

No. 575

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**WEST VIRGINIA LEGISLATURE**  
REGULAR SESSION, 1989



**ENROLLED**  
*Committee Substitute for*  
**SENATE BILL NO. 575**

(By Senator *Tucker, Mr. President, et al*)



**PASSED** April 8, 1989  
In Effect from Passage

**ENROLLED**

COMMITTEE SUBSTITUTE  
FOR

**Senate Bill No. 575**

(BY SENATORS TUCKER, MR. PRESIDENT, AND HARMAN,  
BY REQUEST OF THE EXECUTIVE)

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

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*Public*

AN ACT to repeal article one, chapter five-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal article sixteen, chapter thirty-one of said code; and to amend and reenact article fifteen, chapter thirty-one of said code, relating to the West Virginia Economic Development Authority Act; making certain legislative findings as to general economic condition of West Virginia and identifying segments of state economy requiring promotion and development and further identifying financing methods necessary to finance and promote economic and industrial development within state; recognizing that availability of financial assistance through creation of insurance fund will promote economic development of state; further recognizing ~~public~~ *public* interest in establishing state instrumentality with powers to address economic development needs of the state including, but not limited to, furnishing money and credit to approved industrial development agencies and enterprises, promoting establishment of new commercial and industrial projects and retaining existing projects; setting forth and identifying purposes of act including, but not limited to, creation of economic development authority to develop and advance business prosperity and economic welfare of state, to borrow money and issue bonds, notes, commercial paper and other debt instruments, to furnish money and credit or credit enhancement to industrial development agencies and enterprises for the promotion of new commercial and industrial projects

and to retain existing projects, to insure the financing of working capital or the refinancing of existing debt of an enterprise, and creation of an insurance fund for credit enhancement purposes, and declaring that all such purposes are public purposes; abolishing West Virginia industry and jobs development corporation and designating economic development authority as its successor; defining certain key terms; establishing composition of authority and setting forth appointment and terms of members thereof and voting by such members; stating general powers of authority, including, but not limited, to the issuance of bonds and notes, borrowing money, financing projects, insuring bonds and notes issued by the authority and others, and insuring loans made to various parties by financial institutions; providing for loans to industrial development agencies and enterprises for certain projects; creating, as a credit enhancement vehicle, an insurance fund which may be used, among other purposes, to insure payment or repayment of all or any part of bonds and notes issued by the authority as well as by certain other public bodies, to insure payment or repayment of instruments executed, obtained or delivered in connection with issuance and sale of such bonds and notes, and to insure payment or repayment of other types of debt instruments entered into by an enterprise or a state public body or authority with a financial institution; authorizing authority to issue bonds and notes and providing that such bonds and notes are special obligations of the authority, and specifying form of such bonds and notes; setting forth procedure for approval of projects, issuance of bonds and notes and other matters concerning authority; providing that bonds or notes may be secured by trust agreement and that trustee may be any trust bank or company located within or outside state, and providing for pledge or assignment of revenues; setting forth permitted uses of funds acquired by authority and restrictions thereon; providing for refunding bonds and notes; establishing that bonds and notes issued and obligations undertaken by authority are not debts of state or any political subdivision thereof; providing that

bonds and notes are negotiable instruments and constitute legal investments; exempting authority from payment of taxes or assessments upon any property acquired or used by authority or upon income therefrom; shielding various parties from personal liability with respect to bonds or notes issued by authority; declaring that powers granted under act cumulative; setting forth authority of board of investments; providing for loan and insurance application requirements; providing for confidentiality of certain documentary materials or data made or received by authority; establishing economic development fund and setting forth uses thereof; authorizing governor to transfer state property to authority; providing for validity of certain pledges, mortgages and other security instruments; providing for collection of money accruing to authority and deposit thereof into state treasury; providing conflicts of interest clause; providing for agreements with federal agencies; requiring annual audits; providing severability and construction clauses; and declaring that projects shall not be deemed public improvements.

*Be it enacted by the Legislature of West Virginia:*

That article one, chapter five-c, and article sixteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that article fifteen, chapter thirty-one of said code be amended and reenacted, all to read as follows:

**ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT  
AUTHORITY.**

**§31-15-1. Short title.**

1 This article shall be known and may be cited as  
2 "The West Virginia Economic Development Authority  
3 Act."

**§31-15-2. Legislative findings.**

1 It is hereby determined and declared as a matter of  
2 legislative finding: (a) That unemployment exists in  
3 many areas of the state and may well come about,  
4 from time to time, in other areas of the state; (b) that



5 in some areas of the state, unemployment is a serious  
6 problem and has been for so long a period of time that,  
7 without remedial measures, it may become so in other  
8 areas of the state; (c) that economic insecurity due to  
9 unemployment is a serious menace to the health,  
10 safety, morals and general welfare of the people of the  
11 entire state; (d) that widespread industry unemploy-  
12 ment produces indigency which falls with crushing  
13 force upon all unemployed workers and ultimately  
14 upon the state in the form of welfare and unemploy-  
15 ment compensation; (e) that the absence of employ-  
16 ment and business opportunities for youth is a serious  
17 threat to the strength and permanence of their faith in  
18 our American political and economic institutions and  
19 the philosophy of freedom on which those institutions  
20 are based; (f) that lack of employment and business  
21 opportunities has resulted in thousands of workers and  
22 their families leaving the state to find such opportun-  
23 ities elsewhere, and that this exodus has adversely  
24 affected the tax base of counties and municipalities  
25 resulting in an impairment of their financial ability to  
26 support education and other local government servi-  
27 ces; (g) that security against unemployment and the  
28 spread of indigency and economic stagnation can best  
29 be provided by the promotion, attraction, stimulation,  
30 rehabilitation and revitalization of commerce, tourism,  
31 industry and manufacturing; (h) that the present and  
32 future health, safety, morals, right to gainful employ-  
33 ment and general welfare of the people of the state  
34 require as a public purpose the promotion and devel-  
35 opment of new and expanded coal and other energy  
36 production, industrial, commercial, tourist and manu-  
37 facturing enterprises within this state; (i) that the  
38 means and measures being authorized for the financ-  
39 ing of projects, including the insuring of loans or other  
40 debt issued for working capital or the refinancing of  
41 existing debt of an enterprise, are, as a matter of  
42 public policy, for the public purposes of the several  
43 counties, municipalities and the state; (j) that the  
44 device under which private community industrial  
45 development organizations in the state acquire or  
46 build industrial buildings or sites and equip the same

47 with funds raised through popular subscription, loans  
48 or otherwise for lease and sale to new or expanding  
49 industries has proven effective in creating new  
50 employment and business opportunities locally, is in  
51 accord with the American tradition of community  
52 initiative and enterprise, and requires and deserves  
53 encouragement and support from the state, as a means  
54 toward alleviation of unemployment and economic  
55 distress; (k) that community industrial development  
56 corporations in the state have invested substantial  
57 funds in successful coal production, industrial projects  
58 and are experiencing difficulty in undertaking addi-  
59 tional projects by reason of the partial inadequacy of  
60 their own funds potentially available from local  
61 subscription sources and by reason of limitations of  
62 local financial institutions in providing additional and  
63 sufficiently sizable first deed of trust or mortgage  
64 loans or letters of credit and other forms of credit  
65 enhancement; (l) that an urgent need exists to stimu-  
66 late a larger flow of private investment funds from  
67 banks, investment houses, insurance companies and  
68 other financial institutions into projects; (m) that by  
69 increasing the number of projects presenting attrac-  
70 tive opportunities for private investment, a larger  
71 portion of the private capital available in this state for  
72 investment can be put to use for the general economic  
73 development of the state; (n) that the availability of  
74 financial assistance through the creation of an insur-  
75 ance fund will promote the economic development of  
76 the state; and that it is in the public interest, in order  
77 to address the needs aforesaid, that a state instrumen-  
78 tality be created as a public body corporate with full  
79 powers to accept grants, gifts and appropriations, to  
80 generate revenues, to borrow money and issue its  
81 bonds, notes, commercial paper, other debt instru-  
82 ments and security interests to the end that funds  
83 obtained thereby may be used to furnish money and  
84 credit to approved industrial development agencies or  
85 enterprises or to promote the establishment of new  
86 projects or to retain existing projects.

