

SB 0371

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SENATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995



ENROLLED

SENATE BILL NO. 371

(By Senators TOMBLIN MR. PRESIDENT, AND BOLEY, BY REQUEST OF THE EXECUTIVE)



PASSED MARCH 10, 1995
In Effect FRAY Passage

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Senate Bill No. 371

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND BOLEY,
BY REQUEST OF THE EXECUTIVE)

[Passed March 10, 1995; in effect from passage.]

AN ACT to amend and reenact section twenty-one, article two-c, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to industrial development and commercial development bonds; ceiling on issuance of private activity bonds, including private activity bonds for projects located in empowerment zones and enterprise communities; procedure for allocation and disbursements; reservation of funds; limitations; unused allocation; expirations; and carryovers.

Be it enacted by the Legislature of West Virginia:

That section 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 to read as follows:

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

§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.

1 (a) Private activity bonds (as defined in Section 141(a)
2 of the United States Internal Revenue Code of 1986,
3 other than those described in Section 146(g) of the Inter-
4 nal Revenue Code) issued pursuant to this article, in-
5 cluding bonds issued by the West Virginia public energy
6 authority pursuant to subsection (11), section five, article
7 one, chapter five-d of this code, or under article eigh-
8 teen, chapter thirty-one of this code, during any calendar
9 year shall not exceed the ceiling established by Section
10 146(d) of the United States Internal Revenue Code. It is
11 hereby determined and declared as a matter of legisla-
12 tive finding: (i) That, in an attempt to promote economic
13 revitalization of distressed urban and rural areas, certain
14 special tax incentives will be provided for empowerment
15 zones and enterprise communities to be designated from
16 qualifying areas nominated by state and local govern-
17 ments, all as set forth by Section 1391 et seq. of the
18 United States Internal Revenue Code; (ii) that qualified
19 businesses operating in enterprise communities and
20 empowerment zones will be eligible to finance property
21 and provide other forms of financial assistance as pro-
22 vided for in Section 1394 of the United States Internal
23 Revenue Code; (iii) that it is in the best interest of this
24 state and the citizens thereof to facilitate the acquisition,
25 construction and equipping of projects within designated
26 empowerment zones and enterprise communities by
27 providing an orderly mechanism for the commitment of
28 the annual ceiling for private activity bonds for such
29 projects. It is hereby further determined and declared as
30 a matter of legislative finding; (iv) that the production of
31 bituminous coal in this state has resulted in coal waste,
32 which coal waste is stored in areas generally referred to
33 as gob piles; (v) that such gob piles are unsightly and
34 have the potential to pollute the environment in this
35 state; (vi) that the utilization of the materials in such gob
36 piles to produce alternative forms of energy needs to be
37 encouraged; (vii) that Section 142(a)(6) of the United
38 States Internal Revenue Code of 1986, permits the fi-
39 nancing of solid waste disposal facilities through the

40 issuance of such private activity bonds; and (viii) that it
41 is in the best interest of this state and the citizens there-
42 of to facilitate the construction of facilities for the gener-
43 ation of power through the utilization of coal waste by
44 providing an orderly mechanism for the commitment of
45 the annual ceiling for private activity bonds for such
46 projects.

47 (b) On or before the first day of each calendar year, the
48 executive director of the development office shall deter-
49 mine the state ceiling for such year based on the criteria
50 of the United States Internal Revenue Code, which
51 annual ceiling shall be allocated among the several
52 issuers of bonds under this article or under article eigh-
53 teen, chapter thirty-one of this code, as follows:

54 (1) Fifty million dollars shall be allocated to the West
55 Virginia housing development fund for the purpose of
56 issuing qualified mortgage bonds, qualified mortgage
57 certificates or bonds for qualified residential rental
58 projects.

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

64 (3) For calendar year one thousand nine hundred
65 ninety-five, twenty-five and one-half percent of the state
66 allocation and for all subsequent calendar years, thirty-
67 five percent of the state allocation shall be set aside by
68 the development office to be made available for lessees,
69 purchasers or owners of proposed projects, hereafter in
70 this section referred to as "nonexempt projects", which
71 do not qualify as exempt facilities as defined by United
72 States Internal Revenue Code. All reservations of pri-
73 vate activity bonds for nonexempt projects shall be
74 approved and awarded by the committee based upon an
75 evaluation of general economic benefit and any rule or
76 regulation that the council for community and economic

77 development may promulgate pursuant to section three,
78 article two, chapter five-b of this code: *Provided*, That
79 all requests for reservations of funds from projects
80 described in this subsection shall be submitted to the
81 development office on or before the first day of Novem-
82 ber of each calendar year: *Provided, however*, That on
83 the fifteenth day of November of each calendar year, the
84 uncommitted portion of this part of the state allocation,
85 shall revert to and become part of the state allocation
86 portion described in subsection (g) of this section.

