

HB 4605

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996



ENROLLED

COM. SUB. FOR
HOUSE BILL No. 4605

(By Delegate MR. SPEAKER, MR. CHAMBERS,
AND DELEGATE ASHLEY
[BY REQUEST OF THE EXECUTIVE])

Passed MARCH 9, 1996

In Effect July 1, 1996 ~~Passage~~

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 4605

(BY MR. SPEAKER, MR. CHAMBERS, AND DELEGATE ASHLEY)
[By Request of the Executive]

[Passed March 9, 1996; in effect July 1, 1996.]

AN ACT to amend and reenact section three, article eleven-b, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend chapter twenty-two of said code by adding thereto a new article, designated article twenty-two; and to amend and reenact section four, article fifteen, chapter thirty-one of said code, all relating generally to remediation of contaminated property; adding the remediation of contaminated property as projects eligible for tax increment financing; legislative findings and purpose; defining terms; authorizing the director to promulgate legislative rules; establishing the voluntary remediation program; establishing eligibility requirements and the application process for the remediation of contaminated property; authorizing the director to establish application fees and other costs; making information available to the public; providing for confidentiality of trade secrets; creating criminal penalties for violating confidentiality of trade secrets; establishing requirements for site assessments; establishing the criteria under which the director may reject an application; providing for notice and partial return of application fee if the application is denied; establishing brownfield remediation program, application process and fee; providing for application for remediation loans for brownfield sites; allowing access to information in possession

of the director; creating voluntary remediation administrative fund; providing for disbursements from the fund; establishing brownfield revolving fund; providing for disbursements from the fund; authorizing employment of specialized persons to administer and manage the fund; providing for voluntary remediation agreements; requiring the use of licensed remediation specialist; establishing the requirements of voluntary remediation agreements; creating applicants right to appeal to the environmental quality board upon failure to reach a voluntary remediation agreement; providing that no enforcement action will be undertaken when property is in compliance with a voluntary remediation agreement unless there is imminent threat to the public; requiring that voluntary remediation work plans and reports must be submitted to the director for review; allowing the remediator to terminate the remediation agreement; allowing the director to recover the remediation costs incurred prior to termination; providing for suit in circuit court of Kanawha county or the circuit court where the site is situated for recovery of clean-up costs; authorizing the director to take samples at brownfield and voluntary remediation sites, and share the samples with the remediator; authorizing the director to inspect and make reports; providing the director access to all records relating to brownfield and voluntary remediation sites; requiring license issued by the director in order to work as a remediation specialist; specifying licensure requirements; specifying licensed remediation specialist duties, responsibilities and limitations; providing for licenses renewal, revocation or suspension; providing for civil and criminal penalties, license revocation and enforcement orders for licensing remediation specialists; providing for issuance of certificate of completion; providing for land-use covenants to be issued by the director; providing that the land-use covenant be recorded in the deed; establishing criminal penalty for violating land-use covenants; providing for reopening a remediation agreement for a brownfield site for future action; requiring the assessors of each county and allowing citizens to notify the director when use of property changes; providing for notification of the public when a remediation site is being considered; providing for environmental liability protection; establishing and limiting the responsibilities of remediation contractors; establishing affirmative defenses;

providing that nothing in this article effects the rights, duties, immunities, other defenses or causes of action; and adding site assessment and site remediation cost to the definition of "costs of establishing an industrial development project".

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 11B. WEST VIRGINIA TAX INCREMENT FINANCING ACT.

§7-11B-3. Definitions.

1 As used in this article, the term or phrase:

2 (a) "Agency" means a county or municipal develop-
3 ment agency established by section one, article twelve,
4 chapter seven of this code.

5 (b) "Base assessed value" means the taxable assessed
6 value of real and tangible personal property of a project
7 developer within a development project area as shown
8 upon the landbook and personal property records of the
9 assessor on the first day of July of the year preceding the
10 effective date of the order authorizing the tax increment
11 financing plan.

12 (c) "Current assessed value" means the annual taxable
13 assessed value of real and tangible personal property of a
14 project developer within a development project area as
15 shown upon the landbook and personal property records
16 of the assessor.

17 (d) "Development project" means a project undertaken
18 by a county commission in a development project area in
19 accordance with a tax increment financing plan.

20 (e) "Development project area" means an area to be

21 designated by one or more agencies as a development
22 project area, which may include one or more counties,
23 municipalities or combination thereof.

24 (f) "Private project" means any project which is subject
25 to ad valorem property taxes in the state undertaken by a
26 project developer in accordance with a tax increment fi-
27 nancing plan in a development project area.

28 (g) "Project" means any facility requiring an invest-
29 ment of capital, including extensions, additions or im-
30 provements to existing facilities including water or waste
31 water facilities, and the remediation of contaminated prop-
32 erty as provided for in article twenty-two of chapter
33 twenty-two of this code, but does not include performance
34 of any governmental service by a county or municipal
35 government or any housing facility to be rented or used as
36 a permanent residence.

37 (h) "Project developer" means any person or corpora-
38 tion which engages in the development of projects in the
39 state.

40 (i) "Tax increment" means the amount of tax attribut-
41 able to the amount by which the current assessed value of
42 a private project in a development project area exceeds the
43 base assessed value, if any, of such private project, less the
44 portion of tax allocated to the state.

45 (j) "Tax increment obligation" means any bond or
46 note issued by a county commission in accordance with
47 section six of this article.

48 (k) "Tax increment financing plan" means a plan
49 proposed by either an agency or a project developer re-
50 questing that a specific development project be developed
51 in conjunction with a private project of such project devel-
52 oper, which plan is approved by the county commission
53 for the county in which the development project area is
54 located in accordance with the procedures set forth in
55 section four of this article.

56 (l) "Taxing unit" means a municipal corporation, a
57 county commission or a county board of education.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 22. VOLUNTARY REMEDIATION AND REDEVELOPMENT ACT.

§22-22-1. Legislative findings; legislative statement of purpose.

1 (a) The Legislature finds there is property in West
2 Virginia that is not being put to its highest productive use
3 because it is contaminated or it is perceived to be contam-
4 inated as a result of past activity on the property.

5 (b) The Legislature further finds that abandonment or
6 under use of contaminated or potentially contaminated
7 industrial sites results in inefficient use of public facilities
8 and services and increases the pressure for development of
9 uncontaminated pristine land. Since existing industrial
10 areas frequently have transportation networks, utilities and
11 an existing infrastructure, it can be less costly to society to
12 redevelop existing industrial areas than to relocate ameni-
13 ties for industrial areas at pristine sites.

