed to further new and
48 more extensive uses of the natural and other resources of
49 the state, and to assist in technology transfer, research and
50 coupling from existing sources to new and innovative
51 businesses;
52 (l) Organize, conduct, sponsor or cooperate in and assist
53 the conducting of institutes, conferences, demonstrations
54 and studies relating to the stimulation and formulation of
55 new and innovative businesses;
56 (m) Assist new and innovative businesses in solving
57 problems concerning operations, manufacturing,
58 engineering, technology exchange and development,
59 personnel administration, marketing, sales,
60 merchandising, finance, accounting, business strategy
61 development and other disciplines required for business
growth and expansion, increased productivity and
management improvement;

(n) Provide access to professional specialists to conduct
research or to provide counseling assistance to new and
innovative businesses whenever the need arises;

(o) Determine the availability of financial resources and
recommend methods for delivery of financial assistance to
new and innovative businesses, including methods of
securing equity capital;

(p) Cooperate with other regional business innovation
centers for the purpose of coordinating efforts;

(q) Provide, whenever practicable, feasible and
desirable, housing for new and innovative businesses in
order to better accomplish the purposes set forth herein;

(r) Assist businesses participating in the program to
develop comprehensive business plans with specific
business targets, objectives and goals;

(s) Provide for such other nonfinancial services as
deemed necessary for the establishment, preservation and
growth of participating businesses, including, but not
limited to, loan packaging, financial counseling,
accounting and bookkeeping assistance, marketing
assistance and management assistance;

(t) Assist participating businesses in obtaining equity
and debt financing;

(u) Establish regular performance monitoring and
reporting systems for participating businesses to assure
compliance with their business plans;

(v) Analyze and report the causes of success and failure
of new and innovative businesses participating in the
program;

(w) Provide counseling and assist with technology
development when necessary to help new and innovative
businesses find solutions for complying with
environmental, energy, health, safety and other federal,
state and local laws and regulations;

(x) Apply for and receive gifts or grants in money or in
kind from any person, organization, governmental agency
or entity whatsoever which shall be exclusively utilized by
the regional business innovation center receiving such gifts
or grants; and

(y) Prepare an annual report by the first day of
September of each year detailing the operation of the center for the previous year and submit the same to the director of the state business innovation center, and, as to regional business innovation centers existing and incorporated by virtue of these provisions, prepare and submit by the first day of September, one thousand nine hundred eighty-five, a report to the same authorities detailing a preliminary plan for the implementation of the program, including coordination and expansion of the various original programs.

§5B-1-11d. Documentary materials concerning trade secrets; commercial or financial information; confidentiality.

1 Any documentary material or data made or received by any public body for the purpose of furnishing assistance to a new and innovative business, to the extent that such material or data consists of trade secrets or commercial or financial information regarding the operation of such businesses, shall not be considered public records, and shall be exempt from disclosure pursuant to the provisions of chapter twenty-nine-b of this code. Any discussion or consideration of such trade secrets or commercial or financial information may be held by the public body in executive session closed to the public, notwithstanding the provisions of article nine-a, chapter six of this code.

§5B-1-11e. Rules and regulations.

1 The director of the state small business innovation center shall make and adopt rules and regulations for the establishment, operation and maintenance of any regional business innovation center established including such rules, regulations and standards as may be necessary for compliance with any federal statute pertaining to grants-in-aid, and such other rules and regulations as may be necessary to effectuate the purposes set forth herein, including regulations establishing any fee to be charged for services provided pursuant hereto.

§5B-1-12. Division of parks and recreation created; duties, records and equipment transferred from the department of natural resources; funds.

1 (a) The duties, powers and functions of the division of
2 parks and recreation within the department of natural
3 resources are hereby transferred to the department of
4 commerce.
5 (b) All books, papers, maps, charts, plans, literature and
6 other records, and all equipment in the possession of the
7 division of parks and recreation within the department of
8 natural resources shall be delivered or turned over to the
9 department of commerce.
10 (c) The department of commerce shall have the duty and
11 authority to administer those properties which are a part of
12 the state parks and public recreation system, but the legal
13 title to such properties shall remain with the department of
14 natural resources.
15 (d) All existing contracts and obligations of the division
16 of parks and recreation shall remain in full force and effect
17 and any existing contracts and obligations relating to parks
18 and recreation shall be performed by the department of
19 commerce.
20 (e) The unexpended balance existing on the effective
21 date of this chapter in any appropriation made to the
22 division of parks and recreation within the department of
23 natural resources is hereby transferred and appropriated to
24 the department of commerce for the use of the division of
25 parks and recreation for the fiscal period ending the
26 thirtieth day of June, one thousand nine hundred eighty-
27 five.
28 The director of the department of natural resources and
29 the commissioner of commerce shall cooperate fully and
30 exercise their powers to facilitate the development of new
31 or the expansion of existing park facilities, including but
32 not limited to, the authorities as set forth in this chapter
33 relating to the department of commerce, and as set forth in
34 section twenty, article one, chapter twenty of this code,
35 relating to the department of natural resources, as amended
36 from time to time.

§5B-1-13. Division of parks and recreation; purpose; powers
and duties generally.

1 It shall be the duty of the division of parks and recreation
2 to have within its jurisdiction and supervision:
3 (a) All state parks and state recreation areas, including
4 all lodges, cabins, swimming pools, motorboating and all
other recreational facilities therein, except the roads therein which, by reason of section one, article four, chapter seventeen, are transferred to the state road system and to the responsibility of the commissioner of highways with respect to the construction, reconstruction and maintenance of the roads or any future roads for public usage on publicly owned lands in future state parks, state forests and public hunting and fishing areas;

(b) The authority and responsibility to do the necessary cutting and planting of vegetation along road rights-of-way in state parks and recreational areas;

(c) The administration of all laws and regulations relating to the establishment, development, protection, use and enjoyment of all state parks and state recreational facilities consistent with the provisions of this article: Provided, That nothing herein shall be construed to assign to the division of parks and recreation of the department of commerce the law-enforcement duties set forth in article seven, chapter twenty of this code, which duties shall remain the responsibility of the department of natural resources.

(d) The Berkeley Springs sanitarium in Morgan County shall be continued as a state recreational facility under the jurisdiction and supervision of the department of commerce and shall be managed, directed and controlled as prescribed here in this article and in article one, chapter twenty of the code.

The commissioner shall have and is hereby granted all of the powers and authority and shall perform all of the functions and duties with regard to Berkeley Springs sanitarium that were previously vested in and performed by the director of the department of natural resources, who shall no longer have such power and authority and whose power and authority with regard to Berkeley Springs sanitarium is hereby abolished;

(e) The Washington Carver camp in Fayette County is hereby transferred from the department of natural resources to the commissioner who shall have the jurisdiction and supervision of the camp subject to the jurisdiction and authority of the department of culture and history as provided under section thirteen, article one, chapter twenty-nine of this code. The commissioner shall
manage the Washington Carver camp as a state recreational
facility and a component of the state park system; and
(f) The commissioner of the department of commerce
shall be primarily responsible for the execution and
administration of the provisions herein as an integral part
of the parks and recreation program of the state and shall
organize and staff his division for the orderly, efficient and
economical accomplishment of these ends.

§5B-1-13a. Definitions; state parks and recreation system.

As used in this article, unless the context clearly requires
otherwise:
“Bonds” shall mean bonds issued by the commissioner.
“Cost of project” shall embrace the cost of construction,
the cost of all land, property, material and labor which are
deemed essential thereto, cost of improvements, financing
charges, interest during construction, and all other
expenses, including legal fees, trustees’, engineers’ and
architects’ fees which are necessarily or properly incidental
to the project.
“Project” shall be deemed to mean collectively the
acquisition of land, the construction of any buildings or
other works, together with incidental approaches,
structures and facilities, reasonably necessary and useful in
order to provide new or improved recreational facilities.
“Recreational facilities” shall mean and embrace cabins,
lodges, swimming pools, golf courses, restaurants,
commissaries and other revenue producing facilities in any
state park.
“Rent or rental” shall include all moneys received for the
use of any recreational facility.
In addition to the powers and duties vested in the
commissioner elsewhere in this chapter, he shall have the
power and duty to establish and maintain a state park and
public recreation system, and to do all things necessary and
incident to the development and administration thereof.
Individual projects of such system may be financed from
any moneys of the department available for such purposes,
or by the issuance of park development revenue bonds as
provided in this section.
The purposes of such system shall be to promote
conservation by preserving and protecting natural areas of
unique or exceptional scenic, scientific, cultural, archaeological or historic significance, and to provide outdoor recreational opportunities for the citizens of this state and its visitors. In accomplishing such purposes the commissioner shall, insofar as is practical, maintain in their natural condition lands that are acquired for and designated as state parks. The commissioner may promulgate rules and regulations to control such uses, subject to the provisions of chapter twenty-nine-a of this code, and may further provide for the construction and operation of cabins, lodges, resorts, restaurants and other developed recreational and service facilities. The commissioner shall not permit public hunting, the exploitation of minerals or the harvesting of timber for commercial purposes in any state park: Provided, That nothing herein shall be construed so as to limit the authority of the director of the department of natural resources with respect to public lands, including state parks, the title to which is vested in him by virtue of the provisions of chapter twenty of this code.

All revenue derived from the operation of the state park and public recreation system shall be expended by the director solely for operating, maintaining and improving the system, or for the retirement of park development revenue bonds.

§5B-1-13b. Authority of commissioner to issue park development revenue bonds; grants and gifts.

The commissioner, with the approval of the governor, is hereby empowered to raise the cost of any project, as defined hereinabove, by the issuance of park development revenue bonds of the state, the principal of and interest on which bonds shall be payable solely from the special fund herein provided for such payment. Such bonds shall be authorized by order of the commissioner, approved by the governor, which shall recite an estimate by the commissioner of the cost of the project, and shall provide for the issuance of bonds in an amount sufficient, when sold as hereinafter provided, to produce such cost, less the amount of any grant or grants, gift or gifts received, or in the opinion of the commissioner expected to be received from
the United States of America or from any other source. The
acceptance by the commissioner of any and all such grants
and gifts, whether in money or in land, labor or materials, is
hereby expressly authorized. All such bonds shall have and
are hereby declared to have all the qualities of negotiable
instruments under the provisions of article eight, chapter
forty-six of this code. The commissioner shall have the
power:
(a) To issue negotiable bonds, security interests of 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.
(b) To sell, at public or private sale, any bond or other
negotiable instrument, security interests or obligation of
the commissioner in any manner and upon such terms as the
commissioner deems would best serve the purposes set forth
herein.
(c) To issue its bonds, security interests and notes
payable solely from the revenues or funds available to the
commissioner therefor; and the commissioner may issue its
bonds, security interests or notes in such principal amounts
as it shall deem necessary to provide funds for any purposes
herein, including:
(i) 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.
(ii) 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 commissioner
incident to and necessary or convenient to carry out its
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 special fund herein provided.
(d) 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
(e) 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.

(f) To accept gifts or grants or 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.

(g) 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 commissioner is a party.

(h) The commissioner shall determine the form of such bonds, including coupons to be attached thereto to evidence the right of interest payments, which bonds shall be signed by the commissioner, under the great seal of the state, attested by the secretary of state, and the coupons attached thereto shall bear the facsimile signature of the commissioner. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until such delivery.

(i) The commissioner shall fix the denominations of the bonds, the principal and interest of which shall be payable at the office of the treasurer of the state of West Virginia, at the capitol of the state, or, at the option of the holder, at some bank or trust company in the city of New York to be named in the bonds in such medium as may be determined by the commissioner.
(j) The commissioner may provide for the registration of such bonds in the name of the owner as to principal alone, and as to both principal and interest under such terms and conditions as the commissioner may determine, and shall sell such bonds in such manner as he may determine to be for the best interest of the state, taking into consideration the financial responsibility of the purchaser, and the terms and conditions of the purchase, and especially the availability of the proceeds of the bonds when required for payment of the cost of the project.

(k) The proceeds of such bonds shall be used solely for the payment of the cost of the project, and shall be deposited and checked out as provided by section fourteen-g of this article, and under such further restrictions, if any, as the commissioner may provide.

(l) If the proceeds of such bonds, by error in calculation or otherwise, shall be less than the cost of the project, additional bonds may in like manner be issued to provide the amount of the deficiency, and unless otherwise provided for in the trust agreement hereinafter mentioned, shall be deemed to be of the same issue, and shall be entitled to payment from the same fund, without preference or priority as the bonds before issued.

(m) If the proceeds of bonds issued for the project shall exceed the cost thereof, the surplus shall be paid into a special fund to be established for payment of the principal and interest of such bonds as specified in the trust agreement provided for in the following section. Such fund may be used for the purchase of any of the outstanding bonds payable from such fund at the market price, but at not exceeding the price, if any, at which such bonds shall in the same year be redeemable, and all bonds redeemed or purchased shall forthwith be cancelled, and shall not again be issued. Prior to the preparation of definitive bonds, the commissioner may, under like restrictions, issue temporary bonds with or without coupons, exchangeable for definitive bonds upon the issuance of the latter. Such revenue bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions and things which are specified and required herein or by the constitution of the state.
§5B-1-13c. Tax exemption.

1 The exercise of the powers granted to the commissioner herein 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 recreational opportunities and is a public purpose. As the operation and maintenance of park development projects will constitute the performance of essential government functions, the commissioner shall not be required to pay any taxes or assessments upon any park development projects or upon any property acquired or used by the commissioner 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.

§5B-1-13d. Investment in notes, bonds, and security interests.

1 The notes, bonds, and security interests of the commissioner are hereby made securities in which the state board of investments, all insurance businesses, all banking institutions, trust companies, building and loan associations, savings and loan associations 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 cancelled.

§5B-1-13e. Disclaimer of any liability of state of West Virginia.

1 The state of West Virginia shall not be liable on notes, security interests or bonds or other evidences of indebtedness of commissioner 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.

§5B-1-13f. Trustee for holders of park development revenue bonds.

1 The commissioner may enter into an agreement or agreements with any trust company, or with any bank
3 having the powers of a trust company, either within or
4 outside the state, as trustee for the holders of bonds issued
5 hereunder, setting forth therein such duties of the state and
6 of the commissioner in respect to acquisition, construction,
7 improvement, maintenance, operation, repair and
8 insurance of the project, the conservation and application
9 of all moneys, the insurance of moneys on hand or on
10 deposit, and the rights and remedies of the trustee and the
11 holders of the bonds, as may be agreed upon with the
12 original purchasers of such bonds, and including therein
13 provisions restricting the individual right of action of
14 bondholders as is customary in trust agreements respecting
15 bonds and debentures of corporations, protecting and
16 enforcing the rights and remedies of the trustee and the
17 bondholders, and providing for approval by the original
18 purchaser of the bonds of the appointment of consulting
19 architects, and of the security given by those who contract
20 to construct the project, and by any bank or trust company
21 in which the proceeds of bonds or rentals shall be deposited,
22 and for approval by the consulting architects of all
23 contracts for construction. All expenses incurred in
24 carrying out such agreement may be treated as a part of the
25 cost of maintenance, operation and repair of the project.

§5B-1-13g. Proceeds of park development revenue bonds,
grants and gifts.

1 The proceeds of all bonds sold for any park development
2 project and the proceeds of any grant or gift received by the
3 commissioner for any project financed by the issuance of
4 park development revenue bonds shall be paid to the
5 treasurer of the state of West Virginia, who shall not
6 commingle such funds with any other moneys, but shall
7 deposit them in a separate bank account or accounts. The
8 moneys in such accounts shall be paid out on check of the
9 treasurer on requisition of the commissioner, or of such
10 other person as the commissioner may authorize to make
11 such requisition. All deposits of such moneys shall, if
12 required by the treasurer or the commissioner, be secured
13 by obligation of the United States, of the state of West
14 Virginia, or of the commissioner, of a market value equal at
15 all times to the amount of the deposit, and all banking
16 institutions are authorized to give such deposits.
§5B-1-13h. Authority of commissioner to pledge revenue from recreational facilities as security.
1 The commissioner, with the approval of the governor, shall have authority to pledge all revenue derived from any project as security for any bonds issued to defray the cost of such project. In any case in which the commissioner may deem it advisable, he shall also have the authority to pledge the revenue derived from any existing recreational facilities under his control, or any state park or forest, as additional security for the payment of any bonds issued under the provisions of this article to pay the cost of any park development project.

§5B-1-13i. Management and control of project.
1 The department shall properly maintain, repair, operate, manage and control the project, fix the rates of rental, and establish bylaws and rules and regulations for the use and operation of the project, and may make and enter into all contracts or agreements necessary and incidental to the performance of its duties and the execution of its powers hereunder.

§5B-1-13j. Provisions of constitution and law observed; what approval required.
1 It shall not be necessary to secure from any officer or board not named in this article any approval or consent, or any certificate or finding, or to hold an election, or to take any proceedings whatever, either for the construction of any project, or the improvement, maintenance, operation or repair thereof, or for the issuance of bonds hereunder, except such as are prescribed by these provisions or are required by the constitution of this state.
2 Nothing contained herein shall be so construed or interpreted as to authorize or permit the incurring of state debt of any kind or nature as contemplated by the provisions of the constitution of the state in relation to state debt.

§5B-1-14. Restaurants and other facilities.
1 The commissioner may, on all areas under his jurisdiction and control, operate commissaries, restaurants and other establishments for the convenience of the public. For these
purposes the commissioner may purchase equipment, foodstuffs, supplies and commodities, according to law.

§5B-1-15. **Contracts for operation of commissaries, restaurants, recreational facilities and other establishments limited to five years’ duration; renewal at option of commissioner; termination of contract by the commissioner.**

When it is deemed necessary by the commissioner to enter into a contract with a person, firm or corporation for the operation of a commissary, restaurant, recreational facility or other such establishment within the state parks and public recreation system, such contract shall be for a duration not to exceed five years, but a contract so made may provide for an option to renew at the commissioner’s discretion for an additional term or terms not to exceed five years at the time of renewal.

Any contract entered into by the commissioner shall provide an obligation upon the part of the operator that he maintain a level of performance satisfactory to the commissioner, and shall further provide that any such contract may be terminated by the commissioner in the event he determines that such performance is unsatisfactory and has given the operator reasonable notice thereof.

§5B-1-16. **Acquisition of former railroad subdivision for establishment of Greenbrier River Trail; development, protection, operation and maintenance of trail.**

(a) The commissioner may acquire from the West Virginia railroad maintenance authority approximately seventy-five miles of right-of-way along the former Greenbrier subdivision of the Chessie Railroad System between Caldwell in Greenbrier County and Cass in Pocahontas County to be developed as the “Greenbrier River Trail.” The acquired property shall be operated under the authority of the department of commerce and used for:

(1) The construction and maintenance of barriers for the protection of the trail from motorized vehicular traffic and for the protection of adjacent public and private property; and
§5B-1-17. Correlation of projects and services.

The commissioner of the department of commerce shall correlate and coordinate his park and recreation programs, projects and developments with the functions and services of other offices and divisions of the department and other agencies of the state government so as to provide, consistent with the provisions of this chapter, suitable and adequate facilities, landscaping, personnel and other services at and about all state parks and public recreation facilities under his jurisdiction.

§5B-1-18. Sunset provision.

Unless sooner terminated by law, the department of commerce shall terminate on the first day of July, one thousand nine hundred ninety-one, in accordance with the provisions of article ten, chapter four of this code.

ARTICLE 2. OFFICE OF COMMUNITY AND INDUSTRIAL DEVELOPMENT.

§5B-2-1. Office of economic and community development abolished; records and property of the office of economic and community development transferred to the office of community and industrial development and department of commerce.

The office of economic and community development is hereby abolished and the governor shall, by executive order, transfer to the office of community and industrial development or the department of commerce, the functions, personnel and property, with any liens relative thereto, of the office of economic and community development, as he may deem necessary.

