WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988

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ENROLLED

Comm. Sub. for

HOUSE BILL No. 4094

(By Mr. Speaker, Mr. Chambers, & Del. Swann

[By request of the Executive.]

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Passed January 29, 1988

In Effect [Signature] Passage
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.

The Legislature finds and declares that West Virginia's economy can be rejuvenated; that bringing new industry and trade to the state will serve as a catalyst
for increasing industrial and commercial activities
within this state; that increasing such activities will
form the nucleus for a growing and prosperous economy,
offering new job opportunities both in industry and
trade; and that new jobs and investments, higher income
and profits, and rising property values will support
better education and superior public services.

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

§5C-1-2. Definitions.

For the purposes of this chapter:

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

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

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

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

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

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

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

(a) The board of directors of the corporation (hereinafter referred to as the “board”) shall be composed of three members, to be appointed by the governor, by and with the advice and consent of the Senate. No more than two of the directors shall be from the same political party. In appointing the board, the governor shall designate the chairman, vice chairman and treasurer. All other officials, agents and employees shall be designated and selected by the board.

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

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

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

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

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

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

(h) Additionally, two advisory, nonvoting members of
the board shall be appointed from the membership of
the Legislature, one member to be appointed from the
Senate by the President of the Senate and one member
to be appointed from the House of Delegates by the
Speaker of the House of Delegates. The terms of the
advisory members shall be at the discretion of the
President of the Senate and Speaker of the House of
Delegates respectively. The advisory members shall
report monthly to the joint committee on government
and finance and the legislative auditor on the activities
of the corporation. Their report shall contain such
information as the President of the Senate and the
Speaker of the House of Delegates may deem approp-
riate. The advisory members shall receive no compen-
sation or expenses for their services.
§5C-1-6. Management and control of the corporation,
officers, and liability.
(a) The board shall direct the exercise of all the
powers of the corporation.
(b) The chairman shall be the chief executive officer
of the corporation, and, in his absence, the vice
chairman shall act as chief executive officer.
(c) The board shall annually elect a secretary, who
need not be a member of the board, to keep a record
of the proceedings of the board and perform such other
duties as may be determined appropriate by the board.
(d) The treasurer of the corporation shall be custodian
of all funds of the corporation, and shall be bonded in
such amount as the other members of the board may
designate.
(e) The directors and officers of the corporation shall
not be personally liable for any debt or obligation
created by the corporation.
§5C-1-7. Officers, employees and wages.
The board shall, without regard to the provisions of
civil service laws applicable to officers and employees
of the state of West Virginia, appoint such managers,
assistant managers, officers, employees, attorneys and
agents as are necessary for the transaction of its
business, fix their compensation, define their duties and
provide a system of organization to fix responsibility
and promote efficiency. Any appointee of the board may
be removed at the discretion of the board.
§5C-1-8. Corporate powers.
In order to foster employment and expand industry
and trade in this state, the corporation is authorized and
empowered to:

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

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

(c) Adopt and use a corporate seal;

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

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

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

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

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

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

(j) Acquire watersheds, water and riparian rights, rights-of-way, easements, licenses and any and all other
property, property rights and appurtenances for the use
and benefit of any enterprise located within this state;

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

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

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

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

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

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

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

(r) Maintain such sinking funds and reserves as the
board shall determine appropriate for the purposes of
meeting the future monetary obligations and needs of the corporation;

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

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

(u) Finance, organize, conduct, sponsor, participate and assist in the conduct of special institutes, conferences, demonstrations and studies relating to the stimulation and formation of business, industry and trade endeavors;

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

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

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

(y) Appear in its own behalf before boards, commissions, departments or other agencies of municipal, county, state or federal government;

(z) Take title by conveyance or foreclosure to any enterprise or project where acquisition is necessary to protect any investment or financing previously made by the corporation, and to sell or lease such enterprise or
project, or any part thereof, to any responsible buyer;

(aa) Participate in any reorganization proceeding pending pursuant to the United States Bankruptcy Code (being the act of Congress, establishing a uniform system of bankruptcy throughout the United States, as amended) or in any receivership proceeding in a state or federal court for the reorganization or liquidation of any enterprise. The corporation may file its claim and participate in any of the foregoing proceedings, and may compromise or reduce the amount of any indebtedness owing to it as a part of any such reorganization or liquidation proceeding;