14 (c) The Legislature further finds that the existing legal
15 structure creates uncertainty regarding the legal effect of
16 remediation upon liability. Legal uncertainty serves as a
17 further disincentive to productive redevelopment of
18 brownfields. Therefore, incentives should be put in place
19 to encourage voluntary redevelopment of contaminated or
20 potentially contaminated sites.

21 (d) The Legislature further finds that an administra-
22 tive program should be established to encourage persons
23 to voluntarily develop and implement remedial plans with-
24 out the need for enforcement action by the division of
25 environmental protection. Therefore, it is the purpose of
26 this article to:

27 (1) Establish an administrative program to facilitate
28 voluntary remediation activities and brownfield revitaliza-
29 tion;

30 (2) Provide financial incentives to entice investment at
31 brownfield sites; and

32 (3) Establish limitations on liability under environ-
33 mental laws and rules for those persons who remediate
34 sites in accordance with applicable standards established
35 under this article.

§22-22-2. Definitions.

1 As used in this article, unless otherwise provided or
2 indicated by the context:

3 (a) "Applicable standards", mean the remediation
4 levels established in or pursuant to section three of this
5 article;

6 (b) "Brownfield" means any industrial or commercial
7 property which is abandoned or not being actively used
8 by the owner as of the effective date of this article, but
9 shall not include any site subject to a unilateral enforce-
10 ment order under §104 through §106 of the "Comprehen-
11 sive Environmental Response, Compensation and Liability
12 Act", 94 Stat. 2779, 42 U.S.C. §9601, as amended, or
13 which has been listed or proposed to be listed by the Unit-
14 ed States environmental protection agency on the priori-
15 ties list of Title I of said act, or subject to a unilateral en-
16 forcement order under §3008 and §7003 of the "Resource
17 Conservation Recovery Act" or any unilateral enforcement
18 order for corrective action under this chapter;

19 (c) "Certified laboratory" means any laboratory ap-
20 proved by the director under laboratory certification rules
21 adopted pursuant to section fifteen, article one of this
22 chapter;

23 (d) "Contaminant" or "contamination" means any
24 man made or man induced alteration of the chemical,
25 physical or biological integrity of soils, sediments, air and
26 surface water or groundwater resulting from activities
27 regulated under this article, in excess of applicable stan-
28 dards in this chapter, including any hazardous substance,
29 petroleum, or natural gas;

30 (e) "Controls" means to apply engineering measures,
31 such as capping or treatment, or institutional measures,
32 such as deed restrictions, to contaminated sites;

33 (f) "Development authority" means any authority as
34 defined in article twelve, chapter seven of this code or the
35 state development office as defined in article two, chapter
36 five-b of this code.

37 (g) "Director" means the director of the division of

38 environmental protection or such other person to whom
39 the director has delegated authority or duties pursuant to
40 this article;

41 (h) "Division" means the division of environmental
42 protection of the state of West Virginia;

43 (i) "Engineering controls" means remedial actions
44 directed exclusively toward containing or controlling the
45 migration of contaminants through the environment.
46 These include, but are not limited to, slurry walls, liner
47 systems, caps, leachate collection systems and groundwater
48 recovery trenches;

49 (j) "Hazardous substance" means any substance identi-
50 fied as a hazardous substance pursuant to the "Compre-
51 hensive Environmental Response, Compensation and Lia-
52 bility Act", 94 Stat. 2779, 42 U.S.C. §9601, as amended;

53 (k) "Institutional controls" means legal or contractual
54 restrictions on property use that remain effective after the
55 remediation action is completed and are used to meet
56 applicable standards. The term may include, but is not
57 limited to, deed and water use restrictions;

58 (l) "Industrial activity" means commercial, manufac-
59 turing, public utility, mining or any other activity done to
60 further either the development, manufacturing or distribu-
61 tion of goods and services, intermediate and final products
62 and solid waste created during such activities, including,
63 but not limited to, administration of business activities,
64 research and development, warehousing, shipping, trans-
65 port, remanufacturing, stockpiling of raw materials, stor-
66 age, repair and maintenance of commercial machinery or
67 equipment and solid waste management;

68 (m) "Land-use covenant" means a document or deed
69 restriction issued by the director on remediated sites which
70 have attained and demonstrate continuing compliance with
71 site-specific standards for any contaminants at the site.
72 The covenant shall be recorded by deed in the office of
73 the county clerk of the county wherein the site is situated.
74 The document or covenant shall be included by any
75 grantor or lessor in any deed or other instrument of con-
76 veyance or any lease or other instrument whereby real

77 property is let for a period of one year or more, as more
78 fully set forth in sections thirteen and fourteen of this
79 article;

80 (n) "Licensed remediation specialist" means a person
81 certified by the director pursuant to rules adopted under
82 section three of this article as qualified to perform profes-
83 sional services and to supervise the remediation of con-
84 taminated sites;

85 (o) "Mitigation measure" means any remediation
86 action performed by a person prior to or during imple-
87 mentation of a remediation plan to protect human health
88 and the environment;

89 (p) "Natural gas" means natural gas, natural gas liq-
90 uids, liquefied natural gas, coalbed methane, synthetic gas
91 usable for fuel or mixtures of natural gas and synthetic
92 gas;

93 (q) "Nonresidential property" means any real property
94 on which commercial, industrial, manufacturing or any
95 other activity is done to further the development, manu-
96 facturing or distribution of goods and services, intermedi-
97 ate and final business activities, research and development,
98 warehousing, shipping, transport, remanufacturing, stock-
99 piling of raw materials, storage, repair and maintenance of
100 commercial machinery and equipment, and solid waste
101 management. This term shall not include schools, day
102 care centers, nursing homes, or other residential-style
103 facilities or recreational areas;

104 (r) "Owner" means any person owning or holding
105 legal or equitable title or possessory interest in property
106 or, where title or control of property was conveyed due to
107 bankruptcy, foreclosure, tax delinquency, abandonment,
108 or similar means to this state or a political subdivision of
109 this state, or any person who owned the property before
110 the conveyance;

111 (s) "Operator" means the person responsible for the
112 overall operation of a facility site;

113 (t) "Person" means any public or private corporation,
114 institution, association, firm or company organized or

