SENATE BILL NO. 1002

(By Senators [Names of Senators]

PASSED January 29, 2005

In Effect from Passage

WEST VIRGINIA LEGISLATURE
1st EXTRAORDINARY SESSION, 2005

ENROLLED

SECRETARY OF STATE
ENROLLED

Senate Bill No. 1002

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

[Passed January 29, 2005; in effect from passage]

AN ACT to amend the code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §5-1-28; to
amend said code by adding thereto a new article, designated
§5B-1-1, §5B-1-2, §5B-1-3, §5B-1-4, §5B-1-5, §5B-1-6 and
§5B-1-7; to amend and reenact §5B-2-2, §5B-2-3 and
§5B-2-8 of said code; to amend said code by adding thereto
a new section, designated §5B-2-14; to amend and reenact
§5B-2E-3, §5B-2E-4, §5B-2E-5, §5B-2E-6 and §5B-2E-9 of
said code; to amend and reenact §5D-1-4 and §5D-1-5 of said
code; to amend said code by adding thereto a new section,
designated §5D-1-24; to amend and reenact §5F-1-2 of said
code; to amend and reenact §5F-2-1 and §5F-2-2 of said
code; to amend and reenact §7-22-3, §7-22-6, §7-22-7,
§7-22-8, §7-22-10, §7-22-11, §7-22-12, §7-22-14 and
§7-22-15 of said code; to amend and reenact §8-38-3,
§8-38-6, §8-38-7, §8-38-8, §8-38-10, §8-38-11, §8-38-12,
§8-38-14 and §8-38-15 of said code; to amend and reenact
§12-7-4 and §12-7-5 of said code; to amend and reenact
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§13-2C-21 of said code; to amend and reenact §17-24-4 of said code; to amend and reenact §18-9D-1 of said code; to amend and reenact §18B-3D-1, §18B-3D-2, §18B-3D-3, §18B-3D-4 and §18B-3D-5 of said code; to amend and reenact §22C-1-4 of said code; to amend and reenact §29-8-2 of said code; to amend and reenact §29-22-18a of said code; to amend and reenact §31-15A-3 and §31-15A-11 of said code; and to amend and reenact §31-18-4 and §31-18-5 of said code, all relating to the reorganization of the executive branch of state government; establishing prerequisites for bond issuance and refunding; creating a new department of commerce in the executive branch of state government; creating the office of secretary as the chief executive officer of the department of commerce; providing for the transfer to and incorporation into the department of commerce of the bureau of commerce and numerous state divisions, agencies and boards and allied, advisory, affiliated and related entities and funds; describing the powers, duties and authority of the secretary, administrators, division heads and employees of the department of commerce; providing for annual reports by the secretary of the department of commerce to the governor; providing for the delegation of powers and duties for the secretary of the department of commerce; extending authority of executive agencies to transfer funds; providing for interdepartmental communication of certain confidential information in certain cases; providing for an appeal in instances relating to the interference of government by the department of commerce; establishing the economic development authority as an independent agency within the executive branch; providing for the appointment and duties of the executive director of the development office; transferring authority from the council for community and economic development to the development office in certain cases; transferring rule-making authority from the council for community and economic development to the development office or its executive director; transferring the certified development community program to the economic development office; revising the powers and duties of the
development office; transferring authority to approve tourism development projects from the council for community and economic development to the executive director of the development office; transferring authority to approve county and municipal economic opportunity development district projects from the council for community and economic development to the development office; authorizing the development office to determine economic viability of waste tire processing facilities; transferring authority to approve disposal of equipment purchased with workforce development grant funds from council for community and economic development to development office; transferring authority to administer the state fund for community and technical college and workforce development from council for community and economic development to development office; authorizing executive director of development office to approve expenditure of grant funds; authorizing executive director of development office to appoint advisory committee to review applications for workforce development grants; transferring authority to administer economic development project bridge loan fund from the council for community and economic development to the economic development authority; expiring terms of members of public energy authority board; reconstituting composition of public energy authority board; providing for governor to chair the public energy authority board; restoring authority of public energy authority to initiate, acquire, construct, finance or issue bonds for electric power projects and transmission facilities; restoring authority of public energy authority to exercise powers of eminent domain; providing for sunset review of public energy authority; modifying membership of the jobs investment trust board; providing for the composition and appointment of the jobs investment trust fund board; providing for governor to chair the jobs investment trust board; authorizing the governor to appoint an executive director of the jobs investment trust board; establishing the water development authority as an independent agency within the executive branch; modifying composition of the water development
authority; providing for governor to chair the water development authority; authorizing the governor to appoint an executive director of the water development authority; modifying composition of school building authority; decreasing terms of certain members of school building authority; providing for governor to chair the school building authority; authorizing the governor to appoint an executive director of the school building authority; authorizing governor to remove members of school building authority for cause; providing for governor to chair the infrastructure and jobs development council; providing applications for infrastructure projects to be submitted to the executive director of the development office; providing for governor to chair the housing development fund board; authorizing the governor to appoint an executive director of the housing development fund board; clarifying that the Blennerhassett Island historical state park is within the division of natural resources; clarifying division of tourism in West Virginia development office; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5-1-28; that said code be amended by adding thereto a new article, designated §5B-1-1, §5B-1-2, §5B-1-3, §5B-1-4, §5B-1-5, §5B-1-6 and §5B-1-7; that §5B-2-2, §5B-2-3 and §5B-2-8 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §5B-2-14; that §5B-2E-3, §5B-2E-4, §5B-2E-5, §5B-2E-6 and §5B-2E-9 of said code be amended and reenacted; that §5D-1-4 and §5D-1-5 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §5D-1-24; that §5F-1-2 of said code be amended and reenacted; that §5F-2-1 and §5F-2-2 of said code be amended and reenacted; that §7-22-3, §7-22-6, §7-22-7, §7-22-8, §7-22-10, §7-22-11, §7-22-12, §7-22-14 and §7-22-15 of said code be amended and reenacted; that §8-38-3, §8-38-6, §8-38-7, §8-38-8, §8-38-10, §8-38-11, §8-38-12, §8-38-14 and §8-38-15 of said code be
amended and reenacted; that §12-7-4 and §12-7-5 of said code be amended and reenacted; that §13-2C-21 of said code be amended and reenacted; that §17-24-4 of said code be amended and reenacted; that §18-9D-1 of said code be amended and reenacted; that §18B-3D-1, §18B-3D-2, §18B-3D-3, §18B-3D-4 and §18B-3D-5 of said code be amended and reenacted; that §22C-1-4 of said code be amended and reenacted; that §29-8-2 of said code be amended and reenacted; that §29-22-18a of said code be amended and reenacted; that §31-15A-3 and §31-15A-11 of said code be amended and reenacted; and that §31-18-4 and §31-18-5 of said code be amended and reenacted, all to read as follows:

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 1. THE GOVERNOR.

§5-1-28. Prerequisites for bond issuance and refunding.

1 (a) On and after the first day of February, two thousand five, bonds may not be issued or refunded by the state of West Virginia or any of its agencies, boards or commissions without the express written direction of the governor, if:

6 (1) The ultimate user of the proceeds of the bonds is the state of West Virginia or any of its agencies, boards, commissions or departments; or

9 (2) The issuance or refunding of the bonds implicates the state's credit rating.

(b) Prior to any state agency, board or commission participating in any formal presentation to any nationally recognized rating agency, with respect to the proposed issuance or refunding of bonds where the ultimate user of the proceeds of the bonds is the state of West Virginia or
any of its agencies, boards, commissions or departments, or the issuance or refunding of the bonds implicates the state's credit rating, the chair or director of the state agency, board or commission shall provide written notice to the governor, the president of the Senate and the speaker of the House of Delegates of the date, time and place of the formal presentation at least ten days in advance.

(c) All bond sale requirements established in this code shall apply unless contrary to the provisions of this section.

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 1. DEPARTMENT OF COMMERCE.

§5B-1-1. Department of commerce; office of secretary of department of commerce.

(a) The secretary of commerce is the chief executive officer of the department. The governor shall appoint the secretary, by and with the advice and consent of the Senate, for the term for which the governor is elected. Any reference in this code to the bureau of commerce means the department of commerce. Any reference in this code to the commissioner of the department of commerce means the secretary of commerce. As used in this article, "secretary" means the secretary of commerce and "department" means department of commerce.

(b) The department may receive federal funds.

(c) The secretary serves at the will and pleasure of the governor. The annual salary of the secretary is ninety thousand dollars.

§5B-1-2. Agencies, boards, commissions, divisions and offices comprising the department of commerce.

The department of commerce consists of the following agencies, boards, commissions, divisions and offices,
including all of the allied, advisory, affiliated or related
entities which are incorporated in and shall be adminis-
tered as part of the department of commerce:

(1) Division of labor provided in article one, chapter
twenty-one of this code, which includes:

(A) Occupational safety and health review commission
provided in article three-a, chapter twenty-one of this
code; and

(B) Board of manufactured housing construction and
safety provided in article nine, chapter twenty-one of this
code;

(2) Office of miners' health, safety and training provided
in article one, chapter twenty-two of this code. The
following boards are transferred to the office of miners'
health, safety and training for purposes of administrative
support and liaison with the office of the governor:

(A) Board of coal mine health and safety and coal mine
safety and technical review committee provided in article
six, chapter twenty-two of this code;

(B) Board of miner training, education and certification
provided in article seven, chapter twenty-two of this
code; and

(C) Mine inspectors' examining board provided in article
nine, chapter twenty-two of this code;

(3) The West Virginia development office, which includes
the division of tourism and the tourism commission
provided in article two, chapter five-b of this code;

(4) Division of natural resources and natural resources
commission provided in article one, chapter twenty of this
code;

(5) Division of forestry provided in article one-a, chapter
nineteen of this code; and
(6) Geological and economic survey provided in article two, chapter twenty-nine of this code.

§5B-1-3. Powers and duties of secretary, administrators, division heads and employees.

(a) The secretary controls and supervises the department and is responsible for the work of each department employee.

(b) The secretary has the power and authority specified in this article, in article two, chapter five-f of this code and as otherwise specified in this code.

(c) The secretary may assess agencies, boards, commissions, divisions and offices in the department for the payment of expenses of the office of the secretary.

(d) The secretary may employ professional staff, including, but not limited to, certified public accountants, economists and attorneys, assistants and other employees as necessary for the efficient operation of the department.

(e) The secretary and administrators, division heads and other employees of the department shall perform their duties as specified in this code and as may be prescribed by the governor.

§5B-1-4. Reports by secretary.

The secretary shall report annually to the governor concerning the conduct of the department and make other reports as the governor may require.

§5B-1-5. Delegation of powers and duties by secretary.

The secretary may delegate his or her powers and duties to assistants and employees, but the secretary is responsible for all official acts of the department.

§5B-1-6. Confidentiality of information.

(a) Information provided to secretary under expectation of confidentiality. - Information that would be confiden-
(a) Interdepartmental communication of confidential information. — Notwithstanding any provision of this code to the contrary, information that is confidential pursuant to this code in the possession of any division, agency, board, commission or office of the department may be disclosed to the secretary or an employee in the office of the secretary. The secretary or employee shall safeguard the information and may not further disclose the information except under the same conditions, restrictions and limitations applicable to the administrator of the agency, board, commission, division or office of the department in whose hands the information is confidential. This subsection does not require disclosure of individually identifiable health care or other information that is prohibited from disclosure by federal law. This subsection is a specific exemption from the disclosure requirements of article one, chapter twenty-nine-b of this code.

(b) Interdepartmental communication of confidential information. — Notwithstanding any provision of this code to the contrary, information that is confidential pursuant to this code in the possession of any division, agency, board, commission or office of the department may be disclosed to the secretary or an employee in the office of the secretary. The secretary or employee shall safeguard the information and may not further disclose the information except under the same conditions, restrictions and limitations applicable to the administrator of the agency, board, commission, division or office of the department in whose hands the information is confidential. This subsection does not require disclosure of individually identifiable health care or other information that is prohibited from disclosure by federal law. This subsection is a specific exemption from the disclosure requirements of article one, chapter twenty-nine-b of this code.

(c) The provisions of this section:

(1) Apply only to information that is actually disclosed by a division, agency, board, commission or office within a department to the secretary, or an employee in the office of the secretary, of that department;

(2) Do not authorize disclosure or exempt from the provisions of article one, chapter twenty-nine-b of this
code any confidential information of a division, agency, board, commission or office within a department to any person or entity other than the secretary, or an employee in the office of the secretary, of that department;

(3) Apply only to disclosure between a division, agency, board, commission or office within a department and the secretary, or an employee in the office of the secretary, of that department.

§5B-1-7. Right of appeal from interference with functioning of agency.

Any governmental entity may appeal to the governor for review upon a showing that application of the secretary's authority may interfere with the successful functioning of that entity. The governor's decision controls on appeal.

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-2. Council for community and economic development; members, appointment and expenses; meetings; appointment and compensation of director.

(a) The council for community and economic development, within the West Virginia development office, is a body corporate and politic, constituting a public corporation and government instrumentality. Membership on the council consists of:

(1) No less than nine nor more than eleven members to be appointed by the governor, with the advice and consent of the Senate, representing community or regional interests, including economic development, commerce, banking, manufacturing, the utility industry, the mining industry, the telecommunications/data processing industry, small business, labor, tourism or agriculture. One such member shall be a member of a regional planning and development council. Of these members at least three shall represent each congressional district of the state and appointments shall be made in such a manner as to provide a broad geographical distribution of members of the council;
(2) Four at-large members to be appointed by the governor with the advice and consent of the Senate;

(3) The president of the West Virginia economic development council; and

(4) The chair, or his or her designee, of the tourism commission created pursuant to the provisions of section eight of this article.

In addition, the president of the Senate and the speaker of the House of Delegates, or his or her designee, shall serve as ex officio nonvoting members.

(b) The governor appoints the members of the council to four-year terms. A member whose term has expired continues to serve until the successor is duly appointed and qualified. Except as otherwise provided in this section, any member is eligible for reappointment. A vacancy is filled by appointment by the governor in the same manner as the original appointment. A member appointed to fill a vacancy serves for the remainder of the unexpired term.

(c) Members of the council are not compensated for services performed as members, but receive reasonable and necessary expenses actually incurred in the performance of their duties in a manner consistent with guidelines of the travel management office of the department of administration. A majority of the voting members constitute a quorum for the purpose of conducting business. The council shall elect its chair for a term to run concurrent with the term of office of the member elected as chair. The chair is eligible for successive terms in that position.

(d) The governor shall appoint an executive director of the West Virginia development office who is qualified for the position by reason of his or her extensive education and experience in the field of professional economic development. The executive director shall serve at the will and pleasure of the governor. The salary of the director
shall annually be fixed by the council. The director shall have overall management responsibility and administrative control and supervision within the West Virginia development office. It is the intention of the Legislature that the director provide professional and technical expertise in the field of professional economic and tourism development in order to support the policy-making functions of the council, but that the director not be a public officer, agent, servant or contractor within the meaning of section thirty-eight, article VI of the constitution of West Virginia and not be a statutory officer within the meaning of section one, article two, chapter five-f of this code. Subject to the provisions of the contract provided in section four of this article, the director may hire and fire economic development representatives employed pursuant to the provisions of section five of this article.

(e) The executive director of the West Virginia development office may promulgate rules to carry out the purposes and programs of the West Virginia development office to include generally the programs available and the procedure and eligibility of applications relating to assistance under the programs. These rules are not subject to the provisions of chapter twenty-nine-a of this code, but shall be filed with the secretary of state. The executive director may adopt any of the rules previously promulgated by the council for community and economic development.

§5B-2-3. Powers and duties of council for community and economic development.

The council for community and economic development shall enhance economic growth and development through the development of a comprehensive economic development strategy for West Virginia. "Comprehensive economic development strategy" means a plan that outlines strategies and activities designed to continue, diversify or expand the economic base of the state as a whole; create
jobs; develop a highly skilled workforce; facilitate business access to capital, including venture capital; advertise and market the resources offered by the state with respect to the needs of business and industry; facilitate cooperation among local, regional and private economic development enterprises; improve infrastructure on a state, regional and community level; improve the business climate generally; and leverage funding from sources other than the state, including federal and private sources.

§5B-2-8. Division of tourism and tourism commission created; members, appointment and expenses.

(a) There is hereby created within the West Virginia development office the division of tourism and an independent tourism commission, which is a body corporate and politic, constituting a public corporation and government instrumentality. The commission consists of thirteen members:

(1) Nine members to be appointed by the governor, with the advice and consent of the Senate, representing participants in the state's tourism industry. At least seven of the members shall be from the private sector. Of the nine members so appointed, one shall represent a convention and visitors bureau and another shall be a member of a convention and visitors bureau. In making the appointments the governor may select from a list provided by the West Virginia hospitality and travel association of qualified applicants. Of the nine members so appointed, no more than three shall be from each congressional district within the state and shall be appointed to provide the broadest geographic distribution which is feasible;

(2) One member to be appointed by the governor from the membership of the council for community and economic development created pursuant to the provisions of section two of this article;

(3) One member to be appointed by the governor to represent public sector nonstate participants in the tourism industry within the state;
(4) The secretary of transportation or his or her designee, ex officio; and
(5) The director of the division of natural resources or his or her designee, ex officio.

(b) Each member appointed by the governor shall serve staggered terms of four years. Any member whose term has expired shall serve until his or her successor has been appointed. Any person appointed to fill a vacancy shall serve only for the unexpired term. Any member shall be eligible for reappointment. In cases of vacancy in the office of member, such vacancy shall be filled by the governor in the same manner as the original appointment.

(c) Members of the commission shall not be entitled to compensation for services performed as members. A majority of these members shall constitute a quorum for the purpose of conducting business. The governor shall appoint a chair of the commission for a term to run concurrent with the term of the office of the member appointed to be the chair. The chair is eligible for successive terms in that position.

§5B-2-14. Certified development community program.

The certified development community program is continued and is transferred to, incorporated in and administered as a program of the West Virginia development office. The program shall provide funding assistance to the participating economic development corporations or authorities through a matching grant program. The West Virginia development office shall establish criteria for awarding matching grants to the corporations or authorities within the limits of funds appropriated by the Legislature for the program. The matching grants to eligible corporations or authorities are in the amount of thirty thousand dollars for each fiscal year, if sufficient funds are appropriated by the Legislature. The West Virginia development office shall recognize existing county,
regional or multicounty corporations or authorities where appropriate.

In developing its plan, the West Virginia development office shall consider resources and technical support available through other agencies, both public and private, including, but not limited to, the state college and university systems; the West Virginia housing development fund; the West Virginia economic development authority; the West Virginia parkways, economic development and tourism authority; the West Virginia round table; the West Virginia chamber of commerce; regional planning and development councils; regional partnership for progress councils; and state appropriations.

ARTICLE 2E. WEST VIRGINIA TOURISM DEVELOPMENT ACT.

§5B-2E-3. Definitions.

1 As used in this article, unless the context clearly indicates otherwise:

2 (1) "Agreement" means a tourism development agreement entered into, pursuant to section six of this article, between the development office and an approved company with respect to a tourism development project.

3 (2) "Approved company" means any eligible company approved by the development office pursuant to section five of this article seeking to undertake a tourism development project.

