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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989

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ENROLLED

HOUSE BILL No. 2760

(By Mr. Speaker, Mr. Chambers, & Del. R. Bunk)
[By Request of the Executive]

— ● —

Passed April 8, 1989

In Effect From Passage

ENROLLED

H. B. 2760

(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATE R. BURK)
[By Request of the Executive]

[Passed April 8, 1989; in effect from passage.]

AN ACT to amend and reenact sections six, ten and eleven, article five-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend and reenact sections two, three, five, twenty, article twenty-nine-a of said chapter relating to nursing home, personal care home and residential board and care home licensure, application, fees, duration, renewal, certified beds, reports of inspections, plans of correction, assessment of penalties and use of funds derived therefrom, license limitation, suspension revocation, continuation of disciplinary proceedings, closure, transfer of patients, appointment of temporary management, assessment of interest, collection thereof, promulgation of regulations to conform to federal requirements, hearings, powers of the West Virginia Hospital Finance Authority, definitions of hospitals, and certificates of need.

Be it enacted by the Legislature of West Virginia:

That sections six, ten and eleven, article five-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections two, three, five and twenty, article twenty-nine-a of said chapter be amended and reenacted, all to read as follows:

ARTICLE 5C. NURSING AND PERSONAL CARE HOMES AND

RESIDENTIAL BOARD AND CARE HOMES.**§16-5C-6. License required; application; fees; duration; renewal.**

1 Subject to the provisions of section seventeen of this
2 article, no person may establish, operate, maintain, offer
3 or advertise a nursing home, personal care home, or
4 residential board and care home within this state unless
5 and until he obtains a valid license therefor as hereinafter
6 provided, which license remains unsuspended,
7 unrevoked and unexpired. No public official or employee
8 may place any person in, or recommend that any
9 person be placed in, or directly or indirectly cause any
10 person to be placed in any facility, as defined in section
11 two of this article, which is being operated without a
12 valid license from the director. The procedure for
13 obtaining a license shall be as follows:

14 (a) The applicant shall submit an application to the
15 director on a form to be prescribed by the director,
16 containing such information as may be necessary to
17 show that the applicant is in compliance with the
18 standards for nursing homes, personal care homes, or
19 residential board and care homes as established by this
20 article and the rules and regulations lawfully promulgated
21 by the board of health hereunder. The application
22 and any exhibits thereto shall provide the following
23 information:

24 (1) The name and address of the applicant;

25 (2) The name, address and principal occupation (i) of
26 each person who, as a stockholder or otherwise, has a
27 proprietary interest of ten percent or more in the
28 applicant, (ii) of each officer and director of a corporate
29 applicant, (iii) of each trustee and beneficiary of an
30 applicant which is a trust, and (iv) where a corporation
31 has a proprietary interest of fifty percent or more in an
32 applicant, the name, address and principal occupation
33 of each officer and director of such corporation;

34 (3) The name and address of the owner of the
35 premises of the facility or proposed facility, if he is a
36 different person from the applicant, and in such case,

37 the name and address (i) of each person who, as a
38 stockholder or otherwise, has a proprietary interest of
39 ten percent or more in such owner, (ii) of each officer
40 and director of a corporate applicant, (iii) of each trustee
41 and beneficiary of such owner if he is a trust, and (iv)
42 where a corporation has a proprietary interest of fifty
43 percent or more in such owner, the name and address
44 of each officer and director of such corporation;

45 (4) Where the applicant is the lessee or the assignee
46 of the facility or the premises of the proposed facility,
47 a signed copy of the lease and any assignment thereof;

48 (5) The name and address of the facility or the
49 premises of the proposed facility;

50 (6) The type of institution to be operated;

51 (7) The proposed bed quota of the facility and the
52 proposed bed quota of each unit thereof;

53 (8) (i) An organizational plan for the facility indicat-
54 ing the number of persons employed or to be employed,
55 the positions and duties of all employees, (ii) the name
56 and address of the individual who is to serve as
57 administrator, and (iii) such evidence of compliance
58 with applicable laws and regulations governing zoning,
59 buildings, safety, fire prevention and sanitation as the
60 director may require;

61 (9) Such additional information as the director may
62 require; and

63 (10) Assurances that the nursing home was reviewed
64 and found to be needed under the provisions of article
65 two-d of this chapter.

66 (b) Upon receipt and review of an application for
67 license made pursuant to subdivision (a) of this section,
68 and inspection of the applicant facility pursuant to
69 section ten of this article, the director shall issue a
70 license if he finds:

71 (1) That an individual applicant, and every partner,
72 trustee, officer, director and controlling person of an
73 applicant which is not an individual, be a person
74 responsible and suitable to operate or to direct or

75 participate in the operation of a facility by virtue of
76 financial capacity, appropriate business or professional
77 experience, a record of compliance with lawful orders
78 of the department (if any) and lack of revocation of a
79 license during the previous five years;

80 (2) That the facility be under the supervision of an
81 administrator who is qualified by training and expe-
82 rience: *Provided*, That every facility classified as a
83 nursing home shall have an administrator licensed
84 pursuant to the provisions of article twenty-five, chapter
85 thirty of this code; and

86 (3) That the facility is in substantial compliance with
87 standards established pursuant to section five of this
88 article, and such other requirements for a license as the
89 board of health may establish by regulation under this
90 article.