115 existing under the laws of this or any other state or coun-
116 try; state of West Virginia; governmental agency, includ-
117 ing federal facilities; political subdivision; county com-
118 mission; municipal corporation; partnership; trust; estate;
119 person or individuals acting individually or as a group; or
120 any legal entity whatever;

121 (u) "Petroleum" means oil or petroleum of any kind
122 and in any form, including, without limitation, crude oil or
123 any fraction thereof, oil sludge, oil refuse, used oil, sub-
124 stances or additives in the refining or blending of crude
125 petroleum or petroleum stock;

126 (v) "Practical quantitation level" means the lowest
127 analytical level that can be reliably achieved within speci-
128 fied limits of precision and accuracy under routine labora-
129 tory conditions for a specified matrix. It is based on
130 quantitation, precision and accuracy under normal opera-
131 tion of a laboratory and the practical need in a
132 compliance-monitoring program to have a sufficient num-
133 ber of laboratories available to conduct the analyses;

134 (w) "Property" means any parcel of real property, and
135 any improvements thereof;

136 (x) "Related" means the persons who are related to the
137 third degree of consanguinity or marriage;

138 (y) "Release" means any spilling, leaking, pumping,
139 pouring, emitting, emptying, discharging, injecting, escap-
140 ing, leaching, migrating, dumping or disposing of any
141 contaminant or regulated substance into the environment,
142 including, without limitation, the abandonment or improv-
143 er discarding of barrels, containers or any other closed
144 receptacle containing any contaminant;

145 (z) "Remediation" means to cleanup, mitigate, correct,
146 abate, minimize, eliminate, control and contain or prevent
147 a release of a contaminant into the environment in order
148 to protect the present or future public health, safety, wel-
149 fare, or the environment, including preliminary actions to
150 study or assess the release;

151 (aa) "Remediation contractor" means any person who
152 enters into and is carrying out a contract to cleanup,
153 remediate, respond to or remove a release or threatened

154 release of a contaminant and includes any person who the
155 contractor retained or hired to provide services under a
156 remediation contract;

157 (bb) "Residential" means any real property or portion
158 thereof which is designed for the housing of human be-
159 ings and does not meet the definition of "nonresidential"
160 property set forth above;

161 (cc) "Risk" means the probability that a contaminant,
162 when released into the environment, will cause an adverse
163 effect in exposed humans or other living organisms;

164 (dd) "Site" means any property or portion thereof
165 which contains or may contain contaminants and is eligi-
166 ble for remediation as provided under this article;

167 (ee) "Unilateral enforcement order" means a written
168 final order issued by a federal or state agency charged
169 with enforcing environmental law, which compels the
170 fulfillment of an obligation imposed by law, rule against a
171 person without their voluntary consent; and

172 (ff) "Voluntary remediation" means a series of mea-
173 sures that may be self-initiated by a person to identify
174 and address potential sources of contamination of proper-
175 ty and to establish that the property complies with applica-
176 ble remediation standards.

§22-22-3. Rule-making authority of the director.

1 Within one year after the effective date of this section,
2 the director, in accordance with chapter twenty-nine-a of
3 this code, shall propose, and subsequently may amend,
4 suspend or rescind, rules that do the following:

5 (a) Establish an administrative program for both
6 brownfield revitalization and voluntary remediation, in-
7 cluding application procedures;

8 (b) Establish procedures for the licensure of
9 remediation specialists, including, but not limited to estab-
10 lishing licensing fees, testing procedures, disciplinary
11 procedures and methods for revocation of licenses;

12 (c) Establish procedures for community notification
13 and involvement;

14 (d) Establish risk-based standards for remediation;

15 (e) Establish standards for the remediation of proper-
16 ty;

17 (f) Establish a risk protocol for conducting risk as-
18 sessments and establishing risk-based standards. The risk
19 protocol shall:

20 (1) Require consideration of existing and reasonably
21 anticipated future human exposures based on current and
22 reasonably anticipated future land and water uses and
23 significant adverse effects to ecological receptor health
24 and viability;

25 (2) Include, at a minimum, both central tendency and
26 reasonable upper bound estimates of exposure;

27 (3) Require risk assessments to consider, to the extent
28 practicable, the range of probabilities of risks actually
29 occurring, the range or size of populations likely to be
30 exposed to risk, and quantitative and qualitative descrip-
31 tions of uncertainties;

32 (4) Establish criteria for what constitutes appropriate
33 sources of toxicity information;

34 (5) Address the use of probabilistic modeling;

35 (6) Establish criteria for what constitutes appropriate
36 criteria for the selection and application of fate and trans-
37 port models;

38 (7) Address the use of population risk estimates in
39 addition to individual risk estimates;

40 (8) To the extent deemed appropriate and feasible by
41 the director considering available scientific information,
42 define appropriate approaches for addressing cumulative
43 risks posed by multiple contaminants or multiple exposure
44 pathways;

45 (9) Establish appropriate sampling approaches and
46 data quality requirements; and

47 (10) This protocol shall include public notification
48 and involvement provisions so that the public can under-
49 stand how remediation standards are applied to a site and

50 provide for clear communication of site risk issues, includ-
51 ing key risk assessment assumptions, uncertainties, popula-
52 tions considered, the context of site risks to other risks and
53 how the remedy will address site risks;

54 (g) Establish chemical and site specific information,
55 where appropriate for purpose of risk assessment. Risk
56 assessments should use chemical and site specific data and
57 analysis, such as toxicity, exposure and fate and transport
58 evaluations in preference to default assumptions. Where
59 chemical and site specific data are not available, a range
60 and distribution of realistic and plausible assumptions
61 should be employed;

62 (h) Establish criteria to evaluate and approve methods
63 for the measurement of contaminants using the practical
64 quantitation level and related laboratory standards and
65 practices to be used by certified laboratories;

66 (i) Establish standards and procedures for the utiliza-
67 tion of certificates of completion, land use covenants and
68 other legal documents necessary to effectuate the purposes
69 of this article; and

70 (j) Establish any other rules necessary to carry out the
71 requirements and the legislative intent of this act.

