WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989

ENROLLED

HOUSE BILL No. 2760

(By Mr. Speaker, Mr. Chambers, and R. B. Burke)

[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
§16-5C-6. License required; application; fees; duration; renewal.

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

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

(1) The name and address of the applicant;

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

(3) The name and address of the owner of the premises of the facility or proposed facility, if he is a different person from the applicant, and in such case,
the name and address (i) of each person who, as a stockholder or otherwise, has a proprietary interest of ten percent or more in such owner, (ii) of each officer and director of a corporate applicant, (iii) of each trustee and beneficiary of such owner if he is a trust, and (iv) where a corporation has a proprietary interest of fifty percent or more in such owner, the name and address of each officer and director of such corporation;

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

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

(6) The type of institution to be operated;

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

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

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

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

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

(1) That an individual applicant, and every partner, trustee, officer, director and controlling person of an applicant which is not an individual, be a person responsible and suitable to operate or to direct or
participate in the operation of a facility by virtue of financial capacity, appropriate business or professional experience, a record of compliance with lawful orders of the department (if any) and lack of revocation of a license during the previous five years;

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

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

Any license granted by the director shall state the maximum bed capacity for which it is granted, the date the license was issued, the expiration date, and the rating assigned to the facility pursuant to section five of this article. Such licenses shall be issued for a period not to exceed fifteen months for nursing homes and for a period of not to exceed one year for personal care homes and residential board and care homes: Provided, That any such license in effect for which timely application for renewal, together with payment of the proper fee has been made to the state department of health in conformance with the provisions of this article and the rules and regulations issued thereunder, and prior to the expiration date of such license, shall continue in effect until (a) one year following the expiration date of such license, or (b) the date of the revocation or suspension of such license pursuant to the provisions of this article, or (c) the date of issuance of a new license, whichever date first occurs. Each license shall be issued only for the premises and persons named in the application and shall not be transferable or assignable: Provided, however, That in the case of the transfer of ownership of a facility with an unexpired license, the application of the new owner for a license shall have the effect of a license for a period of three
months when filed with the director. Every license shall
be posted in a conspicuous place in the facility for which
it is issued so as to be accessible to and in plain view
of all patients and visitors of the facility.

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

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

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

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

   (d) In the case of an application for a renewal license,
if all requirements of section five of this article are not
met, the director may in his discretion issue a provi-
sional license, provided that care given in the facility is
adequate for patient needs and the facility has demon-
Strated improvement and evidences potential for substantial compliance within the term of said license:

Provided, That a provisional renewal may not be issued for a period greater than one year, shall not be renewed, and that no such license shall be issued to any facility with uncorrected violations of any Class I standard, as defined in subsection (c), section five of this article.

(e) A nonrefundable application fee in the amount of one hundred dollars for an original nursing home license or fifty dollars for an original personal care facility or residential board and care home license shall be paid at the time application is made for such license. Direct costs of initial licensure inspections or inspections for changes in licensed bed capacity shall be borne by the applicant and shall be received by the Director prior to the issuance of an initial or amended license. The license fee for renewal of a license shall be at the rate of eight dollars per year per bed for nursing homes, and four dollars per bed per year for personal care homes, and two dollars per bed per year for residential board and care homes, except the annual rate per bed may be assessed for licenses issued for less than one year. The Director may annually adjust the licensure fees for inflation based upon the consumer price index. The bed capacity for the holder of each license shall be determined by the Director. All such license fees shall be due and payable to the Director, annually, and in such manner set forth in the rules and regulations promulgated by the Board of Health. Such fee and application shall be submitted to the Director who shall retain both the application and fee pending final action on the application. All fees received by the Director under the provisions of this article shall be deposited in accordance 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.

(a) Reports of all inspections made pursuant to section nine of this article shall be in writing and filed with the Director, and shall list all deficiencies in the facility's compliance with the provisions of this article and the
regulations adopted by the board of health hereunder. The director shall send a copy of such report to the facility and shall specify a time within which the facility shall submit a plan for correction of such deficiencies, which plan shall be approved, rejected or modified by the director. The surveyors shall allow audio taping of the exit conference for both licensure and certification inspections with all costs directly associated with such taping to be paid by the facility.

