WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1986

ENROLLED
Committee Substitute for
SENATE BILL NO. 403

(By Senator, Junekwick. Mr. President, et al.)

PASSED March 9, 1986
In Effect July 1, 1986
ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 403
(SENATORS BOETTNER, TONKOVICH (MR. PRESIDENT), TOMBLIN, SHARPE,
SPEARS, PARKER, CHERNENKO, KARRAS, ASH AND JONES, original
sponsors)

[Passed March 9, 1986, to take effect July 1, 1986]

AN ACT to repeal sections nine, eleven, eleven-a, eleven-b,
eleven-c, eleven-d, eleven-e, article one, chapter five-b of
the code of West Virginia, one thousand nine hundred thirty-
one, as amended; to amend and reenact sections six and six-a
of said article one; to amend and reenact sections three and
four, article two of said chapter five-b; to further amend said
article two by adding thereto eight new sections, designated
sections five, six, six-a, six-b, six-c, six-d, six-e and seven; to
further amend said chapter five-b by adding thereto four
new articles, designated articles two-a, two-b, two-c and
five; to amend and reenact section three, article three of said
chapter; and to further amend said article three by adding
thereto a new section, designated section five-a; to amend
and reenact section five, article four of said chapter five-b;
to amend and reenact sections three, five, six, nine, eleven
and thirteen, article one, chapter five-c; to amend said code
by adding thereto a new chapter, designated chapter five-e;
to amend and reenact sections one, two, three, four, eight,
eleven, twelve, thirteen, fourteen and fifteen, article twelve,
chapter seven; to further amend said article twelve by
adding thereto a new section, designated section three-a; to amend article thirteen, chapter eleven, by adding thereto a new section, designated section thirty; to amend article thirteen-a of said chapter by adding thereto a new section, designated section twenty-three; to amend article twenty-three of said chapter by adding thereto a new section, designated section twenty-four; to amend article twenty-four of said chapter by adding thereto a new section, designated section twenty-two; to amend chapter eighteen by adding thereto two new articles designated articles twenty-six-b and twenty-six-c; to amend article six, chapter twenty-nine by adding thereto two new sections, designated sections seventeen-a and seventeen-b; to amend and reenact sections six, seven, seven-b, eight, nine and twenty-three, article fifteen, chapter thirty-one; to amend and reenact section four, article eighteen-b of said chapter; and to amend chapter thirty-one by adding thereto a new article, designated article nineteen, all relating to economic development generally; department of commerce divisions; continuation of civil service coverage; program and policy action statement; submission to joint committee on government and finance; office of community and industrial development divisions; feasibility studies; reports to the Legislature; definitions; division of research and strategic planning; power and duties; division of small business development; purposes; powers and duties; regional small business innovation centers; location; authority; state small business innovation center board created; membership; regional center director; functions and duties; trade secrets documentary materials; commercial or financial information; confidentiality; rules and regulations; low-interest loans to private companies entering into the process of converting West Virginia coal to coke; funding; higher education-industry partnership; legislative purpose; university-industry research and development centers; collaboration and technical assistance; Vandalia partnership program; Vandalia partnership fund; grant applications; eligibility and criteria; board of trustees; grants; authority; director appointment; annual report; enterprise zone authority; legislative purpose; definitions; authority created; members, appointment and terms; powers; duties; tax exemptions; administrative regulation exemptions; economically depressed areas; designation;
enterprise zone requirements for creation; designation; conditions for preference of enterprise zones; office of federal procurement assistance; legislative findings; office created; appointment of director; compensation; rules and regulations; duties and powers; financial and technical assistance; West Virginia export development authority; creation and purposes; duties; labor-management council; compensation; independent agencies; employment; expenses of council; employee ownership assistance program; definitions; technical assistance; financial assistance; applications criteria; administration; nondiscrimination; West Virginia industry assistance corporation; definitions; creation; directors; number; appointment in terms of office; compensation; interest in competing business for bidding; corporation powers; principal office; account book; directors' oath of office; authority of board of investments; West Virginia capital company; venture capital authority; purposes; definitions; rules and regulations; certification; minimum standards; tax credit; recaptures; unqualified investments; application requirements; disclaimer of state liability; qualified investments; investment restrictions; conflict of interest; investment reporting and record keeping; examination; decertification; county and municipal development authorities; establishment authorized; name; exceptions; purposes; management and control; appointment in terms of members; vacancies; removal of members; management and control of municipal authority; appointment in terms of members; vacancies; removal of members; members qualification; incurring indebtedness; creditors' rights; participation and appropriations authorized; property transfers and conveynances; county commission contribution; municipalities and others; funds and accounts; audit and examination of books, records and accounts; property sale or lease; reversion of assets upon dissolution; employees covered by workers' compensation; liberal construction; business and occupation tax credit for coal coking facilities; regulations; severance tax credit for coal coking facilities; regulations; business franchise tax credit for coal coking facilities; regulations; corporation net income tax credit for coal coking facilities; regulations; institute for public affairs; directors, administrative control and supervision; institute for international trade
development; creation and purpose; civil service system apprenticeship program; advisory board; West Virginia economic development authority; general powers; loans to industrial development agencies for industrial development projects; loans for construction of electrical power generating facilities, natural gas transmission; coal processing plants, other energy projects; and export development, farm development, job development, forest development projects; loan application requirements; hearings; equipment loans; governing body; organization and meeting; quorum; powers; mortgage and industrial development investment pool; funds for investment of industrial development; amount of funds available; interest rates specified; West Virginia community infrastructure authority; short title; legislative findings and purpose; definitions; authority created; board; organization; appointment of board members; term of office, compensation and expenses; duties and responsibilities of director and staff; community infrastructure project financing; loans, bond purchases from counties and municipalities subject to terms of loan or bond purchase agreement; powers, duties and responsibilities; authority empowered to issue community infrastructure revenue bonds, renewal notes and refunding bond; requirements and manner of issuance; trustee for bond holder; contents of trust agreement; legal remedies of bond holders and trustee; bonds and notes not debt of state, county or municipality; expenses; use of funds; restrictions; investment of funds; reports to governor and legislature; lawful investment; purchase and cancellation of notes or bond; refunding bonds; exemptions from taxation; financial interests and contracts prohibited; criminal penalty; meetings and records to be public; liberal construction; and severability.

Be it enacted by the Legislature of West Virginia:

That sections nine, eleven, eleven-a, eleven-b, eleven-c, eleven-d, eleven-e, article one, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections six and six-a of said article one be amended and reenacted; that sections three and four, article two of said chapter five-b be amended and reenacted; that said article two be further amended by adding thereto eight new
sections, designated sections five, six, six-a, six-b, six-c, six-d, six-e and seven; that said chapter five-b be further amended by adding thereto four new articles, designated articles two-a, two-b, two-c and five; that section three, article three of said chapter be amended and reenacted; that said article three be further amended by adding thereto a new section, designated section five-a; that section five, article four of said chapter be amended and reenacted; that sections three, five, six, nine, eleven and thirteen, article one, chapter five-c be amended and reenacted; that said code be amended by adding thereto a new chapter, designated chapter five-e; that sections one, two, three, four, eight, eleven, twelve, thirteen, fourteen and fifteen, article twelve, chapter seven be amended and reenacted; that said article twelve be further amended by adding thereto a new section, designated section three-a; that article thirteen, chapter eleven be amended by adding thereto a new section, designated section thirty; that article thirteen-a of said chapter be amended by adding thereto a new section, designated section twenty-three; that article twenty-three of said chapter be amended by adding thereto a new section, designated section twenty-four; that article twenty-four of said chapter be amended by adding thereto a new section, designated section twenty-two; that chapter eighteen be amended by adding thereto two new articles, designated articles twenty-six-b and twenty-six-c; that article six, chapter twenty-nine be amended by adding thereto two new sections, designated sections seventeen-a and seventeen-b; that sections six, seven, seven-b, eight, nine and twenty-three, article fifteen, chapter thirty-one be amended and reenacted; that section four, article eighteen-b of said chapter be amended and reenacted; and that said chapter thirty-one be further amended by adding thereto a new article, designated article nineteen, all to read as follows:

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 1. DEPARTMENT OF COMMERCE.

§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.

1 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 product marketing; and 
(4) 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. 
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, the office of community and 
industrial development and any other authorities, boards, 
commissions, corporations or other entities created or 
amended under chapters five-b and articles twenty-six-b
and twenty-six-c, chapter eighteen of this code, 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-six, 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.

ARTICLE 2. OFFICE OF COMMUNITY AND INDUSTRIAL DEVELOPMENT.

§5B-2-3. Divisions created.

1 There are hereby created within the office of community and industrial development:
2 (1) The division of community development;
3 (2) The division of financial and technical assistance;
4 (3) The division of administration;
5 (4) The division of industrial development;
6 (5) The division of research and strategic planning;
7 (6) The division of employment and training;
8 (7) The division of small business development; and
9 (8) The division of small business.

11 Each said division shall be under the control of a director to be appointed by the director of the office of community and industrial development and 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 director.

17 The governor is hereby authorized to establish and maintain foreign trade offices, personnel for same and attendance services.

§5B-2-4. Office to conduct certain feasibility studies; reports to the Legislature; definitions.

1 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, forest resources, jobs development and a technical education system for new industry. 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-seven, and every two years thereafter.
For the purpose 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
farmlands;
(c) 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;
(d) 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 the areas of high unemployment; and
(e) The term “technical education system for new
industry training” means a program to contract, provide
grants, loans or other assistance, establish reimbursements
and otherwise educate and train the state work force, on an
as needed basis, for the purpose of attracting both new
businesses to the state and of retooling, converting or
otherwise modernizing existing businesses in the state; and
which program is to include the review, updating and
modernizing of the state vocational technical centers and
community college training programs for this purpose, so as
to provide immediate technical training, specific to a new
business or existing business.
The feasibility studies provided for hereunder shall be
performed in conjunction with either the institute of public
affairs provided for in article twenty-six-b, chapter
eighteen of this code, or the higher education industry
partnerships provided for in article two-a, chapter five-b of
this code.
§5B-2-5. Division of research and strategic planning; powers and duties.

(a) The division of research and strategic planning shall have the following powers and duties with respect to research:

(1) To establish as an independent entity at West Virginia University in cooperation with and involving other West Virginia colleges and universities a center for economic research. 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 or any other college or university in the state. In addition, the center may employ student interns.

(2) The center shall provide the governor's office of community and industrial development, commissioner of commerce, 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 is directed to establish priorities and coordinate its economic research functions with the governor and the Legislature. To accomplish this purpose the advisory board created for the institute of public affairs in section one, article twenty-six-b, chapter eighteen of this code, shall serve as the advisory board to the center. The director of the center shall serve as the chairman of the advisory board. 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 products series, modeled after the national income and products accounts and the desirability of constructing a periodic input/output table for the state. It shall review the quality of current statistics relating to
41 employment and prices and statistics relating to poverty
42 and the distribution of income and wealth. The center may
43 study the feasibility of, and, based upon such study
44 establish a West Virginia econometric model project.
45 (4) Where deficiencies are found in existing data
46 sources, the center shall publish conclusions regarding the
47 benefits to be derived from gathering additional or better
48 information and shall make operational recommendations
49 on the best possible methods for obtaining the desired
50 information.
51 (5) The director of the center or members of its staff
52 shall meet on a regular basis with the director of the
53 governor’s office of community and industrial
54 development, the commissioner of the department of
55 commerce, other officials of the department and members
56 of the Legislature to provide the results of its research and
57 to provide policy advice and analysis.
58 (6) The center shall develop and maintain an inventory
59 of research efforts of universities and colleges and other
60 institutions or businesses within the state and a register of
61 scientific and technological research facilities in the state.
62 That function may be performed by contract with the center
63 for education and research with industry of the board of
64 regents.
65 (b) The division of research and strategic planning shall
66 develop a strategic plan for the economic development of
67 the state, its regions and specific industries including
68 tourism, manufacturing, timber, agriculture and other
69 rural development, coal, oil, gas and other extractive
70 resources, retail, service, distribution and small businesses.
71 Such a plan shall emphasize a coordinated effort of the
72 public and private sector toward balanced growth for the
73 state. Such plan shall include, but is not limited to, the
74 following:
75 (1) Assessing the state’s economic strengths and
76 weaknesses;
77 (2) Developing and recommending short, intermediate
78 and long-term economic goals and plans, together with
79 options;
80 (3) Identifying barriers to economic growth and
81 diversification in the state;
82 (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 governmental 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-2-6. 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 university supported in whole, or in part, by this state and is hereby authorized and empowered to make appropriations or grants to the regional small business innovation centers, to assist in achieving the public purpose of this section. All funds received by the director to carry out the provisions herein shall be deposited with the state treasurer and disbursed by the director to be used exclusively for carrying out the provisions herein. Any appropriations, gifts, bequests or grants received by the director with any
restriction or restrictions on the use thereof shall be expended by the director in accordance with such restriction or restrictions.

