

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1986



ENROLLED

Committee Substitute for
SENATE BILL NO. 403

(By Senator *Tonkonick, Mr. President, et al.*)



PASSED *March 9,* 1986

In Effect *July 1, 1986* ~~message~~



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 conveyances; 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
- 2 commerce:

- 3 (1) The division of tourism;
- 4 (2) The division of advertising and promotion;
- 5 (3) The division of product marketing; and
- 6 (4) The division of parks and recreation.

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

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

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

- 1 The department of commerce, the office of community and
- 2 industrial development and any other authorities, boards,
- 3 commissions, corporations or other entities created or
- 4 amended under chapters five-b and articles twenty-six-b

5 and twenty-six-c, chapter eighteen of this code, shall
6 prepare and submit to the joint committee on government
7 and finance on/or before the first day of December, one
8 thousand nine hundred eighty-six, and each year
9 thereafter, a program and policy action statement which
10 shall outline in specific detail according to the purpose,
11 powers and duties of the office or division, its procedure,
12 plan and program to be used in accomplishing its goals and
13 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
2 and industrial development:

- 3 (1) The division of community development;
- 4 (2) The division of financial and technical assistance;
- 5 (3) The division of administration;
- 6 (4) The division of industrial development;
- 7 (5) The division of research and strategic planning;
- 8 (6) The division of employment and training;
- 9 (7) The division of small business development; and
- 10 (8) The division of small business.

11 Each said division shall be under the control of a director
12 to be appointed by the director of the office of community
13 and industrial development and who shall be qualified by
14 reason of exceptional training and experience in the field of
15 activities of his respective division and shall serve at the
16 will and pleasure of the director.

17 The governor is hereby authorized to establish and
18 maintain foreign trade offices, personnel for same and
19 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
2 office the duty and responsibility to conduct studies to
3 determine the feasibility of establishing programs or
4 recommending legislation for the establishment of
5 programs relative to coal processing, farm development,
6 forest resources, jobs development and a technical
7 education system for new industry. Such division may

8 conduct inquiries and hold hearings regarding such
9 programs in order to provide interested persons the
10 opportunity to comment, and shall report to the Legislature
11 regarding its findings and policies with respect to each of
12 these areas not later than the first day of the regular session
13 of the Legislature in the year one thousand nine hundred
14 eighty-seven, and every two years thereafter.

15 For the purpose of this section:

16 (a) The term "coal processing" means the process by
17 which coal is converted to coke of the non-by-product
18 variety;

19 (b) The term "farm development" means the promotion,
20 encouragement and development of farming and
21 farmlands;

22 (c) The term "forest resources development" means a
23 program to: (i) improve the business climate for forest
24 industries and the general awareness of forestry potential;
25 (ii) develop a strong state forestry agency; (iii) improve
26 forest resources data; (iv) improve the transportation
27 system for wood products; and (v) improve forestry
28 knowledge and practices of private landowners;

29 (d) The term "jobs development" means a program to
30 maintain existing employment, and to promote new
31 employment opportunities for the people of this state,
32 particularly in the areas of high unemployment; and

33 (e) The term "technical education system for new
34 industry training" means a program to contract, provide
35 grants, loans or other assistance, establish reimbursements
36 and otherwise educate and train the state work force, on an
37 as needed basis, for the purpose of attracting both new
38 businesses to the state and of retooling, converting or
39 otherwise modernizing existing businesses in the state; and
40 which program is to include the review, updating and
41 modernizing of the state vocational technical centers and
42 community college training programs for this purpose, so as
43 to provide immediate technical training, specific to a new
44 business or existing business.

45 The feasibility studies provided for hereunder shall be
46 performed in conjunction with either the institute of public
47 affairs provided for in article twenty-six-b, chapter
48 eighteen of this code, or the higher education industry
49 partnerships provided for in article two-a, chapter five-b of
50 this code.

§5B-2-5. Division of research and strategic planning; powers and duties.

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

4 (1) To establish as an independent entity at West
5 Virginia University in cooperation with and involving other
6 West Virginia colleges and universities a center for economic
7 research. The center shall be under the control and
8 supervision of a director, who shall be appointed by the
9 president of West Virginia University. The center shall
10 employ such staff economists or statisticians, such research
11 assistants and secretaries, each of whom shall serve on a
12 part-time basis and may be members of the faculty or staff
13 of West Virginia University or any other college or
14 university in the state. In addition, the center may employ
15 student interns.

16 (2) The center shall provide the governor's office of
17 community and industrial development, commissioner of
18 commerce, and the Legislature, with an analysis of the
19 quality of economic data pertaining to West Virginia. The
20 center shall recommend ways to obtain additional
21 information necessary to better understand the state's
22 economy and to devise better economic development
23 strategies. The center is directed to establish priorities and
24 coordinate its economic research functions with the
25 governor and the Legislature. To accomplish this purpose
26 the advisory board created for the institute of public affairs
27 in section one, article twenty-six-b, chapter eighteen of this
28 code, shall serve as the advisory board to the center. The
29 director of the center shall serve as the chairman of the
30 advisory board. The center shall publish results of its
31 research, maintain a comprehensive library with
32 supporting computer data bases and shall, upon request,
33 provide a review of the economy and major policy issues to
34 the joint committee on government and finance.

35 (3) During its first year of operation, the center shall
36 include in its research topics the desirability of establishing
37 a detailed gross state products series, modeled after the
38 national income and products accounts and the desirability
39 of constructing a periodic input/output table for the state. It
40 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

83 options utilizing and maximizing existing public and
84 private mechanism;

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

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

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

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

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

**§5B-2-6. Division of small business development; purposes;
powers and duties generally.**

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

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

9 The center network shall:

10 (a) Serve as a liaison between the department of

11 commerce and the state regional small business innovation
12 center board;

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

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

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

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

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

33 The director is further authorized and empowered to
34 apply for and receive appropriations, gifts, bequests or
35 grants of money, services, material, real estate or other
36 things of value from any agency of the United States
37 government, any agency of the state of West Virginia, any
38 municipality or county within this state, any school board
39 or college or university supported in whole, or in part, by
40 this state or any other person, firm, partnership, association
41 or corporation, within or without this state, and any agency
42 of the state of West Virginia, any municipality or county
43 within this state, or any school board or college or
44 university supported in whole, or in part, by this state and is
45 hereby authorized and empowered to make appropriations
46 or grants to the regional small business innovation centers,
47 to assist in achieving the public purpose of this section. All
48 funds received by the director to carry out the provisions
49 herein shall be deposited with the state treasurer and
50 disbursed by the director to be used exclusively for carrying
51 out the provisions herein. Any appropriations, gifts,
52 bequests or grants received by the director with any

53 restriction or restrictions on the use thereof shall be
 54 expended by the director in accordance with such
 55 restriction or restrictions.

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

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

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

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

22 (c) Each regional business innovation center shall be
 23 authorized and permitted to employ such strategies,
 24 techniques and innovations as it shall deem desirable in
 25 accomplishing the purposes of this article.

26 (d) The president of each institution of higher education
 27 establishing a regional small business innovation center

28 shall appoint a director for such center who shall serve at
29 the will and pleasure of such president.

**§5B-2-6b. State small business innovation center board
created; membership; regional center directors.**

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

§5B-2-6c. Functions and duties of regional centers.

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

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

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

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

16 (d) Provide new and innovative businesses with access
17 to managerial and technical expertise and to provide
18 assistance in resolving problems encountered by such
19 businesses;

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

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

25 (g) Foster the establishment and strengthening of
26 business service agencies, including trade associations and
27 cooperatives, which provide services to new and innovative
28 businesses;

29 (h) Implement the furnishing of business counseling,
30 management training and other related services, with
31 special emphasis on the development of management
32 training programs using the resources of the business
33 community, the state labor-management council and state
34 and private colleges and universities, and with emphasis
35 upon providing management training of sufficient scope
36 and duration to develop entrepreneurial and managerial
37 self-sufficiency on the part of the new and innovative
38 businesses served;

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

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

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

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

56 (m) Assist new and innovative businesses in solving
57 problems concerning operations, manufacturing,
58 engineering, technology exchange and development,
59 personnel administration, marketing, sales,
60 merchandising, finance, accounting, business strategy
61 development and other disciplines required for business
62 growth and expansion, increased productivity and
63 management improvement;

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

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

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

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

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

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

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

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

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

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

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

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

§5B-2-6d. Documentary materials concerning trade secrets; commercial or financial information; confidentiality.

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

§5B-2-6e. Rules and regulations.

1 The director of the state small business innovation center
2 shall make and adopt rules and regulations for the
3 establishment, operation and maintenance of any regional
4 business innovation center established including such
5 rules, regulations and standards as may be necessary for
6 compliance with any federal statute pertaining to grants-
7 in-aid, and such other rules and regulations as may be
8 necessary to effectuate the purposes set forth herein,
9 including regulations establishing any fee to be charged for
10 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.

1 Effective the first day of July, one thousand nine hundred
2 eighty-seven, the director, with the approval of the
3 governor, is hereby empowered to provide reduced rate
4 loans to private companies for the building of coal
5 processing facilities for the making of coke for steel
6 production. Funds for such loans shall be provided from
7 moneys borrowed from the workers' compensation fund or
8 any fund administered by the state. The loans will be repaid
9 through the governor's office of community and industrial
10 development to the fund from which they were borrowed.
11 The rate of interest charged shall be two percent below the
12 current prime lending rate for funds available from private

13 sources in projects of a similar nature. The state shall fund
14 no more than eighty percent of the total cost of the project.
15 The private company sponsoring the project must provide
16 the other twenty percent of the project's funds from its own
17 capital or from moneys borrowed from nonpublic sources.
18 The moneys borrowed are to be used for the construction of
19 coal coking facilities and related buildings and other
20 structures: *Provided*, That all coal processed at this facility
21 during the time when loan moneys are being utilized and for
22 five years following the repayment of the loan must be coal
23 mined exclusively in West Virginia. A private company
24 applying to the governor's office of community and
25 industrial development for a loan pursuant to this section
26 shall certify on its loan application that the reduced rate
27 loan will be used exclusively for constructing coal coking
28 facilities for the process of converting West Virginia coal to
29 coke.

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

ARTICLE 2A. HIGHER EDUCATION-INDUSTRY PARTNERSHIPS.

§5B-2A-1. Legislative purpose.

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

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

1 University-industry research and development centers

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

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

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

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

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

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

6 It shall be the duty of the director to develop a program, to
 7 be known as the Vandalia partnership program, to bring
 8 together, through challenge or matching grants, partners

9 from the business, industry, public and educational sectors
10 to develop and apply technologies which will strengthen
11 existing business and stimulate the formation of new firms
12 and products including:

13 (1) *Joint research and development projects.* — Such
14 projects shall require a joint effort of a West Virginia
15 business and a higher educational institution of this state
16 with the potential for preserving or creating jobs in this
17 state;

18 (2) *Education and training projects.* — Such projects
19 shall include employment training or retraining, labor
20 market and occupational analysis, new courses, sharing of
21 costly equipment, educational or technical assistance with
22 the small business innovation centers; and

23 (3) *Entrepreneurial development projects.* — Such
24 projects shall include technical assistance, development of
25 business plans management counseling, technology
26 transfer, venture capital assistance with emphasis on
27 establishing new projects, processes or services.