**§31-15-3. Purposes of article.**

1 The purposes of this article shall be to provide for  
2 the formation of a public economic development  
3 authority to promote, assist, encourage and, in con-  
4 junction with such banking corporations or institu-  
5 tions, trust companies, savings banks, building and  
6 loan associations, insurance companies or related  
7 corporations, partnerships, foundations or other insti-  
8 tutions to develop and advance the business prosperity  
9 and economic welfare of the state of West Virginia; to  
10 encourage and assist in the location of new business  
11 and industry; to stimulate and assist in the expansion  
12 of all kinds of business activity which will tend to  
13 promote the business development and maintain the  
14 economic stability of this state, provide maximum  
15 opportunities for employment, encourage thrift and  
16 improve the standard of living of the citizens of this  
17 state; to cooperate and act in conjunction with other  
18 organizations, public or private, the objects of which  
19 are the promotion and advancement of industrial,  
20 commercial, tourist or manufacturing developments in  
21 this state; to borrow moneys and to issue its bonds,  
22 notes, commercial paper, other debt instruments and  
23 security interests as well as creating an insurance fund  
24 for credit enhancement purposes; to furnish money  
25 and credit or credit enhancement to approved indus-  
26 trial development agencies or enterprises in this state  
27 or for the promotion of new projects or to retain  
28 existing projects or to financially assist projects by  
29 insuring bonds, notes, loans and other instruments,  
30 including, but not limited to, the insuring of financing  
31 of working capital or the refinancing of existing debt  
32 of an enterprise, thereby establishing a source of  
33 credit and credit enhancement not otherwise available  
34 therefor. Such purposes are hereby declared to be  
35 public purposes for which public money may be spent  
36 and are purposes which will promote the health,  
37 safety, morals, right to gainful employment, business  
38 opportunities and general welfare of the inhabitants of  
39 the state.

**§31-15-3a. West Virginia Industry and Jobs Development Corporation abolished; establishment of economic development authority as successor to corporation.**

1 The authority shall be the corporate successor to the  
2 West Virginia industry and jobs development corpora-  
3 tion and is hereby vested with all right, title and  
4 interest of such corporation in and to all property,  
5 rights and choses in action heretofore owned by or  
6 vested in such corporation, including, but not limited  
7 to, its loan portfolio, and shall assume all debts,  
8 liabilities and other obligations, if any, of such corpo-  
9 ration. As of the effective date of this legislation, such  
10 corporation shall cease to exist and all rights and  
11 interests heretofore vested in such corporation shall be  
12 vested in the authority.

13 The unexpended balance of funds authorized under  
14 section seventeen, article one, chapter five-c of this  
15 code available for use of the West Virginia industry  
16 and jobs development corporation as of the effective  
17 date of this legislation is hereby transferred to the  
18 authority.

**§31-15-4. Definitions.**

1 Unless the context clearly indicates otherwise, as  
2 used in this article:

3 (a) "Authority" means the West Virginia economic  
4 development authority.

5 (b) "Board" means the governing body of the  
6 authority.

7 (c) "Board of investments" means the board of  
8 investments established by article six, chapter twelve  
9 of this code.

10 (d) "Bonds" means bonds or other debt instruments  
11 of the authority issued under this article, whether the  
12 interest thereon is taxable or tax-exempt for federal  
13 income tax purposes.

14 (e) "Business plan" means a document detailing the  
15 sales, production and distribution plans of an enter-

16 prise, together with the expenditures necessary to  
17 carry out those plans (including budget and cash flow  
18 projections) on an annual basis, and an employment  
19 plan setting forth steps to be taken by the enterprise  
20 to retain jobs or reduce unemployment in this state.

21 (f) "Cost of establishing a project" means the cost of  
22 acquiring existing facilities, cost of machinery, cost of  
23 equipment and fixtures, cost of construction including,  
24 without limitation, cost of improvements, repairs and  
25 renovations, cost of all lands, water areas, property  
26 rights and easements, financing charges and interest  
27 prior to and during construction, cost of architectural,  
28 engineering, legal and financial or other consulting  
29 services, plans, specifications and surveys, estimates of  
30 costs and any other expenses necessary or incident to  
31 determining the feasibility or practicability of any  
32 project, together with such other costs and expenses as  
33 may be necessary or incidental to the financing and  
34 the construction or acquisition of the project and the  
35 placing of the same in operation.

36 (g) "County" means any county of this state.

37 (h) "Enterprise" means an entity which is or  
38 proposes to be engaged in this state in any business  
39 activity for profit. The entity may be owned, operated,  
40 controlled, or under the management of a person,  
41 partnership, corporation, trust, community-based  
42 development organization or council, local commerce  
43 group, employee stock ownership plan, pension or  
44 profit-sharing plan, trust, a group of participating  
45 employees who desire to own an entity which does not  
46 presently exist, or any similar entity or organization.

47 (i) "Federal agency" means the United States of  
48 America and any department, corporation, agency or  
49 instrumentality created, designated or established by  
50 the United States of America.

51 (j) "Financing plan" means a plan designed to meet  
52 the financing needs of an enterprise as reflected in the  
53 business plan.

54 (k) "Fund" means the economic development fund  
55 provided for in section twenty-three of this article.

56 (l) "Government" means state and federal govern-  
57 ment, and any political subdivision, agency or instru-  
58 mentality thereof, corporate or otherwise.

59 (m) "Industrial development agency" means any  
60 incorporated organization, foundation, association or  
61 agency to whose members or shareholders no profit  
62 inures, which has as its primary function the promo-  
63 tion, encouragement and development of industrial,  
64 commercial, manufacturing and tourist enterprises or  
65 projects in this state.

66 (n) "Insurance fund" means the insurance fund  
67 created by this article.

68 (o) "Loan" means any extension of financing by the  
69 authority to an industrial development agency or an  
70 enterprise, including, but not limited to, a loan, a lease  
71 or an installment sale.

72 (p) "Municipality" means any city or town in this  
73 state.

74 (q) "Notes" means any notes, including commercial  
75 paper, of the authority issued under this article  
76 whether the interest thereon is taxable or tax-exempt  
77 for federal income tax purposes.

78 (r) "Project" means a commercial or industrial  
79 undertaking and all of the assets reasonably and  
80 necessarily required therefor, all as determined by the  
81 authority, which determination shall be conclusive,  
82 and shall include, without limiting the generality of  
83 the foregoing, industrial projects and commercial  
84 projects as presently defined in section (3), article two-  
85 c, chapter thirteen of this code.