(bb) Sell interests in the loan portfolio of the corporation. Such interests shall be evidenced by instruments issued by the corporation. Proceeds from the sale of such interests may be utilized in the same manner and for the same purposes as note revenues;

(cc) Procure insurance against any losses in connection with its property, operations or assets in such amounts and from such insurers as the corporation deems desirable;

(dd) Take and hold security for the payment of money or the performance of obligations owed to the corporation;

(ee) Make and enter into any contracts, agreements and arrangements as may be necessary or convenient to carry out the purposes of the corporation and sell, pledge and assign any such contract, agreement or arrangement to another, with or without recourse, as may be necessary or convenient to carry out the purposes of the corporation;

(ff) Exercise such other and additional powers as may be necessary or appropriate for the exercise of the powers herein conferred; and

(gg) Exercise all of the powers which a public corporation may lawfully exercise under the laws of this state.

(hh) The bonds, notes and other instruments evidenc-

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

§5C-1-9. Investment fund.

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

2 The corporation shall hold the investment fund in an account or accounts separate from other funds. The corporation shall invest and reinvest the fund and the income thereof, temporarily pending use for the purposes of this article, in a manner consistent with the investment of temporary state funds.

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

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

5 Funds in said accounts shall be paid out on the warrant or other order of the treasurer of the corporation and such other person or persons as the board may authorize to execute such warrants or order.

6 The fund shall operate as a revolving fund whereby all appropriations and payments thereto may be applied and reapplied by the corporation for the purposes of this article. The corporation shall requisition from the fund such amounts as are necessary to accomplish the purposes of the corporation.
Whenever the corporation determines that the balance in the fund is in excess of its immediate requirements, it may direct that such excess be invested until needed. In such case such excess shall be invested in a manner consistent with the investment of temporary state funds. Interest earned on any money invested pursuant to this section shall be credited to the fund.

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

The fund shall consist of the following:

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

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

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

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

(e) The proceeds, repayments, lease or rental receipts, sale proceeds, liquidation proceeds, and any other receipts from investments and financings made pursuant to the authority granted by this article.

§5C-1-10. Financing of projects.

(a) The corporation may finance projects after:

(1) Receipt of an application from the enterprise which contains a description of the enterprise and its management, products or services and markets, a business plan, a financing plan, a description of the project, a statement of the amount, timing and projected use of the funds, a statement of the potential economic
impact of the project and such other information as the
board may request;

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

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

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

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

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

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

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

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

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

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

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

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

Any information or data made or received by the corporation in connection with assistance to an enterprise, to the extent that such information or data consists of trade secrets or commercial or financial information regarding the operation of such enterprise, shall not be considered public records and shall be exempt from disclosure pursuant to the provisions of chapter twenty-nine-b of this code. Any discussion or consideration of such trade secrets or commercial or financial information by the corporation may be in executive session, closed to the public, notwithstanding the provisions of article nine-a, chapter six of this code.

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

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

(b) The corporation shall require security for a loan made under this article at the time the loan is made, and such security shall be in an amount equal to or greater than the amount of the loan, as the corporation may determine. Any agreement to make a loan under the provisions of this article shall contain such affirmative and negative covenants and other provisions as the board shall deem appropriate.

(c) The corporation may, in its discretion, include within the terms of the loan agreement minimum project operating periods, liquidated damage provisions for cessation of operations prior to the end of the loan period, loan acceleration provisions, project equipment purchase options in the event of early closure, recapture
of tax credits granted under this article for closure prior
to the end of the loan period, and other provisions to
protect the jobs intended to be created by the project.

(d) The enterprise shall pay such loan fees as may be
prescribed by the board of investments from time to
time. The board of investments shall prescribe and
collect no less frequently than annually a loan fee in
connection with each loan made under the provisions of
this article. Such fee shall be sufficient to compensate
the board of investments for all of the administrative
expenses of the board of investments related to the loan,
but in no case shall such fee be less than one half of one
percent per annum of the outstanding principal amount
of the loan computed daily. All amounts collected by the
board of investments pursuant to this subsection shall
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
to the corporation of the use, possession and control of
such real or personal property of the state of West
Virginia as he may from time to time deem useful to
the corporation in the conduct of its activities as
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
in the city of Charleston, West Virginia.