§5B-2A-5. Vandalia Partnership Fund.

1 There is hereby established a Vandalia Partnership Fund
2 to which shall be credited any state appropriations, gifts,
3 grants or other moneys available to the fund.

4 The center shall invest and reinvest the fund, and the
5 income thereof, pending use for the purposes of this article.

6 The fund shall operate as a revolving fund whereby all
7 appropriations and payments thereto may be applied and
8 reapplied by the center for the purposes of this article.

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

1 Applicants for grants shall submit a proposal which shall
2 set forth the nature of the project, the commitment from the
3 partners either in money, equipment or in kind services and
4 the request for funding. Private, public and educational
5 financial support shall be required as part of each
6 application. Proposals for funding will be reviewed on a
7 competitive basis by a panel of experts appointed by the
8 board of trustees.

9 Among the criteria used to evaluate each proposal will be:

10 (a) Probability of advancing the success of a company
11 doing business in the state;

12 (b) Likelihood of creating jobs, conserving jobs, or
13 leading to a new or expanded industry or venture in the
14 state;

15 (c) Promise of transferring the research and
16 development findings to marketable products;

17 (d) Level of financial contribution from corporate or
18 other sources;

19 (e) Technical or scientific feasibility of the effort, and
20 competency of the team to produce useful results; and

21 (f) Probability of strengthening the permanent research
22 and development base of both the institutions of higher
23 education in West Virginia and industry or sustaining
24 partnerships.

§5B-2A-7. Board of trustees; grants; authority.

1 There is hereby created a board of trustees consisting of
2 the director, the governor or his designee, the chancellor of
3 the board of regents or his designee, and two persons
4 representative of business and industry to be appointed by
5 the governor, with the advice and consent of the Senate.

6 The board shall have the authority to review and approve
7 all applications for grants or funds hereunder according to
8 the purposes of this article, and the rules and regulations
9 promulgated hereunder.

§5B-2A-8. Appointment of the director.

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

§5B-2A-9. Annual reports.

1 On the first day of January of each year, the director shall
2 submit a report on the operation of the center to the
3 governor and to the Legislature. Such report shall include a
4 summary of the activities of the center and a complete
5 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,
2 safety and welfare of the people of West Virginia are
3 enhanced by the continual encouragement, development,
4 growth and expansion of private enterprise within this
5 state, and that there are certain economically depressed
6 areas in the state that need particular attention to create
7 new jobs, stimulate economic activity and attract private
8 sector investment rather than government subsidy to
9 improve the quality of life of their citizens. It is the purpose
10 of the Legislature to encourage new economic activity in
11 these depressed areas of the state by means of reduced taxes
12 and the removal of unnecessary governmental barriers to
13 the production and earning of wages and profits and the
14 creation of economic growth.

§5B-2B-2. Definitions.

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

25 (d) "Qualified property" means:

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

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

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

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

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

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

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

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

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

20 The members appointed by the governor shall serve a
21 term of four years, except that the members first appointed
22 shall serve for the following terms: Three for a term of one
23 year; two for a term of two years; and one for a term of three
24 years. The governor shall have sole discretion in
25 determining the terms for his initial appointees.

26 The authority shall administer this article and has the
27 following powers and duties:

28 (1) To establish criteria for determining which areas
29 qualify as enterprise zones;

30 (2) To monitor the implementation of this article and
31 submit reports evaluating the effectiveness of the program
32 and any suggestions for legislation to the governor and
33 Legislature on the second Wednesday of January of each
34 year;

35 (3) To conduct a continuing evaluation program of
36 enterprise zones;

37 (4) To promulgate all necessary rules and regulations in
38 accordance with the provisions of chapter twenty-nine-a of
39 this code to carry out the purposes of this article;

40 (5) To assist units of local government in obtaining
41 federal status as an enterprise zone;

42 (6) To assist any qualified business in obtaining the
43 benefits of any incentive or inducement program provided
44 by law and to certify qualified businesses to be eligible for
45 the benefits of this article; and

46 (7) To assist the governing authority of an enterprise
47 zone in obtaining assistance from any other agency of state
48 government including, but not limited to, assistance in
49 providing training and technical assistance to qualified
50 businesses within a zone.

§5B-2B-4. Duties of the authority.

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

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

14 (c) Irrespective of any authority delegated to the
15 authority to implement the provisions of this article, the

16 authority for determining if any requested licenses,
17 permits, certificates, approvals, registrations, charters or
18 any other form of permission required by law shall be issued *and*
19 shall remain with the agency otherwise legally authorized
20 to issue the permission required.

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

1 Notwithstanding any provision of this code to the
2 contrary, the following exemptions apply to enterprise
3 zones:

4 (1) All interest payments on loans made to qualified
5 businesses or on mortgage loans on any property within an
6 enterprise zone shall receive a fifty percent reduction of all
7 state taxes if such loans were made after the enterprise zone
8 was officially designated;

9 (2) Building materials used in remodeling,
10 rehabilitation or new construction in an enterprise zone
11 and new and used equipment and machinery purchased by
12 qualified businesses for use in the enterprise zone, certified
13 by the purchaser to be used for these purposes, shall be
14 exempt from sales and use tax;

15 (3) Motor vehicles purchased from a seller located
16 within the enterprise zone by qualified businesses in an
17 enterprise zone shall receive a fifty percent reduction of the
18 motor vehicle privilege tax;

19 (4) Qualified businesses shall receive a tax credit in the
20 amount of unemployment compensation taxes paid in
21 accordance with article five, chapter twenty-one-a of this
22 code, against any corporate net income or personal income
23 tax liability of such qualified business; and

24 (5) For state tax purposes, qualified businesses may
25 carry forward their net operating losses, including casualty
26 losses, for the period of existence of the enterprise zone in
27 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
2 administrative body which promulgates administrative
3 regulations pursuant to chapter twenty-nine-a of this code
4 may, by regulation, exempt enterprise zones from the
5 provisions of any regulation, in whole or in part,
6 promulgated by that administrative body.

7 (b) Enterprise zones shall not be made exempt from the
8 provisions of any regulation if such exemption endangers
9 the health and safety of the citizens of the state as
10 determined by the administrative body responsible for
11 promulgation and enforcement of such regulation.

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

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

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

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

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

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

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

1 (a) Any area or areas of a city, county, or of the state,
2 may be designated an enterprise zone which:

- 3 (1) Has a continuous boundary; and
- 4 (2) Is an area of pervasive poverty, unemployment and
5 economic distress.
- 6 (b) An area meets the requirements of subsection (a),
7 subdivision (2) of this section, if:
 - 8 (1) The average rate of unemployment in such area for
9 the most recent eighteen-month period for which data are
10 available was at least one and one-half times the average
11 national rate of unemployment for such eighteen-month
12 period;
 - 13 (2) At least seventy percent of the residents living in the
14 proposed enterprise zone have incomes below eighty
15 percent of the median income of the residents of the county
16 or counties requesting designation as certified in a
17 statistical report prepared by the state tax department; or
 - 18 (3) The population of all census tracts in the area
19 decreased by ten percent or more between the two most
20 recent decennial United States census and the city or
21 county requesting designation establishes to the
22 satisfaction of the authority that either:
 - 23 (i) Chronic abandonment or demolition of commercial
24 or residential structures exist in the area; or
 - 25 (ii) Substantial tax delinquencies relating to ad
26 valorem real property taxes of commercial or residential
27 structures exist in the area.

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

- 1 (a) In each of the three calendar years after the calendar
2 year one thousand nine hundred eighty-six, the authority
3 may designate two enterprise zones. In the fourth calendar
4 year after the year one thousand nine hundred eighty-six,
5 the authority may designate one enterprise zone. In
6 deciding which areas should be designated as enterprise
7 zones the authority shall give preference to:
 - 8 (1) Areas with the highest levels of poverty,
9 unemployment and general distress;
 - 10 (2) Areas which have the widest support from the
11 government seeking designation, the community, residents,
12 local business and private organizations; and
 - 13 (3) Areas for which the government seeking designation
14 has made or will make the greatest effort to encourage
15 economic activity and remove impediments to job creation,

16 including, but not limited to, a reduction of tax rates or fees
17 and increase in the level or efficiency of local services and a
18 simplification or streamlining of governmental
19 requirements on employers or employees, taking into
20 account the resources available to such government to make
21 such efforts.

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

27 (c) The authority may remove designation of any area as
28 an enterprise zone if such area no longer meets the criteria
29 for designation as set out in this article, and by regulation
30 adopted by the authority pursuant to this article. No
31 designation shall be removed less than ten years from the
32 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.**

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

14 (b) The Legislature finds that it is the purpose of the
15 office of federal procurement assistance to encourage and
16 assist the state businesses through loans, investments,
17 research, technical and managerial advice and other similar
18 means in the sales of products and services to the federal
19 government including the general services administration,
20 the national aeronautics and space administration, and the
21 department of defense.

22 (c) There is hereby created, within the governor's office
23 of community and industrial development, the office of
24 federal procurement assistance. A director of the office
25 shall be appointed by the governor with the advice and
26 consent of the Senate. The director shall have
27 administrative control and supervision of the office.

28 The director shall promulgate rules and regulations to
29 carry out the purposes and programs of the office, to include
30 generally the programs available, and the procedure and
31 eligibility of application relating to assistance under such
32 programs.

§5B-2C-2. Duties and powers.

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

3 (1) To prepare an inventory of state businesses which
4 have the potential of selling goods or products to the federal
5 government;

6 (2) To prepare and periodically issue a register of
7 federal contracts in accordance with applicable federal
8 laws or regulations for which businesses of the state of West
9 Virginia may qualify for bidding;

10 (3) To sponsor and conduct conferences, collect and
11 disseminate information and issue periodic reports relating
12 to the availability of federal contracts upon which state
13 businesses can bid;

14 (4) To identify emerging needs of the federal
15 government and emerging technologies which will meet
16 those needs, and develop an action plan of equipping and
17 preparing businesses in this state to meet those needs with
18 products and services, which plan shall be reduced to
19 writing, and annually reviewed and updated, and shall be
20 included in the annual report to the Legislature required
21 under this article;

22 (5) To directly assist, both technically and financially,
23 businesses within this state in qualifying for and bidding on
24 federal contracts including dissemination; and

25 (6) To develop a formal liaison or other entity with the
26 congressional delegation of this state and with the governor
27 to develop a specific plan of action utilizing the good offices
28 and assistance of the congressional delegation in carrying
29 out the purposes of this section.

§5B-2C-3. Financial and technical assistance.

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

ARTICLE 3. WEST VIRGINIA EXPORT DEVELOPMENT AUTHORITY.

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

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

§5B-3-5a. Duties.

