WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1994

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ENROLLED
Com. Sub. For
HOUSE BILL No. 4032

(By Delegate Ms. Speaker Ms. Chambers,
and Delegate Burke)

[By Request of the Executive]

Passed March 15, 1994

In Effect From Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4032
(By Mr. Speaker, Mr. Chambers, and Delegate Burk)
[By Request of the Executive]

[Passed March 11, 1994; in effect from passage.]

AN ACT to amend and reenact sections three and twenty-one, article two-c, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section three-a, all relating to the allocation of industrial revenue bonds; creating industrial revenue bond allocation review committee; redefining state allocation procedures; and providing a set-aside for classified nonexempt projects.

Be it enacted by the Legislature of West Virginia:

That sections three and twenty-one, article two-c, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section three-a, all to read as follows:

ARTICLE 2C. INDUSTRIAL DEVELOPMENT AND COMMERCIAL DEVELOPMENT BOND ACT.


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

2. (a) "Commercial project" means real or personal
property or both, including any buildings, improvements, additions, extensions, replacements, appurtenances, lands, rights in land, water rights, franchises, machinery, equipment, furnishings, landscaping, utilities, railroad spurs and sidings, parking facilities, farms, parking wharfs, approaches and roadways or any number or combination of the foregoing necessary or desirable in connection with a commercial enterprise or incidental thereto and includes, without limiting the generality of the foregoing, hotels and motels and related facilities, nursing homes and other health care facilities, facilities for participatory or spectator sports, conventions or trade show facilities, airport facilities, shopping centers, office buildings, residential real property for family units, and mass commuting facilities, dormitories, apartments and other housing facilities for the students and faculties of institutions of higher education, instructional buildings and other facilities used in connection with nonpublic institutions of higher education, facilities providing housing for the elderly, including, but not limited to, life care facilities, congregate living facilities and adult residential facilities.

(b) "Committee" means the industrial revenue bond allocation committee created by section three-a of this article.

(c) "County commission" means the governmental body created by section twenty-two, article VIII of the West Virginia constitution.

(d) "Governmental body" means any city, town, village, county, public service district, sanitary district, political subdivision or any other similar public entity now or hereafter created, having power to issue revenue bonds, and the West Virginia public energy authority.

(e) "Industrial project" means any site, structure, building, industrial park, water dock, wharf or port facilities, fixtures, machinery, equipment and related facility, including real and personal property, or any combination thereof, suitable as a factory, mill or shop, or processing, assembly, manufacturing or fabricating
project, or warehouse or distribution facility, or facilities for the extraction, production or distribution of mineral resources and related facilities, or sewage or solid waste disposal facilities, or facilities for the local furnishing of electric energy or gas, or facilities for the furnishing of water, if available on reasonable demand to members of the general public, or storage or training facilities related to any of the foregoing, or research or development facility or pollution abatement or control facility and includes the reconstruction, modernization and modification of any existing industrial project for the abatement or control of industrial pollution.

(f) "Industrial pollution" means any gaseous, liquid or solid waste substances or adverse thermal effects or combinations thereof resulting from any process of industry, manufacturing, trade or business or from the development, processing or recovery of any natural resources which pollute the land, water or air of this state.

§13-2C-3a. Creation of industrial revenue bond allocation review committee; appointment, term, etc., of private members; voting; expenses; duties.

(a) There is hereby created the West Virginia industrial revenue bond allocation review committee consisting of five members, two of whom shall be the secretary of tax and revenue, who shall serve as chair of the committee, and the executive director of the development office, and three of whom shall be chosen from the general public as private members.

(b) The three private members shall be appointed by the governor, with the advice and consent of the Senate: Provided, That one private member shall be appointed from each congressional district of the state, in such a manner as to provide a broad geographical distribution of members of the committee: Provided, however, That at least one private member appointed pursuant to this subdivision shall have significant experience in economic development. No more than two private members shall be from the same political party.
(c) Not later than the first day of July, one thousand nine hundred ninety-four, the governor shall appoint the three private members for staggered terms. The terms of the 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, one at the end of the first year, one at the end of the second year, and one at the end of the third year, after the first day of July, one thousand nine hundred ninety-four. As these original appointments expire, each subsequent appointment shall be for a full three-year term. Any member whose term has expired shall serve until a successor has been duly appointed and qualified. Any member shall be eligible for reappointment. In case of any vacancy in the office of a private member, such vacancy shall be filled by appointment by the governor for the unexpired term. The governor may remove any private member in case of incompetency, neglect of duty, gross immorality, or malfeasance in office; and he may declare the office vacant and may appoint a person for such vacancy as provided in other cases of vacancy.

