

4094

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988

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ENROLLED

Com. Sub. for
HOUSE BILL No. 4094

(By Mr. *Speaker, Mr. Chambers, & Del. Swann*
[By request of the Executive.]

— ● —

Passed January 29, 1988

In Effect From Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4094

(By Mr. SPEAKER, Mr. CHAMBERS and DELEGATE SWANN)
[By request of the Executive]

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AN ACT to repeal article two, chapter five-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact article one of said chapter five-c, all relating to the creation of the "West Virginia Industry and Jobs Development Corporation"; setting forth legislative findings and intent; defining certain terms; creating the West Virginia industry and jobs development corporation; providing for severability in the case of an adjudication of unconstitutionality or invalidity; providing for a board of directors; establishing the number of directors, their appointment, terms of office, qualifications and compensation; prohibiting members from having certain financial interests; defining a misdemeanor offense for officers, members and employees to have a financial interest in a contract or sale of property to or from the corporation and providing penalties therefor; providing for the appointment of the advisory members from the Legislature; describing the management and control of the corporation by the board and the officers of the corporation; exempting corporate directors and officers from personal liability for debts and obligations created by the corporation; authorizing the board to employ

personnel, fix their compensation and define their duties; setting forth the powers of the corporation; creating an investment fund for the investment and reinvestment of corporate funds; describing how such fund must be administered by the board; setting forth sources of the fund; authorizing the corporation to invest funds; describing the conditions under which the corporation may finance projects; providing for the confidentiality of certain information or data made or received by the corporation; describing the terms and conditions under which loans may be made by the corporation to enterprises; authorizing the governor to transfer to the corporation the use, possession and control of real and personal property of the state; providing the location of a principal office; requiring the maintenance of records; requiring board members to subscribe to an oath of office; authorizing the board of investments to be ex officio board of investments for funds of the consolidated fund for investments in accordance with the provisions of said article one; setting forth the authority of the board of investments to invest moneys; describing certain loan limitations on such authority; authorizing certain inspections, audits and investigations; permitting certain tax credits for enterprises which borrow under the provisions of said article one; requiring the corporation to make an annual report to the Legislature; setting forth the requirements of such report; and exempting certain property from ad valorem taxes.

Be it enacted by the Legislature of West Virginia:

That article two, chapter five-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that article one of said chapter five-c, as amended, be amended and reenacted, to read as follows:

ARTICLE 1. WEST VIRGINIA INDUSTRY AND JOBS DEVELOPMENT CORPORATION.

§5C-1-1. Purpose and intent.

1 The Legislature finds and declares that West Virgi-
2 nia's economy can be rejuvenated; that bringing new
3 industry and trade to the state will serve as a catalyst

4 for increasing industrial and commercial activities
5 within this state; that increasing such activities will
6 form the nucleus for a growing and prosperous economy,
7 offering new job opportunities both in industry and
8 trade; and that new jobs and investments, higher income
9 and profits, and rising property values will support
10 better education and superior public services.

11 Therefore, it is the intent of the Legislature to create
12 a governmental instrumentality for the purpose of
13 increasing industry and developing and preserving jobs
14 in the state of West Virginia.

§5C-1-2. Definitions.

1 For the purposes of this chapter:

2 (a) The term “board of investments” means the board
3 of investments established by article six, chapter twelve
4 of this code;

5 (b) The term “business plan” means a document
6 detailing the sales, production and distribution plans of
7 an enterprise, together with the expenditures necessary
8 to carry out those plans (including budget and cash flow
9 projections) on an annual basis, and an employment plan
10 setting forth steps to be taken by the enterprise to retain
11 jobs or reduce unemployment in this state;

12 (c) The term “corporation” means the West Virginia
13 industry and jobs development corporation, unless the
14 context in which such term is used clearly indicates that
15 reference is made to some other corporation;

16 (d) The term “enterprise” means an entity which is or
17 proposes to be engaged in this state in any business
18 activity for profit. The entity may be owned, operated,
19 controlled, or under the management of a person,
20 partnership, corporation, trust, community-based
21 development organization or council, local commerce
22 group, employee stock ownership plan, pension or profit-
23 sharing plan, trust, a group of participating employees
24 who desire to own an entity which does not presently
25 exist, or any similar entity or organization;

26 (e) The term “financing plan” means a plan designed

27 to meet the financing needs of an enterprise as reflected
28 in the business plan;

29 (f) The term "primary employment" means work
30 which pays at least the prevailing wage in the industry
31 and offers adequate fringe benefits;

32 (g) The term "project" means a commercial or
33 industrial undertaking and all of the assets reasonably
34 and necessarily required therefor.