1 The authority shall have the following duties:
2 (a) To create and develop a computer based state trade
3 leads program as follows:
4 (1) To prepare an inventory of state products that are
5 currently and potentially exportable, together with the
6 firms offering such products, by standard industrial

7 classification (SIC) and by applicable international
8 classification;

9 (2) To develop a program that will match state products
10 as classified with trade leads from foreign countries or their
11 agents, representatives or distributors, by utilizing the
12 United States Department of State, the Agency for
13 International Development (AID), the World Bank, or all
14 other available resources; and

15 (3) To develop a program of personal contact with firms
16 requesting such current and available trade leads as
17 providing follow-up assistance to interested firms in the
18 state;

19 (b) To assist, promote, encourage, develop and advance
20 economic prosperity and employment throughout this state
21 by fostering the expansion of exports of manufactured
22 goods and services to foreign purchasers;

23 (c) To cooperate and act in conjunction with other
24 organizations, public and private, the objects of which are
25 the promotion and advancement of export trade activities
26 in the state;

27 (d) To establish a source of funding credit guarantees
28 and insurance for political and commercial loss, as defined
29 in this article, to support export development not otherwise
30 available to West Virginia small and medium sized
31 businesses;

32 (e) To provide financial counseling and assistance to
33 potential and existing exports;

34 (f) To research and identify those foreign countries with
35 the greatest potential for importing state products, and for
36 foreign investment in West Virginia, for the purposes of
37 promoting and facilitating trade with such countries, the
38 investment of capital by such countries in this state, and for
39 other economic activities including tourism;

40 (g) To seek foreign trade zone status for, and to assist in
41 the applications for foreign trade zone status of political
42 subdivisions and private corporations.

ARTICLE 4. LABOR-MANAGEMENT COUNCIL.

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

1 The labor-management council and the regional advisory

2 committees shall constitute an independent agency housed
3 within the governor's office of community and industrial
4 development. The council shall appoint a director and other
5 staff for the council. Funds for necessary staff, supplies and
6 other expenses shall be paid from and with an
7 appropriation by the Legislature as well as reimbursements
8 for each member of the council and of the regional advisory
9 committees for reasonable and necessary expenses.

ARTICLE 5. EMPLOYEE OWNERSHIP ASSISTANCE PROGRAM.

§5B-5-1. Definitions.

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

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

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

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

10 (1) Meets all of the following conditions:

11 (i) Is organized as:

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

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

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

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

§5B-5-2. Employee-ownership program.

1 The office will establish a technical and financial
2 assistance program to promote the development of
3 employee-owned enterprises.

§5B-5-3. Technical assistance.

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

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

10 (1) Existing firms facing a threat of substantial layoffs
 11 or a plant closing and investigating a reorganization of all
 12 or some portion of the firm's business activity, at sites
 13 located within the state, as an employee-owned enterprise.
 14 For purposes of this section, "existing firms" shall include
 15 an ongoing concern, the assets of an existing company or the
 16 assets of a company which has been closed for no more than
 17 one year as of the date of the application for the feasibility
 18 study loan.

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

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

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

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

35 (i) Assess the market value and demand for the product
 36 affected by the closing or layoff.

37 (ii) Assess the market value and demand for other
 38 products which could be manufactured or assembled at the
 39 plant affected by the closing or layoff.

40 (iii) Evaluate the production costs incurred if the plant
 41 were to be operated by the employee-ownership group.

42 (iv) Determine whether there exists in the affected area
43 and in the employee-ownership group, the desire and
44 capacity to create a new production entity and to become
45 competitive.

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

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

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

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

64 (e) Other conditions:

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

§5B-5-4. Financial assistance.

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

7 (b) *Eligibility.* — Eligibility for this assistance shall be
8 limited to employee-ownership groups reorganizing an
9 existing enterprise which is facing a threat of substantial
10 layoffs or a plant closing, where adequate private financing
11 is not available. For purposes of this subsection, “existing
12 enterprise” shall include an ongoing concern, the assets of

13 an existing company or the assets of a company which has
 14 been closed for no more than one year as of the date of
 15 completion of a feasibility study.

16 (c) *Uses.* — Eligible project costs shall include land and
 17 buildings, machinery and equipment, and working capital
 18 secured by accounts receivable and inventory.

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

23 (1) Loans, including deferred interest and principal
 24 payments; and

25 (2) Loan guarantees.

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

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

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

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

1 The office shall evaluate the applications based on the
 2 following criteria:

3 (1) Number of jobs retained or created in relation to the
 4 size of the loan. The loans shall not exceed a cost of fifteen
 5 thousand dollars per job created or retained;

6 (2) Ability of the applicant to repay the loan and the
 7 likelihood of retaining or creating jobs;

8 (3) Evidence of other private financial commitments;

9 (4) Evidence that, without the financial assistance,

10 other federal, state or local public and private investment
11 would be insufficient to finance the employee-owned
12 enterprise;

13 (5) The extent to which a firm employs a significant
14 number of employees or represents a significant portion of
15 employment in the community; and

16 (6) Any additional criteria specified by the office in
17 regulations promulgated hereunder.

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

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

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

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

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

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

§5B-5-7. Nondiscrimination.

1 No loan, loan guarantee or other financial assistance
2 shall be made to a recipient under this act unless the
3 recipient certifies to the office, in a form satisfactory to the
4 office, that it shall not discriminate against any employee or
5 against any applicant for employment because of race,
6 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.

1 For the purpose of this article:

2 (1) The term "enterprise" means a business entity which
3 is or proposes to be engaged in this state in any commercial
4 activity for profit. The entity may be owned, operated,
5 controlled or under the management of a person,
6 partnership, corporation, community-based development
7 organization or council, local commerce group, employee
8 stock ownership plan, pension or council, local commerce
9 group, pension or profit-sharing plan or trust, a group of
10 participating employees who desire to own an entity which
11 does not presently exist, or any similar entity or
12 organization;

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

16 (3) The term "borrower" means an enterprise, any of its
17 subsidiaries or affiliates, or any other entity the board of
18 investments may designate from time to time which
19 borrows funds for the benefit or use of an enterprise;

20 (4) The term "corporation" means the West Virginia
21 industry assistance corporation, unless the context in
22 which such term is used clearly indicates that reference is
23 made to some other corporation;

24 (5) ^{There} term "financing plan" means a plan designed to
25 meet the financing needs of an enterprise as reflected in the
26 operating plan;

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

29 (7) The term "operating plan" means a document
30 detailing production, distribution, and sales plans of an
31 enterprise, together with the expenditures necessary to
32 carry out those plans (including budget and cash flow
33 projections), on an annual basis, and an employment-
34 generating plan setting forth steps to be taken by the
35 enterprise to create jobs and reduce unemployment in this
36 state.

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

1 (a) For the purpose of aiding the establishment and
2 expansion of the industry and trade in this state,
3 encouraging and increasing the use of energy derived from
4 hydrocarbon sources located in the state of West Virginia,

5 for developing and maintaining properties now owned or to
6 be owned by the state of West Virginia throughout this
7 state, and in the interest of improving employment
8 opportunities in this state, the body corporate, heretofore
9 denominated the "West Virginia Automobile Industry
10 Assistance Corporation," shall hereafter be designated the
11 "West Virginia Industry Assistance Corporation"
12 (hereinafter referred to as the "corporation"). The board of
13 directors first appointed shall be deemed the incorporators,
14 and the incorporation shall be held to have been effected
15 from the date of the first meeting of the board.

16 (b) The corporation is created and established to serve a
17 public corporate purpose and to act for the public benefit
18 and as a governmental instrumentality of the state of West
19 Virginia, to act on behalf of the state and its people in
20 improving their health, welfare and prosperity.

21 (c) The corporation:

22 (1) Shall have succession in its corporate name;

23 (2) May sue and be sued in its corporate name;

24 (3) May adopt and use a corporate seal, which shall be
25 judicially noticed;

26 (4) May make contracts as herein authorized; and

27 (5) May adopt, amend and repeal bylaws.

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

1 (a) The board of directors of the corporation
2 (hereinafter referred to as the "Board") shall be composed
3 of three members, to be appointed by the governor, by and
4 with the advice and consent of the Senate. No more than
5 two of the directors shall be from the same political party.
6 In appointing the board, the governor shall designate the
7 chairman, vice chairman and treasurer. All other officials,
8 agents and employees shall be designated and selected by
9 the board.

10 (b) The terms of office of the members first taking office
11 on or after the first day of July, one thousand nine hundred
12 eighty- six, shall expire as designated by the governor at the
13 time of the nomination, one at the end of the second year,
14 one at the end of the fourth year and one at the end of the
15 sixth year, after the first day of July, one thousand nine

16 hundred eighty-six. A successor to be a member of the
17 board shall be appointed in the same manner as the original
18 members and shall have a term of office expiring six years
19 from the date of the expiration of the term for which his
20 predecessor was appointed.

21 (c) In cases of any vacancy in the office of director, such
22 vacancy shall be filled by appointment by the governor. Any
23 member appointed to fill a vacancy in the board occurring
24 prior to the expiration of the term for which his predecessor
25 was appointed shall be appointed for the remainder of such
26 term.

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

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

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

§5C-1-9. Corporation powers.

1 In order to foster and expand industry and trade in this
2 state, the corporation is empowered and directed:

3 (a) To provide, construct, operate, maintain and
4 improve such gas and oil pipelines, electric transmission
5 lines, substations, and facilities and structures appurtenant
6 thereto, as it finds necessary, desirable and appropriate for
7 the purpose of transmitting gas, oil and electric energy,
8 available for sale, from sources within this state to existing

9 and potential markets, and, for the purpose of interchange
10 of energy, to interconnect sources within this state with
11 either private projects, other state or federal projects, and
12 publicly owned power systems now or hereafter
13 constructed;

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

18 (c) To construct, acquire, operate, maintain and
19 improve such waterworks systems and water lines, sewer
20 systems and sewage treatment and disposal systems, or any
21 combination thereof, as it finds necessary, desirable and
22 appropriate for the purpose of assisting an enterprise in
23 carrying out its operating plan, and to acquire watersheds,
24 water and riparian rights, plant sites, rights-of-way and
25 any and all other property and appurtenances necessary,
26 appropriate, useful, convenient or incidental to such system
27 or systems; ways to facilitate the ingress and egress to
28 industrial sites belonging to an enterprise;

29 (d) To acquire, by purchase, lease or donation, such real
30 or personal property, or any interest therein, including
31 buildings, lands, easements, facilities, equipment, rights-
32 of-way, franchises, oil or gas, pipelines, electric
33 transmission lines, substations and facilities and structures
34 appurtenant thereto, waterworks systems and water lines,
35 and sewer systems and sewage treatment and disposal
36 systems, as the board finds necessary and appropriate to
37 carry out the purposes of this article. Title to all property
38 and property rights acquired by the corporation shall be
39 taken in the name of the corporation;

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

47 (f) To sell, lease or otherwise dispose of such personal
48 property as in the opinion of the board is not required for
49 the purposes of this article and such real property and
50 interests, in land acquired in connection with buildings,

51 equipment, facilities or the construction or operation of gas
52 and oil pipelines, electric transmission lines, substations,
53 roads and facilities and other structures, waterworks
54 systems and water lines, and sewer systems and sewage
55 treatment and disposal systems as in the opinion of the
56 board are not required for the purposes of this article;

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

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

63 (i) Finance, conduct or cooperate in financing or
64 conducting technological, business, financial or other
65 investigations which are related to or likely to lead to
66 business and economic development by making and
67 entering into contracts and other appropriate
68 arrangements, including the provision of leases, grants,
69 loans and other forms of assistance;

70 (j) To invest any funds not required for immediate
71 disbursement in any of the following securities;

72 (1) Direct obligations of or obligations guaranteed by
73 the United States of America;

74 (2) Bonds, debentures, notes or other evidences of
75 indebtedness issued by any of the following agencies: Banks
76 for cooperatives; federal intermediate credit banks; federal
77 home loan bank system; export-import bank of the United
78 States; federal land bank; the federal national mortgage
79 association or the government national mortgage
80 association;

81 (3) Bonds issued by public agencies or municipalities
82 and fully secured as to the payment of both principal and
83 interest by a pledge of annual contributions under an
84 annual contributions contract or contracts with the United
85 States of America; or temporary notes issued by public
86 agencies or municipalities or preliminary loan notes issued
87 by public agencies or municipalities in each case, fully
88 secured as to the payment of both principal and interest by a
89 requisition or payment agreement with the United States of
90 America;

91 (4) Certificates of deposit secured by obligations of the
92 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.