(d) Members 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.

(e) A majority of the members of the committee shall constitute a quorum for the purpose of conducting business. The affirmative vote of at least the majority of the members present is necessary for any action taken by vote of the committee. No vacancy in the membership of the committee shall impair the right of a quorum to exercise all the rights and perform all the duties of the committee.

(f) The committee shall review and evaluate all applications for reservation of funds submitted to the development office by a governmental body pursuant to the provisions of subsections (d) and (e), section twenty-one of this article, and shall make reservations of the state allocation (as defined in subdivision (2), subsection (b), section twenty-one of this article) pursuant to
§13-2C-21. Ceiling on issuance of private activity bonds; establishing procedure for allocation and disbursements; reservation of funds; limitations; unused allocation; expirations and carryovers.

(a) Private activity bonds (as defined in section 141(a) of the United States Internal Revenue Code of 1986, other than those described in section 146(g) of the Internal Revenue Code) issued pursuant to this article, including bonds issued by the West Virginia public energy authority pursuant to subsection (11), section five, article one, chapter five-d of this code, or under article eighteen, chapter thirty-one of this code, during any calendar year shall not exceed the ceiling established by section 146(d) of the United States Internal Revenue Code. It is hereby determined and declared as a matter of legislative finding (i) that the production of bituminous coal in this state has resulted in coal waste, which coal waste is stored in areas generally referred to as gob piles; (ii) that such gob piles are unsightly and have the potential to pollute the environment in this state; (iii) that the utilization of the materials in such gob piles to produce alternative forms of energy needs to be encouraged; (iv) that section 142(a)(6) of the United States Internal Revenue Code of 1986 permits the financing of solid waste disposal facilities through the issuance of such private activity bonds; (v) that it is in the best interest of this state and the citizens thereof to facilitate the construction of facilities for the generation of power through the utilization of coal waste by providing an orderly mechanism for the commitment of the annual ceiling for private activity bonds for such projects.

(b) On or before the first day of each calendar year, the executive director of the development office shall determine the state ceiling for such year based on the criteria of the United States Internal Revenue Code, which annual ceiling shall be allocated among the several issuers of bonds under this article or under
(1) Fifty million dollars shall be allocated to the West Virginia housing development fund for the purpose of issuing qualified mortgage bonds, qualified mortgage certificates or bonds for qualified residential rental projects.

(2) The amount remaining after the allocation to the West Virginia housing development fund described in subdivision (1) shall be retained by the West Virginia development office and shall be referred to in this section as the "state allocation."

(3) Thirty percent of the state allocation shall be set aside by the development office to be made available for lessees, purchasers or owners of proposed projects, hereafter in this section referred to as "nonexempt projects", which do not qualify as exempt facilities as defined by United States Revenue Code [26 U.S.C. §142(a)]. All reservations of private activity bonds for nonexempt projects shall be approved and awarded by the committee based upon an evaluation of general economic benefit and any rule or regulation that the council for community and economic development may promulgate pursuant to section three, article two, chapter five-b of this code: Provided, That on the first day of September of each calendar year, the uncommitted portion of this part of the state allocation shall revert to and become part of the state allocation portion described in subsection (c) of this section.

(c) The remaining seventy percent of the state allocation shall be made available for lessees, purchasers or owners of proposed commercial or industrial projects which qualify as exempt facilities as defined by section 142(a) of the United States Internal Revenue Code [26 U.S.C. §142(a): All reservations of private activity bonds for exempt facilities shall be approved and awarded by the committee based upon an evaluation of general economic benefit and any rule or regulation that the council for community and economic development may promulgate pursuant to section three, article two,
chapter five-b of this code: Provided, That no such reservation shall be in an amount in excess of fifty percent of this portion of the state allocation.