4 (3) "Approved costs" means:

5 (A) Included costs:

6 (i) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, delivery persons and material persons in connection with the acquisition, construction, equipping, installation or expansion of a tourism development project;
(ii) The costs of acquiring real property or rights in real property and any costs incidental thereto;

(iii) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping, installation or expansion of a tourism development project which is not paid by the vendor, supplier, delivery person, contractor or otherwise provided;

(iv) All costs of architectural and engineering services, including, but not limited to: Estimates, plans and specifications, preliminary investigations and supervision of construction, installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping, installation or expansion of a tourism development project;

(v) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, installation or expansion of a tourism development project;

(vi) All costs required for the installation of utilities, including, but not limited to: Water, sewer, sewer treatment, gas, electricity, communications and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are to be used to improve the economic situation of the approved company in a manner that allows the approved company to attract persons; and

(vii) All other costs comparable with those described in this subdivision;

(B) Excluded costs. – The term "approved costs" does not include any portion of the cost required to be paid for the acquisition, construction, equipping and installation or expansion of a tourism development project that is financed with governmental incentives, grants or bonds or for which the eligible taxpayer elects to qualify for other
tax credits, including, but not limited to, those provided by article thirteen-q, chapter eleven of this code.

(4) "Base tax revenue amount" means the average monthly amount of consumer sales and service tax collected by an approved company, based on the twelve-month period ending immediately prior to the opening of a new tourism development project for business, as certified by the state tax commissioner.

(5) "Development office" means the West Virginia development office as provided in article two of this chapter.

(6) "Crafts and products center" means a facility primarily devoted to the display, promotion and sale of West Virginia products and at which a minimum of eighty percent of the sales occurring at the facility are of West Virginia arts, crafts or agricultural products.

(7) "Eligible company" means any corporation, limited liability company, partnership, limited liability partnership, sole proprietorship, business trust, joint venture or any other entity operating or intending to operate a tourism development project, whether owned or leased, within the state that meets the standards required by the development office. An eligible company may operate or intend to operate directly or indirectly through a lessee.

(8) "Entertainment destination center" means a facility containing a minimum of two hundred thousand square feet of building space adjacent or complementary to an existing tourism attraction, an approved tourism development project or a major convention facility and which provides a variety of entertainment and leisure options that contain at least one major theme restaurant and at least three additional entertainment venues, including, but not limited to, live entertainment, multiplex theaters, large-format theaters, motion simulators, family entertainment centers, concert halls, virtual reality or other
interactive games, museums, exhibitions or other cultural
and leisure time activities. Entertainment and food and
drink options shall occupy a minimum of sixty percent of
total gross area, as defined in the application, available for
lease and other retail stores shall occupy no more than
forty percent of the total gross area available for lease.

(9) "Final approval" means the action taken by the
executive director of the development office qualifying the
eligible company to receive the tax credits provided in this
article.

(10) "Preliminary approval" means the action taken by
the executive director of the development office condition-
ing final approval.

(11) "State agency" means any state administrative
body, agency, department, division, board, commission or
institution exercising any function of the state that is not
a municipal corporation or political subdivision.

(12) "Tourism attraction" means a cultural or historical
site, a recreation or entertainment facility, an area of
natural phenomenon or scenic beauty, a West Virginia
crafts and products center or an entertainment destination
center. A tourism development project or attraction does
not include any of the following:

(A) Lodging facility, unless:

(i) The facility constitutes a portion of a tourism devel-
opment project and represents less than fifty percent of the
total approved cost of the tourism development project, or
the facility is to be located on recreational property owned
or leased by the state or federal government and the
facility has received prior approval from the appropriate
state or federal agency;

(ii) The facility involves the restoration or rehabilitation
of a structure that is listed individually in the national
register of historic places or is located in a national
register historic district and certified by the state historic preservation officer as contributing to the historic significance of the district and the rehabilitation or restoration project has been approved in advance by the state historic preservation officer; or

(iii) The facility involves the construction, reconstruction, restoration, rehabilitation or upgrade of a full-service lodging facility or the reconstruction, restoration, rehabilitation or upgrade of an existing structure into a full-service lodging facility having not less than five hundred guest rooms, with construction, reconstruction, restoration, rehabilitation or upgrade costs exceeding ten million dollars;

(B) A facility that is primarily devoted to the retail sale of goods, other than an entertainment destination center, a West Virginia crafts and products center or a tourism development project where the sale of goods is a secondary and subordinate component of the project; and

(C) A recreational facility that does not serve as a likely destination where individuals who are not residents of the state would remain overnight in commercial lodging at or near the new tourism development project or existing attraction.

Tourism development project means the acquisition, including the acquisition of real estate by a leasehold interest with a minimum term of ten years, construction and equipping of a tourism attraction; the construction and installation of improvements to facilities necessary or desirable for the acquisition, construction, installation or expansion of a tourism attraction, including, but not limited to, surveys, installation of utilities, which may include water, sewer, sewage treatment, gas, electricity, communications and similar facilities; and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are to be used to improve the economic situation of the
approved company in a manner that allows the approved company to attract persons.

(14) "Tourism development project tax credit" means the tourism development project tax credit allowed by section seven of this article.

§5B-2E-4. Additional powers and duties of the development office.

The development office has the following powers and duties, in addition to those set forth in this case, necessary to carry out the purposes of this article including, but not limited to:

(1) Make preliminary and final approvals of all applications for tourism development projects and enter into agreements pertaining to tourism development projects with approved companies;

(2) Employ fiscal consultants, attorneys, appraisers and other agents as the executive director of the development office finds necessary or convenient for the preparation and administration of agreements and documents necessary or incidental to any tourism development project; and

(3) Impose and collect fees and charges in connection with any transaction.

§5B-2E-5. Tourism development project application; evaluation standards; consulting services; preliminary and final approval of projects; limitation of amount annual tourism development project tax credit.

(a) Each eligible company that seeks to qualify a tourism development project for the tax credit provided by this article must file a written application for approval of the project with the development office.

(b) With respect to each eligible company making an application to the development office for the tourism development project tax credit, the development office
shall make inquiries and request documentation, including a completed application, from the applicant that shall include: A description and location of the project; capital and other anticipated expenditures for the project and the sources of funding therefor; the anticipated employment and wages to be paid at the project; business plans that indicate the average number of days in a year in which the project will be in operation and open to the public; and the anticipated revenues and expenses generated by the project.

(c) Based upon a review of the application and additional documentation provided by the eligible company, if the executive director of the development office determines that the applicant and the tourism development project may reasonably satisfy the criteria for final approval set forth in subsection (d) of this section, then the director of the development office may grant a preliminary approval of the applicant and the tourism development project.

(d) After preliminary approval by the executive director of the development office, the development office shall engage the services of a competent consulting firm or firms to analyze the data made available by the applicant and to collect and analyze additional information necessary to determine that, in the independent judgment of the consultant, the tourism development project:

(1) Likely will attract at least twenty-five percent of its visitors from outside of this state;

(2) Will have approved costs in excess of one million dollars;

(3) Will have a significant and positive economic impact on the state considering, among other factors, the extent to which the tourism development project will compete directly with or complement existing tourism attractions in the state and the amount by which increased tax
revenues from the tourism development project will exceed the credit given to the approved company;

(4) Will produce sufficient revenues and public demand to be operating and open to the public for a minimum of one hundred days per year; and

(5) Will provide additional employment opportunities in the state.

(e) The applicant shall pay to the development office, prior to the engagement of the services of a competent consulting firm or firms pursuant to the provisions of subsection (d) of this section, for the cost of the consulting report or reports and shall cooperate with the consulting firm or firms to provide all of the data that the consultant considers necessary or convenient to make its determination under subsection (d) of this section.

(f) The executive director of the development office, within thirty days following receipt of the consultant’s report or reports, shall review, in light of the consultant’s report or reports, the reasonableness of the project’s budget and timetable for completion and, in addition to the criteria for final approval set forth in subsection (d) of this section, the following criteria:

(1) The quality of the proposed tourism development project and how it addresses economic problems in the area in which the tourism development project will be located;

(2) Whether there is substantial and credible evidence that the tourism development project is likely to be started and completed in a timely fashion;

(3) Whether the tourism development project will, directly or indirectly, improve the opportunities in the area where the tourism development project will be located for the successful establishment or expansion of other industrial or commercial businesses;
(4) Whether the tourism development project will, directly or indirectly, assist in the creation of additional employment opportunities in the area where the tourism development project will be located;

(5) Whether the project helps to diversify the local economy;

(6) Whether the project is consistent with the goals of this article;

(7) Whether the project is economically and fiscally sound using recognized business standards of finance and accounting; and

(8) The ability of the eligible company to carry out the tourism development project.

(g) The development office may establish other criteria for consideration when approving the applications.

(h) The executive director of the development office may give its final approval to the applicant's application for a tourism development project and may grant to the applicant the status of an approved company: Provided, That the total amount of tourism development project tax credits for all approved companies may not exceed one million five hundred thousand dollars each calendar year.

The executive director of the development office shall act to approve or not approve any application within sixty days following the receipt of the consultant's report or reports or the receipt of any additional information requested by the development office, whichever is later. The decision by the executive director of the development office is final.

§5B-2E-6. Agreement between development office and approved company.

The development office, upon final approval of an application by the executive director, may enter into an agreement with any approved company with respect to its
tourism development project. The terms and provisions of each agreement shall include, but not be limited to:

(1) The amount of approved costs of the project that qualify for the sales tax credit, provided in section seven of this article. Within three months of the completion date, the approved company shall document the actual cost of the project through a certification of the costs to the development office by an independent certified public accountant acceptable to the development office; and

(2) A date certain by which the approved company shall have completed and opened the tourism development project to the public. Any approved company that has received final approval may request and the development office may grant an extension or change, however, in no event shall the extension exceed three years from the date of final approval to the completion date specified in the agreement with the approved company.


The executive director of the development office may promulgate rules to implement the tourism development project application approval process and to describe the criteria and procedures it has established in connection therewith. These rules are not subject to the provisions of chapter twenty-nine-a of this code but shall be filed with the secretary of state.

CHAPTER 5D. PUBLIC ENERGY AUTHORITY.

ARTICLE I. PUBLIC ENERGY AUTHORITY OF THE STATE OF WEST VIRGINIA.

§5D-1-4. West Virginia public energy authority continued; West Virginia public energy board continued; organization of authority and board; appointment of board members; term, compensation and expenses; director of authority; appointment.

(a) The West Virginia public energy authority is continued. The authority is a governmental instrumentality of
the state and a body corporate. The exercise by the
authority of the powers conferred by this article and the
carrying out of its purposes and duties are essential
governmental functions and for a public purpose.

(b) The authority is controlled, managed and operated
by a seven-member board known as the West Virginia
public energy authority board, which is continued. The
seven members include the governor or designee; the
secretary of the department of environmental protection
or designee; the director of the economic development
authority or designee; and four members representing the
general public. The public members are appointed by the
governor, by and with the advice and consent of the
Senate, for terms of one, two, three and four years, respec-
tively.

(c) On the thirty-first day of March, two thousand five,
the terms of all appointed members, appointed prior to the
amendment of this section during the first extraordinary
session of the seventy-seventh Legislature, expire. Not
later than the thirty-first day of March, two thousand five,
the governor appoints the public members required in
subsection (b) of this section to assume the duties of the
office immediately, pending the advice and consent of the
Senate.

(d) The successor of each appointed member is appointed
for a four-year term. A vacancy is filled by appointment
by the governor in the same manner as the original
appointment. A member appointed to fill a vacancy serves
for the remainder of the unexpired term. Each board
member serves until a successor is appointed.

(e) No more than three of the public members may at any
time belong to the same political party. No more than
two public members may be employed by or associated
with any industry the authority is empowered to affect.
One member shall be a person with significant experience
members may be reappointed to serve additional terms.

(f) All members of the board shall be citizens of the state. Before engaging in their duties, each member of the board shall comply with the requirements of article one, chapter six of this code and give bond in the sum of twenty-five thousand dollars in the manner provided in article two, chapter six of this code. The governor may remove any board member for cause as provided in article six, chapter six of this code.

(g) The governor serves as chair. The board annually elects one of its public members as vice chair, and appoints a secretary-treasurer who need not be a member of the board.

(h) Four members of the board constitute a quorum and the affirmative vote of the majority of members present at any meeting is necessary for any action taken by vote of the board. A vacancy in the membership of the board does not impair the rights of a quorum by such vote to exercise all the rights and perform all the duties of the board and the authority.

(i) The person appointed as secretary-treasurer, including a board member if so appointed, shall give bond in the sum of fifty thousand dollars in the manner provided in article two, chapter six of this code.

(j) Each public member receives the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. All expenses incurred by the board shall be paid in a manner consistent with guidelines of the travel management office of the department of administration and are payable solely from funds of the authority or from funds appropriated to the authority for
such purpose by the Legislature. Liability or obligation is not incurred by the authority beyond the extent to which moneys are available from funds of the authority or from such appropriations.

(k) The governor may appoint an executive director, with the advice and consent of the Senate, who serves at the governor's will and pleasure. The director is responsible for managing and administering the daily functions of the authority and for performing all other functions necessary to the effective operation of the authority.

§5D-1-5. Powers, duties and responsibilities of authority generally; termination of certain powers.

The West Virginia public energy authority has and may exercise all powers necessary or appropriate to execute its corporate purpose. The authority may:

(1) Adopt, amend and repeal bylaws necessary and proper for the regulation of its affairs and the conduct of its business and rules to implement and make effective its powers and duties, such rules to be promulgated in accordance with the provisions of chapter twenty-nine-a of this code.

(2) Adopt and use an official seal and alter the same at pleasure.

(3) Maintain a principal office and, if necessary, regional suboffices at locations properly designated or provided.

(4) Sue and be sued in its own name and plead and be impleaded in its own name, and particularly to enforce the obligations and covenants made under this article. Any actions against the authority shall be brought in the circuit court of Kanawha County.

(5) Foster, encourage and promote the mineral development industry. The authority is encouraged to maximize the use of the West Virginia mineral development industry,
but is not prohibited from utilizing nonstate mineral resources.

(6) Represent the state with respect to national initiatives concerning the mineral development industry and international marketing activities affecting the mineral development industry.

(7) Engage in strategic planning to enable the state to cope with changes affecting or which may affect the mineral development industry.

(8) Acquire, whether by purchase, construction, gift, lease, lease-purchase or otherwise, any electric power project or natural gas transmission project. In the event that an electric power project to be constructed pursuant to this article is designed to utilize coal wastes for the generation of electricity or the production of other energy, such project shall also be capable of using coal as its primary energy input: Provided, That it shall be demonstrated to the authority's satisfaction that quantities of coal wastes exist in amounts sufficient to provide energy input for such project for the term of the bonds or notes issued by the authority to finance the project and are accessible to the project.

(9) Lease, lease with an option by the lessee to purchase, sell, by installment sale or otherwise, or otherwise dispose of, to persons other than governmental agencies, any or all of its electric power projects or natural gas transmission projects for such rentals or amounts and upon such terms and conditions as the public energy authority board may deem advisable.

(10) Finance one or more electric power projects or natural gas transmission projects by making secured loans to persons other than governmental agencies to provide funds for the acquisition, by purchase, construction or otherwise, of any such project or projects.
(11) Issue bonds for the purpose of financing the cost of acquisition and construction of one or more electric power projects or natural gas transmission projects or any additions, extensions or improvements thereto which will be sold, leased with an option by the lessee to purchase, leased or otherwise disposed of to persons other than governmental agencies or for the purpose of loaning the proceeds thereof to persons other than governmental agencies for the acquisition and construction of said projects or both. Such bonds shall be issued and the payment of such bonds secured in the manner provided by the applicable provisions of sections seven, eight, nine, ten, eleven, twelve, thirteen and seventeen, article two-c, chapter thirteen of this code: Provided, That the principal and interest on such bonds shall be payable out of the revenues derived from the lease, lease with an option by the lessee to purchase, sale or other disposition of or from loan payments in connection with the electric power project or natural gas transmission project for which the bonds are issued, or any other revenue derived from such electric power project or natural gas transmission project.

(12) In the event that the electric power project or natural gas transmission project is to be owned by a governmental agency, apply to the economic development authority for the issuance of bonds payable solely from revenues as provided in article fifteen, chapter thirty-one of this code: Provided, That the economic development authority shall not issue any such bonds except by an act of general law: Provided, however, That the authority shall require that in the construction of any such project, prevailing wages shall be paid as part of a project specific agreement which also takes into account terms and conditions contained in the West Virginia - Ohio valley market retention and recovery agreement or a comparable agreement.

(13) Acquire by gift or purchase, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties as set forth in this article.
(14) Acquire in the name of the state, by purchase or otherwise, on such terms and in such manner as it deems proper, or by the exercise of the right of eminent domain in the manner provided in chapter fifty-four of this code, such real property or parts thereof or rights therein, rights-of-way, property, rights, easements and interests it deems necessary for carrying out the provisions of this article and compensation shall be paid for public or private lands so taken; and the authority may sell any of the real property or parts thereof or rights therein, rights-of-way, property, rights, easements and interests acquired hereunder in such manner and upon such terms and conditions as the authority deems proper. Provided, That if the authority determines that land or an interest therein acquired by the authority through the exercise of the power of eminent domain for the purpose of this article is no longer necessary or useful for such purposes, and if the authority desires to sell such land or interest therein, the authority shall first offer to sell such land or interest to the owner or owners from whom it was acquired, at a price equal to its fair market value. Provided, however, That if the prior owner or owners shall decline to reacquire the land or interest therein, the authority shall be authorized to dispose of such property by direct sale, auction, or competitive bidding. In no case shall such land or an interest therein acquired under this subdivision be sold for less than its fair market value. This article does not authorize the authority to take or disturb property or facilities belonging to any public utility or to a common carrier, which property or facilities are required for the proper and convenient operation of such public utility or common carrier, except for the acquisition of easements or rights-of-way which will not unreasonably interfere with the operation of the property or facilities of such public utility or common carrier, and in the event of the taking or disturbance of property or facilities of public utility or common carrier, provision shall be made for the restoration, relocation or duplication of such property or facilities elsewhere at the sole cost of the authority.
The term "real property" as used in this article is defined to include lands, structures, franchises and interests in land, including lands under water and riparian rights, and any and all other things and rights usually included within the said term, and includes also any and all interests in such property less than full title, such as easements, rights-of-way, uses, leases, licenses and all other incorporeal hereditaments and every estate, interest or right, legal or equitable, including terms for years and liens thereon by way of judgments, mortgages or otherwise, and also all claims for damages for such real estate.

For the purposes of this section, "fair market value" shall be determined by an appraisal made by an independent person or firm chosen by the authority. The appraisal shall be performed using the principles contained in the "Uniform Appraisal Standards for Federal Land Acquisitions" published under the auspices of the Interagency Land Acquisition Conference, United States Government Printing Office, 1972.

(15) Make and enter into all contracts and agreements and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers: Provided, That if any electric power project or natural gas transmission project is to be constructed by a person other than a governmental agency, and with whom the authority has contracted to lease, sell or finance such project upon its completion, then the authority shall not be required to comply with the provisions of article twenty-two, chapter five of this code requiring the solicitation of competitive bids for the construction of such a project.