135 (k) To procure insurance against any loss in connection
 136 with its property in such amounts, and from such insurers,
 137 as may be necessary or desirable;

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

140 (m) To borrow money to carry out and effectuate its
 141 corporate purpose and to issue notes as evidence of any such
 142 borrowing in such principal amounts and upon such terms
 143 as shall be necessary to provide sufficient funds for
 144 achieving its corporate purpose, except that no notes shall
 145 be issued to mature more than ten years from the date of
 146 issuance;

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

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

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

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

**§5C-1-11. Principal office of the corporation; account books;
 directors' oath of office.**

1 (a) The corporation shall maintain its principal office in
 2 the immediate vicinity of Charleston, West Virginia.

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

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

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

1 Subject to the provisions of this article, the board of
 2 investments, on such terms and conditions as it deems
 3 appropriate, may invest moneys, securities, and other assets

4 of the public employees retirement system in the form of
5 interest-bearing loans to a borrower, if at the time of the
6 commitment to make the loan, the board of investments
7 determines:

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

10 (A) Is satisfactory to the board of investments;

11 (B) Has been developed in consultation with other
12 appropriate state agencies, including, but not limited to, the
13 department of labor and the office of community and
14 industrial development;

15 (C) Focuses upon the need to increase the number of
16 jobs available in this state; and

17 (D) Can be carried out by the borrower;

18 (2) That the loan is needed to assist the borrower to open
19 a new facility or expand an existing facility, in this state,
20 and that by meeting such need employment will be
21 increased in the state;

22 (3) That the borrower has submitted to the board of
23 investments a satisfactory operating plan demonstrating
24 the ability of the borrower to generate additional
25 employment at a level which may be maintained or
26 increased without additional loans under the provisions of
27 this article;

28 (4) That the board of investments has received such
29 assurances as it shall require that the operating plan is
30 realistic and feasible;

31 (5) That the borrower has submitted to the board of
32 investments a satisfactory financing plan which meets the
33 financial needs of the borrower as reflected in the operating
34 plan for the period covered by such plan;

35 (6) That the board of investments has received adequate
36 assurances regarding the availability of all financing, both
37 public and private, contemplated by the financing plan and
38 that such financing is adequate to meet the borrower's
39 projected financial needs during the period covered by the
40 financing plan;

41 (7) That none of the proceeds of a loan made under the
42 provisions of this article will be used to repay credit
43 extended or committed prior to the date the loan is made
44 under the provisions of this article; and

45 (8) That the financing plan submitted under subdivision

46 (5) of this ~~sub~~section (2) provides that expenditures under
47 the financing plan will reduce unemployment in this state.

CHAPTER 5E. VENTURE CAPITAL AUTHORITY.

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

§5E-1-1. Short title.

1 The article may be cited as the “West Virginia Capital
2 Company Act.”

§5E-1-2. Declaration of policy.

1 (a) The Legislature finds and declares that:

2 (1) Economic insecurity due to unemployment is a
3 serious detriment to the health, safety, and general welfare
4 of the citizens of this state;

5 (2) Involuntary unemployment, with its resulting
6 burden of indigence, falls with crushing force upon
7 unemployed workers and ultimately on the state itself in the
8 form of public assistance and unemployment
9 compensation; and

10 (3) Unemployment causes a migration of West Virginia
11 workers and families seeking jobs and establishing homes
12 elsewhere which deprives this state of its most valuable
13 resource, its people, and reduces the tax base of this state
14 and of its local governments, impairing their ability to
15 provide services.

16 (b) The Legislature further finds that:

17 (1) The best method of combating unemployment and
18 protecting West Virginia against the loss of its people is by
19 promoting, stimulating, developing, rehabilitating and
20 revitalizing the business prosperity and economic welfare
21 of this state and its citizens; and

22 (2) To accomplish this goal, the Legislature must
23 encourage the formation of venture and equity capital in
24 West Virginia for use in diversifying, strengthening and
25 stabilizing the West Virginia economy by increasing West
26 Virginia employment and business opportunities while
27 protecting the people’s constitutional right to a clean and
28 healthful environment.

29 (c) The Legislature also further finds that:

30 (1) Private investment of venture and equity capital in
31 the West Virginia economy will be encouraged and

32 promoted by making tax credits available to taxpayers
33 investing in West Virginia capital companies;

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

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

§5E-1-3. Purposes.

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

14 (b) This article is aimed at:

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

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

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

§5E-1-4. Definitions.

1 As used in this article, the following terms shall have the
2 meanings ascribed to them in this section, unless the

3 context in which the term is used clearly requires another
4 meaning or a specific different definition is provided.

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

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

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

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

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

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

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

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

§5E-1-5. Rules and regulations.

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

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

1 (a) The board shall certify West Virginia capital
2 companies commencing after the effective date of this
3 article. A company seeking to be certified as a West Virginia
4 capital company must make written application to the

5 board on forms provided by the board. The application
6 must contain the information required by section ten of this
7 article. Further, the certificate must specify the level of
8 capitalization of the company.

9 (b) The application shall set forth the applicant's
10 purpose.

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

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

§5E-1-8. Tax credits.

1 (a) The total amount of tax credits authorized for a
2 single qualified company may not exceed two million
3 dollars. Capitalization of the company may be increased
4 pursuant to regulation of the board.

5 (b) The total credits authorized by the board for all
6 companies may not exceed a total of ten million dollars each
7 fiscal year. The board shall allocate these credits to
8 qualified companies in the order that said companies are
9 certified as qualified capital companies.

10 (c) Any investor, including an individual, partnership
11 or corporation who makes a capital investment in a
12 qualified West Virginia capital company is entitled to a tax
13 credit equal to fifty percent of the investment. This credit
14 may be taken against any tax liability imposed pursuant to
15 article thirteen, twenty-one or twenty-four, chapter eleven
16 of this code until the first day of July, one thousand nine
17 hundred eighty-six and thereafter, to articles twenty-one or
18 twenty-four of said chapter. The credit for investments by a
19 partnership or by a corporation electing to be treated as a
20 Subchapter S corporation may be divided pursuant to
21 election of partners or shareholders.

22 (d) The tax credit allowed under this section is to be
23 credited against the taxpayer's tax liability for the taxable
24 year in which the investment in a qualified West Virginia
25 capital company is made. If the amount of the tax credit
26 exceeds the taxpayer's tax liability for the taxable year, the
27 amount of the credit which exceeds the tax liability may be

28 carried back or may be carried forward in accordance with
29 the provisions of section forty-six (b) of the Internal
30 Revenue Code of 1954, as amended.

31 (e) The tax credit provided for in this section is available
32 only to those taxpayers whose investment in a qualified
33 West Virginia capital company occurs after the first day of
34 July, one thousand nine hundred eighty-six.

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

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

§5E-1-10. Application requirements.

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

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

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

§5E-1-12. Qualified investments.

1 (a) A qualified West Virginia capital company must use

2 its capital base to make qualified investments according to
3 the following schedule:

4 (1) At least twenty percent of its capital base within the
5 first year of the date on which the certified company was
6 designated as qualified capital company by the board;

7 (2) At least forty percent of its capital base within two
8 years of the date on which the certified company was
9 designated as a qualified capital company by the board; and

10 (3) At least sixty percent of its capital base within three
11 years of the date on which the certified company was
12 designated as a qualified capital company by the board.

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

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

§5E-1-13. Restrictions on investment.

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

4 (b) No portion of the equity raised by a West Virginia
5 capital company under this article shall be invested in a
6 business that is related to that West Virginia capital
7 company, or in any business that is owned or operated by, or
8 employs, any officer, investor, member of the board of
9 directors, or employee of that West Virginia capital

10 company, or the family of such person, unless the board of
 11 directors of the West Virginia industrial and trade jobs
 12 development corporation approves, in writing, of the
 13 making of such investment. For purposes of this subsection,
 14 relationships shall be determined in accordance with the
 15 rules set forth in section 267 of the Internal Revenue Code of
 16 1954, as amended.

§5E-1-14. Conflict of interest.

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

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

1 (a) Each qualified West Virginia capital company shall
 2 report to the tax commissioner and the board on a
 3 semiannual basis:
 4 (1) The name of each investor in the qualified West
 5 Virginia capital company who has applied for a tax credit;
 6 (2) The amount of each investor's investment;
 7 (3) The amount of the tax credit allowed to the investor
 8 and the date on which the investment was made; and
 9 (4) All qualified investments the company has made.
 10 (b) The company shall provide each investor in a
 11 qualified West Virginia capital company with a certificate
 12 authorizing the tax credits, and a true copy of the certificate
 13 shall be submitted with each taxpayer's tax return
 14 requesting a credit under section eight of this article.

§5E-1-16. Examination.

1 (a) Annually each certified capital company shall cause
 2 its books and records to be audited by an independent
 3 certified public accountant in accordance with generally
 4 accepted auditing and accounting principles. In addition to
 5 the performance of a financial audit, the audit shall address
 6 the methods of operation and conduct of the business of the
 7 West Virginia capital company to determine compliance
 8 with this article and that the funds received by the company
 9 have been invested within the time limits required by this
 10 article. Upon completion, a copy of the audit report shall be
 11 certified and sent to the board.
 12 (b) The board may examine, under oath, any of the

13 officers, directors, agents, employees or investors of a West
14 Virginia capital company regarding the affairs and
15 business of the company. The board may issue subpoenas
16 and subpoenas duces tecum and administer oaths. Refusal
17 to obey such a subpoena or subpoena duces tecum may at
18 once be reported to the circuit court of the county in which
19 the company is located or the persons subpoenaed resides
20 and the circuit court shall enforce obedience to the
21 subpoena or subpoena duces tecum in the manner provided
22 by law for compliance with a subpoena or subpoena duces
23 tecum issued by a circuit court of this state.

§5E-1-17. Decertification.

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

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

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 12. COUNTY AND MUNICIPAL DEVELOPMENT AUTHORITIES.

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

1 Except as hereinafter provided, the governing body of
2 every municipality and the county commission of every
3 county is hereby authorized to create and establish a public
4 agency to be known as a development authority. The name
5 of the authority shall contain the words "development
6 authority," together with the designation of the
7 municipality or the county within which such authority is
8 intended to operate. Nothing in this article contained,
9 however, shall be construed as permitting the governing
10 body of any municipality or county commission of any
11 county in which there exists, on the date on which this

12 article becomes effective, one or more public development
13 authorities, corporations or commissions, organized and
14 existing pursuant to an act or acts of the Legislature, either
15 local or general, and performing substantially the same or
16 similar functions as the development authorities herein
17 authorized, to create and establish such a development
18 authority until such time as all such other public
19 development authorities, corporations and commissions
20 cease operations in such municipality or county: *Provided*,
21 That nothing herein shall be construed to prohibit the
22 creation and establishment of a municipal development
23 authority when a county or regional development authority
24 exists, and any municipal development authority shall have
25 the exclusive right to exercise its powers granted pursuant
26 to this article within the boundaries of the municipality.