**§5C-1-3. Creation of the West Virginia Industry and Jobs
Development Corporation.**

1 (a) For the purpose of aiding the establishment,
2 expansion and retention of industry and jobs in this
3 state, encouraging and increasing the use of energy
4 derived from sources located within this state, develop-
5 ing and maintaining properties owned or acquired by
6 the state of West Virginia, and improving employment
7 opportunities in this state, there is created a body
8 corporate, denominated the "West Virginia Industry
9 And Jobs Development Corporation" (hereinafter
10 referred to as the "corporation").

11 (b) The corporation is created and established as a
12 governmental instrumentality of the state of West
13 Virginia to serve a public corporate purpose, to act for
14 the public benefit and to act on behalf of the state and
15 its people in improving their economic welfare and
16 prosperity.

17 (c) The corporation shall be the corporate successor to
18 both the West Virginia industry assistance corporation
19 and the West Virginia industrial and trade jobs
20 development corporation and is hereby vested with all
21 rights, title and interests of each such corporation in and
22 to all property, rights and choses in action heretofore
23 owned by or vested in either of them. As of the effective
24 date of this legislation, the West Virginia industry
25 assistance corporation and the West Virginia industrial
26 and trade jobs development corporation shall cease to
27 exist and all rights and interests heretofore vested in
28 either such corporation shall be vested in the West
29 Virginia industry and jobs development corporation.

§5C-1-4. Severability.

1 If any section, subsection, subdivision, subparagraph,
2 sentence or clause of this article is adjudged to be
3 unconstitutional or invalid, such adjudication shall not
4 affect the validity of the remaining portions of this
5 article, and, to this end, the provisions of this article are
6 hereby declared to be severable.

**§5C-1-5. Directors, number, appointments, terms of
office, compensation, and interest in compet-
ing business forbidden; penalty.**

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

10 (b) Upon the effective date of this article, the governor
11 shall forthwith appoint members of the board of the
12 corporation. The terms of office of the board members
13 first taking office on or after the effective date of this
14 legislation shall expire as designated by the governor at
15 the time of nomination, one at the end of the second year,
16 one at the end of the fourth year, and one at the end
17 of the sixth year, after the first day of July, one thousand
18 nine hundred eighty-eight. A successor to a member of
19 the board shall be appointed in the same manner as the
20 original members and shall have a term of office
21 expiring six years from the date of the expiration of the
22 term for which his predecessor was appointed.

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

29 (d) The governor may remove a director in the case

30 of incompetence, neglect of duty, gross immorality or
31 malfeasance in office, and may declare such director's
32 office vacant and appoint a person for such vacancy as
33 provided in other cases of vacancy.

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

39 (f) Each of the members of the board shall be a
40 resident of the state of West Virginia. The compensation
41 of each member of the board shall be paid by the
42 corporation as current expenses. Members of the board
43 shall be reimbursed by the corporation for actual
44 expenses (including traveling and subsistence expenses)
45 incurred by them in the performance of the duties
46 vested in the board by this article.

47 (g) No officer, member or employee of the corporation
48 shall be financially interested, directly or indirectly, in
49 any contract of any person with the corporation, or in
50 the sale of any property, real or personal to or from the
51 corporation. This section does not apply to contracts or
52 purchases of property, real or personal, between the
53 corporation and any governmental agency. Any officer,
54 member or employee of the corporation who has such
55 financial interest in a contract or sale of property
56 prohibited hereby, shall be guilty of a misdemeanor,
57 and, upon conviction thereof, shall be fined not more
58 than one thousand dollars, or confined in the county jail
59 not more than one year, or both fined and imprisoned.