All books, papers, maps, charts, plans, literature and other records of all equipment and property in the possession of the office of economic and community development or of any officer or employee thereof, upon the effective date of this chapter shall be turned over or

13 delivered to the office of the governor.
14 All existing contracts and obligations of the office of
15 economic and community development shall remain in full
16 force and effect and shall be performed by the governor.

§5B-2-2. Office of community and industrial development
created; appointment of director; compensation;
rules and regulations.

1 There is hereby created within the office of the governor
2 the office of community and industrial development. A
3 director of the office shall be appointed by, and shall serve
4 at the will and pleasure of, the governor and shall be paid a
5 salary as fixed by the governor within legislative
6 appropriation. The director shall have administrative
7 control and supervision of the office.
8 The director shall promulgate rules and regulations to
9 carry out the purposes and programs of the office, to include
10 generally the programs available, and the procedure and
11 eligibility of application relating to assistance under such
12 programs; these rules and regulations shall not be subject to
13 the provisions of chapter twenty-nine-a of this code, but
14 shall be filed with the secretary of state.

§5B-2-3. Divisions created.

1 There are hereby created within the office of community
2 and industrial development:
3 (1) The division of community development;
4 (2) The division of financial and technical assistance;
5 (3) The division of administration;
6 (4) The division of industrial development;
7 (5) The division of small business; and
8 (6) The division of employment and training.
9 Each said division shall be under the control of a director
10 to be appointed by the director of the office of community
11 and industrial development and who shall be qualified by
12 reason of exceptional training and experience in the field of
13 activities of his respective division and shall serve at the
14 will and pleasure of the director.
15 In accordance with the provisions of section six, article
16 one of this chapter, the governor may, by executive order,
17 transfer any of the duties or functions of, or appropriations
18 made to, the office to the department of commerce; and, he
may, by executive order, and at the request of the director, 
create such additional divisions or abolish such existing 
divisions as he deems necessary to carry out the provisions 
of this chapter. The authority hereby vested in the governor 
shall expire on January one, one thousand nine hundred 
eighty-six.
§5B-2-4. Office to conduct certain feasibility studies; reports 
to the Legislature; definitions.

The director shall assign to an appropriate division of the 
office the duty and responsibility to conduct studies to 
determine the feasibility of establishing programs or 
recommending legislation for the establishment of 
programs relative to coal processing, farm development, 
enterprise zones, forest resources and jobs development. 
Such division may conduct inquiries and hold hearings 
regarding such programs in order to provide interested 
persons the opportunity to comment, and shall report to the 
Legislature regarding its findings and policies with respect 
to each of these areas not later than the first day of the 
regular session of the Legislature in the year one thousand 
nine hundred eighty-six, and every two years thereafter.
For the purposes of this section:
(a) The term "coal processing" means the process by 
which coal is converted to coke of the non-by-product 
variety;
(b) The term "farm development" means the promotion, 
encouragement and development of farming and farm 
lands;
(c) The term "enterprise zones" means any area of a city 
or county which has a continuous boundary; is an area of 
pervasive poverty, unemployment and economic distress; 
the average rate of unemployment in such area for the most 
recent eighteen-month period for which data are available 
was at least one and one-half times the average national 
rate of unemployment for such eighteen month period; at 
least seventy percent of the residents living in the area have 
incomes below eighty percent of the median income of the 
residents of the city or county in which it is located; the 
population of all census tracts in the area decreased by ten 
percent or more between the two most recent decennial 
United States census and the city or county in which said
area is located establishes that either: (i) chronic abandonment or demolition of commercial or residential structures exist in the area; or (ii) substantial tax delinquencies relating to ad valorem real property taxes of commercial or residential structures exist in the area;

(d) The term “forest resources development” means a program to: (i) improve the business climate for forest industries and the general awareness of forestry potential; (ii) develop a strong state forestry agency; (iii) improve forest resources data; (iv) improve the transportation system for wood products; and, (v) improve forestry knowledge and practices of private landowners; and

(e) The term “jobs development” means a program to maintain existing employment, and to promote new employment opportunities for the people of this state, particularly in areas of high unemployment.

ARTICLE 3. WEST VIRGINIA EXPORT DEVELOPMENT AUTHORITY.

§5B-3-1. Legislative findings.

1 It is hereby found and declared that:
2 (a) The economy of the state of West Virginia and opportunities for employment within the state are increasingly dependent upon the international exports of West Virginia manufactured goods and services and the growth of international export markets for those manufactured goods and services;
3 (b) Other states have utilized, or are preparing to utilize, the resources of their state governments to stimulate, facilitate and promote international exports;
4 (c) One in seven manufacturing jobs in the state of West Virginia are attributable to exporting;
5 (d) The export of services has become vital to the growth and stability of the state of West Virginia's economy;
6 (e) The position of West Virginia as an exporting state is threatened by aggressive government supported export development policies of foreign countries;
7 (f) Competition among businesses and countries will endure and intensify as more countries seek to expand their international export capacities;
8 (g) Financial assistance offered by the federal government to exporters is insufficient to meet the competition offered by foreign countries;
(h) West Virginia exporters find it increasingly difficult to compete with foreign exporters which benefit from their governmentally supported financing programs;

(i) Companies seeking to enter foreign markets face severe problems financing and insuring their transactions;

(j) Expanding international export markets is essential in order to maintain a vigorous and growing economy and to provide adequate job opportunities for citizens of this state;

(k) The state of West Virginia has a responsibility to create employment opportunities by encouraging and stimulating the development of international export sales and markets by West Virginia companies; and

(l) Increased export sales may best be stimulated by making financial assistance available to West Virginia businesses to develop and expand international export markets and to ensure the competitiveness of West Virginia products and services in foreign markets, thereby increasing employment opportunities available to the citizens of the state of West Virginia.

It is hereby declared to be the policy of the state of West Virginia, in the interest of promoting the general welfare of all of the people of the state, to increase job opportunities through stimulating the expansion of international export markets of West Virginia products and services, by providing financial assistance through the authority hereinafter created for that purpose.

§5B-3-2. Definitions.

1 The following words, as used in this article, shall have the meanings set forth below, unless the context clearly requires otherwise:

(a) “Authority” means “The West Virginia Export Development Authority” created by this article;

(b) “Board” means the board of directors of the authority;

(c) “Bond” means any type of interest bearing obligation, including, without limitation, any bond, note, bond anticipation note, or other evidence of indebtedness whether general or special, whether negotiable or nonnegotiable in form, whether in bearer or registered form, whether in temporary or permanent form, whether with or without interest coupons, and regardless of the source of payment;
(d) "Director" means a member of the board;
(e) "Commercial loss" means the failure of the buyer to pay to the West Virginia exporter when due all or part of the gross invoice value as denominated in United States currency of an eligible export loan due to the insolvency of the buyer or failure of the buyer to pay to the West Virginia exporter all or part of the gross invoice value as denominated in United States currency of an eligible export loan on the due date; and
(f) "Political loss" means the losses incurred by a West Virginia exporter on an eligible export loan from dollar transfer delays, war, revolution, license revocation, diversion of goods, and similar politically related incidents occurring in the buyer's country that cause a loss to the West Virginia exporter.

§5B-3-3. West Virginia export development authority—Creation and purposes.
1 There is hereby created "The West Virginia Export Development Authority," a body politic and corporate, hereinafter referred to as the "Authority."
2 The purpose of this authority shall be to:
   (a) Assist, promote, encourage, develop and advance economic prosperity and employment throughout this state by fostering the expansion of exports of manufactured goods and services to foreign purchasers;
   (b) Cooperate and act in conjunction with other organizations, public and private, the objects of which are the promotion and advancement of export trade activities in the state of West Virginia;
   (c) Establish a source of funding credit guarantees and insurance to support export development not otherwise available to West Virginia and medium sized businesses; and
   (d) Provide financial counseling to potential and existing exports.

§5B-3-4. Board of directors—Members, officers, qualifications, terms, oath, compensation, quorum and delegation of power.
1 (a) The governing and administrative powers of the authority shall be vested in a board of directors consisting
of nine members who shall be appointed by the governor with the advice and consent of the Senate. The governor or his designated representative shall be the chairman of the authority. No more than five members appointed by the governor may be of the same political party.

All directors of the authority shall be residents of the state of West Virginia. The directors shall annually elect one of their members as vice chairman, one as secretary and one as treasurer. The board may elect such other officers as it deems proper. Appointments to fill a vacancy of one of the appointed members shall be made in the same manner as the original appointment.

(b) Each member of the board shall be a person of recognized ability and experience in one of the following areas: Finance; international trade; business management; and economics.

c) The governor shall appoint three members of the board whose term shall expire on the third Monday in June, one thousand nine hundred eighty-six; three members of the board whose term shall expire on the third Monday in June, one thousand nine hundred eighty-seven; three members of the board whose term shall expire on the third Monday in June, one thousand nine hundred eighty-eight. Their respective successors shall be appointed for terms of three years from the third Monday in June of the year of appointment. Each member shall serve until his successor is appointed and qualified.

d) Each director before entering upon his duties shall take and subscribe the oath of affirmation required by the West Virginia Constitution. A record of each such oath or affirmation shall be filed in the office of the secretary of state.

e) Members of the board shall not be entitled to compensation for their services as members, but shall be entitled to reimbursement for all necessary expenses incurred in connection with the performance of their duties as members.

(f) Five members of the board shall constitute a quorum and the affirmative vote of the majority of members present at a meeting of the board shall be necessary and sufficient for any action taken by the board, except that the affirmative vote of at least five members shall be required
for the approval of any resolution authorizing the issuance of any bonds pursuant to this article.

(g) No vacancy in the membership of the board shall impair the right of a quorum to exercise all rights and perform all the duties of the board. Any action taken by the board may be authorized by resolution at any regular or special meeting and shall take effect upon the date the chairman certifies the action of the authority by affixing his signature to the resolution unless some other date is otherwise provided in the resolution.

(h) The board may delegate to one or more of its members or to its officials, agents or employees such powers and duties as it may deem proper.

§5B-3-5. General powers.

The authority shall possess all the powers of a body politic and corporate necessary and convenient to accomplish the purposes of this article, including, without any intended limitation upon the other powers hereby conferred, the following:

(a) To borrow money and otherwise incur indebtedness for any of its purposes; to issue bonds, debentures, notes or other evidence of indebtedness, whether secured or unsecured, therefor;

(b) To purchase, discount, sell, negotiate with or without guaranty notes, other evidence of indebtedness, and to sell and guarantee securities;

(c) To procure insurance to guarantee, insure, reinsure and reinsure against political and commercial risk of loss, and such other insurance as the authority may deem necessary;

(d) To provide financial counseling services to West Virginia businesses;

(e) To procure insurance to secure the payment of principal and interest on any bonds, notes or other obligations of the authority;

(f) To accept gifts, grants, or loans from and enter into contracts or other transactions with any federal or state agency, any municipality, any private organization or any other source;

(g) To adopt, and from time to time amend or rescind such bylaws, rules and regulations as may be necessary or
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§ 5B-3-6. Stimulation and facilitation of funding for West Virginia exports.

(a) The authority is empowered to provide guaranteed funding, as defined in subsection (c) below, for any eligible export loan, as defined in subsection (b) below, through a participating banking organization, as defined in subsection (d) below.

(b) An eligible export loan shall consist of a loan from the authority to any participating banking organization located within the state of West Virginia to finance an international preexport or export from the state which, in the judgment of the authority, will:

(1) Create or maintain employment in West Virginia; and

(2) Shall contain at least twenty-five percent of the value of manufactured goods, coal products, lumber and wood products or services whose final processing occurs in West Virginia. An eligible export loan may include a pool of individual exports, all of which, in the judgment of the authority, meet the foregoing conditions.

(c) Guaranteed funding shall consist of a guarantee against political or commercial loss in whole or in part of principal and interest on an eligible export loan. Such a guarantee may include, without limitation, insurance against loss up to a stated amount. The maximum amount payable under any guarantee, herein called the
“Guaranteed Amount,” shall be specifically set forth in writing, executed by the chairman and secretary of the board, at the time any such guarantee is entered into by the authority. Any guarantee entered into by the authority hereunder shall not constitute a general obligation of the state of West Virginia. Any guarantee made by the authority hereunder shall not be terminated, cancelled or otherwise revoked except in accordance with the terms thereof; shall be conclusive evidence that such guarantee complies fully with the provisions of this article; and shall be valid and incontestable in the hands of a holder in due course of a guaranteed eligible export loan.

(d) A participating banking organization shall be any organization as defined by the state banking acts of West Virginia; any agency or branch of a foreign banking corporation licensed by the commissioner of banking; any national bank, federal savings and loan association and federal credit union located within this state who has been approved by the board of directors of the authority to participate in any eligible export loan or guaranteed funding within the purposes of this article.

The authority may charge reasonable fees for providing any eligible export loan or guaranteed funding pursuant to this section to a participating banking organization.

(e) Prior to providing an eligible export loan or guaranteed funding hereunder, the participating banking organization shall make an investigation of a line of credit to the exporter in order to determine its viability, the economic benefits to be derived therefrom, the prospects for repayment, and such other facts as it deems necessary in order to determine that such an eligible export loan or guaranteed funding is consistent with the purposes of this article. The authority shall provide guaranteed funding only if, and to the extent that, it determines, in its sole discretion, that:

(1) Such guaranteed funding is reasonably necessary in order to stimulate or facilitate the making of the eligible export loan including, without limitation, the making of the eligible export loan upon terms which will enable the loan to be reasonably competitive with loans in other states or in foreign countries; or

(2) Such guaranteed funding is reasonably necessary in
order to stimulate or facilitate the resale of such eligible export loan to a holder in due course which would not otherwise purchase such eligible export loan: Provided, That the eligible export loan or guaranteed funding provided by the authority to the participating banking organization shall be loaned to the exporter at a fixed interest rate and term as the authority may from time to time require. The authority may condition the provision of an eligible export loan or guaranteed funding hereunder upon such other terms and conditions as it may deem desirable to carry out the purposes of this article.

§5B-3-7. Annual report and audits.

1. On the first day of January of each year the authority shall report on its operations for the preceding fiscal year to the governor and the state Legislature. Such report shall include a summary of the activities of the authority and a complete operating and financial statement. The West Virginia export development authority shall cause an annual audit to be made by a resident certified public accountant or a registered public accountant of its books, accounts and records, with respect to its receipts, disbursements and all other matters related to its financial operations. The person performing such audit shall also furnish copies of the audit report to the Speaker of the House of Delegates, the President of the Senate and the majority and minority leaders of both houses, and the legislative auditor.

§5B-3-8. Powers to be interpreted broadly.

1. The powers enumerated in this article shall be interpreted broadly to effectuate the purposes thereof and shall not be construed as a limitation of powers.

§5B-3-9. Tax exemption.

1. The authority shall be and hereby is exempt from all franchise, corporate, business and taxes of every nature levied by the state, provided that nothing herein shall be construed to exempt from any such taxes any person receiving an eligible export loan or guaranteed funding with the authority hereunder.
§5B-3-10. Conflict of interests.

(a) No member of the authority or officer, agent or employee thereof shall, in his or her own name or in the name of a nominee, hold an ownership interest of more than seven and one-half percent in any association, trust, corporation, partnership or other entity which is, in its own name or in the name of a nominee, a party to a contract or agreement upon which the member or officer, agent or employee may be called upon to act or vote.

(b) With respect to any direct or any indirect interest, other than an interest prohibited in subsection (a), in a contract or agreement upon which the member or officer, agent or employee may be called upon to act or vote, a member of the authority or officer, agent or employee thereof shall disclose the same to the secretary of the authority prior to the taking of final action by the authority concerning such contract or agreement and shall so disclose the nature and extent of such interest and his or her acquisition thereof, which disclosure shall be publicly acknowledged by the authority and entered upon the minutes of the authority. If a member of the authority or officer, agent or employee thereof holds such an interest, he or she shall refrain from any further official involvement in regard to such contract of agreement, from voting on any matter pertaining to such contract or agreement, and from communicating with other members of the authority or its officers, agents and employees concerning said contract or agreement. Notwithstanding any other provision of law, any contract or agreement entered into in conformity with this subsection (b) shall not be void or invalid by reason of the interest described in this subsection, nor shall any person so disclosing the interest and refraining from further official involvement as provided in this subsection be guilty of an offense, be removed from office or be subject to any other penalty on account of such interest.

(c) Any contract or agreement made in violation of paragraph (a) or (b) of this section shall be null and void and give rise to no action against the authority.

§5B-3-11. Personal liability of members or persons acting on behalf of the authority.

(a) No director or any person acting on behalf of the
authority executing any contracts, commitments or agreements issued pursuant to this article shall be liable personally upon such contracts, commitments or agreements or be subject to any personal liability or accountability by reason thereof.

(b) No director or any person acting on behalf of the authority shall be personally liable for damage or injury resulting from the performance of his duties hereunder.

§5B-3-12. Financing of the authority; bonds payable solely from revenues; bonds not state debt; execution, form, delivery, conditions and sale of bonds.

(a) The authority is hereby authorized to issue, sell and provide for the retirement of bonds in the amount of fifty million dollars to provide funds for the creation and operation of the authority. Such bonds shall be limited obligations of the authority, the principal of and interest on which shall be payable solely out of the revenues derived by the authority. Bonds issued under authority of this section shall never constitute an indebtedness of the state of West Virginia or the authority within the meaning of any state constitutional provision or statutory limitation, but such bonds shall be indebtedness payable solely from a revenue producing source or from a special source, which source does not include revenues from any tax or license, and shall never constitute nor give rise to a pecuniary liability of the state of West Virginia or the authority or a charge against the general credit of the authority or the state or taxing powers of the state, and such fact shall be plainly stated on the face of each bond. Such bonds may be executed and delivered at any time as a single issue or from time to time as several issues, may be in such form and denominations, may be of such tenor, shall be in coupon or registered form, may be payable in such installments and at such time or times not exceeding five years from their date, may be subject to such terms of redemption, may be payable at such place or places, may bear interest at such rate or rates payable at such place or places and evidence in such manner, and may contain such provisions not inconsistent herewith, all of which shall be provided in the resolution of the authority authorizing the bonds. Any bonds issued under the authority of this section may be sold at public or private sale.
at such price and in such manner and from time to time as
may be determined by the authority to be most
advantageous. The authority may pay all expenses,
premiums, insurance premiums and commissions which the
authority may deem necessary or advantageous in
connection with the authorization, sale and issuance
thereof from proceeds of the bonds.

(b) The resolution under which such bonds are
authorized to be issued or any security agreement,
including an indenture or trust indenture to be entered into
in connection therewith, may contain any agreements and
provisions customarily contained in instruments securing
bonds, including, without limiting the generality of the
foregoing, provisions respecting the fixing and collection of
obligations, the creation and maintenance of special funds,
and the rights and remedies available, in the event of
default, to the bondholders or to the trustee under such
security agreement, all as the authority shall deem
advisable and as shall not be in conflict with the provisions
of this article: Provided, That in making any such
agreements or provisions the authority shall not have the
power to obligate itself except with respect to eligible
export loans and shall not have the power to incur a
pecuniary liability or a charge upon the general credit of the
authority or of the state or against the taxing powers of the
state. The resolution of the authority authorizing any bonds
hereunder and any security agreement securing such bonds
may provide that, in the event of default in payment of the
principal of or the interest on such bonds or in the
performance of any agreement contained in such
proceedings or security agreement, such payment and
performance may be enforced by mandamus or by the
appointment of a receiver in equity with power to charge
and collect any obligations and to apply any revenues
pledged in accordance with such proceedings or the
provisions of such security agreement. Any such security
agreement may provide also that in the event of default in
payment or the violation of any agreement contained in the
security agreement, it may be foreclosed by proceedings at
law or in equity, and may provide that any trustee under the
security agreement or the holder of any of the bonds secured
thereby may become the purchaser at any foreclosure sale,
if he is the highest bidder. No breach of any such agreement shall impose any pecuniary liability upon the state of West Virginia or the authority or any charge upon the general credit of the authority or of the state or against the taxing power of the state.