§7-12-2. Purposes.

1 The purposes for which the authority is created are to
2 promote, develop and advance the business prosperity and
3 economic welfare of the municipality or county for which it
4 is created, its citizens and its industrial complex; to
5 encourage and assist through loans, investments or other
6 business transactions in the locating of new business and
7 industry within the municipality or county and to
8 rehabilitate and assist existing businesses and industries
9 therein; to stimulate and promote the expansion of all kinds
10 of business and industrial activity which will tend to
11 advance business and industrial development and maintain
12 the economic stability of the municipality or county,
13 provide maximum opportunities for employment,
14 encourage thrift, and improve the standard of living of the
15 citizens of the county; to cooperate and act in conjunction
16 with other organizations, federal, state or local, in the
17 promotion and advancement of industrial, commercial,
18 agricultural and recreational developments within the
19 municipality or county; and to furnish money and credit,
20 land and industrial sites, technical assistance and such
21 other aid as may be deemed requisite to approved and
22 deserving applicants for the promotion, development and
23 conduct of all kinds of business activity within the
24 municipality or county.

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

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

30 In addition to the appointing agencies hereinbefore
31 named, such other persons, firms, unincorporated
32 associations, and corporations, who reside, maintain
33 offices, or have economic interests, as the case may be, in the
34 county, shall be eligible to participate in and request the
35 county commission to appoint members to the development
36 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.

1 The management and control of a municipal authority, its

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

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

§7-12-4. Qualifications of members.

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

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

1 The authority may incur any proper indebtedness and
2 issue any obligations and give any security therefor which it

3 may deem necessary or advisable in connection with
4 carrying out its purposes as hereinbefore mentioned. No
5 statutory limitation with respect to the nature, or amount,
6 interest rate or duration of indebtedness which may be
7 incurred by municipalities or other public bodies shall
8 apply to indebtedness of the authority. No indebtedness of
9 any nature of the authority shall constitute an indebtedness
10 of the governing body of the municipality or county
11 commission of the municipality or county in which the
12 commission is intended to operate or any municipality
13 situated therein, or a charge against any property of said
14 county commission, municipalities, or other appointing
15 agencies. The rights of creditors of the authority shall be
16 solely against the authority as a corporate body and shall be
17 satisfied only out of property held by it in its corporate
18 capacity.

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

1 The governing body of a municipality and county
2 commission are hereby authorized and empowered to
3 appoint members of the said authority and the county
4 commission and any municipality therein, or any one or
5 more of them, jointly and severally, are hereby authorized
6 and empowered to contribute by appropriation from their
7 respective general funds not otherwise appropriated to the
8 cost of the operation and projects of the authority.

9 The county commission of the county or municipal
10 corporations therein are hereby authorized and empowered
11 to transfer and convey to the said authority property of any
12 kind acquired by said county commission or municipal
13 corporation for or adaptable to use in industrial, economic
14 and recreational development, such transfers or
15 conveyances to be without consideration or for such price
16 and upon such terms and conditions as the said county
17 commission or municipal corporation deems proper.

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

1 Contributions may be made to the authority from time to

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

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

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

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

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

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

1 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.

1 (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.

1 (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.

1 (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 24. CORPORATION NET INCOME TAX.

§11-24-22. Tax credit for coal coking facilities; regulations.

1 (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.

CHAPTER 18. EDUCATION.

ARTICLE 26B. INSTITUTE FOR PUBLIC AFFAIRS.

§18-26B-1. Institute for public affairs; creation and purposes.

1 (a) There is hereby created as an independent entity the
2 institute for public affairs, to be located and operated at
3 West Virginia University. The institute shall be under the
4 control and supervision of a director, which position is to be
5 filled by an individual, whose credentials include
6 accomplishments in the interdisciplinary academic fields
7 together with that of government. The director shall be
8 appointed by the president of West Virginia University. The
9 institute shall engage faculty from institutions of higher
10 learning throughout the state and shall cooperatively
11 develop a program with other such institutions. The terms
12 of such participation may be by contract, loan, part-time
13 basis or other such arrangement.

14 (b) The institute is directed to conduct independent
15 research and propose strategies and options on public
16 issues and policies upon its own initiative or as may be
17 requested by the executive or the Legislature.

18 (c) The institute is directed to establish priorities and
19 coordinate its public policy initiatives with the governor
20 and with the Legislature. To accomplish this purpose, there
21 is hereby created an advisory board to consist of four
22 members of the Legislature, two of whom shall be members
23 of the House of Delegates to be appointed by the Speaker
24 and two of whom shall be members of the Senate to be
25 appointed by the President; and four members of the
26 executive to be appointed by the governor. The director
27 shall serve as the chairman of the advisory board.

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

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

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

ARTICLE 26C. INSTITUTE FOR INTERNATIONAL TRADE DEVELOPMENT.

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

1 There is hereby created as an independent entity the
2 institute for international trade development, to be located
3 and operated at Marshall University. The institute is
4 established to facilitate faculty involvement in the
5 formation and continuation of international market entry
6 and development strategy, to provide assistance to state
7 businesses in exporting and attracting foreign investment,
8 and to engage in other activities designed to promote,
9 develop and stimulate export expansion and foreign direct
10 investment. The institute shall be under the control and
11 supervision of a director, who shall be appointed from
12 among the faculty by the president of Marshall University.
13 The institute shall engage faculty from institutions of
14 higher learning throughout the state and shall
15 cooperatively develop an export program with the other
16 such institutions. The terms of such participation may be by
17 contract, loan, part-time basis, or other such arrangement.
18 The institute shall develop with the board of regents and the
19 governor a program of student internships in international
20 business to place qualified students for academic credit

21 with businesses in West Virginia to help develop export
22 awareness and potential. The institute shall further provide
23 research and analysis on matters of international trade
24 upon request of the executive or the Legislature, and shall
25 initiate partnership grants, and proposals in the area of
26 international trade in accordance with the provisions of
27 article two-a, chapter five-b; and apply for and obtain
28 grants or funds from all available sources, private and
29 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
2 apprenticeship programs for all state agencies that have
3 employees working in apprenticeable trades which are, or
4 may be recognized by, the United States department of
5 labor, bureau of apprenticeship and training.

6 (b) These apprenticeship programs will be developed
7 and conducted in a manner that will assure meeting the
8 national minimum requirements of quality and be
9 registered with the United States department of labor,
10 bureau of apprenticeship and training.

11 (c) The director of the civil service commission, or his
12 designee, in cooperation with the participating appointing
13 authorities within each agency, shall develop and annually
14 revise by the thirty-first day of December a list of
15 employment classifications appropriate for apprenticeship
16 training, which may include, but not be limited to, the
17 following classifications: Computer service technicians;
18 legal assistants; computer systems analysts; computer
19 programmers; computer operators; office machine
20 repairers; physical therapy assistants; electrical engineers;
21 civil engineering technicians; peripheral edp equipment
22 operators; insurance clerks, medical; electrical and
23 electronic technicians; occupational therapists; surveyor
24 helpers; credit clerks, banking and insurance; physical
25 therapists; employment interviewers; mechanical
26 engineers; mechanical engineering technicians; and
27 compression and injection mold machine operators.

28 (d) The chief administrative officer of each agency in

29 cooperation with the director of the civil service
30 commission, or his designee, shall establish procedures for
31 the coordination of apprenticeship programs developed in
32 accordance with this section.

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

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

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

42 (2) The current list of apprenticeable classifications;

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

45 (4) A summary of registered apprenticeships;

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

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

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

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

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

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

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

69 (h) The director, or his designee, shall file a report on the
70 development of apprenticeship programs with the governor

71 and the Legislature on or before the first day of January,
72 one thousand nine hundred eighty-seven.

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

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

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

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

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

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-6. General powers of authority.

1 The authority, as a public corporation and governmental

2 instrumentality exercising public powers of the state, shall
3 have and may exercise all powers necessary or appropriate
4 to carry out the purposes of this article, including the
5 power:

6 (a) To cooperate with industrial development agencies
7 in efforts to promote the expansion of industrial,
8 commercial, manufacturing and tourist activity in this
9 state.

10 (b) To determine, upon the proper application of an
11 industrial development agency, whether the declared
12 public purposes of this article have been or will be
13 accomplished by the establishment by such agency of an
14 industrial development project in this state.

15 (c) To conduct examinations and investigations and to
16 hear testimony and take proof, under oath or affirmation, at
17 public or private hearings, on any matter relevant to this
18 article and necessary for information on the establishment
19 of any industrial development project.

20 (d) To issue subpoenas requiring the attendance of
21 witnesses and the production of books and papers relevant
22 to any hearing before such authority or one or more
23 members appointed by it to conduct any hearing.

24 (e) To apply to the circuit court having venue of such
25 offense to have punished for contempt any witness who
26 refuses to obey a subpoena, to be sworn or affirmed or to
27 testify or who commits any contempt after being summoned
28 to appear.

29 (f) To authorize any member of the authority to conduct
30 hearings, administer oaths, take affidavits and issue
31 subpoenas.

32 (g) To make, upon proper application of any industrial
33 development agency, loans to such agency for industrial
34 development projects, industrial subdivision projects and
35 industrial subdivision project improvements and to provide
36 for the repayment and redeposit of such loans in the manner
37 provided in this article.

38 (h) To sue and be sued, implead and be impleaded, and
39 complain and defend in any court.

40 (i) To adopt, use and alter at will a corporate seal.

41 (j) To make bylaws for the management and regulation
42 of its affairs.

43 (k) To appoint officers, agents, employees and servants.

44 (l) To make contracts of every kind and nature to
45 execute all instruments necessary or convenient for
46 carrying on its business.

47 (m) Without in any way limiting any other subdivision
48 of this section, to accept grants from and enter into
49 contracts and other transactions with any federal agency.

50 (n) To take title by foreclosure to any industrial
51 development project or any industrial subdivision project
52 where acquisition is necessary to protect any loan
53 previously made by the authority and to sell, transfer and
54 convey such project to any responsible buyer. In the event
55 such sale, transfer and conveyance cannot be effected with
56 reasonable promptness, the authority may, in order to
57 minimize financial losses and sustain employment, lease
58 the project to a responsible tenant. The authority shall not
59 lease an industrial development project or industrial
60 subdivision project, except under the conditions and for the
61 purposes cited in this section.

62 (o) To participate in any reorganization proceeding
63 pending pursuant to the United States Code (being the act
64 of Congress establishing a uniform system of bankruptcy
65 throughout the United States, as amended) or in any
66 receivership proceeding in a state or federal court for the
67 reorganization or liquidation of a responsible buyer or
68 responsible tenant. The authority may file its claim against
69 any such responsible buyer or responsible tenant in any of
70 the foregoing proceedings, vote upon any questions pending
71 therein which requires the approval of the creditors
72 participating in any reorganization proceeding or
73 receivership, exchange any evidence of such indebtedness
74 for any property, security or evidence of indebtedness
75 offered as a part of the reorganization of such responsible
76 buyer or responsible tenant or of any other entity formed to
77 acquire the assets thereof and may compromise or reduce
78 the amount of any indebtedness owing to it as a part of any
79 such reorganization.

