WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1992

ENROLLED
Com. Sub. for Com. Sub. for
SENATE BILL NO. 94

(By Senators Fawcett, Mr. President, and Bailey,
By Request of the Executive)

PASSED March 7, 1992
In Effect 90 days from Passage
ENROLLED

COMMITTEE SUBSTITUTE
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Senate Bill No. 94
(BY SENATORS BURDETTE, MR. PRESIDENT, AND BOLEY,
BY REQUEST OF THE EXECUTIVE)

[Passed March 7, 1992; in effect ninety days from passage.]

AN ACT to amend and reenact section eight, article one, chapter five-e, of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend chapter twelve of said code by adding thereto a new article, designated article seven; to amend and reenact sections six and twenty-a, article eighteen, chapter thirty-one of said code; and to further amend said article by adding thereto a new section, designated section twenty-c, all relating generally to economic development and the creation of new jobs; reducing the amount of credits authorized under the West Virginia capital company act for three fiscal years; providing for the creation and establishment of the jobs investment trust; purposes and objectives; legislative findings; definitions; jobs investment trust board; composition of board appointments; terms of private members; election
of chairman; quorum; management and control of jobs
investment trust vested in board; officers; liability;
payment of reasonable expenses of West Virginia
housing development fund; board powers; limitation on
investments; funding; applications for investment
priority; providing of information to West Virginia
housing development fund; acceptance or rejection of
investment package; documentary materials concerning
trade secrets; commercial, financial or personal infor-
mation; confidentiality; reports of board; report of
housing development fund; earnings; exemptions and
audits; severability; conflicts of interest; credit of state
not pledged; eliminating the restriction on the housing
development fund’s authority to finance nonresidential
projects; allowing the housing development fund to
form nonprofit corporations with the same board of
directors; land development fund; and creation of jobs
development fund.

Be it enacted by the Legislature of West Virginia:

That section eight, article one, chapter five-e of the code
of West Virginia, one thousand nine hundred thirty-one, as
amended, be amended and reenacted; that chapter twelve
of said code be amended by adding thereto a new article,
designated article seven; that sections six and twenty-a,
article eighteen, chapter thirty-one of said code be
amended and reenacted; and that said article be further
amended by adding thereto a new section, designated
section twenty-c, all to read as follows:

CHAPTER 5E. VENTURE CAPITAL COMPANY.

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

§5E-1-8. Tax credits.

1 (a) The total amount of tax credits authorized for a
2 single qualified company may not exceed two million
3 dollars. Capitalization of the company may be
4 increased pursuant to rule of the authority.

5 (b) The total credits authorized by the authority for
6 all companies may not exceed a total of ten million
7 dollars each fiscal year: Provided, That for the fiscal
year beginning the first day of July, one thousand
nine hundred ninety-two, the fiscal year beginning on
the first day of July, one thousand nine hundred
ninety-three and the fiscal year beginning on the first
day of July, one thousand nine hundred ninety-four,
the total credits authorized by the authority for all
companies under this section or this article may not
exceed a total of eight million dollars each fiscal year.
The authority shall allocate these credits to qualified
companies in the order that said companies are
qualified.

(c) Any investor, including an individual, partnership or corporation who makes a capital investment in
a qualified West Virginia capital company is entitled to
a tax credit equal to fifty percent of the investment,
except as otherwise provided in this section or in this
article. The credit allowed by this article shall be
taken after all other credits allowed by chapter eleven
of this code. It shall be taken against the same taxes
and in the same order as set forth in subsections (c)
through (i), section five, article thirteen-c, chapter
eleven of this code. The credit for investments by a
partnership or by a corporation electing to be treated
as a Subchapter S corporation may be divided pursuant
to election of partners or shareholders.

(d) The tax credit allowed under this section is to be
credited against the taxpayer’s tax liability for the
taxable year in which the investment in a qualified
West Virginia capital company is made. If the amount
of the tax credit exceeds the taxpayer’s tax liability for
the taxable year, the amount of the credit which
exceeds the tax liability for the taxable year may be
carried to succeeding taxable years until used in full,
or until forfeited: Provided, That: (i) Tax credits may
not be carried forward beyond fifteen years; and (ii)
tax credits may not be carried back to prior taxable
years. Any tax credit remaining after the fifteenth
taxable year is forfeited.

(e) The tax credit provided for in this section is
available only to those taxpayers whose investment in
a qualified West Virginia capital company occurs after
the first day of July, one thousand nine hundred eighty-six.

(f) The tax credit allowed under this section may not be used against any liability the taxpayer may have for interest, penalties or additions to tax.

(g) Notwithstanding any provision in this code to the contrary, the tax commissioner shall publish in the state register the name and address of every taxpayer, and the amount, by category, of any credit asserted under this article for any tax year beginning on or after the first day of January, one thousand ninety-one. The categories by dollar amount of credit received shall be as follows:

(1) More than $1.00, but not more than $50,000;
(2) More than $50,000, but not more than $100,000;
(3) More than $100,000, but not more than $250,000;
(4) More than $250,000, but not more than $500,000;
(5) More than $500,000, but not more than $1,000,000;
(6) More than $1,000,000.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 7. JOBS INVESTMENT TRUST FUND.

