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
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 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.


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
in some areas of the state, unemployment is a serious
problem and has been for so long a period of time that,
without remedial measures, it may become so in other
areas of the state; (c) that economic insecurity due to
unemployment is a serious menace to the health,
safety, morals and general welfare of the people of the
entire state; (d) that widespread industry unemploy-
ment produces indigency which falls with crushing
force upon all unemployed workers and ultimately
upon the state in the form of welfare and unemploy-
ment compensation; (e) that the absence of employ-
ment and business opportunities for youth is a serious
threat to the strength and permanence of their faith in
our American political and economic institutions and
the philosophy of freedom on which those institutions
are based; (f) that lack of employment and business
opportunities has resulted in thousands of workers and
their families leaving the state to find such opportuni-
ties elsewhere, and that this exodus has adversely
affected the tax base of counties and municipalities
resulting in an impairment of their financial ability to
support education and other local government serv-
ices; (g) that security against unemployment and the
spread of indigency and economic stagnation can best
be provided by the promotion, attraction, stimulation,
rehabilitation and revitalization of commerce, tourism,
industry and manufacturing; (h) that the present and
future health, safety, morals, right to gainful employ-
ment and general welfare of the people of the state
require as a public purpose the promotion and devel-
opment of new and expanded coal and other energy
production, industrial, commercial, tourist and manu-
facturing enterprises within this state; (i) that the
means and measures being authorized for the financ-
ing of projects, including the insuring of loans or other
debt issued for working capital or the refinancing of
existing debt of an enterprise, are, as a matter of
public policy, for the public purposes of the several
counties, municipalities and the state; (j) that the
device under which private community industrial
development organizations in the state acquire or
build industrial buildings or sites and equip the same
with funds raised through popular subscription, loans
or otherwise for lease and sale to new or expanding
industries has proven effective in creating new
employment and business opportunities locally, is in
accord with the American tradition of community
initiative and enterprise, and requires and deserves
encouragement and support from the state, as a means
toward alleviation of unemployment and economic
distress; (k) that community industrial development
corporations in the state have invested substantial
funds in successful coal production, industrial projects
and are experiencing difficulty in undertaking addi-
tional projects by reason of the partial inadequacy of
their own funds potentially available from local
subscription sources and by reason of limitations of
local financial institutions in providing additional and
sufficiently sizable first deed of trust or mortgage
loans or letters of credit and other forms of credit
enhancement; (l) that an urgent need exists to stimu-
late a larger flow of private investment funds from
banks, investment houses, insurance companies and
other financial institutions into projects; (m) that by
increasing the number of projects presenting attrac-
tive opportunities for private investment, a larger
portion of the private capital available in this state for
investment can be put to use for the general economic
development of the state; (n) that the availability of
financial assistance through the creation of an insur-
ance fund will promote the economic development of
the state; and that it is in the public interest, in order
to address the needs aforesaid, that a state instrumen-
tality be created as a public body corporate with full
powers to accept grants, gifts and appropriations, to
generate revenues, to borrow money and issue its
bonds, notes, commercial paper, other debt instru-
ments and security interests to the end that funds
obtained thereby may be used to furnish money and
credit to approved industrial development agencies or
enterprises or to promote the establishment of new
projects or to retain existing projects.

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 West Virginia industry and jobs development corporation and is hereby vested with all right, title and interest of such corporation in and to all property, rights and choses in action heretofore owned by or vested in such corporation, including, but not limited to, its loan portfolio, and shall assume all debts, liabilities and other obligations, if any, of such corporation. As of the effective date of this legislation, such corporation shall cease to exist and all rights and interests heretofore vested in such corporation shall be vested in the authority.

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


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

3 (a) “Authority” means the West Virginia economic development authority.

5 (b) “Board” means the governing body of the authority.

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

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

14 (e) “Business plan” means a document detailing the sales, production and distribution plans of an enter-
prise, together with the expenditures necessary to
carry out those plans (including budget and cash flow
projections) on an annual basis, and an employment
plan setting forth steps to be taken by the enterprise
to retain jobs or reduce unemployment in this state.

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

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

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

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

(j) "Financing plan" means a plan designed to meet
the financing needs of an enterprise as reflected in the
business plan.
(k) "Fund" means the economic development fund provided for in section twenty-three of this article.

(l) "Government" means state and federal government, and any political subdivision, agency or instrumentality thereof, corporate or otherwise.