87 (4) For calendar year one thousand nine hundred
88 ninety-five, four and one-half percent of the state alloca-
89 tion and for all subsequent calendar years, ten percent of
90 the state allocation shall be made available for lessees,
91 purchasers or owners of proposed commercial or indus-
92 trial projects which qualify as exempt facilities under
93 Section 1394 of the United States Internal Revenue
94 Code. All reservations of private activity bonds for the
95 projects shall be approved and awarded by the commit-
96 tee based upon an evaluation of general economic benefit
97 and any rule or regulation that the council for commu-
98 nity and economic development may promulgate pursu-
99 ant to section three, article two, chapter five-b of this
100 code.

101 (c) For calendar year one thousand nine hundred
102 ninety-five, the remaining seventy percent and for all
103 subsequent calendar years, the remaining fifty-five
104 percent of the state allocation shall be made available
105 for lessees, purchasers or owners of proposed commercial
106 or industrial projects which qualify as exempt facilities
107 as defined by Section 142(a) of the United States Inter-
108 nal Revenue Code. All reservations of private activity
109 bonds for exempt facilities shall be approved and
110 awarded by the committee based upon an evaluation of
111 general economic benefit and any rule or regulation that
112 the council for community and economic development
113 may promulgate pursuant to section three, article two,
114 chapter five-b of this code: *Provided*, That no reserva-

115 tion shall be in an amount in excess of fifty percent of
116 this portion of the state allocation.

117 (d) No reservation shall be made for any project until
118 the governmental body seeking the same shall submit a
119 notice of reservation of funds as provided in subsection
120 (e) of this section. The governmental body must first
121 adopt an inducement resolution approving the prospec-
122 tive issuance of bonds and setting forth the maximum
123 amount of bonds to be issued. Each governmental body
124 seeking a reservation of funds following the adoption of
125 such inducement resolution shall submit a notice of
126 inducement signed by its clerk, secretary or recorder or
127 other appropriate official to the development office.
128 Such notice shall include information as may be required
129 by the development office pursuant to any rule or regu-
130 lation of the council for community and economic devel-
131 opment. Notwithstanding the foregoing, when a govern-
132 mental body proposes to issue bonds for the purpose of:
133 (i) Constructing, acquiring or equipping a project de-
134 scribed in subdivision (3) or (4), subsection (b) of this
135 section; or (ii) constructing an energy producing project
136 which relies, in whole or in part, upon coal waste as fuel,
137 to the extent such project qualifies as a solid waste
138 facility under Section 142(a)(6) of the United States
139 Internal Revenue Code of 1986, the project may be
140 awarded a reservation of funds from the state allocation
141 available for three years subsequent to the year in which
142 the notice of reservation of funds is submitted, at the
143 discretion of the executive director of the development
144 office: *Provided*, That no discretionary reservation may
145 be made for any single project described in this subdivi-
146 sion in an amount in excess of thirty-five percent of the
147 state allocation available for the year subsequent to the
148 year in which the request is made. A discretionary
149 reservation of the state allocation for a project described
150 in this subdivision shall not be granted by the executive
151 director of the development office unless the project for
152 which the request is made has received a certification.

153 from the federal energy regulatory commission as a
154 qualifying facility or a cogeneration project.

155 (e) Currently with or following the submission of its
156 notice of inducement, the governmental body at any time
157 deemed expedient by it may submit its notice of reserva-
158 tion of funds which shall include the following informa-
159 tion:

160 (1) The date of the notice of reservation of funds;

161 (2) The identity of the governmental body issuing the
162 bonds;

163 (3) The date of inducement and the prospective date of
164 issuance;

165 (4) The name of the entity for which the bonds are to be
166 issued;

167 (5) The amount of the bond issue or, if the amount of
168 the bond issue for which a reservation of funds has been
169 made has been increased, the amount of the increase;

170 (6) The type of issue; and

171 (7) A description of the project for which the bonds are
172 to be issued.