**§22-22-4. Voluntary remediation program; eligibility applica-
tion and fee; information available to public; confidentiality of trade secrets; information;
criminal penalties; requirements of site assess-
ment; rejection or return of application; appeal
of rejection.**

1 (a) Any site is eligible for participation in the volun-
2 tary remediation program, except those sites subject to a
3 federal environmental protection agency unilateral en-
4 forcement order, under §104 through §106 of the "Com-
5 prehensive Environmental Response, Compensation and
6 Liability Act", 94 Stat. 2779, 42 U.S.C. §9601, as amend-
7 ed, or have been listed or proposed to be listed by the
8 United States environmental protection agency on the
9 priorities list of Title I of said act, or subject to a unilateral
10 enforcement order under §3008 and §7003 of the "Re-
11 source Conservation Recovery Act" or any unilateral en-

12 enforcement order for corrective action under this chapter:
13 *Provided*, That the release which is subject to remediation
14 was not created through gross negligence or willful mis-
15 conduct. In order to participate in the voluntary
16 remediation program, a person must submit an application
17 to the director and enter into a voluntary remediation
18 agreement as set forth in section seven of this article.

19 (b) Any person who desires to participate in the vol-
20 untary remediation program must submit to the division
21 an application and an application fee established by the
22 director. The application shall be on a form provided by
23 the director and contain the following information: The
24 applicant's name, address, financial and technical capabili-
25 ty to perform the voluntary remediation, a general de-
26 scription of the site, a site assessment of the actual or
27 potential contaminants made by a licensed remediation
28 specialist and all other information required by the direc-
29 tor.

30 (c) The director shall promulgate a legislative rule
31 establishing a reasonable application fee. Fees collected
32 under this section shall be deposited to the credit of the
33 voluntary remediation fund in the state treasury as estab-
34 lished in section six of this article.

35 (d) Information obtained by the division under this
36 article shall be available to the public, unless the director
37 certifies such information to be confidential. The director
38 may make such certification where any person shows, to
39 the satisfaction of the director, that the information or
40 parts thereof, if made public, would divulge methods,
41 processes or activities entitled to protection as trade se-
42 crets. In submitting data under this article, any person
43 required to provide such confidential data may designate
44 the data which that person believes is entitled to protection
45 under this section and submit such designated data sepa-
46 rately from other data submitted under this article. This
47 designation request shall be made in writing. Any person
48 who divulges or discloses any information entitled to pro-
49 tection under this section is guilty of a misdemeanor, and,
50 upon conviction thereof, shall be fined not more than five
51 thousand dollars or imprisoned in a county jail for not
52 more than one year, or both fined and imprisoned.

53 (e) The site assessment must include a legal descrip-
54 tion of the site; a description of the physical characteristics
55 of the site and the general operational history of the site to
56 the extent that the history is known by the applicant, and
57 information of which the applicant is aware concerning
58 the nature and extent of any known contamination at the
59 site and immediately contiguous to the site, or wherever
60 the contamination came to be located.

61 (f) The director may reject or return an application if:

62 (1) A federal requirement precludes the eligibility of
63 the site;

64 (2) The application is not complete and accurate; or

65 (3) The site is ineligible under the provisions of this
66 article.

67 (g) The director shall act upon all applications within
68 forty-five days of receipt, unless an extension of time is
69 mutually agreed to and confirmed in writing. If an appli-
70 cation is returned by the director because it is not com-
71 plete or accurate, the director shall provide the applicant a
72 list of all information that is needed to make the applica-
73 tion complete or accurate. The applicant may resubmit an
74 application without submitting an additional application
75 fee.

76 (h) If the director rejects the application, then he or
77 she shall notify the applicant that the application has been
78 rejected and provide an explanation of the reasons for the
79 rejection. The applicant may, within twenty-five days of
80 rejection, indicate his desire to resubmit the application.
81 Upon final determination by the director, if the applica-
82 tion is rejected, the director shall return one half of the
83 application fee. The applicant may appeal the director's
84 rejection of the application to the environmental quality
85 board established under article three, chapter twenty-two-b
86 of this code.

87 (i) Upon withdrawal of an application, the applicant is
88 entitled to the refund of one half of the application fee.

§22-22-5. Brownfield application; remediation process; brownfield remediation; eligibility; application; remediation loan; and obtaining information from director.

1 (a) For brownfield property, any environmental
2 remediation undertaken pursuant to this article, by a de-
3 velopment authority or any person who did not cause or
4 contribute to the contamination on the property shall
5 comply with the appropriate standards established by the
6 director pursuant to this article and rules promulgated
7 hereunder. After conferring with the director, the person
8 may apply to the director for a site assessment loan under
9 section six of this article. A site assessment must be con-
10 ducted to establish existing contamination of the site. An
11 application for brownfield remediation must be submitted
12 along with the application fee. The procedures established
13 for voluntary remediation set forth in section four must be
14 followed. The director shall establish a reasonable appli-
15 cation fee.

16 (b) Brownfield sites being remediated by persons who
17 did not cause or contribute to the contamination of the site
18 are eligible for consideration for remediation loans estab-
19 lished under article fifteen, chapter thirty-one of this code.

20 (c) Persons undertaking brownfield remediation, who
21 did not cause or contribute to the contamination of the
22 brownfield site, may obtain all information relating to
23 contamination at the site in the possession of the director
24 prior to engaging in a site assessment.

**§22-22-6. Voluntary remediation administrative fund estab-
lished; voluntary remediation fees authorized; dis-
bursement of funds moneys; employment of
specialized persons authorized.**

1 (a) There is hereby created in the state treasury a
2 special revenue fund known as the "Voluntary
3 Remediation Administrative Fund". The fund shall
4 operate as a special fund whereby all deposits and
5 payments thereto do not expire to the general revenue
6 fund, but shall remain in the fund and be available for

7 expenditure in succeeding fiscal years. This fund shall
8 consist of fees collected by the director in accordance with
9 the provisions of this article as well as interest earned on
10 investments made from moneys deposited in the fund.
11 Moneys from this fund shall be expended by the director
12 for the administration, licensing, enforcement, inspection,
13 monitoring, planning, research and other activities
14 required by this article.

15 The director shall promulgate legislative rules in
16 accordance with the provisions of chapter twenty-nine-a of
17 this code establishing a schedule of voluntary remediation
18 fees applicable to persons who conduct activities subject to
19 the provisions of this article. The fees may include an
20 appropriate assessment of other program costs not
21 otherwise attributable to any specific site but necessary for
22 the administrative activities required to carry out the
23 provisions of this article.