§12-7-1. Purposes and objectives; how article cited.

This article, which may be cited as the "Jobs Investment Trust Act", is enacted to create a jobs investment trust to be used for the development, promotion and expansion of West Virginia's economy and to provide opportunities to businesses and college and university students to develop and implement plans for innovative projects and investment opportunity.

§12-7-2. Legislative findings.

(a) The Legislature finds that the creation of a public body corporate to make investment funds available to eligible businesses would stimulate economic growth and provide or retain jobs within the state. Accord-
ingly, it is declared to be the public policy of the state
to create an availability of funds through an invest-
ment program to inject needed capital into the busi-
ness community, sustain or improve business profita-
bility, and provide jobs to the citizens of the state.

(b) The Legislature further finds: (1) That the
availability of financial assistance through the creation
of the jobs investment trust will promote economic
development in the state and will serve the public
purposes of the state; (2) that a variety of means and
measures for the financing of projects, including the
insuring of loans or other forms of financing or credit
to be made available for working capital, innovative
investment plans and options, equity financing, or the
refinancing of existing debt of an enterprise, will, as a
matter of public policy, serve the public purposes of
the state; and (3) that it is in the public interest, in
order to address the needs of the business community
and the citizens of the state, that a public body
corporate be created with full power to accept grants,
gifts and appropriations, to generate revenues to the
end that funds obtained thereby may be used to
furnish money and credit to approved businesses or
enterprises or to promote the establishment of new
and innovative projects or to upgrade, expand, and
retain existing projects.

(c) The Legislature further finds: (1) That due to the
creation of the jobs investment trust, moneys will be
available for venture capital in this state; (2) that the
implementation this innovative program may supplant
the need for the state to otherwise assist private
venture capital concerns through tax credits; (3) that
due to the availability of venture capital funds through
this program the granting of venture capital company
credits under the capital company act should be
reduced for three fiscal years pending the full imple-
mentation of the jobs investment trust program; (4)
that due to this reduction in the certification of tax
credits, additional general revenue may become
available for new economic development programs; (5)
these economic development programs may be funded
from general revenue in an amount appropriate to
effectuate the purposes of these programs; and (6) due
to the foregoing findings there shall be an annual line
item appropriation, in an amount determined by the
Legislature, to the West Virginia development office
for a matching grant program for regional economic
development corporations or authorities.

§12-7-3. Definitions.

As used in this article, the following words have the
meanings herein ascribed to them, unless the context
in which they are used clearly implies a different
meaning:

(a) “Board” means the jobs investment trust board
established pursuant to section four of this article.

(b) “Eligible business” means any business which is
qualified to do business in West Virginia and is in good
standing with all applicable laws affecting the conduct
of such business.

(c) “Securities” means all bonds, notes, stocks,
debentures or other forms of negotiable and nonnegot-
iable evidences of indebtedness or ownership.

§12-7-4. Jobs investment trust board; composition; appoint-
ment, term of private members; chairman; quorum.

(a) There is hereby created the jobs investment trust
board. The board is created as a public body corporate
and established to improve and otherwise promote
economic development in this state.

(b) The board shall consist of thirteen members, five
of whom shall serve by virtue of their respective
positions. These five are the president of West Virginia
university or his or her designee; the president of
Marshall university or his or her designee; the chancel-
lor of the board of directors of the state college
system or his or her designee; the executive director
of the West Virginia housing development fund and
the secretary of commerce, labor and environmental
resources. Two members shall be appointed by the
governor from a list of four names submitted by the
board of directors of the housing development fund.
The other six members shall be appointed from the
general public by the governor. Of the members of the
general public appointed by the governor, one shall be
an attorney with experience in finance and invest-
ment matters, one shall be a certified public accoun-
tant, one shall be a representative of labor, one shall
be experienced or involved in innovative business
development, two shall be present or past executive
officers of companies listed on a major stock exchange
or large privately held companies.

(c) In case of any vacancy on the board, such
vacancy shall be filled by appointment by the gover-
nor for the unexpired term in the same manner as the
original appointment. Any person appointed to fill a
vacancy shall serve only for the unexpired term.

(d) The governor may remove any appointed mem-
ber in case of incompetency, neglect of duty, moral
turpitude or malfeasance in office, and the governor
may declare the office vacant and fill the vacancy as
provided in other cases of vacancy.

(e) The chairman of the board shall be elected by
the board from among the members of the board.

(f) Seven members of the board shall constitute a
quorum. No action may be taken by the board except
upon the affirmative vote of at least a majority of
those members present, but in no event fewer than six
of the members serving on the board.

(g) The members of the board, including the chair-
man, shall receive no compensation for their services
as members of the board but shall be entitled to their
reasonable and necessary expenses actually incurred
in discharging their duties under this article.

(h) The board shall meet on a quarterly basis
beginning the first day of July, one thousand nine
hundred ninety-two, or more often if necessary.

(i) The terms of the board members appointed by
the governor 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 two at the end of the
fourth year, after the first day of July, one thousand
nine hundred ninety-two. 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 member shall be
eligible for reappointment.