60 (h) Additionally, two advisory, nonvoting members of
61 the board shall be appointed from the membership of
62 the Legislature, one member to be appointed from the
63 Senate by the President of the Senate and one member
64 to be appointed from the House of Delegates by the
65 Speaker of the House of Delegates. The terms of the
66 advisory members shall be at the discretion of the
67 President of the Senate and Speaker of the House of
68 Delegates respectively. The advisory members shall
69 report monthly to the joint committee on government

70 and finance and the legislative auditor on the activities
71 of the corporation. Their report shall contain such
72 information as the President of the Senate and the
73 Speaker of the House of Delegates may deem appropriate. The advisory members shall receive no compensation or expenses for their services.

§5C-1-6. Management and control of the corporation, officers, and liability.

1 (a) The board shall direct the exercise of all the
2 powers of the corporation.

3 (b) The chairman shall be the chief executive officer
4 of the corporation, and, in his absence, the vice
5 chairman shall act as chief executive officer.

6 (c) The board shall annually elect a secretary, who
7 need not be a member of the board, to keep a record
8 of the proceedings of the board and perform such other
9 duties as may be determined appropriate by the board.

10 (d) The treasurer of the corporation shall be custodian
11 of all funds of the corporation, and shall be bonded in
12 such amount as the other members of the board may
13 designate.

14 (e) The directors and officers of the corporation shall
15 not be personally liable for any debt or obligation
16 created by the corporation.

§5C-1-7. Officers, employees and wages.

1 The board shall, without regard to the provisions of
2 civil service laws applicable to officers and employees
3 of the state of West Virginia, appoint such managers,
4 assistant managers, officers, employees, attorneys and
5 agents as are necessary for the transaction of its
6 business, fix their compensation, define their duties and
7 provide a system of organization to fix responsibility
8 and promote efficiency. Any appointee of the board may
9 be removed at the discretion of the board.

§5C-1-8. Corporate powers.

1 In order to foster employment and expand industry
2 and trade in this state, the corporation is authorized and

3 empowered to:

4 (a) Make, adopt, amend and repeal bylaws, and
5 promulgate rules and regulations in accordance with the
6 provisions of chapter twenty-nine-a of this code;

7 (b) Sue and be sued in its corporate name;

8 (c) Adopt and use a corporate seal;

9 (d) Borrow money to carry out and effectuate its
10 corporate purposes and issue notes as evidence of any
11 such borrowing in such principal amounts and upon
12 such terms as shall be necessary to provide sufficient
13 funds for achieving its corporate purposes, except that
14 no notes shall be issued to mature more than twenty
15 years from the date of issuance;

16 (e) Pledge and encumber its assets and property as
17 security for the repayment of borrowed money or to
18 guarantee the performance of any obligation of the
19 corporation;

20 (f) Issue renewal notes, except that no such renewal
21 notes shall be issued to mature more than ten years from
22 the maturity date of the notes renewed;

23 (g) Apply the proceeds from the sale of renewal notes
24 to the purchase, redemption or payment of the notes to
25 be renewed;

26 (h) Acquire, construct, maintain, improve, repair,
27 replace and operate industrial and business sites and
28 facilities within this state, streets, roads, alleys,
29 sidewalks, crosswalks and other means of ingress and
30 egress to and from industrial and business sites and
31 facilities located within this state;

32 (i) Acquire, construct, maintain, improve, repair and
33 replace and operate pipelines, electric transmission
34 lines, waterlines, sewer lines, electric power substations,
35 waterworks systems, sewage treatment and disposal
36 facilities and any combinations thereof for the use and
37 benefit of any enterprise located within this state;

38 (j) Acquire watersheds, water and riparian rights,
39 rights-of-way, easements, licenses and any and all other

40 property, property rights and appurtenances for the use
41 and benefit of any enterprise located within this state;

42 (k) Acquire, by purchase, lease, donation or eminent
43 domain, any real or personal property, or any right or
44 interest therein, as may be necessary or convenient to
45 carry out the purposes of the corporation. Title to all
46 property, property rights and interests acquired by the
47 corporation shall be taken in the name of the
48 corporation;

