

Veto 720

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1986

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## ENROLLED

SENATE BILL NO. 720

(By Senator Tucker)

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PASSED March 8, 1986

In Effect 90 days from Passage



**ENROLLED**  
**Senate Bill No. 720**  
(By SENATOR TUCKER)

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[Passed March 8, 1986; in effect ninety days from passage.]

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AN ACT to amend article two-c, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-two, relating to industrial and commercial development bonds generally, the ceiling and allocation of such bonded public indebtedness; making such bonds subject to unified volume limitations; providing certain limitations with respect thereto; limiting the amount of such bonds which may be issued in any calendar year; the authority of the governor's office of community and industrial development; procedures for allocating such bonds between the several counties, municipalities, the housing development fund and other utilities; providing for the expiration of such unused allocation at end of year and providing for exceptions which may forward into next year; the reservation of funds; providing for certain rules of construction and the automatic repeal of such section; and making the provisions of such section retroactive under certain circumstances.

*Be it enacted by the Legislature of West Virginia:*

That article two-c, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-two, to read as follows:

**ARTICLE 2C. INDUSTRIAL DEVELOPMENT AND COMMERCIAL  
DEVELOPMENT BOND ACT.**

**§13-2C-22. Ceiling on issuance of indebtedness subject to  
unified volume limitation.**

1 (a) As used in this section, unless the context in which  
2 used clearly requires otherwise the word or term:

3 (1) "Nonessential function bonds" means industrial  
4 development bonds, consumer loan bonds, mortgage  
5 subsidy bonds and bonds issued on behalf of §501(c)(3)  
6 organizations or such bonds as may be subsequently  
7 defined in the bill or other indebtedness which is subject to  
8 the unified volume limitation for the state of West Virginia  
9 or any other applicable volume limitation or ceiling and  
10 which nonessential function bonds may not exceed the  
11 unified volume limitation during any calendar year.

12 (2) "The bill" or "federal legislation" means H. R. 3838  
13 currently pending in the Congress of the United States or  
14 any similar legislation enacted by the Congress of the  
15 United States.

16 (3) "501(c)(3) organization" or "§501(c)(3)  
17 organizations" means those organizations qualifying for  
18 tax exempt status and which are organized pursuant to  
19 section 501(c)(3) of the Internal Revenue Code of 1954, as  
20 amended.

21 (4) "Unified volume limitation," "volume limitation,"  
22 or "ceiling" means the total face value amount of  
23 nonessential function bonds permitted pursuant to the bill  
24 to be issued during any calendar year by the state of West  
25 Virginia and its political subdivisions in combination and  
26 which, except for carry forward, if exceeded would deprive  
27 such bonds of any federally enacted tax-exempt status to  
28 the extent of such excess.

29 (b) Nonessential function bonds or other indebtedness  
30 which are subject to the unified volume limitation for the  
31 state of West Virginia or any other applicable volume  
32 limitation or ceiling shall not exceed during any calendar  
33 year the unified volume limitation. The unified volume  
34 limitation shall be as established by the United States  
35 Internal Revenue Code of 1954, as amended, or by the bill or  
36 by any similar federal legislation passed by either the  
37 United States House of Representatives or the United

38 States Senate at any time with an effective date which, if  
39 such legislation were finally enacted, would affect the  
40 unified volume limitation for West Virginia and its political  
41 subdivisions.

42 (c) For calendar year one thousand nine hundred  
43 eighty-six, the director of the governor's office of  
44 community and industrial development shall determine the  
45 unified volume limitation based on federal legislation  
46 within ten days after the effective date of this section. On or  
47 before the first day of each calendar year thereafter, the  
48 director of the governor's office of community and  
49 industrial development shall determine the unified volume  
50 limitation for such year based on federal legislation. The  
51 unified volume limitation for each calendar year shall be  
52 allocated as follows:

53 (1) (A) If mandated under federal legislation, an  
54 amount equal to twenty-five dollars per resident of the  
55 unified volume limitation for exclusive use by 501(c)(3)  
56 organizations or such other amount, if any, as is mandated  
57 to be set aside for use by 501(c)(3) organizations under  
58 federal legislation, shall be available to the state of West  
59 Virginia by the governor's office of community and  
60 industrial development and to the counties on a first come,  
61 first serve basis as provided in subsection (e) below, as  
62 determined by the director of the governor's office of  
63 community and industrial development.

64 (B) In connection with the issuance of nonessential  
65 function bonds or other obligation (other than obligation of  
66 section 501(c)(3) organizations) for which an amount of  
67 unified volume limitation is mandated to be set aside under  
68 federal legislation, if any, such mandated amount for each  
69 such issue shall be available to the state of West Virginia  
70 and the counties on a first come, first serve basis as provided  
71 for below.