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

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

(d) Civil penalties assessed against facilities not certified under titles eighteen or nineteen of the Social Security Act shall be classified according to the nature of the violation as defined in subsection (c), section five of this article and regulations promulgated thereunder by the board of health, as follows: For each violation of a Class I standard, a civil penalty of not less than one hundred nor more than one thousand dollars shall be imposed; for each violation of a Class II standard, a civil penalty of not less than fifty nor more than one hundred dollars shall be imposed; for each violation of a Class III standard, a civil penalty of not less than twenty-five nor more than fifty dollars shall be imposed. Each day a violation continues, after the date by which correction
was required under an approved plan of correction or,
if an approved plan of correction is not submitted, the
date on which such plan was due, shall constitute a
separate violation.

(e) Within thirty days after the completion of an
inspection for a facility certified under titles eighteen or
nineteen of the Social Security Act, the director may
assess civil money penalties against such facility when
the facility is not in compliance with federal regulatory
level A or B certification requirements as contained in
Title 42 Code of Federal Regulations, part 483. In
determining whether to assess a penalty, and the
amount of penalty to be assessed, the director shall
consider how serious the noncompliance with such level
A or B requirement is in relation to direct patient care
and safety, the number of patients such a noncompliance
is likely to affect, whether such a noncompliance was a
noncompliance during the previous inspection, the
opportunity that the facility has had to correct the
noncompliance, and any additional factors that may be
relevant. For each day in which a facility is, or was, out
of compliance with such level A or B requirements,
penalties shall not exceed one hundred dollars for each
such level B requirement and shall not exceed five
hundred dollars for each such level A requirement. If
a facility is out of compliance on two successive
inspections with such a level A or B requirement, the
director may, and in the case of immediate jeopardy to
the health, safety, welfare, or rights of patients the
director shall, for each day of noncompliance assess a
civil penalty: Not to exceed two hundred dollars for each
such level B requirement which is, or was, out of
compliance; and, not to exceed one thousand dollars for
each such level A requirement which is, or was, out of
compliance. If a facility is out of compliance on three
or more successive inspections with such a level A or B
requirement, the director shall for each day of noncom-
pliance assess a civil penalty: Not to exceed six hundred
dollars for each such level B requirement which is, or
was, out of compliance; and, not to exceed three
thousand dollars for each such level A requirement
which is, or was, out of compliance.
If the director and the United States secretary of health and human services determines that a facility's failure to meet federal medicaid certification requirements under title nineteen of the Social Security Act does not jeopardize the health or safety of its patients and if such secretary establishes one or more remedies which are additional or alternative to the remedy of terminating the facility's participation under the state medicaid plan, any civil money penalty assessed under this subsection shall be withdrawn.

(f) The director shall impose a civil penalty of not more than one thousand dollars against an individual who willfully and knowingly certifies under section 1919(b)(3)(B)(i) of title nineteen of the Social Security Act, or under section 1819(b)(3)(B)(i) of title eighteen of such Act, a material and false statement in a patient assessment. Such penalty shall be imposed with respect to each such patient assessment. The director shall impose a civil penalty of not more than five thousand dollars against an individual who willfully and knowingly causes another individual to certify under either such section of the Social Security Act a material and false statement in a patient assessment. Such penalty shall be imposed with respect to each such patient assessment.

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

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

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

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

(a) The director shall by order reclassify a facility, or
reduce the bed quota of the facility, or both, where he
finds upon inspection of the facility that the licensee is
not providing adequate care under the facility's existing
classification or quota, and that reclassification, reduc-
tion in quota or both would place the licensee in a
position to render adequate care. Any notice to a licensee of reclassification, reduction in quota or both shall include the terms of such order, the reasons therefor, and the date set for compliance.

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

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

d) The suspension, expiration, forfeiture or cancellation by operation of law or order of the director of a license issued by the director, or the withdrawal of an application for a license after it has been filed with the director, may not deprive the director of the director's authority to institute or continue a disciplinary proceeding, or a proceeding for the denial of a license application, against the licensee or applicant upon any ground provided by law or to enter an order denying the license application or suspending or revoking the license or otherwise taking disciplinary action on any such ground.

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

(1) Close the facility;
(2) Transfer patients in the facility to other facilities; or

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

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

(B) improvements are made in order to bring the facility into compliance with all the applicable requirements of this article and, if applicable, titles eighteen and nineteen of the Social Security Act.

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

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

The person charged with temporary management shall be an officer of the court, shall not be liable for conditions at the facility which existed or originated prior to his appointment and shall not be personally liable, except for his own gross negligence and inten-
tional acts which result in injuries to persons or damage to property at the facility during his temporary management.

To administer a nursing home, the temporary management shall employ a person licensed as a nursing home administrator in West Virginia.