No reservation shall be made for any project until the governmental body, seeking the same shall submit a notice of reservation of funds as provided in subsection (e) of this section. The governmental body must first adopt an inducement resolution approving the prospective issuance of bonds and setting forth the maximum amount of bonds to be issued. Each governmental body seeking a reservation of funds following the adoption of such inducement resolution shall submit a notice of inducement signed by its clerk, secretary or recorder or other appropriate official to the development office. Such notice shall include such information as may be required by the development office pursuant to any rule or regulation of the council for community and economic development. Notwithstanding the foregoing, when a governmental body proposes to issue bonds for the purpose of constructing an energy producing project which relies, in whole or in part, upon coal waste as fuel, to the extent such project qualifies as a solid waste facility under section 142(a)(6) of the United States Internal Revenue Code of 1986, such project may be awarded a reservation of funds from the state allocation available for three years subsequent to the year in which the notice of reservation of funds is submitted, at the discretion of the executive director of the development office: Provided, That no such discretionary reservation may be made for any single project in an amount in excess of thirty-five percent of the state allocation available for such year subsequent to the year in which the request is made. A discretionary reservation of the state allocation for a project described in the preceding sentence shall not be granted by the executive director of the development office unless the project for which the request is made has received a certification from the Federal Energy Regulatory Commission as a qualifying facility or a cogeneration project.

(e) Currently with or following the submission of its notice of inducement, the governmental body at any
time deemed expedient by it may submit its notice of 
reservation of funds which shall include the following 
information:

(1) The date of the notice of reservation of funds;
(2) The identity of the governmental body issuing the 
bonds;
(3) The date of inducement and the prospective date 
of issuance;
(4) The name of the entity for which the bonds are to 
be issued;
(5) The amount of the bond issue, or, if the amount 
of the bond issue for which a reservation of funds has 
been made has been increased, the amount of the 
increase;
(6) The type of issue; and
(7) A description of the project for which the bonds 
are to be issued.

(f) The development office shall accept the notice of 
reservation of funds no earlier than the first calendar 
work day of the year for which a reservation of funds 
is sought: Provided, That a notice of reservation of funds 
with respect to an energy producing project that is 
eligible for a reservation of funds for a year subsequent 
to the year in which the notice of reservation of funds 
is submitted may contain an application for funds from 
a subsequent year's state allocation. Upon receipt of the 
otice of reservation of funds, the development office 
shall immediately note upon the face of such notice the 
date and time of reception.

(g) If the bond issue for which a reservation has been 
made has not been finally closed within one hundred 
twenty days of the date of the reservation to be made 
by the committee, or the thirty-first day of December 
following such date of reservation if sooner and a 
statement of bond closure which has been executed by 
the clerk, secretary, recorder or other appropriate 
official of the governmental body reserving the same has 
ot been received by the development office within that
time, then such reservation shall expire and be deemed
to have been forfeited and the funds so reserved shall
be released and revert to the portion of the state
allocation from which the funds were originally re-
served and shall then be made available for other
qualified issues in accordance with this section and the
Internal Revenue Code: Provided, That, as to any
reservation for a nonexempt project that is forfeited on
or after the first day of September in any calendar year,
such reservation shall revert to the portion of the state
allocation described in subsection (c) of this section:
Provided, however, That, as to any notice of reservation
of funds received by the development office during the
month of December in any calendar year with respect
to any project qualifying as an elective carry forward
pursuant to section 146(f)(5) of the Internal Revenue
Code, such notice of reservation of funds and the
reservation to which the same relates shall not expire
or be subject to forfeiture: Provided further, That any
unused state ceiling as of the thirty-first day of
December in any year not otherwise subject to a carry
forward pursuant to section 146(f) of the Internal
Revenue Code shall be allocated to the West Virginia
housing development fund, which shall be deemed to
have elected to carry forward the unused state ceiling
for the purpose of issuing qualified mortgage bonds,
qualified mortgage credit certificates or bonds for
qualified residential rental projects, each as defined in
the Internal Revenue Code. All requests for subsequent
reservation of funds upon loss of a reservation pursuant
to this section shall be treated in the same manner as
a new notice of reservation of funds in accordance with
subsections (d) and (e) above.

(h) Once a reservation of funds has been made for an
energy producing project which relies, in whole or in
part, upon coal waste as fuel and otherwise qualifies as
a solid waste facility under section 142(a)(6) of the
United States Internal Revenue Code of 1986, notwith-
standing the language of subsection (g) of this section,
such reservation shall remain fully available with
respect to such project until the first day of October in
the year from which the reservation was made at which
time, if the bond issue has not been finally closed, the reservation shall expire and be deemed forfeited and the funds so reserved shall be released as provided in subsection (g) of this section.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 30th day of March 1994.

Governor