The director of the state business innovation center in addition to such reports as may be required by the governor's office of community and industrial development shall publish an annual report by the first day of December of each year for distribution to the governor, the Legislature, the department and the general public. Such report shall describe the activities undertaken by the state center and the regional centers pursuant to these provisions in the preceding year.

§5B-2-6a. Regional small business innovation centers; locations; authority.

(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 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-2-6b. 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-2-6c. 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;

(e) Conduct planning and research, including feasibility studies and market research in cooperation with the department;

(f) Assist in the identification and development of new and innovative business opportunities;

(g) Foster the establishment and strengthening of business service agencies, including trade associations and cooperatives, which provide services to new and innovative businesses;
(h) Implement the furnishing of business counseling, management training and other related services, with special emphasis on the development of management training programs using the resources of the business community, the state labor-management council and state and private colleges and universities, and with emphasis upon providing management training of sufficient scope and duration to develop entrepreneurial and managerial self-sufficiency on the part of the new and innovative businesses served;

(i) Provide access to business analysts who can refer new and innovative businesses to available experts;

(j) Conduct studies, research and counseling concerning the managing, financing and operation of new and innovative businesses;

(k) Foster and support scientific and technological research for the development and application of new technologies identified as having significant potential for economic growth in the state or designed to further new and more extensive uses of the natural and other resources of the state, and to assist in technology transfer, research and coupling from existing sources to new and innovative businesses;

(l) Organize, conduct, sponsor or cooperate in and assist the conducting of institutes, conferences, demonstrations and studies relating to the stimulation and formulation of new and innovative businesses;

(m) Assist new and innovative businesses in solving problems concerning operations, manufacturing, engineering, technology exchange and development, personnel administration, marketing, sales, merchandising, finance, accounting, business strategy 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;
Cooperate with other regional business innovation centers for the purpose of coordinating efforts;

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

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

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;

Assist participating businesses in obtaining equity and debt financing;

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

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

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;

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

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-2-6d. Documentary materials concerning trade secrets; commercial or financial information; confidentiality.

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-2-6e. Rules and regulations.

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-2-7. Authority of director to provide low-interest loans to private companies entering into the process of converting West Virginia coal to coke; funding.

Effective the first day of July, one thousand nine hundred eighty-seven, the director, with the approval of the governor, is hereby empowered to provide reduced rate loans to private companies for the building of coal processing facilities for the making of coke for steel production. Funds for such loans shall be provided from moneys borrowed from the workers' compensation fund or any fund administered by the state. The loans will be repaid through the governor's office of community and industrial development to the fund from which they were borrowed. The rate of interest charged shall be two percent below the current prime lending rate for funds available from private
The state shall fund no more than eighty percent of the total cost of the project. The private company sponsoring the project must provide the other twenty percent of the project's funds from its own capital or from moneys borrowed from nonpublic sources. The moneys borrowed are to be used for the construction of coal coking facilities and related buildings and other structures: Provided, That all coal processed at this facility during the time when loan moneys are being utilized and for five years following the repayment of the loan must be coal mined exclusively in West Virginia. A private company applying to the governor's office of community and industrial development for a loan pursuant to this section shall certify on its loan application that the reduced rate loan will be used exclusively for constructing coal coking facilities for the process of converting West Virginia coal to coke.

The director is authorized to promulgate rules and regulations consistent with the provisions of this section to aid in administration of the provisions of this section.

ARTICLE 2A. HIGHER EDUCATION-INDUSTRY PARTNERSHIPS.

§5B-2A-1. Legislative purpose.

A pressing need exists for collaborative research and development between institutions of higher education and industry. This need also extends to assisting companies to develop and adapt to new technology. A commitment by the state to support cooperative university-industry partnerships will preserve existing jobs and create new jobs; promote development of business enterprises and help them become competitive; and enable West Virginia to achieve the goals of economic growth and full employment by revitalizing and diversifying the West Virginia economy. Focused research and technical assistance efforts related to West Virginia industry will speed such development, improve technology transfer, assist companies in becoming growth leaders and link basic research and technological developments to economic advancement.

§5B-2A-2. University-industry research and development centers.

University-industry research and development centers
shall be established near or on selected college and
university campuses as approved by the board of trustees
and the board of regents. Joint research and development
efforts at each center shall be dedicated to one or several
targeted industries or processes. Centers may concentrate
on such topics as coal products and uses; materials and
coatings production processes; flexible manufacturing,
robotics and microprocessor controlled production;
biotechnology applications; glass and silicon products;
materials handling and distribution; wood and coal as
feedstocks for the chemical industry; the relationship
between labor and management and the changes faced by
each of them; the promotion of West Virginia products and
international trade; and cellulose, timber and paper
products. In addition to any other state moneys received,
each proposed center may apply for grants pursuant to the
provisions of section six of this article.

§5B-2A-3. Higher education-industry collaboration and
technical assistance.

Institutions of higher education and corporations may
engage in collaborative projects designed to assist
companies to adapt or develop new technology. Through
such collaborative efforts, each project may be eligible to
receive financial support through the matching grant
programs defined in this article.

Each center is authorized and empowered to solicit and
accept financial support from sources other than the state.
Each center shall deposit all funds received into a special
revenue account in the state treasury. A special revenue
account shall be established for each center.

§5B-2A-4. Vandalia partnership program for research and
technical assistance.

The director shall have the authority to allocate any funds
available to higher education-industry projects operating
under the provisions of this article. The amount of the grant
may not exceed the level of contribution from combined
academic and corporate sources.

It shall be the duty of the director to develop a program, to
be known as the Vandalia partnership program, to bring
together, through challenge or matching grants, partners
from the business, industry, public and educational sectors
to develop and apply technologies which will strengthen
existing business and stimulate the formation of new firms
and products including:
(1) Joint research and development projects. — Such
projects shall require a joint effort of a West Virginia
business and a higher educational institution of this state
with the potential for preserving or creating jobs in this
state;
(2) Education and training projects. — Such projects
shall include employment training or retraining, labor
market and occupational analysis, new courses, sharing of
costly equipment, educational or technical assistance with
the small business innovation centers; and
(3) Entrepreneurial development projects. — Such
projects shall include technical assistance, development of
business plans management counseling, technology
transfer, venture capital assistance with emphasis on
establishing new projects, processes or services.

There is hereby established a Vandalia Partnership Fund
to which shall be credited any state appropriations, gifts,
grants or other moneys available to the fund.
The center shall invest and reinvest the fund, and the
income thereof, pending use for the purposes of this article.
The fund shall operate as a revolving fund whereby all
appropriations and payments thereto may be applied and
reapplied by the center for the purposes of this article.

§5B-2A-6. Application for grants; eligibility and criteria.

Applicants for grants shall submit a proposal which shall
set forth the nature of the project, the commitment from the
partners either in money, equipment or in kind services and
the request for funding. Private, public and educational
financial support shall be required as part of each
application. Proposals for funding will be reviewed on a
competitive basis by a panel of experts appointed by the
board of trustees.
Among the criteria used to evaluate each proposal will be:
(a) Probability of advancing the success of a company
doing business in the state;
(b) Likelihood of creating jobs, conserving jobs, or leading to a new or expanded industry or venture in the state;
(c) Promise of transferring the research and development findings to marketable products;
(d) Level of financial contribution from corporate or other sources;
(e) Technical or scientific feasibility of the effort, and competency of the team to produce useful results; and
(f) Probability of strengthening the permanent research and development base of both the institutions of higher education in West Virginia and industry or sustaining partnerships.

§5B-2A-7. Board of trustees; grants; authority.
There is hereby created a board of trustees consisting of the director, the governor or his designee, the chancellor of the board of regents or his designee, and two persons representative of business and industry to be appointed by the governor, with the advice and consent of the Senate. The board shall have the authority to review and approve all applications for grants or funds hereunder according to the purposes of this article, and the rules and regulations promulgated hereunder.

§5B-2A-8. Appointment of the director.
The director shall be appointed by the governor from a list of three persons submitted by the board of regents. The board of regents shall within thirty days of the effective date of this article appoint a search committee of representatives of the educational, government, business and labor sectors to solicit and interview candidates for the position of director. The director shall be qualified by knowledge and experience in the field of research and technology programs.

On the first day of January of each year, the director shall submit a report on the operation of the center to the governor and to the Legislature. Such report shall include a summary of the activities of the center and a complete statement of grants made hereunder.
ARTICLE 2B. ENTERPRISE ZONE AUTHORITY.

§5B-2B-1. Legislative purpose.

1 The Legislature hereby finds and declares that the health, safety and welfare of the people of West Virginia are enhanced by the continual encouragement, development, growth and expansion of private enterprise within this state, and that there are certain economically depressed areas in the state that need particular attention to create new jobs, stimulate economic activity and attract private sector investment rather than government subsidy to improve the quality of life of their citizens. It is the purpose of the Legislature to encourage new economic activity in these depressed areas of the state by means of reduced taxes and the removal of unnecessary governmental barriers to the production and earning of wages and profits and the creation of economic growth.

§5B-2B-2. Definitions.

1 As used in this article, unless the context clearly indicates otherwise:
2 (a) “Authority” means the enterprise zone authority of West Virginia.
3 (b) “Enterprise zone” means an area of the state designated by the authority to be eligible for the benefits of this article.
4 (c) “Qualified business” means any person, corporation or other entity who, during the time of designation of an enterprise zone, is engaged in the active conduct of a trade or business:
5 (1) With at least fifty percent of its employees performing substantially all of their services within an enterprise zone; and
6 (2) With individuals from one or more of the following three categories constituting at least twenty-five percent of the business’s employees:
7 (i) Residents of an enterprise zone;
8 (ii) Individuals who have been unemployed for at least twelve months immediately prior to obtaining employment with the business; or
9 (iii) Individuals who have received public assistance benefits for at least twelve months immediately prior to obtaining employment with the business.
(d) "Qualified property" means:

(1) Any tangible personal property located in an enterprise zone used predominantly by the taxpayer in the zone in the active conduct of a trade or business; or

(2) Any real property located in such zone which:

   (i) Was used predominantly by the taxpayer in the active conduct of a trade or business; or

   (ii) Was the principal residence of the taxpayer on the date of the sale or exchange;

(3) Any interest in a corporation, partnership or other entity if, for the most recent taxable year of such entity ending before the date of the sale or exchange, such entity was a qualified business.

(e) "Qualified employee" means any employee who works for a qualified business.

§5B-2B-3. Enterprise zone authority created; appointment and terms of members; powers.

There is hereby created the enterprise zone authority which consists of seven members. The following membership of the authority shall be appointed by the governor with the advice and consent of the Senate: One member shall be appointed from a list of three names submitted by the West Virginia labor-management advisory council; one member shall be appointed from a list of three names submitted by the West Virginia municipal league; one member shall be appointed from a list of three names submitted by the West Virginia association of county officials; three members, no more than two of which shall be from the same political party, shall be appointed by the governor to serve at large.

In addition to the gubernatorial appointees, the director of the governor's office of community and industrial development shall serve as a member. The commission shall elect a chairman from its members at its first meeting, to be called by the director of the governor's office of community and industrial development, as soon as practicable.

The members appointed by the governor shall serve a term of four years, except that the members first appointed shall serve for the following terms: Three for a term of one year; two for a term of two years; and one for a term of three years. The governor shall have sole discretion in determining the terms for his initial appointees.
The authority shall administer this article and has the following powers and duties:

1. To establish criteria for determining which areas qualify as enterprise zones;
2. To monitor the implementation of this article and submit reports evaluating the effectiveness of the program and any suggestions for legislation to the governor and Legislature on the second Wednesday of January of each year;
3. To conduct a continuing evaluation program of enterprise zones;
4. To promulgate all necessary rules and regulations in accordance with the provisions of chapter twenty-nine-a of this code to carry out the purposes of this article;
5. To assist units of local government in obtaining federal status as an enterprise zone;
6. To assist any qualified business in obtaining the benefits of any incentive or inducement program provided by law and to certify qualified businesses to be eligible for the benefits of this article; and
7. To assist the governing authority of an enterprise zone in obtaining assistance from any other agency of state government including, but not limited to, assistance in providing training and technical assistance to qualified businesses within a zone.

§5B-2B-4. Duties of the authority.

(a) The authority shall establish and design for public display a master business license which shall certify that the qualifying business has obtained all necessary state agency permits, licenses, certificates, approvals, registrations, charters or any other form of permission required by law, including agency rule, to engage in business in an enterprise zone.

(b) The authority shall provide information and appropriate assistance to persons desiring to locate and engage in business in an enterprise zone regarding the state licenses, permits, certificates, approvals, registrations, charters and any other forms of permission required by law to engage in business in the state.