§12-7-5. Management and control of jobs investment trust
vested in board; officers; liability; relationship to higher education institutions.

(a) It shall be the duty of the board to manage and
control the jobs investment trust. In order to carry out
the day to day management and control of the trust
and effectuate the purposes of this article, the board
shall appoint an executive director who is or has been
a senior executive of a major financial institution,
brokerage firm, investment firm, or similar institu-
tion, with extensive experience in capital market
development. The board shall fix the executive direc-
tor's duties. The board shall fix the compensation of
the executive director and the compensation shall, at
least in part, be incentive based. The executive
director shall serve at the will and pleasure of the
board.

(b) The board shall elect a secretary annually, who
need not be a member of the board, to keep a record
of the proceeding of the board.

(c) The members and officers of the board shall not
be liable personally, either jointly or severally, for any
debt or obligation created by the board.

(d) The acts of the board shall be solely the acts of
its corporation and shall not be deemed to be those of
an agent of the state, nor shall any debt or obligation
of the boards be deemed to be a debt or obligation of
the state.
(e) The West Virginia housing development fund shall provide office space and staff support services for the director and the board, shall act as fiscal agent for the board and, as such, shall provide accounting services for the board, invest all funds as directed by the board, service all investment activities of the board, and shall make the disbursements of all funds as directed by the board, for which the West Virginia housing development fund shall be reasonably compensated, as determined by the board.

(f) The board and the executive director shall involve students and faculty members of state institutions of higher education in the board's activities, in order to enhance the opportunities at such institutions for learning, and for participation in the board's investment activities and in the economic development of the state, whether in research, financial analysis, management participation, or in such other ways as the board and the executive director may, in their discretion, find appropriate.

§12-7-6. Corporate powers.

The board shall have the power:

1. To make loans, with or without interest, but with such security for repayment as the jobs investment trust board determines reasonably necessary and practicable, from the board's fund, for investment in eligible businesses that stimulate economic growth and provide or retain jobs in this state; such loans shall be made only upon determination by the board that the loans are prudent and meet the criteria established by the board;

2. To accept appropriations, gifts, grants, bequests and devises and to utilize or dispose of the same to carry out its corporate purposes;

3. To make and execute contracts, releases, compromises, agreements and other instruments necessary or convenient for the exercise of its powers or to carry out its corporate purposes;

4. To collect reasonable fees and charges in connec-
tion with making and servicing loans, notes, bonds, obligations, commitments and other evidences of indebtedness, and in connection with providing technical, consultative and project assistance services;

(5) To sue and be sued;

(6) To have a seal and alter the same at will;

(7) To make, and from time to time, amend and repeal bylaws and rules and regulations not inconsistent with the provisions of this article;

(8) To hire its own employees and appoint such officers and consultants as it deems advisable, and to fix their compensation and prescribe their duties;

(9) To acquire, hold and dispose of real and personal property for its corporate purposes;

(10) To enter into agreements or other transactions with any federal or state agency, college or university, any person and any domestic or foreign partnership, corporation, association or organization;

(11) To acquire real property, or an interest therein, in its own name, by purchase or foreclosure, where acquisition is necessary or appropriate to protect any loan in which the board has an interest and to sell, transfer and convey any property to a buyer and, in the event a sale, transfer or conveyance cannot be effected with reasonable promptness or at a reasonable price, to lease property to a tenant;

(12) To purchase or sell, at public or private sale, any mortgage or other negotiable instrument or obligation securing a loan;

(13) To procure insurance against any loss in connection with its property in such amounts, and from such insurers, as may be necessary or desirable;

(14) To consent, whenever it considers it necessary or desirable in the fulfillment of its corporate purpose, to the modification of the rate of interest, time of payment or any installment of principal or interest, or any other terms, of investment, loan, contract or
agreement of any kind to which the board is a party;

(15) To establish training and educational programs to further the purposes of this article;

(16) To file its own travel rules and regulations;

(17) To borrow money to carry out its corporate purpose in such principal amounts and upon such terms as shall be necessary to provide sufficient funds for achieving its corporate purpose.

(18) To acquire, by purchase or otherwise, and to hold, transfer, sell, assign, pool or syndicate or participate in the syndication of, any loans, notes, mortgages, securities or debt instruments or other instruments evidencing loans or equity interests in or for the fostering of economic growth, jobs preservation and creation in the state of West Virginia, and all other acts which carry out the board's purpose;

(19) To contract with either Marshall university or West Virginia university, or both, for the purpose of retaining the services of, and paying the reasonable cost of services performed by the institution for the board in order to effectuate the purposes of this article;

(20) To enter into collaborative arrangements or contracts with private venture capital companies when deemed advisable by the board;

(21) To provide equity financing for any eligible business that will stimulate economic growth and provide or retain jobs in this State, and to hold, transfer, sell, assign, pool or syndicate, or participate in the syndication of, any loans, notes, mortgages, securities or debt instruments or other instruments evidencing loans or equity interest if in furtherance of the board's corporate purposes;

(22) To form partnerships, create subsidiaries or take all other actions necessary to qualify as a small business investment company under the United States Public Law (85-699) Small Business Investment Act, as amended; and
(23) To provide for staff payroll and make purchases in the same manner as the housing development fund.