173 (f) The development office shall accept the notice of
174 reservation of funds no earlier than the first calendar
175 workday of the year for which a reservation of funds is
176 sought: *Provided*, That a notice of reservation of funds
177 with respect to a project described in subdivision (4),
178 subsection (b) of this section or an energy producing
179 project that is eligible for a reservation of funds for a
180 year subsequent to the year in which the notice of reser-
181 vation of funds is submitted may contain an application
182 for funds from a subsequent year's state allocation.
183 Upon receipt of the notice of reservation of funds, the
184 development office shall immediately note upon the face
185 of the notice the date and time of reception.

186 (g) If the bond issue for which a reservation has been

187 made has not been finally closed within one hundred
188 twenty days of the date of the reservation to be made by
189 the committee, or the thirty-first day of December fol-
190 lowing such date of reservation if sooner and a statement
191 of bond closure which has been executed by the clerk,
192 secretary, recorder or other appropriate official of the
193 governmental body reserving the same has not been
194 received by the development office within that time, then
195 the reservation shall expire and be deemed to have been
196 forfeited and the funds so reserved shall be released and
197 revert to the portion of the state allocation from which
198 the funds were originally reserved and shall then be
199 made available for other qualified issues in accordance
200 with this section and the Internal Revenue Code: *Pro-*
201 *vided*, That as to any reservation for a nonexempt project
202 that is forfeited on or after the first day of November in
203 any calendar year, fifty percent of such reservation shall
204 revert to the portion of the state allocation described in
205 subsection (c) of this section and fifty percent of such
206 reservation shall revert to the portion of the state alloca-
207 tion described in subdivision (4), subsection (b) of this
208 section: *Provided, however*, That, as to any notice of
209 reservation of funds received by the development office
210 during the month of December in any calendar year with
211 respect to any project qualifying as an elective carry
212 forward pursuant to Section 146(f)(5) of the Internal
213 Revenue Code, the notice of reservation of funds and the
214 reservation to which the same relates shall not expire or
215 be subject to forfeiture: *Provided further*, That any
216 unused state ceiling as of the thirty-first day of Decem-
217 ber in any year not otherwise subject to a carry forward
218 pursuant to Section 146(f) of the Internal Revenue Code
219 shall be allocated to the West Virginia housing develop-
220 ment fund, which shall be deemed to have elected to
221 carry forward the unused state ceiling for the purpose of
222 issuing qualified mortgage bonds, qualified mortgage
223 credit certificates or bonds for qualified residential
224 rental projects, each as defined in the Internal Revenue
225 Code. All requests for subsequent reservation of funds

226 upon loss of a reservation pursuant to this section shall
227 be treated in the same manner as a new notice of reser-
228 vation of funds in accordance with subsections (d) and
229 (e) of this section.

230 (h) Once a reservation of funds has been made for a
231 project described in subdivision (4), subsection (b) of this
232 section or for an energy producing project which relies,
233 in whole or in part, upon coal waste as fuel and other-
234 wise qualifies as a solid waste facility under Section
235 142(a)(6) of the United States Internal Revenue Code of
236 1986, notwithstanding the language of subsection (g) of
237 this section, the reservation shall remain fully available
238 with respect to such project until the first day of October
239 in the year from which the reservation was made at
240 which time, if the bond issue has not been finally closed,
241 the reservation shall expire and be deemed forfeited and
242 the funds so reserved shall be released as provided in
243 subsection (g) of this section.

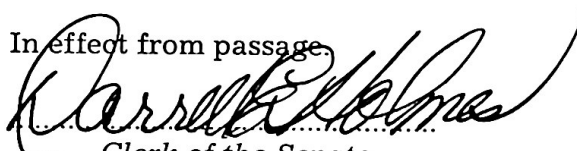
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

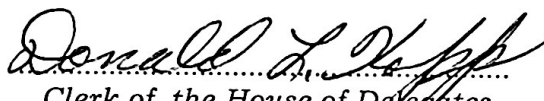

Chairman Senate Committee



Chairman House Committee

Originated in the Senate.

In effect from passage

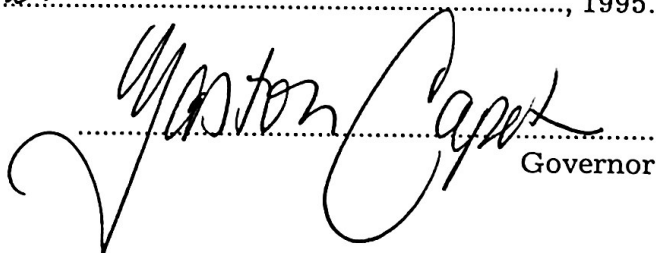

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within is approved this the 21st
day of March, 1995.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/17/95

Time 3:30 pm