(c) Irrespective of any authority delegated to the authority to implement the provisions of this article, the
authority for determining if any requested licenses, permits, certificates, approvals, registrations, charters or any other form of permission required by law shall be issued and shall remain with the agency otherwise legally authorized to issue the permission required.

§5B-2B-5. Enterprise zone tax exemptions.

1 Notwithstanding any provision of this code to the contrary, the following exemptions apply to enterprise zones:
2 (1) All interest payments on loans made to qualified businesses or on mortgage loans on any property within an enterprise zone shall receive a fifty percent reduction of all state taxes if such loans were made after the enterprise zone was officially designated;
3 (2) Building materials used in remodeling, rehabilitation or new construction in an enterprise zone and new and used equipment and machinery purchased by qualified businesses for use in the enterprise zone, certified by the purchaser to be used for these purposes, shall be exempt from sales and use tax;
4 (3) Motor vehicles purchased from a seller located within the enterprise zone by qualified businesses in an enterprise zone shall receive a fifty percent reduction of the motor vehicle privilege tax;
5 (4) Qualified businesses shall receive a tax credit in the amount of unemployment compensation taxes paid in accordance with article five, chapter twenty-one-a of this code, against any corporate net income or personal income tax liability of such qualified business; and
6 (5) For state tax purposes, qualified businesses may carry forward their net operating losses, including casualty losses, for the period of existence of the enterprise zone in which the qualified business is located.

§5B-2B-6. Administrative regulation exemptions.

1 (a) In order to carry out the purposes of this article, any administrative body which promulgates administrative regulations pursuant to chapter twenty-nine-a of this code may, by regulation, exempt enterprise zones from the provisions of any regulation, in whole or in part, promulgated by that administrative body.
(b) Enterprise zones shall not be made exempt from the provisions of any regulation if such exemption endangers the health and safety of the citizens of the state as determined by the administrative body responsible for promulgation and enforcement of such regulation.

c) The authority shall conduct a review of all state regulations and shall recommend to the appropriate administrative bodies the exemption of regulations promulgated by such body which would contribute to the implementation of this article.

d) Any exemption of a regulation in enterprise zones shall be adopted by regulation in the manner provided by chapter twenty-nine-a of this code.

§5B-2B-7. Economically depressed areas; designation.

(a) Any municipal or county government by act of the governing body may designate any area or areas within their jurisdiction to be an economically depressed area. Such municipal or county government may then make written application to the authority to have such area or areas declared to be an enterprise zone. If the area designated by a county government includes a municipality or part thereof, the county government shall receive the approval of the municipal government for the inclusion of said municipality or part thereof. Such application shall include a description of the location of the area or areas in question and such other information as the authority may require.

(b) Upon receipt of an application from a municipal or county government, the authority shall review the application to determine whether the area or areas described in the application qualify to be designated an enterprise zone.

(c) The authority shall complete its review within one hundred twenty days of receipt of the application but may extend this time period an additional sixty days for good cause. If the authority denies the application, it shall inform the unit of local government of the fact along with the reasons for the denial.

§5B-2B-8. Enterprise zone requirements for creation.

(a) Any area or areas of a city, county, or of the state, may be designated an enterprise zone which:
(1) Has a continuous boundary; and
(2) Is an area of pervasive poverty, unemployment and economic distress.

(b) An area meets the requirements of subsection (a), subdivision (2) of this section, if:
(1) 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;
(2) At least seventy percent of the residents living in the proposed enterprise zone have incomes below eighty percent of the median income of the residents of the county or counties requesting designation as certified in a statistical report prepared by the state tax department; or
(3) 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 requesting designation establishes to the satisfaction of the authority 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.

§5B-2B-9. Designation of enterprise zones; conditions for preference of enterprise zones.

(a) In each of the three calendar years after the calendar year one thousand nine hundred eighty-six, the authority may designate two enterprise zones. In the fourth calendar year after the year one thousand nine hundred eighty-six, the authority may designate one enterprise zone. In deciding which areas should be designated as enterprise zones the authority shall give preference to:
(1) Areas with the highest levels of poverty, unemployment and general distress;
(2) Areas which have the widest support from the government seeking designation, the community, residents, local business and private organizations; and
(3) Areas for which the government seeking designation has made or will make the greatest effort to encourage economic activity and remove impediments to job creation,
including, but not limited to, a reduction of tax rates or fees and increase in the level or efficiency of local services and a simplification or streamlining of governmental requirements on employers or employees, taking into account the resources available to such government to make such efforts.

(b) Any designation of an area as an enterprise zone shall remain in effect during the period beginning on the date of designation and ending on the thirty-first day of December of the twentieth year following the year of designation.

(c) The authority may remove designation of any area as an enterprise zone if such area no longer meets the criteria for designation as set out in this article, and by regulation adopted by the authority pursuant to this article. No designation shall be removed less than ten years from the date of original designation.

ARTICLE 2C. OFFICE OF FEDERAL PROCUREMENT ASSISTANCE.

§5B-2C-1. Legislative findings; office of federal procurement assistance created; appointment of director; compensation, rules and regulations.

(a) The Legislature finds that West Virginia ranks significantly behind almost all other states in the manufacture and production of products or its services sold to the federal government; that there is a need to identify those businesses in West Virginia which manufacture or produce products or services which are marketable for sale to the federal government; and that there is a need to develop an aggressive marketing strategy to provide opportunities for West Virginia businesses to compete with other states in sales to the federal government; that there is a need to assist small and emerging science and technologically oriented businesses in applying for federal contracts.

(b) The Legislature finds that it is the purpose of the office of federal procurement assistance to encourage and assist the state businesses through loans, investments, research, technical and managerial advice and other similar means in the sales of products and services to the federal government including the general services administration, the national aeronautics and space administration, and the department of defense.
(c) There is hereby created, within the governor's office of community and industrial development, the office of federal procurement assistance. A director of the office shall be appointed by the governor with the advice and consent of the Senate. The director shall have administrative control and supervision of the office. The director shall promulgate rules and regulations to carry out the purposes and programs of the office, to include generally the programs available, and the procedure and eligibility of application relating to assistance under such programs.

§5B-2C-2. Duties and powers.

It shall be the duty of the office of federal procurement assistance:

1. (1) To prepare an inventory of state businesses which have the potential of selling goods or products to the federal government;
2. (2) To prepare and periodically issue a register of federal contracts in accordance with applicable federal laws or regulations for which businesses of the state of West Virginia may qualify for bidding;
3. (3) To sponsor and conduct conferences, collect and disseminate information and issue periodic reports relating to the availability of federal contracts upon which state businesses can bid;
4. (4) To identify emerging needs of the federal government and emerging technologies which will meet those needs, and develop an action plan of equipping and preparing businesses in this state to meet those needs with products and services, which plan shall be reduced to writing, and annually reviewed and updated, and shall be included in the annual report to the Legislature required under this article;
5. (5) To directly assist, both technically and financially, businesses within this state in qualifying for and bidding on federal contracts including dissemination; and
6. (6) To develop a formal liaison or other entity with the congressional delegation of this state and with the governor to develop a specific plan of action utilizing the good offices and assistance of the congressional delegation in carrying out the purposes of this section.
§5B-2C-3. Financial and technical assistance.

It shall be the duty of the office of federal procurement assistance and the corresponding duty of the West Virginia industrial and trade jobs development corporation to develop, maintain and implement a program of technical and financial assistance available under article two, chapter five-c of this code, and specifically targeted to businesses identified under this article as having the potential of selling goods or products to the federal government, including the issuance of revenue bonds by the economic development authority, or the issuance of other securities.

ARTICLE 3. WEST VIRGINIA EXPORT DEVELOPMENT AUTHORITY.

§5B-3-3. West Virginia export development authority — Creation and purposes.

There is hereby created "The West Virginia Export Development Authority," a body politic and corporate, hereinafter referred to as the "Authority."

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 small and medium sized businesses; and

(d) Provide financial counseling and assistance to potential and existing exporters.

§5B-3-5a. Duties.

The authority shall have the following duties:

(a) To create and develop a computer based state trade leads program as follows:

(1) To prepare an inventory of state products that are currently and potentially exportable, together with the firms offering such products, by standard industrial
7 classification (SIC) and by applicable international classification;
8 (2) To develop a program that will match state products
9 as classified with trade leads from foreign countries or their
10 agents, representatives or distributors, by utilizing the
11 United States Department of State, the Agency for
12 International Development (AID), the World Bank, or all
13 other available resources; and
14 (3) To develop a program of personal contact with firms
15 requesting such current and available trade leads as
16 providing follow-up assistance to interested firms in the
17 state;
18 (b) To assist, promote, encourage, develop and advance
19 economic prosperity and employment throughout this state
20 by fostering the expansion of exports of manufactured
21 goods and services to foreign purchasers;
22 (c) To cooperate and act in conjunction with other
23 organizations, public and private, the objects of which are
24 the promotion and advancement of export trade activities
25 in the state;
26 (d) To establish a source of funding credit guarantees
27 and insurance for political and commercial loss, as defined
28 in this article, to support export development not otherwise
29 available to West Virginia small and medium sized
30 businesses;
31 (e) To provide financial counseling and assistance to
32 potential and existing exports;
33 (f) To research and identify those foreign countries with
34 the greatest potential for importing state products, and for
35 foreign investment in West Virginia, for the purposes of
36 promoting and facilitating trade with such countries, the
37 investment of capital by such countries in this state, and for
38 other economic activities including tourism;
39 (g) To seek foreign trade zone status for, and to assist in
40 the applications for foreign trade zone status of political
41 subdivisions and private corporations.

ARTICLE 4. LABOR-MANAGEMENT COUNCIL.

§5B-4-5. Compensation of members of council and com-
mittees; independent agency; employment and
transferring staff; expenses of council.

1 The labor-management council and the regional advisory
committees shall constitute an independent agency housed within the governor’s office of community and industrial development. The council shall appoint a director and other staff for the council. Funds for necessary staff, supplies and other expenses shall be paid from and with an appropriation by the Legislature as well as reimbursements for each member of the council and of the regional advisory committees for reasonable and necessary expenses.

ARTICLE 5. EMPLOYEE OWNERSHIP ASSISTANCE PROGRAM.

§5B-5-1. Definitions.

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

(a) *Director.* — The director of the governor’s office of community and industrial development.

(b) *Office.* — The governor’s office of community and industrial development.

(c) *Employee-owned enterprise.* — A business which either:

(1) Meets all of the following conditions:

(i) Is organized as:

(A) A worker cooperative, within the meaning of the Internal Revenue Code of 1954, as amended; or

(B) A corporation in which employees own the stock of the corporation through an employee stock ownership plan, within the meaning of section 4975(e)(7) of the Internal Revenue Code of 1954, as amended;

(2) Is organized in a manner determined by the director to involve substantial employee participation.

(d) *Employee-owned group.* — A corporation or other entity, including labor unions, formed by or on behalf of the current or former employees of an industrial or commercial firm or facility located in this state for the purpose of assuming ownership or control of a firm or facility and operating it as an employee-owned enterprise.

§5B-5-2. Employee-ownership program.

The office will establish a technical and financial assistance program to promote the development of employee-owned enterprises.
§5B-5-3. Technical assistance.

1. (a) Authorization to advance funds. — The office is authorized to advance funds for the purpose of providing loans to employee-ownership groups in industrial and commercial enterprises for technical assistance to develop or improve an employee-owned enterprise.

2. (b) Eligibility. — Employee-ownership groups shall be eligible for assistance if the employees in the employee-ownership group are employed by, formerly employed or affiliated with one of the following:

   1. Existing firms facing a threat of substantial layoffs or a plant closing and investigating a reorganization of all or some portion of the firm’s business activity, at sites located within the state, as an employee-owned enterprise. For purposes of this section, “existing firms” shall include an ongoing concern, the assets of an existing company or the assets of a company which has been closed for no more than one year as of the date of the application for the feasibility study loan.

   2. Existing firms, not necessarily facing a threat of substantial layoffs or a plant closing, but considering a conversion to an employee-owned enterprise and seeking professional services to accomplish this, if conversion to employee ownership will create new jobs or retain existing jobs at sites within the state.

   3. Existing firms which currently have some form of employee ownership and require professional services to insure success of the employee-owned enterprise in its effort to create new jobs or retain existing jobs at sites within the state.

3. (c) Uses. — Loans will be made to employee-ownership groups for the following purposes:

   1. Feasibility studies to investigate a reorganization or new incorporation as an employee-owned enterprise. At a minimum, the feasibility study should:

      1. Assess the market value and demand for the product affected by the closing or layoff.

      2. Assess the market value and demand for other products which could be manufactured or assembled at the plant affected by the closing or layoff.

      3. Evaluate the production costs incurred if the plant were to be operated by the employee-ownership group.
(iv) Determine whether there exists in the affected area and in the employee-ownership group, the desire and capacity to create a new production entity and to become competitive.

(2) Professional services to implement a feasibility study and other professional services to develop or insure the success of an employee-owned enterprise.