86 (s) "Revenues" means all fees, premiums, charges,  
87 moneys, profits, payments of principal of, or interest  
88 on, loans and other investments, gifts, grants, appro-  
89 priations, contributions and all other income derived  
90 or to be derived by the authority under this article.

91 (t) "Security interest" means an interest in the loan

92 portfolio of the authority which interest is secured by  
93 an underlying loan or loans and is evidenced by a note  
94 issued by the authority.

**§31-15-5. West Virginia economic development authority;  
composition; appointment; terms; delegation  
of authority by chairman; voting; compensa-  
tion and expenses.**

1 The West Virginia economic development authority  
2 heretofore created is hereby continued as a body  
3 corporate and politic, constituting a public corporation  
4 and government instrumentality.

5 The authority shall be composed of a board of  
6 members consisting of a chairman, who shall be the  
7 governor, or his designated representative, the tax  
8 commissioner and seven members who shall be  
9 appointed by the governor, by and with the advice and  
10 consent of the Senate, and who shall be broadly  
11 representative of the geographic regions of the state.  
12 The board shall direct the exercise of all the powers  
13 given to the authority in this article. The governor  
14 shall also be the chief executive officer of the author-  
15 ity, and shall designate the treasurer and the secretary  
16 of the board.

17 Upon the effective date of this legislation, the  
18 governor shall forthwith appoint seven members of  
19 the board for staggered terms. The terms of the board  
20 members first taking office on or after the effective  
21 date of this legislation shall expire as designated by the  
22 governor at the time of the nomination, two at the end  
23 of the first year, two at the end of the second year, two  
24 at the end of the third year, and one at the end of the  
25 fourth year, after the first day of July, one thousand  
26 nine hundred eighty-nine. As these original appoint-  
27 ments expire, each subsequent appointment shall be  
28 for a full four-year term. Any member whose term  
29 has expired shall serve until his successor has been  
30 duly appointed and qualified. Any person appointed to  
31 fill a vacancy shall serve only for the unexpired term.  
32 Any member shall be eligible for reappointment. The  
33 term of any person serving as a member of the board



34 immediately preceding the effective date of this  
35 legislation shall cease and otherwise expire upon such  
36 effective date: *Provided*, That any such member shall  
37 be eligible for reappointment.

38 The governor may, by written notice filed with the  
39 secretary of the authority, from time to time, delegate  
40 to any subordinate the power to represent him at any  
41 meeting of the authority. In such case, the subordinate  
42 shall have the same power and privileges as the  
43 governor and may vote on any question.

44 Members of the authority shall not be entitled to  
45 compensation for services performed as members, but  
46 shall be entitled to reimbursement for all reasonable  
47 and necessary expenses actually incurred in the  
48 performance of their duties.

49 A majority of the members shall constitute a quo-  
50 rum for the purpose of conducting business. Except in  
51 the case of a loan or insurance application or unless  
52 the bylaws require a larger number, action may be  
53 taken by majority vote of the members present.  
54 Approval or rejection of a loan or insurance applica-  
55 tion shall be made by majority vote of the full  
56 membership of the board.

57 The board shall manage the property and business of  
58 the authority and may prescribe, amend, adopt and  
59 repeal bylaws and rules and regulations governing the  
60 manner in which the business of the authority is  
61 conducted.

62 The board shall, without regard to the provisions of  
63 civil service laws applicable to officers and employees  
64 of the state of West Virginia, appoint such managers,  
65 assistant managers, officers, employees, attorneys and  
66 agents as are necessary for the transaction of its  
67 business, fix their compensation, define their duties  
68 and provide a system of organization to fix responsibil-  
69 ity and promote efficiency. Any appointee of the board  
70 may be removed at the discretion of the board. The  
71 authority may reimburse any state spending unit for  
72 any special expense actually incurred in providing any  
73 service or the use of any facility to the authority.

74 In cases of any vacancy in the office of a member,  
75 such vacancy shall be filled by the governor. Any  
76 member appointed to fill a vacancy in the board  
77 occurring prior to the expiration of the term for which  
78 his predecessor was appointed shall be appointed for  
79 the remainder of such term.

80 The governor may remove a member in the case of  
81 incompetence, neglect of duty, gross immorality or  
82 malfeasance in office, and may declare such member's  
83 office vacant and appoint a person for such vacancy as  
84 provided in other cases of vacancy.

85 The secretary of the board shall keep a record of the  
86 proceedings of the board and perform such other  
87 duties as may be determined appropriate by the board.  
88 The treasurer shall be custodian of all funds of the  
89 authority and shall be bonded in such amount as other  
90 members of the board may designate.

**§31-15-6. General powers of authority.**

1 The authority, as a public corporation and govern-  
2 mental instrumentality exercising public powers of the  
3 state, shall have and may exercise all powers neces-  
4 sary or appropriate to carry out the purposes of this  
5 article, including the power:

6 (a) To cooperate with industrial development agen-  
7 cies in efforts to promote the expansion of industrial,  
8 commercial, manufacturing and tourist activity in this  
9 state.

10 (b) To determine, upon the proper application of an  
11 industrial development agency or an enterprise,  
12 whether the declared public purposes of this article  
13 have been or will be accomplished by the establish-  
14 ment by such agency or enterprise of a project in this  
15 state.

16 (c) To conduct examinations and investigations and  
17 to hear testimony and take proof, under oath or  
18 affirmation, at public or private hearings, on any  
19 matter relevant to this article and necessary for  
20 information on the establishment of any project.

21 (d) To issue subpoenas requiring the attendance of

22 witnesses and the production of books and papers  
23 relevant to any hearing before such authority or one  
24 or more members appointed by it to conduct any  
25 hearing.

26 (e) To apply to the circuit court having venue of  
27 such offense to have punished for contempt any  
28 witness who refuses to obey a subpoena, to be sworn  
29 or affirmed or to testify or who commits any contempt  
30 after being summoned to appear.

31 (f) To authorize any member of the authority to  
32 conduct hearings, administer oaths, take affidavits and  
33 issue subpoenas.

34 (g) To financially assist projects by insuring obliga-  
35 tions in the manner provided in this article through  
36 the use of the insurance fund.

37 (h) To finance any projects by making loans to  
38 industrial development agencies or enterprises upon  
39 such terms as the authority shall deem appropriate:  
40 *Provided*, That nothing contained in this subsection (h)  
41 or under any other provision in this article shall be  
42 construed as permitting the authority to make loans  
43 for working capital: *Provided, however*, That nothing  
44 contained in this article shall be construed as prohib-  
45 iting the authority from insuring loans for working  
46 capital made to industrial development agencies or to  
47 enterprises by financial institutions: *Provided further*,  
48 That nothing contained in this subsection or any other  
49 provision of this article shall be construed as permit-  
50 ting the authority to refinance existing debt except  
51 when such refinancing will result in the expansion of  
52 the enterprise whose debt is to be refinanced or in the  
53 creation of new jobs.

54 (i) To issue revenue bonds or notes to fulfill the  
55 purposes of this article, and to secure the payment of  
56 such bonds or notes, all as hereinafter provided.

57 (j) To issue and deliver revenue bonds or notes in  
58 exchange for a project.