(m) "Industrial development agency" means any incorporated organization, foundation, association or agency to whose members or shareholders no profit inures, which has as its primary function the promotion, encouragement and development of industrial, commercial, manufacturing and tourist enterprises or projects in this state.

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

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

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

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

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

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

(t) "Security interest" means an interest in the loan
portfolio of the authority which interest is secured by
an underlying loan or loans and is evidenced by a note
issued by the authority.

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

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

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

17 Upon the effective date of this legislation, the
governor shall forthwith appoint seven members of
the board for staggered terms. The terms of the board
members first taking office on or after the effective
date of this legislation shall expire as designated by the
governor at the time of the nomination, two at the end
of the first year, two at the end of the second year, two
at the end of the third year, and one at the end of the
fourth year, after the first day of July, one thousand
nine hundred eighty-nine. As these original appoint-
ments expire, each subsequent appointment shall be
for a full four-year term. Any member whose term
has expired shall serve until his successor has been
duly appointed and qualified. Any person appointed to
fill a vacancy shall serve only for the unexpired term.
Any member shall be eligible for reappointment. The
term of any person serving as a member of the board
immediately preceding the effective date of this legislation shall cease and otherwise expire upon such effective date: Provided, That any such member shall be eligible for reappointment.

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

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

A majority of the members shall constitute a quorum for the purpose of conducting business. Except in the case of a loan or insurance application or unless the bylaws require a larger number, action may be taken by majority vote of the members present. Approval or rejection of a loan or insurance application shall be made by majority vote of the full membership of the board.

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

The board shall, without regard to the provisions of civil service laws applicable to officers and employees of the state of West Virginia, appoint such managers, assistant managers, officers, employees, attorneys and agents as are necessary for the transaction of its business, fix their compensation, define their duties and provide a system of organization to fix responsibility and promote efficiency. Any appointee of the board may be removed at the discretion of the board. The authority may reimburse any state spending unit for any special expense actually incurred in providing any service or the use of any facility to the authority.
In cases of any vacancy in the office of a member, such vacancy shall be filled by the governor. Any member appointed to fill a vacancy in the board occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

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

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


The authority, as a public corporation and governmental instrumentality exercising public powers of the state, shall have and may exercise all powers necessary or appropriate to carry out the purposes of this article, including the power:

(a) To cooperate with industrial development agencies in efforts to promote the expansion of industrial, commercial, manufacturing and tourist activity in this state.

(b) To determine, upon the proper application of an industrial development agency or an enterprise, whether the declared public purposes of this article have been or will be accomplished by the establishment by such agency or enterprise of a project in this state.

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

(d) To issue subpoenas requiring the attendance of
witnesses and the production of books and papers
relevant to any hearing before such authority or one
or more members appointed by it to conduct any
hearing.

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

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

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

(h) To finance any projects by making loans to
industrial development agencies or enterprises upon
such terms as the authority shall deem appropriate:
Provided, That nothing contained in this subsection (h)
or under any other provision in this article shall be
construed as permitting the authority to make loans
for working capital: Provided, however, That nothing
contained in this article shall be construed as prohib-
itng the authority from insuring loans for working
capital made to industrial development agencies or to
enterprises by financial institutions: Provided further,
That nothing contained in this subsection or any other
provision of this article shall be construed as permit-
ting the authority to refinance existing debt except
when such refinancing will result in the expansion of
the enterprise whose debt is to be refinanced or in the
creation of new jobs.

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

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

(k) To borrow money for its purposes and issue
bonds or notes for the money and provide for the
rights of the holders of the bonds or notes or other
negotiable instruments, to secure the bonds or notes
by a deed of trust on, or an assignment or pledge of,
any or all of its property and property of the project,
including any part of the security for loans, and the
authority may issue and sell its bonds and notes, by
public or private sale, in such principal amounts as it
shall deem necessary to provide funds for any pur-
poses under this article, including the making of loans
for the purposes set forth in this article.

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

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

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

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

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

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

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

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

(t) To participate in any reorganization proceeding
pending pursuant to the United States Code (being the
act of Congress establishing a uniform system of
bankruptcy throughout the United States, as amended)
or in any receivership proceeding in a state or federal
court for the reorganization or liquidation of an enterprise. The authority may file its claim against any such enterprise in any of the foregoing proceedings, vote upon any questions pending therein which requires the approval of the creditors participating in any reorganization proceeding or receivership, exchange any evidence of such indebtedness for any property, security or evidence of indebtedness offered as a part of the reorganization of such enterprise or of any other entity formed to acquire the assets thereof and may compromise or reduce the amount of any indebtedness owing to it as a part of any such reorganization.

