

SB 720 S

FILED

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
*REGULAR SESSION, 2004*

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**ENROLLED**

SENATE BILL NO. 720

(By Senator HELVICK, ET AL )

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PASSED MARCH 12, 2004

In Effect 90 days from Passage

FILED

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

ENROLLED

## Senate Bill No. 720

(BY SENATORS HELMICK, SHARPE, CHAFIN, PLYMALE, PREZIOSO,  
EDGELL, LOVE, BAILEY, BOWMAN, MCCABE, UNGER, DEMPSEY,  
BOLEY, MINEAR, FACEMYER, GUILLS AND SPROUSE)

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[Passed March 12, 2004; in effect ninety days from passage.]

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AN ACT to amend and reenact §13-2C-21 of the code of West Virginia, 1931, as amended, relating generally to the allocation and carry forward of unused state private activity bond volume cap.

*Be it enacted by the Legislature of West Virginia:*

That §13-2C-21 of the code of West Virginia, 1931, 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) of  
2 the United States Internal Revenue Code of 1986, other  
3 than those described in Section 146(g) of the Internal  
4 Revenue Code) issued pursuant to this article, including  
5 bonds issued by the West Virginia public energy authority  
6 pursuant to subsection (11), section five, article one,  
7 chapter five-d of this code or under article eighteen,  
8 chapter thirty-one of this code, during any calendar year  
9 may not exceed the ceiling established by Section 146(d) of  
10 the United States Internal Revenue Code. It is hereby  
11 determined and declared as a matter of legislative finding:  
12 (i) That, in an attempt to promote economic revitalization  
13 of distressed urban and rural areas, certain special tax  
14 incentives will be provided for empowerment zones and  
15 enterprise communities to be designated from qualifying  
16 areas nominated by state and local governments, all as set  
17 forth by Section 1391, *et seq.*, of the United States Internal  
18 Revenue Code; (ii) that qualified businesses operating in  
19 enterprise communities and empowerment zones will be  
20 eligible to finance property and provide other forms of  
21 financial assistance as provided for in Section 1394 of the  
22 United States Internal Revenue Code; and (iii) that it is in  
23 the best interest of this state and its citizens to facilitate  
24 the acquisition, construction and equipping of projects  
25 within designated empowerment zones and enterprise  
26 communities by providing an orderly mechanism for the  
27 commitment of the annual ceiling for private activity  
28 bonds for these projects. It is hereby further determined  
29 and declared as a matter of legislative finding: (i) That the  
30 production of bituminous coal in this state has resulted in  
31 coal waste which is stored in areas generally referred to as  
32 gob piles; (ii) that gob piles are unsightly and have the  
33 potential to pollute the environment in this state; (iii) that  
34 the utilization of the materials in gob piles to produce  
35 alternative forms of energy needs to be encouraged; (iv)  
36 that Section 142(a)(6) of the United States Internal  
37 Revenue Code of 1986 permits the financing of solid waste  
38 disposal facilities through the issuance of private activity

39 bonds; and (v) that it is in the best interest of this state and  
40 its citizens to facilitate the construction of facilities for the  
41 generation of power through the utilization of coal waste  
42 by providing an orderly mechanism for the commitment of  
43 the annual ceiling for private activity bonds for these  
44 projects.

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

52 (1) For the calendar year two thousand one, fifty million  
53 dollars and for each subsequent calendar year, forty  
54 percent of the state ceiling for that year shall be allocated  
55 to the West Virginia housing development fund for the  
56 purpose of issuing qualified mortgage bonds, qualified  
57 mortgage certificates or bonds for qualified residential  
58 rental 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 to  
63 in this section as the "state allocation";

64 (3) Thirty-five percent of the state allocation shall be set  
65 aside by the development office to be made available for  
66 lessees, purchasers or owners of proposed projects, hereaf-  
67 ter in this section referred to as "nonexempt projects",  
68 which do not qualify as exempt facilities as defined by  
69 United States Internal Revenue Code. All reservations of  
70 private activity bonds for nonexempt projects shall be  
71 approved and awarded by the committee based upon an  
72 evaluation of general economic benefit and any rule that  
73 the council for community and economic development  
74 promulgates pursuant to section three, article two, chapter

75 five-b of this code: *Provided*, That all requests or reserva-  
76 tions of funds from projects described in this subsection  
77 are submitted to the development office on or before the  
78 first day of November of each calendar year: *Provided*,  
79 *however*, That on the fifteenth day of November of each  
80 calendar year the uncommitted portion of this part of the  
81 state allocation shall revert to and become part of the state  
82 allocation portion described in subsection (g) of this  
83 section; and

84 (4) Ten percent of the state allocation shall be made  
85 available for lessees, purchasers or owners of proposed  
86 commercial or industrial projects which qualify as exempt  
87 facilities under Section 1394 of the United States Internal  
88 Revenue Code. All reservations of private activity bonds  
89 for the projects shall be approved and awarded by the  
90 committee based upon an evaluation of general economic  
91 benefit and any rule that the council for community and  
92 economic development promulgates pursuant to section  
93 three, article two, chapter five-b of this code: *Provided*,  
94 That all requests for reservations of funds from projects  
95 described in this subsection shall be submitted to the  
96 development office on or before the first day of November  
97 of each calendar year: *Provided, however*, That on the  
98 fifteenth day of November of each calendar year the  
99 uncommitted portion of this part of the state allocation  
100 shall revert to and become part of the state allocation  
101 portion described in subsection (g) of this section.