91 Any license granted by the director shall state the
92 maximum bed capacity for which it is granted, the date
93 the license was issued, the expiration date, and the
94 rating assigned to the facility pursuant to section five
95 of this article. Such licenses shall be issued for a period
96 not to exceed fifteen months for nursing homes and for
97 a period of not to exceed one year for personal care
98 homes and residential board and care homes: *Provided*,
99 That any such license in effect for which timely
100 application for renewal, together with payment of the
101 proper fee has been made to the state department of
102 health in conformance with the provisions of this article
103 and the rules and regulations issued thereunder, and
104 prior to the expiration date of such license, shall
105 continue in effect until (a) one year following the
106 expiration date of such license, or (b) the date of the
107 revocation or suspension of such license pursuant to the
108 provisions of this article, or (c) the date of issuance of
109 a new license, whichever date first occurs. Each license
110 shall be issued only for the premises and persons named
111 in the application and shall not be transferable or
112 assignable: *Provided, however*, That in the case of the
113 transfer of ownership of a facility with an unexpired
114 license, the application of the new owner for a license
115 shall have the effect of a license for a period of three

116 months when filed with the director. Every license shall
117 be posted in a conspicuous place in the facility for which
118 it is issued so as to be accessible to and in plain view
119 of all patients and visitors of the facility.

120 (c) An original license shall be renewable, conditioned
121 upon the licensee filing timely application for the
122 extension of the term of the license accompanied by the
123 fee, and contingent upon evidence of compliance with
124 the provisions of this article and regulations promul-
125 gated by the board of health hereunder: *Provided*, That
126 notwithstanding the requirements of other sections of
127 this article, the director may deem as evidence of
128 compliance with such provisions and regulations the
129 certification of nursing home beds under the medicare
130 or medicaid requirements of titles eighteen or nineteen
131 of the Social Security Act, Title 42 United States Code
132 sections 1395 and 1396 et seq. Any such application for
133 renewal of a license shall include a report by the licensee
134 in such form and containing such information as shall
135 be prescribed by the director, including the following:

136 (1) A balance sheet of the facility as of the end of its
137 fiscal year, setting forth assets and liabilities at such
138 date, including all capital, surplus, reserve, depreciation
139 and similar accounts;

140 (2) A statement of operations of the facility as of the
141 end of its fiscal year, setting forth all revenues,
142 expenses, taxes, extraordinary items and other credits
143 or charges; and

144 (3) A statement of any changes in the name, address,
145 management or ownership information on file with the
146 director. All holders of facility licenses as of the effective
147 date of this article shall include, in the first application
148 for renewal filed thereafter, such information as is
149 required for initial applicants under the provisions of
150 subsection (a) of this section.

151 (d) In the case of an application for a renewal license,
152 if all requirements of section five of this article are not
153 met, the director may in his discretion issue a provi-
154 sional license, provided that care given in the facility is
155 adequate for patient needs and the facility has demon-

156 strated improvement and evidences potential for
157 substantial compliance within the term of said license:
158 *Provided*, That a provisional renewal may not be issued
159 for a period greater than one year, shall not be renewed,
160 and that no such license shall be issued to any facility
161 with uncorrected violations of any Class I standard, as
162 defined in subsection (c), section five of this article.

163 (e) A nonrefundable application fee in the amount of
164 one hundred dollars for an original nursing home license
165 or fifty dollars for an original personal care facility or
166 residential board and care home license shall be paid at
167 the time application is made for such license. Direct
168 costs of initial licensure inspections or inspections for
169 changes in licensed bed capacity shall be borne by the
170 applicant and shall be received by the director prior to
171 the issuance of an initial or amended license. The license
172 fee for renewal of a license shall be at the rate of eight
173 dollars per year per bed for nursing homes, and four
174 dollars per bed per year for personal care homes, and
175 two dollars per bed per year for residential board and
176 care homes, except the annual rate per bed may be
177 assessed for licenses issued for less than one year. The
178 director may annually adjust the licensure fees for
179 inflation based upon the consumer price index. The bed
180 capacity for the holder of each license shall be deter-
181 mined by the director. All such license fees shall be due
182 and payable to the director, annually, and in such
183 manner set forth in the rules and regulations promul-
184 gated by the board of health. Such fee and application
185 shall be submitted to the director who shall retain both
186 the application and fee pending final action on the
187 application. All fees received by the director under the
188 provisions of this article shall be deposited in accordance
189 with section thirteen, article one of this chapter.

