

SB 169 (veto)

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2010

ENROLLED

Senate Bill No. 169

(BY SENATORS BROWNING AND PLYMALE)

[Passed March 13, 2010; in effect ninety days from passage.]

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AN ACT to amend and reenact §31-15-2 and §31-15-4 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §31-15-12b, all relating to the West Virginia Economic Development Authority; adding legislative findings; defining terms; and providing requirements for loan criteria for loans to tourism projects.

Be it enacted by the Legislature of West Virginia:

That §31-15-2 and §31-15-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §31-15-12b, all to read as follows:

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-2. Legislative findings.

- 1 It is hereby determined and declared as a matter of
- 2 legislative finding:

3 (a) That unemployment exists in many areas of the state
4 and may well come about, from time to time, in other
5 areas of the state;

6 (b) That in some areas of the state, unemployment is a
7 serious problem and has been for so long a period of time
8 that, without remedial measures, it may become so in
9 other areas of the state;

10 (c) That economic insecurity due to unemployment is a
11 serious menace to the health, safety, morals and general
12 welfare of the people of the entire state;

13 (d) That widespread industry unemployment produces
14 indigency which falls with crushing force upon all unem-
15 ployed workers and ultimately upon the state in the form
16 of welfare and unemployment compensation;

17 (e) That the absence of employment and business oppor-
18 tunities for youth is a serious threat to the strength and
19 permanence of their faith in our American political and
20 economic institutions and the philosophy of freedom on
21 which those institutions are based;

22 (f) That lack of employment and business opportunities
23 has resulted in thousands of workers and their families
24 leaving the state to find such opportunities elsewhere and
25 that this exodus has adversely affected the tax base of
26 counties and municipalities resulting in an impairment of
27 their financial ability to support education and other local
28 government services;

29 (g) That security against unemployment and the spread
30 of indigency and economic stagnation can best be provided
31 by the promotion, attraction, stimulation, rehabilitation
32 and revitalization of commerce, tourism, industry and
33 manufacturing;

34 (h) That the present and future health, safety, morals,
35 right to gainful employment and general welfare of the

36 people of the state require as a public purpose the promo-
37 tion and development of new and expanded coal and other
38 energy production, industrial, commercial, tourist and
39 manufacturing enterprises within this state;

40 (i) That the means and measures being authorized for the
41 financing of projects, including the insuring of loans or
42 other debt issued for working capital or the refinancing of
43 existing debt of an enterprise, are, as a matter of public
44 policy, for the public purposes of the several counties,
45 municipalities and the state;

46 (j) That the device under which private community
47 industrial development organizations in the state acquire
48 or build industrial buildings or sites and equip the same
49 with funds raised through popular subscription, loans or
50 otherwise for lease and sale to new or expanding indus-
51 tries has proven effective in creating new employment and
52 business opportunities locally, is in accord with the
53 American tradition of community initiative and enterprise
54 and requires and deserves encouragement and support
55 from the state as a means toward alleviation of unemploy-
56 ment and economic distress;

57 (k) That community industrial development corporations
58 in the state have invested substantial funds in successful
59 coal production, industrial projects and are experiencing
60 difficulty in undertaking additional projects by reason of
61 the partial inadequacy of their own funds potentially
62 available from local subscription sources and by reason of
63 limitations of local financial institutions in providing
64 additional and sufficiently sizable first deed of trust or
65 mortgage loans or letters of credit and other forms of
66 credit enhancement;

67 (l) That minority business ownership, especially among
68 African-Americans in the area of Charleston, West Vir-
69 ginia, is proportionately less than minority business
70 ownership nationwide and statewide, the unemployment

71 rate for African-Americans recently has been about twice
72 the unemployment rate for caucasians and significantly
73 higher in some counties with a greater concentration of
74 African-Americans and an urgent need exists to encourage
75 African-Americans and minority business ownership and
76 higher employment;

77 (m) That an urgent need exists to stimulate a larger flow
78 of private investment funds from banks, investment
79 houses, insurance companies and other financial institu-
80 tions into projects;

81 (n) That by increasing the number of projects presenting
82 attractive opportunities for private investment, a larger
83 portion of the private capital available in this state for
84 investment can be put to use for the general economic
85 development of the state;