(d) Repayment. — Loans provided for feasibility studies and other professional services to employee-ownership groups to investigate a conversion to an employee-owned enterprise are subject to the following repayment conditions:

(1) If the enterprise studied is purchased or improved by the employee group, the employee group shall arrange to repay the entire amount of the loan, with interest, either at the closing of the purchase of the company or within a reasonable time period and under such terms and conditions as the director may provide.

(2) If the enterprise studied is not purchased by the employee group within one year after the completion of the feasibility study, the applicant shall submit a final report concerning the feasibility of repaying the loan.

(e) Other conditions:

(1) The applicant shall provide evidence that there is a prospect for recovery and future job growth or job retention in applications under subsection (b)(1) or a substantial prospect of job growth or job retention in applications under subsections (b)(2) and (3) of this section.

§5B-5-4. Financial assistance.

(a) Authorization to advance funds. — The office is authorized to advance funds for the purpose of providing loans and loan guarantees to employee-owned enterprises reorganizing industrial, manufacturing, agricultural and service enterprises for the development of employee-owned enterprises.

(b) Eligibility. — Eligibility for this assistance shall be limited to employee-ownership groups reorganizing an existing enterprise which is facing a threat of substantial layoffs or a plant closing, where adequate private financing is not available. For purposes of this subsection, “existing enterprise” shall include an ongoing concern, the assets of
(c) **Uses.** — Eligible project costs shall include land and buildings, machinery and equipment, and working capital secured by accounts receivable and inventory.

(d) **Debt instruments.** — The financial subsidy provided should be the minimum necessary to accommodate the borrower's financial needs. Debt instruments shall include either or both of the following:

1. Loans, including deferred interest and principal payments; and
2. Loan guarantees.

(e) **Security.** — Funds loaned shall be secured by lien positions on collateral at the highest level of priority which can accommodate the borrower's ability to raise sufficient debt and equity capital. When the obligation of a firm is guaranteed, the financial institution holding the obligation shall be required to adequately secure the obligation.

(f) **Equity requirement.** — A significant equity investment by the employee-ownership group equal to at least ten percent of the project costs and including substantial participation by at least two thirds of the members of the employee-ownership group is required to qualify for the loan or guarantee.

(g) **Feasibility study.** — Assistance shall not be approved without a feasibility study demonstrating a substantial prospect for job retention or future job growth and a business plan including steps to facilitate labor-management cooperation. General adherence to the plan is required to receive funding.

§5B-5-5. **Criteria for evaluating applications.**

1. The office shall evaluate the applications based on the following criteria:
2. (1) Number of jobs retained or created in relation to the size of the loan. The loans shall not exceed a cost of fifteen thousand dollars per job created or retained;
3. (2) Ability of the applicant to repay the loan and the likelihood of retaining or creating jobs;
4. (3) Evidence of other private financial commitments;
5. (4) Evidence that, without the financial assistance,
other federal, state or local public and private investment would be insufficient to finance the employee-owned enterprise; (5) The extent to which a firm employs a significant number of employees or represents a significant portion of employment in the community; and (6) Any additional criteria specified by the office in regulations promulgated hereunder.

§5B-5-6. Administration of the program.

(a) Responsibility. — The office will be responsible for promoting the program, soliciting applications, evaluating applications and making preliminary decisions on both technical assistance and financial assistance.

(b) Approval by director. — The director will have full responsibility for final approval of all applications for assistance.

(c) Advances. — The office may make advances for the purpose of making loans or loan guarantees consistent with this act.

(d) Loan and loan guarantee fees. — The office may establish and charge reasonable fees for processing loans or loan guarantees under section four by order of the director.

(e) Rules and regulations. — The director may promulgate any rules and regulations, statements of policy, forms, guidelines and other procedures, forms and requirements necessary for the implementation of the proposals set forth herein.

§5B-5-7. Nondiscrimination.

No loan, loan guarantee or other financial assistance shall be made to a recipient under this act unless the recipient certifies to the office, in a form satisfactory to the office, that it shall not discriminate against any employee or against any applicant for employment because of race, religion, color, national origin, sex or age.

CHAPTER 5C. BASIC ASSISTANCE FOR INDUSTRY AND TRADE.

ARTICLE 1. WEST VIRGINIA INDUSTRY ASSISTANCE CORPORATION.

§5C-1-3. Definitions.

For the purpose of this article:
(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 council, local commerce group, 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) The term "board of investments" means the board of investments established by article six, chapter twelve of this code;

(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) The term "corporation" means the West Virginia 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 enterprise as reflected in the operating plan;

(6) The term "fiscal year" means the fiscal year of an enterprise; and

(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.

§5C-1-5. Creation of the West Virginia industry assistance corporation.

(a) For the purpose of aiding the establishment and expansion of the 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, the body corporate, heretofore denominated the “West Virginia Automobile Industry Assistance Corporation,” shall hereafter be designated the “West Virginia 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-six, shall expire as designated by the governor at the time of the 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-six. A successor to be 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.

§5C-1-9. Corporation powers.

In order to foster and expand industry and trade in this state, 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 enterprise;
(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 enterprise 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; ways to facilitate the ingress and egress to
industrial sites belonging to an enterprise;
(d) To acquire, by purchase, lease or donation, such real
or personal property, or any interest therein, including
buildings, lands, easements, facilities, equipment, 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 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 buildings,
equipment, facilities or the 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) Finance, conduct or cooperate in financing or
conducting technological, business, financial or other
investigations which are related to or likely to lead to
business and economic development by making and
entering into contracts and other appropriate
arrangements, including the provision of leases, grants,
loans and other forms of assistance;
(j) 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 bank; 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;
93 (5) Direct obligations of or obligations guaranteed by
94 the state of West Virginia;
95 (6) Direct and general obligations of any other state
96 within the territorial United States; to the payment of the
97 principal of and interest on which the full faith and credit of
98 such state is pledged: Provided, That at the time of their
99 purchases, such obligations are rated in either of the two
100 highest rating categories by a nationally recognized bond-
101 rating agency; and
102 (7) Any fixed interest bond, note or debenture of any
103 corporation organized and operating within the United
104 States: Provided, That there exists an employment-
105 generating plan which is satisfactory to the board; has been
106 developed in consultation with other appropriate state
107 agencies, including but not limited to, the department of
108 labor and the office of community and industrial
109 development; focuses upon the need to increase the number
110 of jobs available in this state; and can be carried out by the
111 borrower; Provided, however, That the loan is needed to
112 assist the borrower to open a new facility or expand an
113 existing facility in this state, and that by meeting such need
114 employment will be increased in the state; the borrower has
115 submitted to the board a satisfactory operating plan
116 demonstrating the ability of the borrower to generate
117 additional payment at a level which may be maintained or
118 increased without additional loans under the provisions of
119 this article; the board has received such assurances as it
120 shall require that the operating plan is realistic and
121 feasible; the borrower has submitted to the board a
122 satisfactory financing plan which meets the financial needs
123 of the borrower as reflected in the operating plan for the
124 period covered by such plan; the board has received
125 adequate assurances regarding the availability of all
126 financing, both public and private, contemplated by the
127 financing plan and that such financing is adequate to meet
128 the borrower's projected financial needs during the period
129 covered by the financing plan; none of the proceeds of a loan
130 made under the provisions of this article will be used to
131 repay credit extended or committed prior to the date the
132 loan is made under the provisions of this article; and the
133 financing plan submitted provides that expenditures under
134 the financing plan will reduce unemployment in this state.
(k) To procure insurance against any loss in connection with its property in such amounts, and from such insurers, as may be necessary or desirable;

(l) To make and publish such rules and regulations as are necessary to effectuate its corporate purpose;

(m) 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 the date of issuance;

(n) 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;

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

(p) 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 the code.

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

§5C-1-11. **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.

(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-1-13. **Authority of the board of investments.**

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 demonstrating the ability of the borrower to generate additional employment at a level which may be maintained or increased 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
CHAPTER 5E. VENTURE CAPITAL AUTHORITY.

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

§5E-1-1. Short title.

The article may be cited as the "West Virginia Capital Company Act."

§5E-1-2. Declaration of policy.

(a) The Legislature finds and declares that:

1. Economic insecurity due to unemployment is a serious detriment to the health, safety, and general welfare of the citizens of this state;
2. Involuntary unemployment, with its resulting burden of indigence, falls with crushing force upon unemployed workers and ultimately on the state itself in the form of public assistance and unemployment compensation; and
3. Unemployment causes a migration of West Virginia workers and families seeking jobs and establishing homes elsewhere which deprives this state of its most valuable resource, its people, and reduces the tax base of this state and of its local governments, impairing their ability to provide services.

(b) The Legislature further finds that:

1. The best method of combating unemployment and protecting West Virginia against the loss of its people is by promoting, stimulating, developing, rehabilitating and revitalizing the business prosperity and economic welfare of this state and its citizens; and
2. To accomplish this goal, the Legislature must encourage the formation of venture and equity capital in West Virginia for use in diversifying, strengthening and stabilizing the West Virginia economy by increasing West Virginia employment and business opportunities while protecting the people's constitutional right to a clean and healthful environment.

(c) The Legislature also further finds that:

1. Private investment of venture and equity capital in the West Virginia economy will be encouraged and
promoted by making tax credits available to taxpayers investing in West Virginia capital companies;

(2) Demands on state revenues restrict the financial ability of this state to make unlimited tax credits available for investment purposes and require that this state place reasonable limits on the total amount of tax credits to be made available for investment incentives; and

(3) Establishment of a rational tax credit program which gives priority to investments in capital companies in the order in which they are qualified as such, will encourage immediate investment in West Virginia businesses.

§5E-1-3. Purposes.

(a) The purpose of this chapter is to promote the development of the human resources and the diversification of the economy of West Virginia. The venture capital generated by this chapter must be used to encourage and assist the strengthening of the economy through loans, equity investments, and other business transactions for purposes of developing new business and industry in West Virginia, rehabilitating existing business and industry, and stimulating and assisting in the expansion of business activities that promote and maintain the economic stability of this state by providing maximum opportunities for employment of West Virginians and improving the standard of living of the people of this state.

(b) This article is aimed at:

(1) Increasing the availability of development capital in order to encourage and assist in the creation, development and expansion of businesses based in West Virginia;

(2) Developing, preserving, diversifying, expanding and strengthening the agricultural, industrial and business base of West Virginia's economy, particularly for those businesses utilizing this state's technical, managerial and research resources in domestic and international markets; and

(3) Providing the residents of West Virginia with greater opportunities to invest and participate in the economic development and potential of this state.

§5E-1-4. Definitions.

As used in this article, the following terms shall have the meanings ascribed to them in this section, unless the
context in which the term is used clearly requires another meaning or a specific different definition is provided.

(a) "Board" means the board of directors of the West Virginia industrial and trade jobs development corporation, provided for in article two, chapter five-c of this code.

(b) "Capital base" means equity capital or net worth.

(c) "Certified West Virginia capital company" means:

(1) A West Virginia business development corporation created pursuant to article fourteen, chapter thirty-one of this code; or

(2) A profit or nonprofit entity organized and existing under the laws of this state, created for the purpose of making venture or risk capital available to qualified investments, that has been certified by the board.

(d) "Qualified investment" means a debt or equity financing of a West Virginia business but only if the business is engaged in one or more of the following activities: Manufacturing; agricultural production or processing; forestry production or processing; mineral production or processing, except for conventional oil and gas exploration; transportation; research and development of products or processes associated with any of the activities previously enumerated above; tourism; and wholesale or retail distribution activities within the state.

(e) "Qualified West Virginia capital company" means a West Virginia capital company that has been certified by the board as a qualified capital company under the provisions of section six of this article.

(f) "State" means the state of West Virginia.

§5E-1-5. Rules and regulations.

The board shall promulgate rules and regulations in accordance with article three, chapter twenty-nine-a of this code, to carry out the purposes and to include generally the programs available, and the procedure and eligibility of application relating to assistance under such programs.

§5E-1-6. Certification of West Virginia capital companies.

(a) The board shall certify West Virginia capital companies commencing after the effective date of this article. A company seeking to be certified as a West Virginia capital company must make written application to the
board on forms provided by the board. The application
must contain the information required by section ten of this
article. Further, the certificate must specify the level of
capitalization of the company.
(b) The application shall set forth the applicant’s
purpose.

§5E-1-7. Minimum standards of qualified West Virginia
capital companies.

The board shall qualify West Virginia capital companies
as certified companies that have been capitalized at a
minimum level of one million dollars. Capitalization of the
company may be increased pursuant to regulation of the
board.

§5E-1-8. Tax credits.