(16) Employ managers, superintendents and other employees, and retain or contract with consulting engineers, financial consultants, accountants, architects, attorneys, and such other consultants and independent contractors as are necessary in its judgment to carry out the provisions of this article, and fix the compensation or fees thereof. All expenses thereof shall be payable solely
from the proceeds of bonds issued by the economic development authority, from the proceeds of bonds issued by or loan payments, lease payments or other payments received by the authority, from revenues and from funds appropriated for such purpose by the Legislature.

(17) Receive and accept from any federal agency, or any other source, grants for or in aid of the construction of any project or for research and development with respect to electric power projects, natural gas transmission projects or other energy projects, and receive and accept aid or contribution from any source of money, property, labor or other things of value to be held, used and applied only for the purpose for which such grants and contributions are made.

(18) Purchase property coverage and liability insurance for any electric power project or natural gas transmission project or other energy project and for the principal office and suboffices of the authority, insurance protecting the authority and its officers and employees against liability, if any, for damage to property or injury to or death of persons arising from its operations and any other insurance which may be provided for under a resolution authorizing the issuance of bonds or in any trust agreement securing the same.

(19) Charge, alter and collect transportation fees and other charges for the use or services of any natural gas transmission project as provided in this article.

(20) Charge and collect fees or other charges from any energy project undertaken as a result of this article.

(21) When the electric power project is owned and operated by the authority, charge reasonable fees in connection with the making and providing of electric power and the sale thereof to corporations, states, municipalities or other entities in the furtherance of the purposes of this article.
(22) Purchase and sell electricity or other energy produced by an electric power project in and out of the state of West Virginia.

(23) Enter into wheeling contracts for the transmission of electric power over the authority's or another party's lines.

(24) Make and enter into contracts for the construction of a project facility and joint ownership with another utility and the provisions of this article shall not constrain the authority from participating as a joint partner therein.

(25) Make and enter into joint ownership agreements.

(26) Establish or increase reserves from moneys received or to be received by the authority to secure or to pay the principal of and interest on the bonds issued by the economic development authority pursuant to the provisions of article fifteen, chapter thirty-one of this code or bonds issued by the authority.

(27) Broker the purchase of natural gas for resale to end-users: Provided, That whenever there are local distribution company pipelines already in place the authority shall arrange to transport the gas through such pipelines at the rates approved by the public service commission of West Virginia.

(28) Engage in market research, feasibility studies, commercial research, and other studies and research pertaining to electric power projects and natural gas transmission projects or any other functions of the authority pursuant to this article.

(29) Enter upon any lands, waters and premises in the state for the purpose of making surveys and examinations as it may deem necessary or convenient for the purpose of this article, and such entry shall not be deemed a trespass, nor shall an entry for such purposes be deemed an entry under any condemnation proceedings which may be then
pending and the authority shall make reimbursement for any actual damages resulting to such lands, waters and premises as a result of such activities.

(30) Participate in any reorganization proceeding pending pursuant to the United States Code (being the act of congress establishing a uniform system of bankruptcy throughout the United States, as amended) or any receivership proceeding in a state or federal court for the reorganization or liquidation of a responsible buyer or responsible tenant. The authority may file its claim against any such responsible buyer or responsible tenant in any of the foregoing proceedings, vote upon any question pending therein, which requires the approval of the creditors participating in any reorganization proceeding or receivership, exchange any evidence of such indebtedness for any property, security or evidence of indebtedness offered as a part of the reorganization of such responsible buyer or responsible tenant or of any entity formed to acquire the assets thereof and may compromise or reduce the amount of any indebtedness owing to it as a part of any such reorganization.

(31) Make or enter into management contracts with a second party or parties to operate any electric power project or any gas transmission project and associated facilities, or other related energy project, either during construction or permanent operation.

(32) Do all acts necessary and proper to carry out the powers expressly granted to the authority in this article.

(33) Nothing herein shall be construed to permit the transportation of gas produced outside of this state through a natural gas transmission project.

(34) The authority shall, after consultation with other agencies of state government having environmental regulatory functions, promulgate legislative rules pursuant to chapter twenty-nine-a of this code, to establish stan-
dards and principles to be applied to all projects in assessing the effects of projects on the environment: Provided, That when a proposed project requires an environmental impact statement pursuant to the National Environmental Policy Act of 1969, a copy of the environmental impact statement shall be filed with the authority and be made available prior to any final decision or final approval of any project and prior to the conducting of any public hearings regarding the project, and in any such case, no assessment pursuant to the legislative rule need be made.

§5D-1-24. Continuation of board.

The West Virginia public energy authority board shall continue to exist, pursuant to the provisions of article ten, chapter four of this code, until the first day of July, two thousand ten, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.

CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 1. GENERAL PROVISIONS.

§5F-1-2. Executive departments created; offices of secretary created.

(a) There are created, within the executive branch of the state government, the following departments:

(1) Department of administration;
(2) Department of education and the arts;
(3) Department of environmental protection;
(4) Department of health and human resources;
(5) Department of military affairs and public safety;
(6) Department of revenue;
(7) Department of transportation; and
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10 (8) Department of commerce.

11 (b) Each department will be headed by a secretary
12 appointed by the governor with the advice and consent of
13 the Senate. Each secretary serves at the will and pleasure
14 of the governor.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-1. Transfer and incorporation of agencies and boards; funds.

1 (a) The following agencies and boards, including all of
2 the allied, advisory, affiliated or related entities and funds
3 associated with any agency or board, are transferred to
4 and incorporated in and administered as a part of the
5 department of administration:

6 (1) Building commission provided in article six, chapter
7 five of this code;

8 (2) Public employees insurance agency and public
9 employees insurance agency advisory board provided in
10 article sixteen, chapter five of this code;

11 (3) Governor's mansion advisory committee provided for
12 in article five, chapter five-a of this code;

13 (4) Commission on uniform state laws provided in article
14 one-a, chapter twenty-nine of this code;

15 (5) Education and state employees grievance board
16 provided for in article twenty-nine, chapter eighteen of
17 this code and article six-a, chapter twenty-nine of this
18 code;

19 (6) Board of risk and insurance management provided
20 for in article twelve, chapter twenty-nine of this code;

21 (7) Boundary commission provided in article
22 twenty-three, chapter twenty-nine of this code;

23 (8) Public defender services provided in article
24 twenty-one, chapter twenty-nine of this code;
(9) Division of personnel provided in article six, chapter twenty-nine of this code;

(10) The West Virginia ethics commission provided in article two, chapter six-b of this code; and

(11) Consolidated public retirement board provided in article ten-d, chapter five of this code.

(b) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are transferred to and incorporated in and administered as a part of the department of commerce:

(1) Division of labor provided in article one, chapter twenty-one of this code, which includes:

(A) Occupational safety and health review commission provided in article three-a, chapter twenty-one of this code; and

(B) Board of manufactured housing construction and safety provided in article nine, chapter twenty-one of this code;

(2) Office of miners' health, safety and training provided in article one, chapter twenty-two-a of this code. The following boards are transferred to the office of miners' health, safety and training for purposes of administrative support and liaison with the office of the governor:

(A) Board of coal mine health and safety and coal mine safety and technical review committee provided in article six, chapter twenty-two-a of this code;

(B) Board of miner training, education and certification provided in article seven, chapter twenty-two-a of this code; and

(C) Mine inspectors' examining board provided in article nine, chapter twenty-two-a of this code;
(3) The West Virginia development office, which includes the division of tourism and the tourism commission provided in article two, chapter five-b of this code;

(4) Division of natural resources and natural resources commission provided in article one, chapter twenty of this code;

(5) Division of forestry provided in article one-a, chapter nineteen of this code; and

(6) Geological and economic survey provided in article two, chapter twenty-nine of this code.

(c) The economic development authority provided for in article fifteen, chapter thirty-one of this code is continued as an independent agency within the executive branch.

(d) The water development authority and board provided in article one, chapter twenty-two-c of this code is continued as an independent agency within the executive branch.

(e) Bureau of employment programs provided in article one, chapter twenty-one-a of this code is continued as an independent agency within the executive branch.

(f) Workers' compensation commission provided in article one, chapter twenty-three of this code is continued as an independent agency within the executive branch.

(g) Bureau of environment is abolished and the following agencies and boards, including all allied, advisory and affiliated entities, are transferred to the department of environmental protection for purposes of administrative support and liaison with the office of the governor:

(1) Air quality board provided in article two, chapter twenty-two-b of this code;

(2) Solid waste management board provided in article three, chapter twenty-two-c of this code;
(3) Environmental quality board, or its successor board, provided in article three, chapter twenty-two-b of this code;

(4) Surface mine board provided in article four, chapter twenty-two-b of this code;

(5) Oil and gas inspectors' examining board provided in article seven, chapter twenty-two-c of this code;

(6) Shallow gas well review board provided in article eight, chapter twenty-two-c of this code; and

(7) Oil and gas conservation commission provided in article nine, chapter twenty-two-c of this code.

(h) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are transferred to and incorporated in and administered as a part of the department of education and the arts:

(1) Library commission provided in article one, chapter ten of this code;

(2) Educational broadcasting authority provided in article five, chapter ten of this code;

(3) Division of culture and history provided in article one, chapter twenty-nine of this code;

(4) Division of rehabilitation services provided in section two, article ten-a, chapter eighteen of this code.

(i) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are transferred to and incorporated in and administered as a part of the department of health and human resources:

(1) Human rights commission provided for in article eleven, chapter five of this code;
(2) Division of human services provided for in article two, chapter nine of this code;

(3) Bureau for public health provided for in article one, chapter sixteen of this code;

(4) Office of emergency medical services and advisory council thereto provided for in article four-c, chapter sixteen of this code;

(5) Health care authority provided for in article twenty-nine-b, chapter sixteen of this code;

(6) Commission on mental retardation provided for in article fifteen, chapter twenty-nine of this code;

(7) Women's commission provided for in article twenty, chapter twenty-nine of this code; and

(8) The child support enforcement division provided for in chapter forty-eight of this code.

(j) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are transferred to and incorporated in and administered as a part of the department of military affairs and public safety:

(1) Adjutant general's department provided for in article one-a, chapter fifteen of this code;

(2) Armory board provided for in article six, chapter fifteen of this code;

(3) Military awards board provided for in article one-g, chapter fifteen of this code;

(4) West Virginia state police provided for in article two, chapter fifteen of this code;

(5) Office of emergency services and disaster recovery board provided for in article five, chapter fifteen of this code;
code and emergency response commission provided for in article five-a of said chapter;

(6) Sheriffs' bureau provided for in article eight, chapter fifteen of this code;

(7) Division of corrections provided for in chapter twenty-five of this code;

(8) Fire commission provided for in article three, chapter twenty-nine of this code;

(9) Regional jail and correctional facility authority provided for in article twenty, chapter thirty-one of this code;

(10) Board of probation and parole provided for in article twelve, chapter sixty-two of this code; and

(11) Division of veterans' affairs and veterans' council provided for in article one, chapter nine-a of this code.

(k) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are transferred to and incorporated in and administered as a part of the department of revenue:

(1) Tax division provided for in article one, chapter eleven of this code;

(2) Racing commission provided for in article twenty-three, chapter nineteen of this code;

(3) Lottery commission and position of lottery director provided for in article twenty-two, chapter twenty-nine of this code;

(4) Agency of insurance commissioner provided for in article two, chapter thirty-three of this code;

(5) Office of alcohol beverage control commissioner provided for in article sixteen, chapter eleven of this code and article two, chapter sixty of this code;
(6) Board of banking and financial institutions provided for in article three, chapter thirty-one-a of this code;

(7) Lending and credit rate board provided for in chapter forty-seven-a of this code;

(8) Division of banking provided for in article two, chapter thirty-one-a of this code;

(9) The state budget office, formerly known as the budget section of the finance division, department of administration, previously provided for in article two, chapter five-a of this code and now provided for in article two of this chapter;

(10) The municipal bond commission provided for in article three, chapter thirteen of this code;

(11) The office of tax appeals provided for in article ten-a, chapter eleven of this code; and

(12) The state athletic commission provided for in article five-a, chapter twenty-nine of this code.

(1) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are transferred to and incorporated in and administered as a part of the department of transportation:

(1) Division of highways provided for in article two-a, chapter seventeen of this code;

(2) Parkways, economic development and tourism authority provided for in article sixteen-a, chapter seventeen of this code;

(3) Division of motor vehicles provided for in article two, chapter seventeen-a of this code;

(4) Driver's licensing advisory board provided for in article two, chapter seventeen-b of this code;
(5) Aeronautics commission provided for in article two-a, chapter twenty-nine of this code;

(6) State rail authority provided for in article eighteen, chapter twenty-nine of this code; and

(7) Port authority provided for in article sixteen-b, chapter seventeen of this code.

(m) Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence of the position of administrator and of the agency and the powers, authority and duties of each administrator and agency are not affected by the enactment of this chapter.

(n) Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence, powers, authority and duties of boards and the membership, terms and qualifications of members of the boards are not affected by the enactment of this chapter and all boards which are appellate bodies or were otherwise established to be independent decision makers will not have their appellate or independent decision-making status affected by the enactment of this chapter.

(o) Any department previously transferred to and incorporated in a department created in section two, article one of this chapter by prior enactment of this section in chapter three, acts of the Legislature, first extraordinary session, one thousand eight hundred eighty-nine, and subsequent amendments means a division of the appropriate department. Wherever reference is made to any department transferred to and incorporated in a department created in section two, article one of this chapter, the reference means a division of the appropriate department and any reference to a division of a department so transferred and incorporated means a section of the appropriate division of the department.
(p) When an agency, board or commission is transferred under a bureau or agency other than a department headed by a secretary pursuant to this section, that transfer is solely for purposes of administrative support and liaison with the office of the governor, a department secretary or a bureau. Nothing in this section extends the powers of department secretaries under section two of this article to any person other than a department secretary and nothing limits or abridges the statutory powers and duties of statutory commissioners or officers pursuant to this code.

§5F-2-2. Power and authority of secretary of each department.

(a) Notwithstanding any other provision of this code to the contrary, the secretary of each department shall have plenary power and authority within and for the department to:

(1) Employ and discharge within the office of the secretary such employees as may be necessary to carry out the functions of the secretary, which employees shall serve at the will and pleasure of the secretary;

(2) Cause the various agencies and boards to be operated effectively, efficiently and economically, and develop goals, objectives, policies and plans that are necessary or desirable for the effective, efficient and economical operation of the department;

(3) Eliminate or consolidate positions, other than positions of administrators or positions of board members, and name a person to fill more than one position;

(4) Delegate, assign, transfer or combine responsibilities or duties to or among employees, other than administrators or board members;

(5) Reorganize internal functions or operations;

(6) Formulate comprehensive budgets for consideration by the governor, and transfer within the department funds appropriated to the various agencies of the department.
which are not expended due to cost savings resulting from
the implementation of the provisions of this chapter:
Provided, That no more than twenty-five percent of the
funds appropriated to any one agency or board may be
transferred to other agencies or boards within the depart-
ment: Provided, however, That no funds may be trans-
ferred from a special revenue account, dedicated account,
capital expenditure account or any other account or funds
specifically exempted by the Legislature from transfer,
except that the use of appropriations from the state road
fund transferred to the office of the secretary of the
department of transportation is not a use other than the
purpose for which such funds were dedicated and is
permitted: Provided further, That if the Legislature by
subsequent enactment consolidates agencies, boards or
functions, the secretary may transfer the funds formerly
appropriated to such agency, board or function in order to
implement such consolidation. The authority to transfer
funds under this section shall expire on the thirtieth day
of June, two thousand six;

(7) Enter into contracts or agreements requiring the
expenditure of public funds, and authorize the expendi-
ture or obligating of public funds as authorized by law:
Provided, That the powers granted to the secretary to
enter into contracts or agreements and to make expendi-
tures or obligations of public funds under this provision
shall not exceed or be interpreted as authority to exceed
the powers heretofore granted by the Legislature to the
various commissioners, directors or board members of the
various departments, agencies or boards that comprise and
are incorporated into each secretary's department under
this chapter;

(8) Acquire by lease or purchase property of whatever
kind or character and convey or dispose of any property of
whatever kind or character as authorized by law: Pro-
vided, That the powers granted to the secretary to lease,
purchase, convey or dispose of such property shall not
(9) Conduct internal audits;
(10) Supervise internal management;
(11) Promulgate rules, as defined in section two, article one, chapter twenty-nine-a of this code, to implement and make effective the powers, authority and duties granted and imposed by the provisions of this chapter, such promulgation to be in accordance with the provisions of chapter twenty-nine-a of this code;
(12) Grant or withhold written consent to the proposal of any rule, as defined in section two, article one, chapter twenty-nine-a of this code, by any administrator, agency or board within the department, without which written consent no proposal of a rule shall have any force or effect;
(13) Delegate to administrators such duties of the secretary as the secretary may deem appropriate from time to time to facilitate execution of the powers, authority and duties delegated to the secretary; and
(14) Take any other action involving or relating to internal management not otherwise prohibited by law.

(b) The secretaries of the departments hereby created shall engage in a comprehensive review of the practices, policies and operations of the agencies and boards within their departments to determine the feasibility of cost reductions and increased efficiency which may be achieved therein, including, but not limited to, the following:
(1) The elimination, reduction and restrictions in the use of the state's vehicle or other transportation fleet;
(2) The elimination, reduction and restrictions in the preparation of state government publications, including annual reports, informational materials and promotional materials;

(3) The termination or rectification of terms contained in lease agreements between the state and private sector for offices, equipment and services;

(4) The adoption of appropriate systems for accounting, including consideration of an accrual basis financial accounting and reporting system;

(5) The adoption of revised procurement practices to facilitate cost effective purchasing procedures, including consideration of means by which domestic businesses may be assisted to compete for state government purchases;

and

(6) The computerization of the functions of the state agencies and boards.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, none of the powers granted to the secretaries herein shall be exercised by the secretary if to do so would violate or be inconsistent with the provisions of any federal law or regulation, any federal-state program or federally delegated program or jeopardize the approval, existence or funding of any such program and the powers granted to the secretary shall be so construed.

(d) The layoff and recall rights of employees within the classified service of the state as provided in subsections five and six, section ten, article six, chapter twenty-nine of this code shall be limited to the organizational unit within the agency or board and within the occupational group established by the classification and compensation plan for the classified service of the agency or board in which the employee was employed prior to the agency or board’s transfer or incorporation into the department: Provided, That the employee shall possess the qualifications estab-
lished for the job class. The duration of recall rights provided in this subsection shall be limited to two years or the length of tenure, whichever is less. Except as provided in this subsection, nothing contained in this section shall be construed to abridge the rights of employees within the classified service of the state as provided in sections ten and ten-a, article six, chapter twenty-nine of this code or the right of classified employees of the board of regents to the procedures and protections set forth in article twenty-six-b, chapter eighteen of this code.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 22. COUNTY ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.

§7-22-3. Definitions.