49 (l) Accept any and all gifts, donations, grants,
50 bequests and devises, conditional or otherwise, of money,
51 property, service or other things of value which may be
52 received from the United States or any agency thereof,
53 any governmental agency or any institution, person,
54 firm or corporation, public or private, to be held, used
55 or applied for any or all of the purposes specified in this
56 article, in accordance with the terms and conditions of
57 any such grant;

58 (m) Sell, license, lease, mortgage, assign, pledge or
59 donate its property, both real and personal, or any right
60 or interest therein to another or authorize the possession,
61 occupancy or use of such property or any right or
62 interest therein by another;

63 (n) Dispose of any real or personal property or any
64 right or interest therein as in the opinion of the board
65 is not required for the purposes of the corporation;

66 (o) Loan money or extend credit to any enterprise, by
67 such means and upon such terms as the corporation
68 shall deem appropriate, to finance, in whole or in part,
69 any project located within the state of West Virginia;

70 (p) Guarantee the repayment of money and the
71 performance of any obligation by another;

72 (q) Apply to the West Virginia economic development
73 authority for the issuance of bonds, in accordance with
74 the provisions of article fifteen, chapter thirty-one of this
75 code;

76 (r) Maintain such sinking funds and reserves as the
77 board shall determine appropriate for the purposes of

78 meeting the future monetary obligations and needs of
79 the corporation;

80 (s) Consent, subject to the provisions of any contract
81 with noteholders, whenever it deems necessary or
82 desirable in the fulfillment of the purposes of the
83 corporation, to the modification, with respect to the rate
84 of interest, time of payment of any installment of
85 principal or interest, or any other term of any contract
86 or agreement of any kind to which the corporation is a
87 party;

88 (t) Participate with the state and federal agencies in
89 efforts to promote the expansion of commercial and
90 industrial development in this state;

91 (u) Finance, organize, conduct, sponsor, participate
92 and assist in the conduct of special institutes, conferen-
93 ces, demonstrations and studies relating to the stimula-
94 tion and formation of business, industry and trade
95 endeavors;

96 (v) Conduct, finance and participate in technological,
97 business, financial and other studies related to business
98 and economic development;

99 (w) Conduct, sponsor, finance, participate and assist
100 in the preparation of business plans, financing plans and
101 other proposals of new or established businesses suitable
102 for support by the corporation;

103 (x) Prepare, publish and distribute, with or without
104 charge as the corporation may determine, such technical
105 studies, reports, bulletins and other materials as it
106 deems appropriate, subject only to the maintenance and
107 respect for confidentiality of client proprietary
108 information;

109 (y) Appear in its own behalf before boards, commis-
110 sions, departments or other agencies of municipal,
111 county, state or federal government;

112 (z) Take title by conveyance or foreclosure to any
113 enterprise or project where acquisition is necessary to
114 protect any investment or financing previously made by
115 the corporation, and to sell or lease such enterprise or

- 116 project, or any part thereof, to any responsible buyer;
- 117 (aa) Participate in any reorganization proceeding
118 pending pursuant to the United States Bankruptcy Code
119 (being the act of Congress, establishing a uniform
120 system of bankruptcy throughout the United States, as
121 amended) or in any receivership proceeding in a state
122 or federal court for the reorganization or liquidation of
123 any enterprise. The corporation may file its claim and
124 participate in any of the foregoing proceedings, and may
125 compromise or reduce the amount of any indebtedness
126 owing to it as a part of any such reorganization or
127 liquidation proceeding;
- 128 (bb) Sell interests in the loan portfolio of the corpo-
129 ration. Such interests shall be evidenced by instruments
130 issued by the corporation. Proceeds from the sale of such
131 interests may be utilized in the same manner and for
132 the same purposes as note revenues;
- 133 (cc) Procure insurance against any losses in connection
134 with its property, operations or assets in such amounts
135 and from such insurers as the corporation deems
136 desirable;
- 137 (dd) Take and hold security for the payment of money
138 or the performance of obligations owed to the
139 corporation;
- 140 (ee) Make and enter into any contracts, agreements
141 and arrangements as may be necessary or convenient to
142 carry out the purposes of the corporation and sell,
143 pledge and assign any such contract, agreement or
144 arrangement to another, with or without recourse, as
145 may be necessary or convenient to carry out the
146 purposes of the corporation;
- 147 (ff) Exercise such other and additional powers as may
148 be necessary or appropriate for the exercise of the
149 powers herein conferred; and
- 150 (gg) Exercise all of the powers which a public
151 corporation may lawfully exercise under the laws of this
152 state.
- 153 (hh) The bonds, notes and other instruments evidenc-