(a) The total amount of tax credits authorized for a
single qualified company may not exceed two million
dollars. Capitalization of the company may be increased
pursuant to regulation of the board.
(b) The total credits authorized by the board for all
companies may not exceed a total of ten million dollars each
fiscal year. The board shall allocate these credits to
qualified companies in the order that said companies are
certified as qualified capital companies.
(c) Any investor, including an individual, partnership
or corporation who makes a capital investment in a
qualified West Virginia capital company is entitled to a tax
credit equal to fifty percent of the investment. This credit
may be taken against any tax liability imposed pursuant to
article thirteen, twenty-one or twenty-four, chapter eleven
of this code until the first day of July, one thousand nine
hundred eighty-six and thereafter, to articles twenty-one or
twenty-four of said chapter. The credit for investments by a
partnership or by a corporation electing to be treated as a
Subchapter S corporation may be divided pursuant to
election of partners or shareholders.
(d) The tax credit allowed under this section is to be
credited against the taxpayer's tax liability for the taxable
year in which the investment in a qualified West Virginia
capital company is made. If the amount of the tax credit
exceeds the taxpayer's tax liability for the taxable year, the
amount of the credit which exceeds the tax liability may be
carried back or may be carried forward in accordance with the provisions of section forty-six (b) of the Internal Revenue Code of 1954, as amended. (e) The tax credit provided for in this section is available only to those taxpayers whose investment in a qualified West Virginia capital company occurs after the first day of July, one thousand nine hundred eighty-six.

§5E-1-9. Recaptures; unqualified investments.

If the amount invested by a taxpayer in a qualified West Virginia capital company is not used by the company for qualified investments, as provided in section twelve of this article, the taxpayer is not subject to a recapture provision for any credit claimed by him but the company is subject to the civil penalty provided for in subsection (c), section twelve of this article.

§5E-1-10. Application requirements.

Each company shall make application to the board on forms provided therefor, which shall set forth: (1) Capitalization level of capital company; (2) Purpose of the company; (3) Names of investors; (4) A process for disclosing to investors the tax credit available pursuant to this article. Such disclosure shall clearly set forth that no tax credit will be available until the certification of said company shall be granted by the board and the disclosure of immunity of the state for damages is provided to said investors; and (5) The location of the escrow account which has been established for investors for the period of time between the investment and the certification of the board of a qualified company.

§5E-1-11. Disclaimer of liability of the state.

The state of West Virginia shall not be liable to any investor or qualified capital company as a result of this article or any of the activities authorized herein by any court of law.

§5E-1-12. Qualified investments.

(a) A qualified West Virginia capital company must use
its capital base to make qualified investments according to the following schedule:

1. At least twenty percent of its capital base within the first year of the date on which the certified company was designated as qualified capital company by the board;
2. At least forty percent of its capital base within two years of the date on which the certified company was designated as a qualified capital company by the board; and
3. At least sixty percent of its capital base within three years of the date on which the certified company was designated as a qualified capital company by the board.

(b) The board shall annually audit the certified audit of each qualified company, as required by section sixteen of this article, and the results of said audit shall be used to notify the tax commissioner of any companies that are not in compliance with this section.

(c) A qualified West Virginia capital company that fails to make qualified investments pursuant to subsection (a) of this section shall pay to the tax commissioner a penalty equal to all of the tax credits allowed to the taxpayers investing in said company with interest at the rate of one and one-half percent per month, compounded monthly, from the date the tax credits were certified as allocated to the qualified West Virginia capital company. The tax commissioner shall give notice to the company of any penalties under this section. The tax commissioner may abate said penalty upon written request if the capital company establishes reasonable cause for the failure to make qualified investments. The tax commissioner shall deposit any amounts received under this subsection in the state general fund.


(a) No more than thirty percent of the equity raised by a West Virginia capital company under this article may be invested in any one West Virginia business.

(b) No portion of the equity raised by a West Virginia capital company under this article shall be invested in a business that is related to that West Virginia capital company, or in any business that is owned or operated by, or employs, any officer, investor, member of the board of directors, or employee of that West Virginia capital
company, or the family of such person, unless the board of directors of the West Virginia industrial and trade jobs development corporation approves, in writing, of the making of such investment. For purposes of this subsection, relationships shall be determined in accordance with the rules set forth in section 267 of the Internal Revenue Code of 1954, as amended.

§5E-1-14. Conflict of interest.

No officer, member or employee of the board shall be financially interested, directly or indirectly, in any capital company.

§5E-1-15. Investment reporting and record keeping.

(a) Each qualified West Virginia capital company shall report to the tax commissioner and the board on a semiannual basis:

(1) The name of each investor in the qualified West Virginia capital company who has applied for a tax credit;
(2) The amount of each investor’s investment;
(3) The amount of the tax credit allowed to the investor and the date on which the investment was made; and
(4) All qualified investments the company has made.

(b) The company shall provide each investor in a qualified West Virginia capital company with a certificate authorizing the tax credits, and a true copy of the certificate shall be submitted with each taxpayer’s tax return requesting a credit under section eight of this article.

§5E-1-16. Examination.

(a) Annually each certified capital company shall cause its books and records to be audited by an independent certified public accountant in accordance with generally accepted auditing and accounting principles. In addition to the performance of a financial audit, the audit shall address the methods of operation and conduct of the business of the West Virginia capital company to determine compliance with this article and that the funds received by the company have been invested within the time limits required by this article. Upon completion, a copy of the audit report shall be certified and sent to the board.

(b) The board may examine, under oath, any of the
officers, directors, agents, employees or investors of a West Virginia capital company regarding the affairs and business of the company. The board may issue subpoenas and subpoenas duces tecum and administer oaths. Refusal to obey such a subpoena or subpoena duces tecum may at once be reported to the circuit court of the county in which the company is located or the persons subpoenaed resides and the circuit court shall enforce obedience to the subpoena or subpoena duces tecum in the manner provided by law for compliance with a subpoena or subpoena duces tecum issued by a circuit court of this state.

§5E-1-17. Decertification.

(a) If the examination conducted pursuant to section sixteen discloses that a West Virginia capital company is not in compliance with the provisions of this article, the board may exercise any of the powers necessary and appropriate to protect the board's interest.

(b) The board shall give a West Virginia capital company written notice of any inadequacies in its compliance with the provisions of this article, and specify a period of time the company has to redress such inadequacies. Failure within said time period to make corrections will result in further action by the board pursuant to this section.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 12. COUNTY AND MUNICIPAL DEVELOPMENT AUTHORITIES.

§7-12-1. Establishment authorized; name; exceptions.

Except as hereinafter provided, the governing body of every municipality and the county commission of every county is hereby authorized to create and establish a public agency to be known as a development authority. The name of the authority shall contain the words "development authority," together with the designation of the municipality or the county within which such authority is intended to operate. Nothing in this article contained, however, shall be construed as permitting the governing body of any municipality or county commission of any county in which there exists, on the date on which this
article becomes effective, one or more public development authorities, corporations or commissions, organized and existing pursuant to an act or acts of the Legislature, either local or general, and performing substantially the same or similar functions as the development authorities herein authorized, to create and establish such a development authority until such time as all such other public development authorities, corporations and commissions cease operations in such municipality or county: Provided, that nothing herein shall be construed to prohibit the creation and establishment of a municipal development authority when a county or regional development authority exists, and any municipal development authority shall have the exclusive right to exercise its powers granted pursuant to this article within the boundaries of the municipality.

§7-12-2. Purposes.

The purposes for which the authority is created are to promote, develop and advance the business prosperity and economic welfare of the municipality or county for which it is created, its citizens and its industrial complex; to encourage and assist through loans, investments or other business transactions in the locating of new business and industry within the municipality or county and to rehabilitate and assist existing businesses and industries therein; to stimulate and promote the expansion of all kinds of business and industrial activity which will tend to advance business and industrial development and maintain the economic stability of the municipality or county, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the citizens of the county; to cooperate and act in conjunction with other organizations, federal, state or local, in the promotion and advancement of industrial, commercial, agricultural and recreational developments within the municipality or county; and to furnish money and credit, land and industrial sites, technical assistance and such other aid as may be deemed requisite to approved and deserving applicants for the promotion, development and conduct of all kinds of business activity within the municipality or county.
§7-12-3. Management and control of county authority vested in board; appointment and terms of members; vacancies; removal of members.

The management and control of a county authority, its property, operations, business and affairs shall be lodged in a board of not fewer than twelve nor more than twenty-one persons who shall be appointed by the county commission and be known as members of the authority. One member shall be appointed by the county commission to represent it on the board. The city and town council of each municipality located within the county shall submit to the county commission the name of one representative to be appointed to the board. Other members shall be appointed by the county commission and shall include representatives of business, industry and labor. The members of the authority first appointed shall serve respectively for terms of one year, two years and three years, divided equally or as nearly equal as possible between these terms. Thereafter, members shall be appointed for terms of three years each. A member may be reappointed for such additional term or terms as the appointing agency may deem proper. If a member resigns, is removed or for any other reason his membership terminates during his term of office, a successor shall be appointed by the appointing agency to fill out the remainder of his term. Members in office at the expiration of their respective terms shall continue to serve until their successors have been appointed and have qualified. The appointing agency may at any time remove its appointed member of the commission by an order duly entered of record or by other action appropriate for such appointing agency and may appoint a successor member for any member so removed.

In addition to the appointing agencies hereinbefore named, such other persons, firms, unincorporated associations, and corporations, who reside, maintain offices, or have economic interests, as the case may be, in the county, shall be eligible to participate in and request the county commission to appoint members to the development authority as the said authority shall by its bylaws provide.

§7-12-3a. Management and control of municipal authority vested in board; appointment and terms of members; vacancies; removal of members.

The management and control of a municipal authority, its
property, operations, business and affairs shall be lodged in a board of not fewer than twelve nor more than twenty-one persons who shall be appointed by the governing body and be known as members of the authority. One member of the authority shall also be a member of the governing body appointed to represent it on the board. Other members shall be appointed by the governing body and shall include representatives of business, industry and labor. The members of the authority first appointed shall serve respectively for terms of one year, two years and three years, divided equally or as nearly equal as possible between these terms. Thereafter, members shall be appointed for terms of three years each. A member may be reappointed for such additional term or terms as the appointing agency may deem proper. If a member resigns, is removed or for any other reason his membership terminates during his term of office, a successor shall be appointed by the appointing agency to fill out the remainder of his term. Members in office at the expiration of their respective terms shall continue to serve until their successors have been appointed and have qualified. The appointing agency may at any time remove its appointed member of the authority by an order duly entered of record or by other action appropriate for such appointing agency and may appoint a successor member for any member so removed.

In addition to the appointing agencies hereinbefore named, such other persons, firms, unincorporated associations and corporations, who reside, maintain offices, or have economic interests, as the case may be, in the municipality, are eligible to participate in and request the governing body to appoint members to the development authority as the said authority by its bylaws provides.

§7-12-4. Qualifications of members.

All members of the board of the authority shall be citizens of the county or municipality in which the authority is intended to operate, and bona fide residents of the municipality or county by which they are appointed.

§7-12-8. Incurring indebtedness; rights of creditors.

The authority may incur any proper indebtedness and issue any obligations and give any security therefor which it
may deem necessary or advisable in connection with carrying out its purposes as hereinbefore mentioned. No statutory limitation with respect to the nature, or amount, interest rate or duration of indebtedness which may be incurred by municipalities or other public bodies shall apply to indebtedness of the authority. No indebtedness of any nature of the authority shall constitute an indebtedness of the governing body of the municipality or county commission of the municipality or county in which the commission is intended to operate or any municipality situated therein, or a charge against any property of said county commission, municipalities, or other appointing agencies. The rights of creditors of the authority shall be solely against the authority as a corporate body and shall be satisfied only out of property held by it in its corporate capacity.

§7-12-11. Participation and appropriations authorized; transfers and conveyances of property.

The governing body of a municipality and county commission are hereby authorized and empowered to appoint members of the said authority and the county commission and any municipality therein, or any one or more of them, jointly and severally, are hereby authorized and empowered to contribute by appropriation from their respective general funds not otherwise appropriated to the cost of the operation and projects of the authority. The county commission of the county or municipal corporations therein are hereby authorized and empowered to transfer and convey to the said authority property of any kind acquired by said county commission or municipal corporation for or adaptable to use in industrial, economic and recreational development, such transfers or conveyances to be without consideration or for such price and upon such terms and conditions as the said county commission or municipal corporation deems proper.

§7-12-12. Contributions by county commissions, municipalities and others; funds and accounts; reports; audit and examination of books, records and accounts.

Contributions may be made to the authority from time to
time by the county commission of the county or any
municipal corporation therein, and by any persons, firms or
corporations which shall desire to do so. All such funds and
all other funds received by the authority shall be deposited
in such bank or banks as the authority may direct and shall
be withdrawn therefrom in such manner as the authority
may direct. The authority shall keep strict account of all its
receipts and expenditures and shall each quarter make a
quarterly report to the county commission and
municipalities containing an itemized statement of its
receipts and disbursements during the preceding quarter.
Within sixty days after the end of each fiscal year, the
authority shall make an annual report containing an
itemized statement of its receipts and disbursements for the
preceding year, and such annual report shall be published
as a Class I legal advertisement in compliance with the
provisions of article three, chapter fifty-nine of this code,
and the publication area for such publication shall be the
county in which the development authority is located. The
books, records and accounts of the authority shall be
subject to audit and examination by the office of the state
tax commissioner of West Virginia and by any other proper
public official or body in the manner provided by law.

