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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994



ENROLLED

Com. Sub. For
HOUSE BILL No. 4032

(By Delegate *Mr. Speake, Mr. Chambers,*
and Delegate Burk)
[By Request of the Executive]

Passed *March 11,* 1994

In Effect *From* Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4032
(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATE BURK)
[By Request of the Executive]

[Passed March 11, 1994; in effect from passage.]

AN ACT to amend and reenact sections three and twenty-one, article two-c, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section three-a, all relating to the allocation of industrial revenue bonds; creating industrial revenue bond allocation review committee; redefining state allocation procedures; and providing a set-aside for classified nonexempt projects.

Be it enacted by the Legislature of West Virginia:

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

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

§13-2C-3. Definitions.

- 1 Unless the context clearly indicates otherwise, as used
- 2 in this article;
- 3 (a) "Commercial project" means real or personal

4 property or both, including any buildings, improve-
5 ments, additions, extensions, replacements, appurtenan-
6 ces, lands, rights in land, water rights, franchises,
7 machinery, equipment, furnishings, landscaping, utili-
8 ties, railroad spurs and sidings, parking facilities,
9 farms, parking wharfs, approaches and roadways or any
10 number or combination of the foregoing necessary or
11 desirable in connection with a commercial enterprise or
12 incidental thereto and includes, without limiting the
13 generality of the foregoing, hotels and motels and
14 related facilities, nursing homes and other health care
15 facilities, facilities for participatory or spectator sports,
16 conventions or trade show facilities, airport facilities,
17 shopping centers, office buildings, residential real
18 property for family units, and mass commuting facili-
19 ties, dormitories, apartments and other housing facili-
20 ties for the students and faculties of institutions of
21 higher education, instructional buildings and other
22 facilities used in connection with nonpublic institutions
23 of higher education, facilities providing housing for the
24 elderly, including, but not limited to, life care facilities,
25 congregate living facilities and adult residential
26 facilities.

27 (b) "Committee" means the industrial revenue bond
28 allocation committee created by section three-a of this
29 article.

30 (c) "County commission" means the governmental
31 body created by section twenty-two, article VIII of the
32 West Virginia constitution.

33 (d) "Governmental body" means any city, town,
34 village, county, public service district, sanitary district,
35 political subdivision or any other similar public entity
36 now or hereafter created, having power to issue revenue
37 bonds, and the West Virginia public energy authority.

38 (e) "Industrial project" means any site, structure,
39 building, industrial park, water dock, wharf or port
40 facilities, fixtures, machinery, equipment and related
41 facility, including real and personal property, or any
42 combination thereof, suitable as a factory, mill or shop,
43 or processing, assembly, manufacturing or fabricating

44 project, or warehouse or distribution facility, or
45 facilities for the extraction, production or distribution of
46 mineral resources and related facilities, or sewage or
47 solid waste disposal facilities, or facilities for the local
48 furnishing of electric energy or gas, or facilities for the
49 furnishing of water, if available on reasonable demand
50 to members of the general public, or storage or training
51 facilities related to any of the foregoing, or research or
52 development facility or pollution abatement or control
53 facility and includes the reconstruction, modernization
54 and modification of any existing industrial project for
55 the abatement or control of industrial pollution.

56 (f) "Industrial pollution" means any gaseous, liquid or
57 solid waste substances or adverse thermal effects or
58 combinations thereof resulting from any process of
59 industry, manufacturing, trade or business or from the
60 development, processing or recovery of any natural
61 resources which pollute the land, water or air of this
62 state.

**§13-2C-3a. Creation of industrial revenue bond allocation
review committee; appointment, term, etc.,
of private members; voting; expenses;
duties.**

1 (a) There is hereby created the West Virginia indus-
2 trial revenue bond allocation review committee consist-
3 ing of five members, two of whom shall be the secretary
4 of tax and revenue, who shall serve as chair of the
5 committee, and the executive director of the develop-
6 ment office, and three of whom shall be chosen from the
7 general public as private members.