1 For purposes of this article, the term:

2 (1) “County commission” means the governing body of a county of this state;

4 (2) “Development expenditures” means payments for governmental functions, programs, activities, facility construction, improvements and other goods and services which a district board is authorized to perform or provide under section five of this article;

9 (3) “District” means an economic opportunity development district created pursuant to this article;

11 (4) “District board” means a district board created pursuant to section ten of this article; and

13 (5) “Eligible property” means any taxable or exempt real property located in a district established pursuant to this article.

§7-22-6. Notice; hearing.

1 (a) General. – A county commission desiring to create an economic opportunity development district shall conduct a public hearing.
(b) Notice of hearing. — Notice of the public hearing shall be published as a Class I-0 legal advertisement in compliance with article three, chapter fifty-nine of this code at least twenty days prior to the scheduled hearing. In addition to the time and place of the hearing, the notice must also state:

1. The purpose of the hearing;
2. The name of the proposed district;
3. The general purpose of the proposed district;
4. The geographic boundaries of the property proposed to be included in the district; and
5. The proposed method of financing any costs involved, including the base and rate of special district excise tax that may be imposed upon sales of tangible personal property and taxable services from business locations situated within the proposed district.

(c) Opportunity to be heard. — At the time and place set forth in the notice, the county commission shall afford the opportunity to be heard to any owner of real property situated in the proposed district and any residents of the county.

(d) Application to West Virginia development office. — If the county commission, following the public hearing, determines it advisable and in the public interest to establish an economic opportunity development district, it shall apply to the West Virginia development office for approval of the economic opportunity development district project pursuant to the procedures provided in section seven of this article.

§7-22-7. Application to development office for approval of an economic opportunity development district project.

(a) General. — The development office shall receive and act on applications filed with it by county commissions
pursuant to section six of this article. Each application
must include:

(1) A true copy of the notice described in section six of
this article;

(2) The total cost of the project;

(3) A reasonable estimate of the number of months
needed to complete the project;

(4) A general description of the capital improvements,
additional or extended services and other proposed
development expenditures to be made in the district as
part of the project;

(5) A description of the proposed method of financing
the development expenditures, together with a description
of the reserves to be established for financing ongoing
development or redevelopment expenditures necessary to
permanently maintain the optimum economic viability of
the district following its inception: Provided, That the
amounts of the reserves shall not exceed the amounts that
would be required by ordinary commercial capital market
considerations;

(6) A description of the sources and anticipated amounts
of all financing, including, but not limited to, proceeds
from the issuance of any bonds or other instruments,
revenues from the special district excise tax and enhanced
revenues from property taxes and fees;

(7) A description of the financial contribution of the
county commission to the funding of development expend-
itures;

(8) Identification of any businesses that the county
commission expects to relocate their business locations
from the district to another place in the state in connection
with the establishment of the district or from another
place in this state to the district: Provided, That for
purposes of this article, any entities shall be designated "relocated entities";

(9) Identification of any businesses currently conducting business in the proposed economic opportunity develop-
ment district that the county commission expects to continue doing business there after the district is created;

(10) A good faith estimate of the aggregate amount of consumers sales and service tax that was actually remitted
to the tax commissioner by all business locations identi-
fied as provided in subdivisions (8) and (9) of this subsec-
tion with respect to their sales made and services rendered from their then current business locations that will be relocated from, or to, or remain in the district, for the twelve full calendar months next preceding the date of the application: Provided, That for purposes of this article, the aggregate amount is designated as "the base tax revenue amount";

(11) A good faith estimate of the gross annual district tax revenue amount;

(12) The proposed application of any surplus from all funding sources to further the objectives of this article;

(13) The tax commissioner's certification of: (i) The amount of consumers sales and service taxes collected from businesses located in the economic opportunity district during the twelve calendar months preceding the calendar quarter during which the application will be submitted to the development office; (ii) the estimated amount of economic opportunity district excise tax that will be collected during the first twelve months after the month in which the tax commissioner would first begin to collect that tax; and (iii) the estimated amount of economic opportunity district excise tax that will be collected during the first thirty-six months after the month in which the tax commissioner would first begin to collect that tax; and
(14) Any additional information the development office may require.

(b) Review of applications. — The development office shall review all project proposals for conformance to statutory and regulatory requirements, the reasonableness of the project’s budget and timetable for completion and the following criteria:

(1) The quality of the proposed project and how it addresses economic problems in the area in which the project will be located;

(2) The merits of the project determined by a cost-benefit analysis that incorporates all costs and benefits, both public and private;

(3) Whether the project is supported by significant private sector investment and substantial credible evidence that, but for the existence of sales tax increment financing, the project would not be feasible;

(4) Whether the economic opportunity district excise tax dollars will leverage or be the catalyst for the effective use of private, other local government, state or federal funding that is available;

(5) Whether there is substantial and credible evidence that the project is likely to be started and completed in a timely fashion;

(6) Whether the project will, directly or indirectly, improve the opportunities in the area where the project will be located for the successful establishment or expansion of other industrial or commercial businesses;

(7) Whether the project will, directly or indirectly, assist in the creation of additional long-term employment opportunities in the area and the quality of jobs created in all phases of the project, to include, but not be limited to, wages and benefits;
Whether the project will fulfill a pressing need for the area, or part of the area, in which the economic opportunity district is located;

Whether the county commission has a strategy for economic development in the county and whether the project is consistent with that strategy;

Whether the project helps to diversify the local economy;

Whether the project is consistent with the goals of this article;

Whether the project is economically and fiscally sound using recognized business standards of finance and accounting; and

The ability of the county commission and the project developer or project team to carry out the project: Provided, That no project may be approved by the development office unless the amount of all development expenditures proposed to be made in the first twenty-four months following the creation of the district results in capital investment of more than fifty million dollars in the district and the county submits clear and convincing information, to the satisfaction of the development office, that such investment will be made if the development office approves the project and the Legislature authorizes the county commission to levy an excise tax on sales of goods and services made within the economic opportunity district as provided in this article.

(c) Additional criteria. The development office may establish other criteria for consideration when approving the applications.

(d) Action on the application. The executive director of the development office shall act to approve or not approve any application within thirty days following the receipt of the application or the receipt of any additional informa-
(e) Certification of project. — If the executive director of the development office approves a county's economic opportunity district project application, he or she shall issue to the county commission a written certificate evidencing the approval.

The certificate shall expressly state a base tax revenue amount, the gross annual district tax revenue amount and the estimated net annual district tax revenue amount which, for purposes of this article, is the difference between the gross annual district tax revenue amount and the base tax revenue amount, all of which the development office has determined with respect to the district's application based on any investigation it considers reasonable and necessary, including, but not limited to, any relevant information the development office requests from the tax commissioner and the tax commissioner provides to the development office: Provided, That in determining the net annual district tax revenue amount, the development office may not use a base tax revenue amount less than that amount certified by the tax commissioner but, in lieu of confirmation from the tax commissioner of the gross annual district tax revenue amount, the development office may use the estimate of the gross annual district tax revenue amount provided by the county commission pursuant to subsection (a) of this section.

(f) Certification of enlargement of geographic boundaries of previously certified district. — If the executive director of the development office approves a county's economic opportunity district project application to expand the geographic boundaries of a previously certified district, he or she shall issue to the county commission a written certificate evidencing the approval.

The certificate shall expressly state a base tax revenue amount, the gross annual district tax revenue amount and
the estimated net annual district tax revenue amount which, for purposes of this article, is the difference between the gross annual district tax revenue amount and the base tax revenue amount, all of which the development office has determined with respect to the district's application based on any investigation it considers reasonable and necessary, including, but not limited to, any relevant information the development office requests from the tax commissioner and the tax commissioner provides to the development office: Provided, That in determining the net annual district tax revenue amount, the development office may not use a base tax revenue amount less than that amount certified by the tax commissioner but, in lieu of confirmation from the tax commissioner of the gross annual district tax revenue amount, the development office may use the estimate of the gross annual district tax revenue amount provided by the county commission pursuant to subsection (a) of this section.

(g) Promulgation of rules. – The executive director of the development office may promulgate rules to implement the economic opportunity development district project application approval process and to describe the criteria and procedures it has established in connection therewith. These rules are not subject to the provisions of chapter twenty-nine-a of this code but shall be filed with the secretary of state.

§7-22-8. Establishment of the economic opportunity development district fund.

(a) General. – There is hereby created a special revenue account in the state treasury designated the “economic opportunity development district fund” which is an interest-bearing account and shall be invested in the manner described in section nine-c, article six, chapter twelve of this code with the interest income a proper credit to the fund.

(b) District subaccount. – A separate and segregated subaccount within the account shall be established for
each economic opportunity development district that is
approved by the executive director of the development
office. In addition to the economic opportunity district
excise tax levied and collected as provided in this article,
funds paid into the account for the credit of any
subaccount may also be derived from the following
sources:

  (1) All interest or return on the investment accruing to
      the subaccount;

  (2) Any gifts, grants, bequests, transfers, appropriations
      or donations which are received from any governmental
      entity or unit or any person, firm, foundation or corpora-
      tion; and

  (3) Any appropriations by the Legislature which are
      made for this purpose.

§7-22-10. Ordinance to create district as approved by develop-
ment office and authorized by the Legislature.

(a) General. – If an economic opportunity development
district project has been approved by the executive
director of the development office and the levying of a
special district excise tax for the district has been autho-
rized by the Legislature, all in accordance with this article,
the county commission may create the district by order
entered of record as provided in article one of this chapter:
Provided, That the county commission may not amend,
alter or change in any manner the boundaries of the
economic opportunity development district authorized by
the Legislature. In addition to all other requirements, the
order shall contain the following:

(1) The name of the district and a description of its
    boundaries;

(2) A summary of any proposed services to be provided
    and capital improvements to be made within the district
    and a reasonable estimate of any attendant costs;
(3) The base and rate of any special district excise tax that may be imposed upon sales by businesses for the privilege of operating within the district, which tax shall be passed on to and paid by the consumer, and the manner in which the taxes will be imposed, administered and collected, all of which shall be in conformity with the requirements of this article; and

(4) The district board members' terms, their method of appointment and a general description of the district board's powers and duties, which powers may include the authority:

(A) To make and adopt all necessary bylaws and rules for its organization and operations not inconsistent with any applicable laws;

(B) To elect its own officers, to appoint committees and to employ and fix compensation for personnel necessary for its operations;

(C) To enter into contracts with any person, agency, government entity, agency or instrumentality, firm, partnership, limited partnership, limited liability company or corporation, including both public and private corporations, and for-profit and not-for-profit organizations and generally to do any and all things necessary or convenient for the purpose of promoting, developing and advancing the purposes described in section two of this article;

(D) To amend or supplement any contracts or leases or to enter into new, additional or further contracts or leases upon the terms and conditions for consideration and for any term of duration, with or without option of renewal, as agreed upon by the district board and any person, agency, government entity, agency or instrumentality, firm, partnership, limited partnership, limited liability company or corporation;

(E) To, unless otherwise provided in, and subject to the provisions of any contracts or leases to operate, repair,
manage and maintain buildings and structures and provide adequate insurance of all types and in connection with the primary use thereof and incidental thereto to provide services, such as retail stores and restaurants, and to effectuate incidental purposes, grant leases, permits, concessions or other authorizations to any person or persons upon the terms and conditions for consideration and for the term of duration as agreed upon by the district board and any person, agency, governmental department, firm or corporation;

(F) To delegate any authority given to it by law to any of its officers, committees, agents or employees;

(G) To apply for, receive and use grants-in-aid, donations and contributions from any source or sources and to accept and use bequests, devises, gifts and donations from any person, firm or corporation;

(H) To acquire real property by gift, purchase or construction or in any other lawful manner and hold title thereto in its own name and to sell, lease or otherwise dispose of all or part of any real property which it may own, either by contract or at public auction, upon the approval by the district board;

(I) To purchase or otherwise acquire, own, hold, sell, lease and dispose of all or part of any personal property which it may own, either by contract or at public auction;

(J) Pursuant to a determination by the district board that there exists a continuing need for redevelopment expenditures and that moneys or funds of the district are necessary therefor, to borrow money and execute and deliver the district's negotiable notes and other evidences of indebtedness therefor, on the terms as the district shall determine, and give security therefor as is requisite, including, without limitation, a pledge of the district's rights in its subaccount of the economic opportunity development district fund;
(K) To acquire (either directly or on behalf of the
municipality) an interest in any entity or entities that own
any real property situate in the district, to contribute
capital to any entity or entities and to exercise the rights
of an owner with respect thereto; and

(L) To expend its funds in the execution of the powers
and authority given in this section, which expenditures, by
the means authorized in this section, are hereby deter-
mined and declared as a matter of legislative finding to be
for a public purpose and use, in the public interest and for
the general welfare of the people of West Virginia, to
alleviate and prevent economic deterioration and to relieve
the existing critical condition of unemployment existing
within the state.

(b) Additional contents of order. – The county commis-
sion’s order shall also state the general intention of the
county commission to develop and increase services and to
make capital improvements within the district.

(c) Mailing of certified copies of order. – Upon entry of
an order establishing an economic opportunity develop-
ment district excise tax, a certified copy of the order shall
be mailed to the state auditor, as ex officio the chief
inspector and supervisor of public offices, the state
treasurer and the tax commissioner.

§7-22-11. District board; duties.

(a) General. – The county commission of a county that
has been authorized by the Legislature to establish an
economic opportunity development district, in accordance
with this article, shall provide, by order entered of record,
for the appointment of a district board to oversee the
operations of the district: Provided, That the county
commission may, by order, in lieu of appointing a separate
district board, designate itself to act as the district board.

(b) Composition of board. – If a separate district board
is to be appointed, it shall be made up of at least seven
members, two of which shall be owners, or representatives 
of owners, of real property situated in the economic 
opportunity development district and the other five shall 
be residents of the county within which the district is 
located.

(c) Annual report. – The district board, in addition to the 
duties prescribed by the order creating the district, shall 
submit an annual report to the county commission and the 
development office containing:

(1) An itemized statement of its receipts and disburse-
ments for the preceding fiscal year;

(2) A description of its activities for the preceding fiscal 
year;

(3) A recommended program of services to be performed 
and capital improvements to be made within the district 
for the coming fiscal year; and

(4) A proposed budget to accomplish its objectives.

(d) Conflict of interest exception. – Nothing in this 
article prohibits any member of the district board from 
also serving on the board of directors of a nonprofit 
corporation with which the county commission may 
contract to provide specified services within the district.

(e) Compensation of board members. – Each member of 
the district board may receive reasonable compensation 
for services on the board in the amount determined by the 
county commission: Provided, That when a district board 
is not created for the district but the work of the board is 
done by the county commission, the county commissioners 
shall receive no additional compensation.

§7-22-12. Special district excise tax authorized.

(a) General. – The county commission of a county, 
authorized by the Legislature to levy a special district 
excise tax for the benefit of an economic opportunity
development district, may, by order entered of record,
impose that tax on the privilege of selling tangible per-
sonal property and rendering select services in the district
in accordance with this section.

(b) **Tax base.** – The base of a special district excise tax
imposed pursuant to this section shall be identical to the
base of the consumers sales and service tax imposed
pursuant to article fifteen, chapter eleven of this code on
sales made and services rendered within the boundaries of
the district: *Provided,* That except for the exemption
provided in section nine-£ of said article, all exemptions
and exceptions from the consumers sales and service tax
shall also apply to the special district excise tax and sales
of gasoline and special fuel shall not be subject to special
district excise tax but shall remain subject to the tax
levied by said article.

(c) **Tax rate.** – The rate of a special district excise tax
levied pursuant to this section shall be stated in an order
entered of record by the county commission and equal to
the general rate of tax on each dollar of gross proceeds
from sales of tangible personal property and services
subject to the tax levied by section three, article fifteen,
chapter eleven of this code. The tax on fractional parts of
a dollar shall be levied and collected in conformity with
the provision of said section.

(d) **Collection by tax commissioner.** – The order of the
county commission imposing a special district excise tax
shall provide for the tax to be collected by the tax commis-
sioner in the same manner as the tax levied by section
three, article fifteen, chapter eleven of this code is admin-
istered, assessed, collected and enforced.

(e) **Deposit of net tax collected.** –

(1) The order of the county commission imposing a
special district excise tax shall provide that the tax
commissioner deposit the net amount of tax collected in
the special economic opportunity development district
fund to the credit of the county commission's subaccount
therein for the economic opportunity development district
and that the money in the subaccount may only be used to
pay for development expenditures as provided in this
article except as provided in subsection (f) of this section.

(2) The state treasurer shall withhold from the county
commission's subaccount in the economic opportunity
development district fund and shall deposit in the general
revenue fund of this state, on or before the twentieth day
of each calendar month next following the effective date
of a special district excise tax, a sum equal to one twelfth
of the base tax revenue amount last certified by the
development office pursuant to section seven of this
article.

(f) Effective date of special district excise tax. — Any
taxes imposed pursuant to the authority of this section
shall be effective on the first day of the calendar month
that begins sixty days after the date of adoption of an
order entered of record imposing the tax or the first day of
any later calendar month expressly designated in the
order.

(g) Copies of order. — Upon entry of an order levying a
special district excise tax, a certified copy of the order
shall be mailed to the state auditor, as ex officio the chief
inspector and supervisor of public offices, the state
treasurer and the tax commissioner.

§7-22-14. Modification of included area; notice; hearing.

(a) General. — The order creating an economic opportu-
nity development district may not be amended to include
additional contiguous property until after the amendment
is approved by the executive director of the development
office in the same manner as an application to approve the
establishment of the district is acted upon under section
seven of this article and the amendment is authorized by
the Legislature.
(b) **Limitations.** — Additional property may not be included in the district unless it is situated within the boundaries of the county and is contiguous to the then current boundaries of the district.

(c) **Public hearing required.** —

(1) The county commission of any county desiring to amend its order shall designate a time and place for a public hearing upon the proposal to include additional property. The notice shall meet the requirements set forth in section six of this article.

(2) At the time and place set forth in the notice, the county commission shall afford the opportunity to be heard to any owners of real property either currently included in or proposed to be added to the existing district and to any other residents of the county.

(d) **Application to West Virginia development office.** — Following the hearing, the county commission may, by resolution, apply to the development office to approve inclusion of the additional property in the district.

(e) **Consideration by the executive director of the development office.** — Before the executive director of the development office approves inclusion of the additional property in the district, the development office shall determine the amount of taxes levied by article fifteen, chapter eleven of this code that were collected by businesses located in the area the county commission proposes to add to the district in the same manner as the base amount of tax was determined when the district was first created. The state treasurer shall also deposit one twelfth of this additional tax base amount into the general revenue fund each month, as provided in section twelve of this article.

(f) **Legislative action required.** — After the executive director of the development office approves amending the boundaries of the district, the Legislature must amend
section nine of this article to allow levy of the special
district excise tax on business located in geographic area
to be included in the district. After the Legislature
amends said section, the county commission may then
amend its order. Provided, That the order may not be
effective any earlier than the first day of the calendar
month that begins sixty days after the effective date of the
act of the Legislature authorizing the levy on the special
district excise tax on businesses located in the geographic
area to be added to the boundaries of the district for which
the tax is levied or a later date as set forth in the order of
the county commission.