The trustee or trustees under any security agreement, or any depository specified by such security agreement, may be such persons or corporations as the authority shall designate, notwithstanding that they may be a nonresident of West Virginia or incorporated under the laws of the United States or any state thereof.

(c) Any bonds issued hereunder and at any time outstanding may at any time and from time to time be refunded by the authority, by the issuance of its refunding bonds in such amount as the authority may deem necessary but not exceeding an amount sufficient to refund the principal of the bonds to be refunded, together with any unpaid interest thereon and any premiums, expenses and commissions necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded have matured or shall thereafter mature, either by sale of the refunding bonds to be refunded, or by exchange of the refunding bonds for the bonds to be refunded thereby: Provided, That the holders of any bonds to be refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable, or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption. All refunding bonds issued under the authority of this section shall be payable in the same manner and under the same terms and conditions as are herein provided for the issuance of bonds.

d) The proceeds from the sale of any bonds issued under authority of this section shall be applied only for the purpose for which the bonds were issued: Provided, That any premium and secured interest received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold: Provided, however, That if for any reason any portion of the proceeds shall not be needed for the purpose for which the bonds were issued, such unneeded portion of the proceeds shall be applied to the payment of the principal of or the interest on the bonds.
(e) The proceeds of the export development bonds shall be kept in a separate fund to be known as the "Export Development Bond Fund." All other moneys received by the authority shall also be deposited in such fund. The treasurer may, with the approval of the board of directors of the authority, invest and reinvest all moneys in such fund from time to time in such obligations of the United States government or such other governmental or corporate issuers as the treasurer, with the approval of the board of directors of the authority deems appropriate. All earnings upon such investment shall be added to such fund. The authority is authorized to use moneys deposited in the fund expressly for the purposes specified in and according to the procedures established by this article.

§5B-3-13. Bonds, income therefrom, security agreements, financing agreements are exempt from certain taxes.

The bonds authorized pursuant to this article and the income therefrom shall be exempt from all taxation in the state of West Virginia except for inheritance, estate or transfer taxes; and all security agreements and financing agreements made pursuant to the provisions of this article shall be exempt from West Virginia stamp and transfer taxes.

§5B-3-14. Insurance fund; purchase of insurance by authority.

The authority is authorized to create an insurance fund consisting solely of funds from the export development bond fund. Such insurance fund shall be held in the custody of one or more banks or trust companies having a principal place of business in this state. The insurance fund shall be held as security for the holders of bonds issued under this article. It shall be governed by a trust agreement entered into by the authority with the trustees. The trust agreement may contain such provisions and limitations as to the investment and disbursement of moneys in the insurance fund, the payment of expenses of the insurance fund, the appointment, resignation and discharge of trustees, the delegation of enforcement and collection powers under the insurance agreements to the trustee, the duties of the trustees, amendments of the trust agreement and such other...
lawful provisions and limitation as may be deemed appropriate by the authority. The trust agreement may pledge premiums and other moneys which may be deposited in the insurance fund. Such pledge shall be valid and binding from the time when the pledge is made. The premiums and other moneys so pledged and thereafter received by the insurance fund or by the trustees in its behalf shall immediately be subject to the lien of such pledge and shall be valid and binding as against all parties having claims of any kind against the insurance fund, irrespective of whether such parties have notice thereof.

The authority may also use export development bond funds to purchase insurance which shall be pledged for the security of the holders of any bonds issued under this article. In any case in which insurance is pledged as security, whether obtained through the insurance funds authorized to be created under this section or purchased with export development bond funds, any description of such insurance shall expressly indicate the limitation of the liability of the authority and that neither the credit nor taxing power of the state of West Virginia or any political subdivision thereof shall be available to satisfy any obligations with respect thereto.

§5B-3-15. Bonds and notes of the authority legal investments for fiduciaries.

The bonds, debentures, notes or other evidence of indebtedness of the authority are hereby made securities in which all public officers and bodies of the state of West Virginia and all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks, savings associations, including savings and loan associations and building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or who may hereafter be authorized to invest in bonds or other obligations of the state of West Virginia, may properly and legally invest funds including capital in their control or belonging to them. Notwithstanding any other provision of
law, the bonds, debentures, notes or other evidence of indebtedness of the authority are also hereby made securities which may be deposited with and may be received by all public officers and bodies of this state and all municipalities and municipal subdivisions for any purpose for which the deposit of bonds or other obligations of this state are now or may hereafter be authorized.

§ 5B-3-16. Exemption from disclosures of confidential information.

Any information submitted to or compiled by the authority in connection with the authority's responsibilities with respect to the identity, background, finance, marketing plans, trade secrets or any other commercially sensitive information of persons, firms, associations, partnerships, agencies, corporations or other entities, shall be confidential, except to the extent that the person or entity which provided such information consents to disclosure.

§ 5B-3-17. Provisions as cumulative.

Neither this article nor anything herein contained shall be construed as a restriction or limitation upon any powers which the authority might otherwise have under any laws of this state, but shall be construed as cumulative.

§ 5B-3-18. Severability.

If for any reason any section or provision of this article shall be held to be invalid or unconstitutional, such holding shall not affect the validity or applicability of the remainder of this article.

ARTICLE 4. LABOR-MANAGEMENT COUNCIL.

§ 5B-4-1. Appointment, terms, vacancies, chairman, quorum of the labor-management council.

The West Virginia labor-management advisory council, heretofore created under the provisions of article one-c, chapter twenty-one of this code, shall be continued and be so designated as the West Virginia labor-management council. The council shall consist of twenty-six members. One member of the council shall be the commissioner of labor, one member of the council shall be a member of the
economic development authority, one member of the
council shall be the employment security commissioner or
his designated representative, one member of the council
shall be the state superintendent of schools, one member of
the council shall be a member of the economic development
board to be selected by it annually, and one member of the
council shall be a member of the board of regents to be
selected by it annually, all of whom shall be ex officio
nonvoting members of the council. The other members of
the council shall be appointed by the governor by and with
the advice and consent of the senate for terms of four years
or until their successors have been appointed and have
qualified. The members of the council appointed by the
governor shall include one president of a state university,
one president of a state college or community college, and
two persons representing public secondary schools in the
state, who shall be appointed for terms of two, three and
four years, respectively, as designated by the governor at
the time of their appointment, and until their successors
have been appointed and have qualified. The present
members of the council shall continue to serve out the terms
to which they were appointed.

Vacancies shall be filled by appointment by the governor
for the unexpired term of the member whose office is vacant
and the appointment shall be made within sixty days of the
occurrence of the vacancy.

In making appointments to the council, the governor shall
consider names of persons recommended to him by the West
Virginia chamber of commerce, the West Virginia coal
association, the West Virginia manufacturers' association,
the West Virginia retailers' association, utilities, other
industrial groups in this state, the West Virginia labor
federation, the united mine workers union, the West
Virginia building trades council, other labor organizations
in the State, the institutional boards of advisors for state
colleges and universities, the state board of education, and
the West Virginia school board association. Membership
shall be composed of, in addition to those of the state or
other government agencies and educational institutions, no
less than eight members from industry and eight from labor.
The council shall elect one of its members as chairman and
may elect such other officers as the council may deem necessary or desirable. Such persons shall serve as such for one year or until their successors are elected and shall be eligible for reelection.

The council shall meet at least four times each year and at other times on call of the chairman or a majority of the members. Thirteen members of the council shall constitute a quorum for the transaction of business.

§5B-4-2. Objectives of the council.

It is the object of this article to improve labor-management relations within this state, in order both to improve the present convenience and welfare of the citizens of the state, and to attract and encourage new and existing industry in the state. To this end, the council shall act as advisor and consultant to state government, and to labor and management within this state, to promote better labor-management relations within the state; develop and encourage methods of improved communications and mutual respect between labor and management; endeavor to narrow ideological differences between labor and management; develop and encourage innovative techniques to resolve labor-management conflicts through cooperative teamwork rather than confrontation; and encourage both labor and management to recognize their common ground and common purpose.

§5B-4-3. Powers, duties and functions of the council; annual reports.

On or before the first day of September, one thousand nine hundred eighty-five, the council shall submit to the joint committee on government and finance a preliminary plan for the implementation of programs designed to improve labor-management relations within the state. Such plan shall include, but need not be limited to, programs to:

(a) Conduct seminars and other programs designed to promote better labor-management relations and greater productivity, including the provision of training in specialized skills required by management and by employee representatives, in cooperation with institutions of higher and secondary education within the state;
(b) Develop a resource network through which labor and management can be made aware of available experts and other resources for resolving labor-management disputes and improving labor-management relations;

(c) Develop a method of compiling, analyzing and publicizing fair and honest information about the characteristics of the workforce in this state, including its productivity and loyalty, in cooperation with the commission on employment security, the West Virginia promotion and development foundation and other state agencies and educational institutions;

(d) Conduct and publicize, in cooperation with the West Virginia promotion and development foundation, case studies which identify examples of successful business operations in the state with excellent labor-management relations, and which document the specific characteristics of labor-management relations in each such business;

(e) Establish forums for dialogue between labor and management, including an annual state conference on labor management relations;

(f) Hold public hearings, and solicit comment and suggestions from interested parties and the public in general, concerning the development of a long-term plan for improving labor-management relations within the state;

(g) Develop a long-term plan for improving labor-management relations within this state;

(h) Submit a preliminary operation report to the joint committee on government and finance by the first day of September, one thousand nine hundred eighty-five, at such other times as the council may find desirable, or as directed by the commission or the board, which report shall reflect the plan of operation of the council and contain such recommendations as it shall see fit as to structure, functions and financing; and

(i) Cooperate with other agencies, organizations and institutions, both public and private, and in particular with institutions of higher and secondary education within the state and with the regional advisory committees established by this article in performing the duties and functions of the council and is authorized to enter into agreements with any such agencies, organizations and institutions for the
purpose of carrying out the provisions of this article. The council is authorized and empowered to apply for, receive and utilize appropriations, gifts, bequests or grants, in money or in kind, from any person, organization, governmental agency or entity whatsoever to assist in achieving the public purposes of this article. The council may decline to receive gifts, bequests or grants from private sources which are restricted in a manner which to the opinion of the council would benefit either labor or management over the other. All funds received by the council shall be deposited with the state treasurer of West Virginia and dispersed by the council to be used exclusively for carrying out the provisions of this article: Provided, That any appropriations, gifts, bequests or grants received by the council with any restriction or restrictions on the use thereof shall be expended by the council in accordance with such restriction or restrictions.

§5B-4-4. Regional advisory committee; composition; functions.

1 The council shall designate at least five regions, representing the northern, southern, eastern, western and central geographic areas of the state, and shall appoint a regional advisory committee for each such region, to advise and consult with the council and to address problems of common interest within the region. The council shall determine the number of members to serve on each regional committee. In making appointments to the committee, the council shall consider names of persons recommended by business, labor and educational organizations and institutions within the respective region and shall endeavor to appoint persons with a commonality of interest in labor-management relations. Committee members shall serve for a term of four years and until their successors have been appointed and have qualified, except that the members first appointed shall be for two, three and four years, respectively, as designated by the council at the time of their appointment, and until their successors have been appointed and have qualified. Vacancies shall be filled by appointment by the council for the unexpired term of the member whose office is vacant and the appointment shall be made within sixty days of the occurrence of the vacancy.
Each regional advisory committee shall meet at least two times each year and at other times on call of the chairman or a majority of the members or as the council may direct. Each committee shall elect a chairman from among its members, and the chairman shall cause a summary of the proceedings of each committee meeting, as well as any recommendations made by the committee, to be delivered to the council. The regional advisory committees shall review the plans prepared by the council pursuant to section three of this article, and shall make such recommendations as they deem appropriate. The committees shall participate in the programs established by the council, and also may establish programs to improve labor-management relations within their respective regions.

The council may enter into an agreement with a state university, college or community college, county governments or boards of education within each region to provide space sufficient to enable the regional advisory committee to carry out its functions.

§5B-4-5. Compensation of members of council and committees; employment of staff; expenses of council.

The labor-management council and the regional advisory committees shall be supplied with necessary staff and supplies within the limits of appropriation by the commissioner of labor as well as funds for reimbursing each member of the council and of the regional advisory committees for reasonable and necessary expenses at the rate of one hundred dollars per diem for each meeting attended.

§5B-4-6. Duration of council.

After having conducted a performance audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the West Virginia labor-management advisory council heretofore established under the provisions of article one-c, chapter twenty-one of this code, should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the
West Virginia labor-management advisory council shall continue to exist until the first day of July, one thousand nine hundred ninety-one.

CHAPTER 5C. BASIC ASSISTANCE FOR INDUSTRY AND TRADE.

ARTICLE 1. WEST VIRGINIA AUTOMOBILE ASSISTANCE CORPORATION.

§5C-1-1. General provisions.

1 This chapter shall be known and may be cited as the "West Virginia Basic Assistance for Industry and Trade Act."

§5C-1-2. Purpose and intent.

1 The Legislature finds and declares that West Virginia's economy can be rejuvenated; that bringing new industry and trade to the state will serve as a catalyst for reviving and restoring steel, aluminum, coal and other industrial and commercial activities within the state; that increasing such activities will form the nucleus for growing and prosperous communities, offering new job opportunities both in industry and trade; and that new jobs and investments, higher income and profits, and rising property values will support better education and superior public services.

Therefore, it is the intent of the Legislature to create authorities for the purpose of enhancing the establishment or renewal of industry and trade in the state of West Virginia.

§5C-1-3. Definitions.

1 For the purpose of this article:

2 (1) The term "automobile manufacturer" means a business entity, the subsidiaries and affiliates, whose primary business is the production and sale of motor vehicles;

2 (2) The term "board of investments" means the board of investments established by article six, chapter twelve of this code;

2 (3) The term "borrower" means an automobile
manufacturer, any of its subsidiaries or affiliates, or any
other entity the board of investments may designate from
time to time which borrows funds for the benefit or use of an
automobile manufacturer;
(4) The term "corporation" means the West Virginia
automobile industry assistance corporation, unless the
context in which such term is used clearly indicates that
reference is made to some other corporation;
(5) The term "financing plan" means a plan designed to
meet the financing needs of an automobile manufacturer as
relected in the operating plan;
(6) The term "fiscal year" means the fiscal year of an
automobile manufacturer; and
(7) The term "operating plan" means a document
detailing production, distribution, and sales plans of an
automobile manufacturer, together with the expenditures
necessary to carry out those plans (including budget and
cash flow projections), on an annual basis, and an
employment-generating plan setting forth steps to be taken
by the automobile manufacturer to create jobs and reduce
unemployment in this state.
§5C-1-4. Severability.
If any section, subsection, subdivision, subparagraph,
sentence or clause of this article is adjudged to be
unconstitutional or invalid, such invalidation shall not
affect the validity of the remaining portions of this article,
and, to this end, the provisions of this article are hereby
declared to be severable.
§5C-1-5. Creation of the West Virginia automobile industry
assistance corporation.
(a) For the purpose of aiding the establishment and
expansion of the automobile industry in this state,
encouraging and increasing the use of energy derived from
hydrocarbon sources located in the state of West Virginia,
for developing and maintaining properties now owned or to
be owned by the state of West Virginia throughout this
state, and in the interest of improving employment
opportunities in this state, there is created a body
corporate, denominated the "West Virginia Automobile
Industry Assistance Corporation," (hereinafter referred to
as the "corporation"). The board of directors first appointed shall be deemed the incorporators, and the incorporation shall be held to have been effected from the date of the first meeting of the board. (b) The corporation is created and established to serve a public corporate purpose and to act for the public benefit and as a governmental instrumentality of the state of West Virginia, to act on behalf of the state and its people in improving their health, welfare and prosperity. (c) The corporation: (1) Shall have succession in its corporate name; (2) May sue and be sued in its corporate name; (3) May adopt and use a corporate seal, which shall be judicially noticed; (4) May make contracts as herein authorized; and (5) May adopt, amend and repeal bylaws.

§5C-1-6. Directors; number; appointment and terms of office; compensation; interest in competing business forbidden.

(a) The board of directors of the corporation (hereinafter referred to as the "Board") shall be composed of three members, to be appointed by the governor, by and with the advice and consent of the Senate. No more than two of the directors shall be from the same political party. In appointing the board, the governor shall designate the chairman, vice chairman and treasurer. All other officials, agents and employees shall be designated and selected by the board. (b) The terms of office of the members first taking office on or after the first day of July, one thousand nine hundred eighty-five, shall expire as designated by the governor at the time of nomination, one at the end of the second year, one at the end of the fourth year and one at the end of the sixth year, after the first day of July, one thousand nine hundred eighty-five. A successor to a member of the board shall be appointed in the same manner as the original members and shall have a term of office expiring six years from the date of the expiration of the term for which his predecessor was appointed. (c) In cases of any vacancy in the office of director, such vacancy shall be filled by appointment by the governor. Any
member appointed to fill a vacancy in the board occurring
prior to the expiration of the term for which his predecessor
was appointed shall be appointed for the remainder of such
term.
(d) The governor may remove a director in the case of
incompetence, neglect of duty, gross immorality or
malfeasance in office, and may declare such director's
office vacant and appoint a person for such vacancy as
provided in other cases of vacancy.
(e) Vacancies in the board, so long as there shall be two
members in office, shall not impair the powers of the board
to execute the functions of the corporation, and two of the
members in office shall constitute a quorum for the
transaction of the business of the board.
(f) Each of the members of the board shall be a citizen of
the state of West Virginia. The compensation of each
member of the board shall be paid by the corporation as
current expenses. Members of the board shall be
reimbursed by the corporation for actual expenses
(including traveling and subsistence expenses) incurred by
them in the performance of the duties vested in the board by
this article. No member of said board shall, during his
continuance in office, be engaged in any other business, but
each member shall devote himself to the work of the
corporation.
(g) No director shall have a financial interest in any
automobile manufacturer or in any public-utility
corporation engaged in the business of distributing and
selling electric power or natural gas to the public nor shall
any member have any interest in any business that may be
adversely affected by the success of the corporation as a
distributor of water, electric power, or oil or natural gas.
§5C-1-7. Management and control of corporation; officers;
liability.
(a) The board shall direct the exercise of all the powers
of the corporation.
(b) The chairman shall be the chief executive officer of
the corporation, and, in his absence, the vice chairman shall
act as chief executive officer.
(c) The board shall annually elect a secretary, who need
not be a member of the board, to keep a record of the
proceedings of the board and perform such other duties as
may be determined appropriate by the board.
(d) The treasurer of the corporation shall be custodian
of all funds of the corporation, and shall be bonded in such
amount as the other members of the board of directors may
designate.
(e) The directors and officers of the corporation shall
not be liable personally, either jointly or severally, for any
debt or obligation created by the corporation.
§5C-1-8. Officers and employees; wages of laborers and
mechanics.