24 (b) There is hereby created in the state treasury a
25 special revenue fund known as the "Brownfields Revolving
26 Fund". The fund shall be comprised of moneys allocated
27 to the state by the federal government expressly for the
28 purposes of establishing and maintaining a state
29 brownfields redevelopment revolving fund, all receipts
30 from loans made from the fund, any moneys appropriated
31 by the Legislature, all income from the investment of
32 moneys held in the fund, and all other sums designated
33 for deposit to the fund from any source, public or private.
34 The fund shall operate as a special fund whereby all
35 deposits and payments thereto do not expire to the general
36 revenue fund, but shall remain in the account and be
37 available for expenditure in succeeding fiscal years.
38 Moneys in the fund, to the extent that moneys are
39 available, shall be used solely to make loans to persons to
40 finance site assessments of eligible brownfield sites and
41 such other activities as authorized by any federal grant
42 received or any legislative appropriation: *Provided*, That
43 moneys in the fund may be utilized to defray those costs
44 incurred by the division in administering the provisions of
45 this subsection. The director shall promulgate rules in
46 accordance with the provisions of chapter twenty-nine-a of
47 this code, to govern the disbursement of moneys from the

48 fund, and establish a state brownfields redevelopment
49 assistance program to direct the distribution of loans from
50 the fund, and establish the interest rates and repayment
51 terms of such loans: *Provided, however,* That amounts in
52 the fund, other than those appropriated by the federal
53 government, and which are found from time to time to
54 exceed the amount needed for the purposes set forth in
55 this article, may be transferred to other accounts or funds
56 and redesignated for other purposes through
57 appropriations of the Legislature.

58 In order to carry out the administration and
59 management of the fund, the division is authorized to
60 employ officers, agents, advisors and consultants including
61 attorneys, financial advisors, engineers, other technical
62 advisors and public accountants and, notwithstanding any
63 provisions of this code to the contrary, to determine their
64 duties and compensation without the approval of any
65 other agency or instrumentality.

**§22-22-7. Voluntary remediation agreement; required use of
licensed remediation specialist; required provisions
of a voluntary remediation agreement;
failure to reach agreement; appeal to the
environmental quality board; no enforcement
action when subject of agreement.**

1 Upon acceptance of an application, the director shall
2 enter into an agreement with the applicant for the
3 remediation of the site which sets forth the following:

4 (a) A person desiring to participate in the voluntary
5 remediation program must enter into a voluntary
6 remediation agreement that sets forth the terms and
7 conditions of the evaluation of the reports and the
8 implementation of work plans;

9 (b) Any voluntary remediation agreement approved
10 by the director shall provide for the services of a licensed
11 remediation specialist for supervision of all activities
12 described in the agreement;

13 (c) A voluntary remediation agreement must provide
14 for cost recovery of all reasonable costs incurred by the
15 division in review and oversight of the person's work plan

16 and reports as a result of field activities or attributable to
17 the voluntary remediation agreement, which are in excess
18 of the fees submitted by the applicant along with a
19 schedule of payments; appropriate tasks, deliverables and
20 schedules for performance of the remediation; a listing of
21 all statutes and rules for which compliance is mandated; a
22 description of any work plan or report to be submitted for
23 review by the director, including a final report that
24 provides all information necessary to verify that all work
25 contemplated by the agreement has been completed; the
26 licensed remediation specialist's supervision of
27 remediation contractors; and a listing of the technical
28 standards to be applied in evaluating the work plans and
29 reports, with reference to the proposed future land use to
30 be achieved. The voluntary remediation agreement may
31 also provide for alternate dispute resolutions between the
32 parties to the agreement, including but not limited to,
33 arbitration or mediation of any disputes under this
34 agreement;

35 (d) No voluntary remediation agreement may be
36 modified or amended, unless the amendment or
37 modification is reduced to writing and mutually agreed
38 upon by the parties to the agreement: *Provided*, That
39 when the director determines that there is an imminent
40 threat to the public, he or she may unilaterally modify or
41 amend the agreement;

42 (e) Upon acceptance of an application, the director
43 and the applicant shall develop a remediation agreement.
44 If an agreement is not reached between the applicant and
45 the director on or before the thirty-first day after the
46 application has been accepted, either party may withdraw
47 from negotiations. Should this occur, the agency retains
48 the application fee. The applicant may appeal the failure
49 to reach agreement to the environmental quality board as
50 established under article three, chapter twenty-two-b of
51 this code. By mutual agreement, when it becomes
52 impractical to reach an agreement within thirty-one days,
53 the time limit may be extended in writing; and

54 (f) The division may not initiate an enforcement
55 action against a person who is in compliance with this
56 section for the contamination that is the subject of the

57 voluntary remediation agreement or for the activity that
58 resulted in the contamination, unless there is an imminent
59 threat to the public.

§22-22-8. Voluntary remediation work plans and reports.

1 After signing a voluntary remediation agreement, the
2 person undertaking remediation shall prepare and submit
3 the appropriate work plans and reports to the director. The
4 director shall review and evaluate the work plans and
5 reports for accuracy, quality and completeness. The
6 director may approve a voluntary remediation work plan
7 or report or disapprove and notify the person of
8 additional information needed to obtain approval.

§22-22-9. Termination of agreement; cost of recovery; legal actions.

1 The person undertaking remediation may, in their
2 sole discretion, terminate the agreement as provided by the
3 terms of the agreement and by giving fifteen days advance
4 written notice of termination. Only those costs incurred or
5 obligated by the director before notice of termination of
6 the agreement are recoverable, if the agreement is
7 terminated. The termination of the agreement does not
8 affect any right the director may have under any other law
9 to recover costs. The person undertaking the remediation
10 must pay the division's costs associated with the voluntary
11 remediation within thirty-one days after receiving notice
12 that the costs are due and owing. The director may bring
13 an action in Kanawha County circuit court or in the circuit
14 court in the county wherein the property is situated to
15 recover the amount owed to the division and reasonable
16 legal expenses.

§22-22-10. Inspections; right of entry; sampling; reports and analyses.

1 (a) The director, upon presentation of proper
2 credentials may enter any building, property, premises,
3 place or facility where brownfield or voluntary
4 remediation activities are being or have been performed
5 for the purpose of making an inspection to ascertain the
6 compliance by any person with the provisions of this
7 article or the rules promulgated by the director.