(g) Collection of special district excise tax. – All busi-
nesses included in a district because of the boundary
amendment shall on the effective date of the order,
determined as provided in subsection (f) of this section,
collect the special district excise tax on all sales on
tangible property or services made from locations in the
district on or after the effective date of the county commis-
sion's order or a later date as set forth in the order.

§7-22-15. Abolishment and dissolution of district; notice; hear-
ing.

(a) General. – Except upon the express written consent
of the executive director of the development office and of
all the holders or obligees of any indebtedness or other
instruments the proceeds of which were applied to any
development or redevelopment expenditures or any
indebtedness the payment of which is secured by revenues
payable into the fund provided under section eight of this
article or by any public property, a district may only be
abolished by the county commission when there is no
outstanding indebtedness, the proceeds of which were
applied to any development or redevelopment expendi-
tures or the payment of which is secured by revenues
payable into the fund provided under section eight of this
article, or by any public property, and following a public
hearing upon the proposed abolition.
Notice of public hearing. – Notice of the public hearing required by subsection (a) of this section shall be provided by first-class mail to all owners of real property within the district and shall be published as a Class I-0 legal advertisement in compliance with article three, chapter fifty-nine of this code at least twenty days prior to the public hearing.

(c) Transfer of district assets and funds. – Upon the abolishment of any economic opportunity development district, any funds or other assets, contractual rights or obligations, claims against holders of indebtedness or other financial benefits, liabilities or obligations existing after full payment has been made on all existing contracts, bonds, notes or other obligations of the district are transferred to and assumed by the county commission. Any funds or other assets transferred shall be used for the benefit of the area included in the district being abolished.

(d) Reinstatement of district. – Following abolishment of a district pursuant to this section, its reinstatement requires compliance with all requirements and procedures set forth in this article for the initial development, approval, establishment and creation of an economic opportunity development district.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 38. MUNICIPAL ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.


1 For purposes of this article, the term:

2 (1) “Development expenditures” means payments for governmental functions, programs, activities, facility construction, improvements and other goods and services which a district board is authorized to perform or provide under section five of this article;

7 (2) “District” means an economic opportunity development district created pursuant to this article;
(3) "District board" means a district board created pursuant to section ten of this article;

(4) "Eligible property" means any taxable or exempt real property located in a district established pursuant to this article; and

(5) "Municipality" is a word of art and shall mean, for the purposes of this article, only Class I and Class II cities as classified in section three, article one of this chapter.

§8-38-6. Notice; hearing.

(a) General. — A municipality desiring to create an economic opportunity development district shall conduct a public hearing.

(b) Notice of hearing. — Notice of the public hearing shall be published as a Class I-0 legal advertisement in compliance with article three, chapter fifty-nine of this code at least twenty days prior to the scheduled hearing. In addition to the time and place of the hearing, the notice must also state:

(1) The purpose of the hearing;

(2) The name of the proposed district;

(3) The general purpose of the proposed district;

(4) The geographic boundaries of the property proposed to be included in the district; and

(5) The proposed method of financing any costs involved, including the base and rate of special district excise tax that may be imposed upon sales of tangible personal property and taxable services from business locations situated within the proposed district.

(c) Opportunity to be heard. — At the time and place set forth in the notice, the municipality shall afford the opportunity to be heard to any owner of real property
situated in the proposed district and any residents of the municipality.

(d) Application to West Virginia development office. – If the municipality, following the public hearing, determines it advisable and in the public interest to establish an economic opportunity development district, it shall apply to the West Virginia development office for approval of the economic opportunity development district project pursuant to the procedures provided in section seven of this article.

§8-38-7. Application to development office for community and economic development for approval of an economic opportunity development district project.

(a) General. – The development office shall receive and act on applications filed with it by municipalities pursuant to section six of this article. Each application must include:

(1) A true copy of the notice described in section six of this article;

(2) The total cost of the project;

(3) A reasonable estimate of the number of months needed to complete the project;

(4) A general description of the capital improvements, additional or extended services and other proposed development expenditures to be made in the district as part of the project;

(5) A description of the proposed method of financing the development expenditures, together with a description of the reserves to be established for financing ongoing development or redevelopment expenditures necessary to permanently maintain the optimum economic viability of the district following its inception. Provided, That the amounts of the reserves shall not exceed the amounts that
would be required by ordinary commercial capital market considerations;

(6) A description of the sources and anticipated amounts of all financing, including, but not limited to, proceeds from the issuance of any bonds or other instruments, revenues from the special district excise tax and enhanced revenues from property taxes and fees;

(7) A description of the financial contribution of the municipality to the funding of development expenditures;

(8) Identification of any businesses that the municipality expects to relocate their business locations from the district to another place in the state in connection with the establishment of the district or from another place in this state to the district: Provided, That for purposes of this article, any entities shall be designated "relocated entities";

(9) Identification of any businesses currently conducting business in the proposed economic opportunity development district that the municipality expects to continue doing business there after the district is created;

(10) A good faith estimate of the aggregate amount of consumers sales and service tax that was actually remitted to the tax commissioner by all business locations identified as provided in subdivisions (8) and (9) of this subsection with respect to their sales made and services rendered from their then current business locations that will be relocated from, or to, or remain in the district, for the twelve full calendar months next preceding the date of the application: Provided, That for purposes of this article, the aggregate amount is designated as "the base tax revenue amount";

(11) A good faith estimate of the gross annual district tax revenue amount;

(12) The proposed application of any surplus from all funding sources to further the objectives of this article;
(13) The tax commissioner’s certification of: (i) The amount of consumers sales and service taxes collected from businesses located in the economic opportunity district during the twelve calendar months preceding the calendar quarter during which the application will be submitted to the development office; (ii) the estimated amount of economic opportunity district excise tax that will be collected during the first twelve months after the month in which the tax commissioner would first begin to collect that tax; and (iii) the estimated amount of economic opportunity district excise tax that will be collected during the first thirty-six months after the month in which the tax commissioner would first begin to collect that tax; and

(14) Any additional information the development office may require.

(b) Review of applications. – The development office shall review all project proposals for conformance to statutory and regulatory requirements, the reasonableness of the project’s budget and timetable for completion and the following criteria:

(1) The quality of the proposed project and how it addresses economic problems in the area in which the project will be located;

(2) The merits of the project determined by a cost-benefit analysis that incorporates all costs and benefits, both public and private;

(3) Whether the project is supported by significant private sector investment and substantial credible evidence that, but for the existence of sales tax increment financing, the project would not be feasible;

(4) Whether the economic opportunity development district excise tax dollars will leverage or be the catalyst for the effective use of private, other local government, state or federal funding that is available;
(5) Whether there is substantial and credible evidence that the project is likely to be started and completed in a timely fashion;

(6) Whether the project will, directly or indirectly, improve the opportunities in the area where the project will be located for the successful establishment or expansion of other industrial or commercial businesses;

(7) Whether the project will, directly or indirectly, assist in the creation of additional long-term employment opportunities in the area and the quality of jobs created in all phases of the project, to include, but not be limited to, wages and benefits;

(8) Whether the project will fulfill a pressing need for the area, or part of the area, in which the economic opportunity district is located;

(9) Whether the municipality has a strategy for economic development in the municipality and whether the project is consistent with that strategy;

(10) Whether the project helps to diversify the local economy;

(11) Whether the project is consistent with the goals of this article;

(12) Whether the project is economically and fiscally sound using recognized business standards of finance and accounting; and

(13) The ability of the municipality and the project developer or project team to carry out the project: Provided, That no project may be approved by the development office unless the amount of all development expenditures proposed to be made in the first twenty-four months following the creation of the district results in capital investment of more than fifty million dollars in the district and the municipality submits clear and convincing information, to the satisfaction of the development office, that
such investment will be made if the development office approves the project and the Legislature authorizes the municipality to levy an excise tax on sales of goods and services made within the economic opportunity development district as provided in this article.

(c) **Additional criteria.** – The development office may establish other criteria for consideration when approving the applications.

(d) **Action on the application.** – The executive director of the development office shall act to approve or not approve any application within thirty days following the receipt of the application or the receipt of any additional information requested by the development office, whichever is the later.

(e) **Certification of project.** – If the executive director of the development office approves a municipality's economic opportunity district project application, he or she shall issue to the municipality a written certificate evidencing the approval.

The certificate shall expressly state a base tax revenue amount, the gross annual district tax revenue amount and the estimated net annual district tax revenue amount which, for purposes of this article, is the difference between the gross annual district tax revenue amount and the base tax revenue amount, all of which the development office has determined with respect to the district's application based on any investigation it considers reasonable and necessary, including, but not limited to, any relevant information the development office requests from the tax commissioner and the tax commissioner provides to the development office: **Provided,** that in determining the net annual district tax revenue amount, the development office may not use a base tax revenue amount less than that amount certified by the tax commissioner but, in lieu of confirmation from the tax commissioner of the gross annual district tax revenue amount, the development
office may use the estimate of the gross annual district tax revenue amount provided by the municipality pursuant to subsection (a) of this section.

(f) Certification of enlargement of geographic boundaries of previously certified district. – If the executive director of the development office approves a municipality’s economic opportunity district project application to expand the geographic boundaries of a previously certified district, he or she shall issue to the municipality a written certificate evidencing the approval.

The certificate shall expressly state a base tax revenue amount, the gross annual district tax revenue amount and the estimated net annual district tax revenue amount which, for purposes of this article, is the difference between the gross annual district tax revenue amount and the base tax revenue amount, all of which the development office has determined with respect to the district’s application based on any investigation it considers reasonable and necessary, including, but not limited to, any relevant information the development office requests from the tax commissioner and the tax commissioner provides to the development office. Provided, That in determining the net annual district tax revenue amount, the development office may not use a base tax revenue amount less than that amount certified by the tax commissioner but, in lieu of confirmation from the tax commissioner of the gross annual district tax revenue amount, the development office may use the estimate of the gross annual district tax revenue amount provided by the municipality pursuant to subsection (a) of this section.

(g) Promulgation of rules. – The executive director of the development office may promulgate rules to implement the economic opportunity development district project application approval process and to describe the criteria and procedures it has established in connection therewith. These rules are not subject to the provisions of chapter
§8-38-8. Establishment of the economic opportunity development district fund.

(a) General. – There is hereby created a special revenue account in the state treasury designated the “economic opportunity development district fund” which is an interest-bearing account and shall be invested in the manner described in section nine-c, article six, chapter twelve of this code with the interest income a proper credit to the fund.

(b) District subaccount. – A separate and segregated subaccount within the account shall be established for each economic opportunity development district that is approved by the executive director of the development office. In addition to the economic opportunity district excise tax levied and collected as provided in this article, funds paid into the account for the credit of any subaccount may also be derived from the following sources:

(1) All interest or return on the investment accruing to the subaccount;

(2) Any gifts, grants, bequests, transfers, appropriations or donations which are received from any governmental entity or unit or any person, firm, foundation or corporation; and

(3) Any appropriations by the Legislature which are made for this purpose.

§8-38-10. Ordinance to create district as approved by development office and authorized by the Legislature.

(a) General. – If an economic opportunity development district project has been approved by the executive director of the development office and the levying of a special district excise tax for the district has been autho-
rized by the Legislature, all in accordance with this article, the municipality may create the district by ordinance entered of record as provided in article one of this chapter:

Provided, That the municipality may not amend, alter or change in any manner the boundaries of the economic opportunity development district authorized by the Legislature. In addition to all other requirements, the ordinance shall contain the following:

(1) The name of the district and a description of its boundaries;

(2) A summary of any proposed services to be provided and capital improvements to be made within the district and a reasonable estimate of any attendant costs;

(3) The base and rate of any special district excise tax that may be imposed upon sales by businesses for the privilege of operating within the district, which tax shall be passed on to and paid by the consumer, and the manner in which the taxes will be imposed, administered and collected, all of which shall be in conformity with the requirements of this article; and

(4) The district board members' terms, their method of appointment and a general description of the district board's powers and duties, which powers may include the authority:

(A) To make and adopt all necessary bylaws and rules for its organization and operations not inconsistent with any applicable laws;

(B) To elect its own officers, to appoint committees and to employ and fix compensation for personnel necessary for its operations;

(C) To enter into contracts with any person, agency, government entity, agency or instrumentality, firm, partnership, limited partnership, limited liability company or corporation, including both public and private corpora-
tions, and for-profit and not-for-profit organizations and
generally to do any and all things necessary or convenient
for the purpose of promoting, developing and advancing
the purposes described in section two of this article;

(D) To amend or supplement any contracts or leases or
to enter into new, additional or further contracts or leases
upon the terms and conditions for consideration and for
any term of duration, with or without option of renewal,
as agreed upon by the district board and any person,
agency, government entity, agency or instrumentality,
firm, partnership, limited partnership, limited liability
company or corporation;

(E) To, unless otherwise provided in, and subject to the
provisions of any contracts or leases to operate, repair,
manage, and maintain buildings and structures and
provide adequate insurance of all types and in connection
with the primary use thereof and incidental thereto to
provide services, such as retail stores and restaurants, and
to effectuate incidental purposes, grant leases, permits,
concessions or other authorizations to any person or
persons upon the terms and conditions for consideration
and for the term of duration as agreed upon by the district
board and any person, agency, governmental department,
firm or corporation;

(F) To delegate any authority given to it by law to any of
its officers, committees, agents or employees;

(G) To apply for, receive and use grants-in-aid, dona-
tions and contributions from any source or sources and to
accept and use bequests, devises, gifts and donations from
any person, firm or corporation;

(H) To acquire real property by gift, purchase or con-
struction or in any other lawful manner and hold title
thereto in its own name and to sell, lease or otherwise
dispose of all or part of any real property which it may
own, either by contract or at public auction, upon the
approval by the district board;
(I) To purchase or otherwise acquire, own, hold, sell, lease and dispose of all or part of any personal property which it may own, either by contract or at public auction;

(J) Pursuant to a determination by the district board that there exists a continuing need for redevelopment expenditures and that moneys or funds of the district are necessary therefor, to borrow money and execute and deliver the district's negotiable notes and other evidences of indebtedness therefor, on the terms as the district shall determine, and give security therefor as is requisite, including, without limitation, a pledge of the district's rights in its subaccount of the economic opportunity development district fund;

(K) To acquire (either directly or on behalf of the municipality) an interest in any entity or entities that own any real property situate in the district, to contribute capital to any entity or entities and to exercise the rights of an owner with respect thereto; and

(L) To expend its funds in the execution of the powers and authority given in this section, which expenditures, by the means authorized in this section, are hereby determined and declared as a matter of legislative finding to be for a public purpose and use, in the public interest and for the general welfare of the people of West Virginia, to alleviate and prevent economic deterioration and to relieve the existing critical condition of unemployment existing within the state.

(b) Additional contents of ordinance. - The municipality's ordinance shall also state the general intention of the municipality to develop and increase services and to make capital improvements within the district.

(c) Mailing of certified copies of ordinance. - Upon enactment of an ordinance establishing an economic opportunity development district excise tax, a certified copy of the ordinance shall be mailed to the state auditor,
§8-38-11. District board; duties.

(a) General. – The council of a municipality that has been authorized by the development office to establish an economic opportunity development district, in accordance with this article, shall provide, by ordinance, for the appointment of a district board to oversee the operations of the district: Provided, That the municipality may, in the ordinance, in lieu of appointing a separate district board, designate itself to act as the district board.

(b) Composition of board. – If a separate district board is to be appointed, it shall be made up of at least seven members, two of which shall be owners, or representatives of owners, of real property situated in the economic opportunity development district and the other five shall be residents of the municipality within which the district is located.

(c) Annual report. – The district board, in addition to the duties prescribed by the ordinance creating the district, shall submit an annual report to the municipality and the development office containing:

(1) An itemized statement of its receipts and disbursements for the preceding fiscal year;

(2) A description of its activities for the preceding fiscal year;

(3) A recommended program of services to be performed and capital improvements to be made within the district for the coming fiscal year; and

(4) A proposed budget to accomplish its objectives.

(d) Conflict of interest exception. – Nothing in this article prohibits any member of the district board from also serving on the board of directors of a nonprofit
corporation with which the municipality may contract to provide specified services within the district.

(e) Compensation of board members. – Each member of the district board may receive reasonable compensation for services on the board in the amount determined by the municipality: Provided, That when a district board is not created for the district but the work of the board is done by the municipality, the members shall receive no additional compensation.

§8-38-12. Special district excise tax authorized.

(a) General. – The council of a municipality, authorized by the Legislature to levy a special district excise tax for the benefit of an economic opportunity development district, may, by ordinance, impose that tax on the privilege of selling tangible personal property and rendering select services in the district in accordance with this section.

(b) Tax base. – The base of a special district excise tax imposed pursuant to this section shall be identical to the base of the consumers sales and service tax imposed pursuant to article fifteen, chapter eleven of this code on sales made and services rendered within the boundaries of the district: Provided, That except for the exemption provided in section nine-f of said article, all exemptions and exceptions from the consumers sales and service tax shall also apply to the special district excise tax and sales of gasoline and special fuel shall not be subject to special district excise tax but shall remain subject to the tax levied by said article.

(c) Tax rate. – The rate of a special district excise tax levied pursuant to this section shall be stated in an ordinance enacted by the municipality and equal to the general rate of tax on each dollar of gross proceeds from sales of tangible personal property and services subject to the tax levied by section three, article fifteen, chapter
eleven of this code. The tax on fractional parts of a dollar shall be levied and collected in conformity with the provision of said section.

(d) Collection by tax commissioner. – The ordinance of the municipality imposing a special district excise tax shall provide for the tax to be collected by the tax commissioner in the same manner as the tax levied by section three, article fifteen, chapter eleven of this code is administered, assessed, collected and enforced.

(e) Deposit of net tax collected. –

(1) The ordinance of the municipality imposing a special district excise tax shall provide that the tax commissioner shall deposit the net amount of tax collected in the special economic opportunity development district fund to the credit of the municipality's subaccount therein for the economic opportunity development district and that the money in the subaccount may only be used to pay for development expenditures as provided in this article except as provided in subsection (f) of this section.

(2) The state treasurer shall withhold from the municipality's subaccount in the economic opportunity development district fund and shall deposit in the general revenue fund of this state, on or before the twentieth day of each calendar month next following the effective date of a special district excise tax, a sum equal to one twelfth of the base tax revenue amount last certified by the development office pursuant to section seven of this article.

(f) Effective date of special district excise tax. – Any taxes imposed pursuant to the authority of this section shall be effective on the first day of the calendar month that begins at least sixty days after the date of enactment of the ordinance imposing the tax or at any later date expressly designated in the ordinance that begins on the first day of a calendar month.
(g) Copies of ordinance. – Upon enactment of an ordinance levying a special district excise tax, a certified copy of the ordinance shall be mailed to the state auditor, as ex officio the chief inspector and supervisor of public offices, the state treasurer and the tax commissioner.

§8-38-14. Modification of included area; notice; hearing.

(a) General. – The ordinance creating an economic opportunity development district may not be amended to include additional contiguous property until after the amendment is approved by the executive director of the development office in the same manner as an application to approve the establishment of the district is acted upon under section seven of this article.

(b) Limitations. – Additional property may not be included in the district unless it is situated within the boundaries of the municipality and is contiguous to the then current boundaries of the district.