§7-12-13. Sale or lease of property; reversion of assets upon
dissolution.

In the event the board of the authority shall so determine,
the authority may lease or sell all of its property and
equipment on such terms and conditions as the authority
may fix and determine. Upon the dissolution of the
authority, all of its assets and property shall revert to and
become the property of the county or municipality for
which said authority was created.

§7-12-14. Employees to be covered by workers' compensation.

All employees of the authority eligible thereto are deemed
to be within the Workers' Compensation Act of West
Virginia, and premiums on their compensation shall be paid
by the authority as required by law.

§7-12-15. Liberal construction of article.

It is the purpose of this article to provide for promotion,
2 development and advancement of the business prosperity
3 and economic welfare of the municipality or county, its
4 citizens and its industrial complex, and this article shall be
5 liberally construed as giving to the authority full and
6 complete power reasonably required to give effect to the
7 purposes hereof.

CHAPTER 11. TAXATION.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-30. Tax credit for coal coking facilities; regulations.

(a) Effective the first day of July, one thousand nine
2 hundred eighty-seven, notwithstanding any provisions of
3 this code to the contrary, any company granted a reduced
4 rate loan pursuant to section seven, article two, chapter
5 five-b of this code shall be allowed a credit against the tax
6 imposed by this article for a period of five years from the
7 date the reduced rate loan is issued.
8 (b) The tax commissioner may prescribe such
9 regulations as may be necessary to carry out the purposes of
10 this section.

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-23. Tax credit for coal coking facilities; regulations.

(a) Effective the first day of July, one thousand nine
2 hundred eighty-seven, notwithstanding any provisions of
3 this code to the contrary, any company granted a reduced
4 rate loan pursuant to section seven, article two, chapter
5 five-b of this code shall be allowed a credit against the tax
6 imposed by this article for a period of five years from the
7 date the reduced rate loan is issued.
8 (b) The tax commissioner may prescribe such
9 regulations as may be necessary to carry out the purposes of
10 this section.

ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-24. Tax credit for coal coking facilities; regulations.

(a) Effective the first day of July, one thousand nine
2 hundred eighty-seven, notwithstanding any provisions of
3 this code to the contrary, any company granted a reduced
4 rate loan pursuant to section seven, article two, chapter
five-b of this code shall be allowed a credit against the tax
imposed by this article for a period of five years from the
date the reduced rate loan is issued.
(b) The tax commissioner may prescribe such
regulations as may be necessary to carry out the purposes of
this section.

ARTICLE 24. CORPORATION NET INCOME TAX.
§11-24-22. Tax credit for coal coking facilities; regulations.
(a) Effective the first day of July, one thousand nine
hundred eighty-seven, notwithstanding any provisions of
this code to the contrary, any company granted a reduced
rate loan pursuant to section seven, article two, chapter
five-b of this code shall be allowed a credit against the tax
imposed by this article for a period of five years from the
date the reduced rate loan is issued.
(b) The tax commissioner may prescribe such
regulations as may be necessary to carry out the purposes of
this section.

CHAPTER 18. EDUCATION.
ARTICLE 26B. INSTITUTE FOR PUBLIC AFFAIRS.
§18-26B-1. Institute for public affairs; creation and purposes.
(a) There is hereby created as an independent entity the
institute for public affairs, to be located and operated at
West Virginia University. The institute shall be under the
control and supervision of a director, which position is to be
filled by an individual, whose credentials include
accomplishments in the interdisciplinary academic fields
together with that of government. The director shall be
appointed by the president of West Virginia University. The
institute shall engage faculty from institutions of higher
learning throughout the state and shall cooperatively
develop a program with other such institutions. The terms
of such participation may be by contract, loan, part-time
basis or other such arrangement.
(b) The institute is directed to conduct independent
research and propose strategies and options on public
issues and policies upon its own initiative or as may be
requested by the executive or the Legislature.
(c) The institute is directed to establish priorities and coordinate its public policy initiatives with the governor and with the Legislature. To accomplish this purpose, there is hereby created an advisory board to consist of four members of the Legislature, two of whom shall be members of the House of Delegates to be appointed by the Speaker and two of whom shall be members of the Senate to be appointed by the President; and four members of the executive to be appointed by the governor. The director shall serve as the chairman of the advisory board.

(d) The institute is directed to seek all other funds, grants, and other sources of assistance from other agencies of government as well as the private sector.

§18-26B-2. Director's administrative control and supervision.

The director shall have administrative control and supervision of the institute.

ARTICLE 26C. INSTITUTE FOR INTERNATIONAL TRADE DEVELOPMENT.

§18-26C-1. Institute for international trade development; creation and purpose.

There is hereby created as an independent entity the institute for international trade development, to be located and operated at Marshall University. The institute is established to facilitate faculty involvement in the formation and continuation of international market entry and development strategy, to provide assistance to state businesses in exporting and attracting foreign investment, and to engage in other activities designed to promote, develop and stimulate export expansion and foreign direct investment. The institute shall be under the control and supervision of a director, who shall be appointed among the faculty by the president of Marshall University. The institute shall engage faculty from institutions of higher learning throughout the state and shall cooperatively develop an export program with the other such institutions. The terms of such participation may be by contract, loan, part-time basis, or other such arrangement. The institute shall develop with the board of regents and the governor a program of student internships in international business to place qualified students for academic credit
with businesses in West Virginia to help develop export
awareness and potential. The institute shall further provide
research and analysis on matters of international trade
upon request of the executive or the Legislature, and shall
initiate partnership grants, and proposals in the area of
international trade in accordance with the provisions of
article two-a, chapter five-b; and apply for and obtain
grants or funds from all available sources, private and
public.

CHAPTER 29. MISCELLANEOUS BOARDS AND
OFFICERS.

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-17a. Apprenticeship program.
1 (a) The civil service system shall develop and monitor
apprenticeship programs for all state agencies that have
employees working in apprenticeable trades which are, or
may be recognized by, the United States department of
labor, bureau of apprenticeship and training.
6 (b) These apprenticeship programs will be developed
and conducted in a manner that will assure meeting the
national minimum requirements of quality and be
registered with the United States department of labor,
bureau of apprenticeship and training.
11 (c) The director of the civil service commission, or his
designee, in cooperation with the participating appointing
authorities within each agency, shall develop and annually
revise by the thirty-first day of December a list of
employment classifications appropriate for apprenticeship
training, which may include, but not be limited to, the
following classifications: Computer service technicians;
legal assistants; computer systems analysts; computer
programmers; computer operators; office machine
repairers; physical therapy assistants; electrical engineers;
civil engineering technicians; peripheral edp equipment
operators; insurance clerks, medical; electrical and
electronic technicians; occupational therapists; surveyor
helpers; credit clerks, banking and insurance; physical
therapists; employment interviewers; mechanical
ingineers; mechanical engineering technicians; and
compression and injection mold machine operators.
28 (d) The chief administrative officer of each agency in
cooperation with the director of the civil service
commission, or his designee, shall establish procedures for
the coordination of apprenticeship programs developed in
accordance with this section.

(e) Subject to the approval of the director of the civil
service commission and the procedures established, each
participating agency shall determine the location and
positions in which apprenticeships are to be established.

(f) The director, or his designee, shall make an annual
report to the Legislature and shall include in such report the
following:

(1) A review of the development and operation of
apprenticeship programs;

(2) The current list of apprenticeable classifications;

(3) A summary of the agencies and types of positions
involved;

(4) A summary of registered apprenticeships;

(5) The number of persons who applied for
apprenticeship positions under this section;

(6) The number of persons accepted into the
apprenticeship programs established in accordance with
this section;

(7) The number of persons who successfully completed
and received a certificate of completion from the United
States department of labor, bureau of apprenticeship and
training;

(8) The number of persons who failed to complete
apprenticeships in accordance with this section;

(9) The number of persons who remain employed after
successfully completing apprenticeships; and

(10) A summary of characteristics of applicants and
participants in the program deemed pertinent to the
director of the civil service commission.

(g) The recruitment, selection and training of
apprentices during their apprenticeship shall be without
discrimination because of race, color, religion, national
origin or sex. The commission will take affirmative action
to provide equal opportunity in apprenticeship programs
and will operate the program to assure equal employment in
apprenticeship.

(h) The director, or his designee, shall file a report on the
development of apprenticeship programs with the governor
and the Legislature on or before the first day of January, one thousand nine hundred eighty-seven.

(i) No contract between the state and a vendor, whereby persons who have participated in the apprenticeship program are to be hired, may be approved by the attorney general unless and until said contract contains a statement that the vendor will not discriminate in employment or public accommodation because of race, religion, color, national origin, ancestry, sex, age, blindness or handicap of any individual.

§29-6-17b. Advisory board for the apprenticeship program.

1 In order to better accomplish the goals of this program an apprenticeship advisory board is established. Its members shall include the commissioner of labor or a designee, the commissioner of finance and administration or a designee, the state superintendent of the department of education or a designee, two employees of the state who are covered under the civil service system, and one private citizen, with the employee and citizen members to be appointed by the governor. The employees and the private citizen members shall serve without compensation for two years, after which they may be reappointed.

2 The commissioner of labor shall call the first meeting of the advisory board within three months of the effective date for this program. At this meeting the chairman of the board shall be elected by the board as a whole.

3 The advisory board shall meet at least semiannually, at the call of the chairman, for the purpose of receiving, reviewing and evaluating reports from the director of the civil service commission on the achievements and deficiencies of the program. The board may seek the advice and counsel from appropriate members of the United States department of labor who may be knowledgeable about such apprenticeship programs. The board may also prepare written recommendations to the governor on ways to improve the apprenticeship program.

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 questions pending therein which requires the approval of the creditors participating in any reorganization proceeding or receivership, exchange any evidence of such indebtedness for any property, security or evidence of indebtedness offered as a part of the reorganization of such responsible buyer or responsible tenant or of any other entity formed to acquire the assets thereof and may compromise or reduce the amount of any indebtedness owing to it as a part of any such reorganization.

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

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

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

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

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

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

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

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

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

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

(w) To sell security interests in the loan portfolio of the authority. Such security interests shall be evidenced by instruments issued by the authority. Proceeds from the sale of security interests may be 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 industry 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, 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.

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

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

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

(b) The authority shall determine that the industrial
development agency has obtained from other independent
and responsible sources, such as banks and insurance
companies, a firm commitment for all other funds over and
above the loan of the authority and such funds or property
as the agency may hold, necessary for payment of all the
estimated cost of establishing or acquiring the industrial
development project and that the sum of all these funds is
adequate to ensure completion and operation of the
industrial development project. The proceeds of any loan
made by the authority to the industrial development agency
pursuant to this subdivision (b) shall be used only for the
establishment or acquisition of industrial development
projects in furtherance of the public purposes of this article.
(c) The loan of the authority shall be for such period of
time and shall bear interest at such rate as the authority
determines and it shall be secured by the negotiable
promissory note of the industrial development agency and
by deed of trust on the industrial development project for
which the loan was made or by assignment of any deed of
trust and negotiable promissory note and other security
taken by the industrial development agency on the
industrial development project, such deed of trust and note,
assignment of deed of trust and note and other security to be
second and subordinate only to the deed of trust securing
the first lien obligation issued to secure the commitment of
funds from the independent and responsible sources and
used in the financing of the industrial development project.
Money loaned by the authority to an industrial
development agency shall be withdrawn from the fund and
paid over to the agency in such manner as is provided by
rules and regulations of the authority. The authority shall
deposit all payments of interest on loans and the principal
thereof in the fund.
Where any federal agency participating in the financing
of an industrial development project is not permitted to
take as security for such participation a deed of trust or
assignment of deed of trust and other security the lien of
which is junior to the deed of trust or assignment of deed of
trust and other security of the authority, the authority may
take as security for its loan to the industrial development
agency a deed of trust or assignment of deed of trust and
other security junior in lien to that of the federal agency.
§31-15-7b. 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 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 industry 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.
§31-15-8. Loan application requirements; hearings.

Prior to the loaning of any funds to an industrial development agency for an industrial development project or for an industrial subdivision project acquisition or improvement, the authority shall receive from such agency a loan application in such form as adopted by the authority.

(1) If the loan application is for an industrial development project, the form shall contain at least the following:

(a) A general description of the project and a general description of the industrial, commercial, manufacturing or tourist enterprise for which the project has been or will be established.

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

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

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

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

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

(g) Evidence of the arrangement made by the industrial development agency for the financing of all costs of the project.