8 (b) The three private members shall be appointed by
9 the governor, with the advice and consent of the Senate:
10 *Provided*, That one private member shall be appointed
11 from each congressional district of the state, in such a
12 manner as to provide a broad geographical distribution
13 of members of the committee: *Provided, however*, That
14 at least one private member appointed pursuant to this
15 subdivision shall have significant experience in eco-
16 nomic development. No more than two private members
17 shall be from the same political party.

18 (c) Not later than the first day of July, one thousand
19 nine hundred ninety-four, the governor shall appoint the
20 three private members for staggered terms. The terms
21 of the members first taking office on or after the
22 effective date of this legislation shall expire as desig-
23 nated by the governor at the time of the nomination, one
24 at the end of the first year, one at the end of the second
25 year, and one at the end of the third year, after the first
26 day of July, one thousand nine hundred ninety-four. As
27 these original appointments expire, each subsequent
28 appointment shall be for a full three-year term. Any
29 member whose term has expired shall serve until a
30 successor has been duly appointed and qualified. Any
31 member shall be eligible for reappointment. In case of
32 any vacancy in the office of a private member, such
33 vacancy shall be filled by appointment by the governor
34 for the unexpired term. The governor may remove any
35 private member in case of incompetency, neglect of
36 duty, gross immorality, or malfeasance in office; and he
37 may declare the office vacant and may appoint a person
38 for such vacancy as provided in other cases of vacancy.

39 (d) Members shall not be entitled to compensation for
40 services performed as members, but shall be entitled to
41 reimbursement for all reasonable and necessary ex-
42 penses actually incurred in the performance of their
43 duties.

44 (e) A majority of the members of the committee shall
45 constitute a quorum for the purpose of conducting
46 business. The affirmative vote of at least the majority
47 of the members present is necessary for any action taken
48 by vote of the committee. No vacancy in the membership
49 of the committee shall impair the right of a quorum to
50 exercise all the rights and perform all the duties of the
51 committee.

52 (f) The committee shall review and evaluate all
53 applications for reservation of funds submitted to the
54 development office by a governmental body pursuant to
55 the provisions of subsections (d) and (e), section twenty-
56 one of this article, and shall make reservations of the
57 state allocation (as defined in subdivision (2), subsection
58 (b), section twenty-one of this article) pursuant to

59 subdivision (3), subsection (b) and subsection (c), section
60 twenty-one of this article.

**§13-2C-21. Ceiling on issuance of private activity bonds;
establishing procedure for allocation and
disbursements; reservation of funds; limita-
tions; unused allocation; expirations and
carryovers.**

1 (a) Private activity bonds (as defined in section 141(a)
2 of the United States Internal Revenue Code of 1986,
3 other than those described in section 146(g) of the
4 Internal Revenue Code) issued pursuant to this article,
5 including bonds issued by the West Virginia public
6 energy authority pursuant to subsection (11), section
7 five, article one, chapter five-d of this code, or under
8 article eighteen, chapter thirty-one of this code, during
9 any calendar year shall not exceed the ceiling estab-
10 lished by section 146(d) of the United States Internal
11 Revenue Code. It is hereby determined and declared as
12 a matter of legislative finding (i) that the production of
13 bituminous coal in this state has resulted in coal waste,
14 which coal waste is stored in areas generally referred
15 to as gob piles; (ii) that such gob piles are unsightly and
16 have the potential to pollute the environment in this
17 state; (iii) that the utilization of the materials in such
18 gob piles to produce alternative forms of energy needs
19 to be encouraged; (iv) that section 142(a)(6) of the United
20 States Internal Revenue Code of 1986 permits the
21 financing of solid waste disposal facilities through the
22 issuance of such private activity bonds; (v) that it is in
23 the best interest of this state and the citizens thereof to
24 facilitate the construction of facilities for the generation
25 of power through the utilization of coal waste by
26 providing an orderly mechanism for the commitment of
27 the annual ceiling for private activity bonds for such
28 projects.