59 (k) To borrow money for its purposes and issue  
60 bonds or notes for the money and provide for the

61 rights of the holders of the bonds or notes or other  
62 negotiable instruments, to secure the bonds or notes  
63 by a deed of trust on, or an assignment or pledge of,  
64 any or all of its property and property of the project,  
65 including any part of the security for loans, and the  
66 authority may issue and sell its bonds and notes, by  
67 public or private sale, in such principal amounts as it  
68 shall deem necessary to provide funds for any pur-  
69 poses under this article, including the making of loans  
70 for the purposes set forth in this article.

71 (l) To maintain such sinking funds and reserves as  
72 the board shall determine appropriate for the purposes  
73 of meeting future monetary obligations and needs of  
74 the authority.

75 (m) To sue and be sued, implead and be impleaded,  
76 and complain and defend in any court.

77 (n) To adopt, use and alter at will a corporate seal.

78 (o) To make, amend, repeal and adopt both bylaws  
79 and rules and regulations for the management and  
80 regulation of its affairs.

81 (p) To appoint officers, agents and employees and to  
82 contract for and engage the services of consultants.

83 (q) To make contracts of every kind and nature to  
84 execute all instruments necessary or convenient for  
85 carrying on its business.

86 (r) To accept grants and loans from and enter into  
87 contracts and other transactions with any federal  
88 agency.

89 (s) To take title by conveyance or foreclosure to any  
90 project where acquisition is necessary to protect any  
91 loan previously made by the authority and to sell, by  
92 public or private sale, transfer, lease or convey such  
93 project to any enterprise.

94 (t) To participate in any reorganization proceeding  
95 pending pursuant to the United States Code (being the  
96 act of Congress establishing a uniform system of  
97 bankruptcy throughout the United States, as amended)  
98 or in any receivership proceeding in a state or federal

99 court for the reorganization or liquidation of an  
100 enterprise. The authority may file its claim against  
101 any such enterprise in any of the foregoing proceed-  
102 ings, vote upon any questions pending therein which  
103 requires the approval of the creditors participating in  
104 any reorganization proceeding or receivership,  
105 exchange any evidence of such indebtedness for any  
106 property, security or evidence of indebtedness offered  
107 as a part of the reorganization of such enterprise or of  
108 any other entity formed to acquire the assets thereof  
109 and may compromise or reduce the amount of any  
110 indebtedness owing to it as a part of any such  
111 reorganization.

112 (u) To acquire, construct, maintain, improve, repair,  
113 replace and operate projects within this state, as well  
114 as streets, roads, alleys, sidewalks, crosswalks and  
115 other means of ingress and egress to and from projects  
116 located within this state.

117 (v) To acquire, construct, maintain, improve, repair  
118 and replace and operate pipelines, electric transmis-  
119 sion lines, waterlines, sewer lines, electric power  
120 substations, waterworks systems, sewage treatment  
121 and disposal facilities and any combinations thereof for  
122 the use and benefit of any enterprise located within  
123 this state.

124 (w) To acquire watersheds, water and riparian  
125 rights, rights-of-way, easements, licenses and any and  
126 all other property, property rights and appurtenances  
127 for the use and benefit of any enterprise located  
128 within this state.

129 (x) To acquire, by purchase, lease, donation or  
130 eminent domain, any real or personal property, or any  
131 right or interest therein, as may be necessary or  
132 convenient to carry out the purposes of the authority.  
133 Title to all property, property rights and interests  
134 acquired by the authority shall be taken in the name  
135 of the authority.

136 (y) To issue renewal notes, or security interests, to  
137 issue bonds to pay notes or security interests and,  
138 whenever it deems refunding expedient, to refund any

139 bonds or notes by the issuance of new bonds or notes,  
140 whether the bonds or notes to be refunded have or  
141 have not matured and whether or not the authority  
142 originally issued the bonds or notes to be refunded.

143 (z) To apply the proceeds from the sale of renewal  
144 notes, security interests or refunding bonds or notes to  
145 the purchase, redemption or payment of the notes,  
146 security interests or bonds or notes to be refunded.

147 (aa) To accept gifts or grants of property, funds,  
148 security interests, money, materials, labor, supplies or  
149 services from the United States of America or from  
150 any governmental unit or any person, firm or corpo-  
151 ration, and to carry out the terms or provisions of, or  
152 make agreements with respect to, or pledge, any gifts  
153 or grants, and to do any and all things necessary,  
154 useful, desirable or convenient in connection with the  
155 procuring, acceptance or disposition of gifts or grants.

156 (bb) To the extent permitted under its contracts  
157 with the holders of bonds, security interests or notes  
158 of the authority, to consent to any modification of the  
159 rate of interest, time of payment of any installment of  
160 principal or interest, security or any other term of any  
161 bond, security interests, note or contract or agreement  
162 of any kind to which the authority is a party.

163 (cc) To sell loans, security interests or other obliga-  
164 tions in the loan portfolio of the authority. Such  
165 security interests shall be evidenced by instruments  
166 issued by the authority. Proceeds from the sale of  
167 loans, security interests, or other obligations may be  
168 used in the same manner and for the same purposes  
169 as bond and note revenues.

170 (dd) To procure insurance against any losses in  
171 connection with its property, operations or assets in  
172 such amounts and from such insurers as the authority  
173 deems desirable.

174 (ee) To sell, license, lease, mortgage, assign, pledge  
175 or donate its property, both real and personal, or any  
176 right or interest therein to another or authorize the  
177 possession, occupancy or use of such property or any

178 right or interest therein by another, in such manner  
179 and upon such terms as it deems appropriate.

180 (ff) To participate with the state and federal agencies  
181 in efforts to promote the expansion of commercial and  
182 industrial development in this state.

183 (gg) To finance, organize, conduct, sponsor, partici-  
184 pate and assist in the conduct of special institutes,  
185 conferences, demonstrations and studies relating to the  
186 stimulation and formation of business, industry and  
187 trade endeavors.

188 (hh) To conduct, finance and participate in techno-  
189 logical, business, financial and other studies related to  
190 business and economic development.

191 (ii) To conduct, sponsor, finance, participate and  
192 assist in the preparation of business plans, financing  
193 plans and other proposals of new or established  
194 businesses suitable for support by the authority.

195 (jj) To prepare, publish and distribute, with or  
196 without charge as the authority may determine, such  
197 technical studies, reports, bulletins and other materials  
198 as it deems appropriate, subject only to the mainte-  
199 nance and respect for confidentiality of client propri-  
200 etary information.

201 (kk) To exercise such other and additional powers as  
202 may be necessary or appropriate for the exercise of  
203 the powers herein conferred.

204 (ll) To exercise all of the powers which a corporation  
205 may lawfully exercise under the laws of this state.

206 (mm) To contract for the provision of legal services  
207 by private counsel, and notwithstanding the provisions  
208 of article three, chapter five, such counsel may, but is  
209 not limited to, represent the authority in court,  
210 negotiate contracts and other agreements on behalf of  
211 the authority, render advice to the authority on any  
212 matter relating thereto, prepare contracts and other  
213 agreements, and provide such other legal services as  
214 may be requested by the authority.

215 (nn) To develop, maintain, operate and apply for the



216 establishment of foreign trade zones pursuant to and  
217 in accordance with all applicable provisions of federal  
218 law.