(c) Public hearing required. –

(1) The council of any municipality desiring to amend its ordinance shall designate a time and place for a public hearing upon the proposal to include additional property. The notice shall meet the requirements set forth in section six of this article.

(2) At the time and place set forth in the notice, the municipality shall afford the opportunity to be heard to any owners of real property either currently included in or proposed to be added to the existing district and to any other residents of the municipality.

(d) Application to West Virginia development office. – Following the hearing, the municipality may, by resolution, apply to the development office to approve inclusion of the additional property in the district.

(e) Consideration by the executive director of the development office. – Before the executive director of the
development office approves inclusion of the additional
property in the district, the development office shall
determine the amount of taxes levied by article fifteen,
chapter eleven of this code that were collected by busi-
nesses located in the area the municipality proposes to add
to the district in the same manner as the base amount of
tax was determined when the district was first created.
The state treasurer shall also deposit one twelfth of this
additional tax base amount into the general revenue fund
each month, as provided in section twelve of this article.

(f) Legislative action required. – After the executive
director of the development office approves amending the
boundaries of the district, the Legislature must amend
section nine of this article to allow levy of the special
district excise tax on business located in geographic area
to be included in the district. After the Legislature
amends said section, the municipality may then amend its
ordinance: Provided, That the ordinance may not be
effective any earlier than the first day of the calendar
month that begins sixty days after the effective date of the
amended ordinance imposing the levy of the special
district excise tax on businesses located in the geographic
area to be added to the boundaries of the district for which
the tax is levied or the first day of a later calendar month
as set forth in the ordinance of the municipality.

(g) Collection of special district excise tax. – All busi-
nesses included in a district because of the boundary
amendment shall on the effective date of the ordinance,
determined as provided in subsection (f) of this section,
collect the special district excise tax on all sales on
tangible property or services made from locations in the
district on or after the effective date of the municipality's
ordinance or a later date as set forth in the ordinance.

§8-38-15. Abolishment and dissolution of district; notice; hear-
ing.

(a) General. – Except upon the express written consent
of the executive director of the development office and of
all the holders or obligees of any indebtedness or other instruments the proceeds of which were applied to any development or redevelopment expenditures or any indebtedness, the payment of which is secured by revenues payable into the fund provided under section eight of this article or by any public property, a district may only be abolished by the municipality when there is no outstanding indebtedness the proceeds of which were applied to any development or redevelopment expenditures or the payment of which is secured by revenues payable into the fund provided under section eight of this article, or by any public property, and following a public hearing upon the proposed abolishment.

(b) Notice of public hearing. – Notice of the public hearing required by subsection (a) of this section shall be provided by first-class mail to all owners of real property within the district and shall be published as a Class I-0 legal advertisement in compliance with article three, chapter fifty-nine of this code at least twenty days prior to the public hearing.

(c) Transfer of district assets and funds. – Upon the abolition of any economic opportunity development district, any funds or other assets, contractual rights or obligations, claims against holders of indebtedness or other financial benefits, liabilities or obligations existing after full payment has been made on all existing contracts, bonds, notes or other obligations of the district are transferred to and assumed by the municipality. Any funds or other assets transferred shall be used for the benefit of the area included in the district being abolished.

(d) Reinstatement of district. – Following abolishment of a district pursuant to this section, its reinstatement requires compliance with all requirements and procedures set forth in this article for the initial development, approval, establishment and creation of an economic opportunity development district.
CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 7. JOBS INVESTMENT TRUST FUND.

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

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

(b) The board consists of thirteen members, five of whom serve by virtue of their respective positions. These five are the governor or designee; president of West Virginia university or designee; the president of Marshall university or designee; the chancellor of the higher education policy commission or designee; and the executive director of the West Virginia housing development fund. One member is appointed by the governor from a list of two names submitted by the board of directors of the housing development fund. One member is appointed by the governor from a list of two names submitted by the commissioner of the division of tourism. The other six members are appointed from the general public by the governor. Of the general public members appointed by the governor, one is an attorney with experience in finance and investment matters; one is a certified public accountant; one is a representative of labor; one is experienced or involved in innovative business development; and two are present or past executive officers of companies listed on a major stock exchange or large privately held companies. All appointments made pursuant to the provisions of this article are by and with the advice and consent of the Senate.

(c) A vacancy on the board is filled by appointment by the governor in the same manner as the original appointment. A member appointed to fill a vacancy serves for the remainder of the unexpired term.
(d) The governor may remove any appointed member in case of incompetency, neglect of duty, moral turpitude or malfeasance in office and fill the vacancy as provided in other cases of vacancy.

(e) The governor or designee serves as the chair. The board annually elects one of its public members as vice chair and appoints a secretary to keep records of its proceedings who need not be a member of the board.

(f) Seven members of the board is a quorum. Action may not be taken by the board except upon the affirmative vote of at least a majority of those members present or participating by any other means as described in subsection (g) of this section, but in any event not fewer than six of the members serving on the board.

(g) Members of the board may participate in a meeting of the board by means of conference telephone or similar communication equipment by means of which all persons participating in the meeting can hear each other. Participation in a board meeting pursuant to this subsection constitutes presence in person at the meeting.

(h) The members of the board are not compensated for their services as members of the board, but receive reasonable and necessary expenses actually incurred in discharging their duties under this article in a manner consistent with guidelines of the travel management office of the department of administration.

(i) The board meets on a quarterly basis or more often if necessary.

(j) The governor shall appoint a member for a four-year term. Any member whose term has expired serves until a successor is duly appointed and qualified. Any member is eligible for reappointment.

(k) Additionally, one member of the West Virginia House of Delegates, appointed by the speaker of the House of
§12-7-5. Management and control of jobs investment trust vested in board; officers; liability; authority of executive director to act on behalf of board; relationship to higher education institutions.

1. (a) It is the duty of the board to manage and control the jobs investment trust. With the advice and consent of the Senate, the governor appoints an executive director of the jobs investment trust who is or has been a senior executive of a major financial institution, brokerage firm, investment firm or similar institution, with extensive experience in capital market development. The director serves at the governor's will and pleasure and is responsible for managing and administering the daily functions of the jobs investment trust and for performing other functions necessary to the effective operation of the trust. The compensation of the director is annually fixed by the board.

2. (b) The board annually elects a secretary to keep a record of the proceedings of the board, who need not be a member of the board.

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

4. (d) The acts of the board are solely the acts of its corporation and are not those of an agent of the state. A debt or obligation of the board is not a debt or obligation of the state.

5. (e) Upon the affirmative vote of at least a majority of those members in attendance or participating by such other means as described in subsection (g), section four of this article in a meeting of the board, but in any event not
fewer than six of the members serving on the board, the
board may approve any action to be taken and authorize
the executive director for and on behalf of the board to
execute and deliver all instruments, agreements or other
documents that are required or are reasonably necessary
to effectuate the decisions or acts of the board.

(f) The West Virginia housing development fund shall
provide office space and staff support services for the
director and the board shall act as fiscal agent for the
board and, as such, shall provide accounting services for
the board, invest all funds as directed by the board, service
all investment activities of the board and shall make the
disbursements of all funds as directed by the board, for
which the West Virginia housing development fund shall
be reasonably compensated as determined by the board.

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

CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.

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.

(a) Private activity bonds (as defined in Section 141(a) of
the United States Internal Revenue Code of 1986, other
than those described in Section 146(g) of the Internal
Revenue Code) issued pursuant to this article, including
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bonds issued by the West Virginia public energy authority
pursuant to subsection (11), section five, article one,
chapter five-d of this code or under article eighteen,
chapter thirty-one of this code, during any calendar year
may not exceed the ceiling established by Section 146(d)
of the United States Internal Revenue Code. It is hereby
determined and declared as a matter of legislative finding:
(i) That, in an attempt to promote economic revitalization
of distressed urban and rural areas, certain special tax
incentives will be provided for empowerment zones and
enterprise communities to be designated from qualifying
areas nominated by state and local governments, all as set
forth by Section 1391, et seq., of the United States Internal
Revenue Code; (ii) that qualified businesses operating in
enterprise communities and empowerment zones will be
eligible to finance property and provide other forms of
financial assistance as provided for in Section 1394 of the
United States Internal Revenue Code; and (iii) that it is in
the best interest of this state and its citizens to facilitate
the acquisition, construction and equipping of projects
within designated empowerment zones and enterprise
communities by providing an orderly mechanism for the
commitment of the annual ceiling for private activity
bonds for these projects. It is hereby further determined
and declared as a matter of legislative finding: (i) That the
production of bituminous coal in this state has resulted in
gob piles; (ii) that gob piles are unsightly and have the
potential to pollute the environment in this state; (iii) that
the utilization of the materials in gob piles to produce
alternative forms of energy needs to be encouraged; (iv)
that Section 142(a)(6) of the United States Internal
Revenue Code of 1986 permits the financing of solid waste
disposal facilities through the issuance of private activity
bonds; and (v) that it is in the best interest of this state and
its citizens to facilitate the construction of facilities for the
generation of power through the utilization of coal waste
by providing an orderly mechanism for the commitment of
the annual ceiling for private activity bonds for these projects.

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

(1) For the calendar year two thousand one, fifty million dollars and for each subsequent calendar year, forty percent of the state ceiling for that year shall be allocated to the West Virginia housing development fund for the purpose of issuing qualified mortgage bonds, qualified mortgage certificates or bonds for qualified residential rental projects;

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

(3) Thirty-five percent of the state allocation shall be set aside by the development office to be made available for lessees, purchasers or owners of proposed projects, hereafter in this section referred to as “nonexempt projects”, which do not qualify as exempt facilities as defined by United States Internal Revenue Code. All reservations of private activity bonds for nonexempt projects shall be approved and awarded by the committee based upon an evaluation of general economic benefit and any rule that the development office promulgates pursuant to section two, article two, chapter five-b of this code: Provided, That all requests or reservations of funds from projects described in this subsection are submitted to the development office on or before the first day of November of each calendar year: Provided, however, That on the fifteenth
day of November of each calendar year, the uncommitted portion of this part of the state allocation shall revert to and become part of the state allocation portion described in subsection (g) of this section; and

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

(c) The remaining fifty-five percent of the state allocation shall be made available for lessees, purchasers or owners of proposed commercial or industrial projects which qualify as exempt facilities as defined by Section 142(a) of the United States Internal Revenue Code. All reservations of private activity bonds for exempt facilities shall be approved and awarded by the committee based upon an evaluation of general economic benefit and any rule that the development office promulgates pursuant to section two, article two, chapter five-b of this code: Provided, That no reservation may be in an amount in excess of fifty percent of this portion of the state allocation: Provided, however, That all requests for reservations of funds from projects described in this subsection shall be submitted to the development office on or before the first
day of November of each calendar year: *Provided further,*
That on the fifteenth day of November of each calendar
year the uncommitted portion of this part of the state
allocation shall revert to and become part of the state
allocation portion described in subsection (g) of this
section.

(d) No reservation may be made for any project until the
governmental body seeking the reservation submits a
notice of reservation of funds as provided in subsection (e)
of this section. The governmental body shall first adopt an
inducement resolution approving the prospective issuance
of bonds and setting forth the maximum amount of bonds
to be issued. Each governmental body seeking a reserva-
tion of funds following the adoption of the inducement
resolution shall submit a notice of inducement signed by
its clerk, secretary or recorder or other appropriate official
to the development office. The notice shall include
information required by the development office pursuant
to any rule of the development office. Notwithstanding
the foregoing, when a governmental body proposes to issue
bonds for the purpose of: (i) Constructing, acquiring or
equipping a project described in subdivision (3) or (4),
subsection (b) of this section; or (ii) constructing an energy
producing project which relies, in whole or in part, upon
coal waste as fuel, to the extent the project qualifies as a
solid waste facility under Section 142(a)(6) of the United
States Internal Revenue Code of 1986, the project may be
awarded a reservation of funds from the state allocation
available for three years subsequent to the year in which
the notice of reservation of funds is submitted, at the
discretion of the executive director of the development
office: *Provided,* That no discretionary reservation may be
made for any single project described in this subsection in
an amount in excess of thirty-five percent of the state
allocation available for the year subsequent to the year in
which the request is made.

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

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

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

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

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

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

(6) The type of issue; and

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

(f) The development office shall accept the notice of reservation of funds no earlier than the first calendar workday of the year for which a reservation of funds is sought: Provided, That a notice of reservation of funds with respect to a project described in subdivision (4), subsection (b) of this section or an energy producing project that is eligible for a reservation of funds for a year subsequent to the year in which the notice of reservation of funds is submitted may contain an application for funds from a subsequent year’s state allocation. Upon receipt of the notice of reservation of funds, the development office shall immediately note upon the face of the notice the date and time of reception.

(g) If the bond issue for which a reservation has been made has not been finally closed within one hundred twenty days of the date of the reservation to be made by the committee, or the thirty-first of December following
the date of reservation if sooner and a statement of bond
closure which has been executed by the clerk, secretary,
recorder or other appropriate official of the governmental
body reserving the bond issue has not been received by the
development office within that time, then the reservation
shall expire and be considered to have been forfeited and
the funds reserved shall be released and revert to the
portion of the state allocation from which the funds were
originally reserved and shall then be made available for
other qualified issues in accordance with this section and
the Internal Revenue Code: Provided, That as to any
reservation for a nonexempt project or any reservation for
a project described in subdivision (4), subsection (b) of this
section that is forfeited on or after the first day of Novem-
ber in any calendar year, the reservation shall revert to the
state allocation for allocation by the industrial revenue
bond allocation review committee: Provided, however,
That as to any notice of reservation of funds received by
the development office during the month of December in
any calendar year with respect to any project qualifying as
an elective carry forward pursuant to Section 146(f)(5) of
the Internal Revenue Code, the notice of reservation of
funds and the reservation to which the notice relates may
not expire or be subject to forfeiture: Provided further,
That any unused state ceiling as of the thirty-first day of
December in any year not otherwise subject to a carry
forward pursuant to Section 146(f) of the Internal Revenue
Code shall be allocated to the West Virginia housing
development fund which shall be considered to have
elected to carry forward the unused state ceiling for the
purpose of issuing qualified mortgage bonds, qualified
mortgage credit certificates or bonds for qualified residen-
tial rental projects, each as defined in the Internal Revenue
Code. All requests for subsequent reservation of funds
upon loss of a reservation pursuant to this section shall be
treated in the same manner as a new notice of reservation
of funds in accordance with subsections (d) and (e) of this
section.
(h) Once a reservation of funds has been made for a project described in subdivision (4), subsection (b) of this section, notwithstanding the language of subsection (g) of this section, the reservation shall remain fully available with respect to the project until the first day of October in the year from which the reservation was made at which time, if the bond issue has not been finally closed, the reservation shall expire and be considered forfeited and the funds reserved are released as provided in said subsection.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 24. WASTE TIRE REMEDIATION.

§17-24-4. Division of highways to administer funds for waste tire remediation; rules authorized; duties of commissioner.

(a) The division of highways shall administer all funds made available to the division for remediation of waste tire piles and for the proper disposal of waste tires removed from waste tire piles. The commissioner of the division of highways may: (i) Propose for legislative promulgation in accordance with article three, chapter twenty-nine-a of this code emergency and legislative rules necessary to implement the provisions of this article; and (ii) administer all funds appropriated by the Legislature to carry out the requirements of this article and any other funds from whatever source, including, but not limited to, federal, state or private grants.

(b) The commissioner also has the following powers:

(1) To apply and carry out the provisions of this article and the rules promulgated under this article.

(2) To investigate, from time to time, the operation and effect of this article and of the rules promulgated under this article and to report his or her findings and recommendations to the Legislature and the governor.
(c) The provisions of articles two-a and four of this chapter and the policy, rules, practices and procedures under those articles shall be followed by the commissioner in carrying out the purposes of this article.

(d) On or before the first day of June, two thousand one, the commissioner shall determine the location, approximate size and potential risk to the public of all waste tire piles in the state and establish, in descending order, a waste tire remediation list.

(e) The commissioner may contract with the department of health and human resources or the division of corrections, or both, to remediate or assist in remediation of waste tire piles throughout the state. Use of available department of health and human resources and the division of corrections work programs shall be given priority status in the contract process so long as such programs prove a cost-effective method of remediating waste tire piles.

(f) Waste tire remediation shall be stopped and the division of environmental protection notified upon the discovery of any potentially hazardous material at a remediation site. The division of environmental protection shall respond to the notification in accordance with the provisions of article eighteen, chapter twenty-two of this code.

(g) The commissioner may establish a tire disposal program within the division to provide for a cost effective and efficient method to accept passenger car and light truck waste tires at such division of highways county headquarters as have sufficient space for temporary storage of waste tires and personnel to accept and handle waste tires. The commissioner may pay a fee for each tire an individual West Virginia resident or West Virginia business brings to the division. The commissioner may establish a limit on the number of tires an individual or business may be paid for during any calendar month. The
commissioner may in his or her discretion authorize commercial businesses to participate in the collection program: Provided, That no person or business who has a waste tire pile subject to remediation under this article may participate in this program.

(h) The commissioner may pledge not more than two and one-half million dollars annually of the moneys appropriated, deposited or accrued in the A. James Manchin fund created by section six of this article, to the payment of debt service, including the funding of reasonable reserves, on bonds issued by the water development authority pursuant to section seventeen-a, article fifteen-a, chapter thirty-one of this code to finance infrastructure projects relating to waste tire processing facilities located in this state: Provided, That a waste tire processing facility shall be determined by the solid waste management board, established pursuant to the provisions of article three, chapter twenty-two-c of this code, to meet all applicable federal and state environmental laws and rules and regulations and to aid the state in efforts to promote and encourage recycling and use of constituent component parts of waste tires in an environmentally sound manner: Provided, however, That the waste tire processing facility shall have a capital cost of not less than three hundred million dollars and the West Virginia development office shall determine that the waste tire processing facility is a viable economic development project of benefit to the state's economy.

CHAPTER 18. EDUCATION.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-1. School building authority; powers.

(a) The school building authority consists of eleven members, including the governor or designee; the state superintendent of schools, ex officio; three members of the state board of education, elected by the state board; and
six citizens of the state, appointed by the governor, by and
with the advice and consent of the Senate, who are
knowledgeable in matters relevant to the issues addressed
by the authority, one of whom is representative of the
interests of the construction trades.

(b) Citizen members are appointed for three-year terms,
which are staggered in accordance with the initial ap-
pointments under prior enactment of this section. State
board of education members are elected for three-year
terms and may not be elected to serve additional consecu-
tive terms or portions thereof.

(c) The governor or designee serves as chair. The author-
ity shall annually elect one of its public members as vice
chair and shall appoint a secretary, who need not be a
member of the authority and who shall keep records of its
proceedings.

(d) The governor appoints an executive director of the
authority, with the advice and consent of the Senate, who
serves at the governor's will and pleasure. The director is
responsible for managing and administering the daily
functions of the authority and for performing all other
functions necessary to the effective operation of the
authority.

(e) The governor may remove any appointed member for
incompetency, neglect of duty, moral turpitude or malfea-
sance in office. If the governor removes a member, the
governor shall fill the vacancy for the remainder of the
unexpired term in the same manner as the original ap-
pointment.

