WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989

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ENROLLED

HOUSE BILL No. 2700

(By Delegate Hanley)

Passed April 7, 1989

In Effect from Passage

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

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

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

(2) One half the total state ceiling for each year
removing after the allocation to the West Virginia housing development fund described in subdivision (1) shall be allocated to the counties on a per capita basis and, unless the context in which used requires otherwise, shall be hereinafter in this section referred to as the “county allocation.”

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

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

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

(e) Distribution of both the county and state allocations to lessees, purchasers or owners of proposed commercial or industrial projects shall be on a first come, first serve basis and shall not be distributed or allocated for any project until the governmental body, seeking the same shall submit an application for reservation of funds as provided in subsection (f) of this section. The governmental body must first adopt an
inducement resolution approving the prospective issuance of bonds and setting forth the amount of bonds to be issued. Each governmental body, which includes the West Virginia public energy authority, seeking an allocation of the state ceiling following the adoption of such inducement resolution shall submit a notice of inducement signed by its clerk, secretary or recorder or other appropriate official to the governor’s office of community and industrial development. Such notice shall include such information as may be required by the governor’s office of community and industrial development by rule or regulation. Notwithstanding the foregoing, when an issuer described in this section proposes to issue bonds for the purpose of constructing an energy producing project which relies, in whole or in part, upon coal waste as fuel, to the extent such project qualifies as a solid waste facility under section 142(a)(6) of the United States Internal Revenue Code of 1986, such project may be given an allocation from the state ceiling available for any year subsequent to the year in which application is made (other than the amount to be allocated pursuant to subdivision (1) of subsection (b) of this section), at the discretion of the director of the governor’s office of community and industrial development: Provided, That no such discretionary allocation may be made to any single project in an amount in excess of forty percent of the state ceiling available for such year subsequent to the year in which the request is made (exclusive of the amount to be allocated pursuant to subdivision (1) of subsection (b) of this section for such year). A discretionary allocation of the state ceiling for a project described in the preceding sentence shall not be granted by the director of the governor’s office of community and industrial development unless the project for which the request is made has received a certification from the Federal Energy Regulatory Commission as a qualifying facility or a cogeneration project.

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

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

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

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

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

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

(6) The type of issue; and

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

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

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

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

(i) If the bond issue for which a reservation has been made has not been finally closed within one hundred twenty days of the date of the certification of reservation to be made by the governor’s office of community and industrial development, as required by the provisions of subsection (g) of this section, or the thirty-first day of December following such date of certification if sooner and a statement of bond closure which has been executed by the clerk, secretary, recorder or other appropriate official of the governmental body reserving the same has not been received by such office within that time, then such reservation shall expire and be deemed to have been forfeited and the funds so reserved shall be released and revert to the county and/or state allocation, as the case may be, from which the funds were originally reserved and allocation will then be made available for other qualified issues in accordance with this section and the Internal Revenue Code:

Provided, That, as to any notice of reservation of funds received by the governor’s office of community and industrial development during the month of December in any calendar year with respect to any project qualifying as an elective carry forward pursuant to section 146(f)(5) of the Internal Revenue Code, such reservation of funds and the allocation to which the same relates shall not expire or be subject to forfeiture:

Provided, however, That any unused state ceiling as of the thirty-first day of December in any year not otherwise subject to a carry forward pursuant to section 146(f) of the Internal Revenue Code shall be allocated to the West Virginia housing development fund, which shall be deemed to have elected to carry forward the unused state ceiling for the purpose of issuing qualified mortgage bonds, qualified mortgage credit certificates or bonds for qualified residential rental projects, each as defined in the Internal Revenue Code. All requests for subsequent reservation of funds and reallocation
upon loss of a reservation pursuant to this section will be treated in the same manner as a new notice of reservation of funds in accordance with subsections (f) and (g) above.

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

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

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

Frederick L. Berger
Chairman Senate Committee

J. L. Sittle
Chairman House Committee

Originating in the House.

Takes effect from passage.

J. L. Sittle
Clerk of the Senate

Donald E. Kopp
Clerk of the House of Delegates

Larry E. Young
President of the Senate

Robert E. Corchran
Speaker of the House of Delegates

The within ... approved this the ... day of ... 1989.

Hasten Caperton
Governor
PRESENTED TO THE
GOVERNOR

Date 4/06/89
Time 10:38