§12-7-7. Limitation on investments.
1 Subject to the provisions of section nine of this article, the board may invest in any eligible business: Provided, That at the time of the placement of the investment not more than twenty percent of the board’s total investment portfolio is so invested in one eligible business within any two-year period.

§12-7-8. Funding.
1 Effective the first day of July, one thousand nine hundred ninety-two, the West Virginia housing development fund shall make available for the use of the board ten million dollars as and when requested in accordance with the provisions of section twenty-c, article eighteen, chapter thirty-one of this code. The funds shall be transferred to and held in a separate account at the housing development fund for the trust until a disbursement of such funds is directed by the board. No more than eight million dollars may be invested in qualified investments in the fiscal year one thousand nine hundred ninety-three.

§12-7-9. Applications for investment priority; investment package.
1 (a) The board shall accept and review applications from eligible businesses and shall determine the investment worthiness and jobs creation potential of each proposal, and the economic circumstances of the region or regions of the state which would benefit from each proposal. The board shall attempt to balance its investments, as nearly as is practicable, among the geographic regions of the state.
2 (b) Any public or private institution of higher education in the state, or faculty or students of the institution, may present for the board’s consideration proposals relating to innovative projects or investment opportunities.
3 (c) There shall also be an annual audit conducted by
an independent firm of certified public accountants  
which shall be made available to the Legislature  
anually.

(d) The board shall forward to the West Virginia  
housing development fund for its review and informa-
tion approved investment packages containing such  
information as is necessary to permit the West Vir-
ginia housing development fund to carry out its duties  
under this article. The board shall determine whether  
each applicant is an eligible business.

§12-7-10. Acceptance or rejection of investment package.

(a) The board may approve or disapprove an invest-
ment package or any portion thereof: Provided, That  
notwithstanding any provision of this article to the  
contrary, the board may not accept any investment  
package or any portion thereof unless the same has  
been reviewed and approved by the board's executive  
director in his or her sole discretion.

(b) The board shall disapprove any investment  
package if the business requesting such investment is  
not in good standing with all applicable laws affecting  
the conduct of such business. Upon request of the  
board, each affected state agency shall provide the  
board with such information as to the standing of each  
applicant, notwithstanding any provision of this code  
to the contrary.

§12-7-11. Documentary materials concerning trade secrets;
commercial, financial, or personal informa-
tion; confidentiality.

Any documentary material or data made or received  
by the board for the purpose of furnishing assistance,  
to the extent that such material or data consists of  
trade secrets, commercial, financial or personal infor-
mation regarding the financial position or activities of  
such business or person, 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 consideration of such trade secrets,  
commercial, financial or personal information may be
held by the board in executive session closed to the public, notwithstanding the provisions of article nine-
a, chapter six of this code: Provided, That the board shall make public the following information regarding executed investments: (1) The names and addresses of the principals of the business and its board of direc-
tors; (2) the location or locations of the projects; (3) the amount of the investment or financial assistance provided by the board; (4) the purpose of the invest-
ment or financial assistance; (5) the maturity, interest rate, and other pertinent terms of the investment; (6) the fixed assets which serve as security for the investment; and (7) names and addresses of all persons holding twenty-five percent or more of the equity of the entity receiving investment assistance.

§12-7-12. Reports of board; report of housing development fund.

(a) The board shall prepare annually, or more frequently if deemed necessary by the board, a report of its operations and the performance of the various investments administered by it. A copy thereof shall be furnished to the governor, the president of the Senate, the speaker of the House of Delegates, the legislative auditor and, upon request, to any legislative committee. Such report shall be kept available for inspection by any citizen of this state.

(b) The West Virginia housing development fund shall prepare annually and submit to the president of the Senate, the speaker of the House of Delegates, the legislative auditor and, upon request, any legislative committee, a report on the performance of the board and the quality of its investments for the preceding year.

§12-7-13. Earnings.

All earnings, interest and fees collected by the board on or in respect of funds provided by the West Virginia housing development fund shall go back into the jobs development fund created pursuant to section twenty-c, article eighteen, chapter thirty-one of this code, for reinvestment and no such earnings, interest
or fees shall be considered part of the general revenue of the state.

§12-7-14. Exemption from certain requirements; audit.

1 In order to provide excellent investment opportunities, the investment activity provided by this article shall be exempt from the bidding and public sale requirements, from the approval of contractual agreements by the department of finance and administration or the attorney general and from the requirements of chapter five-a of this code. The transactions provided by this article shall be subject to an annual audit by an independent firm of certified public accountants.

§12-7-15. Conflicts of interest.

(a) No member of the board or officer, agent or employee thereof shall, in his or her own name or in the name of a nominee, hold an ownership interest of more than seven and one-half percent in any association, trust, corporation, partnership or other entity which is, in its own name or in the name of a nominee, a party to a contract or agreement upon which the member or officer, agent or employee may be called upon to act or vote.