**§31-15-7. Loans to industrial development agencies or  
enterprises for projects.**

1 (a) When it has determined upon application of an  
2 industrial development agency or an enterprise that  
3 the establishment or acquisition of a particular project  
4 has accomplished or will accomplish the public pur-  
5 poses of this article, the authority may contract to loan  
6 such agency or enterprise up to one hundred percent  
7 of the estimated cost of such project from any or all of  
8 the following sources:

9 (1) The proceeds of bonds or notes issued by the  
10 authority pursuant to this article;

11 (2) Moneys in the fund available to make loans; or

12 (3) The investment in such loans by the board of  
13 investments through the consolidated fund of the state  
14 as provided in this article.

15 (b) Loans made under subsection (a) of this section  
16 shall be subject to the following conditions:

17 (1) If the authority is providing less than one  
18 hundred percent financing for the project, the author-  
19 ity shall determine that other sources of funds will be  
20 available to complete the project;

21 (2) The loan shall contain such terms and conditions  
22 as the authority deems appropriate, which terms and  
23 conditions shall be set forth in a resolution adopted by  
24 the board in accordance with the provisions of section  
25 ten of this article;

26 (3) The authority may, in its discretion, include  
27 within the terms of a loan minimum project operating  
28 periods, liquidated damage provisions for cessation of  
29 operations prior to the end of the loan period, loan  
30 acceleration provisions, project equipment purchase  
31 options in the event of early closure and other provi-  
32 sions to protect the jobs intended to be created by the  
33 project;

34 (4) The industrial development agency or enterprise  
35 shall pay such loan fees as may be prescribed by the  
36 authority from time to time pursuant to the provisions  
37 of this article.

38 Money loaned by the authority to an industrial  
39 development agency or enterprise pursuant to subdivi-  
40 sions (2) and (3), subsection (a) of this section seven  
41 shall be withdrawn from the fund and paid over to the  
42 agency or enterprise in such manner as shall be  
43 determined by the authority, and the authority shall  
44 deposit all payments of interest on such loans and the  
45 principal thereof in the fund.

**§31-15-8. Insurance fund.**

1 (a) There is hereby created an insurance fund which  
2 shall be a continuing, nonlapsing, revolving fund that  
3 consists of:

4 (1) Moneys appropriated by the state to the insur-  
5 ance fund;

6 (2) Premiums, fees, and any other amounts received  
7 by the authority with respect to financial assistance  
8 provided by the authority from the insurance fund;

9 (3) Upon the satisfaction of any indebtedness or  
10 other obligation owed on any property held or  
11 acquired by the authority, such proceeds as designated  
12 by the authority from the sale, lease, or other dispo-  
13 sition of such property;

14 (4) Income from investments made from moneys in  
15 the insurance fund; and

16 (5) Any other moneys transferred to the insurance  
17 fund or made available to it for the purposes described  
18 under this section, under this article or pursuant to  
19 any other provisions of this code.

20 Subject to the provisions of any outstanding insur-  
21 ance agreements entered into by the authority under  
22 this section, the authority may enter into covenants or  
23 agreements with respect to the insurance fund, and  
24 establish accounts within the insurance fund which  
25 may be used to implement the purposes of this article.

26 If the authority elects to establish separate accounts  
27 within the insurance fund, the authority may allocate  
28 its revenues and receipts among the respective  
29 accounts in any manner the authority considers  
30 appropriate.

31 If the authority at any time finds that more money  
32 is needed to keep the reserves of the insurance fund  
33 at an adequate level, the authority, with the consent of  
34 the chairman, shall send a written request to the  
35 Legislature for additional funds.

36 (b) The insurance fund shall be used for the follow-  
37 ing purposes by the authority to financially assist  
38 projects so long as such financial assistance will, as  
39 determined by the authority, fulfill the public pur-  
40 poses of this article:

41 (1) To insure the payment or repayment of all or  
42 any part of the principal of, redemption or prepay-  
43 ment premiums or penalties on, and interest on bonds  
44 or notes whether issued under the provisions of this  
45 article or under the Industrial Development and  
46 Commercial Development Bond Act, the West Virginia  
47 Hospital Finance Authority Act or, with respect to  
48 health care facilities only, article thirty-three, chapter  
49 eight of this code;

50 (2) To insure the payment or repayment of all or  
51 any part of the principal of, redemption or prepay-  
52 ment premiums or penalties on, and interest on any  
53 instrument executed, obtained, or delivered in connec-  
54 tion with the issuance and sale of bonds or notes  
55 whether under the provisions of this article or under  
56 the Industrial Development and Commercial Develop-  
57 ment Bond Act, the West Virginia Hospital Finance  
58 Authority Act or, with respect to health care facilities  
59 only, article thirty-three, chapter eight of this code;

60 (3) To insure the payment or repayment of all or  
61 any part of the principal of, prepayment premiums or  
62 penalties on, and interest on any form of debt instru-  
63 ment entered into by an enterprise, public body or  
64 authority of the state with a financial institution,  
65 including, but not limited to, banks, insurance compa-

66 nies and other institutions in the business of lending  
67 money, which debt instruments shall include, but not  
68 be limited to, instruments relating to loans for work-  
69 ing capital and to the refinancing of existing debt:  
70 *Provided*, That nothing contained in this subsection or  
71 any other provision of this article shall be construed as  
72 permitting the authority to insure the refinancing of  
73 existing debt except when such insurance will result  
74 in the expansion of the enterprise whose debt is to be  
75 refinanced or in the creation of new jobs;

76 (4) To pay or insure the payment of any fees or  
77 premiums necessary to obtain insurance, guarantees,  
78 letters of credit or other credit support from any  
79 person or financial institution in connection with  
80 financial assistance provided by the authority under  
81 this section; and

82 (5) To pay any and all expenses of the authority,  
83 including, but not limited to:

84 (i) Any and all expenses for administrative, legal,  
85 actuarial, and other services related to the operation of  
86 the insurance fund; and

87 (ii) All costs, charges, fees, and expenses of the  
88 authority related to the authorizing, preparing, print-  
89 ing, selling, issuing, and insuring of bonds or notes  
90 (including, by way of example, bonds or notes, the  
91 proceeds of which are used to refund outstanding  
92 bonds or notes) and the funding of reserves.

93 (c) The total aggregate amount of insurance from  
94 the insurance fund with respect to the insured por-  
95 tions of principal of bonds or notes or other instru-  
96 ments may not exceed at any time an amount equal to  
97 five times the balance in the insurance fund.

98 (d) The authority may, in its sole and absolute  
99 discretion, set the premiums and fees to be paid to it  
100 for providing financial assistance under this section.  
101 The premiums and fees set by the authority shall be  
102 payable in the amounts, at the time, and in the  
103 manner that the authority, in its sole and absolute  
104 discretion, requires. The premiums and fees need not

105 be uniform among transactions, and may vary in  
106 amount: (1) Among transactions, and (2) at different  
107 stages during the terms of transactions.

108 (e) The authority may, in its sole and absolute  
109 discretion, require the security it believes sufficient in  
110 connection with its insuring of the payment or repay-  
111 ment of any bonds, notes, debt or other instruments  
112 described in subdivisions one, two, three and four,  
113 subsection (b) of this section.