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

A temporary management established for the purpose of making improvements in order to bring a facility into compliance with applicable requirements shall not be terminated until the court has determined that the facility has the management capability to ensure continued compliance with all applicable requirements, except if the court has not made such determination within six months of the establishment of the temporary management, the temporary management terminates by operation of law at that time, and the facility shall be closed. After the termination of the temporary management, the person who was responsible for the temporary management shall make an accounting to the court, and after deducting from receipts the costs of the temporary management, expenditures, and civil penalties and interest no longer subject to appeal, in that order, any excess shall be paid to the licensee or operator of the facility.

(f) The assessments for penalties and for costs of actions taken under this article shall have interest assessed at two percent on the last day of each month after the month in which occurs the thirtieth day after receipt of notice of such assessment or after the month in which occurs the thirtieth day after receipt of the director's final order following a hearing, whichever is
later. All such assessments against a facility that are unpaid shall be added to the facility's licensure fee and may be filed as a lien against the property of the licensee or operator of the facility. Funds received from such assessments shall be deposited as funds received in section ten of this article.

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

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

ARTICLE 29A. WEST VIRGINIA HOSPITAL FINANCE AUTHORITY ACT.

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

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

The Legislature finds and hereby declares that the responsibility of the state as outlined above cannot be effectively met without the hospital loan program as
§16-29A-3. Definitions.

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

1. “Authority” means the West Virginia hospital finance authority created by section four of this article, the duties, powers, responsibilities and functions of which are specified in this article;

2. “Board” means the West Virginia hospital finance board created by section four of this article, which shall manage and control the authority;

3. “Bond” means a revenue bond issued by the authority to effect the purposes of this article;

4. “Construction” means and includes reconstruction, enlargement, improvement and providing furnishings or equipment;

5. “Direct provider of health care” means a person or organization whose primary current activity is the provision of health care to individuals and includes a licensed or certified physician, osteopath, dentist, nurse, podiatrist or physician’s assistant or an organization comprised of these health professionals or employing these health professionals;

6. “Hospital” means a corporation, association, institution or establishment for the care of those who require medical treatment, which may be a public or private corporation or association, or state owned or operated establishment and specifically includes nursing homes which are licensed under chapter sixteen of this code or those facilities certified under the Social Security Act as intermediate care facilities for the mentally retarded.

7. “Hospital facilities” means any real or personal property suitable and intended for, or incidental or ancillary to, use by a hospital and includes: Outpatient clinics; laboratories; laundries; nurses, doctors or interns residences; administration buildings; facilities for research directly involved with hospital care; mainte-
nance, storage or utility facilities; parking lots and
garages; and all necessary, useful or related equipment,
furnishings and appurtenances and all lands necessary
or convenient as a site for the foregoing and specifically
includes any capital improvements to any of the
foregoing. "Hospital facilities" specifically includes
office facilities not less than eighty percent of which are
intended for lease to direct providers of health care and
which are geographically or functionally related to one
or more other hospital facilities, if the authority
determines that the financing of the office facilities is
necessary to accomplish the purposes of this article;

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

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

(10) "Project costs" means the total of the reasonable
or necessary costs incurred for carrying out the works
and undertakings for the acquisition or construction of
hospital facilities under this article. "Project costs"
includes, but is not limited to, all of the following costs:
The costs of acquisition or construction of the hospital
facilities; studies and surveys; plans, specifications,
architectural and engineering services; legal, organiza-
tion, marketing or other special services; financing,
acquisition, demolition, construction, equipping and site
development of new and rehabilitated buildings; reha-
bilitation, reconstruction, repair or remodeling of
existing buildings; interest and carrying charges during
construction and before full earnings are achieved and
operating expenses before full earnings are achieved or
a period of one year following the completion of
construction, whichever occurs first, and a reasonable
reserve for payment of principal of and interest on
bonds or notes of the authority. "Project costs" shall also
include reimbursement of a hospital for the foregoing
costs expended by a hospital from its own funds or from
money borrowed by the hospital for such purposes
before issuance and delivery of bonds or notes by the
authority for the purpose of providing funds to pay the
project costs. "Project costs" also specifically includes
the refinancing of any existing debt of a hospital
necessary in order to permit the hospital to borrow from
the authority and give adequate security for the hospital
loan. The determination of the authority with respect to
the necessity of refinancing and adequate security for
a hospital loan is conclusive.