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

(v) To acquire, construct, maintain, improve, repair and replace and operate pipelines, electric transmission lines, waterlines, sewer lines, electric power substations, waterworks systems, sewage treatment and disposal facilities and any combinations thereof for the use and benefit of any enterprise located within this state.

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

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

(y) To issue renewal notes, or security interests, to issue bonds to pay notes or security interests and, whenever it deems refunding expedient, to refund any
bonds or notes by the issuance of new bonds or notes, whether the bonds or notes to be refunded have or have not matured and whether or not the authority originally issued the bonds or notes to be refunded.

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

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

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

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

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

(ee) To sell, license, lease, mortgage, assign, pledge or donate its property, both real and personal, or any right or interest therein to another or authorize the possession, occupancy or use of such property or any
right or interest therein by another, in such manner
and upon such terms as it deems appropriate.

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

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

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

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

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

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

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

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

(nn) To develop, maintain, operate and apply for the
establishment of foreign trade zones pursuant to and
in accordance with all applicable provisions of federal
law.

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

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

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

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

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

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

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

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

(3) The authority may, in its discretion, include
within the terms of a loan minimum project operating
periods, liquidated damage provisions for cessation of
operations prior to the end of the loan period, loan
acceleration provisions, project equipment purchase
options in the event of early closure and other provi-
sions to protect the jobs intended to be created by the
project;
(4) The industrial development agency or enterprise shall pay such loan fees as may be prescribed by the authority from time to time pursuant to the provisions of this article.

Money loaned by the authority to an industrial development agency or enterprise pursuant to subdivisions (2) and (3), subsection (a) of this section seven shall be withdrawn from the fund and paid over to the agency or enterprise in such manner as shall be determined by the authority, and the authority shall deposit all payments of interest on such loans and the principal thereof in the fund.


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

(1) Moneys appropriated by the state to the insurance fund;

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

(3) Upon the satisfaction of any indebtedness or other obligation owed on any property held or acquired by the authority, such proceeds as designated by the authority from the sale, lease, or other disposition of such property;

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

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

Subject to the provisions of any outstanding insurance agreements entered into by the authority under this section, the authority may enter into covenants or agreements with respect to the insurance fund, and establish accounts within the insurance fund which may be used to implement the purposes of this article.
If the authority elects to establish separate accounts within the insurance fund, the authority may allocate its revenues and receipts among the respective accounts in any manner the authority considers appropriate.

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

(b) The insurance fund shall be used for the following purposes by the authority to financially assist projects so long as such financial assistance will, as determined by the authority, fulfill the public purposes of this article:

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

(2) To insure the payment or repayment of all or any part of the principal of, redemption or prepayment premiums or penalties on, and interest on any instrument executed, obtained, or delivered in connection with the issuance and sale of bonds or notes whether under the provisions of this article or under the Industrial Development and Commercial Development Bond Act, the West Virginia Hospital Finance Authority Act or, with respect to health care facilities only, article thirty-three, chapter eight of this code;

(3) To insure the payment or repayment of all or any part of the principal of, prepayment premiums or penalties on, and interest on any form of debt instrument entered into by an enterprise, public body or authority of the state with a financial institution, including, but not limited to, banks, insurance compa-
nies and other institutions in the business of lending
money, which debt instruments shall include, but not
be limited to, instruments relating to loans for work-
ing capital and to the refinancing of existing debt:
Provided, That nothing contained in this subsection or
any other provision of this article shall be construed as
permitting the authority to insure the refinancing of
existing debt except when such insurance will result
in the expansion of the enterprise whose debt is to be
refinanced or in the creation of new jobs;

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

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

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

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

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

(d) The authority may, in its sole and absolute
discretion, set the premiums and fees to be paid to it
for providing financial assistance under this section.
The premiums and fees set by the authority shall be
payable in the amounts, at the time, and in the
manner that the authority, in its sole and absolute
discretion, requires. The premiums and fees need not
be uniform among transactions, and may vary in amount: (1) Among transactions, and (2) at different stages during the terms of transactions.

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

(f) The authority may itself approve the form of any insurance agreement entered into under this section or may authorize the chairman or his designee to approve the form of any such agreement. Any payment by the authority under an agreement entered into by the authority under this section shall be made at the time and in the manner that the authority, in its sole and absolute discretion, determines.

