WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1987

ENROLLED

HOUSE BILL No. 2831...

(By Representative Mr. Speaker, Mr. Chambers and Delegate Swann)

[By request of the Executive]

Passed MARCH 14, 1987

In Effect JANUARY 1, 1987
AN ACT to amend and reenact section twenty-one, article two-c, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to issuance of private activity bonds and establishing an allocation and disbursements procedure for the annual state ceiling for tax-exempt private activity bonds in compliance with the provisions of section one hundred forty-six of the United States Internal Revenue Code of one thousand nine hundred eighty-six; granting the West Virginia housing development fund a set portion of the annual state ceiling for tax-exempt private activity bonds; and providing for reservation of funds, limitations, unused allocation, expirations and carryovers.

Be it enacted by the Legislature of West Virginia:

That section twenty-one, article two-c, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, to read as follows:

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

§13-2C-21. Ceiling on issuance of private activity bonds; establishing procedure for allocation and disbursements; reservation of funds; limita-
(a) Private activity bonds (as defined in section 141(a) of the United States Internal Revenue Code of 1986, other than those described in section 146(g) of the Internal Revenue Code) issued pursuant to this article, or under article eighteen, chapter thirty-one of this code, during any calendar year shall not exceed the ceiling established by section 146(d) of the United States Internal Revenue Code.

(b) On or before the first day of each calendar year, the director of the governor's office of community and industrial development shall determine the state ceiling for such year based on the criteria of the United States Internal Revenue Code, which annual ceiling shall be allocated among the several issuers of bonds under this article or under article eighteen, chapter thirty-one of this code, as follows:

1. Fifty million dollars shall be allocated to the West Virginia housing development fund for the purpose of issuing qualified mortgage bonds, qualified mortgage certificates or bonds for qualified residential rental projects.

2. One half the total state ceiling for each year remaining after the allocation to the West Virginia housing development fund described in subsection one shall be allocated to the counties on a per capita basis and, unless the context in which used requires otherwise, shall be hereinafter in this section referred to as the "county allocation."

3. One half of the total state ceiling for each year remaining after the allocation to the West Virginia housing development fund described in subsection one shall be retained by the state of West Virginia by the governor's office of community and industrial development and, unless the context in which used requires otherwise, shall be hereinafter in this section referred to as the "state allocation."

(c) The director of the governor's office of community
and industrial development shall notify each clerk of the
county commission of that county’s apportionment from
the county allocation. All apportionments made to any
county from the county allocation shall be for issues of
the county commission of that county and for issues of
all municipalities or other governmental bodies within
that county.

(d) Notwithstanding the foregoing, in the event the
state allocation is fully distributed prior to the first day
of July of each calendar year, the governor’s office of
community and industrial development may reallocate
all or any portion of the then remaining county
allocation to the state upon the director’s notification of
such action to the clerk of the several county commis-
sions. Any reallocations of less than all of the then
remaining county allocation shall be made proportion-
ately from each county’s apportionment then remaining.

(e) Distribution of both the county and state alloca-
tions to lessees, purchasers or owners of proposed
commercial or industrial projects shall be on a first
come, first serve basis and shall not be distributed or
allocated for any project until the governmental body
seeking the same shall submit an application for
reservation of funds as provided in subsection (f) of this
section. The governmental body must first adopt an
inducement resolution approving the prospective issu-
ance of bonds and setting forth the amount of bonds to
be issued. Each governmental body seeking an alloca-
tion of the state ceiling following the adoption of such
inducement resolution shall submit a notice of induc-
ment signed by its clerk, secretary or recorder or other
appropriate official to the governor’s office of communi-
ity and industrial development. Such notice shall
include such information as may be required by the
governor’s office of community and industrial develop-
ment by rule or regulation.

(f) Currently with or following the submission of its
notice of inducement, the governmental body at any
time deemed expedient by it may submit its notice of
reservation of funds which shall include the following
information:
(1) The date of the notice of reservation of funds;
(2) The identity of the governmental body issuing the bonds;
(3) The date of inducement and the prospective date of issuance;
(4) The name of the entity for which the bonds are to be issued;
(5) The amount of the bond issue, or, if the amount of the bond issue for which a reservation of funds has been made has been increased, the amount of the increase;
(6) The type of issue; and
(7) A description of the project for which the bonds are to be issued.

(g) (1) Upon receipt of the notice of reservation of funds by the governor's office of community and industrial development, such office shall immediately note upon the face of such notice the date and time the same was so received and shall within ten days certify to the governmental body submitting the same (A) that the statewide ceiling has not been exceeded, if such be the case, and (B) that the amount of the bond issue has been allocated and reserved in the name of such governmental body for the project for which the bonds are to be issued and, thereafter, the amount of such bond issue shall be so allocated and reserved.

(2) In the event the amount required in the notification of reservation of funds, as provided for in subdivision (1) of this subsection, exceeds the apportionment available to that county from the county allocation, the governor's office of community and industrial development shall immediately notify the governmental body proposing to issue such bonds of that fact and such body may apply to such office for an apportionment to the extent of such excess from the state allocation.

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

(i) If the bond issue for which a reservation has been
made has not been finally closed within one hundred
twenty days of the date of the certification of reservation
to be made by the governor's office of community and
industrial development, as required by the provisions of
subsection (g) of this section, or the thirty-first day of
December following such date of certification if sooner
and a statement of bond closure which has been
executed by the clerk, secretary, recorder or other
appropriate official of the governmental body reserving
the same has not been received by such office within
that time, then such reservation shall expire and be
deemed to have been forfeited and the funds so reserved
shall be released and revert to the county and/or state
allocation, as the case may be, from which the funds
were originally reserved and allocation will then be
made available for other qualified issues in accordance
with this section and the Internal Revenue Code:
Provided, That, as to any notice of reservation of funds
received by the governor's office of community and
industrial development during the month of December
in any calendar year with respect to any project
qualifying as an elective carry forward pursuant to
section 146(f)(5) of the Internal Revenue Code, such
reservation of funds and the allocation to which the
same relates shall not expire or be subject to forfeiture:
Provided, however, That any unused state ceiling as of
the thirty-first day of December in any year not
otherwise subject to a carry forward pursuant to section
146(f) of the Internal Revenue Code shall be allocated
to the West Virginia housing development fund, which
shall be deemed to have elected to carry forward the
unused state ceiling for the purpose of issuing qualified
mortgage bonds, qualified mortgage credit certificates
or bonds for qualified residential rental projects, each
as defined in the Internal Revenue Code. All requests
for subsequent reservation of funds and reallocation
upon loss of a reservation pursuant to this section will
be treated in the same manner as a new notice of
reservation of funds in accordance with sections (f) and (g) above.

(j) Any amount of the county allocation remaining unreserved on the first day of October in any calendar year (which amount shall be determined by the director of the governor's office of community and industrial development) shall revert to the state allocation for the remainder of that year, and all notification of reservation of funds by either the state or any county submitted on or after such date shall be treated on a first come, first serve basis.

(k) The amendments to this section adopted by the Legislature at the regular session thereof, held in the year one thousand nine hundred eighty-seven, shall apply and be effective with respect to such year and to all subsequent years.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.


Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within ____________ this the ________ day of ____________, 1987.

Governor