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OFFICE OF THE SECRETARY  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989

— ● —

# ENROLLED

HOUSE BILL No. 2700

(By  Delegate Harley)

— ● —

Passed April 7, 1989

In Effect from Passage

ENROLLED

**H. B. 2700**

(By DELEGATE FARLEY)

[Passed April 7, 1989; in effect from passage.]

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 the allocation of the state ceiling for private activity bonds; declaring public policy of the state to include the construction of facilities for the generation of power through the utilization of coal waste; clarifying that issuers of private activity bonds shall include the West Virginia public energy authority; facilitating the allocation of the state ceiling for certain projects producing energy from coal waste; and expanding the period for reservation of the state ceiling for certain projects producing energy from coal waste.

*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; limitations; unused allocation; expirations and carryovers.**

1 (a) Private activity bonds (as defined in section

2 141(a) of the United States Internal Revenue Code of  
3 1986, other than those described in section 146(g) of the  
4 Internal Revenue Code) issued pursuant to this article,  
5 including bonds issued by the West Virginia public  
6 energy authority pursuant to section five (8), article one,  
7 chapter five-d of this code, or under article eighteen,  
8 chapter thirty-one of this code, during any calendar year  
9 shall not exceed the ceiling established by section  
10 146(d) of the United States Internal Revenue Code. It  
11 is hereby determined and declared as a matter of  
12 legislative finding (i) that the production of bituminous  
13 coal in this state has resulted in coal waste, which coal  
14 waste is stored in areas generally referred to as gob  
15 piles; (ii) that such gob piles are unsightly and have the  
16 potential to pollute the environment in this state;  
17 (iii) that the utilization of the materials in such gob piles  
18 to produce alternative forms of energy needs to be  
19 encouraged; (iv) that section 142(a)(6) of the United  
20 States Internal Revenue Code of 1986 permits the  
21 financing of solid waste disposal facilities through the  
22 issuance of such private activity bonds; (v) that it is in  
23 the best interest of this state and the citizens thereof to  
24 facilitate the construction of facilities for the generation  
25 of power through the utilization of coal waste by  
26 providing an orderly mechanism for the commitment of  
27 the annual ceiling for private activity bonds for such  
28 projects.

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

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

42 (2) One half the total state ceiling for each year

43 remaining after the allocation to the West Virginia  
44 housing development fund described in subdivision  
45 (1) shall be allocated to the counties on a per capita  
46 basis and, unless the context in which used requires  
47 otherwise, shall be hereinafter in this section referred  
48 to as the “county allocation.”

49 (3) One half of the total state ceiling for each year  
50 remaining after the allocation to the West Virginia  
51 housing development fund described in subdivision  
52 (1) shall be retained by the state of West Virginia by  
53 the governor’s office of community and industrial  
54 development and, unless the context in which used  
55 requires otherwise, shall be hereinafter in this section  
56 referred to as the “state allocation.”

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

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

75 (e) Distribution of both the county and state alloca-  
76 tions to lessees, purchasers or owners of proposed  
77 commercial or industrial projects shall be on a first  
78 come, first serve basis and shall not be distributed or  
79 allocated for any project until the governmental body,  
80 seeking the same shall submit an application for  
81 reservation of funds as provided in subsection (f) of this  
82 section. The governmental body must first adopt an

83 inducement resolution approving the prospective issu-  
84 ance of bonds and setting forth the amount of bonds to  
85 be issued. Each governmental body, which includes the  
86 West Virginia public energy authority, seeking an  
87 allocation of the state ceiling following the adoption of  
88 such inducement resolution shall submit a notice of  
89 inducement signed by its clerk, secretary or recorder or  
90 other appropriate official to the governor's office of  
91 community and industrial development. Such notice  
92 shall include such information as may be required by  
93 the governor's office of community and industrial  
94 development by rule or regulation. Notwithstanding the  
95 foregoing, when an issuer described in this section  
96 proposes to issue bonds for the purpose of constructing  
97 an energy producing project which relies, in whole or  
98 in part, upon coal waste as fuel, to the extent such  
99 project qualifies as a solid waste facility under section  
100 142(a)(6) of the United States Internal Revenue Code of  
101 1986, such project may be given an allocation from the  
102 state ceiling available for any year subsequent to the  
103 year in which application is made (other than the  
104 amount to be allocated pursuant to subdivision (1) of  
105 subsection (b) of this section), at the discretion of the  
106 director of the governor's office of community and  
107 industrial development: *Provided*, That no such discre-  
108 tionary allocation may be made to any single project in  
109 an amount in excess of forty percent of the state ceiling  
110 available for such year subsequent to the year in which  
111 the request is made (exclusive of the amount to be  
112 allocated pursuant to subdivision (1) of subsection (b) of  
113 this section for such year). A discretionary allocation of  
114 the state ceiling for a project described in the preceding  
115 sentence shall not be granted by the director of the  
116 governor's office of community and industrial develop-  
117 ment unless the project for which the request is made  
118 has received a certification from the Federal Energy  
119 Regulatory Commission as a qualifying facility or a  
120 cogeneration project.