8 (b) The director shall make periodic inspections at
9 sites subject to this article. After an inspection is made, a
10 report shall be filed with the director and a copy shall be
11 provided to the person who is responsible pursuant to the
12 voluntary agreement for remediation activities. The
13 reports shall not disclose any confidential information
14 protected under the provisions of subsection (d), section
15 four of this article. The inspection reports shall be
16 available to the public in accordance with the provisions of
17 article one, chapter twenty-nine-b of this code.

18 (c) The director may, upon presentation of proper
19 credentials, enter any building, motor vehicle, property,
20 premises or site where brownfield or voluntary
21 remediation activities are being or have been performed
22 and take samples of wastes, soils, air, surface water and
23 groundwater. In taking such samples, the director may
24 utilize such sampling methods as are necessary in
25 exercising good scientific technique. Following the taking
26 of any sample, the director shall give the person
27 responsible in the voluntary agreement for remediation
28 activities a receipt describing the sample obtained and if
29 requested, a portion of each sample equal in volume or
30 weight to the portion retained. The director shall
31 promptly provide a copy of any analysis made to the
32 responsible person named in the voluntary agreement.

33 (d) Upon presentation of proper credentials, the
34 director shall be given access to all records relating to a
35 brownfield or voluntary remediation.

**§22-22-11. Licensed remediation specialist, licensure pro-
cedures.**

1 (a) No person may practice as a licensed remediation
2 specialist without a license issued by the director. Any
3 violation of this provision shall be subject to the
4 enforcement orders as set forth in section twelve of this
5 article.

6 (b) To obtain a license, a person must apply to the
7 director in writing on forms approved and supplied by the
8 director. Each application for examination for license
9 shall contain:

10 (1) The full name of the person applying for the
11 license;

12 (2) The principal business address of the applicant;

13 (3) All formal academic education and experience of
14 the applicant to demonstrate professional expertise of the
15 applicant;

16 (4) If waiver of the examination is being requested,
17 any license or certification that the person desires to be
18 considered as part of the waiver request;

19 (5) The examination fee; and

20 (6) Any other necessary information prescribed by
21 the director.

22 (c) The director shall establish the date, time and
23 location of licensed remediation specialist examinations.

24 (d) The applicant must demonstrate that he or she
25 possesses a practical knowledge of the remediation
26 activities; procedures necessary to remediate a site; and the
27 management of contaminants at a site, including, but not
28 limited to, site investigation, health and safety protocol,
29 quality assurance, feasibility studies and remedial design.

30 (e) If the director does not certify the remediation
31 specialist applicant, the director shall inform the applicant
32 in writing of the reasons therefor. The director may not
33 deny a license without cause.

34 (f) It is the licensed remediation specialist's duty to
35 protect the safety, health and welfare of the public as set
36 forth in this article, in the performance of his or her
37 professional duties. The licensed remediation specialist is
38 responsible for any release of contaminants during
39 remediation activities undertaken pursuant to the approved
40 remediation agreement, work plans or reports. If a
41 licensed remediation specialist faces a situation where he
42 or she is unable to meet this duty, the licensed remediation
43 specialist may either sever the relationship with the client
44 or employer or refuse professional responsibility for work
45 plan, report or design. The specialist shall notify the
46 division, if there is a threat to the environment or the
47 health, safety or welfare of the public.

48 (g) A licensed remediation specialist shall only
49 perform assignments for which the specialist is qualified
50 by training and experience in those specific technical
51 fields; be objective in work plans, reports and opinions;
52 and avoid any conflict of interest with employer, clients
53 and suppliers. A licensed remediation specialist shall not
54 solicit or accept gratuities, directly or indirectly from
55 contractors, agents or other parties dealing directly with
56 the employer or client in regard to professional services
57 being performed at the work site; accept any type of
58 bribe; falsify or permit misrepresentation of professional
59 qualifications; intentionally provide false information to
60 the director; or knowingly associate with one who is
61 engaging in business or professional practices of a
62 fraudulent or dishonest nature.

63 (h) A licensed remediation specialist shall not charge
64 any special fees above usual and customary professional
65 rates for being licensed.

66 (i) The license issued by the director may be renewed
67 every two years for any licensed remediation specialist in
68 good standing. The director, by rule, shall establish license
69 fees.

70 (j) The director is authorized to revoke a license;
71 suspend a license for not more than five years or impose
72 lesser sanctions as may be appropriate for acts or
73 omissions in violation of this article.

**§22-22-12. Enforcement orders for licensed remediation
specialists; cease and desist order; criminal
penalties.**

1 (a) If the director, upon inspection, investigation or
2 through other means observes, discovers or learns that a
3 licensed remediation specialist has violated the provisions
4 of this article or any rules promulgated hereunder, the
5 director may:

6 (1) Issue an order stating with reasonable specificity
7 the nature of the violation and requiring compliance
8 immediately or within a specified time. An order under
9 this section includes, but is not limited to, orders
10 suspending or revoking licenses, orders requiring a person
11 to take remedial action or cease and desist orders; or

12 (2) Request the prosecuting attorney of the county in
13 which the alleged violation occurred bring a criminal
14 action as provided for herein.

15 (b) Any person issued an order may file a request for
16 reconsideration with the director within seven days of the
17 receipt of the order. The director shall conduct a hearing
18 on the merits of the order within ten days of the filing of
19 the request for reconsideration. The filing of a notice of
20 request for reconsideration does not stay or suspend the
21 execution or enforcement of the order.

22 (c) Any licensed remediation specialist who
23 fraudulently misrepresents that work has been completed
24 and such action results in an unjustified and inexcusable
25 disregard for the safety of others, thereby placing another
26 in imminent danger or contributing to ongoing harm to
27 the environment, he or she shall be guilty of a felony, and,
28 upon conviction thereof, shall be fined not more than fifty
29 thousand dollars or imprisoned not less than one nor more
30 than two years, or both such fine and imprisonment.

31 (d) If any person associated with remediation of a
32 brownfield or voluntary remediation site engages in
33 fraudulent acts or representations to the division, he or she
34 shall be guilty of a felony, and, upon conviction thereof,
35 shall be fined not more than fifty thousand dollars or
36 imprisoned not less than one nor more than two years, or
37 both.

§22-22-13. Certificate of completion.

1 (a) The licensed remediation specialist shall issue a
2 final report to the person undertaking the voluntary
3 remediation when the property meets the applicable
4 standards and all work has been completed as
5 contemplated in the voluntary remediation agreement or
6 the site assessment shows that all applicable standards are
7 being met. Upon receipt of the final report, the person
8 may seek a certificate of completion from the director.