The board shall, without regard to the provisions of civil
service laws applicable to officers and employees of the
state of West Virginia, appoint such managers, assistant
managers, officers, employees, attorneys and agents as are
necessary for the transaction of its business, fix their
compensation, define their duties, and provide a system of
organization to fix responsibility and promote efficiency.
Any appointee of the board may be removed in the
discretion of the board. No regular officer or employee of
the corporation shall receive a salary in excess of that
received by the members of the board.
All contracts to which the corporation is a party and
which require the employment of laborers and mechanics in
the construction, alteration, maintenance, or repair of
buildings, gas transmission pipelines, electric power lines,
waterworks systems and waterlines, sewer systems and
sewage treatment and disposal systems, roads or other
projects shall contain a provision that not less than the
prevailing rate of wages for work of a similar nature
prevailing in the vicinity shall be paid to such laborers or
mechanics.
In the event any dispute arises as to what are the
prevailing rates of wages, the question shall be referred to
the commissioner of the department of labor for
determination, and his decision shall be final. In the
determination of such prevailing rate or rates, due regard
shall be given to those rates which have been secured
through collective agreement by representatives of
employers and employees.
Where such work as is described in the two preceding
In order to foster and expand the automobile industry in this state and to encourage the widest possible use of energy that can be generated from hydrocarbon sources in this state and to market and provide reasonable outlets therefore, the corporation is empowered and directed:

(a) To provide, construct, operate, maintain, and improve such gas and oil pipelines, electric transmission lines, substations, and facilities and structures appurtenant thereto, as it finds necessary, desirable and appropriate for the purpose of transmitting gas, oil and electric energy, available for sale, from sources within this state to existing and potential markets, and, for the purpose of interchange of energy, to interconnect sources within this state with either private projects, other state or federal projects, and publicly owned power systems now or hereafter constructed;

(b) To provide for the construction and maintenance of streets, avenues, roads, alleys, ways, sidewalks, crosswalks and other access ways to facilitate the ingress and egress to industrial sites belonging to an automobile manufacturer;

(c) To construct, acquire, operate, maintain, and improve such waterworks systems and water lines, sewer systems and sewage treatment and disposal systems, or any combination thereof, as it finds necessary, desirable, and appropriate for the purpose of assisting an automobile manufacturer in carrying out its operating plan, and to acquire watersheds, water and riparian rights, plant sites, rights-of-way and any and all other property and appurtenances necessary, appropriate, useful, convenient or incidental to such system or systems;

(d) To acquire, by purchase, lease, condemnation, or donation, such real or personal property, or any interest therein, including lands, easements, rights-of-way, franchises, oil or gas, pipelines, electric transmission lines, substations and facilities and structures appurtenant thereto, waterworks systems and water lines, and sewer systems and sewage treatment and disposal systems, as the

§5C-1-9. Corporate powers.
board finds necessary and appropriate to carry out the purposes of this article. Title to all property and property rights acquired by the corporation shall be taken in the name of the corporation.

(e) To acquire any property or property rights, including patent rights, which in the opinion of the board are necessary to carry out the purposes of this article, by purchase, lease, donation, or by the exercise of the right of eminent domain and to institute condemnation proceedings therefor in the same manner as is provided by law for the condemnation of real estate.

(f) To sell, lease or otherwise dispose of such personal property as in the opinion of the board is not required for the purposes of this article and such real property and interests in land acquired in connection with construction or operation of gas and oil pipelines, electric transmission lines, substations, roads and facilities and other structures, waterworks systems and water lines, and sewer systems and sewage treatment and disposal systems as in the opinion of the board are not required for the purposes of this article.

(g) To negotiate and enter into such contracts, agreements, and arrangements as it shall find necessary and appropriate to carry out the purposes of this article.

(h) To accept appropriations, gifts, grants, bequests and devises, and to dispose of the same to carry out its corporate purposes;

(i) To invest any funds not required for immediate disbursement in any of the following securities:
(1) Direct obligations of or obligations guaranteed by the United States of America;
(2) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: banks for cooperatives; federal intermediate credit banks; federal home loan bank system; export-import bank of the United States; federal land banks; the federal national mortgage association or the government national mortgage association;
(3) Bonds issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States of America; or temporary notes issued by public
agencies or municipalities or preliminary loan notes issued
by public agencies or municipalities in each case, fully
secured as to the payment of both principal and interest by a
requisition or payment agreement with the United States of
America;
(4) Certificates of deposit secured by obligations of the
United States of America;
(5) Direct obligations of or obligations guaranteed by
the state of West Virginia;
(6) Direct and general obligations of any other state
within the territorial United States, to the payment of the
principal of and interest on which the full faith and credit of
such state is pledged: Provided, That at the time of their
purchases, such obligations are rated in either of the two
highest rating categories by a nationally recognized bond­
rating agency: and
(7) Any fixed interest bond, note or debenture of any
corporation organized and operating within the United
States: Provided, That such corporation shall have a
minimum net worth of fifteen million dollars and its
securities or its parent corporation's securities are listed on
one or more of the national stock exchanges: Provided,
however, That (1) such corporation has earned a profit in
eight of the preceding ten fiscal years as reflected in its
statements, and (2) such corporation has not defaulted in
the payment of principal or interest on any of the
outstanding funded indebtedness during its preceding ten
fiscal years, and (3) the bonds, notes or debentures of such
corporation to be purchased are rated “AA” or the
equivalent thereof or better than “AA” or the equivalent
thereof by at least two or more nationally recognized rating
services such as Standard and Poor's, Dun & Bradstreet or
Moody’s;
(j) To procure insurance against any loss in connection
with its property in such amounts, and from such insurers,
as may be necessary or desirable;
(k) To make and publish such rules and regulations as
are necessary to effectuate its corporate purpose;
(l) To borrow money to carry out and effectuate its
corporate purpose and to issue notes as evidence of any such
borrowing in such principal amounts and upon such terms
as shall be necessary to provide sufficient funds for
achieving its corporate purpose, except that no notes shall be issued to mature more than ten years from date of issuance;

(m) To issue renewal notes, except that no such renewal notes shall be issued to mature more than ten years from date of issuance of the notes renewed;

(n) To apply the proceeds from the sale of renewal notes to the purchase, redemption or payment of the notes to be refunded; and

(o) To make proper application to the West Virginia economic development authority for the issuance of bonds, in accordance with the provisions of article fifteen, chapter thirty-one of this code.

The corporation shall have such additional powers as may be necessary or appropriate for the exercise of the powers herein conferred.

§5C-l-10. Transfer of state property to corporation.

The governor is authorized to provide for the transfer to the corporation of the use, possession and control of such real or personal property of the state of West Virginia as he may from time to time deem necessary and proper for the purposes of the corporation as herein stated.

§5C-l-11. Principal office of the corporation; account books; directors' oath of office.

(a) The corporation shall maintain its principal office in the immediate vicinity of Charleston, West Virginia or upon the site of any facility.

(b) The corporation shall at all times maintain complete and accurate books of accounts.

(c) Each member of the board, before entering upon the duties of his office, shall subscribe to an oath or affirmation to support the constitution of the state of West Virginia and to faithfully and impartially perform the duties imposed upon him by this article.

§5C-l-12. West Virginia board of investments to act as board of investments for purposes of this article; powers.

The West Virginia state board of investments as heretofore created and constituted under the provisions of article six, chapter twelve of this code, shall be ex officio a
board of investments for public employees retirement system funds as they are made available for investment in accordance with the provisions of this article, and as such, the board of investments may exercise all of the powers and functions granted to it pursuant to the provisions of said article six in carrying out the duties assigned to it under the provisions of this article.

§5C-1-13. Authority of the board of investments.

(a) Subject to the provisions of this article, the board of investments, on such terms and conditions as it deems appropriate, may invest moneys, securities, and other assets of the public employees retirement system in the form of interest-bearing loans to a borrower, if at the time of the commitment to make the loan, the board of investments determines:

1. That there exists an employment-generating plan which:
   (A) Is satisfactory to the board of investments;
   (B) Has been developed in consultation with other appropriate state agencies, including, but not limited to, the department of labor and the office of community and industrial development;
   (C) Focuses upon the need to increase the number of jobs available in this state; and
   (D) Can be carried out by the borrower;

2. That the loan is needed to assist the borrower to open a new facility or expand an existing facility, in this state, to produce, distribute, and sell automobiles, and that by meeting such need employment will be increased in the state;

3. That the borrower has submitted to the board of investments a satisfactory operating plan for the 1985-1986 fiscal year and the next succeeding two fiscal years demonstrating the ability of the borrower to employ not less than an additional one thousand full-time employees in this state in the furnishing of goods and services, and after the thirty-first day of December, one thousand nine hundred eighty-eight, to continue to maintain such increased level of employment without additional loans under the provisions of this article;

4. That the board of investments has received such
assurances as it shall require that the operating plan is realistic and feasible;
(5) That the borrower has submitted to the board of investments a satisfactory financing plan which meets the financial needs of the borrower as reflected in the operating plan for the period covered by such plan;
(6) That the board of investments has received adequate assurances regarding the availability of all financing, both public and private, contemplated by the financing plan and that such financing is adequate to meet the borrower's projected financial needs during the period covered by the financing plan;
(7) That none of the proceeds of a loan made under the provisions of this article will be used to repay credit extended or committed prior to the date the loan is made under the provisions of this article; and
(8) That the financing plan submitted under subdivision (5) of this subsection (a) provides that expenditures under the financing plan will reduce unemployment in this state.

§5C-1-14. Requirements of loan.
(a) A loan may be made under the provisions of this article when such loan is based upon the criteria set forth in section sixteen of this article. In addition, the terms of any such loan shall provide that the loan is made upon the following findings of the board of investments:
(1) That the prospective earning power of the borrower, together with the character and value of any security pledged, furnish reasonable assurance of repayment of the loan in accordance with its terms;
(2) That the loan will bear interest at a rate determined by the board of investments to be reasonable, taking into account the current average yield on outstanding investments of the board of investments of the pension funds in the consolidated pension fund established under the provisions of section eight, article six, chapter twelve of this code;
(3) That the corporation has agreed for as long as unpaid balances of principal and interest are outstanding on a loan issued under this article;
(A) To have prepared and submitted on or before the thirtieth day of preceding each fiscal year beginning after
the thirty-first day of December, one thousand nine
hundred eighty-six, a revised operating plan and financial
plan which cover the two-year period commencing with
such fiscal year and which show compliance with the
requirements of section sixteen of this article, and
B) To prepare and deliver to the board of investments
within one hundred twenty days following the close of each
fiscal year, an analysis reconciling the borrower’s actual
performance in generating employment in this state with
the projected employment for such year as set forth in the
operating plan and the financial plan in effect at the start of
such fiscal year.

(b) The borrower has agreed to pay such loan fees as
may be prescribed by the board of investments from time to
time. The board of investments shall prescribe and collect
no less frequently than annually a loan fee in connection
with each loan made under the provisions of this article.
Such fee shall be sufficient to compensate the board of
investments for all of the administrative expenses of the
board of investments related to the loan, but in no case shall
such fee be less than one half of one percent per annum of
the outstanding principal amount of the loan computed
daily. All amounts collected by the board of investments
pursuant to this subsection (b) shall be deposited in the
state treasury as general revenue.

§5C-1-15. Limitations on loan authority.

(a) The authority of the board of investments to make
loans under the provisions of this article shall not at any
time exceed two hundred fifty million dollars in the
aggregate principal amount outstanding.

§5C-1-16. Terms and conditions of loans.

(a) Loans made under the provisions of this article shall
be payable in full not later than twenty years from the date
the loan is made.

(b) The board of investments shall require security for
the loans to be made under this article at the time the
commitment is made. Any commitment to make a loan
under the provisions of this article shall contain all of the
affirmative and negative covenants and other protective
provisions that the board of investments determines are
appropriate.
§5C-1-17. Audits; audit reports.

(a) The accounts of a borrower under this article shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants, certified or licensed by a regulatory authority of this state or a sister state.

(b) At any time a request for an application for a loan under this article is pending or a loan under this article is outstanding, the board of investments is authorized to request a report of such independent audit. The report shall set forth the scope of the audit and include such statements as are necessary to present fairly the borrower's assets and liabilities, surplus or deficit with an analysis of changes therein during the year, supplemented in reasonable detail by a statement of the corporation's income and expenses during the year, together with the independent auditor's opinion of those statements.

(c) No loan may be made under this article unless and until the borrower agrees, in writing, to provide the board of investments with such reports of independent audits as may be requested under the provisions of subsection (b) of this section.

§5C-1-18. Enforcement of rights accruing to the state.

The board of investments shall take such action as may be appropriate to enforce any right accruing to the state or any officer or agency thereof as a result of the making of a loan under the provisions of this article.

§5C-1-19. Tax credit for borrowers.

The borrower, as defined in this article, may be eligible for any tax credits provided for in articles thirteen-c, thirteen-d and thirteen-e, chapter eleven of this code.

§5C-1-20. Reports to the Legislature.

The board of investments shall submit to the Legislature annually a full report of its activities under this article during fiscal years 1985-1986 and 1986-1987, and annually thereafter so long as any loan guaranteed under this article is outstanding. The report for 1987 shall include an evaluation of the long-term employment implications of the
§5C-l-21. Termination.

The authority of the board of investments to make loans under this article expires on the thirty-first day of December, one thousand nine hundred eighty-seven.

ARTICLE 2. WEST VIRGINIA INDUSTRIAL AND TRADE JOBS DEVELOPMENT CORPORATION.

§5C-2-1. Definitions.

For the purposes of this chapter:
1. (1) The term “enterprise” means a business entity which is or proposes to be engaged in this state in any commercial activity for profit. The entity may be owned, operated, controlled or under the management of a person, partnership, corporation, community-based development organization or council, local commerce group, employee stock ownership plan, pension or profit-sharing plan or trust, a group of participating employees who desire to own an entity which does not presently exist, or any similar entity or organization;
2. (2) The term “board of investments” means the board of investments established by article six, chapter twelve of this code;
3. (3) The term “borrower” means an enterprise, any of its subsidiaries or affiliates, or any other entity the board of investments may designate from time to time which borrows funds for the benefit or use of an enterprise;
4. (4) The term “corporation” means the West Virginia industrial and trade jobs development corporation, unless the context in which such term is used clearly indicates that reference is made to some other corporation;
5. (5) The term “financing plan” means a plan designed to meet the financing needs of an enterprise as reflected in the operating plan;
6. (6) The term “fiscal year” means the fiscal year of an enterprise;
(7) The term "operating plan" means a document detailing production, distribution, and sales plans of an enterprise, together with the expenditures necessary to carry out those plans (including budget and cash flow projections) on an annual basis, and an employment-generating plan setting forth steps to be taken by the enterprise to create jobs and reduce unemployment in this state;

(8) The term "investment" means an investment by the corporation in qualified securities of an enterprise to provide initial capital to the enterprise;

(9) The term "primary employment" means work which pays at least the prevailing wage in the industry, offers adequate fringe benefits, including health insurance, and is not seasonal or part-time;

(10) The term "qualified security" means any note, bond, debenture, convertible debenture, evidence of indebtedness, certificate of deposit for a security, certificate of interest or participation in a patent, trademark, or other intangible property or application therefor, or in general, any interest or instrument commonly known as a security or warrant or right to subscribe to or purchase any of the foregoing, but shall not include any security the ownership of which is prohibited by section six, article ten of the Constitution of the state of West Virginia;

(11) The term "initial capital" shall mean financing that is provided for the development, refinement, and commercialization of a product, process or service, and other initial working capital needs, including formation, organization, promotion, employment, employment training, and similar expenditures incident to the start-up of an enterprise; and

(12) The term "development project" means a commercial or industrial project and all of the assets reasonably and necessarily required for its operation.

§5C-2-2. Creation of the West Virginia industrial and trade jobs development corporation.

(a) For the purpose of aiding the establishment and expansion of industry and trade in this state, encouraging and increasing the use of energy derived from hydrocarbon
sources located in the state of West Virginia, for developing
and maintaining properties now owned or to be owned by
the state of West Virginia throughout this state, and in the
interest of improving employment opportunities in this
state, there is created a body corporate, denominated the
"West Virginia Industrial and Trade Jobs Development
Corporation" (hereinafter referred to as the "corporation").
The board of directors first appointed shall be deemed the
incorporators, and the incorporation shall be held to have
been effected from the date of the first meeting of the board.
(b) The corporation is created and established to serve a
public corporate purpose and to act for the public benefit
and as a governmental instrumentality of the state of West
Virginia, to act on behalf of the state and its people in
improving their health, welfare and prosperity.
§5C-2-3. Directors; number; appointment and terms of office;
compensation; interest in competing business
forbidden.
(a) The board of directors of the corporation
(hereinafter referred to as the "board") shall be composed
of three members, to be appointed by the governor, by and
with the advice and consent of the Senate. No more than
two of the directors shall be from the same political party.
In appointing the board, the governor shall designate the
chairman, vice chairman and treasurer. All other officials,
agents and employees shall be designated and selected by
the board.
(b) The terms of office of the members first taking office
on or after the first day of July, one thousand nine hundred
eighty-five, shall expire as designated by the governor at
the time of nomination, one at the end of the second year,
one at the end of the fourth year, and one at the end of the
sixth year, after the first day of July, one thousand nine
hundred eighty-five. A successor to a member of the board
shall be appointed in the same manner as the original
members and shall have a term of office expiring six years
from the date of the expiration of the term for which his
predecessor was appointed.
(c) In cases of any vacancy in the office of director, such
vacancy shall be filled by appointment by the governor. Any
member appointed to fill a vacancy in the board occurring
prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(d) The governor may remove a director in the case of incompetence, neglect of duty, gross immorality or malfeasance in office, and may declare such director's office vacant and appoint a person for such vacancy as provided in other cases of vacancy.

(e) Vacancies in the board, so long as there shall be two members in office, shall not impair the powers of the board to execute the functions of the corporation, and two of the members in office shall constitute a quorum for the transaction of the business of the board.

(f) Each of the members of the board shall be a citizen of the state of West Virginia. The compensation of each member of the board shall be paid by the corporation as current expenses. Members of the board shall be reimbursed by the corporation for actual expenses (including traveling and subsistence expenses) incurred by them in the performance of the duties vested in the board by this article. No member of said board shall, during his continuance in office, be engaged in any other business, but each member shall devote himself to the work of the corporation.

(g) No officer, member or employee of the corporation shall be financially interested, directly or indirectly, in any contract of any person with the corporation, or in the sale of any property, real or personal to or from the corporation. This section does not apply to contracts or purchases of property, real or personal, between the corporation and any governmental agency. Any officer, member or employee of the corporation who has such financial interest in a contract or sale of property prohibited hereby, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

§5C-2-4. Management and control of corporation; officers; liability.

(a) The board shall direct the exercise of all the powers of the corporation.
(b) The chairman shall be the chief executive officer of the corporation, and, in his absence, the vice chairman shall act as chief executive officer.

c) The board shall annually elect a secretary, who need not be a member of the board, to keep a record of the proceedings of the board and perform such other duties as may be determined appropriate by the board.

d) The treasurer of the corporation shall be custodian of all funds of the corporation, and shall be bonded in such amount as the other members of the board of directors may designate.

e) The directors and officers of the corporation shall not be liable personally, either jointly or severally, for any debt or obligation created by the corporation.

§5C-2-5. Officers and employees; wages of laborers and mechanics.

The board shall, without regard to the provisions of civil service laws applicable to officers and employees of the state of West Virginia, appoint such managers, assistant managers, officers, employees, attorneys and agents as are necessary for the transaction of its business, fix their compensation, define their duties and provide a system of organization to fix responsibility and promote efficiency. Any appointee of the board may be removed in the discretion of the board. No regular officer or employee of the corporation shall receive a salary in excess of that received by the members of the board.

All contracts to which the corporation is a party and which require the employment of laborers and mechanics in the construction, alteration, maintenance, or repair of buildings, gas transmission pipelines, electric power lines, waterworks systems and waterlines, sewer systems and sewage treatment and disposal systems, roads or other projects shall contain a provision that not less than the prevailing rate of wages for work of a similar nature prevailing in the vicinity shall be paid to such laborers or mechanics.

In the event any dispute arises as to what are the prevailing rates of wages, the question shall be referred to the commissioner of the department of labor for determination, and his decision shall be final. In the
determination of such prevailing rate or rates, due regard
shall be given to those rates which have been secured
through collective agreement by representatives of
employers and employees.
Where such work as is described in the two preceding
paragraphs is done directly by the corporation the
prevailing rate of wages shall be paid in the same manner as
though such work had been let by contract.

§5C-2-6. Corporate powers.