**§16-5C-10. Reports of inspections; plans of correction;
assessment of penalties and use of funds
derived therefrom; hearings.**

- 1 (a) Reports of all inspections made pursuant to section
- 2 nine of this article shall be in writing and filed with the
- 3 director, and shall list all deficiencies in the facility's
- 4 compliance with the provisions of this article and the

5 regulations adopted by the board of health hereunder.
6 The director shall send a copy of such report to the
7 facility and shall specify a time within which the facility
8 shall submit a plan for correction of such deficiencies,
9 which plan shall be approved, rejected or modified by
10 the director. The surveyors shall allow audio taping of
11 the exit conference for both licensure and certification
12 inspections with all costs directly associated with such
13 taping to be paid by the facility.

14 (b) With regard to a facility with deficiencies which
15 is not certified under titles eighteen or nineteen of the
16 Social Security Act and upon such facility's failure to
17 submit a plan of correction which is approved by the
18 director, or to correct any deficiency within the time
19 specified in an approved plan of correction, the director
20 may assess civil penalties as hereinafter provided or
21 may initiate any other legal or disciplinary action as
22 provided by this article.

23 (c) Nothing in this section shall be construed to
24 prohibit the director from enforcing a regulation,
25 administratively or in court, without first affording
26 formal opportunity to make correction under this
27 section, where, in the opinion of the director, the
28 violation of such regulation jeopardizes the health or
29 safety of patients or where the violation of such
30 regulation is the second or subsequent such violation
31 occurring during a period of twelve full months.

32 (d) Civil penalties assessed against facilities not
33 certified under titles eighteen or nineteen of the Social
34 Security Act shall be classified according to the nature
35 of the violation as defined in subsection (c), section five
36 of this article and regulations promulgated thereunder
37 by the board of health, as follows: For each violation of
38 a Class I standard, a civil penalty of not less than one
39 hundred nor more than one thousand dollars shall be
40 imposed; for each violation of a Class II standard, a civil
41 penalty of not less than fifty nor more than one hundred
42 dollars shall be imposed; for each violation of a Class III
43 standard, a civil penalty of not less than twenty-five nor
44 more than fifty dollars shall be imposed. Each day a
45 violation continues, after the date by which correction

46 was required under an approved plan of correction or,
47 if an approved plan of correction is not submitted, the
48 date on which such plan was due, shall constitute a
49 separate violation.

50 (e) Within thirty days after the completion of an
51 inspection for a facility certified under titles eighteen or
52 nineteen of the Social Security Act, the director may
53 assess civil money penalties against such facility when
54 the facility is not in compliance with federal regulatory
55 level A or B certification requirements as contained in
56 Title 42 Code of Federal Regulations, part 483. In
57 determining whether to assess a penalty, and the
58 amount of penalty to be assessed, the director shall
59 consider how serious the noncompliance with such level
60 A or B requirement is in relation to direct patient care
61 and safety, the number of patients such a noncompliance
62 is likely to affect, whether such a noncompliance was a
63 noncompliance during the previous inspection, the
64 opportunity that the facility has had to correct the
65 noncompliance, and any additional factors that may be
66 relevant. For each day in which a facility is, or was, out
67 of compliance with such level A or B requirements,
68 penalties shall not exceed one hundred dollars for each
69 such level B requirement and shall not exceed five
70 hundred dollars for each such level A requirement. If
71 a facility is out of compliance on two successive
72 inspections with such a level A or B requirement, the
73 director may, and in the case of immediate jeopardy to
74 the health, safety, welfare, or rights of patients the
75 director shall, for each day of noncompliance assess a
76 civil penalty: Not to exceed two hundred dollars for each
77 such level B requirement which is, or was, out of
78 compliance; and, not to exceed one thousand dollars for
79 each such level A requirement which is, or was, out of
80 compliance. If a facility is out of compliance on three
81 or more successive inspections with such a level A or B
82 requirement, the director shall for each day of noncom-
83 pliance assess a civil penalty: Not to exceed six hundred
84 dollars for each such level B requirement which is, or
85 was, out of compliance; and, not to exceed three
86 thousand dollars for each such level A requirement
87 which is, or was, out of compliance.

88 If the director and the United States secretary of
89 health and human services determines that a facility's
90 failure to meet federal medicaid certification require-
91 ments under title nineteen of the Social Security Act
92 does not jeopardize the health or safety of its patients
93 and if such secretary establishes one or more remedies
94 which are additional or alternative to the remedy of
95 terminating the facility's participation under the state
96 medicaid plan, any civil money penalty assessed under
97 this subsection shall be withdrawn.

98 (f) The director shall impose a civil penalty of not
99 more than one thousand dollars against an individual
100 who willfully and knowingly certifies under section
101 1919(b)(3)(B)(i) of title nineteen of the Social Security
102 Act, or under section 1819(b)(3)(B)(i) of title eighteen of
103 such Act, a material and false statement in a patient
104 assessment. Such penalty shall be imposed with respect
105 to each such patient assessment. The director shall
106 impose a civil penalty of not more than five thousand
107 dollars against an individual who willfully and know-
108 ingly causes another individual to certify under either
109 such section of the Social Security Act a material and
110 false statement in a patient assessment. Such penalty
111 shall be imposed with respect to each such patient
112 assessment.