(b) With respect to any direct or any indirect interest, other than an interest prohibited in subsection (a), in a contract or agreement upon which the member or officer, agent or employee may be called upon to act or vote, the member of the board or officer, agent or employee thereof holding such interest shall disclose the same to the board secretary prior to the taking of final action by the board concerning such contract or agreement and shall disclose the nature and extent of such interest and the date of his or her acquisition thereof, which disclosure shall be publicly acknowledged by the board and entered upon the minutes of the board. If a member of the board or officer, agent or employee thereof holds such an interest, he or she shall refrain from any further involvement on behalf of the board in regard to such contract or agreement, from voting on any matter
pertaining to such contract or agreement, and from communicating with other members of the board or its officers, agents and employees concerning said contract or agreement. Notwithstanding any other provision of law, any contract or agreement entered into in conformity with this subsection shall not be void or invalid by reason of the interest described in this subsection, nor shall any person so disclosing the interest and refraining from further official involve- ment as provided in this subsection be guilty of an offense, be removed from office or be subject to any other penalty or legal disability on account of such interest.

(c) Any contract or agreement made in violation of subsection (a) or (b) of this section shall be null and void and shall give rise to no civil or criminal action against the board or any member thereof.

§12-7-16. Credit of state not pledged.

No provisions of this article shall be construed to authorize the jobs investment trust board at any time or in any manner to pledge the credit or taxing power of the state, nor shall any of the obligations or debts created by the jobs investment trust board under the authority herein granted be deemed to be obligations of the state.

CHAPTER 31. CORPORATIONS.

ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.

§31-18-6. Corporate powers.

The housing development fund is hereby granted, has and may exercise all powers necessary or appro- priate to carry out and effectuate its corporate pur- pose, including, but not limited to, the following:

(1) To make or participate in the making of federally insured construction loans to sponsors of land development, residential housing or nonresidential projects. Such loans shall be made only upon determination by the housing development fund that construction loans are not otherwise available, wholly or in part, from
(2) To make temporary loans, with or without interest, but with such security for repayment as the housing development fund determines reasonably necessary and practicable, from the operating loan fund, if created, established, organized and operated in accordance with the provisions of section nineteen of this article, to defray development costs to sponsors of land development, residential housing or nonresidential projects which are eligible or potentially eligible for federally insured construction loans, federally insured mortgages, federal mortgages or uninsured construction loans or uninsured mortgage loans;

(3) To make or participate in the making of long-term federally insured mortgage loans to sponsors of land development, residential housing or nonresidential projects. Such loans shall be made only upon determination by the housing development fund that long-term mortgage loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

(4) To establish residential housing and nonresidential and land development projects for counties declared to be in a disaster area by the Federal Emergency Management Agency or other agency or instrumentality of the United States or this state;

(5) To accept appropriations, gifts, grants, bequests and devises and to utilize or dispose of the same to carry out its corporate purpose;

(6) To make and execute contracts, releases, compromises, compositions and other instruments necessary or convenient for the exercise of its powers, or to carry out its corporate purpose;

(7) To collect reasonable fees and charges in connection with making and servicing loans, notes, bonds, obligations, commitments and other evidences of indebtedness, and in connection with providing technical, consultative and project assistance services;
(8) To invest any funds not required for immediate
   disbursement in any of the following securities:

   (i) Direct obligations of or obligations guaranteed by
   the United States of America or for the payment of
   the principal and interest on which the full faith and
   credit of the United States of America is pledged;

   (ii) Bonds, debentures, notes or other evidences of
indebtedness issued by any of the following agencies:
   Banks for cooperatives; federal intermediate credit
   banks; federal home loan bank system; export-import
   bank of the United States; federal land banks; Tennes-
   see valley authority; United States postal service;
   inter-American development bank; international bank
   for reconstruction and development; small business
   administration; Washington metropolitan area transit
   authority; general services administration; federal
   financing bank; federal home loan mortgage corpora-
   tion; student loan marketing association; farmer’s
   home administration; the federal national mortgage
   association or the government national mortgage
   association; or any bond, debenture, note, participation
   certificate or other similar obligation to the extent
   such obligations are guaranteed by the government
   national mortgage association or federal national
   mortgage association or are issued by any other
   federal agency and backed by the full faith and credit
   of the United States of America;

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

   (iv) Certificates of deposit, time deposits, investment
   agreements, repurchase agreements or similar bank-
   ing arrangements with a member bank or banks of the
federal reserve system or a bank the deposits of which are insured by the federal deposit insurance corporation, or its successor, or a savings and loan association or savings bank the deposits of which are insured by the federal savings and loan insurance corporation, or its successor, or government bond dealers reporting to, trading with and recognized as primary dealers by a federal reserve bank: Provided, That such investments shall only be made to the extent insured by the federal deposit insurance corporation or the federal savings and loan insurance corporation or to the extent that the principal amount thereof shall be fully collateralized by obligations which are authorized investments for the housing development fund pursuant to this section;

(v) Direct obligations of or obligations guaranteed by the state of West Virginia;