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

85 (q) To sell, at public or private sale, any bond or other
86 negotiable instrument, security interests or obligation of

87 the authority in such manner and upon such terms as the
88 authority deems would best serve the purposes of this
89 article.

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

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

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

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

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

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

124 (u) To accept gifts or grants of property, funds, security
125 interests, money, materials, labor, supplies or services from
126 the United States of America or from any governmental
127 unit or any person, firm or corporation, and to carry out the
128 terms or provisions of, or make agreements with respect to,

129 or pledge, ~~or~~ many gifts or grants, and to do any and all things
130 necessary, useful, desirable or convenient in connection
131 with the procuring, acceptance or disposition of gifts or
132 grants.

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

140 (w) To sell security interests in the loan portfolio of the
141 authority. Such security interests shall be evidenced by
142 instruments issued by the authority. Proceeds from the sale
143 of security interests may be issued in the same manner and
144 for the same purposes as bond and note revenues.

145 (x) To procure insurance against any losses in
146 connection with its property, operations or assets in such
147 amounts and from such insurers as the authority deems
148 desirable.

149 (y) To take and hold security interests for equipment
150 loans as prescribed in this article.

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

166 (aa) To take title by foreclosure to any project, plant,
167 property or equipment where acquisition is necessary to
168 protect any loan previously made by the authority and to
169 sell, transfer and convey such project, plant, property or
170 equipment to any responsible buyer. In the event such sale,

171 transfer and conveyance cannot be effected with reasonable
172 promptness, the authority may in order to minimize
173 financial losses and sustain employment, lease a project to a
174 responsible tenant.

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

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

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

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

18 (b) The authority shall determine that the industrial
19 development agency has obtained from other independent
20 and responsible sources, such as banks and insurance
21 companies, a firm commitment for all other funds over and
22 above the loan of the authority and such funds or property
23 as the agency may hold, necessary for payment of all the
24 estimated cost of establishing or acquiring the industrial
25 development project and that the sum of all these funds is

26 adequate to ensure completion and operation of the
 27 industrial development project. The proceeds of any loan
 28 made by the authority to the industrial development agency
 29 pursuant to this subdivision (b) shall be used only for the
 30 establishment or acquisition of industrial development
 31 projects in furtherance of the public purposes of this article.

32 (c) The loan of the authority shall be for such period of
 33 time and shall bear interest at such rate as the authority
 34 determines and it shall be secured by the negotiable
 35 promissory note of the industrial development agency and
 36 by deed of trust on the industrial development project for
 37 which the loan was made or by assignment of any deed of
 38 trust and negotiable promissory note and other security
 39 taken by the industrial development agency on the
 40 industrial development project, such deed of trust and note,
 41 assignment of deed of trust and note and other security to be
 42 second and subordinate only to the deed of trust securing
 43 the first lien obligation issued to secure the commitment of
 44 funds from the independent and responsible sources and
 45 used in the financing of the industrial development project.

46 Money loaned by the authority to an industrial
 47 development agency shall be withdrawn from the fund and
 48 paid over to the agency in such manner as is provided by
 49 rules and regulations of the authority. The authority shall
 50 deposit all payments of interest on loans and the principal
 51 thereof in the fund.

52 Where any federal agency participating in the financing
 53 of an industrial development project is not permitted to
 54 take as security for such participation a deed of trust or
 55 assignment of deed of trust and other security the lien of
 56 which is junior to the deed of trust or assignment of deed of
 57 trust and other security of the authority, the authority may
 58 take as security for its loan to the industrial development
 59 agency a deed of trust or assignment of deed of trust and
 60 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.**

1 (a) At the request of the governor or the appropriate

2 state agency or authority, the authority may lend money to
3 such office, agency or authority for the acquisition,
4 construction, improvement or alteration of projects for
5 electrical power generating facilities, natural gas
6 transmission lines, coal processing plants and other energy
7 projects.

8 (b) At the request of the department of commerce or the
9 office of community and industrial development, the
10 authority may lend money to any person or entity for the
11 acquisition, construction, improvement or alteration of any
12 project relative to export development, farm development,
13 job development and forest development.

14 (c) At the request of the West Virginia industry
15 assistance corporation, the authority may lend money to
16 any person or entity for the acquisition, construction,
17 improvement or alteration of any project relative thereto.

18 (d) At the request of the West Virginia industrial and
19 trade jobs development corporation, the authority may lend
20 money to any person or entity for the acquisition,
21 construction, improvement or alteration of any project
22 relative thereto.

23 (e) A loan shall not be made unless the authority is
24 reasonably satisfied that the project will produce revenues
25 sufficient, together with any other revenues pledged, to
26 meet the principal and interest on the loan, other costs,
27 expenses and charges in connection with the loan and other
28 charges or obligations of the project which may be prior or
29 equal to the loan, promptly as they become due; that the
30 project is otherwise soundly financed; that the loan
31 application requirements of section eight of this article
32 have been satisfied; that the project will be owned and
33 operated by the state of West Virginia. A loan made
34 pursuant to this subsection shall not exceed the project
35 costs as determined by the authority. A loan shall be
36 secured in the manner required by the authority, shall be
37 repaid in a period and bear interest at a rate as determined
38 by the authority, which interest rate may be decreased or
39 increased so that it shall in no event be less than the rate
40 paid by the authority on notes, renewal notes or bonds
41 issued to fund the loan, and shall have such terms and
42 conditions as are required by the authority, all which shall
43 be set forth in a loan agreement and related documents as
44 required by the authority.

§31-15-8. Loan application requirements; hearings.

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

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

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

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

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

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

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

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

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

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

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

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

41 (2) If the loan application is for an industrial

42 subdivision project acquisition or improvement, the form
43 shall contain at least the following:

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

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

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

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

§31-15-9. Equipment loans.

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

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

1 The governing body of the authority shall consist of the
2 members of the authority acting as a board, which shall
3 exercise all the powers given to the authority in this article.
4 The governor or his designated representative shall be

5 chairman of the board and its chief executive officer. On the
 6 second Wednesday of July of each year, the board shall meet
 7 to elect a secretary and a treasurer from among its own
 8 members.

9 A majority of the members shall constitute a quorum for
 10 the purpose of conducting business. Except in the case of a
 11 loan application or unless the bylaws require a larger
 12 number, action may be taken by majority vote of the
 13 members present. Approval or rejection of a loan
 14 application shall be made by majority vote of the full
 15 membership of the board.

16 The board shall manage the property and business of the
 17 authority and prescribe, amend and repeal bylaws and rules
 18 and regulations governing the manner in which the
 19 business of the authority is conducted.

20 The governor shall provide staff services to the authority
 21 for administration of this article, including liaison between
 22 the authority and the industrial development agencies and
 23 related organizations and between the authority and other
 24 state agencies whose facilities and services may be useful to
 25 the authority in its work. The authority may reimburse any
 26 state spending unit for any special expense actually
 27 incurred in providing any service or the use of any facility to
 28 the authority.

29 The authority shall employ an executive director and any
 30 other personnel it determines necessary, and may appoint
 31 its own counsel and legal staff, and retain such temporary
 32 engineering, financial and other consultants or technicians
 33 as may be required for any special study or survey
 34 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.**

1 (a) The West Virginia economic development authority
 2 may use for any investments authorized by sections seven
 3 and seven-a, article fifteen, chapter thirty-one of this code,
 4 up to one half of the funds of the state mortgage and

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.**

§31-19-1. Short title.

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

5 counties and municipalities necessitating legislation to
6 enable counties and municipalities to attain a more
7 competitive position in capital markets.

8 (b) The Legislature hereby finds and declares further
9 that it is in the public interest and is the responsibility of the
10 state of West Virginia to foster and promote by all lawful
11 means the provision of adequate capital markets and
12 facilities for borrowing money by counties and
13 municipalities for the financing of public improvements
14 and the fulfillment of public purposes, and to make it
15 possible for counties and municipalities to obtain new or
16 additional sources of capital funds at acceptable interest
17 costs, including activities to encourage investor interest in
18 the purchase of bonds or notes of counties or municipalities
19 as sound and preferred securities for investments.

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

32 (d) The Legislature hereby finds and declares further
33 that it is in the public interest, in order to implement and aid
34 in the discharge of the responsibilities of the aforesaid, that
35 a state instrumentality be created as a public body
36 corporate with full powers to borrow money and issue its
37 bonds and notes to the end that funds obtained thereby may
38 be used for the purchase by such state instrumentality of the
39 bonds or notes of counties and municipalities or for the
40 purposes of making loans to the counties or municipalities
41 for community infrastructure projects, and that such state
42 instrumentality be granted all powers necessary or
43 appropriate to accomplish and carry out the aforesaid
44 public purposes and responsibilities of the state of West
45 Virginia in a manner to make it possible for counties or
46 municipalities to sell their bonds and borrow funds at as

47 low an interest rate as said instrumentality finds and
48 determines to be feasible.

49 (e) The Legislature further finds and declares that in
50 accomplishing these purposes, the West Virginia
51 community infrastructure authority, created and
52 established by this article, will be acting in all respects for
53 the benefit of the people of the state of West Virginia to
54 serve the public purposes of improving and otherwise
55 promoting their health, education, welfare, safety and
56 prosperity, and that the West Virginia community
57 infrastructure authority, so created and established, is
58 hereby empowered to act on behalf of the state of West
59 Virginia and its people in serving the aforesaid public
60 purposes for the benefit of the general public of said state.

§31-19-3. Definitions.

1 As used in this article, unless the context clearly requires
2 a different meaning:

3 (1) "Authority" means the West Virginia community
4 infrastructure authority created in section four of this
5 article, the duties, powers, responsibilities and functions of
6 which are specified in this article.

7 (2) "Board" means the West Virginia community
8 infrastructure authority board created in section four of
9 this article, which shall manage and control the West
10 Virginia community infrastructure authority.

11 (3) "Bond" or "community infrastructure revenue
12 bond" means a revenue bond or note issued by the West
13 Virginia community infrastructure authority to effect the
14 intents and purposes of this article.

15 (4) "Community infrastructure project" or "project"
16 means any project of a public nature which is considered a
17 part of the infrastructure of a county or municipality,
18 including, but not limited to roads and other appurtenances
19 to community or economic development, which are
20 specifically declared to be for a public purpose.

21 (5) "Cost" means, as applied to community
22 infrastructure projects, the cost of acquisition, repair,
23 renovation and construction thereof; the cost of acquisition
24 of all land, rights-of-way, property rights, easements,
25 franchise rights, and interests required by the county or
26 municipality for such acquisition, renovation, repair or
27 construction; the cost of demolishing or removing any

28 buildings or structures on land so acquired, including the
 29 cost of acquiring any lands to which buildings or structures
 30 may be moved; the cost of diverting highways, interchange
 31 of highways, access roads to private property, including the
 32 cost of land or easement therefor; the cost of all machinery,
 33 furnishing, and equipment; all finance charges, and interest
 34 prior to and ~~doing~~ the construction and for no more than *during ←*
 35 eighteen months after completion of construction; the cost
 36 of all legal services and expenses; the cost of all plans,
 37 specifications, surveys and estimates of cost; all working
 38 capital and other expenses necessary or incident to
 39 determining the feasibility or practicability of acquiring,
 40 renovating, repairing or constructing any such project; the
 41 financing of such acquisition, renovation, or repair or
 42 construction, including the amount authorized in the
 43 resolution of the authority providing for the issuance of
 44 community infrastructure revenue bonds to be paid into
 45 any special funds from the proceeds of such bonds; and the
 46 financing of the placing of any such project in operation, if
 47 necessary. Any obligations or expenses incurred after the
 48 effective date of this article by any county or municipality,
 49 with the approval of the authority, for surveys, borings,
 50 preparation of plans and specifications and other
 51 engineering services in connection with the acquisition,
 52 renovation, repair or construction of a project shall be
 53 regarded as a part of the cost of such project and shall be
 54 reimbursed out of the proceeds of grants, loans or
 55 community infrastructure revenue bonds as authorized by
 56 the provisions of this article.