113 (g) The director shall assess a civil penalty not to
114 exceed two thousand dollars against any individual who
115 notifies, or causes to be notified, a facility of the time
116 or date on which an inspection is scheduled to be
117 conducted under this article or under titles eighteen or
118 nineteen of the Social Security Act.

119 (h) If the director assesses a penalty under this
120 section, the director shall cause delivery of notice of such
121 penalty by personal service or by certified mail. Said
122 notice shall state the amount of the penalty, the action
123 or circumstance for which the penalty is assessed, the
124 requirement that the action or circumstance violates,
125 and the basis upon which the director assessed the
126 penalty and selected the amount of the penalty.

127 (i) The director shall, in a civil judicial proceeding,

128 recover any unpaid assessment which has not been
129 contested under section twelve of this article within
130 thirty days of receipt of notice of such assessment, or
131 which has been affirmed under the provisions of that
132 section and not appealed within thirty days of receipt
133 of the director's final order, or which has been affirmed
134 on judicial review, as provided in section thirteen of this
135 article. All money collected by assessments of civil
136 penalties or interest shall be paid into a special patient
137 benefit account and shall be applied by the director only
138 for the protection of the health or property of patients
139 of facilities operated within the state that the director
140 or the United States secretary of health and human
141 services find to be deficient, including payment for the
142 costs of relocation of patients to other facilities,
143 operation of a facility pending correction of deficiencies
144 or closure, and reimbursement of patients for personal
145 funds lost.

146 (j) The opportunity for a hearing on an action taken
147 under this section shall be as provided in section twelve
148 of this article. In addition to any other rights of appeal
149 conferred upon a facility pursuant to this section, a
150 facility shall have the right to request a hearing and
151 seek judicial review pursuant to sections twelve and
152 thirteen of this article to contest the citing by the
153 director of a deficiency on an inspection report,
154 irrespective of whether the deficiency results in the
155 imposition of a civil penalty.

**§16-5C-11. License limitation, suspension, revocation;
continuation of disciplinary proceedings;
closure, transfer of patients, appointment
of temporary management; assessment of
interest; collection of assessments; promul-
gation of regulations to conform with
federal requirements; hearings.**

1 (a) The director shall by order reclassify a facility, or
2 reduce the bed quota of the facility, or both, where he
3 finds upon inspection of the facility that the licensee is
4 not providing adequate care under the facility's existing
5 classification or quota, and that reclassification, reduc-
6 tion in quota or both would place the licensee in a

7 position to render adequate care. Any notice to a licensee
8 of reclassification, reduction in quota or both shall
9 include the terms of such order, the reasons therefor,
10 and the date set for compliance.

11 (b) The director may suspend or revoke a license
12 issued under this article if he finds upon inspection that
13 there has been a substantial failure to comply with the
14 provisions of this article or the standards or regulations
15 promulgated pursuant hereto.

16 (c) Whenever a license is limited, suspended or
17 revoked pursuant to this section, the director shall file
18 a complaint stating facts constituting a ground or
19 grounds for such limitation, suspension or revocation.
20 Upon the filing of the complaint, the director shall
21 notify the licensee in writing of the filing of the
22 complaint, enclosing a copy of the complaint, and shall
23 advise the licensee of the availability of a hearing
24 pursuant to section twelve of this article. Such notice
25 and copy of the complaint shall be served on such
26 licensee by certified mail, return receipt requested.

27 (d) The suspension, expiration, forfeiture or cancella-
28 tion by operation of law or order of the director of a
29 license issued by the director, or the withdrawal of an
30 application for a license after it has been filed with the
31 director, may not deprive the director of the director's
32 authority to institute or continue a disciplinary proceed-
33 ing, or a proceeding for the denial of a license applica-
34 tion, against the licensee or applicant upon any ground
35 provided by law or to enter an order denying the license
36 application or suspending or revoking the license or
37 otherwise taking disciplinary action on any such ground.

38 (e) In addition to other remedies provided in this
39 article, upon petition from the director, a circuit court
40 may determine that a facility's deficiencies under this
41 article, or under titles eighteen or nineteen of the Social
42 Security Act, if applicable, constitute an emergency
43 immediately jeopardizing the health, safety, welfare, or
44 rights of its patients, and issue an order to:

45 (1) Close the facility;

46 (2) Transfer patients in the facility to other facilities;
47 or

48 (3) Appoint temporary management to oversee the
49 operation of the facility and to assure the health, safety,
50 welfare, and rights of the facility's patients, where there
51 is a need for temporary management while:

52 (A) there is an orderly closure of the facility, or

53 (B) improvements are made in order to bring the
54 facility into compliance with all the applicable require-
55 ments of this article and, if applicable, titles eighteen
56 and nineteen of the Social Security Act.