86 (o) That the availability of financial assistance through
87 the creation of an insurance fund will promote the eco-
88 nomic development of the state; and that it is in the public
89 interest, in order to address the needs aforesaid, that a
90 state instrumentality be created as a public body corporate
91 with full powers to accept grants, gifts and appropriations,
92 to generate revenues, to borrow money and issue its bonds,
93 notes, commercial paper, other debt instruments and
94 security interests to the end that funds obtained thereby
95 may be used to furnish money and credit to approved
96 industrial development agencies or enterprises or to
97 promote the establishment of new projects or to retain
98 existing projects;

99 (p) That tourism is one of the mainstays of the state's
100 economy and has a high potential for growth;

101 (q) That the success of tourism projects should not be
102 measured so much in the number of jobs or capital cre-
103 ated, but in the value created by patrons of such projects
104 and their ancillary economic contributions to the state;
105 and

106 (r) That the authority must consider the uniqueness of
107 tourism in the state's economic picture in determining
108 participation of tourism projects under this article.

§31-15-4. Definitions.

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

3 (a) "Authority" means the West Virginia Economic
4 Development Authority;

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

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

9 (d) "Bonds" means bonds or other debt instruments of
10 the authority issued under this article, whether the
11 interest thereon is taxable or tax-exempt for federal
12 income tax purposes;

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

20 (f) "Costs of establishing an industrial development
21 project" means the cost of acquiring existing facilities,
22 cost of machinery, cost of equipment and fixtures, the cost
23 of construction, including with out limitation, cost of
24 improvements, repairs, and renovations, costs of all lands,
25 water areas, property rights and easements, financing
26 charges, interest prior to and during construction, cost of
27 architectural, engineering, legal and financial or other
28 consulting services, plans, site assessments, site

29 remediation costs, specifications and surveys, estimates of
30 costs and any other expenses necessary or incident to
31 determining the feasibility or practicability of any project,
32 together with such other costs and expenses as may be
33 necessary or incidental to the financing and the construc-
34 tion or acquisition of the project and the placing of the
35 same in operation;

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

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

46 (i) "Federal agency" means the United States of America
47 and any department, corporation, agency or instrumentality
48 created, designated or established by the United States
49 of America;

50 (j) "Financing plan" means a plan designed to meet the
51 financing needs of an enterprise as reflected in the busi-
52 ness plan;

53 (k) "Fund" means the Economic Development Fund
54 provided in section twenty-three of this article;

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

58 (m) "Industrial development agency" means any incor-
59 porated organization, foundation, association or agency to
60 whose members or shareholders no profit inures, which
61 has as its primary function the promotion, encouragement

62 and development of industrial, commercial, manufactur-
63 ing and tourist enterprises or projects in this state;

64 (n) "Insurance fund" means the insurance fund created
65 in this article;

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

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

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

75 (r) "Project" means a commercial or industrial undertak-
76 ing and all of the assets reasonably and necessarily
77 required therefor, all as determined by the authority,
78 which determination shall be conclusive, and shall in-
79 clude, without limiting the generality of the foregoing,
80 industrial projects and commercial projects as presently
81 defined in section three, article two-c, chapter thirteen;

82 (s) "Revenues" means all fees, premiums, charges,
83 moneys, profits, payment or principal of or interest on,
84 loans and other investments, gifts, grants, appropriations,
85 contributions and all other income derived or to be derived
86 by the authority under this article;

87 (t) "Security interest" means an interest in the loan
88 portfolio of the authority which interest is secured by an
89 underlying loan or loans and is evidenced by a note issued
90 by the authority; and

91 (u) "Tourism project" means a commercial undertaking
92 which receives or projects to receive more than seventy-
93 five percent of its revenue from nonresident sources and is
94 not a retail operation.

§31-15-12b. Tourism projects; criteria for loans.

1 Notwithstanding any other provision of this article to
2 the contrary, in developing criteria for loans to a tourism
3 project under this article, the authority shall consider
4 many factors including, but not limited to, whether any
5 specific number of jobs are or will be created by the
6 project, whether any existing jobs or jobs to be created by
7 the project are to meet any specific compensation levels, or
8 whether any existing jobs or jobs to be created by the
9 project provide any specific employee benefits: *Provided,*
10 That no tourism project may be denied a loan for the sole
11 reason that a specific number of jobs will not be created
12 by the project or that existing jobs or jobs to be created by
13 the project will not meet specific compensation levels or
14 offer any specific employee benefits. Any criteria for a
15 loan application for a tourism project under this article
16 shall include a requirement that the applicant provide a
17 jobs impact statement with information as required by the
18 authority.

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

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

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

The within ~~is~~ *disapproved* this the *7th*
Day of *April*, 2010.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

APR 01 2010

Time 11:25hr