9 (b) The director may delegate the responsibility for
10 issuance of a certificate of completion to a licensed
11 remediation specialist in limited circumstances, as
12 specified by rule pursuant to this article.

13 (c) The certificate of completion shall contain a
14 provision relieving a person who undertook the
15 remediation and subsequent successors and assigns from
16 all liability to the state as provided under this article which
17 shall remain effective as long as the property complies
18 with the applicable standards in effect at the time the
19 certificate of completion was issued. This certificate is
20 subject to reopener provisions of section fifteen of this
21 article and may, if applicable, result in a land-use covenant
22 as provided in section fourteen of this article.

§22-22-14. Land-use covenant; criminal penalties.

1 (a) The director shall establish by rule, criteria for
2 deed recordation of land-use covenants and containing all
3 necessary deed restrictions. The director shall cause all
4 land-use covenants to appear in the chain of title by deed
5 to be properly recorded in the office of the county clerk
6 where the remediation site is located. If institutional and
7 engineering controls are used, in whole or in part, to
8 achieve a remediation standard, the director shall direct
9 that a land-use covenant be applied. The covenant shall
10 include whether residential or nonresidential exposure
11 factors were used to comply with the site-specific standard.
12 The covenant shall contain a provision relieving the
13 person who undertook the remediation and subsequent
14 successors and assigns from all civil liability to the state as
15 provided under this article and shall remain effective as
16 long as the property complies with the applicable
17 standards in effect at the time the covenant was issued.

18 (b) Whoever knowingly violates a land-use covenant
19 by converting nonresidential property to residential
20 property is guilty of a felony, and, upon conviction
21 thereof, shall be fined not more than twenty-five thousand
22 dollars, imprisoned for not more than five years, or both.

§22-22-15. Reopeners.

1 Any person who completes remediation in
2 compliance with this article shall not be required to
3 undertake additional remediation actions for contaminants
4 subject to the remediation, unless the director demon-
5 strates that:

6 (a) Fraud was committed in demonstrating attainment
7 of a standard at the site that resulted in avoiding the need
8 for further remediation of the site;

9 (b) New information confirms the existence of an area
10 of a previously unknown contamination which contains
11 contaminants that have been shown to exceed the
12 standards applied to the previous remediation at the site;

13 (c) The level of risk is increased significantly beyond
14 the established level of protection at the site due to
15 substantial changes in exposure conditions, such as, a
16 change in land use, or new information is obtained about
17 a contaminant associated with the site which revises
18 exposure assumptions beyond the acceptable range. Any
19 person who changes the use of the property causing the
20 level of risk to increase beyond established protection
21 levels shall be required by the division to undertake
22 additional remediation measures under the provisions of
23 this article;

24 (d) The release occurred after the effective date of this
25 article on a site not used for industrial activity prior to the
26 effective date of this article; the remedy relied, in whole or
27 in part, upon institutional or engineering controls instead
28 of treatment or removal of contamination; and treatment,
29 removal or destruction has become technically and
30 economically practicable; or

31 (e) The remediation method failed to meet the
32 remediation standard or combination of standards.

33 In the event that any of the foregoing circumstances
34 occur, the remediation agreement will be reopened and
35 revised to the extent necessary to return the site to its
36 previously agreed to state of remediation or other
37 appropriate standard.

**§22-22-16. Duty of assessor and citizens to notify director when
change of property use occurs.**

1 If an assessor in any county becomes aware of a
2 change of remediated property use from nonresidential
3 property to residential, the assessor shall check the land
4 record of the county to ascertain if a land-use covenant

5 appears to have been violated. Should it appear that a
6 violation has occurred, the assessor shall notify the
7 director in writing of the suspected violation. If any citizen
8 becomes aware of a change of property use from
9 nonresidential to residential, the citizen may check the
10 land record of the county to ascertain if a land use
11 covenant appears to have been violated and may notify the
12 director in writing. The director shall then investigate and
13 proceed with any necessary enforcement action.

§22-22-17. Public notification for brownfields.

1 Persons undertaking the remediation and
2 revitalization of brownfield sites shall comply with the
3 following public notice and review requirements:

4 (a) A notice of intent to remediate a site shall be
5 submitted to the division which provides, to the extent
6 known, a brief description of the location of the site, a
7 listing of the contaminants involved and the proposed
8 remediation measures. The division shall publish an
9 acknowledgment noting the receipt of the notice of intent
10 in a division publication of general circulation. At the
11 time a notice of intent to remediate a site is submitted to
12 the division, a copy of such notice shall be provided to the
13 municipality and the county in which the site is located
14 and a summary of the notice of intent shall be published
15 in a newspaper of general circulation serving the area in
16 which the site is located.

17 (b) The notice required by this subsection shall
18 include a thirty-day public, county and municipal
19 comment period during which the public, county and
20 municipality can request to be involved in the
21 development of the remediation and reuse plans for the
22 site. If requested by the public, county, municipality or
23 the director, the person undertaking the remediation shall
24 develop and implement a public involvement program
25 plan which meets the requirements set forth by the
26 director.

§22-22-18. Environmental liability protection.

1 (a) Any person demonstrating compliance with the
2 applicable standards established in section three of this

3 article, whether by remediation or where the site
4 assessment shows that the contamination at the site meets
5 applicable standards, shall be relieved of further liability
6 for the remediation of the site under this chapter.
7 Contamination identified in the remediation agreement
8 submitted to and approved by the division shall not be
9 subject to citizen suits or contribution actions. The
10 protection from further remediation liability provided by
11 this article applies to the following persons:

12 (1) The current or future owner or operator of the
13 site, including development authorities and fiduciaries who
14 participated in the remediation of the site;

15 (2) A person who develops or otherwise occupies the
16 site;

17 (3) A successor or assign of any person to whom the
18 liability protection applies;

19 (4) A public utility, as defined in section two, article
20 one, chapter twenty-four of this code, and for the purpose
21 of this article, a utility engaged in the storage and
22 transportation of natural gas, to the extent the public
23 utility performs activities on the site;

24 (5) A remediation contractor;

25 (6) A licensed remediation specialist; and

26 (7) A lender or developer who engages in the routine
27 practices of commercial lending, including, but not limited
28 to, providing financial services, holding of security
29 interests, workout practices, foreclosure or the recovery of
30 funds from the sale of a site.