(g) The obligations of the authority under any insurance agreement entered into pursuant to this article shall not constitute a debt or a pledge of the faith and credit or taxing powers of this state or of any county, municipality or any political subdivision of this state for the payment of any amount due thereunder or pursuant thereto, but the obligations evidenced by such insurance agreement shall be payable solely from the funds pledged for their payment. All such insurance agreements shall contain on the face thereof a statement to the effect that such agreements and the obligations evidenced thereby, are not debts of the state or any county, municipality or political subdivision thereof but are payable solely from funds pledged 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 fulfill the purposes set forth in this article.

3 (b) The authority may issue renewal notes to pay notes and, if it considers refunding expedient, may refund or refund in advance, bonds or notes, whether or not originally issued by the authority, by the issuance of new bonds or notes.
(c) Except as may otherwise be expressly provided by the authority, every issue of its notes or bonds shall be special obligations of the authority, payable solely from the property, revenues or other sources of or available to the authority pledged therefor.

(d) The bonds and the notes shall be authorized by the authority pursuant to section ten of this article, and shall be secured, be in such denominations, may bear interest at such rate or rates, be in such form, either coupon or registered, carry such registration privileges, be payable in such medium of payment and at such place or places and such time or times and be subject to such terms of redemption as the authority may authorize. The bonds and notes of the authority may be sold by the authority, at public or private sale, at or not less than the price the authority determines. The bonds and notes shall be executed by manual or facsimile signature by the chairman of the board, and the official seal of the authority or a facsimile thereof shall be affixed to or printed on each bond and note and attested, manually or by facsimile signature, by the secretary of the board, and any coupons attached to any bond or note shall bear the manual or facsimile signature of the chairman of the board. In case any officer whose signature, or a facsimile of whose signature, appears on any bonds, notes or coupons ceases to be such officer before delivery of such bonds or notes, such signature or facsimile is nevertheless sufficient for all purposes the same as if he had remained in office until such delivery; and, in case the seal of the authority has been changed after a facsimile has been imprinted on such bonds or notes, such facsimile seal will continue to be sufficient for all purposes.

§31-15-10. Approval by authority.

(a) To implement the powers and authority conferred upon it by this article, the board of the authority may adopt a resolution pursuant to which it shall:

1. Specify and describe the project;

2. Generally describe the public purpose to be
served and the financing transaction to be accomplished under this article;

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

(4) Impose any terms or conditions on the issuance of notes or bonds, the making of a loan or the provision of insurance that the authority deems appropriate.

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

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

(d) In any suit, action, or proceeding involving the validity or enforceability of any bonds or notes issued, loan made, or insurance extended by the authority under this article or any security therefor, any finding by the authority as to the public purpose of any actions taken under this article and the appropriateness of those actions to serve the public purpose shall be conclusive.

(e) Any resolution authorizing the issuance of bonds or notes shall provide that such bonds or notes shall contain a recital that they are issued pursuant to this article, which recital shall be conclusive evidence of 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 of this article, in the discretion of the authority, any bonds or notes, including refunding bonds or notes issued by the authority, may be secured by a trust agreement between the authority and a corporate trustee, which trustee may be any bank or trust company within or without the state. Any such trust agreement may contain such binding covenants with the holders of such bonds or notes as to any matter or provisions as are deemed necessary or advisable to the authority to enhance the marketability and security of such bonds or notes and may also contain such other provisions with respect thereto as the authority may authorize and approve. Any resolution adopted by the authority or any trust agreement may contain a pledge or assignment of revenues to be received in connection 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 authority, whether as proceeds from the sale of bonds or notes or as revenues or otherwise, shall be held by it in trust for the purposes of carrying out its powers and duties and shall be used and reused in accordance with the purposes and provisions of this article. Such moneys shall at no time be commingled with other public funds. Such moneys, except as otherwise provided in any resolution authorizing the issuance of bonds or notes or in any trust agreement securing the same, or except when invested pursuant to this article, shall be kept in appropriate depositories and secured as provided and required by law. The resolution authorizing the issuance of such bonds or notes of any issue or the trust agreement securing such bonds or notes shall provide that any officer to whom, or any banking institution or trust company to which, such moneys are paid, shall act as trustee of such moneys and hold and apply them for the purposes hereof,
20 subject to the conditions this article and such
21 resolution or trust agreement provide.