114 (f) The authority may itself approve the form of any  
115 insurance agreement entered into under this section  
116 or may authorize the chairman or his designee to  
117 approve the form of any such agreement. Any pay-  
118 ment by the authority under an agreement entered  
119 into by the authority under this section shall be made  
120 at the time and in the manner that the authority, in  
121 its sole and absolute discretion, determines.

122 (g) The obligations of the authority under any  
123 insurance agreement entered into pursuant to this  
124 article shall not constitute a debt or a pledge of the  
125 faith and credit or taxing powers of this state or of any  
126 county, municipality or any political subdivision of this  
127 state for the payment of any amount due thereunder  
128 or pursuant thereto, but the obligations evidenced by  
129 such insurance agreement shall be payable solely from  
130 the funds pledged for their payment. All such insur-  
131 ance agreements shall contain on the face thereof a  
132 statement to the effect that such agreements and the  
133 obligations evidenced thereby, are not debts of the  
134 state or any county, municipality or political subdivi-  
135 sion thereof but are payable solely from funds pledged  
136 for their payment.

**§31-15-9. Bonds and notes issued pursuant to this article.**

1 (a) The authority may issue its bonds or notes to  
2 fulfill the purposes set forth in this article.

3 (b) The authority may issue renewal notes to pay  
4 notes and, if it considers refunding expedient, may  
5 refund or refund in advance, bonds or notes, whether  
6 or not originally issued by the authority, by the  
7 issuance of new bonds or notes.

8 (c) Except as may otherwise be expressly provided  
 9 by the authority, every issue of its notes or bonds shall  
 10 be special obligations of the authority, payable solely  
 11 from the property, revenues or other sources of or  
 12 available to the authority pledged therefor.

13 (d) The bonds and the notes shall be authorized by  
 14 the authority pursuant to section ten of this article,  
 15 and shall be secured, be in such denominations, may  
 16 bear interest at such rate or rates, be in such form,  
 17 either coupon or registered, carry such registration  
 18 privileges, be payable in such medium of payment and  
 19 at such place or places and such time or times and be  
 20 subject to such terms of redemption as the authority  
 21 may authorize. The bonds and notes of the authority  
 22 may be sold by the authority, at public or private sale,  
 23 at or not less than the price the authority determines.  
 24 The bonds and notes shall be executed by manual or  
 25 facsimile signature by the chairman of the board, and  
 26 the official seal of the authority or a facsimile thereof  
 27 shall be affixed to or printed on each bond and note  
 28 and attested, manually or by facsimile signature, by  
 29 the secretary of the board, and any coupons attached  
 30 to any bond or note shall bear the manual or facsimile  
 31 signature of the chairman of the board. In case any  
 32 officer whose signature, or a facsimile of whose  
 33 signature, appears on any bonds, notes or coupons  
 34 ceases to be such officer before delivery of such bonds  
 35 or notes, such signature or facsimile is nevertheless  
 36 sufficient for all purposes the same as if he had  
 37 remained in office until such delivery; and, in case the  
 38 seal of the authority has been changed after a facsim-  
 39 ile has been imprinted on such bonds or notes, such  
 40 facsimile seal will continue to be sufficient for all  
 41 purposes.

**§31-15-10. Approval by authority.**

1 (a) To implement the powers and authority con-  
 2 ferred upon it by this article, the board of the author-  
 3 ity may adopt a resolution pursuant to which it shall:

- 4 (1) Specify and describe the project;
- 5 (2) Generally describe the public purpose to be

6 served and the financing transaction to be accom-  
7 plished under this article;

8 (3) Specify the maximum principal amount of any  
9 bonds or notes to be issued by the authority, the  
10 maximum principal amount of the loan, and the  
11 amount of insurance, if any, to be provided by the  
12 authority; and

13 (4) Impose any terms or conditions on the issuance  
14 of notes or bonds, the making of a loan or the provi-  
15 sion of insurance that the authority deems appropriate.

16 (b) The board of the authority may, by resolution, or  
17 may delegate to the chairman or other designee the  
18 authority to, specify, prescribe, determine, provide for  
19 and approve such matters, details, forms, documents  
20 or procedures as the authority deems appropriate to  
21 the making of a loan, the authorization, sale, issuance,  
22 security, delivery, or payment of or for bonds or notes,  
23 or the authority's insurance of bonds, notes, loans or  
24 other instruments, including, without limitation, the  
25 rate or rates of interest and any security for the loan  
26 or insurance.

27 (c) The resolution adopted pursuant to this section is  
28 administrative in nature, is not subject to procedures  
29 required for legislative acts, and is not subject to  
30 referendum.

31 (d) In any suit, action, or proceeding involving the  
32 validity or enforceability of any bonds or notes issued,  
33 loan made, or insurance extended by the authority  
34 under this article or any security therefor, any finding  
35 by the authority as to the public purpose of any  
36 actions taken under this article and the appropriate-  
37 ness of those actions to serve the public purpose shall  
38 be conclusive.

39 (e) Any resolution authorizing the issuance of bonds  
40 or notes shall provide that such bonds or notes shall  
41 contain a recital that they are issued pursuant to this  
42 article, which recital shall be conclusive evidence of  
43 their validity and of the regularity of their issuance.



**§31-15-11. Trustee for bondholders; contents of trust agreement; pledge or assignment of revenues.**

1 For bonds or notes issued pursuant to the provisions  
2 of this article, in the discretion of the authority, any  
3 bonds or notes, including refunding bonds or notes  
4 issued by the authority, may be secured by a trust  
5 agreement between the authority and a corporate  
6 trustee, which trustee may be any bank or trust  
7 company within or without the state. Any such trust  
8 agreement may contain such binding covenants with  
9 the holders of such bonds or notes as to any matter or  
10 provisions as are deemed necessary or advisable to the  
11 authority to enhance the marketability and security of  
12 such bonds or notes and may also contain such other  
13 provisions with respect thereto as the authority may  
14 authorize and approve. Any resolution adopted by the  
15 authority or any trust agreement may contain a pledge  
16 or assignment of revenues to be received in connection  
17 with the financing.

**§31-15-12. Use of funds by authority; restrictions thereon relating to projects.**

1 All moneys, properties and assets acquired by the  
2 authority, whether as proceeds from the sale of bonds  
3 or notes or as revenues or otherwise, shall be held by  
4 it in trust for the purposes of carrying out its powers  
5 and duties and shall be used and reused in accordance  
6 with the purposes and provisions of this article. Such  
7 moneys shall at no time be commingled with other  
8 public funds. Such moneys, except as otherwise  
9 provided in any resolution authorizing the issuance of  
10 bonds or notes or in any trust agreement securing the  
11 same, or except when invested pursuant to this article,  
12 shall be kept in appropriate depositories and secured  
13 as provided and required by law. The resolution  
14 authorizing the issuance of such bonds or notes of any  
15 issue or the trust agreement securing such bonds or  
16 notes shall provide that any officer to whom, or any  
17 banking institution or trust company to which, such  
18 moneys are paid, shall act as trustee of such moneys  
19 and hold and apply them for the purposes hereof,

20 subject to the conditions this article and such  
21 resolution or trust agreement provide.