(1) In order to foster and expand industry and trade in this
state, the corporation is empowered and directed:
(a) Make, amend and repeal bylaws; and promulgate
rules and regulations in accordance with the provisions of
chapter twenty-nine-a of this code;
(b) Sue and be sued in its corporate name;
(c) Adopt and use a corporate seal;
(d) Make contracts, and execute all instruments
necessary or convenient for the carrying on of its business;
(e) Acquire, own, hold, dispose of and encumber
personal property of any nature, or any interest therein;
(f) Enter into agreements or other transactions with any
federal, state or municipal agency;
(g) Acquire real property, or an interest therein, by
purchase or foreclosure, where such acquisition is
necessary or appropriate to protect or secure any
investment or loan in which the corporation has an interest;
to sell, transfer and convey any such property to a buyer and
in the event such sale, transfer or conveyance cannot be
effected with reasonable promptness or at a reasonable
price, to lease such property to a tenant;
(h) Invest any funds held in reserves or sinking funds, or
any funds not required for immediate disbursement, in such
investments as may be lawful for fiduciaries in the state;
(i) Borrow money and give guarantees, provided that
the indebtedness and other obligations of the corporation
shall be payable solely out of its own resources;
(j) Appoint officers, employees, consultants, agents and
advisors and prescribe their duties and fix compensation
within the limitations provided by law;
(k) Appear in its own behalf before boards,
32 commissions, departments or other agencies of municipal,
33 state or federal government;
34 (l) Procure insurance against any losses in connection
35 with its property in such amounts, and from such insurers,
36 as may be necessary or desirable;
37 (m) Consent, subject to the provisions of any contract
38 with noteholders, whenever it deems it necessary or
39 desirable in the fulfillment of the purposes of this article, to
40 the modification, with the respect to rate of interest, time of
41 payment of any installment of principal or interest, or any
42 other terms of any contract or agreement of any kind to
43 which the corporation is a party;
44 (n) To accept any and all donations, grants, bequests
45 and devises, conditional or otherwise, of money, property,
46 service or other things of value which may be received from
47 the United States or any agency thereof, any governmental
48 agency or any institution, person, firm or corporation,
49 public or private, to be held, used or applied for any or all of
50 the purposes specified in this article, in accordance with the
51 terms and conditions of any such grant. Receipt of each such
52 donation or grant shall be detailed in the annual report of
53 the corporation. Such report shall include the identity of
54 the donor or lender, the nature of the transaction and any
55 conditions attaching thereto;
56 (o) Buy, hold and sell qualified securities;
57 (p) Finance, conduct or cooperate in financing or
58 conducting technological, business, financial or other
59 investigations which are related to or likely to lead to
60 business and economic development by making and
61 entering into contracts and other appropriate
62 arrangements, including the provision of grants, loans and
63 other forms of assistance;
64 (q) Solicit, study and assist in the preparation of
65 business plans and proposals of new or established
66 businesses suitable for support by the corporation;
67 (r) Prepare, publish and distribute, with or without
68 charge as the corporation may determine, such technical
69 studies, reports, bulletins and other materials as it deems
70 appropriate, subject only to the maintenance and respect
71 for confidentiality of client proprietary information;
72 (s) Organize, conduct, sponsor or cooperate in and assist
73 the conduct of special institutes, conferences,
demonstrations and studies relating to the stimulation and formation of industry and trade endeavors;
(t) Provide and pay for such advisory services and technical assistance as may be necessary or desirable to carry out the purposes of this article;
(u) Exercise any other powers of a corporation organized under article one, chapter thirty-one of this code;
(v) Cooperate with state and federal agencies in efforts to promote the expansion of commercial and industrial development in this state.
(w) Request the issuance of revenue bonds by the economic development authority, payable solely from revenues, to pay the cost or finance in whole or in part enterprises or development projects.
(x) Make, upon proper application of any local development agency, loans to such agency for development projects and to provide for the repayment and redeposit of such loans in the manner provided in this article.
(y) Take title by foreclosure to any enterprise or development project where acquisition is necessary to protect any investment or financing previously made by the corporation, and to sell, transfer and convey such enterprise or project, or any part thereof, 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 corporation may lease, sublease, or engage in similar financial transactions with any enterprise or project, under the conditions and for the purposes cited in this section.
(z) 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 any enterprise or development project. The corporation may file its claim against any enterprise or development project 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
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.

(aa) Sell security interests in the loan portfolio of the
corporation. Such security interests shall be evidenced by
instruments issued by the corporation. Proceeds from the
sale of security interests may be issued in the same manner
and for the same purposes as note revenues.

(bb) Procure insurance against any losses in connection
with its property, operations or assets in such amounts and
from such insurers as the corporation deems desirable; and

(cc) Take and hold security interests for investments
and financings on a non-recourse basis.

§5C-2-7. Investment fund.

There is hereby established an investment fund to which
shall be credited any state appropriations or other moneys
made available to the fund.

The corporation shall hold the investment fund in an
account or accounts separate from other funds. The
corporation shall invest and reinvest the fund and the
income thereof, temporarily pending use for the purposes of
this article, in the purchase of such securities as may be
lawful investments for fiduciaries in the state.

All funds may be used to pay for the proper general
expenses of the corporation.

Unless otherwise specified, all moneys of the corporation
from whatever source derived shall be paid to the treasurer
of the corporation.

Funds in said accounts shall be paid out on the warrant or
other order of the treasurer of the corporation and other
person or persons as the board may authorize to execute
such warrants or order.

The fund shall operate as a revolving fund whereby all
appropriations and payments there to may be applied and
reapplied by the corporation for the purposes of this article.

The corporation shall requisition from the fund such
amounts as are necessary to accomplish the purposes of this
article.
Whenever the corporation determines that the balance in the fund is in excess of its immediate requirements, it may request that such excess be invested until needed. In such case such excess shall be invested in a manner consistent with the investment of temporary state funds. Interest earned on any money invested pursuant to this section shall be credited to the fund.

If the corporation determines that funds held in the fund are in excess of the amount needed to accomplish 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 fund shall consist of the following:

(a) Moneys collected and deposited in the state treasury which are specifically designated by acts of the Legislature for inclusion into the fund;

(b) Contributions, grants and gifts from any source, both public and private, which may be used by the corporation for any project or projects;

(c) All interest earned on investments made by the state from moneys deposited in the fund;

(d) The proceeds from the issuance of any revenue bonds issued by the economic development authority in accordance with the provisions of article fifteen, chapter thirty-one of this code; and

(e) The proceeds, repayments, lease or rental receipts, sale proceeds, liquidation proceeds, and any other receipts from investments and financings made pursuant to the authority granted by this article.

§5C-2-8. Investment in qualified securities.

(1) The corporation may invest in qualified securities issued by an enterprise only after:

(a) Receipt of an application from the enterprise which contains a business plan including a description of the enterprise and its management, product, or service and market, a statement of the amount, timing and projected use of the capital required, a statement of the potential economic impact of the enterprise, including the number, location and types of jobs expected to be created, and such other information as the board shall request; and

(b) Approval of the investment by the board after the
board shall find, based upon the application submitted by
the enterprise and such additional investigation as the
corporation shall make, and incorporate in its minutes that:

(1) The proceeds of the investment will be used to cover
the initial capital needs of the enterprise as hereinafter
authorized;

(2) The enterprise has a reasonable chance of success;

(3) The corporation's participation is necessary to the
success of the enterprise because funding for the enterprise
is unavailable in the traditional capital markets, or because
funding has been offered on terms that would substantially
hinder the success of the enterprise;

(4) The enterprise has reasonable potential to create a
substantial amount of primary employment within the state
and this employment, so far as feasible, offers employment
opportunities to unskilled and semiskilled individuals;

(5) The founders or owners of the enterprise have
already made or are prepared to make a financial or time
commitment, or both, to the enterprise;

(6) The securities to be purchased are qualified
securities;

(7) There is a reasonable possibility that the corporation
will recoup at least its initial investment; and

(8) Binding commitments have been made to the
corporation by the enterprise for adequate reporting of
financial data to the corporation which shall include a
requirement for an annual or other periodic audit of the
books of the enterprise, by an independent certified public
accountant, and for such control on the part of the
corporation as the board shall consider prudent over the
management of the enterprise, so as to protect the
investment of the corporation including, in the discretion of
the board and without limitation, right of access to
financial and other records of the enterprise; and

(9) A reasonable effort has been made to find an investor
to make an investment in the enterprise as a coventure, and
that such effort was unsuccessful.

Such findings when made by the board shall conclusive.

(2) The corporation shall not make investments in
qualified securities issued by enterprises in excess of the
following limits:

(a) Not more than one million dollars shall be invested
in the securities of any one enterprise; except that not more
than a total of two million dollars may be invested in the
securities of any one enterprise if the board shall find, after
the initial investment by the corporation, that additional
investments in such enterprise are required to protect the
initial investment of the corporation and the other findings
set forth above are made as to the additional investment:
Provided, That the board may, by rule adopted in
accordance with the provisions of chapter twenty-nine-a of
this code, determine that a higher amount is necessary and
prudent, and may, after hearing, determine that a higher
amount is necessary and prudent in a particular situation.
(b) The corporation shall not invest in securities
representing more than ninety-nine percent of the market
value of the enterprise at the time of investment by the
corporation, after giving effect to the conversion of all
outstanding convertible securities of the enterprise.
(3) Any investment, or proposed investment, by the
corporation, and by all others involved in the enterprise,
shall be exempt transactions under the provisions of section
four hundred two, article four, chapter thirty-two, of this
code.

The corporation may finance development projects, only
after:
(a) Receipt of an application, except that if an
application has been received under section eight of this
article no new application need be received at the discretion
of the board, from the enterprise which contains a business
plan including a description of the enterprise and its
management, product or service and market, a description
of the development project, a statement of the amount,
timing and projected use of the funds, a statement of the
potential economic impact of the development project,
including the number, location and types of jobs expected
to be created, and other information as the board shall
request;
(b) Approval of the financing by the board after the
board shall find based upon the application submitted by
the enterprise and such additional investigation as the
corporation shall make, and incorporate in its minutes that:
(1) The proceeds of the financing will be used for development of the project;
(2) The development project has a reasonable chance of success;
(3) The corporation's participation is necessary to the success of the development project because financing for the development project is unavailable in the traditional capital markets, or because financing has been offered on terms that would substantially hinder the success of the development project;
(4) The development project has reasonable potential to create a substantial amount of primary employment within the state and this employment, so far as feasible, offers employment opportunities to unskilled and semiskilled individuals;
(5) The founders of the development project have already made or are prepared to make a financial or time commitment, or both, to the project;
(6) Binding commitments have been made to the corporation by the project for adequate reporting of financial data to the corporation, which shall include a requirement for an annual or other periodic audit of the books of the project by an independent certified public accountant, and for such control on the part of the corporation as the board shall consider prudent over the management of the project, so as to protect the investment of the corporation including, in the discretion of the board and without limitation, right of access to financial and other records of the project;
(7) A reasonable effort has been made to find other financing for the development project and that such effort was unsuccessful.

Such findings when made by the board shall be conclusive.

The corporation may not finance development projects in excess of the following limits:
(a) one hundred percent of development project costs;
(b) ten million dollars for any one development project:
except that after two years of continual operations, the corporation may finance a total of twenty million dollars of development costs for any one project where the board finds that the development project warrants expansion beyond
the original project limits: Provided, That the board may, by rule adopted in accordance with the provisions of chapter twenty-nine-a of this code, determine that a higher amount is necessary and prudent. The corporation shall utilize appropriate financing documents and notes in making financing arrangements and shall acquire appropriate security interests, deeds of trust, collateral security agreements, senior and junior security arrangements, and other necessary lien-holder interests, not necessitating recourse financing. Any such financing, or proposed financing, by the corporation, and by all others involved in the development project, shall be exempt transactions under the provisions of section four hundred two, article four, chapter thirty-two of this code.

§5C-2-10. Transfer of state property to corporation.

The governor is authorized to provide for the transfer to the corporation of the use, possession, and control of such real of personal property of the state of West Virginia as he may from time to time deem necessary and proper for the purposes of the corporation as herein stated.

§5C-2-11. Principal office of the corporation; account books; directors' oath of office.

(a) The corporation shall maintain its principal office in the immediate vicinity of Charleston, West Virginia or upon the site of any facility.
(b) The corporation shall at all times maintain complete and accurate books of accounts.
(c) Each member of the board, before entering upon the duties of his office, shall subscribe to an oath or affirmation to support the constitution of the state of West Virginia and to faithfully and impartially perform the duties imposed upon him by this article.

§5C-2-12. West Virginia board of investments to act as board of investments for purposes of this article; powers.

The West Virginia state board of investments as heretofore created and constituted under the provisions of article six, chapter twelve of this Code, shall be ex officio a board of investments for public employees retirement
system funds as they are made available for investment in accordance with the provisions of this article, and as such, the board of investments may exercise all of the powers and functions granted to it pursuant to the provisions of said article six in carrying out the duties assigned to it under the provisions of this article.

§5C-2-13. Authority of the board of investments.

(a) Subject to the provisions of this article, the board of investments, on such terms and conditions as it deems appropriate, may invest moneys, securities, and other assets of the public employees retirement system in the form of interest-bearing loans to a borrower, if at the time of the commitment to make the loan, the board of investments determines:

(1) That there exists an employment-generating plan which:

(A) Is satisfactory to the board of investments;
(B) Has been developed in consultation with other appropriate state agencies, including, but not limited to, the department of labor and the office of community and industrial development;
(C) Focuses upon the need to increase the number of jobs available in this state; and
(D) Can be carried out by the borrower;
(2) That the loan is needed to assist the borrower to open a new facility or expand an existing facility, in this state, and that by meeting such need employment will be increased in the state;
(3) That the borrower has submitted to the board of investments a satisfactory operating plan for the 1985-1986 fiscal year and the next succeeding two fiscal years demonstrating the ability of the borrower to generate additional employment in this state in the furnishing of goods and services, and after the thirty-first day of December, one thousand nine hundred eighty-eight, to continue to maintain such increased level of employment without additional loans under the provisions of this article; and
(4) That the board of investments has received such assurances as it shall require that the operating plan is realistic and feasible;
§5C-2-14. Requirements of loan.

(a) A loan may be made under the provisions of this article when such loan is based upon the criteria set forth in section sixteen of this article. In addition, the terms of any such loan shall provide that the loan is made upon the following findings of the board of investments:

(1) That the prospective earning power of the borrower, together with character and value of any security pledged, furnish reasonable assurance of repayment of the loan in accordance with its terms;

(2) That the loan will bear interest at a rate determined by the board of investments to be reasonable, taking into account the current average yield on outstanding investments of the board of investments of the pension funds in the consolidated pension fund established under the provisions of section eight, article six, chapter twelve of this code;

(3) That the corporation has agreed for as long as unpaid balances of principal and interest are outstanding on a loan issued under this article;

(A) To have prepared and submitted on or before the thirtieth day preceding each fiscal year beginning after the thirty-first day of December, one thousand nine hundred eighty-six, a revised operating plan and financial plan...
which cover the two-year period commencing with such fiscal year and which show compliance with the requirements of section sixteen of this article; and

(B) To prepare and deliver to the board of investments within one hundred twenty days following the close of each fiscal year, an analysis reconciling the borrower's actual performance in generating employment in this state with the projected employment for such year as set forth in the operating plan and the financial plan in effect at the start of such fiscal year;

(b) The borrower has agreed to pay such loan fees as may be prescribed by the board of investments from time to time. The board of investments shall prescribe and collect no less frequently than annually a loan fee in connection with each loan made under the provisions of this article. Such fee shall be sufficient to compensate the board of investments for all of the administrative expenses of the board of investments related to the loan, but in no case shall such fee be less than one-half of one percent per annum of the outstanding principal amount of the loan computed daily. All amounts collected by the board of investments pursuant to this subsection (b) shall be deposited in the state treasury as general revenue.

§5C-2-15. Limitations on loan authority.

(a) The authority of the board of investments to make loans under the provisions of this article shall not at any time exceed fifty million dollars in the aggregate principal amount outstanding.

§5C-2-16. Terms and conditions of loans.

(a) Loans made under the provisions of this article shall be payable in full not later than twenty years from the date the loans is made.

(b) The board of investments shall require security for the loans to be made under this article at the time the commitment is made. Any commitment to make a loan under the provisions of this article shall contain all of the affirmative and negative covenants and other protective provisions that the board of investments determines are appropriate.
§5C-2-17. Enforcement of rights accruing to the state.

1 The board of investments shall take such action as may be appropriate to enforce any right accruing to the state or any officer or agency thereof as a result of the making of a loan under the provisions of this article.

§5C-2-18. Tax credit for borrowers.

1 (a) There shall be allowed to every borrower under the provisions of this article, as a credit against the business and occupation tax imposed by article thirteen, chapter eleven of this code, and as a credit against the corporation net income tax imposed by article twenty-four of said chapter eleven, the amount determined under subsection (b) of this section. The liability of such borrower for business and occupation tax and corporation net income tax for the taxable year shall be the tax imposed by said chapter eleven for such taxes, reduced by the sum of the credit allowable under subsection (b) of this section.

12 (b) The amount of credit allowed by subsection (a) for the taxable year shall be equal to the amount of principal and interest paid by the borrower during the taxable year on a loan made under this article, subject to the limitations set forth in subsection (c) of this section.

17 (c) Notwithstanding subsection (b) of this section, the amount of the credit allowed by this section shall not exceed the liability of the borrower for business and occupation tax and corporation net income tax for the taxable year. The tax credit granted under the provisions of this section shall not extend beyond a period of five taxable years. The tax credit granted under the provisions of this section shall be in addition to the credits provided for in articles thirteen-c, thirteen-d and thirteen-e, chapter eleven of this code. There shall be no carryback of unused tax credit to taxable years preceding the tax year, nor shall there be a carryover to taxable years following the tax year.

§5C-2-19. Reports to the Legislature.

1 The board of investments shall submit to the Legislature annually a full report of its activities under this article during fiscal years 1985-1986 and 1986-1987, and annually thereafter so long as any loan guaranteed under this article
§5C-2-20. Termination.

1 The authority of the board of investments to make loans under this article shall expire in accordance with the provisions of article ten, chapter four of this code.

§5C-2-21. Inspection, audit, and investigation.

(a) At any time a request for an application for a loan under this article is pending or a loan under this article is outstanding, the board of investments is authorized to inspect and copy all accounts, books, records, memoranda, correspondence, and other documents and transactions of the borrower.

(b) The legislative auditor shall make such audits as may be deemed appropriate by the President of the Senate and the Speaker of the House of Delegates of all accounts, books, records, memoranda, correspondence, and other documents and transactions of the borrower. No loan may be made under this article unless and until the borrower agrees, in writing, to allow the legislative auditor to make such audits. The legislative auditor shall report the results of all such audits to the Legislature.

(c) The board of investments is empowered to investigate and shall investigate all allegations of fraud, dishonesty, incompetence, misconduct, or irregularity in the management of the affairs of the borrower which are material to the borrower's ability to repay a loan made under the provisions of this article.

CHAPTER 5D. PUBLIC ENERGY AUTHORITY ACT.

ARTICLE 1. PUBLIC ENERGY AUTHORITY OF THE STATE OF WEST VIRGINIA.

§5D-1-1. Short title.

1 This chapter shall be known and cited as the “West Virginia Public Energy Authority Act.”
§5D-1-2. Purpose and intent.

1 The Legislature finds and declares:
2 (a) That the long-term health and economy of the
3 United States will depend upon the availability of reliable
4 sources of energy;
5 (b) That the state of West Virginia has abundant
6 reserves of coal, natural gas and other natural resources;
7 (c) That the economy of the state of West Virginia needs
8 a reliable and dependable market for the state's coal,
9 natural gas and other natural resources;
10 (d) That, with all due regard to the protection and
11 environment and husbandry of the natural resources of this
12 state, the health, happiness, safety, right of gainful
13 employment and general welfare of the citizens of this state
14 will be promoted by the establishment and operation of coal
15 fired electric generating plants and the establishment and
16 operation of natural gas transmission projects and or other
17 energy projects; and
18 (e) That the means and measures herein authorized for
19 the building and operation of the facilities described in
20 subsection (d) are, as a matter of public policy, for the
21 public purpose of the state.
22 Accordingly, the public energy authority created herein
23 shall be authorized to initiate such directions and take such
24 measures as may be necessary to effectuate the public
25 purpose of this chapter.

§5D-1-3. Definitions.