29 (b) On or before the first day of each calendar year,
30 the executive director of the development office shall
31 determine the state ceiling for such year based on the
32 criteria of the United States Internal Revenue Code,
33 which annual ceiling shall be allocated among the
34 several issuers of bonds under this article or under

35 article eighteen, chapter thirty-one of this code, as
36 follows:

37 (1) Fifty million dollars shall be allocated to the West
38 Virginia housing development fund for the purpose of
39 issuing qualified mortgage bonds, qualified mortgage
40 certificates or bonds for qualified residential rental
41 projects.

42 (2) The amount remaining after the allocation to the
43 West Virginia housing development fund described in
44 subdivision (1) shall be retained by the West Virginia
45 development office and shall be referred to in this
46 section as the "state allocation."

47 (3) Thirty percent of the state allocation shall be set
48 aside by the development office to be made available for
49 lessees, purchasers or owners of proposed projects,
50 hereafter in this section referred to as "nonexempt
51 projects", which do not qualify as exempt facilities as
52 defined by United States Revenue Code [26 U.S.C.
53 §142(a)]. All reservations of private activity bonds for
54 nonexempt projects shall be approved and awarded by
55 the committee based upon an evaluation of general
56 economic benefit and any rule or regulation that the
57 council for community and economic development may
58 promulgate pursuant to section three, article two,
59 chapter five-b of this code: *Provided*, That on the first
60 day of September of each calendar year, the uncommit-
61 ted portion of this part of the state allocation shall revert
62 to and become part of the state allocation portion
63 described in subsection (c) of this section.

64 (c) The remaining seventy percent of the state
65 allocation shall be made available for lessees, purchasers
66 or owners of proposed commercial or industrial projects
67 which qualify as exempt facilities as defined by section
68 142(a) of the United States Internal Revenue Code [26
69 U.S.C. §142(a): All reservations of private activity bonds
70 for exempt facilities shall be approved and awarded by
71 the committee based upon an evaluation of general
72 economic benefit and any rule or regulation that the
73 council for community and economic development may
74 promulgate pursuant to section three, article two,

75 chapter five-b of this code: *Provided*, That no such
76 reservation shall be in an amount in excess of fifty
77 percent of this portion of the state allocation.

78 No reservation shall be made for any project until the
79 governmental body, seeking the same shall submit a
80 notice of reservation of funds as provided in subsection
81 (e) of this section. The governmental body must first
82 adopt an inducement resolution approving the prospec-
83 tive issuance of bonds and setting forth the maximum
84 amount of bonds to be issued. Each governmental body
85 seeking a reservation of funds following the adoption of
86 such inducement resolution shall submit a notice of
87 inducement signed by its clerk, secretary or recorder or
88 other appropriate official to the development office.
89 Such notice shall include such information as may be
90 required by the development office pursuant to any rule
91 or regulation of the council for community and economic
92 development. Notwithstanding the foregoing, when a
93 governmental body proposes to issue bonds for the
94 purpose of constructing an energy producing project
95 which relies, in whole or in part, upon coal waste as fuel,
96 to the extent such project qualifies as a solid waste
97 facility under section 142(a)(6) of the United States
98 Internal Revenue Code of 1986, such project may be
99 awarded a reservation of funds from the state allocation
100 available for three years subsequent to the year in which
101 the notice of reservation of funds is submitted, at the
102 discretion of the executive director of the development
103 office: *Provided*, That no such discretionary reservation
104 may be made for any single project in an amount in
105 excess of thirty-five percent of the state allocation
106 available for such year subsequent to the year in which
107 the request is made. A discretionary reservation of the
108 state allocation for a project described in the preceding
109 sentence shall not be granted by the executive director
110 of the development office unless the project for which
111 the request is made has received a certification from the
112 Federal Energy Regulatory Commission as a qualifying
113 facility or a cogeneration project.