(f) The school building authority shall meet at least
quarterly and the citizen members shall be reimbursed for
reasonable and necessary expenses actually incurred in the
performance of their official duties in a manner consistent
with guidelines of the travel management office of the
department of administration from funds appropriated or
otherwise made available for such purpose upon submission of an itemized statement.

(g) The acts performed by the members of the state board of education in their capacity as members of the school building authority are solely the acts of the authority.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 3D. WORKFORCE DEVELOPMENT INITIATIVE.

§18B-3D-1. Legislative findings and intent.

(a) The Legislature finds that a recent statewide study of the workforce training needs of employers throughout the state provided a clear message from the business community:

1. The needs of employers are rapidly changing and training providers must be more responsive or the state economy will suffer;

2. Information specific to West Virginia, once again emphasizes the critical link between education and economic development that empowering youth and adults with the knowledge and skills they need to succeed in the competitive work world also results in a workforce which enables businesses and communities to prosper;

3. Although employers are generally satisfied with the quality of the West Virginia workforce and the study provides additional support that the measures adopted in the Jobs Through Education Act will bring continued improvement, workforce needs are not static, critical skill shortages currently exist, and the establishment of a workforce development system that responds more quickly to the evolving skill requirements of employers is needed.

(b) The Legislature further finds that a study of community and technical education in West Virginia performed by the national center for higher education management
systems called attention to problems in providing needed workforce education and found that there is a need to:

(1) Jump-start development of community and technical college and post-secondary workforce development initiatives;

(2) Provide incentives for existing public post-secondary providers to respond jointly to both short and long-term needs of employers and other clients;

(3) Provide funding for explicit incentives for partnerships between employers and public post-secondary institutions to develop comprehensive community and technical college and workforce development services; and

(4) Allocate funds competitively on the basis of proposals submitted by providers.

It is further the intent of the Legislature that the granting of funds under this article will promote the development of comprehensive community and technical colleges as set forth in article three-c of this chapter.

It is the intent of the Legislature through the grant of funds under this article to provide limited seed money to address some of the specific areas where improvement is needed, including:

(1) Improving employer awareness and access to services available through the state's education institutions;

(2) Providing designated professionals and resources to support workforce education through the state's education institutions;

(3) Assisting with the modernization and procurement of equipment needed for workforce training programs: Provided. That any equipment purchased or upgraded with grant funds awarded under the provisions of this article may not be sold, disposed of or used for purposes...
other than those specified in the grant without prior approval of the development office;

(4) Increasing the capacity of the state's education institutions to respond rapidly to employer needs for workforce education and training on an on-going basis through the development of a client-focused, visible point of contact for program development and delivery, service referral and needs assessment, such as a workforce development center, and

(5) Maximizing the use of available resources for workforce education and training through partnerships with public vocational, technical and adult education centers and private training providers.

(e) It is further the intent of the Legislature that consideration and partnering opportunities be given to small businesses on an equal basis with larger businesses for the purposes of this article and that the seed money will assist providers in becoming self-sustaining through partnerships with business and industry which will include cost-sharing initiatives and fees charged for the use of services.

(f) The Legislature intends that grants of funds made under the provisions of this article will be competitive among applicants who meet all of the criteria established in this article and such other criteria as may be specified by the development office. Subject to the availability of funds, more than one competition may be held during the same fiscal year and the dollar range of awards granted in successive competitions shall be prorated based on the number of months remaining in the fiscal year. Subject to annual review and justification, it is the intent of the Legislature to renew grant awards made under this article each year for not more than five years following the initial grant award.
§18B-3D-2. Workforce development initiative program created; program administration.

(a) For the purposes of this article, "development office" means the West Virginia development office provided in article two, chapter five-b of this code.

(b) There is under the development office a workforce development initiative program to administer and oversee grants to community and technical colleges to achieve the purposes of this article in accordance with legislative intent. The primary responsibility of the development office as it relates to the workforce development initiative program is to administer the state fund for community and technical college and workforce development including setting criteria for grant applications, receiving applications for grants, making determinations on distribution of funds, and evaluating the performance of workforce development initiatives.

(c) The executive director of the development office shall review and approve the expenditure of all grant funds, including development of application criteria, the review and selection of applicants for funding and the annual review and justification of applicants for grant renewal.

(1) To aid in decisionmaking, the executive director of the development office appoints an advisory committee consisting of the chancellor of the West Virginia council for community and technical college education; the secretary of education and the arts or designee; the assistant state superintendent for technical and adult education; the chair of the West Virginia council for community and technical college education; and the chair of the West Virginia workforce investment council. The advisory committee shall review all applications for workforce development initiative grants and make a report including recommendations for distributing grant funds to the executive director of the development office. The advisory committee also shall make recommendations
on methods to share among the community and technical colleges any curricula developed as a result of a workforce development initiative grant.

(2) When determining which grant proposals will be funded, the executive director of the development office shall give special consideration to proposals by community and technical colleges that involve businesses with fewer than fifty employees.

(3) The executive director of the development office shall weigh each proposal to avoid awarding grants which will have the ultimate effect of providing unfair advantage to employers new to the state who will be in direct competition with established local businesses.

(d) The executive director of the development office may allocate a reasonable amount, not to exceed five percent up to a maximum of fifty thousand dollars of the funds available for grants on an annual basis, for general program administration.

(e) The executive director of the development office shall report to the legislative oversight commission on workforce investment for economic development on the status of the workforce development initiative program annually by the first day of December.

(f) Moneys appropriated or otherwise available for the workforce development initiative program shall be allocated by line item to an appropriate account. Any moneys remaining in the fund at the close of a fiscal year are carried forward for use in the next fiscal year.

(g) Nothing in this article requires a specific level of appropriation by the Legislature.


(a) The statewide mission of the workforce development initiative program is to develop a strategy to strengthen
the quality of the state's workforce by linking the existing post-secondary education capacity to the needs of business, industry and other employers. Available funding will be used to provide explicit incentives for partnerships between employers and community and technical colleges to develop comprehensive workforce development services. Funds will be granted on the basis of proposals developed according to criteria established by the development office.

(b) The mission of any community and technical college accepting a workforce development initiative grant is to:

(1) Become client-focused and develop programs that meet documented employer needs;

(2) Involve and collaborate with employers in the development of programs;

(3) Develop customized training programs that provide for the changing needs of employers and that are offered at flexible times and locations to accommodate employer scheduling;

(4) Develop partnerships with other public and private providers, including small business development centers and vocational, technical and adult education centers, and with business and labor, to fulfill the workforce development needs of the service area;

(5) Establish cooperative arrangements with the public school system for the seamless progression of students through programs of study that begin at the secondary level and conclude at the community and technical college level, particularly with respect to career and technical education certificates, associate of applied science and selected associate of science degree programs for students seeking immediate employment, individual entrepreneur-ship skills, occupational development, skill enhancement and career mobility.
(6) Assist in the on-going assessment of the workforce development needs of the service area; and

(7) Serve as a visible point of contact and referral for services to meet the workforce development needs of the service area.

§18B-3D-4. Grant application procedures.

(a) In order to participate in the workforce development initiative grant program, a community and technical college must meet the following conditions:

(1) Participate in a community and technical college consortia as required by article three-c of this chapter. Consortia representatives shall participate in the development of and approve applications for funding grants under the provisions of this article and shall approve the workforce development initiative budget;

(2) Develop a plan to achieve measurable improvements in the quality of the workforce within its service area over a five-year period. The plan must be developed in partnership with employers, local vocational schools and other workforce education providers;

(3) Establish a special revolving fund under the jurisdiction of the community and technical college consortia dedicated solely to workforce development initiatives for the purposes provided in this article. Any fees or revenues generated from workforce development initiatives funded by a competitive grant shall be deposited into this fund.

(b) To be eligible to receive a workforce development initiative grant, a community and technical college must provide at least the following information in its application:

(1) Identification of the specific business or business sector training needs that will be met if a workforce development initiative grant is received;
(2) A commitment from the private sector to provide a match of one dollar, cash and in-kind, for each dollar of state grant money received except in cases where the community and technical college can demonstrate in the grant application that it would be a hardship for the business being served to provide such a match. In those cases only, the match required may be reduced to one private dollar, cash and in-kind, for every three dollars of state grant money provided. In the case of awards for the modernization of procurement of equipment, the development office may establish a separate match requirement of up to one dollar, cash and in-kind, for each dollar of state grant money received;

(3) An agreement to share with other community and technical colleges any curricula developed using funds from a workforce development initiative grant;

(4) A specific plan showing how the community and technical college will collaborate with local post-secondary vocational institutions to maximize the use of existing facilities, personnel and equipment;

(5) An acknowledgment that acceptance of a grant under the provisions of this article commits the community and technical college and its consortia committee to such terms, conditions and deliverables as is specified by the development office in the request for applications, including, but not limited to, the measures by which the performance of the workforce development initiative will be evaluated.

(c) Applications submitted by community and technical colleges may be awarded funds for programs which meet the requirements of this article that are operated on a collaborative basis at facilities under the jurisdiction of the public schools and utilized by both secondary and post-secondary students.

§18B-3D-5. Legislative rules.
The executive director of the development office shall propose a legislative rule pursuant to article three-a, chapter twenty-nine-a of this code to implement the provisions of this article and shall file the rule with the legislative oversight commission on education accountability no later than the first day of September, two thousand five.

Any rule in effect as of the effective date of the amendment and reenactment of this section in the year two thousand five will remain in effect until amended, modified, repealed or replaced.

CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS, AUTHORITIES, COMMISSIONS AND COMPACTS.

ARTICLE 1. WATER DEVELOPMENT AUTHORITY.

§22C-1-4. Water development authority; water development board; organization of authority and board; appointment of board members; their term of office, compensation and expenses; director of authority; compensation.

(a) The water development authority is continued. The authority is a governmental instrumentality of the state and a body corporate. The exercise by the authority of the powers conferred by this article and the carrying out of its purposes and duties are essential governmental functions and for a public purpose.

(b) The authority is controlled, managed and operated by a seven-member board known as the water development board. The governor or designee, the secretary of the department of environmental protection or designee and the commissioner of the bureau for public health or designee are members ex officio of the board. Four members are appointed by the governor, by and with the advice and consent of the Senate, for six-year terms, which are staggered in accordance with the initial appointments
under prior enactment of this section. In the event of a
vacancy, appointments are filled in the same manner as
the original appointment for the remainder of the unex-
pired term. A member continues to serve until the ap-
pointment and qualification of the successor. More than
two appointed board members may not at any one time
belong to the same political party. Appointed board
members may be reappointed to serve additional terms.

(c) All members of the board shall be citizens of the
state. Each appointed member of the board, before
entering upon his or her duties, shall comply with the
requirements of article one, chapter six of this code and
give bond in the sum of twenty-five thousand dollars in
the manner provided in article two of said chapter. The
governor may remove any board member for cause as
provided in article six of said chapter.

(d) The governor or designee serves as chair. The board
annually elects one of its appointed members as vice chair
and appoints a secretary-treasurer, who need not be a
member of the board. Four members of the board is a
quorum and the affirmative vote of four members is
necessary for any action taken by vote of the board. A
vacancy in the membership of the board does not impair
the rights of a quorum by such vote to exercise all the
rights and perform all the duties of the board and the
authority. The person appointed as secretary-treasurer,
including a board member if so appointed, shall give bond
in the sum of fifty thousand dollars in the manner pro-
vided in article two, chapter six of this code.

(e) The governor or designee, the secretary of the depart-
ment of environmental protection and the commissioner of
the bureau for public health do not receive compensation
for serving as board members. Each appointed member
receives an annual salary of twelve thousand dollars,
payable in monthly installments. Each of the seven board
members is reimbursed for all reasonable and necessary
expenses actually incurred in the performance of duties as
a member of the board in a manner consistent with
guidelines of the travel management office of the depart-
ment of administration. All expenses incurred by the
board are payable solely from funds of the authority or
from funds appropriated for that purpose by the Legisla-
ture. Liability or obligation is not incurred by the author-
ity beyond the extent to which moneys are available from
funds of the authority or from such appropriations.

(f) There is a director of the authority appointed by the
governor, with the advice and consent of the Senate, who
serves at the governor’s will and pleasure. The director is
responsible for managing and administering the daily
functions of the authority and for performing other
functions necessary to the effective operation of the
authority. The compensation of the director is fixed
annually by the board.

CHAPTER 29. MISCELLANEOUS BOARDS
AND OFFICERS.

ARTICLE 8. BLENNERHASSETT ISLAND HISTORICAL STATE PARK
COMMISSION.

§29-8-2. Blennerhassett Island historical state park commission
established; members; terms; meeting; quorum;
compensation; expenses.

1 (a) There is within the division of natural resources the
Blennerhassett Island historical state park commission.
2 All assets, real and personal property, debts, liabilities,
3 duties, powers and authority are the property of the
division of natural resources. The Blennerhassett Island
historical state park commission is maintained as an
advisory commission as hereinafter provided. The com-
mission is composed of ten members who must be citizens
and residents of this state, appointed by the governor for
terms of four years, by and with the advice and consent of
the Senate: Provided, That the terms of all members
previously appointed to the Blennerhassett Island histori-
cal state park commission prior to any amendment and reenactment of this section shall continue for the periods originally specified and no member serving as of the effective date of the amendment and reenactment need be reappointed.

(b) Each member must be qualified to carry out the functions of the commission under this article by reason of his or her special interest, training, education or experience.

No person may be eligible to appointment as a member who is an officer or member of any political party executive committee; or the holder of any other public office or public employment under the United States government or the government of this state or a political subdivision of this state. Not more than six members may belong to the same political party.

(c) The commission shall elect a chairman from among its members on the second Monday in September of each year.

(d) All members are eligible for reappointment once by the governor. A member shall, unless sooner removed, continue to serve until his or her term expires and his or her successor has been appointed and has qualified. A vacancy caused by the death, resignation or removal of a member prior to the expiration of his or her term shall be filled only for the remainder of term.

(e) For the purpose of carrying out its powers, duties and responsibilities under this article, six members of the commission constitute a quorum for the transaction of business. Each member is entitled to one vote. The commission shall meet at a time and place designated by the chairman at least four times each fiscal year. Additional meetings may be held when called by the chairman or when requested by five members of the commission or by the governor. All meetings shall comply with the
provisions of article nine-a, chapter six of this code. Each
member shall be reimbursed for all reasonable and neces-
sary expenses actually incurred in the performance of his
or her duties under this article.

(f) The commission shall advise the division of natural
resources in all matters relating to the development,
establishment and maintenance of the Blennerhassett
Island historical state park.

(g) All employee positions in the former Blennerhassett
Island historical state park commission transferred to the
division of commerce by a previous amendment and
reenactment of this section are continued in the classified
service of the civil service system pursuant to article six of
this chapter. Any person included in the classified service
by the provisions of this section who is employed in any of
these positions as of the effective date of any amendment
and reenactment of this section shall not be required to
take and pass qualifying or competitive examinations
upon or as a condition to being added to the classified
service. Provided, That no person included in the classi-
fied service by the provisions of this section who is em-
ployed in any of these positions as of the effective date of
any amendment and reenactment of this section, be
thereafter severed, removed or terminated from such
employment prior to his or her entry into the classified
service except for cause as if the person had been in the
classified service when severed, removed or terminated.

(h) Notwithstanding any provision of this code to the
contrary, the division of natural resources is vested with
exclusive regulatory authority over watercraft transport
of visitors to the Blennerhassett Island portion of the
Blennerhassett Island historical state park and the
watercraft transport of these visitors is not subject to the
provisions of article eighteen, chapter seventeen of this
code.

(i) Notwithstanding the provisions of section fifty-eight,
article two, chapter twenty of this code, the natural
resources commission shall promulgate rules pursuant to the provisions of section seventeen, article one, chapter twenty and section three, article one, chapter twenty-nine-a of this code to permit and regulate the hunting of whitetailed deer at Blennerhassett Island historical state park.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18a. State excess lottery revenue fund.

(a) There is continued a special revenue fund within the state lottery fund in the state treasury which is designated and known as the “state excess lottery revenue fund”. The fund consists of all appropriations to the fund and all interest earned from investment of the fund and any gifts, grants or contributions received by the fund. All revenues received under the provisions of sections ten-b and ten-c, article twenty-two-a of this chapter and under article twenty-two-b of this chapter, except the amounts due the commission under section 29-22B-1408(a)(1) of this chapter, shall be deposited in the state treasury and placed into the “state excess lottery revenue fund”. The revenue shall be disbursed in the manner provided in this section for the purposes stated in this section and shall not be treated by the auditor and the state treasurer as part of the general revenue of the state.

(b) For the fiscal year beginning the first day of July, two thousand two, the commission shall deposit: (1) Sixty-five million dollars into the subaccount of the state excess lottery revenue fund hereby created in the state treasury to be known as the “general purpose account” to be expended pursuant to appropriation of the Legislature; (2) ten million dollars into the education improvement fund for appropriation by the Legislature to the “promise scholarship fund” created in section seven, article seven, chapter eighteen-c of this code; (3) nineteen million dollars into the economic development project fund created in subsection (d) of this section for the issuance of revenue bonds and to be spent in accordance with the provisions of
said subsection; (4) twenty million dollars into the school
building debt service fund created in section six, article
nine-d, chapter eighteen of this code for the issuance of
revenue bonds; (5) forty million dollars into the West
Virginia infrastructure fund created in section nine, article
fifteen-a, chapter thirty-one of this code to be spent in
accordance with the provisions of said article; (6) ten
million dollars into the higher education improvement
fund for higher education; and (7) five million dollars into
the state park improvement fund for park improvements.

For the fiscal year beginning the first day of July, two
thousand three, the commission shall deposit: (1)
Sixty-five million dollars into the general purpose account
to be expended pursuant to appropriation of the Legisla-
ture; (2) seventeen million dollars into the education
improvement fund for appropriation by the Legislature to
the "promise scholarship fund" created in section seven,
article seven, chapter eighteen-c of this code; (3) nineteen
million dollars into the economic development project
fund created in subsection (d) of this section for the
issuance of revenue bonds and to be spent in accordance
with the provisions of said subsection; (4) twenty million
dollars into the school building debt service fund created
in section six, article nine-d, chapter eighteen of this code
for the issuance of revenue bonds; (5) forty million dollars
into the West Virginia infrastructure fund created in
section nine, article fifteen-a, chapter thirty-one of this
code to be spent in accordance with the provisions of said
article; (6) ten million dollars into the higher education
improvement fund for higher education; and (7) five
million dollars into the state park improvement fund for
park improvements.