(vi) Direct and general obligations of any other state, municipality or other political subdivision within the territorial United States: Provided, That at the time of their purchase, such obligations are rated in either of the two highest rating categories by a nationally recognized bond-rating agency;

(vii) Any bond, note, debenture or annuity issued by any corporation organized and operating within the United States: Provided, That such corporation shall have a minimum net worth of fifteen million dollars and its securities or its parent corporation's securities are listed on one or more of the national stock exchanges: Provided, however, That: (1) Such corporation has earned a profit in eight of the preceding ten fiscal years as reflected in its statements; and (2) such corporation has not defaulted in the payment of principal or interest on any of its outstanding funded indebtedness during its preceding ten fiscal years; and (3) the bonds, notes or debentures of such corporation to be purchased are rated "AA" or the equivalent thereof or better than "AA" or the equivalent thereof by at least two or more nationally recognized rating services such as Standard and Poor's, Dunn & Bradstreet, Best's or Moody's;
(viii) If entered into solely for the purpose of reducing investment, interest rate, liquidity or other market risks in relation to obligations issued or to be issued or owned or to be owned by the housing development fund, options, futures contracts (including index futures but exclusive of commodities futures, options or other contracts), standby purchase agreements or similar hedging arrangements listed by a nationally recognized securities exchange or a corporation described in paragraph (vii) above;

(ix) Certificates, shares or other interests in mutual funds, unit trusts or other entities registered under section eight of the United States Investment Company Act of 1940, but only to the extent that the terms on which the underlying investments are to be made prevent any more than a minor portion of the pool which is being invested in to consist of obligations other than investments permitted pursuant to this section; and

(x) To the extent not inconsistent with the express provisions of this section, obligations of the West Virginia state board of investments or any other obligation authorized as an investment for the West Virginia state board of investments under article six, chapter twelve of this code or for a public housing authority under article fifteen, chapter sixteen of this code;

(9) To sue and be sued;

(10) To have a seal and alter the same at will;

(11) To make, and from time to time, amend and repeal bylaws and rules and regulations not inconsistent with the provisions of this article;

(12) To appoint such officers, employees and consultants as it deems advisable and to fix their compensation and prescribe their duties;

(13) To acquire, hold and dispose of real and personal property for its corporate purposes;

(14) To enter into agreements or other transactions
21  [Enr. Com. Sub. for Com. Sub. for S. B. No. 94]

169 with any federal or state agency, any person and any
170 domestic or foreign partnership, corporation, associa-
171 tion or organization;
172
173 (15) To acquire real property, or an interest therein,
174 in its own name, by purchase or foreclosure, where
175 such acquisition is necessary or appropriate to protect
176 any loan in which the housing development fund has
177 an interest and to sell, transfer and convey any such
178 property to a buyer and, in the event of such sale,
179 transfer or conveyance cannot be effected with reason-
180 able promptness or at a reasonable price, to lease such
181 property to a tenant;
182
183 (16) To purchase or sell, at public or private sale, any
184 mortgage or other negotiable instrument or obligation
185 securing a construction, rehabilitation, improvement,
186 land development, mortgage or temporary loan;
187
188 (17) To procure insurance against any loss in connec-
189 tion with its property in such amounts, and from such
190 insurers, as may be necessary or desirable;
191
192 (18) To consent, whenever it deems it necessary or
193 desirable in the fulfillment of its corporate purpose, to
194 the modification of the rate of interest, time of
195 payment or any installment of principal or interest, or
196 any other terms, of mortgage loan, mortgage loan
197 commitment, construction loan, rehabilitation loan,
198 improvement loan, temporary loan, contract or agree-
199 ment of any kind to which the housing development
200 fund is a party;
201
202 (19) To make and publish rules and regulations
203 respecting its federally insured mortgage lending,
204 uninsured mortgage lending, construction lending,
205 rehabilitation lending, improvement lending and
206 lending to defray development costs and any such
207 other rules and regulations as are necessary to effec-
208 tuate its corporate purpose;
209
210 (20) To borrow money to carry out and effectuate its
211 corporate purpose and to issue its bonds or notes as
212 evidence of any such borrowing in such principal
213 amounts and upon such terms as shall be necessary to
provide sufficient funds for achieving its corporate purpose, except that no notes shall be issued to mature more than ten years from date of issuance and no bonds shall be issued to mature more than fifty years from date of issuance;

(21) To issue renewal notes, to issue bonds to pay notes and, whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured except that no such renewal notes shall be issued to mature more than ten years from date of issuance of the notes renewed and no such refunding bonds shall be issued to mature more than fifty years from the date of issuance;

(22) To apply the proceeds from the sale of renewal notes or refunding bonds to the purchase, redemption or payment of the notes or bonds to be refunded;

(23) To make grants and provide technical services to assist in the purchase or other acquisition, planning, processing, design, construction, or rehabilitation, improvement or operation of residential housing, nonresidential projects or land development: Provided, That no such grant or other financial assistance shall be provided except upon a finding by the housing development fund that such assistance and the manner in which it will be provided will preserve and promote residential housing in this state or the interests of this state in maintaining or increasing employment or the tax base;