154 ing indebtedness issued by the corporation pursuant to
155 the provisions of this article shall contain on their face
156 a statement to the effect that: (1) Neither the state of
157 West Virginia nor any agency, political corporation or
158 political subdivision of the state of West Virginia is
159 obligated to pay the principal of or interest on the bonds,
160 notes or other instruments evidencing indebtedness
161 except as provided in this article; and (2) neither the
162 faith and credit nor the taxing power of the state of
163 West Virginia or any agency, political corporation or
164 political subdivision of the state of West Virginia is
165 pledged to the payment of the principal of or interest
166 on the bonds, notes or other instruments evidencing
167 indebtedness except as provided by this article.

§5C-1-9. Investment fund.

1 There is hereby established an investment fund to
2 which shall be credited any state appropriations or other
3 monies made available to the corporation.

4 The corporation shall hold the investment fund in an
5 account or accounts separate from other funds. The
6 corporation shall invest and reinvest the fund and the
7 income thereof, temporarily pending use for the pur-
8 poses of this article, in a manner consistent with the
9 investment of temporary state funds.

10 All funds may be used to pay for the proper general
11 expenses of the corporation.

12 All moneys of the corporation from whatever source
13 derived shall be paid to the treasurer of the corporation.

14 Funds in said accounts shall be paid out on the
15 warrant or other order of the treasurer of the corpora-
16 tion and such other person or persons as the board may
17 authorize to execute such warrants or order.

18 The fund shall operate as a revolving fund whereby
19 all appropriations and payments thereto may be applied
20 and reapplied by the corporation for the purposes of this
21 article. The corporation shall requisition from the fund
22 such amounts as are necessary to accomplish the
23 purposes of the corporation.

24 Whenever the corporation determines that the balance
25 in the fund is in excess of its immediate requirements,
26 it may direct that such excess be invested until needed.
27 In such case such excess shall be invested in a manner
28 consistent with the investment of temporary state funds.
29 Interest earned on any money invested pursuant to this
30 section shall be credited to the fund.

31 If the corporation determines that funds held in the
32 fund are in excess of the amount needed to accomplish
33 the purposes of this article, it shall take such action as
34 is necessary to release such excess and transfer it to the
35 general fund of the state treasury.

36 The fund shall consist of the following:

37 (a) Moneys collected and deposited in the state
38 treasury which are specifically designated by acts of the
39 Legislature for use by the corporation;

40 (b) Contributions, grants and gifts from any source,
41 both public and private, which may be used by the
42 corporation for any project or projects;

43 (c) All interest earned on investments made by the
44 state from moneys deposited in the fund;

45 (d) The proceeds from the issuance of any revenue
46 bonds issued by the economic development authority in
47 accordance with the provisions of article fifteen, chapter
48 thirty-one of this code; and

49 (e) The proceeds, repayments, lease or rental receipts,
50 sale proceeds, liquidation proceeds, and any other
51 receipts from investments and financings made pursu-
52 ant to the authority granted by this article.

§5C-1-10. Financing of projects.

1 (a) The corporation may finance projects after:

2 (1) Receipt of an application from the enterprise
3 which contains a description of the enterprise and its
4 management, products or services and markets, a
5 business plan, a financing plan, a description of the
6 project, a statement of the amount, timing and projected
7 use of the funds, a statement of the potential economic

8 impact of the project and such other information as the
9 board may request;

10 (2) Approval of the financing by the board based upon
11 the application submitted by the enterprise and such
12 additional investigation as the board shall make, which
13 approval shall include specific findings by the board
14 that:

15 (A) The proceeds of the financing will be used for the
16 project;

17 (B) The project has a reasonable chance of success;