**§31-15-13. Refunding bonds or notes.**

1 Any bonds or notes issued by the authority or any  
2 other public body or authority of the state pursuant to  
3 the provisions of this article or any other provision of  
4 this code and at any time outstanding may at any time  
5 and from time to time be refunded by the authority by  
6 the issuance of its refunding bonds or notes in such  
7 amount as it may deem necessary to refund the  
8 principal of the bonds or notes so to be refunded,  
9 together with any unpaid interest thereon; to provide  
10 additional funds for the purposes of the authority; and  
11 to pay any premiums and commissions necessary to be  
12 paid in connection therewith. Any such refunding may  
13 be effected whether the bonds or notes to be refunded  
14 shall have then matured or shall thereafter mature,  
15 either by sale of the refunding bonds or notes and the  
16 application of the proceeds thereof for the redemption  
17 of the bonds or notes to be refunded thereby or by  
18 exchange of the refunding bonds or notes for the  
19 bonds or notes to be refunded thereby. Such refunding  
20 bonds or notes shall be issued in conformance with the  
21 provisions of sections nine and ten of this article.

**§31-15-14. Obligations of authority undertaken pursuant to  
this article not debt of state, county, munic-  
ipality or any political subdivision.**

1 Bonds and notes, including refunding bonds and  
2 notes, issued under the authority of this article and  
3 any coupons in connection therewith, and any other  
4 obligations undertaken by the authority pursuant to  
5 this article, shall not constitute a debt or a pledge of  
6 the faith and credit or taxing power of this state or of  
7 any county, municipality or any other political subdivi-  
8 sion of this state, and the holders and owners thereof  
9 shall have no right to have taxes levied by the  
10 Legislature or the taxing authority of any county,  
11 municipality or any other political subdivision of this  
12 state for the payment of the principal thereof or  
13 interest thereon, but such bonds, notes and other

14 obligations shall be payable solely from revenues and  
 15 funds pledged for their payment as authorized by this  
 16 article unless the notes are issued in anticipation of  
 17 the issuance of bonds or the notes are refunded by  
 18 refunding bonds issued under the authority of this  
 19 article, which bonds or refunding bonds shall be  
 20 payable solely from revenues and funds pledged for  
 21 their payment as authorized by this article. All such  
 22 bonds and notes, and all documents evidencing any  
 23 other obligation, shall contain on the face thereof a  
 24 statement to the effect that the bonds, notes or such  
 25 other obligation as to both principal and interest, are  
 26 not debts of the state or any county, municipality or  
 27 political subdivision thereof, but are payable solely  
 28 from revenues and funds pledged for their payment.

**§31-15-15. Negotiability of bonds and notes issued pursuant to this article.**

1 Whether or not the bonds or notes issued pursuant  
 2 to this article are of such form or character as to be  
 3 negotiable instruments under the Uniform Commer-  
 4 cial Code, such bonds or notes are negotiable instru-  
 5 ments within the meaning of and for all the purposes  
 6 of the Uniform Commercial Code, subject only to the  
 7 provisions of the bonds or notes for registration.

**§31-15-16. Bonds and notes issued pursuant to this article; legal investments.**

1 The provisions of sections nine and ten, article six,  
 2 chapter twelve of this code to the contrary notwith-  
 3 standing, the bonds and notes issued pursuant to the  
 4 provisions of this article are securities in which all  
 5 public officers and bodies of this state, including the  
 6 West Virginia state board of investments, all munici-  
 7 palities and other political subdivisions of this state, all  
 8 insurance companies and associations and other per-  
 9 sons carrying on an insurance business, including  
 10 domestic for life and domestic not for life insurance  
 11 companies, all banks, trust companies, societies for  
 12 savings, building and loan associations, savings and  
 13 loan associations, deposit guarantee associations and  
 14 investment companies, all administrators, guardians,

15 executors, trustees and other fiduciaries and all other  
16 persons whatsoever who are authorized to invest in  
17 bonds or other obligations of the state may properly  
18 and legally invest funds, including capital, in their  
19 control or belonging to them.

**§31-15-17. Exemption from taxation.**

1 The exercise of the powers granted to the authority  
2 by this article will be in all respects for the benefit of  
3 the people of the state for the improvement of their  
4 health, safety, convenience and welfare and is a public  
5 purpose. As the operation and maintenance of projects  
6 financed under this article will constitute the perfor-  
7 mance of essential governmental functions, the  
8 authority shall not be required to pay any taxes or  
9 assessments upon any property acquired or used by  
10 the authority or upon the income therefrom. All bonds  
11 and notes of the authority, and all interest and income  
12 thereon, shall be exempt from all taxation by this state  
13 and any county, municipality, political subdivision or  
14 agency thereof, except inheritance taxes.

**§31-15-18. Personal liability; persons executing bonds or  
notes issued pursuant to this article.**

1 Neither the members or officers of the authority or  
2 of any authority, agency or office, nor any person  
3 executing the bonds or notes issued pursuant to the  
4 provisions of this article, shall be liable personally on  
5 such bonds or notes or be subject to any personal  
6 liability or accountability by reason of the issuance  
7 thereof.

**§31-15-19. Cumulative authority as to powers conferred;  
applicability of other statutes and charters;  
bonds and notes issued pursuant to this  
article.**

1 The provisions of this article relating to the making  
2 of loans and to the issuance of bonds and notes shall  
3 be construed as granting cumulative authority for the  
4 exercise of the various powers herein conferred, and  
5 neither the powers nor any bonds or notes issued  
6 hereunder shall be affected or limited by any other

7 statutory or charter provision now or hereafter in  
 8 force, other than as may be provided in this article, it  
 9 being the purpose and intention of this article to  
 10 create full, separate and complete additional powers.  
 11 The various powers conferred herein may be exer-  
 12 cised independently and notwithstanding that no  
 13 bonds or notes are issued hereunder.

**§31-15-20. Authority of the board of investments.**

1 The board of investments shall, under the provisions  
 2 of this article, invest moneys, securities and other  
 3 assets of the special account for the common invest-  
 4 ment of state funds designated as the state account  
 5 within the special investment fund designated as the  
 6 consolidated fund established under the provisions of  
 7 subsection (b), section eight, article six, chapter twelve  
 8 of this code as a revolving loan fund with the author-  
 9 ity, to enable the authority to make loans approved by  
 10 the authority and to be funded from such consolidated  
 11 fund in an amount which shall not at anytime exceed  
 12 one hundred fifty million dollars in the aggregate  
 13 principal amount outstanding. With respect to loans  
 14 funded under this article through the consolidated  
 15 fund of the state, such loans shall be made in the  
 16 name of the consolidated fund by the authority.

**§31-15-21. Loan and insurance application requirements.**

1 Prior to the loaning of any funds to an industrial  
 2 development agency or an enterprise for a project or  
 3 the insuring of any bonds, notes, loans or other  
 4 instruments pursuant to section eight of this article,  
 5 the authority shall receive from such agency or  
 6 enterprise an application in such form as adopted by  
 7 the authority for either the loan or the insurance.