57 If the director petitions a circuit court for the closure
58 of a facility, the transfer of patients, or the appointment
59 of a temporary management, the circuit court shall hold
60 a hearing no later than seven days thereafter, at which
61 time the director and the licensee or operator of the
62 facility may participate and present evidence.

63 A circuit court may divest the licensee or operator of
64 possession and control of a facility in favor of a
65 temporary management. The temporary management
66 shall be responsible to the court and shall have such
67 powers and duties as the court may grant to direct all
68 acts necessary or appropriate to conserve the property
69 and promote the health, safety, welfare, and rights of
70 the patients of the facility, including, but not limited to,
71 the replacement of management and staff, the hiring of
72 consultants, the making of any necessary expenditures
73 to close the facility or to repair or improve the facility
74 so as to return it to compliance with applicable
75 requirements, and the power to receive, conserve, and
76 expend funds, including medicare, medicaid and other
77 payments on behalf of the licensee or operator of the
78 facility. Priority shall be given to expenditures for
79 current direct patient care or the transfer of patients.

80 The person charged with temporary management
81 shall be an officer of the court, shall not be liable for
82 conditions at the facility which existed or originated
83 prior to his appointment and shall not be personally
84 liable, except for his own gross negligence and inten-

85 tional acts which result in injuries to persons or damage
86 to property at the facility during his temporary
87 management.

88 To administer a nursing home, the temporary man-
89 agement shall employ a person licensed as a nursing
90 home administrator in West Virginia.

91 No person shall impede the operation of a temporary
92 management. There shall be an automatic stay for a
93 ninety day period subsequent to the establishment of a
94 temporary management of any action that would
95 interfere with the functioning of the facility, including,
96 but not limited to, cancellation of insurance policies,
97 termination of utility services, attachments to working
98 capital accounts, foreclosures, evictions, and reposses-
99 sions of equipment used in the facility.

100 A temporary management established for the purpose
101 of making improvements in order to bring a facility into
102 compliance with applicable requirements shall not be
103 terminated until the court has determined that the
104 facility has the management capability to ensure
105 continued compliance with all applicable requirements,
106 except if the court has not made such determination
107 within six months of the establishment of the temporary
108 management, the temporary management terminates by
109 operation of law at that time, and the facility shall be
110 closed. After the termination of the temporary manage-
111 ment, the person who was responsible for the temporary
112 management shall make an accounting to the court, and
113 after deducting from receipts the costs of the temporary
114 management, expenditures, and civil penalties and
115 interest no longer subject to appeal, in that order, any
116 excess shall be paid to the licensee or operator of the
117 facility.

118 (f) The assessments for penalties and for costs of
119 actions taken under this article shall have interest
120 assessed at two percent on the last day of each month
121 after the month in which occurs the thirtieth day after
122 receipt of notice of such assessment or after the month
123 in which occurs the thirtieth day after receipt of the
124 director's final order following a hearing, whichever is

125 later. All such assessments against a facility that are
126 unpaid shall be added to the facility's licensure fee and
127 may be filed as a lien against the property of the licensee
128 or operator of the facility. Funds received from such
129 assessments shall be deposited as funds received in
130 section ten of this article.

131 (g) The board of health shall have the power to
132 promulgate emergency regulations that expand the
133 power of the director in excess of that provided in this
134 article to the extent required to comply with federal
135 requirements, but any such regulations shall expand the
136 power of the director to the minimum extent required
137 by federal requirements. Such regulations are subject to
138 the provisions of article three, chapter twenty-nine-a of
139 this code.

140 (h) The opportunity for a hearing on an action by the
141 director taken under this section shall be as provided in
142 section twelve of this article.

**ARTICLE 29A. WEST VIRGINIA HOSPITAL FINANCE AUTHOR-
ITY ACT.**

**§16-29A-2. Declaration of policy and responsibility;
purpose and intent of article; findings.**

1 It is hereby declared to be the public policy of the
2 state of West Virginia and a responsibility of the state
3 of West Virginia, for the benefit of the people of the
4 state and the improvement of their health, welfare and
5 living conditions, to provide hospitals with appropriate
6 means at reasonable cost to maintain, expand, enlarge
7 and establish health care, hospital and other related
8 facilities and to provide hospitals with the ability to
9 refinance indebtedness. This article shall provide a
10 method to enable hospitals to provide or maintain at
11 reasonable cost pursuant to reasonable terms the
12 facilities, structures and services needed to accomplish
13 the purposes of this article, all to the public benefit and
14 good, to the extent and in the manner provided in this
15 article.

16 The Legislature finds and hereby declares that the
17 responsibility of the state as outlined above cannot be
18 effectively met without the hospital loan program as

19 provided for in this article.

§16-29A-3. Definitions.