114 (e) Currently with or following the submission of its
115 notice of inducement, the governmental body at any

116 time deemed expedient by it may submit its notice of
117 reservation of funds which shall include the following
118 information:

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

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

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

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

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

130 (6) The type of issue; and

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

133 (f) The development office shall accept the notice of
134 reservation of funds no earlier than the first calendar
135 work day of the year for which a reservation of funds
136 is sought: *Provided*, That a notice of reservation of funds
137 with respect to an energy producing project that is
138 eligible for a reservation of funds for a year subsequent
139 to the year in which the notice of reservation of funds
140 is submitted may contain an application for funds from
141 a subsequent year's state allocation. Upon receipt of the
142 notice of reservation of funds, the development office
143 shall immediately note upon the face of such notice the
144 date and time of reception.

145 (g) If the bond issue for which a reservation has been
146 made has not been finally closed within one hundred
147 twenty days of the date of the reservation to be made
148 by the committee, or the thirty-first day of December
149 following such date of reservation if sooner and a
150 statement of bond closure which has been executed by
151 the clerk, secretary, recorder or other appropriate
152 official of the governmental body reserving the same has
153 not been received by the development office within that

154 time, then such reservation shall expire and be deemed
155 to have been forfeited and the funds so reserved shall
156 be released and revert to the portion of the state
157 allocation from which the funds were originally re-
158 served and shall then be made available for other
159 qualified issues in accordance with this section and the
160 Internal Revenue Code: *Provided*, That, as to any
161 reservation for a nonexempt project that is forfeited on
162 or after the first day of September in any calendar year,
163 such reservation shall revert to the portion of the state
164 allocation described in subsection (c) of this section:
165 *Provided, however*, That, as to any notice of reservation
166 of funds received by the development office during the
167 month of December in any calendar year with respect
168 to any project qualifying as an elective carry forward
169 pursuant to section 146(f)(5) of the Internal Revenue
170 Code, such notice of reservation of funds and the
171 reservation to which the same relates shall not expire
172 or be subject to forfeiture: *Provided further*, That any
173 unused state ceiling as of the thirty-first day of
174 December in any year not otherwise subject to a carry
175 forward pursuant to section 146(f) of the Internal
176 Revenue Code shall be allocated to the West Virginia
177 housing development fund, which shall be deemed to
178 have elected to carry forward the unused state ceiling
179 for the purpose of issuing qualified mortgage bonds,
180 qualified mortgage credit certificates or bonds for
181 qualified residential rental projects, each as defined in
182 the Internal Revenue Code. All requests for subsequent
183 reservation of funds upon loss of a reservation pursuant
184 to this section shall be treated in the same manner as
185 a new notice of reservation of funds in accordance with
186 subsections (d) and (e) above.

187 (h) Once a reservation of funds has been made for an
188 energy producing project which relies, in whole or in
189 part, upon coal waste as fuel and otherwise qualifies as
190 a solid waste facility under section 142(a)(6) of the
191 United States Internal Revenue Code of 1986, notwith-
192 standing the language of subsection (g) of this section,
193 such reservation shall remain fully available with
194 respect to such project until the first day of October in
195 the year from which the reservation was made at which

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196 time, if the bond issue has not been finally closed, the
197 reservation shall expire and be deemed forfeited and the
198 funds so reserved shall be released as provided in
199 subsection (g) of this section.

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

[Handwritten Signature]
.....
Chairman Senate Committee

Ernest C. Moore
.....
Chairman House Committee

Originating in the House.

Takes effect from passage.

Carroll Phelps
.....
Clerk of the Senate

Donald L. Kepp
.....
Clerk of the House of Delegates

Paul Budette
.....
President of the Senate

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

The within *is approved* this the *30th*
day of *March* 1994

Ernest C. Moore
.....
Governor



PRESENTED TO THE

GOVERNOR

Date

3/28/94

Time

9:26am