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.


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

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

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

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

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

(b) Nonessential function bonds or other indebtedness which are subject to the unified volume limitation for the state of West Virginia or any other applicable volume limitation or ceiling shall not exceed during any calendar year the unified volume limitation. The unified volume limitation shall be as established by the United States Internal Revenue Code of 1954, as amended, or by the bill or by any similar federal legislation passed by either the United States House of Representatives or the United
States Senate at any time with an effective date which, if such legislation were finally enacted, would affect the unified volume limitation for West Virginia and its political subdivisions.

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

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

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

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

(A) With respect to nonessential function bonds or other issues subject to the unified volume limitation, other than qualified mortgage bonds, one half of such balance shall be allocated to the counties on a per capita basis using the percentage of the state population residing in the county
based on the census for the year one thousand nine hundred eighty and one twelfth of such balance shall be allocated to the housing development fund.

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

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

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

(e) Distribution of the county per capita allocation pursuant to subdivisions (1) and (2), subsection (c) of this section shall be on a first come, first serve basis (except for allocations reserved for the housing development fund) and shall not be distributed or allocated for any project until the governmental body seeking the same shall submit an application for reservation of funds as provided in subsection (f) below. The governmental body must first
adopt an inducement resolution approving the prospective
issuance of indebtedness and setting forth the amount of
indebtedness to be issued. Within ten days of the
inducement resolution, each governmental body must
submit a notice of inducement signed by its clerk, secretary,
recorder or other appropriate official to the governor's
office of community and industrial development. Such
notice shall include such information as may be required by
the governor's office of community and industrial
development by rule or regulation.

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

(1) The date of the notice of reservation of funds;
(2) The identity of the governmental body issuing the
indebtedness;
(3) The date of inducement and the prospective date of
issuance;
(4) The name of the entity for which the indebtedness is
to be issued;
(5) The amount of the issue, or, if the amount of an issue
for which a reservation of funds has been made has been
increased, the amount of the increase;
(6) The type of issue;
(7) A description of the project for which the bonds are
to be issued; and
(8) With respect to a notice of reservation of funds
received by the governor's office of community and
industrial development after the thirtieth day of September
of any year, substantial evidence that the indebtedness will
be issued prior to the first day of January of the subsequent
year.

(g) Upon receipt of the notice of reservation of funds by
the governor's office of community and industrial
development, such office shall immediately note upon the
face of such notice the date and time the same was so
received and shall within ten days certify to the
governmental body submitting the same (i) that the
statewide unified volume limitation has not been exceeded,
if such be the case; and (ii) that the amount of the issue has
been allocated and reserved in the name of such governmental body for the project for which the indebtedness is to be issued and, thereafter, the amount of such issue shall be so allocated and reserved: Provided, That no such allocation shall be made if the notice of reservation of funds relates to an issue for which a previous reservation of funds has expired until sixty days after the expiration date (as defined in subdivision (2) of subsection (h) of this section), unless such allocation is requested by the housing development fund.

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

(2) Except for allocations reserved by the housing development fund, if the issue for which a reservation has been made has not been finally closed within one hundred twenty days of the date of certification of reservation to be made by the governor's office of community and industrial development, as required by the provisions of subsection (g) above (referred to herein as the “expiration date”), and a statement of closure which has been executed by the clerk, secretary, recorder or other appropriate official of the governmental body reserving the same has not been received by such office within that time, then such reservation shall expire and be deemed to have been forfeited and the funds so reserved shall revert to the county and/or state allocation, as the case may be, from which the funds were originally reserved and the allocation will then be made available for other qualified issues in accordance with this section: Provided, That as to any notice of reservation of funds received by the governor's office of community and industrial development during the month of December in any calendar year with respect to any project qualifying as an elective carry forward pursuant to the then applicable rules and regulations of the Internal Revenue Service of the United States Department of the Treasury, as published in the Federal Registry, such reservation of funds and the allocation to which the same relates shall not expire or be subject to forfeiture. All
requests for subsequent reservation of funds or reallocations upon loss of a reservation pursuant to this subsection (h)(2) will be treated in the same manner as a new notice of reservation of funds in accordance with subsections (f) and (g) above: Provided, That no such request may be submitted to the governor's office of community and industrial development until at least sixty days after the expiration date.

(i) Any amount of the county allocation for any type of issue pursuant to subdivision (2), subsection (c) of this section remaining unreserved on the first day of October in any calendar year (which amount shall be determined by the director of the governor's office of community and industrial development) shall be available to the counties on a first come, first serve basis to be used for any type of issue, as determined by the director of the governor's office of community and industrial development. Any amount of the allocation for any type of issue pursuant to subdivisions (1) and (2), subsection (c) of this section remaining unreserved on the first day of November in any calendar year (which amount shall be determined by the director of the governor's office of community and industrial development) shall be reallocated in any manner prescribed by the director of the governor's office of community and industrial development.

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

(k) It is intended that this section shall take effect upon passage and shall prevail over the provisions of section twenty-one and twenty-three-a of this article to the extent of any conflict between any of the provisions of such sections (which are hereinafter referred to as the prior allocation statutes) and the provisions of this section. Such
prior allocation statutes shall remain in effect to the extent hereinafter provided: Provided, That if the bill is not enacted by the date upon which the Second Session of the 99th Congress of the United States is adjourned, this section shall be automatically repealed by operation of this provision without any further action by the Legislature being necessary and the prior allocation statutes shall become fully operative. If the bill is enacted prior to such adjournment, the prior allocation statutes shall no longer be operative without any further action by the Legislature being necessary. (l) The allocation methodology provided for herein is specifically enacted as a substitute methodology for that established by the bill, and shall be deemed controlling over that methodology. (m) In the event the bill is amended so as not to have an effective date which is retroactive, then the prior allocation statutes shall be operative until such time as the bill is enacted and a unified volume limitation becomes effective.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Bruce C. Williams  
Chairman Senate Committee

Floyd Fields  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Judd C. Hicks  
Clerk of the Senate

Daniel J. Kopp  
Clerk of the House of Delegates

Dan Tawes  
President of the Senate

Joseph P. Altheimer  
Speaker House of Delegates

The within .......................this the  ........

day of ....................... 1986.

Rudolph Simeon, Jr.  
Governor