(24) To provide project assistance services for residential housing, nonresidential projects and land development, including, but not limited to, management, training and social and other services;

(25) To promote research and development in scientific methods of constructing low cost land development, residential housing or nonresidential projects of high durability including grants, loans or equity contributions for research and development purposes: Provided, That no such grant or other financial assistance shall be provided except upon a finding by
248 the housing development fund that such assistance
249 and the manner in which it will be provided will
250 preserve and promote residential housing in this state
251 or the interests of this state in maintaining and
252 increasing employment and the tax base;
253
254 (26) With the proceeds from the issuance of notes or
255 bonds of the housing development fund, including, but
256 not limited to, mortgage finance bonds, or with other
257 funds available to the housing development fund for
258 such purpose, to participate in the making of or to
259 make loans to mortgagees approved by the housing
260 development fund and take such collateral security
261 therefor as is approved by the housing development
262 fund and to invest in, purchase, acquire, sell or
263 participate in the sale of, or take assignments of, notes
264 and mortgages, evidencing loans for the construction,
265 rehabilitation, improvement, purchase or refinancing
266 of land development, residential housing or nonresi-
267 dential projects in this state: Provided, That the
268 housing development fund shall obtain such written
269 assurances as shall be satisfactory to it that the
270 proceeds of such loans, investments or purchases will
271 be used, as nearly as practicable, for the making of or
272 investment in long-term federally insured mortgage
273 loans or federally insured construction loans, unin-
274 sured mortgage loans or uninsured construction loans,
275 for land development, residential housing or nonresi-
276 dential projects or that other moneys in an amount
277 approximately equal to such proceeds shall be commit-
278 ted and used for such purpose;
279
280 (27) To make or participate in the making of unin-
281 sured construction loans for land development, resi-
282 dential housing or nonresidential projects. Such loans
283 shall be made only upon determination by the housing
284 development fund that construction loans are not
285 otherwise available, wholly or in part, from private
286 lenders upon reasonably equivalent terms and
287 conditions;
288
289 (28) To make or participate in the making of long-
290 term uninsured mortgage loans for land development,
291 residential housing or nonresidential projects. Such
loans shall be made only upon determination by the housing development fund that long-term mortgage loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

(29) To obtain options to acquire real property, or any interest therein, in its own name, by purchase, or lease or otherwise, which is found by the housing development fund to be suitable, or potentially suitable, as a site, or as part of a site, for land development or the construction of residential housing or nonresidential projects; to hold such real property or to acquire by purchase or otherwise and to transfer by sale or otherwise any ownership or equity interests in any other legal entity which holds such real property; to finance the performance of land development, residential housing or nonresidential projects on or in connection with any such real property or to perform land development, residential housing or nonresidential projects on or in connection with any such real property; to own, operate and sponsor or participate in the sponsorship of land development, residential housing or nonresidential projects; or to sell, transfer and convey, lease or otherwise dispose of such real property, or lots, tracts or parcels of such real property, for such prices, upon such terms, conditions and limitations, and at such time or times as the housing development fund shall determine;

(30) To make loans, with or without interest, but with such security for repayment as the housing development fund determines reasonably necessary and practicable from the land development fund, if created, established, organized and operated in accordance with the provisions of section twenty-a of this article, to sponsors of land development, to defray development costs and other costs of land development;

(31) To exercise all of the rights, powers and authorities of a public housing authority as set forth and provided in article fifteen, chapter sixteen of this code, in any area or areas of the state which the housing development fund shall determine by resolution to be
necessary or appropriate;
(32) To provide assistance to urban renewal projects in accordance with the provisions of section twenty-eight, article eighteen, chapter sixteen of this code and in so doing to exercise all of the rights, powers and authorities granted in this article or in said article, in and for any communities of the state which the housing development fund shall determine by resolution to be necessary or appropriate;
(33) To make or participate in the making of loans for the purpose of rehabilitating or improving existing residential and temporary housing or nonresidential projects, or to owners of existing residential or temporary housing for occupancy by eligible persons and families for the purpose of rehabilitating or improving such residential or temporary housing or nonresidential projects and, in connection therewith, to refinance existing loans involving the same property. Such loans shall be made only upon determination by the housing development fund that rehabilitation or improvement loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;
(34) Whenever the housing development fund deems it necessary in order to exercise any of its powers set forth in subdivision (29) of this section, and upon being unable to agree with the owner or owners of real property or interest therein sought to be acquired by the fund upon a price for acquisition of private property not being used or operated by the owner in the production of agricultural products, to exercise the powers of eminent domain in the acquisition of such real property or interest therein in the manner provided under chapter fifty-four of this code, and the purposes set forth in said subdivision are hereby declared to be public purposes for which private property may be taken. For the purposes of this section, the determination of “use or operation by the owner in the production of agricultural products” means that the principal use of such real estate is for the production of food and fiber by agricultural
production other than forestry, and the fund shall not initiate or exercise any powers of eminent domain without first receiving an opinion in writing from both the governor and the commissioner of agriculture of this state that at the time the fund had first attempted to acquire such real estate or interest therein, such real estate or interest therein was not in fact being used or operated by the owner in the production of agricultural products;

(35) To acquire, by purchase or otherwise, and to hold, transfer, sell, assign, pool or syndicate, or participate in the syndication of, any loans, notes, mortgages, securities or debt instruments collateralized by mortgages or interests in mortgages or other instruments evidencing loans or equity interests in or for the construction, rehabilitation, improvement, renovation, purchase or refinancing of land development, residential housing and nonresidential projects in this state; and

(36) To form one or more nonprofit corporations, whose board of directors shall be the same as the board of directors of the housing development fund, which shall be authorized and empowered to carry out any or all of the corporate powers or purposes of the housing development fund, including without limitation acquiring limited or general partnership interests and other forms of equity ownership.