18 (C) The project has the reasonable potential to create
19 or preserve primary employment within the state;

20 (D) The principals of the enterprise have made or will
21 make a financial or management commitment to the
22 project;

23 (E) Binding commitments have been made to the
24 corporation by the enterprise for the adequate reporting
25 of financial information including, but not limited to, an
26 annual report or other periodic audit of the books of the
27 enterprise by a qualified independent public accountant,
28 and, in the discretion of the board, the right of access
29 to the financial and other records of the enterprise; and

30 (F) The enterprise has agreed for as long as unpaid
31 balances of principal and interest are outstanding on a
32 loan issued under this article to prepare and deliver to
33 the corporation within one hundred twenty days
34 following the close of each fiscal year, an analysis
35 reconciling the actual performance of the enterprise in
36 preserving or generating employment in this state with
37 the projected employment set forth in the business plan.

38 Such findings when made by the board shall be
39 incorporated in its minutes and shall be conclusive.

40 (b) The corporation may not finance projects in excess
41 of one hundred percent of the project costs.

42 (c) None of the proceeds of a loan made under the
43 provisions of this article shall be used to repay credit
44 extended or committed prior to the date the loan is made

45 under the provisions of this article.

46 (d) Any such financing, or proposed financing, by the
47 corporation, and by all others involved in the project,
48 shall be exempt transactions under the provisions of
49 section four hundred two, article four, chapter thirty-
50 two of this code.

**§5C-1-11. Documentary materials concerning trade
secrets, commercial or financial informa-
tion, and confidentiality.**

1 Any information or data made or received by the
2 corporation in connection with assistance to an enter-
3 prise, to the extent that such information or data
4 consists of trade secrets or commercial or financial
5 information regarding the operation of such enterprise,
6 shall not be considered public records and shall be
7 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 by the corporation may be in
11 executive session, closed to the public, notwithstanding
12 the provisions of article nine-a, chapter six of this code.

§5C-1-12. Terms and conditions of loans.

1 (a) Loans made under the provisions of this article
2 shall be payable in full not later than twenty years from
3 the date the loans are made.

4 (b) The corporation shall require security for a loan
5 made under this article at the time the loan is made,
6 and such security shall be in an amount equal to or
7 greater than the amount of the loan, as the corporation
8 may determine. Any agreement to make a loan under
9 the provisions of this article shall contain such affirma-
10 tive and negative covenants and other provisions as the
11 board shall deem appropriate.

12 (c) The corporation may, in its discretion, include
13 within the terms of the loan agreement minimum
14 project operating periods, liquidated damage provisions
15 for cessation of operations prior to the end of the loan
16 period, loan acceleration provisions, project equipment
17 purchase options in the event of early closure, recapture

18 of tax credits granted under this article for closure prior
19 to the end of the loan period, and other provisions to
20 protect the jobs intended to be created by the project.

21 (d) The enterprise shall pay such loan fees as may be
22 prescribed by the board of investments from time to
23 time. The board of investments shall prescribe and
24 collect no less frequently than annually a loan fee in
25 connection with each loan made under the provisions of
26 this article. Such fee shall be sufficient to compensate
27 the board of investments for all of the administrative
28 expenses of the board of investments related to the loan,
29 but in no case shall such fee be less than one half of one
30 percent per annum of the outstanding principal amount
31 of the loan computed daily. All amounts collected by the
32 board of investments pursuant to this subsection shall
33 be deposited in the state treasury as general revenue.

§5C-1-13. Transfer of state property to the corporation.

1 The governor is authorized to provide for the transfer
2 to the corporation of the use, possession and control of
3 such real or personal property of the state of West
4 Virginia as he may from time to time deem useful to
5 the corporation in the conduct of its activities as
6 authorized by this article.

§5C-1-14. Principal office of the corporation, account books and directors' oath of office.

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

3 (b) The corporation shall at all times maintain
4 complete and accurate corporate minutes, financial
5 records and books of accounts.

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

§5C-1-15. West Virginia board of investments to act as board of investments for purposes of this article.