1 As used in this article, unless the context clearly requires
2 a different meaning:
3 (1) "Authority" means the West Virginia public energy
4 authority created in section four of this article, the duties,
5 powers, responsibilities and functions of which are
6 specified in this article.
7 (2) "Board" means the West Virginia public energy
8 authority board created in section four of this article, which
9 shall manage and control the West Virginia public energy
10 authority.
11 (3) "Bond" means a revenue bond or note issued by the
12 West Virginia economic development authority to effect the
13 intents and purposes of this article.
14 (4) "Construction" includes construction,
reconstruction, enlargement, improvement and providing furnishings or equipment.

(5) "Cost" means, as applied to natural gas transmission projects, electric power generating projects or other energy projects authorized by the authority shall include but not be limited to: the cost of their acquisition and construction, including all costs pertaining to pipelines; the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights, contract rights, lease rights and other rights or interests required by the authority for such acquisition and construction; the cost of demolishing or removing any pipeline, buildings or structures on land so acquired, including the cost of acquiring any lands to which such pipelines, buildings or structures may be moved; the cost of acquiring or constructing and equipping a principal office and suboffices of the authority; the cost of diverting highways; interchange of highways and access roads to private property, including the cost of land or easements therefor; the cost of all machinery, furnishings, and equipment; all financing charges, and interest prior to and during construction and after completion of construction; the cost of all engineering services and all expenses of research and development with respect to natural gas transmission projects, electric power generating projects, and related facilities; the cost of all legal services and expenses; cost of all plans, specifications, surveys and estimates of cost and revenues; all working capital and other expenses necessary or incident to determining the feasibility or practicability of acquiring or constructing any such projects; all administrative expenses and such other expenses as may be necessary or incident to the acquisition or construction of any such projects; the financing of such acquisition or construction, and the cost of financing of the placing of any such project in operation. Any obligation or expenses incurred after the effective date of this article by any governmental agency, with the approval of the authority, for surveys, borings, preparation of plans and specifications and other engineering services in connection with the acquisition or construction of a project shall be regarded as a part of the cost of such project and shall be reimbursed out of the proceeds of loans or revenue bonds as authorized by the provisions of this article.
(6) "End-user" means any person who consumes or uses natural gas in connection with any industrial, commercial, residential or other use, except that such term shall not include any person purchasing such natural gas for resale to another person. For purposes of this article, the term end-user shall include local distribution companies and intrastate pipelines as defined in article three, chapter twenty-four of this code.

(7) "Governmental agency" means the state government or any agency, department, division or unit thereof; counties; municipalities; public service districts; regional governmental authorities and any other governmental agency, entity, political subdivision, public corporation or agency; the United States government or any agency, department, division or unit thereof; and any agency, commission or authority established pursuant to an interstate compact or agreement.

(8) "Local distribution company" means any person, other than any interstate pipeline or any intrastate pipeline, engaged in transportation or local distribution of natural gas and the sale of natural gas for ultimate consumption.

(9) "Owner" includes all persons having any title or interest in any property rights, easements and interests authorized to be acquired by this article.

(10) "Person" means any public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; the United States or the state of West Virginia; any federal or state governmental agency; political subdivision; county commission; municipality; industry; public service district; partnership; trust; estate; person or individual; and group of persons or individuals acting individually or as a group or any other legal entity whatever.

(11) "Pipeline" or "pipelines" means any actual lines of pipe for the transmission and distribution of natural gas together with all appurtenances, facilities, structures, equipment, machinery and other items related to the transmission and distribution of gas through lines of pipe.

(12) "Natural gas transmission project" means any natural gas pipeline and all facilities necessary or incident to the transportation of natural gas to or for the benefit of industrial or other end-users in West Virginia, the
acquisition or construction of which is financed in whole or
in part by the West Virginia public energy authority or the
acquisition or construction of which is financed in whole or
in part from funds made available by grant, loan or any
other source by, or through, the authority as provided in
this article, including facilities, the acquisition or
construction of which is authorized in whole or in part by
the West Virginia public energy authority or the acquisition
or construction of which is financed in whole or in part from
funds made available by grant, loan or any other source by,
or through, the authority as provided in this article,
including all pipelines, buildings and facilities which the
authority deems necessary for the operation of the project,
together with all property, rights, easements and interests
which may be required for the operation of the project.
(13) "Electric power generating project" means the
complex of structures, machinery and associated
equipment for the generation and transmission of
electricity produced from coal, and all facilities related or
incidental thereto.
(14) "Revenue" means any money or thing of value
collected by, or paid to, the West Virginia public energy
authority as rates, user fees, services charges or other
charge for the electric power produced by, or for the use of,
or in connection with, any electric power generating
project; or as rent, use, transportation or service fee or
charge for use of, or in connection with, any natural gas
transmission project; or other money or property from any
source which is received and may be expended for or
pledged as revenues pursuant to this article.
§5D-1-4. West Virginia public energy authority created; West
Virginia public energy board created; organization of authority and board; appointment
of board members; term, compensation and expenses; director authority.

There is hereby created the West Virginia public energy
authority. The authority is a governmental instrumentality
of the state and a body corporate. The exercise by the
authority of the powers conferred by this article and the
carrying out of its purposes and duties shall be deemed and
held to be, and are hereby determined to be essential
governmental functions and for a public purpose.
The authority shall be controlled, managed and operated
by a nine member board known as the West Virginia public
energy authority board which is hereby created. The nine
members of the board shall be appointed by the governor,
by and with the advice and consent of the Senate. Two
members shall be appointed to serve a term of two years;
two members shall be appointed to serve a term of three
years; two members shall be appointed to serve a term of
four years; two members shall be appointed to serve a term
of five years; and one member shall be appointed to serve a
term of six years. The successor of each such appointed
member shall be appointed for a term of five years, except
that any person appointed to fill a vacancy occurring prior to
the expiration of the term for which the predecessor was
appointed shall be appointed only the remainder of such
term. Each board member shall serve until the appointment
of his successor. No more than five of the board members
shall at any one time belong to the same political party. No
more than four members of the board shall be employed by
or associated with any industry this authority is empowered
to effect. Board members may be reappointed to serve
additional terms.

All members of the board shall be citizens of the state.
Before entering upon his duties, each member of the board
shall comply with the requirements of article one, chapter
six of this code and give bond in the sum of twenty-five
thousand dollars in the manner provided in article two,
chapter six of this code. The governor may remove any
board member for cause as provided in article six, chapter
six of this code.
Annually the board shall elect one of its members as
chairman and another as vice chairman, and shall appoint a
secretary-treasurer, who need not be a member of the
board. Five members of the board shall constitute a quorum
and the affirmative vote of the majority of members present
at any meeting shall be necessary for any action taken by
vote of the board. No vacancy in the membership of the
board shall impair the rights of a quorum by such vote to
exercise all the rights and perform all the duties of the
board and the authority. The person appointed as
secretary-treasurer, including a board member if he is so
appointed, shall give bond in the sum of fifty thousand dollars in the manner provided in article two, chapter six of this code.

Each member of the board shall receive an annual salary of six thousand dollars, payable in monthly installments. Each member of the board shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duty as a member of such board. All such expenses incurred by the board shall be payable solely from funds of the authority or from funds appropriated for such purpose by the legislature and no liability or obligation shall be incurred by the authority beyond the extent to which moneys are available from funds of the authority or from such appropriations.

There shall also be a director of the authority appointed by the board, who shall be responsible for managing and administering the daily functions of the authority and for performing any and all other functions necessary or helpful to the effective functioning of the authority, together with all other functions and powers as may be delegated to him by the board.

§5D-1-5. Powers, duties and responsibilities of authority generally.

1 The West Virginia public energy authority is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purpose. The authority shall have the power and capacity to:

2 (1) Adopt, and from time to time, amend and repeal bylaws necessary and proper for the regulation of its affairs and the conduct of its business and rules and regulations to implement and make effective its powers and duties, such rules and regulations to be promulgated in accordance with the provisions of chapter twenty-nine-a of this code.

3 (2) Adopt and use an official seal and alter the same at pleasure.

4 (3) Maintain a principal office and, if necessary, regional suboffices at locations properly designated or provided.

5 (4) Sue and be sued in its own name and plead and be impleaded in its own name, and particularly to enforce the
obligations and covenants made under this article. Any actions against the authority shall be brought in the circuit court of Kanawha County.

(5) Apply to the economic development authority for the issuance of bonds payable solely from revenues as provided in article fifteen, chapter twenty-one of this code: Provided, That the economic development authority shall not issue any such bonds except by an act of general law: Provided further, That the powers of eminent domain or condemnation provided for in this section shall not be exercised until such time as the bonds provided for in this paragraph have been approved by an act of general law and issued by the economic development authority.

(6) Acquire by gift or purchase, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties as set forth in this article.

(7) Acquire in the name of the state, by purchase or otherwise, on such terms and in such manner as it deems proper, or by the exercise of the right of eminent domain in the manner provided in chapter fifty-four of this code, such real property or parts thereof or rights therein, rights-of-way, property, rights, easements and interests it deems necessary for carrying out the provisions of this article, and compensation shall be paid for public or private lands so taken.

The term “real property” as used in this article is defined to include lands, structures, franchises and interests in land, including lands under water and riparian rights, and any and all other things and rights usually included within the said term, and includes also any and all interests in such property less than full title, such as easements, rights-of-way, uses, leases, licenses and all other incorporeal hereditaments and every estate, interest or right, legal or equitable, including terms for years and liens thereof by way of judgments, mortgages or otherwise, and also all claims for damages for such real estate.

(8) Make and enter into all contracts and agreements and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers.

(9) Employ managers, superintendents and other employees, and retain or contract with consulting engineers, financial consultants, accounting experts,
architects, attorneys, and such other consultants and
independent contractors as are necessary in its judgment to
carry out the provisions of this article, and fix the
compensation or fees thereof. All expenses thereof shall be
payable solely from the proceeds of revenue bonds or notes
issued by the economic development authority, from
revenues and from funds appropriated for such purpose by
the Legislature.

(10) Receive and accept from any federal agency, or any
other source, grants for or in aid of the construction of any
project or for research and development with respect to
electric power generating projects, natural gas
transmission projects or other energy projects, and receive
and accept aid or contribution from any source of money,
property, labor or other things of value to be held, used and
applied only for the purpose for which such grants and
contributions are made.

(11) Purchase property coverage and liability insurance
for any electric power generating project or natural gas
transmission project or other energy project and for the
principal office and suboffices of the authority, insurance
protecting the authority and its officers and employees
against liability, if any, for damage to property or injury to
or death of persons arising from its operations and any
other insurance which may be provided for under a
resolution authorizing the issuance of bonds or in any trust
agreement securing the same.

(12) Charge, alter and collect transportation fees and
other charges for the use or services of any natural gas
transmission project as provided in this article.

(13) Charge and collect fees or other charges from any
energy project undertaken as a result of this article.

(14) Charge reasonable fees in connection with the
making and providing of electric power and the sale thereof
to corporations, states, municipalities or other entities in
the furtherance of the purposes of this article.

(15) Purchase and sell electricity in and out of the state
of West Virginia.

(16) Enter into wheeling contracts for the transmission
of electric power over another party's lines.

(17) Make and enter into the construction of a facility and
joint ownership with another utility, and the provisions of
(18) Make and enter into joint ownership agreements.
(19) Establish or increase reserves from moneys received or to be received by the authority to secure or to pay the principal of and interest on the bonds and notes issued by the economic development authority pursuant to the provisions of article fifteen, chapter thirty-one of this code.
(20) Broker the purchase of natural gas for resale to end-users: Provided, That whenever there are local distribution company pipelines already in place the authority shall arrange to transport the gas through such pipelines at the rates approved by the public service commission of West Virginia.
(21) Engage in market research, feasibility studies, commercial research, and other studies and research pertaining to electric power generating projects and natural gas transmission projects or any other functions of the authority pursuant to this article.
(22) Enter upon any lands, waters and premises in the state for the purpose of making surveys and examinations as it may deem necessary or convenient for the purpose of this article, and such entry shall not be deemed a trespass, nor shall an entry for such purposes be deemed an entry under any condemnation proceedings which may be then pending, and the authority shall make reimbursement for any actual damages resulting to such lands, waters and premises as a result of such activities.
(23) 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 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 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.

(24) Make or enter into management contracts with a
second party or parties to operate any electric power
generating project or any gas transmission project and
associated facilities, or other related energy project, either
during construction or permanent operation.

(25) Do all acts necessary and proper to carry out the
powers expressly granted to the authority in this article.

(26) Nothing herein shall be construed to permit the
transportation of gas produced outside of this state through
a natural gas transmission project.

§5D-1-6. Authority may construct, finance, maintain, etc.,

electric power generating projects and
transmission facilities.

To accomplish the public policies and purposes and to
meet the responsibility of the state as set forth in this
article, the West Virginia public energy authority may
initiate, acquire, construct, maintain, repair and operate
electric power generating projects and transmission
facilities, and may request the issuance of revenue bonds by
the economic development authority, payable solely from
revenues, to pay the cost or finance in whole or in part such
projects: Provided, That the economic development
authority shall not be authorized to issue any such bonds
except by an act of general law, as provided in article
fifteen, chapter thirty-one of this code. An electric power
generating project shall not be undertaken unless it has
been determined by the authority that the project will be
consistent with the purposes set out in this article. Any
resolution providing for acquiring or constructing such
projects shall include a finding by the authority that such
determinations have been made.

The authority is authorized and directed:

(1) To cooperate with the appropriate agencies and
officials of the United States government to the end that
any electric power generating project shall be so planned
and constructed as to be adaptable to the plans of the
United States.

(2) To apply to the appropriate agencies and officials of
the United States government including the federal power
commission for such licenses, permits or approval of its
plans or projects as it may deem necessary or advisable, and
in its discretion and upon such terms and conditions as it
may deem appropriate, to accept such licenses, permits or
approvals as may be tendered to it by such agencies or
officials and such federal or other public or governmental
assistance as is now or may hereafter become available to it;
and to enter into contracts with such agencies or officials
relating to the construction or operation of any project
authorized by this article.

(3) To proceed with the physical construction or
completion of any project authorized by this article,
including the erection of the necessary power houses and
other facilities, instrumentalties and things necessary or
convenient to that end, and including also the erection of
such transmission lines as may be necessary to conduct the
electricity; and including also the acquisition or
construction of transmission lines or the use of such
transmission lines, available or which may be made
available, to conduct electricity to such point or points at
which the electricity is sold by the authority to any person,
corporation or association, public or private.

(4) To cooperate with and, when the board deems it
feasible and advisable, to enter into contractual
arrangements with utility companies.

(5) To purchase, when available, coal produced in this
state as the fuel source for all electric power generating
projects.

§5D-1-7. Authority may construct, finance, maintain, etc.,
natural gas transmission projects and facilities.

To accomplish the public policies and purposes and to
meet the responsibility of the State as set forth in this
article, the West Virginia public energy authority may
initiate, acquire, construct, reconstruct, enlarge, maintain,
repair, improve, furnish, equip, lease or rent, and operate
natural gas transmission projects at such locations or areas
within the state as may be determined by the authority:
Provided, That at least thirty days prior to exercising any such power, the authority shall provide written notice to any local natural gas distribution company or to any company that transports natural gas in intrastate or interstate commerce, which would experience a direct loss of sales to an end-user presently served by such company as a result of such natural gas transmission project. For purposes of this article, notice shall be given either by personal delivery thereof to the affected company to be so notified, or by depositing such notice in the United States mail, postage prepaid, in an envelope addressed to such affected company.

§5D-1-8. Annual report to governor and Legislature; audit.

The authority shall make an annual report, as soon as possible after the close of each fiscal year, 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.


All expenses incurred in carrying out the provisions of this article shall be payable solely from funds provided under authority of this article. Such article does not authorize the authority to incur indebtedness or liability on behalf of or payable by the state.

§5D-1-10. Use of funds by authority; restrictions.

All moneys, properties and assets acquired by the authority, bonds or as revenues or otherwise, shall be held by it in trust for the purposes of carrying out its powers and duties, and shall be used and reused in accordance with the purposes and provisions of this article. Such moneys shall at no time be commingled with other public funds.

§5D-1-11. Investment of funds by authority.

The authority is hereby authorized and empowered to
invest any funds not needed for immediate disbursement in
any of the following securities:
(1) (i) Direct obligations of or obligations guaranteed by
the United States of America; (ii) evidences of ownership of
a proportionate interest in specified direct obligations of, or
specific obligations the timely payment of the principal of
and the interest on which are unconditionally and fully
guaranteed by, the United States of America, which
obligations are held by a bank or trust company organized
and existing under the law of the United States of America
or any state thereof in the capacity of custodian and (iii)
obligations, the sole source of the payment of the principal
of and interest on which are obligations of the nature of
those described in clause (i), which are irrevocably pledged
for such purpose.
(2) Bonds, debentures, notes or other evidences of
indebtedness issued by any of the following agencies: Banks
for cooperatives; federal intermediate credit banks; federal
home loan bank system; Export-Import Bank of the United
States; federal land banks; the Federal National Mortgage
Association or the Government National Mortgage
Association;
(3) Public housing bonds issued by public agencies or
municipalities and fully secured as to the payment of both
principal and interest by a pledge of annual contributions
under an annual contributions contract or contracts with
the United States of America; or temporary notes issued by
public agencies or municipalities or preliminary loan notes
issued by public agencies or municipalities, in each case,
fully secured as to the payment of both principal and
interest by a requisition or payment agreement with the
United States of America;
(4) Certificates of deposit secure by obligations of the
United States of America;
(5) Direct obligations of or obligations guaranteed by
the state of West Virginia;
(6) Direct and general obligations of any other state
within the territorial United States, to the payment of the
principal of and interest on which the full faith and credit of
such state is pledged: Provided, That at the time of their
purchase, such obligations are rated in either of the two
highest rating categories by a nationally recognized bond-

rating agency;

(7) Any fixed interest bond, note or debenture of any

corporations organized and operating within the United

States: Provided, That such corporation shall have a

minimum net worth of fifteen million dollars and its

securities or its parent corporation’s securities are listed on

one or more of the national stock exchanges: Provided,

however, That (i) such corporation has earned a profit in

eight of the preceding ten fiscal years as reflected in its

statements, and (ii) such corporation has not defaulted in

the payment of principal or interest on any of its

outstanding funded indebtedness during its preceding ten

fiscal years, and (iii) the bonds, notes or debentures of such

corporation to be purchases are rated "AA" or the

equivalent thereof or better than "AA" or the equivalent

thereof by at least two or more nationally recognized rating

services such as Standard and Poor’s, Dun & Bradstreet or

Moody’s; and

(8) Such other investments which at the time of the

acquisition thereof shall be listed as permissible

investments of trusted funds in an official statement,

offering circular or prospectus with respect to indebtedness

which is rated by Moody’s or Standards & Poor not less than

the highest rating assigned by such agencies to any series of

bonds.

§5D-1-12. Maintenance, operation and repair of projects.

Each electric power generating project, each natural gas

transmission project, or other energy project, when

constructed and placed in operation, shall be maintained

and kept in good condition and repair by the authority.

Each such project owned by the authority shall be operated

by such operating employees as the authority employs or

pursuant to a contract or lease with a governmental agency

or person. All public or private property damaged or

destroyed in carrying out the provisions of this article and

in the exercise of the powers granted hereunder with regard

to any project shall be restored or repaired and placed in its

original condition, as nearly as practicable, or adequate

compensation made therefor out of funds provided in

accordance with the provisions of this article.

1 The provisions of sections nine and ten, article six, chapter twelve of this code to the contrary notwithstanding, all revenue bonds issued for the purposes of this article shall be lawful investments for the West Virginia state board of investments and shall also be lawful investments for banking institutions, societies for savings, building and loan associations, savings and loan associations, deposit guarantee associations, trust companies, insurance companies, including domestic for life and domestic not for life insurance companies.

§5D-1-14. Exemption from taxation.