**§31-15-22. Documentary materials concerning trade secrets;  
 commercial or financial information; or  
 confidentiality.**

1 Any documentary material or data made or received  
 2 by the authority for the purpose of furnishing assis-  
 3 tance to a business, to the extent that such material or  
 4 data consists of trade secrets or commercial or finan-

5 cial information regarding the financial position or  
6 business operation of such business, shall not be  
7 considered public records and shall be exempt from  
8 disclosure pursuant to the provisions of chapter  
9 twenty-nine-b of this code. Any discussion or consider-  
10 ation of such trade secrets or commercial or financial  
11 information may be held by the authority in executive  
12 session closed to the public, notwithstanding the  
13 provisions of article nine-a, chapter six of this code:  
14 *Provided*, That the authority shall make publicly  
15 available the following information regarding executed  
16 loans or its provision of insurance: (1) The name of the  
17 debtor, (2) location(s) of the project, (3) amount of the  
18 authority loan or financial assistance provided by the  
19 insurance fund, (4) the purpose of the loan or financial  
20 assistance, (5) the term, rate and interest of the loan,  
21 and (6) the fixed assets which serve as security for the  
22 loan or insurance provided.

**§31-15-23. Economic development fund.**

1 The economic development fund, to which shall be  
2 credited any appropriation made by the Legislature to  
3 the authority, any funds which the authority is  
4 authorized to receive under any provision of this code,  
5 other funds which the board directs to be deposited  
6 into the fund, and such other deposits as are provided  
7 for in this section, is hereby continued in the state  
8 treasury as a special account.

9 The authority may requisition from the fund such  
10 amounts as are necessary to provide for the payment  
11 of the administrative expenses of this article. Notwith-  
12 standing any other provision of this article, whenever  
13 the authority determines it to be necessary to pur-  
14 chase at a foreclosure sale any project pursuant to  
15 subdivision (t), section six of this article, it may  
16 requisition from the fund such amount as is necessary  
17 to pay the purchase price thereof.

18 The authority shall requisition from the fund such  
19 amounts as are allocated and appropriated for loans to  
20 industrial development agencies or enterprises for  
21 projects. As loans to industrial development agencies

22 or enterprises are repaid to the authority pursuant to  
23 the terms of mortgages and other agreements, the  
24 authority shall pay such amounts into the fund,  
25 consistent with the intent of this article that the fund  
26 shall operate as a revolving fund whereby all appro-  
27 priations and payments made thereto may be applied  
28 and reapplied for the purposes of this article.  
29 Revenues deposited into the fund may be used to  
30 make payments of interest and principal and may be  
31 pledged as security for bonds, security interests or  
32 notes issued by the authority pursuant to this article.

33 Whenever the authority determines that the balance  
34 in the fund is in excess of the immediate requirements  
35 for loans, it may request that such excess be invested  
36 until needed for loan purposes, in which case such  
37 excess shall be invested in a manner consistent with  
38 the investment of other temporary state funds. Inter-  
39 est earned on any money invested pursuant to this  
40 section shall be credited to the fund.

41 If the authority determines that funds held in the  
42 fund are in excess of the amount needed to carry out  
43 the purposes of this article, it may take such action as  
44 is necessary to release such excess and transfer it to  
45 the general fund of the state treasury.

**§31-15-24. Transfer of state property to the authority.**

1 The governor is authorized to provide for the  
2 transfer to the authority of the use, possession and  
3 control of such real or personal property of the state  
4 as he may from time to time deem useful to the  
5 authority in the conduct of its activities as authorized  
6 by this article.

**§31-15-25. Validity of any pledge, mortgage, deed of trust or security instrument.**

1 It is the intention hereof that any pledge, mortgage,  
2 deed of trust or security instrument made by or for  
3 the benefit of the authority shall be valid and binding  
4 between the parties from the time the pledge, mort-  
5 gage, deed of trust or security instrument is made; and  
6 that the moneys or property so pledged, encumbered,



7 mortgaged or entrusted shall immediately be subject  
8 to the lien of such pledge, mortgage, deed of trust or  
9 security instrument without any physical delivery  
10 thereof or further act.

**§31-15-26. Money of the authority.**

1 All money accruing to the authority from whatever  
2 source derived, except legislative appropriations, shall  
3 be collected and received by the treasurer of the  
4 authority, who shall pay it into the state treasury in  
5 the manner required by section two, article two,  
6 chapter twelve of this code, which shall be credited to  
7 the appropriate fund of the authority.

**§31-15-27. Conflict of interest; when contracts void.**

1 No member, officer or employee of the authority  
2 shall either directly or indirectly be a party to or  
3 interested in any manner in any contract or agree-  
4 ment with the authority whereby liability or indebted-  
5 ness against or to the authority is in any manner  
6 created. Any contract or agreement made in violation  
7 of the provisions of this section shall be void and no  
8 action thereon shall be maintained against the  
9 authority.

**§31-15-28. Agreement with federal agencies not to alter or limit powers of authority.**

1 The state hereby pledges to and agrees with each  
2 federal agency that, if such agency constructs or loans  
3 or contributes any funds for any project, the state will  
4 not alter or limit the rights and powers of the author-  
5 ity in any manner which would be inconsistent with  
6 the due performance of any agreement between the  
7 authority and such federal agency and that the author-  
8 ity shall continue to have and exercise all powers  
9 granted for carrying out the purposes of this article for  
10 so long as necessary.

**§31-15-29. Audits.**

1 As soon as possible after the close of each fiscal year,  
2 the authority shall make an annual report of its  
3 activities for the preceding fiscal year to the governor

4 and the Legislature. Each such report shall set forth a  
5 complete operating and financial statement covering  
6 the authority's operations during the preceding fiscal  
7 year. The authority shall cause an audit of its books  
8 and accounts to be made at least once each fiscal year  
9 by certified public accountants and the cost thereof  
10 may be treated as a part of the cost of construction or  
11 of operations of its projects.

**§31-15-30. Projects not to be considered public improvements.**

1 No project, enterprise or business facility which  
2 conducts as its primary activity a manufacturing  
3 process or other non-governmental or non-public  
4 activity may be deemed to be a "public improvement"  
5 within the meaning of the provisions of article five-a,  
6 chapter twenty-one of this code.

**§31-15-31. Foreign trade zones; authority approval.**

1 Any public corporation located in the state is hereby  
2 authorized to apply for, develop, maintain and operate  
3 a foreign trade zone in the state pursuant to and in  
4 accordance with all applicable provisions of federal  
5 law: *Provided*, That any public corporation desiring to  
6 apply for or develop a foreign trade zone must first  
7 receive the approval of the authority.

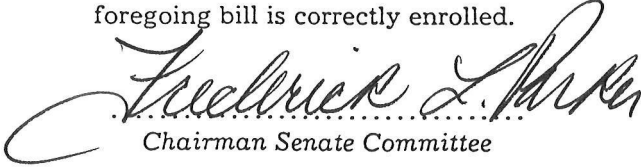
**§31-15-32. Severability.**

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

**§31-15-33. Construction.**

1 The provisions of this article are remedial and shall  
2 be liberally construed and applied so as to promote the  
3 purposes set out in section three of this article.

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

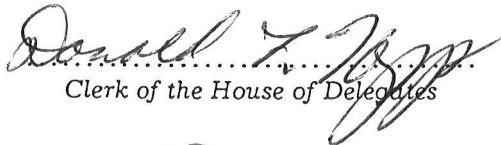
  
.....  
Chairman Senate Committee

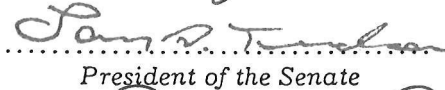
  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

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

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

Date 4/25/89

Time 2:16