72 (2) The balance of the unified volume limitation after  
73 subtracting the allocation required by subdivision (1),  
74 subsection (b) of this section shall be allocated as follows:

75 (A) With respect to nonessential function bonds or other  
76 issues subject to the unified volume limitation, other than  
77 qualified mortgage bonds, one half of such balance shall be  
78 allocated to the counties on a per capita basis using the  
79 percentage of the state population residing in the county

80 based on the census for the year one thousand nine hundred  
81 eighty and one twelfth of such balance shall be allocated to  
82 the housing development fund.

83 (B) With respect to qualified mortgage bonds, one  
84 quarter of such balance shall be allocated to the counties on  
85 a per capita basis using the percentage of the state  
86 population residing in the county based on the 1980 census  
87 and one quarter of such balance shall be allocated to the  
88 housing development fund: *Provided*, That use of the  
89 allocation by a county or municipality is conditioned upon  
90 such county or municipality providing to the governor's  
91 office of community and industrial development an  
92 analysis supporting the demand for the bonds to be issued  
93 or firm commitments from qualified lenders participating  
94 in the program.

95 (3) If federal legislation terminates the authority of  
96 governmental units to issue qualified mortgage bonds or  
97 other nonessential function bonds subject to the unified  
98 volume limitation listed in this section, the allocations  
99 established pursuant to subdivisions (2)(a) and (2)(b) of this  
100 subsection shall be allocated proportionally.

101 (d) The director of the governor's office of community  
102 and industrial development shall notify each clerk of the  
103 county commission, or, when appropriate, housing  
104 development fund of the total allocation available for use  
105 by the state of West Virginia and the counties pursuant to  
106 subdivision (1) of subsection (c) of this section and available  
107 to the counties and the housing development fund pursuant  
108 to subdivision (2) of subsection (c) of this section. All such  
109 allocations shall be available for issues of the county  
110 commission of a county, for issues of all municipalities  
111 within a county, for issues by the housing development  
112 fund, and other entities within that county authorized to  
113 issue indebtedness under any provision of this code.

114 (e) Distribution of the county per capita allocation  
115 pursuant to subdivisions (1) and (2), subsection (c) of this  
116 section shall be on a first come, first serve basis (except for  
117 allocations reserved for the housing development fund) and  
118 shall not be distributed or allocated for any project until the  
119 governmental body seeking the same shall submit an  
120 application for reservation of funds as provided in  
121 subsection (f) below. The governmental body must first

122 adopt an inducement resolution approving the prospective  
123 issuance of indebtedness and setting forth the amount of  
124 indebtedness to be issued. Within ten days of the  
125 inducement resolution, each governmental body must  
126 submit a notice of inducement signed by its clerk, secretary,  
127 recorder or other appropriate official to the governor's  
128 office of community and industrial development. Such  
129 notice shall include such information as may be required by  
130 the governor's office of community and industrial  
131 development by rule or regulation.

132 (f) Following the submission of its notice of inducement,  
133 the governmental body at any time deemed expedient by it  
134 may submit its notice of reservation of funds to the  
135 governor's office of community and industrial development  
136 which shall include the following information:

137 (1) The date of the notice of reservation of funds;

138 (2) The identity of the governmental body issuing the  
139 indebtedness;

140 (3) The date of inducement and the prospective date of  
141 issuance;

142 (4) The name of the entity for which the indebtedness is  
143 to be issued;

144 (5) The amount of the issue, or, if the amount of an issue  
145 for which a reservation of funds has been made has been  
146 increased, the amount of the increase;

147 (6) The type of issue;

148 (7) A description of the project for which the bonds are  
149 to be issued; and

150 (8) With respect to a notice of reservation of funds  
151 received by the governor's office of community and  
152 industrial development after the thirtieth day of September  
153 of any year, substantial evidence that the indebtedness will  
154 be issued prior to the first day of January of the subsequent  
155 year.

156 (g) Upon receipt of the notice of reservation of funds by  
157 the governor's office of community and industrial  
158 development, such office shall immediately note upon the  
159 face of such notice the date and time the same was so  
160 received and shall within ten days certify to the  
161 governmental body submitting the same (i) that the  
162 statewide unified volume limitation has not been exceeded,  
163 if such be the case; and (ii) that the amount of the issue has

164 been allocated and reserved in the name of such  
165 governmental body for the project for which the  
166 indebtedness is to be issued and, thereafter, the amount of  
167 such issue shall be so allocated and reserved: *Provided,*  
168 That no such allocation shall be made if the notice of  
169 reservation of funds relates to an issue for which a previous  
170 reservation of funds has expired until sixty days after the  
171 expiration date (as defined in subdivision (2) of subsection  
172 (h) of this section), unless such allocation is requested by the  
173 housing development fund.

174 (h) (1) The governmental body shall submit a new  
175 notice of reservation of funds pursuant to subsections (f)  
176 and (g) of this section for any increase in the amount of an  
177 issue for which a reservation of funds has been made. Such  
178 notice shall be treated as a new request for a reservation of  
179 funds to the extent of such increase.