§31-18-20a. Land development fund.

(a) The board of directors of the housing development fund may create and establish a special revolving fund of moneys made available by appropriation, grant, contribution or loan, to be known as the land development fund and to be governed, administered and accounted for by the directors, officers and managerial staff of the housing development fund as a special purpose account separate and distinct from any other moneys, fund or funds owned and managed by the housing development fund.

(b) The purpose of the land development fund shall be to provide a source from which the housing devel-
The housing development fund may invest and reinvest all moneys in the land development fund in any investments authorized under section six of this article, pending the disbursement thereof in connection with the financing of development costs and land development in this state.

(d) No loans shall be made by the housing development fund from the land development fund except in accordance with a written loan agreement which shall include, but not be limited to, the following terms and conditions:

1. The proceeds of all such loans shall be used only for development costs and land development;
2. All such loans shall be repaid in full, with or without interest, as provided in the agreement;
3. All repayments shall be made concurrent with receipt by the borrower of the proceeds of a construction loan or mortgage, as the case may be, or at such other times as the housing development fund deems reasonably necessary or practicable; and
4. Specification of such security for repayments upon such terms and conditions as the housing development fund deems reasonably necessary or practicable.

(e) No grants shall be made by the housing development fund from the land development fund except in accordance with a written grant agreement which shall require that the proceeds of all such grants shall be used only for development costs or land development and containing such other terms and provisions as the housing development fund may require to ensure that the public purposes of this article are
furthered by such grant.

(f) The housing development fund may expend any income from the financing of development costs and land development with moneys in the land development fund, and from investment of such moneys, in payment, or reimbursement, of all expenses of the housing development fund which, as determined in accordance with procedures approved by the board of directors of the housing development fund, are fairly allocable to such financing or its land-development activities: Provided, That no funds from the land development fund shall be used to carry on propaganda, or otherwise attempt to influence legislation.

(g) The housing development fund shall create and establish a special account within the land development fund to be designated as the "special project account" into which the housing development fund shall, effective the first day of July, one thousand nine hundred ninety-two, deposit the sum of ten million dollars. Such funds shall be governed, administered and accounted for by the housing development fund as a special purpose account separate and distinct from any other moneys, fund or funds owned or managed by the housing development fund. The sole and exclusive purpose of such account shall be to provide a source of funds for the financing of infrastructure projects including distribution from time to time to the West Virginia water pollution control revolving fund created pursuant to section three, article five-i, chapter twenty of this code: Provided, That such distribution shall not exceed five million four hundred fifty thousand dollars; and distribution from time to time to fund soil conservation projects: Provided, however, That such distribution shall not exceed four million five hundred fifty thousand dollars. Until so disbursed, the moneys initially deposited or thereafter from time to time deposited in such special project account, may be invested and reinvested by the housing development fund as permitted under subsection (8), section six of this article. Any funds remaining in the special project account on the first day of July, one thousand nine hundred ninety-five shall automatically revert to the general fund of the hous-
ing development fund free of any limitations provided in this section. The provisions of subsections (c), (d), (e) and (f) of this section shall not apply to the special project account created in this section.


1 There is hereby created and established a special fund to be designated as the “jobs development fund” into which the housing development fund shall, effective the first day of July, one thousand nine hundred ninety-two, deposit the sum of ten million dollars. Thereafter, the housing development fund shall have no further duty or obligation to, but may in its sole discretion, deposit additional funds. Such funds shall be governed, administered and accounted for by the housing development fund as a special purpose account separate and distinct from any other moneys, fund or funds owned or managed by the housing development fund. The sole and exclusive purpose of such fund shall be to provide a source for distribution from time to time to the jobs investment trust as provided for in article seven, chapter twelve of this code. Upon receipt by the housing development fund from time to time of a written requisition from the trust together with a certificate that the funds so requisitioned will be used in accordance with the provisions of article seven, chapter twelve of this code and are expected to be expended within thirty days after such disbursement to fund a loan or other investment or to pay the operating expenses of the trust, the housing development fund shall disburse the amount so requisitioned. Until so disbursed, the moneys initially deposited or thereafter from time to time deposited in such fund may be invested and reinvested by the housing development fund as permitted under subsection (8), section six of this article. Upon the dissolution or the termination of the jobs investment trust board, any funds remaining in the jobs development fund shall automatically revert to the general fund of the housing development fund free of any limitations provided in this section.
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 ninety days 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 __________ day of __________ 1992.

Governor