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 natural gas transmission projects and electric power generating projects, and other energy projects will constitute the performance of essential governmental functions, the authority shall not be required to pay any taxes or assessments upon any such project or upon any property acquired or used by the authority or upon the 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.

§5D-1-15. Acquisition of property by authority — acquisition by purchase; governmental agencies authorized to convey, etc., property.

1 The authority may acquire by purchase, whenever it deems such purchase expedient, any land, property, rights, rights-of-way, franchises, easements, leases and other interests in lands it deems necessary or convenient for the construction and operation of any natural gas transmission
project, any electric power generating project, or other
energy project, upon such terms and at such prices it
considers reasonable and can be agreed upon between the
authority and the owner thereof, and take title thereto in
the name of the state.

All governmental agencies, notwithstanding any
contrary provision of law, may lease, lend, grant or convey
to the authority, at its request, upon such terms as the
proper authorities of such governmental agencies deem
reasonable and fair and without the necessity for an
advertisement, auction, order of court or other action or
formality, other than the regular and formal action of the
governmental agency concerned, any real property or
interest therein, including improvements thereto or
personal property which is necessary or convenient to the
effectuation of the authorized purposes of the authority,
including public roads and other real property or interests
therein, including improvements thereto or personal
property already devoted to public use.

§5D-1-16. Authority not public utility and not subject to full
jurisdiction of public service commission;
authority subject to provisions concerning gas
pipeline safety.

Notwithstanding anything contained in this article to the
contrary, and specifically notwithstanding any activities of
the authority which shall constitute a public service, the
authority shall not be considered or deemed a public utility
in any respect for purposes of chapter twenty-four of this
code, and neither the authority, nor any of its activities or
the activities of its agents or employees, nor any project
constructed, maintained or operated by the authority, nor
any other matters pertaining to the authority, shall be
subject to the jurisdiction of the public service commission
of West Virginia, either with respect to the powers of said
public service commission generally, or with respect to its
power over rates, or otherwise: Provided, That the
authority and all natural gas transmission projects which it
constructs, maintains or operates shall nevertheless be
subject to the provisions of chapter twenty-four-b of this
code concerning gas pipeline safety.
§5D-1-17. Transportation of gas from natural gas transportation projects by gas utility pipelines as common carriers.

1 In conjunction with any natural gas transportation project, and for any other purpose in order to effectuate the policies and intent of this article, the authority may petition the public service commission, pursuant to section three-a, article three, chapter twenty-four of this code, to authorize and require the transportation of natural gas for the authority or for any end-user or other person doing business with the authority, by intrastate pipelines with unused or excess capacity not needed to meet its contractual obligations, by interstate pipelines with unused or excess capacity not needed to meet interstate commerce demands, or by local distribution companies.

§5D-1-18. Transportation fees and other revenues from national gas transmission projects owned by the authority.

1 This section shall apply to any natural gas transmission project or projects which are owned by the authority. The authority may charge, alter and collect transportation fees or other charges for the use or services of any natural gas transmission project, and fix the terms, conditions, transportation fees or other charges for such use or services. Such transportation fees or other charges shall not be subject to supervision or regulation by any other authority, department, commission, board, bureau or agency of the state, including specifically the public service commission.

§5D-1-19. Financial interest in contracts prohibited; penalty.

1 No officer, member or employee of the authority shall be financially interested, directly or indirectly, in any contract of any person with the authority, or in the sale of any property, real or personal, to or from the authority. This section does not apply to contracts or purchases of property, real or personal, between the authority and any governmental agency. If any officer, member or employee of the authority has such financial interest in a contract or sale of property prohibited hereby, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, or imprisoned in the
county jail not more than one year, or both fined and imprisoned.

§5D-1-20. Personal liability of members or persons acting on behalf of the authority.

(a) No director or any person acting on behalf of the authority executing any contracts, comments or agreements issued pursuant to this article shall be liable personally upon such contracts, comments or agreements or be subject to any personal liability or accountability by reason thereof; and

(b) No director or any person acting on behalf of the authority shall be personally liable for damage or injury resulting from the performance of his duties hereunder.

§5D-1-21. Meetings and records of authority to be kept public.

All meetings of the authority shall be open to the public and the records of the authority shall be open to public inspection at all reasonable times, except as otherwise provided in this section. All final actions of the authority shall be journalized and such journal shall also be open to the inspection of the public at all reasonable times. Any records or information relating to secret processes or secret methods of manufacture or production which may be obtained by the authority or other persons acting under authority of this article are confidential and shall not be disclosed.

§5D-1-22. Liberal construction of article.

The provisions of this article are hereby declared to be remedial and shall be liberally construed to effectuate its purposes and intents.

§5D-1-23. Severability.

If any section, part, provision, subsection, subpart, subdivision, paragraph or subparagraph of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect any other section, part provision, subsection, subpart, subdivision, paragraph or subparagraph of this article or its application or validity,
and to this end the provisions of this article are declared to be severable.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 1A. LINKED DEPOSIT PROGRAM.

§12-1A-1. Definitions.

(a) "Eligible small business" means any business which employs two hundred or less employees or has gross annual receipts of four million dollars or less.

(b) "Eligible lending institution" means a financial institution that is eligible to make commercial loans, is a public depository of state funds and agrees to participate in the linked deposit program.

(c) "Linked deposit" means a certificate of deposit placed by the state treasurer with an eligible lending institution at up to three percent below current market rates, as determined and calculated by the state treasurer, provided the institution agrees to lend the value of such deposit, according to the deposit agreement provided for by this article, to eligible small businesses at three percent below the present borrowing rate applicable to each specific business at the time of the deposit of state funds in the institution.

§12-1A-2. Legislative findings.

The Legislature finds that many small businesses throughout the state are experiencing economic stagnation or decline, that high interest rates have caused small businesses in this state to suffer disproportionately in profitability and competition and that such high interest rates have fostered a serious increase in unemployment. The linked deposit program provided for by this article is intended to provide a statewide availability of lower cost funds for lending purposes that will materially contribute to the economic revitalization of this state. Accordingly, it is declared to be the public policy of the state through the linked deposit program to create an availability of lower-cost funds to inject needed capital into the business community, sustain or improve business profitability and protect the jobs of citizens of this state.
§12-1A-3. Limitations on investment in linked deposits.

1 The state treasurer may invest in linked deposits, provided that at the time of placement of the linked deposit not more than ten percent of the state’s total investment portfolio is so invested. The total amount so deposited at any one time shall not exceed, in the aggregate, one hundred million dollars.

§12-1A-4. Applications for loan priority; loan package.

1 (a) An eligible lending institution that desires to receive a linked deposit shall accept and review applications for loans from eligible small businesses. The lending institution shall apply all usual lending standards to determine the creditworthiness of each eligible small business.

2 (b) An eligible small business shall certify on its loan application that the reduced rate loan will be used exclusively to create new jobs or preserve existing jobs and employment opportunities. Whoever knowingly makes a false statement concerning such application shall be prohibited from entering into the linked deposit loan program.

3 (c) In considering which eligible small businesses should receive reduced rate loans, the eligible lending institution shall give priority to the economic needs of the area in which the business is located and the number of jobs to be created or preserved by the receipt of such loan.

4 (d) The eligible financial institution shall forward to the state treasurer a linked deposit loan package, in the form and manner as prescribed by the state treasurer. The package shall include such information as required by the state treasurer, including the amount of the loan requested and the number of jobs to be created or sustained by each eligible small business. The institution shall certify that each applicant is an eligible small business, and shall, for each business, certify the present borrowing rate applicable to each specific eligible business.

§12-1A-5. Acceptance or rejection of loan package; deposit agreement.

1 (a) The state treasurer may accept or reject a linked deposit loan package or any portion thereof, based on the
ratio of state funds to be deposited to jobs sustained or
created.

(b) Upon acceptance of the linked deposit loan package
or any portion thereof, the state treasurer may place
certificates of deposit with the eligible lending institution
at three percent below current market rates, as determined
and calculated by the state treasurer. When necessary, the
treasurer may place certificates of deposit prior to
acceptance of a linked deposit loan package.

(c) The eligible lending institution shall enter into a
deposit agreement with the state treasurer, which shall
include requirements necessary to carry out the purposes of
this article. Such requirements shall reflect the market
conditions prevailing in the eligible lending institution's
lending area. The agreement may include a specification of
the period of time in which the lending institution is to lend
funds upon the placement of a linked deposit and shall
include provisions for the certificates of deposit to be
placed for up to two-year maturities that may be renewed
for up to an additional two years. Interest shall be paid at
the times determined by the state treasurer.

§12-1A-6. Rate of loan; certification and monitoring of
compliance; reports.

(a) Upon the placement of a linked deposit with an
eligible lending institution, such institution is required to
lend such funds to each approved eligible small business
listed in the linked deposit loan package required in
subsection (d), section four of this article, and in accordance
with the deposit agreement required by subsection (c),
section five of this article. The loan shall be at three percent
below the present borrowing rate applicable to each
business. A certification of compliance with this section in
the form and manner as prescribed by the state treasurer
shall be required of the eligible lending institution.

(b) The state treasurer shall take any and all steps
necessary to implement the linked deposit program and
monitor compliance of eligible lending institutions and
eligible small businesses. The state treasurer and the
industrial development authority shall notify each other at
least quarterly of the names of the businesses receiving
financial assistance from their respective programs.
By the first day of January, April, July and October of each year, the treasurer shall report on the linked deposit program for the preceding calendar quarter to the governor and to the joint committee on government and finance. The reports shall set forth the linked deposits made by the state treasurer under the program during the quarter and shall include information regarding the nature, terms and amounts of the loans upon which the linked deposits were based and the eligible small business to which the loans were made.

§12-1A-7. Liability of state and treasurer.

The state and the state treasurer are not liable to any eligible lending institution in any manner for payment of the principal or interest on the loan to an eligible small business. Any delay in payment or default on the part of an eligible small business does not in any manner affect the deposit agreement between the eligible lending institution and the state treasurer.

CHAPTER 19. AGRICULTURE.

ARTICLE 1A. DIVISION OF FORESTRY.

§19-1A-1. Legislative findings.

The Legislature finds that West Virginia has extensive forest resources and their continued development and expansion is vital to the economic well-being of the state and its people. The Legislature also finds that the production potential of the state’s forest resources remains far greater than the present demand. The Legislature further finds that the promotion of existing forest products industries and the promotion of new forest products industries would benefit the state in terms of employment and additional revenue to the state. The Legislature further finds and declares that, to increase employment and boost the state’s economy, the limits to the development of the potential of West Virginia forest resources must be reduced through an intensive campaign aimed at making new contacts, developing new and existing markets and increasing public awareness of the advantages of the forest resources in West Virginia.
The Legislature further finds that the state forests are an important resource for silvicultural and scientific research; developed and undeveloped outdoor recreation; propagation of forest trees, fish and wildlife; wildlife and fisheries management; aesthetic preservation; hunting and fishing; timber production; and demonstration of state-of-the-art forestry management and therefor should be managed on a multiple-use basis.

§19-1A-2. Legislative purposes.

The purposes of this article are to provide for promoting West Virginia products; promoting new forest products industries; developing existing forest product industries; promoting coordination of all state forests resources; advising the governor and Legislature on all aspects of forestry, the management of state forests for conservation and preservation of wildlife, fish, forest species, natural areas, aesthetic and scenic values and to provide developed and undeveloped outdoor recreational opportunities, and hunting and fishing for the citizens of this state and its visitors.

§19-1A-3. Division of forestry; division director; duties, powers, lands, records, equipment, appropriations and personnel transferred; creation of a special revenue account.

The division of forestry which existed within the department of natural resources pursuant to article three, chapter twenty of this code is hereby abolished. And, except as otherwise provided in this article, all powers and duties previously exercised by the director of natural resources under subsection thirteen, section seven, article one and article three, chapter twenty of this code, except those powers and duties relating solely to wildlife areas as described in section three, article three, chapter twenty of this code are hereby transferred to the division of forestry herein created in the department of agriculture. All books, papers, maps, charts, plans, literature and other records, equipment, personnel, buildings, structures, other tangible properties and assets and appropriations used by or assigned to the division shall be transferred with the program. However, nothing in this article shall be
construed as to transfer the legal title to any real property possessed by the department of natural resources prior to the thirtieth day of June, one thousand nine hundred eighty-five. The division of forestry of the department of agriculture shall have within its jurisdiction and supervision the state forests, other forests and woodland areas, the protection of forest areas from injury and damage by fire, disease, insects and other pestilences and forces the management of forest areas for natural resources, conservation and undeveloped recreational activities, administration of the southeastern interstate forest fire protection compact and other compacts and agreements relating to forest management and husbandry, and the administration and enforcement of laws relating to the conservation, development, protection, use and enjoyment of all forest land areas of the state consistent with the provisions of this chapter. All moneys collected from the sale of timber realized through management of the state-owned forests and the sale of seedlings from the tree nurseries shall be paid into the state treasury and into a special account therein to be subsequently appropriated to the department of agriculture for the administration of this article.

The chief of the division shall be designated state forester and shall be responsible for the execution and administration of the provisions of this article as an integral part of the natural resources program of the state. In addition to meeting merit system or civil service qualifications and requirements, the state forester shall be a graduate of an accredited school of forestry with practical experience and training in forestry field organization and programs. All other personnel shall be transferred with the current merit or civil service ratings they now hold under the civil service system.

The state forester shall study means and methods of implementing the provisions of section fifty-three, article six of the Constitution of West Virginia, relating to forest lands, and shall prepare and recommend to the commissioner legislation thereon.

The commissioner of the department of agriculture shall meet with the state forester and the director of the department of natural resources prior to the first day of
June, one thousand nine hundred eighty-five, to facilitate
the orderly transfer of the forestry division, books, papers,
maps, charts, plans, literature, records, equipment,
buildings, structures and other tangible properties and
assets. The director of the department of natural resources
shall cooperate fully to ensure that present forestry
operations and programs are not discontinued prior to the
transfer which shall be the first day of July, one thousand
nine hundred eighty-five. The director of the department of
natural resources and the commissioner shall work out a
pro-rata agreement for continuation of the present
occupancy of any buildings transferred that are occupied
by the department of natural resources personnel, other
than personnel of the forestry division and for any buildings
that are not transferred, but which are partially occupied
by personnel of the forestry division.
The state forester shall immediately after the transfer of
the division of forestry establish a system to divide the
forests being transferred to the department of agriculture
for management from the cabins, lodges and improved
recreational facilities which shall remain with the parks
division of the department of commerce.
In establishing the division lines, the commissioner and
the state forester shall cooperate fully to ensure that
management of improved property essential to the parks
division is not transferred.
In the event of disagreement over the placement of a
division line or dual occupancy of a building, the
disposition shall be decided by the Legislature’s joint
committee on government and finance at a regularly
scheduled meeting. The transfer of management shall
include a transfer of all appurtenances, equipment
products, inventories and forest facilities.
All personnel employed in the division of forestry within
the department of natural resources and whose
employment is being transferred to the department of
agriculture shall retain their coverage under the civil
service commission and civil service system, and all matters
relating to job classification, job tenure, salary and
conditions of employment shall remain in force and effect
from and after the effective date of this article.
100 The chief of the division of forestry in the department of
101 natural resources on the effective date of transfer to the
102 department of agriculture shall continue as, and thereafter
103 be designated as, the state forester and retain civil service
104 system coverage with such duties and responsibilities as
105 may be assigned by the director.

§19-1A-4. Additional duties of the director of the division of
106 forestry generally.

1 The division director shall encourage and assist in the
2 location of new and expansion of existing wood products
3 business and industry; stimulate and assist in the expansion
4 of the forest industry; cooperate and act in conjunction with
5 other organizations, public or private, the objects of which
6 are the promotion and advancement of the wood products
7 industry in this state. The division shall arrange for or
8 conduct research in forest utilization and the marketing of
9 forest products, affecting the industrial and commercial
10 development of the state; shall correlate and interchange
11 information and disseminate the results of such research;
12 and shall, to the extent considered necessary, provide for or
13 conduct additional research projects or pilot plant
14 demonstrations of research results by cooperating with all
15 appropriate existing educational, public and industrial
16 institutions or agencies of the state.
17 The division director may exercise all powers necessary
18 or appropriate to carry out and effectuate the purposes of
19 this section, including the following powers, in addition to
20 others herein granted:
21 (a) To cooperate with industrial development agencies
22 in their efforts to promote the expansion of forest resources;
23 and
24 (b) To pursue research and education related to forest
25 resources and their multiple use, including conservation,
26 management and utilization, evaluation of forest land use
27 and the maintenance of the rural environment; the
28 manufacture and marketing of forest products, the
29 protection of recreation and aesthetic values, and the
30 organization of technical advisory committees to assist in
31 all or any of these or any aspect of forestry.
32 The director shall study ways and shall advise the

33 governor and the Legislature on all aspects of what is
34 needed to:
35 (1) Improve the business climate for forest industries
36 and the general awareness of forestry potential;
37 (2) Develop a strong state forestry agency;
38 (3) Improve forest resources data;
39 (4) Improve the transportation system for wood
40 products; and
41 (5) Improve forestry knowledge and practices of private
42 landowners.
43 (c) To accept and use gifts, donations or contributions
44 from individuals, associations, corporations and to acquire
45 by gift, lease or purchase real estate for purposes within the
46 powers and duties of the division.
47 (d) To promulgate rules and regulations, subject to the
48 provisions of chapter twenty-nine-a of this code, for the
49 management of state forests and to implement the programs
50 and policies of this article.

§19-1A-5. Forestry commission; qualifications and
appointment of director, powers and duties
generally; appointment of director by governor.

1 There is hereby created in the division of forestry in the
2 department of agriculture a forestry commission composed
3 of three members who are the commissioner of agriculture,
4 the commissioner of commerce and the director of the
5 department of natural resources. The commissioner of
6 agriculture shall be the chairman of the commission. No
7 business shall be transacted by the commission in the
8 absence of a quorum which consists of two members
9 including the chairman. The forestry commission shall hold
10 meetings quarterly or at the call of the chairman. The
11 commission shall appoint the director of the division of
12 forestry. In the event that the commission cannot agree
13 upon the appointment of a director within sixty days of any
14 vacancy therein, the appointment shall be made by the
15 governor within sixty days thereafter, but by with the
16 advice and consent of the Senate, in either event. The salary
17 of the director shall be forty-five thousand dollars a year.
18 The director shall be a graduate of a school of forestry
19 accredited by the Society of American Foresters or have a
minimum of ten years experience in forest management and shall serve at the will and pleasure of the forestry commission. The commission serves as an advisory board for the director and shall approve the division budget before it is submitted to the department of finance and administration by the department.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.


Subject to any controlling rules and regulations of the department of finance and administration relating to state fiscal management policies and practices, the director shall establish in the department an adequate budget, finance and accounting system which will currently and accurately reflect the fiscal operations and conditions of the department at all times. The department's accounting and auditing services shall be on a fiscal-year basis. The director shall select and designate a competent and qualified person as department fiscal officer who, under the supervision of the director, shall be responsible for all budget, finance and accounting services of the department. All moneys received by the department shall be recorded and shall be paid as special revenue to the department of natural resources, as provided in subdivision (i), section two, article two, chapter twelve of this code, except in cases wherein certain receipts of the department are by specific provisions of this chapter required to be paid into some special fund or funds.

§20-1-14. Divisions within department.

Divisions of game and fish, of forestry, of water resources, of law enforcement and of reclamation are hereby created and established within the department. Subject to provisions of law, the director shall allocate the functions and services of the department to the divisions, offices and activities thereof and may from time to time establish and abolish other divisions, offices and activities within the department in order to carry out fully and in an orderly manner the powers, duties and responsibilities of his office.
as director. The director shall select and designate a
competent and qualified person to be chief of each division.
The chief shall be the principal administrative officer of his
division and shall be accountable and responsible for the
orderly and efficient performance of the duties, functions
and services thereof.

ARTICLE 7. LAW ENFORCEMENT, PROCEDURES AND PENALTIES;
MOTORBOATING.