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, municipality 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 subdi-
8 vision 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
obligations shall be payable solely from revenues and funds pledged for their payment as authorized by this article unless the notes are issued in anticipation of the issuance of bonds or the notes are refunded by refunding bonds issued under the authority of this article, which bonds or refunding bonds shall be payable solely from revenues and funds pledged for their payment as authorized by this article. All such bonds and notes, and all documents evidencing any other obligation, shall contain on the face thereof a statement to the effect that the bonds, notes or such other obligation as to both principal and interest, are not debts of the state or any county, municipality or political subdivision thereof, but are payable solely 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 to this article are of such form or character as to be negotiable instruments under the Uniform Commercial Code, such bonds or notes are negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code, subject only to the 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, chapter twelve of this code to the contrary notwithstanding, the bonds and notes issued pursuant to the provisions of this article are securities in which all public officers and bodies of this state, including the West Virginia state board of investments, all municipalities and other political subdivisions of this state, all insurance companies and associations and other persons carrying on an insurance business, including domestic for life and domestic not for life insurance companies, all banks, trust companies, societies for savings, building and loan associations, savings and loan associations, deposit guarantee associations and investment companies, all administrators, guardians,
executors, trustees and other fiduciaries and all other
persons whatsoever who are authorized to invest in
bonds or other obligations of the state may properly
and legally invest funds, including capital, in their
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 perform-
7 ance 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
statutory or charter provision now or hereafter in force, other than as may be provided in this article, it being the purpose and intention of this article to create full, separate and complete additional powers. The various powers conferred herein may be exercised independently and notwithstanding that no bonds or notes are issued hereunder.


The board of investments shall, under the provisions of this article, invest moneys, securities and other assets of the special account for the common investment of state funds designated as the state account within the special investment fund designated as the consolidated fund established under the provisions of subsection (b), section eight, article six, chapter twelve of this code as a revolving loan fund with the authority, to enable the authority to make loans approved by the authority and to be funded from such consolidated fund in an amount which shall not at anytime exceed one hundred fifty million dollars in the aggregate principal amount outstanding. With respect to loans funded under this article through the consolidated fund of the state, such loans shall be made in the name of the consolidated fund by the authority.

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

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

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

Any documentary material or data made or received by the authority for the purpose of furnishing assistance to a business, to the extent that such material or data consists of trade secrets or commercial or finan-
cial information regarding the financial position or
business operation of such business, shall not be
considered public records and shall be exempt from
disclosure pursuant to the provisions of chapter
twenty-nine-b of this code. Any discussion or consider-
ation of such trade secrets or commercial or financial
information may be held by the authority in executive
session closed to the public, notwithstanding the
provisions of article nine-a, chapter six of this code:
Provided, That the authority shall make publicly
available the following information regarding executed
loans or its provision of insurance: (1) The name of the
debtor, (2) location(s) of the project, (3) amount of the
authority loan or financial assistance provided by the
insurance fund, (4) the purpose of the loan or financial
assistance, (5) the term, rate and interest of the loan,
and (6) the fixed assets which serve as security for the
loan or insurance provided.


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

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

The authority shall requisition from the fund such
amounts as are allocated and appropriated for loans to
industrial development agencies or enterprises for
projects. As loans to industrial development agencies
or enterprises are repaid to the authority pursuant to
the terms of mortgages and other agreements, the
authority shall pay such amounts into the fund,
consistent with the intent of this article that the fund
shall operate as a revolving fund whereby all appro-
priations and payments made thereto may be applied
and reapplied for the purposes of this article.
Revenues deposited into the fund may be used to
make payments of interest and principal and may be
pledged as security for bonds, security interests or
notes issued by the authority pursuant to this article.

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

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


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

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

It is the intention hereof that any pledge, mortgage,
deed of trust or security instrument made by or for
the benefit of the authority shall be valid and binding
between the parties from the time the pledge, mort-
gage, deed of trust or security instrument is made; and
that the moneys or property so pledged, encumbered,
mortgaged or entrusted shall immediately be subject
to the lien of such pledge, mortgage, deed of trust or
security instrument without any physical delivery
thereof or further act.


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

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

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

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

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


As soon as possible after the close of each fiscal year,
the authority shall make an annual report of its
activities for the preceding fiscal year to the governor
and the Legislature. Each such report shall set forth a complete operating and financial statement covering the authority’s operations during the preceding fiscal year. The authority shall cause an audit of its books and accounts to be made at least once each fiscal year by certified public accountants and the cost thereof may be treated as a part of the cost of construction or operations of its projects.

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

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

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

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


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


The provisions of this article are remedial and shall be liberally construed and applied so as to promote the 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 29th day of April, 1989.

Governor
PRESENTED TO THE
GOVERNOR
Date 4/20/89
Time 2:16