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

59 (7) "Revenue" means any money or thing of value
 60 collected by, or paid to, the West Virginia community
 61 infrastructure authority in connection with any community
 62 infrastructure project or as principal of or interest, charges
 63 or other fees on loans, or any other collections on loans
 64 made by the West Virginia community infrastructure
 65 authority to counties or municipalities to finance in whole
 66 or in part the acquisition, renovation, repair or construction
 67 of any community infrastructure project or projects, or
 68 other money or property which is received and may be
 69 expended for or pledged as revenues pursuant to this
 70 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.

1 (a) There is hereby created the West Virginia
2 community infrastructure authority. The authority is a
3 governmental instrumentality of the state and a body
4 corporate. The exercise by the authority of the powers
5 conferred by this article and the carrying out of its purposes
6 and duties shall be deemed and held to be, and are hereby
7 determined to be, essential governmental functions and for
8 a public purpose.

9 The authority shall be controlled, managed and operated
10 by the five member board known as the West Virginia
11 community infrastructure board, which is hereby created.
12 The director of the governor's office of community and
13 industrial development, or his designee, the director of the
14 department of natural resources, or his designee, and the
15 commissioner of the department highways, or his designee,
16 shall be members ex-officio of the board. The director of the
17 governor's office of community and industrial
18 development, or his designee, shall be the ex-officio
19 chairman. Two members of the board shall be
20 representative of the general public, one of which shall have
21 had experience or a demonstrated interest in local
22 government. The two members who are not ex-officio
23 members of the board shall be appointed by the governor,
24 by and with the advice and consent of the Senate, for initial
25 terms of three and six years, respectively. The successor of
26 each such appointed member shall be appointed for a term
27 of six years in the same manner as the original
28 appointments were made, except that any person appointed
29 to fill a vacancy occurring prior to the expiration of the term
30 for which his predecessor was appointed shall be appointed
31 only for the remainder of such term. Each board member
32 shall serve until the appointment and qualification of his
33 successor. The two appointed board members shall not at
34 any one time belong to the same political party. Appointed
35 board members may be reappointed to serve additional

36 terms, not to exceed two consecutive full terms. All
37 members of the board shall be citizens of the state. Each
38 appointed member of the board, before entering upon his
39 duties, shall comply with the requirements of article one,
40 chapter six of this code and give bond in the sum of twenty
41 thousand dollars in the manner provided in article two,
42 chapter six of this code. The governor may remove any
43 board member for cause as provided in article six, chapter
44 six of this code.

45 Annually the board shall elect one of its appointed
46 members as vice-chairman, and shall appoint a secretary-
47 treasurer, who need not be a member of the board. Three
48 members of the board shall constitute a quorum and the
49 affirmative vote of three members shall be necessary for any
50 action taken by vote of the board. No vacancy in the
51 membership of the board shall impair the rights of a
52 quorum by such vote to exercise all the rights and perform
53 all the duties of the board and the authority. The person
54 appointed as secretary-treasurer, including a board
55 member if he is so appointed, shall give bond in the sum of
56 fifty thousand dollars in the manner provided in article two,
57 chapter six of this code.

58 The director of the governor's office of community and
59 industrial development or his designee, the director of the
60 department of natural resources or his designee, and the
61 commissioner of the department of highways or his
62 designee, shall not receive any compensation for serving as
63 board members. Each of the two appointed board members
64 of the board shall receive an annual salary of five thousand
65 dollars, payable in monthly installments. Each of the five
66 board members shall be reimbursed for all reasonable and
67 necessary expenses actually incurred in the performance of
68 his duties as a member of such board. All such expenses
69 incurred by the board shall be payable solely from funds of
70 the authority or from funds appropriated for such purpose
71 by the Legislature and no liability or obligation shall be
72 incurred by the authority beyond the extent for which
73 moneys are available from funds of the authority or from
74 such appropriations.

75 (b) There shall be a director of the authority appointed
76 by the board who shall supervise and manage the
77 community infrastructure authority, and the governor's

78 office of community and industrial development shall serve
79 as the staff for the authority. Except as otherwise provided
80 in this section, the duties and responsibilities of the director
81 and of the staff shall be established by the authority. At the
82 board's discretion, it may provide for the position of general
83 counsel, who shall be an employee of the authority, or for
84 the appointment of special counsel. As the board deems
85 necessary and desirable, it may at any time elect to change
86 its decision on the employment or appointment of a counsel.

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

98 (d) The board shall meet at least quarterly, and more
99 often as it deems necessary. The director and any other staff
100 member or members as the director deems expedient shall
101 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.**

1 To accomplish the public policies and purposes and to
2 meet the responsibility of the state as set forth in this
3 article, the West Virginia community infrastructure
4 authority may make loans to counties and municipalities
5 for the acquisition, renovation, repair or construction of
6 community infrastructure projects by such counties and
7 municipalities, and may issue community infrastructure
8 revenue bonds of this state, payable solely from revenues, to
9 pay the cost of, or finance, in whole or in part, by loans to
10 counties and municipalities such projects. A community
11 infrastructure project shall not be undertaken unless it has
12 been determined by the authority based upon information
13 provided to it by the county or municipality or other agency

14 charged by law with the responsibility of reporting to be
15 consistent with any applicable requirements of law. Any
16 resolution of the authority providing for making a loan or
17 bond purchase pursuant to this article shall include a
18 finding by the authority that such determinations have
19 been made. A loan or bond purchase agreement shall be
20 entered into between the authority and each county or
21 municipality to which a loan is made or from which bonds
22 are purchased for the acquisition, renovation, repair or
23 construction of a community infrastructure project, which
24 loan or bond purchase agreement shall include without
25 limitation the following provisions:

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

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

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

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

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

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

6 (1) Adopt, and from time to time, amend and repeal
7 bylaws necessary and proper for the regulation of its affairs
8 and the conduct of its business and rules and regulations to
9 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

52 only for the purposes for which such grants and
53 contributions are made.

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

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

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

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

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

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

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

87 (17) Do all acts necessary and proper to carry out the
88 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.

1 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
44 determines. The bonds and notes shall be executed by the

45 chairman of the authority who may use a facsimile
46 signature. The official seal of the authority or a facsimile
47 shall be affixed thereto or printed thereon and attested,
48 manually or by facsimile signature by the secretary-
49 treasurer of the authority, and any coupons attached
50 thereto shall bear the signature or facsimile signature of the
51 chairman of the authority. In case any officer whose
52 signature, or a facsimile of whose signature appears on any
53 bonds, notes or coupons ceases to be such officer before
54 delivery of such bonds or notes, such signature or facsimile
55 is nevertheless sufficient for all purposes the same as if he
56 had remained in office until such delivery and in case the
57 seal of the authority have been changed after a facsimile has
58 been imprinted on such bonds or notes, such facsimile will
59 continue to be sufficient for all purposes.

60 Any resolution authorizing any bonds or notes or any
61 issue thereof may contain provisions (subject to such
62 agreements with bondholders or noteholders as may then
63 exist, which provisions shall be a part of the contract with
64 the holders thereof) as to pledging all or any part of the
65 revenues of the authority to secure the payment of the bonds
66 or notes or of any issue thereof; the use and disposition of
67 revenues of the authority; the setting aside of reserve funds,
68 sinking funds or replacement and improvement funds and
69 the regulation and disposition thereof; the crediting of the
70 proceeds of the sale of bonds or notes to and among the
71 funds referred to and provided for in the resolution
72 authorizing the issuance of the bonds or notes; the use,
73 lease, sale or other disposition of any assets of the authority;
74 limitations on the purpose to which the proceeds of sale of
75 bonds or notes may be applied; notes issued in anticipation
76 of the issuance of bonds; the agreement of authority to do all
77 things necessary for the authorization, issuance and sale of
78 such bonds in such amounts as may be necessary for the
79 timely retirement of such notes; limitation on the issuance
80 of additional bonds or notes; the terms upon which
81 additional bonds or notes may be issued and secured; the
82 refunding of outstanding bonds or notes; the procedure, if
83 any, by which the terms of any contract with bondholders or
84 noteholders may be amended or abrogated; the amount of
85 bonds or notes the holders of which must consent thereto
86 and the manner in which such consent may be given;

87 limitations on the amount of moneys to be expended by the
88 authority for operating, administrative or other expenses of
89 the authority securing any bonds or notes by a trust
90 agreement; and any other matter, of like or different
91 character, which in any way affect the security or
92 protection of the bonds or notes.

93 In the event that the sum of all reserves pledged to the
94 payment of such bonds or notes shall be less than the
95 minimum reserve requirements established in any
96 resolution or resolutions authorizing the issuance of such
97 bonds or notes, the chairman of the authority shall certify,
98 on or before the first day of December of each year, the
99 amount of such deficiency to the governor of the state for
100 inclusion, if the governor shall so elect, of the amount of
101 such deficiency in the budget to be submitted to the next
102 session of the Legislature for appropriation to the authority
103 to be pledged for payment of such bonds or notes: *Provided*,
104 That the Legislature shall not be required to make any
105 appropriations so requested, and the amount of such
106 deficiencies shall not constitute a debt or liability of the
107 state.

108 Neither the members of the authority nor any person
109 executing the bonds or notes shall be liable personally on
110 the bonds or notes or be subject to any personal liability or
111 accountability by reason of the issuance thereof.

§31-19-8. Trustee for bondholders; contents of trust agreement.

1 Any community infrastructure revenue bonds or notes or
2 community infrastructure revenue refunding bonds issued
3 by the authority under this article may be secured by a trust
4 agreement between the authority and a corporate trustee,
5 which trustee may be any trust company or banking
6 institution having the powers of a trust company within or
7 without this state. The authority shall promulgate rules and
8 regulations pursuant to article three, chapter twenty-nine-
9 a of this code establishing the method of choosing any such
10 trustee which shall be done by a public competitive bidding
11 procedure.

12 The authority shall, in all instances, seek to achieve the
13 highest possible rating for any community infrastructure
14 revenue bonds or notes or community infrastructure
15 revenue refunding bonds or notes.