PART I. LAW ENFORCEMENT, PROCEDURES AND PENALTIES.

§20-7-1. Chief conservation officer; conservation officers;
special and emergency conservation officers;
subsistence allowance; expenses.

The department's law-enforcement policies, practices
and programs shall be under the immediate supervision and
direction of the department law-enforcement officer
selected by the director and designated as chief
conservation officer as provided in article one hereof.
Under the supervision of the director, the chief
conservation officer shall organize, develop and maintain
law-enforcement practices, means and methods geared,
timed and adjustable to seasonal, emergency and other
needs and requirements of the department's comprehensive
natural resources program. All department personnel
detailed and assigned to law-enforcement duties and
services hereunder shall be known and designated as chief
conservation officers and shall be under the immediate
supervision and direction of the chief conservation officer.
All such conservation officers shall be trained, equipped
and conditioned for duty and services wherever and
whenever required by department law-enforcement needs.
The chief conservation officer, acting under supervision
of the director, is authorized to select and appoint
emergency conservation officers for a limited period of time
for effective enforcement of the provisions of this chapter
when considered necessary because of emergency or other
unusual circumstances. The emergency conservation
officers shall be selected from qualified civil service
personnel of the department, except in emergency
situations and circumstances when the director may
designate such officers, without regard to such
requirements and qualifications, to meet law-enforcement needs. Emergency conservation officers shall exercise all powers and duties prescribed in section four of this article for full-time salaried conservation officers except the provisions of subdivision (8).

The chief conservation officer, acting under supervision of the director, is also authorized to select and appoint as special conservation officers any full-time civil service employee who is assigned to, and has direct responsibility for management of, an area owned, leased or under the control of the department and who has satisfactorily completed a course of training established and administered by the chief conservation officer, when such action is deemed necessary because of law-enforcement needs. The powers and duties of a special conservation officer, appointed under this provision, shall be the same within his assigned area as prescribed for full-time salaried conservation officers. The jurisdiction of such person appointed as a special conservation officer, under this provision, shall be limited to the department area or areas to which he is assigned and directly manages.

The chief conservation officer, acting under supervision of the director, is also authorized to appoint as special conservation officers any full-time civil service forest fire control personnel who have satisfactorily completed a course of training established and administered by the chief conservation officer. The jurisdiction of forest fire control personnel appointed as special conservation officers shall be limited to the enforcement of the provisions of article three of this chapter.

The chief conservation officer, with the approval of the director, shall have the power and authority to revoke any such appointment of an emergency conservation officer or of a special conservation officer at any time.

Conservation officers shall be subject to seasonal or other assignment and detail to duty whenever and wherever required by the functions, services and needs of the department.

The chief conservation officer shall designate the area of primary residence of each conservation officer, including himself. Since the area of business activity of the department is actually anywhere within the territorial
confiness of the state of West Virginia, actual expenses incurred shall be paid whenever the duties are performed outside the area of primary assignment and still within the state.

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.


1 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 revenue 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 be 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 issued 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.

(z) To make, upon proper application, loans for the purposes and under the conditions provided in this article, for electrical power generating facilities, natural gas transmission lines, coal processing plants, other energy projects, export development, farm development, job development, forest development, and for automobile assistance corporation projects, and the industrial and trade jobs development corporation projects, and to
provide for the repayment and redeposit of such loans in the manner provided in this article: Provided, That no bonds shall be issued for the constructing of electrical power generating facilities, natural gas transmission lines or other energy projects unless the same shall be specifically provided for by an act of general law, after public notice and public hearing.

(aa) To take title by foreclosure to any project, plant, property or equipment where acquisition is necessary to protect any loan previously made by the authority and to sell, transfer and convey such project, plant, property or equipment 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 a project to a responsible tenant.

(bb) To borrow money for its purpose and issue bonds or notes for the money and provide for the rights of the holders of the bonds or notes, and to secure the bonds or notes by a deed of trust on, or an assignment or pledge of, any or all of its property and property of the project, including any part of the security for the project loans, and the authority may issue its bonds and notes in such principal amounts as it shall deem necessary to provide funds for any purposes under this article, including the making of loans for the purposes set forth in subsection (z) of this section.

§31-15-7b. Loans for construction of electrical power generating facilities, natural gas transmission lines, coal processing plants, other energy projects; and export development, farm development, job development, forest development and projects.

(a) At the request of the governor or the appropriate state agency or authority, the authority may lend money to such office, agency or authority for the acquisition, construction, improvement or alteration of projects for electrical power generating facilities, natural gas transmission lines, coal processing plants and other energy projects.

(b) At the request of the department of commerce or the office of community and industrial development, the
authority may lend money to any person or entity for the
acquisition, construction, improvement or alteration of any
project relative to export development, farm development,
job development and forest development.
(c) At the request of the West Virginia automobile
assistance corporation, the authority may lend money to
any person or entity for the acquisition, construction,
improvement or alteration of any project relative thereto.
(d) At the request of the West Virginia industrial and
trade jobs development corporation, the authority may lend
money to any person or entity for the acquisition,
construction, improvement or alteration of any project
relative thereto.
(e) A loan shall not be made unless the authority is
reasonably satisfied that the project will produce revenues
sufficient, together with any other revenues pledged, to
meet the principal and interest on the loan, other costs,
expenses and charges in connection with the loan and other
charges or obligations of the project which may be prior or
equal to the loan, promptly as they become due; that the
project is otherwise soundly financed; that the loan
application requirements of section eight of this article
have been satisfied; that the project will be owned and
operated by the state of West Virginia. A loan made
pursuant to this subsection shall not exceed the project
costs as determined by the authority. A loan shall be
secured in the manner required by the authority, shall be
repaid in a period and bear interest at a rate as determined
by the authority, which interest rate may be decreased or
increased so that it shall in no event be less than the rate
paid by the authority on notes, renewal notes or bonds
issued to fund the loan, and shall have such terms and
conditions as are required by the authority, all which shall
be set forth in a loan agreement and related documents as
required by the authority.
§31-15-7c. Bonds and notes issued pursuant to section seven-b.
The following provisions apply to loans made pursuant to
section seven-b of this article:
(a) The authority periodically may issue its negotiable
bonds and notes in a principal amount which, in the opinion
of the authority, shall be necessary to provide sufficient
funds for the making of loans provided for in section seven-
(b) of this article, including temporary loans during the
construction of such projects, for the payment of interest on
bonds and notes of the authority during construction of
such projects and for a reasonable time thereafter and for
the establishment of reserves to secure those bonds and
notes.
(b) No bonds shall be issued for any projects for an
electrical power generating facility, a natural gas
transmission line or other energy project unless the same
shall be specifically provided for by an act of general law.
(c) The authority periodically may issue renewal notes,
may issue bonds to pay notes and, if it considers refunding
expedient, to refund or to refund in advance, bonds or notes
issued by the authority by the issuance of new bonds.
(d) Except as may otherwise be expressly provided by
the authority, every issue of its notes or bonds shall be
special obligations of the authority, payable solely from the
property, revenues or other sources of or available to the
authority pledged therefor.
(e) The bonds and the notes shall be authorized by
resolution of the authority, shall bear such date and shall
mature at such time or times, as such resolution may
provide. The bonds and notes 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
payable in such medium of payment and at such place or
places and be subject to such terms of redemption as the
authority may authorize. The bonds and notes of the
authority may be sold by the authority, at public or private
sale, at or not less than the price the authority determines.
The bonds and notes shall be executed by the chairman and
vice chairman of the board, both of whom may use facsimile
signatures. The official seal of the authority or a facsimile
thereof shall be affixed to or printed on each bond and note
and attested, manually or by facsimile signature, by the
secretary-treasurer of the board, and any coupons attached
to any bond or note shall bear the signature or facsimile
signature of the chairman of the board. In case any officer
whose signature, or a facsimile of whose signature, appears
on any bonds, notes or coupons ceases to be such officer
before delivery of such bonds or notes, such signature or
A facsimile is nevertheless sufficient for all purposes the same as if he had remained in office until such delivery; and, in case the seal of the authority has been changed after a facsimile has been imprinted on such bonds or notes, such facsimile seal will continue to be sufficient for all purposes. A resolution authorizing bonds or notes or an issue of bonds or notes under this article may contain provisions, which shall be a part of the contract with the holders of the bonds or notes, as to any or all of the following:

1. Pledging and creating a lien on all or any part of the fees and charges made or received or to be received by the authority, all or any part of the moneys received in payment of project loans and interest on project loans and all or any part of other moneys received or to be received, to secure the payment of the bonds or notes or of any issue of bonds or notes, subject to those agreements with bondholders or noteholders which then exist;

2. Pledging and creating a lien on all or any part of the assets of the authority, including notes, deeds of trust and obligations securing the assets, to secure the payment of the bonds or notes or of any issue of bonds or notes, subject to those agreements with bondholders or noteholders which then exist;

3. Pledging and creating a lien on any loan, grant or contribution to be received from the federal, state or local government or other source;

4. The use and disposition of the income from project loans owned by the authority and payment of the principal of and interest on project loans owned by the authority;

5. The setting aside of reserves or sinking funds and the regulation and disposition thereof;

6. Limitations on the purpose to which the proceeds of sale of bonds or notes may be applied and pledging the proceeds to secure the payment of the bonds or notes or of any issue of the bonds or notes;

7. Limitations on the issuance of additional bonds or notes and the terms upon which additional bonds or notes may be issued and secured;

8. The procedure by which the terms of a contract with
the bondholders or noteholders may be amended or abrogated, the amount of bonds or notes the holders of which must consent thereto and the manner in which the consent may be given; and
(9) Vesting in a trustee or trustees the property, rights, powers, remedies and duties which the authority considers necessary or convenient.

§31-15-7d. Trustee for bondholders; contents of trust agreement; relating to bonds issued pursuant to section seven-c of this article.

1 For bonds issued pursuant to the provisions of section seven-c of this article, in the discretion of the authority, any bonds, including refunding bonds or notes issued by the authority, may be secured by a trust agreement between the authority and a corporate trustee, which trustee may be any trust company within or without the state. Any such trust agreement may contain provisions as set forth in section seven-c of this article with respect to resolution. All expenses incurred in carrying out the provisions of any trust agreement may be treated as a part of the costs of the operation of the project loan program provided for hereunder. Any such trust agreement, indenture or resolution authorizing the issuance of bonds or notes may provide the method whereby the general administrative overhead expenses of the authority shall be allocated among the several projects for which project loans have been made.

§31-15-7e. Use of funds by authority; restrictions thereon; relating to projects under section seven-b of this article.

1 For projects described in and loans made pursuant to section seven-b of this article, and bonds and notes issued pursuant to section seven-c thereof:
2 All moneys, properties and assets acquired by the authority, whether as proceeds from the sale of bonds or notes or as revenues or otherwise, shall be held by it in trust for the purposes of carrying out its powers and duties and shall be used and reused in accordance with the purposes and provisions of this article. Such moneys shall at no time be commingled with other public funds. Such moneys,
except as otherwise provided in any resolution authorizing the issuance of bonds or notes or in any trust agreement securing the same, or except when invested pursuant to this article, shall be kept in appropriate depositories and secured as provided and required by law. The resolution authorizing the issuance of such bonds or notes of any issue or the trust agreement securing such bonds or notes shall provide that any officer to whom, or any banking institution or trust company to which, such moneys are paid, shall act as trustee of such moneys and hold and apply them for the purposes hereof, subject to the conditions this article and such resolution or trust agreement provide.

§31-15-7f. Security for bonds and notes issued pursuant to section seven-c of this article.

A resolution authorizing the issuance of bonds or notes under section seven-c of this article may provide that the principal of and interest on the bonds or notes issued shall be secured by a lien on any or all of the fees and charges made or received, or to be received, by the authority from the project in connection with the project loan, on any or all of the money received in payment of the project loan and interest thereon, on any or all of investment earnings or profits on any of these sources or on any or all of the security held for that payment, and on other funds or assets of the authority or of any other agency, person or entity pledged for such purpose.

§31-15-7g. Enforcement of payment and validity of bonds and notes issued pursuant to section seven-c of this article.

For bonds and notes issued pursuant to section seven-c of this article:

(a) The provisions of this article and any resolution, indenture, deed of trust or security agreement shall continue in effect until the principal of and interest on the bonds or notes of the authority have been fully paid, and the duties of the authority under this article and any resolution, indenture, deed of trust or security agreement shall be enforceable by any bondholder or noteholder by mandamus, trustee's sale under the deed of trust or other appropriate action in any court of competent jurisdiction.
(b) The resolution authorizing the bonds or notes shall provide that such bonds or notes shall contain a recital that they are issued pursuant to this article, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

§31-15-7h. Pledges; time; liens; recordation; bonds issued pursuant to section seven-c of this article.

For bonds and notes issued pursuant to section seven-c of this article, any pledge made by the authority shall be valid and binding from the time the pledge is made. The money or property so pledged and thereafter received by the authority shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act. The lien of any such pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether such parties have notice thereof.

§31-15-7i. Refunding bonds; bonds issued pursuant to section seven-c of this article.

Any bonds issued pursuant to the provisions of section seven-c of this article and at any time outstanding may at anytime and from time to time be refunded by the authority by the issuance of its refunding bonds in such amount as it may deem necessary to refund the principal of the bonds so to be refunded, together with any unpaid interest thereon; to provide additional funds for the purposes of the authority; and to pay any premiums and commissions necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the redemption of the bonds to be refunded thereby or by exchange of the refunding bonds for the bonds to be refunded thereby: Provided, That the holders of any bonds so to be refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption. Any refunding bonds issued under the
authority of this article shall be payable from the revenues
out of which the bonds to be refunded thereby were
payable, from other moneys or from the principal of and
interest on or other investment yield from investments or
proceeds of bonds or other applicable funds and moneys,
including investments of proceeds of any refunding bonds,
shall be subject to the provisions contained in section
seven-c of this article and shall be secured in accordance
with the provisions of sections seven-c and seven-d of this
article.

§31-15-7j. Purchase and cancellation of notes or bonds issued
pursuant to section seven-c of this article.
1 For bonds and notes issued pursuant to the provisions of
section seven-c of this article:
3 The authority, subject to such agreements with
noteholders or bondholders as may then exist, shall have
power, out of any funds available therefor, to purchase
bonds, including refunding bonds, or notes of the authority.
7 If the bonds or notes 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 bonds or notes 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 bonds or notes become subject to
redemptions plus accrued interest to such date. Upon such
purchase, such bonds or notes shall be cancelled.

§31-15-7k. Vested rights; impairment; bonds issued pursuant
to section seven-c of this article.
1 The state pledges and agrees with the holders of any
bonds or notes issued under the provisions of section seven-
c of this article that the state will not limit or alter the rights
vested in the authority to fulfill the terms of any agreements
made with the holders thereof, or in any way impair the
rights and remedies of the holders until the bonds or notes,
together with the interest thereon, and all costs and
expenses in connection with any action or proceeding by or
on behalf of such holders, are fully met and discharged. The
authority is authorized to include this pledge and
agreement of the state in any agreement with the holders of
such bonds or notes.
§31-15-7m. Bonds and notes issued pursuant to section seven-c of this article not debt of state, county, municipality or any political subdivision; exceptions; expenses incurred pursuant to article.

1 Bonds, including refunding bonds, and notes issued under the authority of section seven-c of this article and any coupons in connection therewith shall not constitute a debt or a pledge of the faith and credit or taxing power of this state or of any county, municipality or any other political subdivision of this state, and the holders and owners thereof shall have no right to have taxes levied by the legislature or the taxing authority of any county, municipality or any other political subdivision of this state for the payment of the principal thereof or interest thereon, but such bonds and notes shall be payable solely from the revenues and funds pledged for their payment as authorized by this article unless the notes are issued in anticipation of the issuance of bonds or the bonds are refunded by refunding bonds issued under the authority of this article, which bonds or refunding bonds shall be payable solely from revenues and funds pledged for their payment.

2 Such bonds and notes shall be the debts of any state agency, office or authority specifically agreeing thereto.

3 All expenses incurred in carrying out the provisions of this article shall be payable solely from funds provided under the authority of this article. Such article does not authorize the authority to incur indebtedness or liability on behalf of or payable by the state or any county, municipality or any other political subdivision thereof.

§31-15-7n. Negotiability of bonds and notes issued pursuant to section seven-c of this article.

1 Whether or not the bonds or notes issued pursuant to the provisions of section seven-c of this article are of such form or character as to be negotiable instruments under the
Uniform Commercial Code, such bonds or notes are negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code, subject only to the provisions of the bonds or notes for registration.

§31-15-70. Bonds and notes issued pursuant to section seven-c of this article; legal investments.

The provisions of sections nine and ten, article six, chapter twelve of this code to the contrary notwithstanding, the bonds and notes issued pursuant to the provisions of section seven-c of this article are securities in which all public officers and bodies of this state, including the West Virginia state board of investments, all municipalities and other political subdivisions of this state, all insurance companies and associations and other persons carrying on an insurance business, including domestic for life and domestic not for life insurance companies, all banks, trust companies, societies for savings, building and loan associations, savings and loan associations, deposit guarantee associations and investment companies, all administrators, guardians, executors, trustees and other fiduciaries and all other persons whatsoever who are 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.

§31-15-7p. Exemption from taxation; bonds issued pursuant to the provisions of section seven-c of this article.

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 is a public purpose. As the operation and maintenance of projects described in section seven-b of this article will constitute the performance of essential governmental functions, the authority shall not be required to pay any taxes or assessments upon any property acquired or used by the authority or upon the income therefrom. All bonds and notes of the authority, and all interest and income thereon, shall be exempt from all taxation by this state and any county, municipality, political subdivision or agency thereof, except inheritance taxes.
All bonds and notes of the authority issued pursuant to the provisions of section seven-c of this article, and all interest and income thereon, shall be exempt from all taxation by this state and any county, municipality, political subdivision or agency thereof, except inheritance taxes.

§31-15-7q. Personal liability; persons executing bonds or notes issued pursuant to section seven-c of this article.

Neither the members or officers of the authority or of any authority agency or office, nor any person executing the bonds or notes issued pursuant to the provisions of section seven-c of this article, shall be liable personally on such bonds or notes or be subject to any personal liability or accountability by reason of the insurance thereof.

§31-15-7r. Cumulative authority as to powers conferred; applicability of other statutes and charters; bonds issued pursuant to section seven-c of this article.

The provisions of this article relating to the issuance of loans made pursuant to the provisions of section seven-b of this article, and bonds issued pursuant to the provisions of section seven-c of this article shall be construed as granting cumulative authority for the exercise of the various powers herein conferred, and neither the powers nor any bonds or notes issued hereunder shall be affected or limited by any other statutory or charter provision now or hereafter in force, other than as may be provided in this article, it being the purpose and intention of this article to create full, separate and complete additional powers. The various powers conferred herein may be exercised independently and notwithstanding that no bonds or notes are issued hereunder.


The authority may make loans for equipment as part of industrial development projects, industrial subdivision projects, and projects for electrical power generating facilities, natural gas transmission lines, coal processing plants, other energy projects, export development, farm development, job development, forest development,
automobile assistance corporation projects and industrial
and trade jobs development corporation projects, and
improvements thereto, subject to the same application,
loan, and bond procedures and provisions as usually apply
to loans issued under the provisions of this article, or by an
unconditional letter of credit approved by the authority.
The real property in which a security interest is taken may
be the real property upon which the equipment is situate or
real property at a different location from the location of the
equipment. Such additional security shall be upon such
terms and in such amount satisfactory to the authority.

The aggregate principal amount of notes, security
interests and bonds issued by the authority shall not exceed
three 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 forty-five million
dollars at any one time in such notes, security interests or
bonds.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Floyd Fulla

Chairman House Committee

Originated in the Senate.

To take effect July 1, 1985.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ......... approved this the ......... day of ......... , 1985.

Governor
PRESENTED TO THE
GOVERNOR
Date  4/30/55
Time  4:30 p.m.