1 As used in this article, unless the context clearly
2 requires a different meaning:

3 (1) "Authority" means the West Virginia hospital
4 finance authority created by section four of this article,
5 the duties, powers, responsibilities and functions of
6 which are specified in this article;

7 (2) "Board" means the West Virginia hospital finance
8 board created by section four of this article, which shall
9 manage and control the authority;

10 (3) "Bond" means a revenue bond issued by the
11 authority to effect the purposes of this article;

12 (4) "Construction" means and includes reconstruction,
13 enlargement, improvement and providing furnishings
14 or equipment;

15 (5) "Direct provider of health care" means a person or
16 organization whose primary current activity is the
17 provision of health care to individuals and includes a
18 licensed or certified physician, osteopath, dentist, nurse,
19 podiatrist or physician's assistant or an organization
20 comprised of these health professionals or employing
21 these health professionals;

22 (6) "Hospital" means a corporation, association,
23 institution or establishment for the care of those who
24 require medical treatment, which may be a public or
25 private corporation or association, or state owned or
26 operated establishment and specifically includes nurs-
27 ing homes which are licensed under chapter sixteen of
28 this code or those facilities certified under the Social
29 Security Act as intermediate care facilities for the
30 mentally retarded.

31 (7) "Hospital facilities" means any real or personal
32 property suitable and intended for, or incidental or
33 ancillary to, use by a hospital and includes: Outpatient
34 clinics; laboratories; laundries; nurses, doctors or interns
35 residences; administration buildings; facilities for
36 research directly involved with hospital care; mainte-

37 nance, storage or utility facilities; parking lots and
38 garages; and all necessary, useful or related equipment,
39 furnishings and appurtenances and all lands necessary
40 or convenient as a site for the foregoing and specifically
41 includes any capital improvements to any of the
42 foregoing. "Hospital facilities" specifically includes
43 office facilities not less than eighty percent of which are
44 intended for lease to direct providers of health care and
45 which are geographically or functionally related to one
46 or more other hospital facilities, if the authority
47 determines that the financing of the office facilities is
48 necessary to accomplish the purposes of this article;

49 (8) "Hospital loan" means a loan made by the author-
50 ity to a hospital and specifically includes financings by
51 the authority for hospital facilities pursuant to lease-
52 purchase agreements, installment sale or other similar
53 agreements;

54 (9) "Note" means a short-term promise to pay a
55 specified amount of money, payable and secured as
56 provided pursuant to this article and issued by the
57 authority to effect the purposes of this article.

58 (10) "Project costs" means the total of the reasonable
59 or necessary costs incurred for carrying out the works
60 and undertakings for the acquisition or construction of
61 hospital facilities under this article. "Project costs"
62 includes, but is not limited to, all of the following costs:
63 The costs of acquisition or construction of the hospital
64 facilities; studies and surveys; plans, specifications,
65 architectural and engineering services; legal, organiza-
66 tion, marketing or other special services; financing,
67 acquisition, demolition, construction, equipping and site
68 development of new and rehabilitated buildings; reha-
69 bilitation, reconstruction, repair or remodeling of
70 existing buildings; interest and carrying charges during
71 construction and before full earnings are achieved and
72 operating expenses before full earnings are achieved or
73 a period of one year following the completion of
74 construction, whichever occurs first, and a reasonable
75 reserve for payment of principal of and interest on
76 bonds or notes of the authority. "Project costs" shall also
77 include reimbursement of a hospital for the foregoing

78 costs expended by a hospital from its own funds or from
79 money borrowed by the hospital for such purposes
80 before issuance and delivery of bonds or notes by the
81 authority for the purpose of providing funds to pay the
82 project costs. "Project costs" also specifically includes
83 the refinancing of any existing debt of a hospital
84 necessary in order to permit the hospital to borrow from
85 the authority and give adequate security for the hospital
86 loan. The determination of the authority with respect to
87 the necessity of refinancing and adequate security for
88 a hospital loan is conclusive.

89 (11) "Revenue" means any money or thing of value
90 collected by, or paid to, the authority as principal of or
91 interest, charges or other fees on hospital loans, or any
92 other collections on hospital loans made by the authority
93 to hospitals to finance in whole or in part the acquisition
94 or construction of any hospital facilities, or other money
95 or property which is received and may be expended for
96 or pledged as revenues pursuant to this article.

§16-29A-5. Powers of authority.