16 Any such trust agreement may pledge or assign revenues
 17 of the authority to be received. Any such trust agreement or
 18 any resolution providing for the issuance of such bonds or
 19 notes may contain such provisions for protecting and
 20 enforcing the rights and remedies of the bondholders or
 21 noteholders as are reasonable and proper and not in
 22 violation of law, including the provisions contained in
 23 section seven of this article and covenants setting forth the
 24 duties of the authority in relation to provisions regarding
 25 the payment of the principal of and interest, charges and
 26 fees on loans made to, or bond purchases from, counties and
 27 municipalities from the proceeds of such bonds or notes, the
 28 custody, safeguarding and application of all moneys. Any
 29 banking institution or trust company incorporated under
 30 the laws of this state which may act as depository of the
 31 proceeds of bonds or notes or of revenues shall furnish such
 32 indemnifying bonds or pledge such securities as are
 33 required by the authority. Any such trust agreement may
 34 set forth the rights and remedies of the bondholders and
 35 noteholders and of the trustee and may restrict individual
 36 rights of action by bondholders and noteholders as
 37 customarily provided in trust agreement or trust indentures
 38 securing similar bonds. Such trust agreement may contain
 39 such other provisions as the authority deems reasonable
 40 and proper for the security of the bondholders or
 41 noteholders. All expenses incurred in carrying out the
 42 provisions of any such trust agreement may be treated as
 43 part of the cost of the construction, renovation, repair or
 44 acquisition of a community infrastructure project.

§31-19-9. Legal remedies of bondholders and trustees.

1 Any holder of community infrastructure revenue bonds
 2 issued pursuant to this article or any of the coupons
 3 appertaining thereto and the trustee under any trust
 4 agreement, except the extent the rights given by this article
 5 may be restricted by the applicable resolution or such trust
 6 agreement, may by civil action, mandamus or other
 7 proceedings protect and enforce any rights granted under
 8 the laws of the state or granted under this article by the
 9 trust agreement or by the resolution in the issuance of such
 10 bonds, and may enforce and compel the performance or all
 11 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.**

1 Community infrastructure revenue bonds and notes and
2 community infrastructure revenue refunding bonds issued
3 pursuant to this article and any coupons in connection
4 therewith shall not constitute a debt or a pledge of the faith
5 and credit or taxing power of this state or of any county or
6 municipality of the state and the holders or owners thereof
7 shall have no right to have taxes levied by the Legislature or
8 taxing authority of any county or municipality for the
9 payment of the principal thereof or interest thereon, but
10 such bonds and notes shall be payable solely from the
11 revenues and funds pledged for their payment as authorized,
12 by this article unless the notes are issued in anticipation of
13 the issuance of bonds or the bonds are refunded by
14 refunding bonds issued pursuant to this article which bonds
15 or refunding bonds shall be payable solely from revenues
16 and funds pledged for their payment as authorized by this
17 article. All such bonds and notes shall contain on the face
18 thereof a statement to the effect that the bonds or notes, as
19 to both principal and interest, are not debts of the state or
20 any county or municipality thereof, but are payable solely
21 from revenues and funds pledged for their payment.

22 All expenses incurred in the carrying out of the provisions
23 of this article shall be payable solely from funds provided
24 under the authority of this article. Such article does not
25 authorize the authority to incur indebtedness or liability on
26 behalf of or payable by the state or any county or
27 municipality thereof.

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

1 All moneys, properties and assets acquired by the
2 authority whether as proceeds from the sale of community
3 infrastructure revenue bonds or as revenues or otherwise,
4 shall be held by it in trust for the purposes of carrying out its
5 powers and duties, and shall be used and reused in
6 accordance with the purposes and provisions of this article.
7 Such moneys shall at no time be commingled with other

8 public funds. Such moneys, except as otherwise provided in
9 any resolution authorizing the issuance of community
10 infrastructure revenue bonds or in any trust agreement
11 securing the same, or except when invested pursuant to
12 section twelve of this article, shall be kept in appropriate
13 depositories and secured as provided and required by law.
14 The resolution authorizing the issuance of such bonds of
15 any issue or of the trust agreement securing such bonds
16 shall provide that any officer to whom, or any banking
17 institution or trust company to which, such moneys are paid
18 shall act as trustee of such moneys and hold and apply them
19 for the purposes hereof, subject to the conditions this article
20 and such resolution or trust agreement provide.

§31-19-12. Investment of funds by authority.

1 Except as otherwise provided in any resolution
2 authorizing the issuance of community infrastructure
3 revenue bonds or in any trust agreement securing the same,
4 the authority is hereby authorized and empowered to invest
5 any funds not needed for immediate disbursement in any of
6 the following securities:

7 (1) Direct obligations of or obligations guaranteed by
8 the United States of America;

9 (2) Bonds, debentures, notes or other evidences of
10 indebtedness issued by any of the following agencies: Banks
11 for cooperatives; federal intermediate credit banks; federal
12 home loan bank system; Export-Import Bank of the United
13 States; federal land banks; The Federal National Mortgage
14 Association or the Government National Mortgage
15 Association;

16 (3) Public housing bonds issued by public agencies or
17 municipalities and fully secured as to the payment of both
18 principal and interest by a pledge of annual contributions
19 under an annual contributions contract or contracts with
20 United States of America; or temporary notes issued by
21 public agencies or municipalities or preliminary loan notes
22 issued by public agencies or municipalities, in each case,
23 fully secured as to the payment of both principal and
24 interest by a requisition or payment agreement with United
25 States of America;

26 (4) Certificates of deposit secured by obligations of the
27 United States of America;

28 (5) Direct obligations of or obligations guaranteed by
29 the state of West Virginia;

30 (6) Direct and general obligations of any other state
31 within the territorial United States, to the payment of the
32 principal of and interest of which the full faith and credit of
33 such state is pledged: *Provided*, That at the time of their
34 purchase, such obligations are rated in either of the two
35 highest rating categories by nationally recognized bond-
36 rating agencies; and

37 (7) Any fixed interest bond, note or debenture of any
38 corporation organized and operating within the United
39 States: *Provided*, That such corporation shall have a
40 minimum net worth of fifteen million dollars and its
41 securities or its parent corporation's securities are listed on
42 one or more of the national stock exchanges: *Provided*,
43 *however*, That (i) such corporation has earned a profit in
44 eight of the preceding ten fiscal years as reflected in its
45 statements, (ii) such corporation has not defaulted in the
46 payment of principal or interest on any of its outstanding
47 funded indebtedness during its preceding ten fiscal years,
48 and (iii) the bonds, notes or debentures of such corporation
49 to be purchased are rated "AA" or the equivalent thereof or
50 better than "AA" or the equivalent thereof by at least two or
51 more nationally recognized rating services such as
52 Standard and Poor's, Dun & Bradstreet or Moody's.

§31-19-13. Reports by authority to governor and Legislature.

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

9 The cost of such audit shall be treated as a part of the cost
10 of operation of the authority.

§31-19-14. Community infrastructure bonds lawful investments.

1 The provisions of sections nine and ten, article six,
2 chapter twelve of this code to the contrary notwithstanding,

3 all community infrastructure revenue bonds issued
4 pursuant to this article shall be lawful investments for the
5 West Virginia state board of investments and shall also be
6 lawful investments for banking institutions, societies for
7 savings, building and loan associations, savings and loan
8 associations, deposit guarantee associations, trust
9 companies, insurance companies, including domestic for
10 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
2 noteholders or bondholders as may then exist, shall have
3 power, out of any funds available therefor, to purchase
4 notes or bonds of the authority.

5 If the notes or bonds are then redeemable, the price of
6 such purchase shall not exceed the redemption price then
7 applicable plus accrued interest to the next interest
8 payment date thereon. If the notes or bonds are not then
9 redeemable, the price of such purchase shall not exceed the
10 redemption price applicable on the first date after such
11 purchase upon which the notes or bonds become subject to
12 redemption plus accrued interest to such date. Upon such
13 purchase such notes or bonds shall be cancelled.

§31-19-16. Refunding bonds.

1 Any bonds issued hereunder and at any time outstanding
2 may at any time and from time to time be refunded by the
3 authority by the issuance of its refunding bonds in such
4 amount as it may deem necessary to refund the principal of
5 the bonds so to be refunded, together with any unpaid
6 interest thereon; to provide additional funds for the
7 purpose of the authority; and any premiums and
8 commissions necessary to be paid in connection therewith.
9 Any such refunding may be effected whether the bonds to
10 be refunded shall have then matured or shall thereafter
11 mature, either by sale of the refunding bonds and the
12 application of the proceeds thereof for the redemption of
13 the bonds for the bonds to be refunded thereby: *Provided,*
14 That the holders of any bonds so to be refunded shall not be
15 compelled without their consent to surrender their bonds
16 for payment or exchange prior to the date on which they are
17 payable or, if they are called for redemption, prior to the

18 date on which they are by their terms subject to redemption.
19 Any refunding bonds issued pursuant to this article shall be
20 payable from the revenues out of which the bonds to be
21 refunded thereby were payable, or from other moneys or the
22 principal of and interest on or other investment yield from,
23 investments or proceeds of bonds or other applicable funds
24 or moneys, including investments of proceeds of any
25 refunding bonds, and shall be subject to the provisions
26 contained in section seven of this article and shall be
27 secured in accordance with the provisions of sections seven
28 and eight of this article.

§31-19-17. Exemption from taxation.

1 The exercise of the powers granted to the authority by
2 this article will be in all respects for the benefit of the people
3 of the state, for the improvement of their health, safety,
4 convenience and welfare and for the enhancement of their
5 residential, agricultural, recreational, economic,
6 commercial and industrial opportunities and is a public
7 purpose. As the construction, acquisition, repair or
8 renovation of community infrastructure projects will
9 constitute the performance of essential governmental
10 functions, the authority shall not be required to pay any
11 taxes or assessments upon any community infrastructure
12 project or upon any property acquired or used by the
13 authority or upon the income therefrom. Such bonds and
14 notes and all interests and income thereon shall be exempt
15 from all taxation by this state, or any county, municipality,
16 political subdivision or agency thereof, except inheritance
17 taxes.

§31-19-18. Financial interests in contracts prohibited; penalty.

1 No officer, member or employee of the authority shall be
2 financially interested, directly or indirectly, in any contract
3 of any person with the authority, or in the sale of any
4 property, real or personal, to or from the authority. This
5 section does not apply to contracts or purchases of property,
6 real or personal, between the authority and any
7 governmental agency. If any officer, member or employee of
8 the authority has such financial interests in the contract or
9 sale of property prohibited hereby, he shall be guilty of a
10 misdemeanor, and, upon conviction thereof, shall be fined

11 not more than one thousand dollars or imprisoned in the
12 county jail not more than one year, or both fined and
13 imprisoned.

§31-19-19. Meetings and records of authority to be kept public.

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

§31-19-20. Liberal construction of article.

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

§31-19-21. Severability.

1 If any section, part or provision of this article or the
2 application thereof to any person or circumstance is held
3 unconstitutional or invalid, such unconstitutionality or
4 invalidity shall not affect any other section, part or
5 provision of this article or its application and to this end the
6 provisions of this article are declared to be severable.



Handwritten signatures and initials at the bottom of the page, including a large signature on the left and several smaller ones on the right.

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

Bruce O. Whitcomb
.....
Chairman Senate Committee

Floyd Fuller
.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1986.

Jedd C. Mills
.....
Clerk of the Senate

Donald L. Hoop
.....
Clerk of the House of Delegates

Dan Touhansil
.....
President of the Senate

Joseph P. Allright
.....
Speaker House of Delegates

The within *Approved* this the *26th*
Hand day of 1986.

Aubra. Snow, Jr.
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/21/86

Time 4:32 p.m.

RECEIVED

1986 MAR 26 AM 11:04

OFFICE OF THE CLERK
SECRETARY OF STATE

Handwritten: 3/26/86
APR 1 1986
WEST VIRGINIA
SECRETARY OF STATE

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 3/26/86