1 The West Virginia state board of investments as
2 heretofore created and constituted under the provisions
3 of article six, chapter twelve of this code, shall be ex
4 officio a board of investments for funds of the special
5 account for the common investment of state funds
6 designated as the state account within the special
7 investment fund designated as the consolidated fund, as
8 they are made available for investment in accordance
9 with the provisions of this article, and as such, the board
10 of investments may exercise all of the powers and
11 functions granted to it pursuant to the provisions of said
12 article six in carrying out the duties assigned to it under
13 the provisions of this article.

§5C-1-16. 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
4 assets of the special account for the common investment
5 of state funds designated as the state account within the
6 special investment fund designated as the consolidated
7 fund established under the provisions of subsection (b),
8 section eight, article six, chapter twelve of this code, in
9 the form of interest-bearing loans to the corporation,
10 provided that:

11 (1) The loan is needed to assist the enterprise or to
12 enable the corporation to assist the enterprise to develop
13 a project in this state;

14 (2) The board of investments has received adequate
15 assurances regarding the availability of all financing,
16 both public and private, contemplated by the financing
17 plan and that such financing is adequate to meet the
18 projected financial needs of the enterprise;

19 (3) The prospective earning power of the enterprise,
20 together with the character and value of any security
21 pledged, furnish reasonable assurance of repayment of
22 the loan in accordance with its terms; and

23 (4) The loan will bear interest at a rate determined
24 by the board of investments to be reasonable, taking into
25 account the current average yield on outstanding

26 investments of the consolidated fund established under
27 the provisions of subsection (b), section eight, article six,
28 chapter twelve of this code.

29 (5) There exists an employment plan which focuses
30 upon the need to retain or increase the number of jobs
31 available in this state and can be carried out by the
32 enterprise.

33 (6) The enterprise has submitted to the corporation a
34 satisfactory business plan demonstrating the ability of
35 the enterprise to retain employment or generate
36 additional employment in this state and to maintain
37 such level of employment.

§5C-1-17. Limitations on loan authority.

1 The authority of the board of investments to make
2 loans under the provisions of this article shall not at any
3 time exceed one hundred fifty million dollars in the
4 aggregate principal amount outstanding in investments
5 made from the consolidated fund. In determining the
6 aggregate principal amounts outstanding in such
7 investments, the board of investments shall include in
8 such amounts the principal amounts outstanding under
9 loans made in accordance with the provisions of the
10 former enactments of this article and article two of this
11 chapter.

§5C-1-18. Inspection, audit and investigation.

1 (a) The accounts of an enterprise under this article
2 shall be audited annually in accordance with generally
3 accepted accounting standards by independent certified
4 public accountants or independent licensed public
5 accountants, certified or licensed by a regulatory
6 authority of this state or a sister state.

7 (b) At any time an application for financing under this
8 article is pending or a financing under this article is
9 outstanding, the corporation may request a report of
10 such independent audit. The report shall set forth the
11 scope of the audit and include such statements as are
12 necessary to present fairly the assets and liabilities of
13 the enterprise, surplus or deficit with an analysis of
14 changes therein during the year, supplemented in

15 reasonable detail by a statement of the income and
16 expenses of the enterprise during the year, together
17 with independent auditor's opinion of those statements.

18 (c) The corporation is empowered to investigate and
19 shall investigate all allegations of fraud, dishonesty,
20 incompetence, misconduct, or irregularity in the
21 management of the affairs of an enterprise which are
22 material to the ability of the enterprise to repay a
23 financing made under the provisions of this article.

§5C-1-19. Tax credit for enterprises.

1 (a) There shall be allowed to every enterprise under
2 the provisions of this article, as a credit against the
3 corporation net income tax imposed by article twenty-
4 four of said chapter eleven of this code, the amount
5 determined under subsection (b) of this section. The
6 liability of such enterprise for and corporation net
7 income tax for the taxable year shall be the tax imposed
8 by said chapter eleven for such taxes, reduced by the
9 sum of the credit allowable under subsection (b) of this
10 section.

11 (b) The amount of credit allowed by subsection (a) for
12 the taxable year shall be equal to the amount of
13 principal and interest paid by the enterprise during the
14 taxable year on a loan made under this article, subject
15 to the limitations set forth in subsection (c) of this
16 section.