(c) For the fiscal year beginning the first day of July, two
thousand four, and subsequent fiscal years, the commis-
sion shall deposit: (1) Sixty-five million dollars into the
general purpose account to be expended pursuant to
appropriation of the Legislature; (2) twenty-seven million
dollars into the education improvement fund for appropri-

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68    ation by the Legislature to the “promise scholarship fund”
69    created in section seven, article seven, chapter eighteen-c
70    of this code; (3) nineteen million dollars into the economic
71    development project fund created in subsection (d) of this
72    section for the issuance of revenue bonds and to be spent
73    in accordance with the provisions of said subsection; (4)
74    nineteen million dollars into the school building debt
75    service fund created in section six, article nine-d, chapter
76    eighteen of this code for the issuance of revenue bonds; (5)
77    forty million dollars into the West Virginia infrastructure
78    fund created in section nine, article fifteen-a, chapter
79    thirty-one of this code to be spent in accordance with the
80    provisions of said article; (6) ten million dollars into the
81    higher education improvement fund for higher education;
82    and (7) five million dollars into the state park improve-
83    ment fund for park improvements. No portion of the
84    distributions made as provided in this subsection and
85    subsection (b) of this section, except distributions made in
86    connection with bonds issued under subsection (d) of this
87    section, may be used to pay debt service on bonded
88    indebtedness until after the Legislature expressly autho-
89    rizes issuance of the bonds and payment of debt service on
90    the bonds through statutory enactment or the adoption of
91    a concurrent resolution by both houses of the Legislature.
92    Until subsequent legislative enactment or adoption of a
93    resolution that expressly authorizes issuance of the bonds
94    and payment of debt service on the bonds with funds
95    distributed under this subsection and subsection (b) of this
96    section, except distributions made in connection with
97    bonds issued under subsection (d) of this section, the
98    distributions may be used only to fund capital improve-
99    ments that are not financed by bonds and only pursuant to
100    appropriation of the Legislature.
101    (d) The Legislature finds and declares that in order to
102    attract new business, commerce and industry to this state,
103    to retain existing business and industry providing the
104    citizens of this state with economic security and to ad-
105    vance the business prosperity of this state and the eco-
nomic welfare of the citizens of this state, it is necessary to provide public financial support for constructing, equipping, improving and maintaining economic development projects, capital improvement projects and infrastructure which promote economic development in this state.

(1) The West Virginia economic development authority created and provided for in article fifteen, chapter thirty-one of this code shall, by resolution, in accordance with the provisions of this article and article fifteen, chapter thirty-one of this code, and upon direction of the governor, issue revenue bonds of the economic development authority in no more than two series to pay for all or a portion of the cost of constructing, equipping, improving or maintaining projects under this section or to refund the bonds at the discretion of the authority. Any revenue bonds issued on or after the first day of July, two thousand two, which are secured by state excess lottery revenue proceeds shall mature at a time or times not exceeding thirty years from their respective dates. The principal of, and the interest and redemption premium, if any, on, the bonds shall be payable solely from the special fund provided in this section for the payment.

(2) There is continued in the state treasury a special revenue fund named the "economic development project fund" into which shall be deposited on and after the first day of July, two thousand two, the amounts to be deposited in said fund as specified in subsections (b) and (c) of this section. The economic development project fund shall consist of all such moneys, all appropriations to the fund, all interest earned from investment of the fund and any gifts, grants or contributions received by the fund. All amounts deposited in the fund shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds authorized by this section, including any and all commercially customary and reasonable costs and expenses which may be incurred in connection with the
issuance, refunding, redemption or defeasance thereof. The West Virginia economic development authority may further provide in the resolution and in the trust agreement for priorities on the revenues paid into the economic development project fund as may be necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this section. The bonds issued pursuant to this subsection shall be separate from all other bonds which may be or have been issued from time to time under the provisions of this article.

(3) After the West Virginia economic development authority has issued bonds authorized by this section and after the requirements of all funds have been satisfied, including any coverage and reserve funds established in connection with the bonds issued pursuant to this subsection, any balance remaining in the economic development project fund may be used for the redemption of any of the outstanding bonds issued under this subsection which, by their terms, are then redeemable or for the purchase of the outstanding bonds at the market price, but not to exceed the price, if any, at which redeemable, and all bonds redeemed or purchased shall be immediately canceled and shall not again be issued.

(4) Bonds issued under this subsection shall state on their face that the bonds do not constitute a debt of the state of West Virginia; that payment of the bonds, interest and charges thereon cannot become an obligation of the state of West Virginia; and that the bondholders' remedies are limited in all respects to the "special revenue fund" established in this subsection for the liquidation of the bonds.

(5) The West Virginia economic development authority shall expend the bond proceeds from the revenue bond issues authorized and directed by this section for such projects as may be certified under the provision of this subsection: Provided, That the bond proceeds shall be expended in accordance with the requirements and
provisions of article five-a, chapter twenty-one of this
code and either article twenty-two or twenty-two-a,
chapter five of this code, as the case may be: Provided,
however, That if such bond proceeds are expended pursu-
ant to article twenty-two-a, chapter five of this code and
if the design-build board created under said article
determines that the execution of a design-build contract in
connection with a project is appropriate pursuant to the
criteria set forth in said article and that a competitive
bidding process was used in selecting the design builder
and awarding such contract, such determination shall be
conclusive for all purposes and shall be deemed to satisfy
all the requirements of said article.

(6) For the purpose of certifying the projects that will
receive funds from the bond proceeds, a committee is
hereby established and comprised of the governor, or his
or her designee, the secretary of the department of tax and
revenue, the executive director of the West Virginia
development office and six persons appointed by the
governor: Provided, That at least one citizen member
must be from each of the state's three congressional
districts. The committee shall meet as often as necessary
and make certifications from bond proceeds in accordance
with this subsection. The committee shall meet within
thirty days of the effective date of this section.

(7) Applications for grants submitted on or before the
first day of July, two thousand two, shall be considered
refiled with the committee. Within ten days from the
effective date of this section as amended in the year two
thousand three, the lead applicant shall file with the
committee any amendments to the original application
that may be necessary to properly reflect changes in facts
and circumstances since the application was originally
filed with the committee.

(8) When determining whether or not to certify a project,
the committee shall take into consideration the following:
(A) The ability of the project to leverage other sources of funding;

(B) Whether funding for the amount requested in the grant application is or reasonably should be available from commercial sources;

(C) The ability of the project to create or retain jobs, considering the number of jobs, the type of jobs, whether benefits are or will be paid, the type of benefits involved and the compensation reasonably anticipated to be paid persons filling new jobs or the compensation currently paid to persons whose jobs would be retained;

(D) Whether the project will promote economic development in the region and the type of economic development that will be promoted;

(E) The type of capital investments to be made with bond proceeds and the useful life of the capital investments; and

(F) Whether the project is in the best interest of the public.

(9) No grant may be awarded to an individual or other private person or entity. Grants may be awarded only to an agency, instrumentality or political subdivision of this state or to an agency or instrumentality of a political subdivision of this state. The project of an individual or private person or entity may be certified to receive a low-interest loan paid from bond proceeds. The terms and conditions of the loan, including, but not limited to, the rate of interest to be paid and the period of the repayment, shall be determined by the economic development authority after considering all applicable facts and circumstances.

(10) Prior to making each certification, the committee shall conduct at least one public hearing, which may be held outside of Kanawha County. Notice of the time, place, date and purpose of the hearing shall be published
in at least one newspaper in each of the three congressional districts at least fourteen days prior to the date of the public hearing.

(11) The committee may not certify a project unless the committee finds that the project is in the public interest and the grant will be used for a public purpose. For purposes of this subsection, projects in the public interest and for a public purpose include, but are not limited to:

(A) Sports arenas, fields parks, stadiums and other sports and sports-related facilities;

(B) Health clinics and other health facilities;

(C) Traditional infrastructure, such as water and wastewater treatment facilities, pumping facilities and transmission lines;

(D) State-of-the-art telecommunications infrastructure;

(E) Biotechnical incubators, development centers and facilities;

(F) Industrial parks, including construction of roads, sewer, water, lighting and other facilities;

(G) Improvements at state parks, such as construction, expansion or extensive renovation of lodges, cabins, conference facilities and restaurants;

(H) Railroad bridges, switches and track extension or spurs on public or private land necessary to retain existing businesses or attract new businesses;

(I) Recreational facilities, such as amphitheaters, walking and hiking trails, bike trails, picnic facilities, restrooms, boat docking and fishing piers, basketball and tennis courts, and baseball, football and soccer fields;

(J) State-owned buildings that are registered on the national register of historic places;
(K) Retail facilities, including related service, parking and transportation facilities, appropriate lighting, landscaping and security systems to revitalize decaying downtown areas; and

(L) Other facilities that promote or enhance economic development, educational opportunities or tourism opportunities thereby promoting the general welfare of this state and its residents.

(12) Prior to the issuance of bonds under this subsection, the committee shall certify to the economic development authority a list of those certified projects that will receive funds from the proceeds of the bonds. Once certified, the list may not thereafter be altered or amended other than by legislative enactment.

(13) If any proceeds from sale of bonds remain after paying costs and making grants and loans as provided in this subsection, the surplus may be deposited in an account created in the state treasury to be known as the “economic development project bridge loan fund” to be administered by the economic development authority created in article fifteen, chapter thirty-one of this code. Expenditures from the fund are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter five-a of this code. Loan repayment amounts, including the portion attributable to interest shall be paid into the fund created in this subdivision.

(e) If the commission receives revenues in an amount that is not sufficient to fully comply with the requirements of subsections (b), (c) and (h) of this section, the commission shall first make the distribution to the economic development project fund; second, make the distribution or distributions to the other funds from which debt service is to be paid; third, make the distribution to the education
improvement fund for appropriation by the Legislature to
the promise scholarship fund; and fourth, make the
distribution to the general purpose account: Provided,
That, subject to the provisions of this subsection, to the
extent such revenues are not pledged in support of revenue
bonds which are or may be issued from time to time under
this section, the revenues shall be distributed on a pro rata
basis.

(f) For the fiscal year beginning on the first day of July,
two thousand two, and each fiscal year thereafter, the
commission shall, after meeting the requirements of
subsections (b), (c) and (h) of this section and after trans-
ferring to the state lottery fund created under section
eighteen of this article an amount equal to any transfer
from the state lottery fund to the excess lottery fund
pursuant to subsection (f), section eighteen of this article,
deposit fifty percent of the amount by which annual gross
revenue deposited in the state excess lottery revenue fund
exceeds two hundred twenty-five million dollars in a fiscal
year in a separate account in the state lottery fund to be
available for appropriation by the Legislature.

(g) When bonds are issued for projects under subsection
d(d) of this section or for the school building authority,
infrastructure, higher education or park improvement
purposes described in this section that are secured by
profits from lotteries deposited in the state excess lottery
revenue fund, the lottery director shall allocate first to the
economic development project fund an amount equal to
one tenth of the projected annual principal, interest and
coverage requirements on any and all revenue bonds
issued, or to be issued, on or after the first day of July, two
thousand two, as certified to the lottery director; and
second, to the fund or funds from which debt service is
paid on bonds issued under this section for the school
building authority, infrastructure, higher education and
park improvements an amount equal to one tenth of the
projected annual principal, interest and coverage require-
ments on any and all revenue bonds issued, or to be issued, on or after the first day of April, two thousand two, as certified to the lottery director. In the event there are insufficient funds available in any month to transfer the amounts required pursuant to this subsection, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency.

(h) In fiscal year two thousand four and thereafter, prior to the distributions provided in subsection (c) of this section, the lottery commission shall deposit into the general revenue fund amounts necessary to provide reimbursement for the refundable credit allowable under section twenty-one, article twenty-one, chapter eleven of this code.

(i) (1) The Legislature considers the following as priorities in the expenditure of any surplus revenue funds:

(A) Providing salary and/or increment increases for professional educators and public employees;

(B) Providing adequate funding for the public employees insurance agency; and

(C) Providing funding to help address the shortage of qualified teachers and substitutes in areas of need, both in number of teachers and in subject matter areas.

(2) The provisions of this subsection may not be construed by any court to require any appropriation or any specific appropriation or level of funding for the purposes set forth in this subsection.

(j) The Legislature further directs the governor to focus resources on the creation of a prescription drug program for senior citizens by pursuing a medicaid waiver to offer prescription drug services to senior citizens; by investigating the establishment of purchasing agreements with other entities to reduce costs; by providing discount prices or
rebate programs for seniors; by coordinating programs
offered by pharmaceutical manufacturers that provide
reduced cost or free drugs; by coordinating a collaborative
effort among all state agencies to ensure the most efficient
and cost effective program possible for the senior citizens
of this state; and by working closely with the state's
congressional delegation to ensure that a national program
is implemented. The Legislature further directs that the
governor report his progress back to the joint committee
on government and finance on an annual basis beginning
in November of the year two thousand one until a compre-
hensive program has been fully implemented.

CHAPTER 31. CORPORATIONS.

ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOP-
MENT COUNCIL.

§31-15A-3. West Virginia infrastructure and jobs development
council continued; members of council; staff of
council.

(a) The West Virginia infrastructure and jobs develop-
ment council is hereby continued. The council is a govern-
mental instrumentality of the state. The exercise by the
council of the powers conferred by this article and the
carrying out of its purpose and duties shall be considered
and held to be, and are hereby determined to be, essential
governmental functions and for a public purpose.

(b) The council shall consist of eleven members, includ-
ing the governor or designee, the executive director of the
housing development fund or his or her designee, the
director of the division of environmental protection or his
or her designee, the director of the economic development
authority or his or her designee, the director of the water
development authority or his or her designee, the director
of the division of health or his or her designee, the chair-
man of the public service commission or his or her
designee, and four members representing the general
Provided, That there shall be at least one member representing the general public from each congressional district: Provided, however, That after the expiration of the term of office of the members first appointed as representatives of the general public, no more than one member representing the general public may be a resident of the same county. The governor shall appoint the public members of the council who shall serve three-year staggered terms. The commissioner of the division of highways, the executive director of the state rail authority, two members of the West Virginia Senate, two members of the West Virginia House of Delegates, the chancellor of the higher education policy commission and the chancellor of the West Virginia council for community and technical college education serve as advisory members of the council. The governor shall appoint the legislative members of the council: Provided further, That no more than three of the legislative members may be of the same political party. The governor shall appoint the representatives of the governing boards from a list of three names submitted by each governing board. The advisory members shall be ex officio, nonvoting members of the council.

(c) The governor or designee shall serve as chairman and the council shall annually appoint a vice chairperson and shall appoint a secretary, who need not be a member of the council and who shall keep records of its proceedings. Six members of the council shall constitute a quorum and the affirmative vote of at least the majority of those members present shall be necessary for any action taken by vote of the council. A vacancy in the membership of the council does not impair the rights of a quorum by such vote to exercise all the rights and perform all the duties of the council.

(d) A member of the council who serves by virtue of his or her office does not receive compensation or reimbursement of expenses for serving as a member. The public members are reimbursed for actual expenses incurred in
the service of the council in a manner consistent with
guidelines of the travel management office of the depart-
ment of administration.

(e) The council meets at least monthly to review projects
and infrastructure projects requesting funding assistance
and otherwise to conduct its business and may meet more
frequently if necessary. Notwithstanding any other
provision of this article to the contrary, the economic
development authority is not subject to council review
with regard to any action taken pursuant to the authority
established in article fifteen, chapter thirty-one of this
code. The governor's civil contingent fund is not subject
to council review with regard to projects or infrastructure
projects funded through the governor's civil contingent
fund.

(f) The water development authority shall provide office
space for the council and each governmental agency
represented on the council shall provide staff support for
the council in the manner determined appropriate by the
council.

(g) The council shall invite to each meeting one or more
representatives of the United States department of agri-
culture, rural economic community development, the
United States economic development agency and the
United States army corps of engineers or any successors
thereof. The council shall invite such other appropriate
parties as is necessary to effectuate the purposes of this
article.

§31-15A-11. Reservation of funds for projects and infrastruc-
ture projects.

Eighty percent of the funds deposited in the West
Virginia infrastructure fund shall be dedicated for the
purpose of providing funding for the cost of projects as
defined in subsection (n), section two of this article.
Twenty percent of the funds deposited in the West Virginia
infrastructure fund shall be dedicated for the purpose of providing funding for costs of infrastructure projects as defined in subsection (l), section two of this article. Project sponsors of infrastructure projects shall follow the application process as established by this article: Provided, That notwithstanding any provision of this article to the contrary, all applications for any infrastructure project shall be submitted to the executive director of the West Virginia development office for review, recommendation and approval regarding infrastructure project funding.

ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.

§31-18-4. Composition; board of directors; appointment, term, etc., of private members; chairman and vice chairman; quorum.

(a) There is continued as a governmental instrumentality of the state of West Virginia, a public body corporate to be known as the West Virginia housing development fund.

(b) The housing development fund is created and established to serve a public corporate purpose and to act for the public benefit and as a governmental instrumentality of the state of West Virginia, to act on behalf of the state and its people in improving and otherwise promoting their health, welfare and prosperity.

(c) The housing development fund shall be governed by a board of directors, consisting of eleven members, four of whom shall be the governor, the attorney general, the commissioner of agriculture, and the state treasurer, or their designated representatives as public directors, and seven of whom shall be chosen from the general public residing in the state, as private directors. No more than four of the private directors shall be from the same political party.

(d) Upon organization of the housing development fund, the governor shall appoint, by and with the advice and
consent of the Senate, the seven private directors to take 
office and to exercise all powers thereof immediately, with 
two each appointed for terms of two years and three years, 
and with three each appointed for terms of four years, 
respectively, as the governor shall designate; at the 
expiration of said terms and for all succeeding terms, the 
governor shall appoint a successor to the office of private 
director for a term of four years in each case.

(e) A vacancy in the office of a private director is filled 
by appointment by the governor for the remainder of the 
unexpired term.

(f) The governor may remove any private director for 
reason of incompetency, neglect of duty, gross immorality, 
or malfeasance in office and appoint a director to fill the 
vacancy as provided in other cases of vacancy.

(g) The governor or designee serves as chair. The board 
of directors shall annually elect one of its public members 
as vice chair and appoint a secretary to keep records of its 
proceedings, who need not be a member of the board.

(h) Six members of the board of directors constitutes a 
quorum. A vacancy in the membership of the board does 
not impair the duties of the board of directors.

(i) Action may not be taken by the board of directors 
except upon the affirmative vote of at least six of the 
directors.

(j) The directors, including the chair, vice chair and 
treasurer, and the secretary of the board are not compen-
sated for their services but receive reasonable and neces-
sary expenses actually incurred in discharging their duties 
under this article in a manner consistent with guidelines 
of the travel management office of the department of 
administration.

§31-18-5. Management and control of housing development 
fund vested in board; officers; liability.
(a) The management and control of the housing development fund shall be vested solely in the board of directors in accordance with the provisions of this article.

(b) The chairman shall be the chief executive officer of the housing development fund, and, in his or her absence, the vice chairman shall act as chief executive officer.

(c) The governor appoints an executive director of the housing development fund, with the advice and consent of the Senate, who serves at the governor's will and pleasure. The director is responsible for managing and administering the daily functions of the housing development fund and for performing other functions necessary to the effective operation of the housing development fund. The executive director's compensation is fixed annually by the board of directors.

(d) The board of directors of the housing development fund shall annually elect from its membership a treasurer and shall annually elect a secretary, who need not be a member of the board, to keep a record of the proceedings of the housing development fund.

(e) The treasurer of the housing development fund shall be custodian of all funds of the housing development fund and shall be bonded in such amount as the other members of the board of directors may designate.

(f) The directors and officers of the West Virginia housing development fund shall not be liable personally, either jointly or severally, for any debt or obligation created by the West Virginia housing development fund.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect 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 14th Day of February, 2005.

Governor
PRESENTED TO THE GOVERNOR

Date 2/7/05
Time 3:45