1 The authority is hereby granted, has and may exercise
2 all the powers necessary or appropriate to carry out and
3 effectuate the purposes of this article, including the
4 following:

5 (a) To sue and be sued in its own name and plead and
6 be impleaded in its own name; to have a seal and alter
7 the same at its pleasure; to make, execute and deliver
8 contracts, indentures, agreements, conveyances and
9 other instruments necessary or convenient to the
10 exercise of its powers; to adopt and, from time to time,
11 amend and repeal bylaws necessary and proper for the
12 legislation of its business and rules and regulations to
13 implement and make effective its powers and duties,
14 such rules and regulations to be promulgated in
15 accordance with the provisions of chapter twenty-nine-
16 a of this code; and to maintain a principal office. Any
17 actions against the authority shall be brought in the
18 circuit court of Kanawha County, in which the principal
19 office of the authority shall be located. When the cost
20 under any contract or agreement to be entered by the

21 authority, other than compensation for personal servi-
22 ces, involves an expenditure of more than three thou-
23 sand dollars, the authority shall make a written contract
24 with the lowest responsible bidder after public notice
25 published as a Class II legal advertisement in com-
26 pliance with the provisions of article three, chapter fifty-
27 nine of this code, the publication area for such publica-
28 tion to be the county wherein the work is to be
29 performed or which is affected by the contract, which
30 notice shall state the general character of the work and
31 the general character of the materials to be furnished,
32 the place where plans and specifications therefor may
33 be examined and the time and place of receiving bids:
34 *Provided*, That a contract, indenture or agreement for
35 a hospital loan is not subject to the foregoing require-
36 ments, and the authority may enter into such contract,
37 indenture or agreement pursuant to negotiation and
38 upon such terms and conditions and for such period as
39 it finds to be reasonable and proper under the circum-
40 stances and as necessary to best effectuate the purposes
41 of this article: *Provided, however*, That a contract or
42 agreement entered into by a hospital to which any
43 hospital loan is made is not subject to the foregoing
44 requirements. The authority may reject any and all bids.
45 A bond with good and sufficient surety, approved by the
46 authority, shall be required of all contractors in an
47 amount equal to at least fifty percent of the contract
48 price, conditioned upon the faithful performance of the
49 contract.

50 (b) To solicit and accept gifts, grants, loans and other
51 aids from any person, corporation or governmental
52 agency.

53 (c) To make hospital loans, to participate in the
54 making of hospital loans, to undertake commitments, to
55 execute and be the beneficiary under deeds of trust, to
56 enter into security agreements, to sell hospital loans and
57 the security therefor at public or private sale, to modify
58 or alter hospital loans and security therefor, to dis-
59 charge hospital loans and security therefor, to order a
60 trustee's sale under a deed of trust or commence an
61 action to protect or enforce a right conferred upon it by

62 a law, deed of trust, hospital loan, contract, indenture
63 or other agreement and to bid for and purchase property
64 which was the subject of a deed of trust at a trustee's
65 sale or at any other sale and to acquire or take
66 possession of that property and in that event complete,
67 administer, pay the principal of and interest on any
68 obligations incurred in connection with such property,
69 dispose of and otherwise deal with the property in a
70 manner necessary or desirable to protect the interest of
71 the authority in the property. The hospital loans made
72 by the authority may be secured by deeds of trust or
73 security agreements, as applicable, or not, as the
74 authority determines.

75 (d) To lend money to hospitals for the purpose of
76 refinancing any outstanding indebtedness of a hospital
77 if the authority determines the refinancing is necessary
78 to realize the purposes of this article. A hospital loan
79 made pursuant to this subsection shall not exceed the
80 amount of the principal of and interest and redemption
81 premium, if any, on the indebtedness to be refinanced
82 which has not been repaid, plus the marketing, financ-
83 ing, legal and other costs incurred in connection with
84 the refinancing and the issuance of bonds or notes of the
85 authority issued in whole or in part to provide funds to
86 make the hospital loan described in this subdivision,
87 including the costs of funding a bond reserve and paying
88 capitalized interest on the bonds or notes for a period
89 not to exceed one year after the issuance of such bonds
90 or notes. The determination of the authority under this
91 subsection shall be conclusive.

92 (e) To charge, impose and collect fees and charges in
93 connection with its hospital loans, commitments and
94 servicing, including reimbursement of the costs of
95 financing by the authority, service charges, insurance
96 premiums and an allocable share of the operating
97 expenses of the authority and to make provision for
98 increasing the same, if necessary, as the authority
99 determines is reasonable and approved by the board.

100 (f) To acquire, hold and dispose of real or personal
101 property necessary or appropriate for the accomplish-
102 ment of the purposes of this article.

103 (g) To procure insurance against a loss in connection
104 with its property, assets or activities.

105 (h) To borrow money for its purpose, including its
106 initial operating expense and issue its bonds or notes for
107 the money and provide for the rights of the holders of
108 the bonds or notes and to secure the bonds or notes by
109 a deed of trust on or an assignment or pledge of any or
110 all of its properties, including any part of the security
111 for its hospital loans. The state shall not be liable on any
112 bonds or notes of the authority; the bonds or notes shall
113 not be a debt of the state; and each bond or note shall
114 contain on its face a statement to that effect.