17 (c) Notwithstanding subsection (b) of this section, the
18 amount of the credit allowed by this section shall not
19 exceed the liability of the enterprise for corporation net
20 income tax for the taxable year. The tax credit granted
21 under the provisions of this section shall not extend
22 beyond a period of five taxable years. The tax credit
23 granted under the provisions of this section shall be in
24 addition to the credits provided for in articles thirteen-
25 c, thirteen-d and thirteen-e, chapter eleven of this code.
26 There shall be no carryback of unused tax credit to
27 taxable years preceding the tax year, nor shall there be
28 a carryover to taxable years following the tax year.

§5C-1-20. Reports to the Legislature.

1 The corporation shall submit to the Legislature, on or
2 before the first day of December of each year following
3 the effective date of this section, a full report of its
4 activities under this article. The report shall include an
5 evaluation of the long-term employment impact of its
6 activities under the provisions of this article, with
7 findings, conclusions and recommendations for legisla-
8 tive and administrative actions considered appropriate
9 to future activities under this article or under similar
10 industry and jobs development programs which might
11 be foreseen. The report shall also contain a list of all
12 corporation employees, stating their position, annual
13 salary and amount claimed by each in travel expenses
14 in the twelve-month period covered by the report,
15 information correlating travel expenses and production
16 of jobs in West Virginia, and an accounting of all income
17 received and expenditures made by the corporation.

§5C-1-21. Liability for ad valorem property taxes.

1 (a) The corporation shall be exempt from the im-
2 position of ad valorem taxes upon its property by any
3 political subdivision of the state of West Virginia.

4 (b) When title to real or personal property is trans-
5 ferred to the corporation, the ad valorem property taxes,
6 if any, assessed against such property shall be apporti-
7 oned between the transferor and the corporation on a
8 calendar year basis as of the date of the transfer, and
9 neither the transferor nor the corporation shall be liable
10 for the payment of that portion of the ad valorem
11 property taxes apportioned to the part of the year
12 following the transfer, but the transferor shall continue
13 to be liable for the payment of that portion of the taxes
14 apportioned to the part of the year preceding and
15 including the date of transfer.

16 (c) When title to real or personal property is trans-
17 ferred by the corporation to a transferee not exempt
18 from the payment of ad valorem property taxes, ad
19 valorem property taxes shall be assessed against such
20 property, as of the date of the transfer, by extension of
21 the applicable levy rate, notwithstanding that the
22 corporation was the owner of such property on the last

23 past date of assessment, and the transferee shall be
24 liable for the payment of the property taxes so assessed
25 for that portion of the calendar year following the date
26 of the transfer from the corporation.

27 (d) In negotiating the terms of an agreement between
28 the corporation and an enterprise for the financing of
29 a project under the provisions of this article, if the
30 agreement contemplates continued ownership by the
31 corporation of real property and the use and occupancy
32 of such real property by the enterprise, whether by
33 lease, lease-back or other device, with the result that the
34 real property would not be subject to ad valorem
35 property taxes, the corporation and the enterprise may
36 include within the terms and conditions of such agree-
37 ment a requirement that the enterprise pay, to such
38 political subdivisions as would otherwise benefit from
39 the receipt of ad valorem property taxes if the real
40 property were not owned by the corporation, sums of
41 money agreed upon by the corporation and the enter-
42 prise, in the form of annual payments in lieu of ad
43 valorem property taxes.

Enr. Com. Sub. for H. B. 4094] 22

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

Vol. J. Kaufman

Chairman Senate Committee
Member

F. L. Letts

Chairman House Committee

Originating in the House.

Takes effect from passage.

J. C. Willis

Clerk of the Senate

Donald L. Kopp

Clerk of the House of Delegates

Don Tolson

President of the Senate

W. G. Chamber

Speaker of the House of Delegates

The within *approved* this the *30th*
day of *January*, ¹⁹⁸⁹~~1987~~.

Archie B. French

Governor

PRESENTED TO THE

GOVERNOR

Date 1/29/88

Time 8:30 p.m.

RECEIVED

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OFFICE OF THE
SECRETARY OF STATE