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


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

(a) To sue and be sued in its own name and plead and
be impleaded in its own name; to have a seal and alter
the same at its pleasure; to make, execute and deliver
contracts, indentures, agreements, conveyances and
other instruments necessary or convenient to the
exercise of its powers; to adopt and, from time to time,
amend and repeal bylaws necessary and proper for the
legislation of its business and rules and regulations to
implement and make effective its powers and duties,
such rules and regulations to be promulgated in
accordance with the provisions of chapter twenty-nine-
a of this code; and to maintain a principal office. Any
actions against the authority shall be brought in the
circuit court of Kanawha County, in which the principal
office of the authority shall be located. When the cost
under any contract or agreement to be entered by the
authority, other than compensation for personal services, involves an expenditure of more than three thousand dollars, the authority shall make a written contract with the lowest responsible bidder after public notice published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, the publication area for such publication to be the county wherein the work is to be performed or which is affected by the contract, which notice shall state the general character of the work and the general character of the materials to be furnished, the place where plans and specifications therefor may be examined and the time and place of receiving bids: Provided, That a contract, indenture or agreement for a hospital loan is not subject to the foregoing requirements, and the authority may enter into such contract, indenture or agreement pursuant to negotiation and upon such terms and conditions and for such period as it finds to be reasonable and proper under the circumstances and as necessary to best effectuate the purposes of this article: Provided, however, That a contract or agreement entered into by a hospital to which any hospital loan is made is not subject to the foregoing requirements. The authority may reject any and all bids. A bond with good and sufficient surety, approved by the authority, shall be required of all contractors in an amount equal to at least fifty percent of the contract price, conditioned upon the faithful performance of the contract.

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

(c) To make hospital loans, to participate in the making of hospital loans, to undertake commitments, to execute and be the beneficiary under deeds of trust, to enter into security agreements, to sell hospital loans and the security therefor at public or private sale, to modify or alter hospital loans and security therefor, to discharge hospital loans and security therefor, to order a trustee's sale under a deed of trust or commence an action to protect or enforce a right conferred upon it by
a law, deed of trust, hospital loan, contract, indenture
or other agreement and to bid for and purchase property
which was the subject of a deed of trust at a trustee’s
sale or at any other sale and to acquire or take
possession of that property and in that event complete,
administer, pay the principal of and interest on any
obligations incurred in connection with such property,
dispose of and otherwise deal with the property in a
manner necessary or desirable to protect the interest of
the authority in the property. The hospital loans made
by the authority may be secured by deeds of trust or
security agreements, as applicable, or not, as the
authority determines.

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

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

(f) To acquire, hold and dispose of real or personal
property necessary or appropriate for the accomplish-
ment of the purposes of this article.
(g) To procure insurance against a loss in connection with its property, assets or activities.

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

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

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

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

   (3) Public housing bonds issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States of America; or temporary notes issued by public agencies or municipalities or preliminary loan notes issued by public agencies or municipalities, in each case fully secured as to the payment of both principal and interest by a requisition or payment agreement with the United States of America;

   (4) Certificates of deposit secured by obligations of the type specified in subparagraph (1);
(5) Direct obligations of, or obligations the timely payment of the principal of and interest on which is guaranteed by, the state of West Virginia;

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

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

(8) Fully collateralized or insured bankers acceptances or time deposits drawn on and accepted by commercial banks; and

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

(j) To engage necessary personnel and to engage the services of private consultants for rendering professional and technical assistance and advice.
(k) To establish or increase reserves from moneys received or to be received by the authority to secure or to pay the principal of and interest on bonds issued by the authority pursuant to this article.

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

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


Before the authority makes a hospital loan to any hospital, and as a condition precedent to the authority’s making any such hospital loan, a certificate of need shall be obtained pursuant to article two-d of this chapter, or a determination shall be secured from the agency issuing the certificate of need that a certificate is not necessary for the hospital facilities with respect to which the hospital loan is proposed to be made: Provided, That if a certificate of need is not necessary for a specific project or projects, then the health care cost review authority created by section five, article twenty-nine-b of this chapter must be consulted by the authority concerning the availability of financial resources to both repay the loan and to fund the ongoing operations of the project or projects. The opinion of the health care cost review authority, while not determinative on the question of the issuance of the hospital loan, shall be entitled to substantial weight before the authority and shall be overcome only by clear and convincing evidence to the contrary. This section shall not apply to refinancing of present indebtedness or to refunding or advance refunding of bonds, notes, or for reimbursement of projects costs.
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 27th day of April, 1989.

Governor