102 (c) The remaining fifty-five percent of the state alloca-  
103 tion shall be made available for lessees, purchasers or  
104 owners of proposed commercial or industrial projects  
105 which qualify as exempt facilities as defined by Section  
106 142(a) of the United States Internal Revenue Code. All  
107 reservations of private activity bonds for exempt facilities  
108 shall be approved and awarded by the committee based  
109 upon an evaluation of general economic benefit and any  
110 rule that the council for community and economic devel-  
111 opment promulgates pursuant to section three, article two,

112 chapter five-b of this code: *Provided*, That no reservation  
113 may be in an amount in excess of fifty percent of this  
114 portion of the state allocation: *Provided, however*, That all  
115 requests for reservations of funds from projects described  
116 in this subsection shall be submitted to the development  
117 office on or before the first day of November of each  
118 calendar year: *Provided further*, That on the fifteenth day  
119 of November of each calendar year the uncommitted  
120 portion of this part of the state allocation shall revert to  
121 and become part of the state allocation portion described  
122 in subsection (g) of this section.

123 (d) No reservation may be made for any project until the  
124 governmental body seeking the reservation submits a  
125 notice of reservation of funds as provided in subsection (e)  
126 of this section. The governmental body shall first adopt an  
127 inducement resolution approving the prospective issuance  
128 of bonds and setting forth the maximum amount of bonds  
129 to be issued. Each governmental body seeking a reserva-  
130 tion of funds following the adoption of the inducement  
131 resolution shall submit a notice of inducement signed by  
132 its clerk, secretary or recorder or other appropriate official  
133 to the development office. The notice shall include  
134 information required by the development office pursuant  
135 to any rule of the council for community and economic  
136 development. Notwithstanding the foregoing, when a  
137 governmental body proposes to issue bonds for the purpose  
138 of: (i) Constructing, acquiring or equipping a project  
139 described in subdivision (3) or (4), subsection (b) of this  
140 section; or (ii) constructing an energy producing project  
141 which relies, in whole or in part, upon coal waste as fuel,  
142 to the extent the project qualifies as a solid waste facility  
143 under Section 142(a)(6) of the United States Internal  
144 Revenue Code of 1986, the project may be awarded a  
145 reservation of funds from the state allocation available for  
146 three years subsequent to the year in which the notice of  
147 reservation of funds is submitted, at the discretion of the  
148 executive director of the development office: *Provided*,  
149 That no discretionary reservation may be made for any

150 single project described in this subsection in an amount in  
151 excess of thirty-five percent of the state allocation avail-  
152 able for the year subsequent to the year in which the  
153 request is made.

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

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

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

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

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

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

169 (6) The type of issue; and

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

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

183 shall immediately note upon the face of the notice the date  
184 and time of reception.

185 (g) If the bond issue for which a reservation has been  
186 made has not been finally closed within one hundred  
187 twenty days of the date of the reservation to be made by  
188 the committee, or the thirty-first of December following  
189 the date of reservation if sooner and a statement of bond  
190 closure which has been executed by the clerk, secretary,  
191 recorder or other appropriate official of the governmental  
192 body reserving the bond issue has not been received by the  
193 development office within that time, then the reservation  
194 shall expire and be considered to have been forfeited and  
195 the funds reserved shall be released and revert to the  
196 portion of the state allocation from which the funds were  
197 originally reserved and shall then be made available for  
198 other qualified issues in accordance with this section and  
199 the Internal Revenue Code: *Provided*, That as to any  
200 reservation for a nonexempt project or any reservation for  
201 a project described in subdivision (4), subsection (b) of this  
202 section that is forfeited on or after the first day of Novem-  
203 ber in any calendar year, the reservation shall revert to the  
204 state allocation for allocation by the industrial revenue  
205 bond allocation review committee: *Provided, however*,  
206 That as to any notice of reservation of funds received by  
207 the development office during the month of December in  
208 any calendar year with respect to any project qualifying as  
209 an elective carry forward pursuant to Section 146(f)(5) of  
210 the Internal Revenue Code, the notice of reservation of  
211 funds and the reservation to which the notice relates may  
212 not expire or be subject to forfeiture: *Provided further*,  
213 That any unused state ceiling as of the thirty-first day of  
214 December in any year not otherwise subject to a carry  
215 forward pursuant to Section 146(f) of the Internal Revenue  
216 Code shall be allocated to the West Virginia housing  
217 development fund which shall be considered to have  
218 elected to carry forward the unused state ceiling for the  
219 purpose of issuing qualified mortgage bonds, qualified  
220 mortgage credit certificates or bonds for qualified residen-

221 tial rental projects, each as defined in the Internal Revenue  
222 Code. All requests for subsequent reservation of funds  
223 upon loss of a reservation pursuant to this section shall be  
224 treated in the same manner as a new notice of reservation  
225 of funds in accordance with subsections (d) and (e) of this  
226 section.

227 (h) Once a reservation of funds has been made for a  
228 project described in subdivision (4), subsection (b) of this  
229 section, notwithstanding the language of subsection (g) of  
230 this section, the reservation shall remain fully available  
231 with respect to the project until the first day of October in  
232 the year from which the reservation was made at which  
233 time, if the bond issue has not been finally closed, the  
234 reservation shall expire and be considered forfeited and  
235 the funds reserved are released as provided in said subsec-  
236 tion.

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

*Lucy P. ...*  
.....  
Chairman Senate Committee

*Greg Butcher*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Russell ...*  
.....  
Clerk of the Senate

*Barry M. ...*  
.....  
Clerk of the House of Delegates

*Carl ...*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within... is approved this the 2nd  
Day of April, 2004.  
*Bob Wise*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR  
DATE 3/24/84  
TIME 10:25 am