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

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

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

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

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

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

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

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


The authority may make loans for equipment as part of the 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, industry 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.

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

The governing body of the authority shall consist of the members of the authority acting as a board, which shall exercise all the powers given to the authority in this article. The governor or his designated representative shall be
chairman of the board and its chief executive officer. On the
second Wednesday of July of each year, the board shall meet
to elect a secretary and a treasurer from among its own
members.
A majority of the members shall constitute a quorum for
the purpose of conducting business. Except in the case of a
loan application or unless the bylaws require a larger
number, action may be taken by majority vote of the
members present. Approval or rejection of a loan
application shall be made by majority vote of the full
membership of the board.
The board shall manage the property and business of the
authority and prescribe, amend and repeal bylaws and rules
and regulations governing the manner in which the
business of the authority is conducted.
The governor shall provide staff services to the authority
for administration of this article, including liaison between
the authority and the industrial development agencies and
related organizations and between the authority and other
state agencies whose facilities and services may be useful to
the authority in its work. The authority may reimburse any
state spending unit for any special expense actually
incurred in providing any service or the use of any facility to
the authority.
The authority shall employ an executive director and any
other personnel it determines necessary, and may appoint
its own counsel and legal staff, and retain such temporary
engineering, financial and other consultants or technicians
as may be required for any special study or survey
consistent with the provisions of this article.

ARTICLE 18B. MORTGAGE AND INDUSTRIAL DEVELOPMENT
INVESTMENT POOL.

§31-18B-4. West Virginia economic development authority to
make available state mortgage and industrial
development investment pool funds for
investment in industrial development; amount
of funds available; interest rate specified.

(a) The West Virginia economic development authority
may use for any investments authorized by sections seven
and seven-a, article fifteen, chapter thirty-one of this code,
up to one half of the funds of the state mortgage and
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5 industrial development investment pool: Provided, That
6 the economic development authority shall deposit with the
7 treasurer of the state for the credit of the state mortgage and
8 industrial development pool such notes, security interests
9 or bonds issued by the economic development authority
10 evidencing the indebtedness of the authority to the pool.
11 (b) Such notes, security interests or bonds issued by the
12 authority shall be secured by security equal to or better
13 than one of the three highest rating grades by an agency
14 which is nationally known in the field of rating corporate
15 securities: Provided, That notes, security interests or bonds
16 evidencing indebtedness of less than two million dollars
17 may be secured by a letter of credit guarantee issued by a
18 bank having an unsecured legal lending limit greater than
19 one million dollars.
20 (c) The interest rate and the maturity dates of the notes,
21 security interests or bonds held by the treasurer for the state
22 mortgage and industrial development investment pool shall
23 be determined by the economic development authority
24 according to the provisions of section eleven, article fifteen,
25 chapter thirty-one of this code: Provided, That such
26 interest rate shall not be less than the prior four-week
27 auction average yield for thirteen-week treasury bills and
28 such rate shall be valid for a term of not more than three
29 years: Provided, however, That the economic development
30 authority may determine a variable rate of interest to be
31 adjusted no less frequently than semiannually, and such
32 variable interest rate shall not be less than the prior four-
33 week auction average yield for thirteen-week treasury bills.

ARTICLE 19. WEST VIRGINIA COMMUNITY INFRASTRUCTURE
AUTHORITY.

1 This article shall be known as the "West Virginia
2 Community Infrastructure Authority Act."

§31-19-2. Legislative findings and purposes.
1 (a) The Legislature hereby finds and declares that
2 increasing requirements for essential public improvements
3 and escalating costs of providing such improvements have
4 created inordinate demands upon the financial resources of
(b) The Legislature hereby finds and declares further that it is in the public interest and is the responsibility of the state of West Virginia to foster and promote by all lawful means the provision of adequate capital markets and facilities for borrowing money by counties and municipalities for the financing of public improvements and the fulfillment of public purposes, and to make it possible for counties and municipalities to obtain new or additional sources of capital funds at acceptable interest costs, including activities to encourage investor interest in the purchase of bonds or notes of counties or municipalities as sound and preferred securities for investments.

(c) The Legislature hereby finds and declares further that it is in the public interest and is the responsibility of the state of West Virginia to encourage counties and municipalities to continue their independent undertakings of public improvements and fulfillment of public purposes and the financing thereof and to improve or enhance the possibilities of counties and municipalities obtaining funds, to the extent possible, at reduced interest costs, for orderly financing of public improvements and fulfillment of public purposes, particularly those counties or municipalities not otherwise able to borrow for such purposes during periods of need.

(d) The Legislature hereby finds and declares further that it is in the public interest, in order to implement and aid in the discharge of the responsibilities of the aforesaid, that a state instrumentality be created as a public body corporate with full powers to borrow money and issue its bonds and notes to the end that funds obtained thereby may be used for the purchase by such state instrumentality of the bonds or notes of counties and municipalities or for the purposes of making loans to the counties or municipalities for community infrastructure projects, and that such state instrumentality be granted all powers necessary or appropriate to accomplish and carry out the aforesaid public purposes and responsibilities of the state of West Virginia in a manner to make it possible for counties or municipalities to sell their bonds and borrow funds at as
low an interest rate as said instrumentality finds and
determines to be feasible.
(e) The Legislature further finds and declares that in
accomplishing these purposes, the West Virginia
community infrastructure authority, created and
established by this article, will be acting in all respects for
the benefit of the people of the state of West Virginia to
serve the public purposes of improving and otherwise
promoting their health, education, welfare, safety and
prosperity, and that the West Virginia community
infrastructure authority, so created and established, is
hereby empowered to act on behalf of the state of West
Virginia and its people in serving the aforesaid public
purposes for the benefit of the general public of said state.


As used in this article, unless the context clearly requires
a different meaning:
(1) “Authority” means the West Virginia community
infrastructure authority created in section four of this
article, the duties, powers, responsibilities and functions of
which are specified in this article.
(2) “Board” means the West Virginia community
infrastructure authority board created in section four of
this article, which shall manage and control the West
Virginia community infrastructure authority.
(3) “Bond” or “community infrastructure revenue
bond” means a revenue bond or note issued by the West
Virginia community infrastructure authority to effect the
intents and purposes of this article.
(4) “Community infrastructure project” or “project”
means any project of a public nature which is considered a
part of the infrastructure of a county or municipality,
including, but not limited to roads and other appurtenances
to community or economic development, which are
specifically declared to be for a public purpose.
(5) “Cost” means, as applied to community
infrastructure projects, the cost of acquisition, repair,
renovation and construction thereof; the cost of acquisition
of all land, rights-of-way, property rights, easements,
franchise rights, and interests required by the county or
municipality for such acquisition, renovation, repair or
construction; the cost of demolishing or removing any
buildings or structures on land so acquired, including the
cost of acquiring any lands to which buildings or structures
may be moved; the cost of diverting highways, interchange
of highways, access roads to private property, including the
cost of land or easement therefor; the cost of all machinery,
furnishing, and equipment; all finance charges, and interest
prior to and during the construction and for no more than
eighteen months after completion of construction; the cost
of all legal services and expenses; the cost of all plans,
specifications, surveys and estimates of cost; all working
capital and other expenses necessary or incident to
determining the feasibility or practicability of acquiring,
renovating, repairing or constructing any such project; the
financing of such acquisition, renovation, or repair or
construction, including the amount authorized in the
resolution of the authority providing for the issuance of
community infrastructure revenue bonds to be paid into
any special funds from the proceeds of such bonds; and the
financing of the placing of any such project in operation, if
necessary. Any obligations or expenses incurred after the
effective date of this article by any county or municipality,
with the approval of the authority, for surveys, borings,
preparation of plans and specifications and other
engineering services in connection with the acquisition,
renovation, repair 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 grants, loans or
community infrastructure revenue bonds as authorized by
the provisions of this article.

(6) "Department" means the governor’s office of
community and industrial development.

(7) "Revenue" means any money or thing of value
collected by, or paid to, the West Virginia community
infrastructure authority in connection with any community
infrastructure project or as principal of or interest, charges
or other fees on loans, or any other collections on loans
made by the West Virginia community infrastructure
authority to counties or municipalities to finance in whole
or in part the acquisition, renovation, repair or construction
of any community infrastructure project or projects, or
other money or property which is received and may be
expended for or pledged as revenues pursuant to this
article.
§31-19-4. West Virginia community infrastructure authority created; West Virginia community infrastructure board created; organization of authority and board; appointment of board members; their term of office, compensation and expenses; duties and responsibilities of director and staff of authority.

(a) There is hereby created the West Virginia community infrastructure 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 the five member board known as the West Virginia community infrastructure board, which is hereby created. The director of the governor's office of community and industrial development, or his designee, the director of the department of natural resources, or his designee, and the commissioner of the department highways, or his designee, shall be members ex-officio of the board. The director of the governor's office of community and industrial development, or his designee, shall be the ex-officio chairman. Two members of the board shall be representative of the general public, one of which shall have had experience or a demonstrated interest in local government. The two members who are not ex-officio members of the board shall be appointed by the governor, by and with the advice and consent of the Senate, for initial terms of three and six years, respectively. The successor of each such appointed member shall be appointed for a term of six years in the same manner as the original appointments were made, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. Each board member shall serve until the appointment and qualification of his successor. The two appointed board members shall not at any one time belong to the same political party. Appointed board members may be reappointed to serve additional
terms, not to exceed two consecutive full terms. All
members of the board shall be citizens of the state. Each
appointed member of the board, before entering upon his
duties, shall comply with the requirements of article one,
chapter six of this code and give bond in the sum of twenty
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 appointed
members as vice-chairman, and shall appoint a secretary-
treasurer, who need not be a member of the board. Three
members of the board shall constitute a quorum and the
affirmative vote of three members 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.
The director of the governor's office of community and
industrial development or his designee, the director of the
department of natural resources or his designee, and the
commissioner of the department of highways or his
designee, shall not receive any compensation for serving as
board members. Each of the two appointed board members
of the board shall receive an annual salary of five thousand
dollars, payable in monthly installments. Each of the five
board members shall be reimbursed for all reasonable and
necessary expenses actually incurred in the performance of
his duties 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 for which
moneys are available from funds of the authority or from
such appropriations.
(b) There shall be a director of the authority appointed
by the board who shall supervise and manage the
community infrastructure authority, and the governor's
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office of community and industrial development shall serve
as the staff for the authority. Except as otherwise provided
in this section, the duties and responsibilities of the director
and of the staff shall be established by the authority. At the
board's discretion, it may provide for the position of general
counsel, who shall be an employee of the authority, or for
the appointment of special counsel. As the board deems
necessary and desirable, it may at any time elect to change
its decision on the employment or appointment of a counsel.

(c) The director, or his designee, may employ or appoint
any staff members in addition to those provided by the
governor's office of community and industrial
development, including general or special counsel if the
position is established by the board. The number of
employees needed, the positions to be filled and their
salaries or wages shall be determined by the director with
the approval of the board, unless the board elects to not
require its approval. At any time the board may elect to
change its decision concerning approval of additional staff
hiring and salaries.

(d) The board shall meet at least quarterly, and more
often as it deems necessary. The director and any other staff
member or members as the director deems expedient shall
attend board meetings.

§31-19-5. Authority may finance community infrastructure
projects; loans to or bond purchases from counties
and municipalities shall be subject to terms of
loan or bond purchase agreements.

To accomplish the public policies and purposes and to
meet the responsibility of the state as set forth in this
article, the West Virginia community infrastructure
authority may make loans to counties and municipalities
for the acquisition, renovation, repair or construction of
community infrastructure projects by such counties and
municipalities, and may issue community infrastructure
revenue bonds of this state, payable solely from revenues, to
pay the cost of, or finance, in whole or in part, by loans to
counties and municipalities such projects. A community
infrastructure project shall not be undertaken unless it has
been determined by the authority based upon information
provided to it by the county or municipality or other agency
charged by law with the responsibility of reporting to be consistent with any applicable requirements of law. Any resolution of the authority providing for making a loan or bond purchase pursuant to this article shall include a finding by the authority that such determinations have been made. A loan or bond purchase agreement shall be entered into between the authority and each county or municipality to which a loan is made or from which bonds are purchased for the acquisition, renovation, repair or construction of a community infrastructure project, which loan or bond purchase agreement shall include without limitation the following provisions:

(1) The cost of such project, the amount of the loan or bond purchase, the terms of repayment of such loan or bond purchase and the security therefor.

(2) The specific purposes for which the proceeds of the loan or bond purchase shall be expended, the procedures as to the disbursements of loan or bond purchase proceeds and the duties and obligations imposed upon the county or municipality in regard to the construction, renovation, repair or acquisition of the project.

(3) The agreement of the county or municipality to raise the funds for repayment, through levy, pursuant to an election pursuant to article one of chapter thirteen of this code; and

(4) The agreement of the county or the municipality to comply with all applicable laws, rules and regulations issued by the authority or other state, federal or local bodies in regard to the construction, repair, renovation or acquisition of the project.