121 (f) Currently with or following the submission of its  
122 notice of inducement, the governmental body at any  
123 time deemed expedient by it may submit its notice of  
124 reservation of funds which shall include the following

125 information:

126 (1) The date of the notice of reservation of funds;

127 (2) The identity of the governmental body issuing the  
128 bonds;

129 (3) The date of inducement and the prospective date  
130 of issuance;

131 (4) The name of the entity for which the bonds are to  
132 be issued;

133 (5) The amount of the bond issue, or, if the amount  
134 of the bond issue for which a reservation of funds has  
135 been made has been increased, the amount of the  
136 increase;

137 (6) The type of issue; and

138 (7) A description of the project for which the bonds  
139 are to be issued.

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

152 (2) In the event the amount required in the notifica-  
153 tion of reservation of funds, as provided for in subdivi-  
154 sion (1) of this subsection, exceeds the apportionment  
155 available to that county from the county allocation, the  
156 governor's office of community and industrial develop-  
157 ment shall immediately notify the governmental body  
158 proposing to issue such bonds of that fact and such body  
159 may apply to such office for an apportionment to the  
160 extent of such excess from the state allocation.

161 (h) The governmental body shall submit a new notice

162 of reservation of funds pursuant to subsections (f) and  
163 (g) above for any increase in the amount of a bond issue  
164 for which a reservation of funds has been made. Such  
165 notice shall be treated as a new request for a reservation  
166 of funds to the extent of such increase.

167 (i) If the bond issue for which a reservation has been  
168 made has not been finally closed within one hundred  
169 twenty days of the date of the certification of reservation  
170 to be made by the governor's office of community and  
171 industrial development, as required by the provisions of  
172 subsection (g) of this section, or the thirty-first day of  
173 December following such date of certification if sooner  
174 and a statement of bond closure which has been  
175 executed by the clerk, secretary, recorder or other  
176 appropriate official of the governmental body reserving  
177 the same has not been received by such office within  
178 that time, then such reservation shall expire and be  
179 deemed to have been forfeited and the funds so reserved  
180 shall be released and revert to the county and/or state  
181 allocation, as the case may be, from which the funds  
182 were originally reserved and allocation will then be  
183 made available for other qualified issues in accordance  
184 with this section and the Internal Revenue Code:  
185 *Provided, That, as to any notice of reservation of funds*  
186 *received by the governor's office of community and*  
187 *industrial development during the month of December*  
188 *in any calendar year with respect to any project*  
189 *qualifying as an elective carry forward pursuant to*  
190 *section 146(f)(5) of the Internal Revenue Code, such*  
191 *reservation of funds and the allocation to which the*  
192 *same relates shall not expire or be subject to forfeiture:*  
193 *Provided, however, That any unused state ceiling as of*  
194 *the thirty-first day of December in any year not*  
195 *otherwise subject to a carry forward pursuant to section*  
196 *146(f) of the Internal Revenue Code shall be allocated*  
197 *to the West Virginia housing development fund, which*  
198 *shall be deemed to have elected to carry forward the*  
199 *unused state ceiling for the purpose of issuing qualified*  
200 *mortgage bonds, qualified mortgage credit certificates*  
201 *or bonds for qualified residential rental projects, each*  
202 *as defined in the Internal Revenue Code. All requests*  
203 *for subsequent reservation of funds and reallocation*

204 upon loss of a reservation pursuant to this section will  
205 be treated in the same manner as a new notice of  
206 reservation of funds in accordance with subsections  
207 (f) and (g) above.

208 (j) Once a reservation of an allocation has been made  
209 to an energy producing project which relies, in whole  
210 or in part, upon coal waste as fuel and otherwise  
211 qualifies as a solid waste facility under section  
212 142(a)(6) of the United States Internal Revenue Code of  
213 1986, notwithstanding the language of subsection (i) of  
214 this section, such reservation shall remain fully availa-  
215 ble with respect to such project until the first day of  
216 October in the year from which the reservation of  
217 allocation was made at which time, if the bond issue has  
218 not been finally closed, the reservation shall expire and  
219 be deemed forfeited and the funds so reserved shall be  
220 released as provided in subsection (i) of this section.

221 (k) Any amount of the county allocation remaining  
222 unreserved on the first day of October in any calendar  
223 year (which amount shall be determined by the director  
224 of the governor's office of community and industrial  
225 development) shall revert to the state allocation for the  
226 remainder of that year, and all notification of reserva-  
227 tion of funds by either the state or any county submitted  
228 on or after such date shall be treated on a first come,  
229 first serve basis.

230 (l) The amendments to this section adopted by the  
231 Legislature at the regular session thereof, held in the  
232 year one thousand nine hundred eighty-nine, shall apply  
233 and be effective with respect to such year and to all  
234 subsequent years.



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

  
Chairman Senate Committee

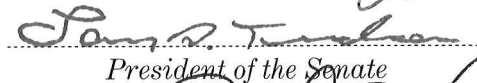
  
Chairman House Committee


Originating in the House.


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 26<sup>th</sup>  
day of April, 1989.  
  
Governor

PRESENTED TO THE

GOVERNOR

Date 4/30/89

Time 10:28