180 (2) Except for allocations reserved by the housing  
181 development fund, if the issue for which a reservation has  
182 been made has not been finally closed within one hundred  
183 twenty days of the date of certification of reservation to be  
184 made by the governor's office of community and industrial  
185 development, as required by the provisions of subsection (g)  
186 above (referred to herein as the "expiration date"), and a  
187 statement of closure which has been executed by the clerk,  
188 secretary, recorder or other appropriate official of the  
189 governmental body reserving the same has not been  
190 received by such office within that time, then such  
191 reservation shall expire and be deemed to have been  
192 forfeited and the funds so reserved shall revert to the county  
193 and/or state allocation, as the case may be, from which the  
194 funds were originally reserved and the allocation will then  
195 be made available for other qualified issues in accordance  
196 with this section: *Provided,* That as to any notice of  
197 reservation of funds received by the governor's office of  
198 community and industrial development during the month  
199 of December in any calendar year with respect to any  
200 project qualifying as an elective carry forward pursuant to  
201 the then applicable rules and regulations of the Internal  
202 Revenue Service of the United States Department of the  
203 Treasury, as published in the Federal Registry, such  
204 reservation of funds and the allocation to which the same  
205 relates shall not expire or be subject to forfeiture. All

206 requests for subsequent reservation of funds or  
207 reallocations upon loss of a reservation pursuant to this  
208 subsection (h)(2) will be treated in the same manner as a  
209 new notice of reservation of funds in accordance with  
210 subsections (f) and (g) above: *Provided*, That no such  
211 request may be submitted to the governor's office of  
212 community and industrial development until at least sixty  
213 days after the expiration date.

214 (i) Any amount of the county allocation for any type of  
215 issue pursuant to subdivision (2), subsection (c) of this  
216 section remaining unreserved on the first day of October in  
217 any calendar year (which amount shall be determined by  
218 the director of the governor's office of community and  
219 industrial development) shall be available to the counties  
220 on a first come, first serve basis to be used for any type of  
221 issue, as determined by the director of the governor's office  
222 of community and industrial development. Any amount of  
223 the allocation for any type of issue pursuant to subdivisions  
224 (1) and (2), subsection (c) of this section remaining  
225 unreserved on the first day of November in any calendar  
226 year (which amount shall be determined by the director of  
227 the governor's office of community and industrial  
228 development) shall be reallocated in any manner prescribed  
229 by the director of the governor's office of community and  
230 industrial development.

231 (j) Any amount of allocation pursuant to subdivisions  
232 (1) or (2), subsection (c) of this section remaining unused in  
233 any calendar year (which amount shall be determined by  
234 the director of the governor's office of community and  
235 industrial development) shall be carried forward to  
236 subsequent years, as permitted under federal legislation,  
237 and each issuer is hereby deemed to have elected to carry  
238 forward such allocations, and the director of the governor's  
239 office of community and industrial development shall file  
240 any election or notice required under federal legislation to  
241 carry forward any unused allocation.

242 (k) It is intended that this section shall take effect upon  
243 passage and shall prevail over the provisions of section  
244 twenty-one and twenty-three-a of this article to the extent  
245 of any conflict between any of the provisions of such  
246 sections (which are hereinafter referred to as the prior  
247 allocation statutes) and the provisions of this section. Such



248 prior allocation statutes shall remain in effect to the extent  
249 hereinafter provided: *Provided*, That if the bill is not  
250 enacted by the date upon which the Second Session of the  
251 99th Congress of the United States is adjourned, this section  
252 shall be automatically repealed by operation of this  
253 provision without any further action by the Legislature  
254 being necessary and the prior allocation statutes shall  
255 become fully operative. If the bill is enacted prior to such  
256 adjournment, the prior allocation statutes shall no longer  
257 be operative without any further action by the Legislature  
258 being necessary.

259 (l) The allocation methodology provided for herein is  
260 specifically enacted as a substitute methodology for that  
261 established by the bill, and shall be deemed controlling over  
262 that methodology.

263 (m) In the event the bill is amended so as not to have an  
264 effective date which is retroactive, then the prior allocation  
265 statutes shall be operative until such time as the bill is  
266 enacted and a unified volume limitation becomes effective.

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

*Bruce O. Williams*  
.....  
Chairman Senate Committee

*Floyd Fulber*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Isaac C. Steich*  
.....  
Clerk of the Senate

*Donald L. Kopp*  
.....  
Clerk of the House of Delegates

*Sam Taskiran*  
.....  
President of the Senate

*Joseph P. Albright*  
.....  
Speaker House of Delegates

The within *disapproved* this the *26th*  
*March*  
day of ....., 1986.

*Arch A. Moore Jr.*  
.....  
Governor



PRESENTED TO THE

GOVERNOR

Date 3/21/86

Time 4:28 p.m.

RECEIVED  
1936 MAR 23 PM 4:23

SECRETARY OF STATE

FILED IN THE OFFICE OF  
SECRETARY OF STATE OF  
WEST VIRGINIA

THIS DATE 3/26/86