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

(c) Each member of the board, before entering upon
the duties of his or her office, shall subscribe to an oath
or affirmation to support the constitution of the state of
West Virginia and to faithfully and impartially perform
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.
The West Virginia state board of investments as heretofore created and constituted under the provisions of article six, chapter twelve of this code, shall be ex officio a board of investments for funds of the special account for the common investment of state funds designated as the state account within the special investment fund designated as the consolidated fund, as they are made available for investment in accordance with the provisions of this article, and as such, the board of investments may exercise all of the powers and functions granted to it pursuant to the provisions of said article six in carrying out the duties assigned to it under the provisions of this article.

§5C-1-16. Authority of the board of investments.

Subject to the provisions of this article, the board of investments, on such terms and conditions as it deems appropriate, may invest moneys, securities, and other assets of the special account for the common investment of state funds designated as the state account within the special investment fund designated as the consolidated fund established under the provisions of subsection (b), section eight, article six, chapter twelve of this code, in the form of interest-bearing loans to the corporation, provided that:

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

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

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

(4) The loan will bear interest at a rate determined by the board of investments to be reasonable, taking into account the current average yield on outstanding
investments of the consolidated fund established under the provisions of subsection (b), section eight, article six, chapter twelve of this code.

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

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

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

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

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

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

(b) At any time an application for financing under this article is pending or a financing under this article is outstanding, the corporation may request a report of such independent audit. The report shall set forth the scope of the audit and include such statements as are necessary to present fairly the assets and liabilities of the enterprise, surplus or deficit with an analysis of changes therein during the year, supplemented in
reasonable detail by a statement of the income and
expenses of the enterprise during the year, together
with independent auditor's opinion of those statements.

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

§5C-1-19. Tax credit for enterprises.

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

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

(c) Notwithstanding subsection (b) of this section, the
amount of the credit allowed by this section shall not
exceed the liability of the enterprise for corporation net
income tax for the taxable year. The tax credit granted
under the provisions of this section shall not extend
beyond a period of five taxable years. The tax credit
granted under the provisions of this section shall be in
addition to the credits provided for in articles thirteen-
c, thirteen-d and thirteen-e, chapter eleven of this code.

§5C-1-20. Reports to the Legislature.
The corporation shall submit to the Legislature, on or before the first day of December of each year following the effective date of this section, a full report of its activities under this article. The report shall include an evaluation of the long-term employment impact of its activities under the provisions of this article, with findings, conclusions and recommendations for legislative and administrative actions considered appropriate to future activities under this article or under similar industry and jobs development programs which might be foreseen. The report shall also contain a list of all corporation employees, stating their position, annual salary and amount claimed by each in travel expenses in the twelve-month period covered by the report, information correlating travel expenses and production of jobs in West Virginia, and an accounting of all income received and expenditures made by the corporation.

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

(a) The corporation shall be exempt from the imposition of ad valorem taxes upon its property by any political subdivision of the state of West Virginia.

(b) When title to real or personal property is transferred to the corporation, the ad valorem property taxes, if any, assessed against such property shall be apportioned between the transferor and the corporation on a calendar year basis as of the date of the transfer, and neither the transferor nor the corporation shall be liable for the payment of that portion of the ad valorem property taxes apportioned to the part of the year following the transfer, but the transferor shall continue to be liable for the payment of that portion of the taxes apportioned to the part of the year preceding and including the date of transfer.

(c) When title to real or personal property is transferred by the corporation to a transferee not exempt from the payment of ad valorem property taxes, ad valorem property taxes shall be assessed against such property, as of the date of the transfer, by extension of the applicable levy rate, notwithstanding that the corporation was the owner of such property on the last
past date of assessment, and the transferee shall be liable for the payment of the property taxes so assessed for that portion of the calendar year following the date of the transfer from the corporation.

(d) In negotiating the terms of an agreement between the corporation and an enterprise for the financing of a project under the provisions of this article, if the agreement contemplates continued ownership by the corporation of real property and the use and occupancy of such real property by the enterprise, whether by lease, lease-back or other device, with the result that the real property would not be subject to ad valorem property taxes, the corporation and the enterprise may include within the terms and conditions of such agreement a requirement that the enterprise pay, to such political subdivisions as would otherwise benefit from the receipt of ad valorem property taxes if the real property were not owned by the corporation, sums of money agreed upon by the corporation and the enterprise, in the form of annual payments in lieu of ad valorem property taxes.
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.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 30th day of January, 1997.

Governor
PRESENTED TO THE
GOVERNOR
Date 11/29/88
Time 8:30 p.m.