115 (i) To invest any funds not required for immediate use
116 or disbursement, at its discretion, in any of the
117 following:

118 (1) Direct obligations of, or obligations the timely
119 payment of the principal of and interest on which is
120 guaranteed by, the United States of America;

121 (2) Bonds, debentures, notes or other evidences of
122 indebtedness issued by any of the following agencies:
123 Banks for cooperatives; federal intermediate credit
124 banks; federal home loan bank system; Export-Import
125 Bank of the United States; federal farm credit banks;
126 federal land banks; federal financing banks; the Federal
127 National Mortgage Association or the Government
128 National Mortgage Association;

129 (3) Public housing bonds issued by public agencies or
130 municipalities and fully secured as to the payment of
131 both principal and interest by a pledge of annual
132 contributions under an annual contributions contract or
133 contracts with the United States of America; or
134 temporary notes issued by public agencies or municipal-
135 ities or preliminary loan notes issued by public agencies
136 or municipalities, in each case fully secured as to the
137 payment of both principal and interest by a requisition
138 or payment agreement with the United States of
139 America;

140 (4) Certificates of deposit secured by obligations of the
141 type specified in subparagraph (1);

142 (5) Direct obligations of, or obligations the timely
143 payment of the principal of and interest on which is
144 guaranteed by, the state of West Virginia;

145 (6) Direct and general obligations of any other state
146 within the territorial United States, to the payment of
147 the principal of and interest on which the full faith and
148 credit of such state is pledged: *Provided*, That at the
149 time of their purchase, such obligations are rated in
150 either of the two highest rating categories by a
151 nationally recognized bond-rating agency;

152 (7) Any fixed interest bond, note or debenture of any
153 corporation organized and operating within the United
154 States: *Provided*, That such corporation has a minimum
155 net worth of fifteen million dollars and its securities or
156 its parent corporation's securities are listed on one or
157 more of the national stock exchanges: *Provided, however*,
158 That (i) such corporation has earned a profit in eight of
159 the preceding ten fiscal years as reflected in its
160 statements, (ii) such corporation has not defaulted in the
161 payment of principal of or interest on any of its
162 outstanding funded indebtedness during its preceding
163 ten fiscal years, and (iii) the bonds, notes or debentures
164 of such corporation to be purchased are rated "AA" or
165 the equivalent thereof or better than "AA" or the
166 equivalent thereof by at least two or more nationally
167 recognized rating services such as Standard and Poor's,
168 Dun & Bradstreet or Moody's;

169 (8) Fully collateralized or insured bankers acceptan-
170 ces or time deposits drawn on and accepted by commer-
171 cial banks; and

172 (9) Repurchase agreements of commercial banks or
173 trust companies fully secured by obligations of the type
174 specified in subparagraph (1) and having on the date of
175 such agreement a fair market value equal to at least one
176 hundred percent of the principal amount of such
177 repurchase agreement.

178 (j) To engage necessary personnel and to engage the
179 services of private consultants for rendering profes-
180 sional and technical assistance and advice.

181 (k) To establish or increase reserves from moneys
182 received or to be received by the authority to secure or
183 to pay the principal of and interest on bonds issued by
184 the authority pursuant to this article.

185 (l) To lease, or lease with an option to purchase, to
186 others its real or personal property, including hospitals
187 and hospital facilities, for such rentals and upon such
188 terms and conditions as the authority may deem
189 advisable.

190 (m) To do all acts necessary and proper to carry out
191 the powers expressly granted to the authority in this
192 article.

§16-29A-20. Certificate of need.

1 Before the authority makes a hospital loan to any
2 hospital, and as a condition precedent to the authority's
3 making any such hospital loan, a certificate of need shall
4 be obtained pursuant to article two-d of this chapter, or
5 a determination shall be secured from the agency
6 issuing the certificate of need that a certificate is not
7 necessary for the hospital facilities with respect to which
8 the hospital loan is proposed to be made: *Provided*, That
9 if a certificate of need is not necessary for a specific
10 project or projects, then the health care cost review
11 authority created by section five, article twenty-nine-b
12 of this chapter must be consulted by the authority
13 concerning the availability of financial resources to both
14 repay the loan and to fund the ongoing operations of the
15 project or projects. The opinion of the health care cost
16 review authority, while not determinative on the
17 question of the issuance of the hospital loan, shall be
18 entitled to substantial weight before the authority and
19 shall be overcome only by clear and convincing evidence
20 to the contrary. This section shall not apply to refinanc-
21 ing of present indebtedness or to refunding or advance
22 refunding of bonds, notes, or for reimbursement of
23 projects costs.

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

Frederick L. Kuper
Chairman Senate Committee

L. L. Latham
Chairman House Committee

Originating in the House.

Takes effect from passage.

Todd C. Hulse
Clerk of the Senate

Donald L. Hogg
Clerk of the House of Delegates

Pam D. Tucker
President of the Senate

Bob Call
Speaker of the House of Delegates

The within *is approved* this the *27th*
day of *April*, 1989.

Gaston Caperton
Governor

PRESENTED TO THE

GOVERNOR/

Date 4/24/89

Time 2:20