31 (b) A person shall not be considered a person
32 responsible for a release or a threatened release of
33 contaminants simply by virtue of conducting or having a
34 site assessment conducted. Nothing in this section relieves
35 a person of any liability for failure to exercise due
36 diligence in performing a site assessment.

**§22-22-19. Establishing and limiting the responsibilities of
remediation contractors.**

1 (a) A person who is engaged in the business of

2 remediation contractor under this article is not responsible
3 for a release or threatened release of contaminants at the
4 site described in the voluntary remediation agreement for
5 work properly performed pursuant to the agreement.

6 (b) A person who is engaged in the business of
7 remediation contractor under this article is not liable for
8 any harm, damage or injury caused by a release of a
9 contaminant which occurred prior to the contractor
10 undertaking work at the site.

11 (c) Limitation of liability, pursuant to subsections (a)
12 and (b) of this section does not apply to a release or
13 threatened release of contaminants at the site described in
14 the voluntary remediation agreement that is directly
15 caused by an act or omission which constitutes gross
16 negligence or by the willful misconduct of the
17 remediation contractor.

18 (d) A remediation contractor is not required to obtain
19 a permit for remediation activities, if a permit is required
20 under article five, eleven, fifteen or eighteen, of this
21 chapter. However, an owner or operator of the site to be
22 remediated is not relieved of the permit requirements, if
23 any, for remediation activities undertaken at the site. A
24 remediation contractor must comply with all applicable
25 state and federal laws in the transportation, treatment,
26 storage and disposal of contaminants generated as a
27 consequence of the remediation activities.

28 (e) A remediation contractor is not a "generator" for
29 the purposes of the generator assessments imposed
30 pursuant to article twenty of this chapter.

§22-22-20. Affirmative defenses.

1 Any person who is alleged to have violated an
2 environmental law or the common law equivalent, which
3 occurred while acting pursuant to this article, may
4 affirmatively plead the following in response to an alleged
5 violation:

6 (a) An act of God;

7 (b) An intervening act of a public agency;

8 (c) Migration from property owned by a third party;

9 (d) Actions taken or omitted in the course of
10 rendering care, assistance or advice in accordance with the
11 environmental laws or at the direction of the division;

12 (e) An act of a third party who was not an agent or
13 employee of the lender, fiduciary, developer, remediation
14 contractor or development authority; or

15 (f) If the alleged liability for a lender, fiduciary,
16 developer or development authority arises after
17 foreclosure, and the lender, fiduciary, developer or
18 development authority exercised due care with respect to
19 the lender's, fiduciary's, developer's or development
20 authority's knowledge about the contaminants, and took
21 reasonable precautions based upon such knowledge
22 against foreseeable actions of third parties and the
23 consequences arising therefrom. A lender, fiduciary,
24 developer, remediation contractor or development
25 authority may avoid liability by proving any other defense
26 which may be available to it.

§22-22-21. Savings clause.

1 Nothing in this article shall affect the rights, duties,
2 defenses, immunities or causes of action under other
3 statutes or the common law of this state which may be
4 applicable to persons conducting remediation of a site.

CHAPTER 31. CORPORATIONS.

ARTICLE 15. ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-4. Definitions.

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

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

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

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

10 (d) "Bonds" means bonds or other debt instruments of

11 the authority issued under this article, whether the interest
12 thereon is taxable or tax-exempt for federal income tax
13 purposes;

14 (e) "Business plan" means a document detailing the
15 sales, production and distribution plans of an enterprise,
16 together with the expenditures necessary to carry out those
17 plans (including budget and cash flow projections) on an
18 annual basis, and an employment plan setting forth steps
19 to be taken by the enterprise to retain jobs or reduce
20 unemployment in this state;

21 (f) "Costs of establishing an industrial development
22 project" means the cost of acquiring existing facilities, cost
23 of machinery, cost of equipment and fixtures, the cost of
24 construction, including with out limitation, cost of
25 improvements, repairs, and renovations, costs of all lands,
26 water areas, property rights and easements, financing
27 charges, interest prior to and during construction, cost of
28 architectural, engineering, legal and financial or other
29 consulting services, plans, site assessments, site remediation
30 costs, specifications and surveys, estimates of costs and any
31 other expenses necessary or incident to determining the
32 feasibility or practicability of any project, together with
33 such other costs and expenses as may be necessary or
34 incidental to the financing and the construction or
35 acquisition of the project and the placing of the same in
36 operation;

37 (g) "County" means any county of this state;

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

48 (i) "Federal agency" means the United States of
49 America and any department, corporation, agency or

50 instrumentality created, designated or established by the
51 United States of America;

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

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

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

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

67 (n) "Insurance fund" means the insurance fund
68 created in this article;

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

73 (p) "Municipality" means any city or town in this
74 state;

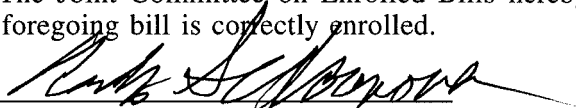
75 (q) "Notes" means any notes, including commercial
76 paper, of the authority issued under this article whether the
77 interest thereon is taxable or tax-exempt for federal
78 income tax purposes;

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

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

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

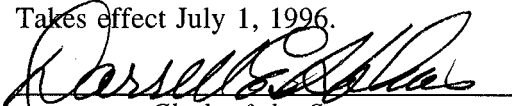
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman Senate Committee

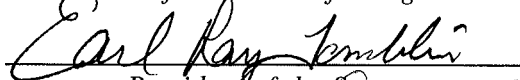

Chairman House Committee

Originating in the House.

Takes effect July 1, 1996.

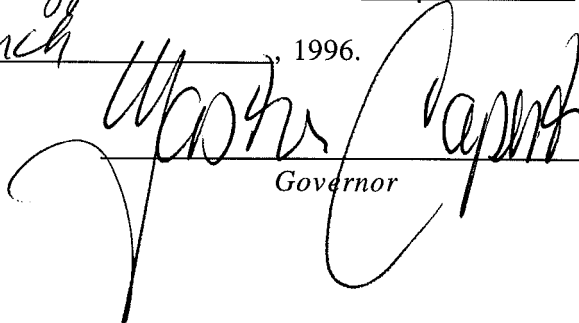

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 25th
day of March 1996.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/22/96

Time 3:02 pm