§31-19-6. Powers, duties and responsibilities of the authority generally.

The West Virginia community infrastructure 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:

(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
10 rules and regulations to be promulgated in accordance with
11 the provisions of chapter twenty-nine-a of this code.
12 (2) Adopt an official seal.
13 (3) Maintain a principal office and, if necessary,
14 regional sub-offices at locations properly designated or
15 provided.
16 (4) Sue and be sued in its own name and plead and be
17 impleaded in its own name, particularly to enforce the
18 obligations and covenants made under sections seven and
19 eight of this article. Any actions against the authority shall
20 be brought in the circuit court of Kanawha County, in
21 which the principal office of the authority shall be located.
22 (5) Establish and operate a revolving loan fund for the
23 purpose of making loans to counties and municipalities for
24 the acquisition, renovation, repair or construction of
25 community infrastructure projects by such counties or
26 municipalities; purchase the bonds of counties and
27 municipalities issued for the acquisition, renovation, repair
28 or construction of community infrastructure projects by
29 such county or municipality; and, in accordance with the
30 provisions of chapter twenty-nine-a of this code, adopt
31 rules and procedures for making such loans or purchasing
32 such bonds.
33 (6) Issue community infrastructure revenue bonds and
34 notes and community infrastructure revenue refunding
35 bonds of the state, payable as provided in section seven of
36 this article unless the bonds are refunded by refunding
37 bonds, for the purpose of making loans to or bond purchases
38 from counties or municipalities for one or more community
39 infrastructure projects or parts thereof.
40 (7) Acquire by gift or purchase, hold or dispose of real
41 and personal property in the exercise of its powers and
42 performance of its duties as set forth in this article.
43 (8) Make and enter into all contracts and agreements
44 and execute all instruments necessary or incidental to the
45 performance of its duties and the execution of its powers.
46 (9) Receive and accept from any federal agency, subject
47 to the approval of the governor, grants for or in aid of the
48 construction, repair, renovation or acquisition of
49 community infrastructure projects, and receive and accept
50 aid or contributions from any source of money, property,
51 labor or other things of value, to be held, used and applied
only for the purposes for which such grants and contributions are made.

(10) Purchase property coverage and liability insurance for any community infrastructure project and for any offices of the authority, insurance protecting the authority and its officers and employees against liability, if any, or damage to property or injury to or death of persons arising from its operations and any other insurance the authority may agree to provide under any resolution authorizing the issuance of community infrastructure revenue bonds or in any trust agreement securing the same.

(11) Establish or increase reserves from moneys received or to be received by the authority to secure or pay the principal of and interest on bonds and notes issued by the authority pursuant to this article or other law.

(12) Receive and disburse the proceeds of such general obligation bonds of the state as may be allowed by law pursuant to any resolution or act of the Legislature.

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

(14) Make grants to counties or municipalities for one or more community infrastructure projects or parts thereof.

(15) Provide consultation services to municipalities or counties in connection with the acquisition, renovation, repair or construction of any community infrastructure project.

(16) Establish and amend the criteria and qualifications for the making of any loan to or the purchasing of any bond from a county or municipality and the terms not inconsistent with this article of any loan or bond purchase agreement with any county or municipality.

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

§31-19-7. Authority empowered to issue community infrastructure revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.

The authority is hereby empowered to issue from time to
2 time community infrastructure revenue bonds and notes of
3 the state in such principal amounts as the authority deems
4 necessary to make loans to or bond purchases from counties
5 and municipalities for one or more community
6 infrastructure projects.
7 The authority may, from time to time, issue renewal
8 notes, issue bonds to pay such notes and whenever it deems
9 refunding expedient, refund any bonds by the issuance of
10 community infrastructure revenue refunding bonds by the
11 state pursuant to the provisions of section sixteen of this
12 article. Except as may otherwise be expressly provided in
13 this article or by the authority, every issue of its bond or
14 notes shall be obligations of the authority payable out of the
15 revenues and reserves created for such purposes by the
16 authority which are expressly pledged for such payment,
17 without preference or priority of the first bonds issued,
18 subject only to any agreements with the holders of
19 particular bonds or notes pledging any particular revenues.
20 Such pledge shall be valid and binding from the time the
21 pledge is made and the revenues so pledged and thereafter
22 received by the authority shall immediately be subject to
23 the lien of such pledge without any physical delivery
24 thereof or further act and the lien of any such pledge shall
25 be valid and binding as against all parties having claims of
26 any kind in tort, contract or otherwise against the authority
27 irrespective of whether such parties have notice thereof.
28 All such bonds and notes shall have and are hereby
29 declared to have all the qualities of negotiable instruments.
30 The bonds and notes shall be authorized by resolution of
31 the authority, shall bear such date and shall mature at such
32 time, in case of any such note or any renewal thereof not
33 exceeding five years from the date of issue of such original
34 note, and in the case of any such bond not exceeding fifty
35 years from the date of issue, as such resolution may provide.
36 The bonds and notes shall bear interest at such rate or rates,
37 including variable rates, be in such denominations, be in
38 such form, either coupon or registered, carry such
39 registration privileges, be payable in such medium of
40 payment, in such place and be subject of such terms of
41 redemption as the authority may authorize. The bonds and
42 notes of the authority may be sold by the authority at public
43 or private sale, at or not less than the price the authority
determines. The bonds and notes shall be executed by the
chairman of the authority who may use a facsimile signature. The official seal of the authority or a facsimile shall be affixed thereto or printed thereon and attested, manually or by facsimile signature by the secretary-treasurer of the authority, and any coupons attached thereto shall bear the signature or facsimile signature of the chairman of the authority. 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 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 have been changed after a facsimile has been imprinted on such bonds or notes, such facsimile will continue to be sufficient for all purposes.

Any resolution authorizing any bonds or notes or any issue thereof may contain provisions (subject to such agreements with bondholders or noteholders as may then exist, which provisions shall be a part of the contract with the holders thereof) as to pledging all or any part of the revenues of the authority to secure the payment of the bonds or notes or of any issue thereof; the use and disposition of revenues of the authority; the setting aside of reserve funds, sinking funds or replacement and improvement funds and the regulation and disposition thereof; the crediting of the proceeds of the sale of bonds or notes to and among the funds referred to and provided for in the resolution authorizing the issuance of the bonds or notes; the use, lease, sale or other disposition of any assets of the authority; limitations on the purpose to which the proceeds of sale of bonds or notes may be applied; notes issued in anticipation of the issuance of bonds; the agreement of authority to do all things necessary for the authorization, issuance and sale of such bonds in such amounts as may be necessary for the timely retirement of such notes; limitation on the issuance of additional bonds or notes; the terms upon which additional bonds or notes may be issued and secured; the refunding of outstanding bonds or notes; the procedure, if any, by which the terms of any contract with 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 such consent may be given;
limitations on the amount of moneys to be expended by the
authority for operating, administrative or other expenses of
the authority securing any bonds or notes by a trust
agreement; and any other matter, of like or different
character, which in any way affect the security or
protection of the bonds or notes.
In the event that the sum of all reserves pledged to the
payment of such bonds or notes shall be less than the
minimum reserve requirements established in any
resolution or resolutions authorizing the issuance of such
bonds or notes, the chairman of the authority shall certify,
on or before the first day of December of each year, the
amount of such deficiency to the governor of the state for
inclusion, if the governor shall so elect, of the amount of
such deficiency in the budget to be submitted to the next
session of the Legislature for appropriation to the authority
to be pledged for payment of such bonds or notes: Provided,
That the Legislature shall not be required to make any
appropriations so requested, and the amount of such
deficiencies shall not constitute a debt or liability of the
state.
Neither the members of the authority nor any person
executing the bonds or notes shall be liable personally on
the bonds or notes or be subject to any personal liability or
accountability by reason of the issuance thereof.

§31-19-8. Trustee for bondholders; contents of trust
agreement.
Any community infrastructure revenue bonds or notes or
community infrastructure revenue refunding bonds issued
by the authority under this article may be secured by a trust
agreement between the authority and a corporate trustee,
which trustee may be any trust company or banking
institution having the powers of a trust company within or
without this state. The authority shall promulgate rules and
regulations pursuant to article three, chapter twenty-nine-
a of this code establishing the method of choosing any such
trustee which shall be done by a public competitive bidding
procedure.
The authority shall, in all instances, seek to achieve the
highest possible rating for any community infrastructure
revenue bonds or notes or community infrastructure
revenue refunding bonds or notes.
Any such trust agreement may pledge or assign revenues of the authority to be received. Any such trust agreement or any resolution providing for the issuance of such bonds or notes may contain such provisions for protecting and enforcing the rights and remedies of the bondholders or noteholders as are reasonable and proper and not in violation of law, including the provisions contained in section seven of this article and covenants setting forth the duties of the authority in relation to provisions regarding the payment of the principal of and interest, charges and fees on loans made to, or bond purchases from, counties and municipalities from the proceeds of such bonds or notes, the custody, safeguarding and application of all moneys. Any banking institution or trust company incorporated under the laws of this state which may act as depository of the proceeds of bonds or notes or of revenues shall furnish such indemnifying bonds or pledge such securities as are required by the authority. Any such trust agreement may set forth the rights and remedies of the bondholders and noteholders and of the trustee and may restrict individual rights of action by bondholders and noteholders as customarily provided in trust agreement or trust indentures securing similar bonds. Such trust agreement may contain such other provisions as the authority deems reasonable and proper for the security of the bondholders or noteholders. All expenses incurred in carrying out the provisions of any such trust agreement may be treated as part of the cost of the construction, renovation, repair or acquisition of a community infrastructure project.


Any holder of community infrastructure revenue bonds issued pursuant to this article or any of the coupons appertaining thereto and the trustee under any trust agreement, except the extent the rights given by this article may be restricted by the applicable resolution or such trust agreement, may by civil action, mandamus or other proceedings protect and enforce any rights granted under the laws of the state or granted under this article by the trust agreement or by the resolution in the issuance of such bonds, and may enforce and compel the performance or all duties required by this article, whereby the trust agreement
12 or resolution, to be performed by the authority or any
13 officer thereof.

§31-19-10. Bonds and notes not debt of state, county, or
municipality; expenses incurred pursuant to
article.

Community infrastructure revenue bonds and notes and
pursuant to 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 or
municipality of the state and the holders or owners thereof
shall have no right to have taxes levied by the Legislature or
taxing authority of any county or municipality 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 pursuant to this article which bonds
or refunding bonds shall be payable solely from revenues
and funds pledged for their payment as authorized by this
article. All such bonds and notes shall contain on the face
thereof a statement to the effect that the bonds or notes, as
to both principal and interest, are not debts of the state or
any county or municipality thereof, but are payable solely
from revenues and funds pledged for their payment.

All expenses incurred in the carrying out of 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 or
municipality thereof.

§31-19-11. Use of funds by authority; restrictions thereon.

All moneys, properties and assets acquired by the
authority whether as proceeds from the sale of community
infrastructure revenue 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
§31-19-12. Investment of funds by authority.

Except as otherwise provided in any resolution authorizing the issuance of community infrastructure revenue bonds or in any trust agreement securing the same, the authority is hereby authorized and empowered to invest any funds not needed 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) 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 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 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 of 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 nationally recognized bond-rating agencies; 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 (i) such corporation has earned a profit in eight of the preceding ten fiscal years as reflected in its statements, (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 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.


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


The provisions of sections nine and ten, article six, chapter twelve of this code to the contrary notwithstanding,
all community infrastructure revenue bonds issued pursuant to 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.

§31-19-15. Purchase and cancellation of notes or bonds.

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


1. 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 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 purpose of the authority; and 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 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 pursuant to this article shall be payable from the revenues out of which the bonds to be refunded thereby were payable, or from other moneys or the principal of and interest on or other investment yield from, investments or proceeds of bonds or other applicable funds or moneys, including investments of proceeds of any refunding bonds, and shall be subject to the provisions contained in section seven of this article and shall be secured in accordance with the provisions of sections seven and eight of this article.

§31-19-17. Exemption from taxation.

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 construction, acquisition, repair or renovation of community infrastructure projects will constitute the performance of essential governmental functions, the authority shall not be required to pay any taxes or assessments upon any community infrastructure project or upon any property acquired or used by the authority or upon the income therefrom. Such bonds and notes and all interests and income thereon shall be exempt from all taxation by this state, or any county, municipality, political subdivision or agency thereof, except inheritance taxes.


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 interests in the 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.

§31-19-19. 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 journals 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.

§31-19-20. 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.


If any section, part or provision 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 or
provision of this article or its application and to this end the
provisions of this article are declared to be severable.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect July 1, 1986.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within appeared this the 26th day of March 1986.

Governor
PRESENTED TO THE
GOVERNOR

Date  3/21/86
Time  4:32 p.m.