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HB 202

FILED

JUN 19 2003

IN THE OFFICE OF
JOE MANCHIN III
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND EXTRAORDINARY SESSION, 2003



ENROLLED

House Bill No. 202

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]



Passed June 12, 2003

In Effect from Passage

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H. B. 202

(BY MR. SPEAKER, MR. KISS, AND DELEGATE TRUMP)

[BY REQUEST OF THE EXECUTIVE]

[Passed June 12, 2003; in effect from passage.]

AN ACT to amend and reenact section nine-e, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the amount available from the consolidated fund as a revolving loan to the West Virginia economic development authority for the purpose of promoting certain business or industrial development projects.

Be it enacted by the Legislature of West Virginia:

That section nine-e, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§12-6-9e. Legislative findings; loans for industrial development; availability of funds and interest rates.

- 1 (a) The Legislature hereby finds and declares that the
- 2 citizens of the state benefit from the creation of jobs and

3 businesses within the state; that a business and industrial
4 development loan program provides for economic growth and
5 stimulation within the state; that loans from pools established
6 in the consolidated fund will assist in providing the needed
7 capital to assist business and industrial development; and that
8 time constraints relating to business and industrial development
9 projects prohibit duplicative review by both the board and the
10 West Virginia economic development authority board. The
11 Legislature further finds and declares that an investment in the
12 West Virginia enterprise capital fund, LLC, of moneys in the
13 consolidated fund as hereinafter provided will assist in creating
14 jobs and businesses within the state and providing the needed
15 risk capital to assist business and industrial development. This
16 section is enacted in view of these findings.

17 (b) The board shall make available, subject to cash avail-
18 ability, in the form of a revolving loan, up to one hundred
19 seventy-five million dollars from the consolidated fund to loan
20 the West Virginia economic development authority for business
21 or industrial development projects authorized by section seven,
22 article fifteen, chapter thirty-one of this code and to consolidate
23 existing loans authorized to be made to the West Virginia
24 economic development authority pursuant to this section and
25 pursuant to section twenty, article fifteen, chapter thirty-one of
26 this code which authorizes a one hundred fifty million dollar
27 revolving loan, and article eighteen-b, chapter thirty-one of this
28 code which authorizes a fifty million dollar investment pool:
29 *Provided*, That the West Virginia economic development
30 authority may not loan more than fifteen million dollars for any
31 one business or industrial development project. The revolving
32 loan authorized by this subsection must be secured by one note
33 at a variable interest rate equal to the twelve-month average of
34 the board's yield on its cash liquidity pool. The rate must be set
35 on the first day of July and the rate must be adjusted annually
36 on the same date. The maximum annual adjustment may not
37 exceed one percent. Monthly payments made by the West

38 Virginia economic development authority to the board must be
39 calculated on a one hundred twenty-month amortization. The
40 revolving loan must be secured by a security interest that
41 pledges and assigns the cash proceeds of collateral from all
42 loans under this revolving loan pool. The West Virginia
43 economic development authority may also pledge as collateral
44 certain revenue streams from other revolving loan pools which
45 source of funds does not originate from federal sources or from
46 the board.

47 The outstanding principal balance of the revolving loan
48 from the board to the West Virginia economic development
49 authority may at no time exceed one hundred three percent of
50 the aggregate outstanding principal balance of the business and
51 industrial loans from the West Virginia economic development
52 authority to economic development projects funded from this
53 revolving loan pool. This provision must be certified annually
54 by an independent audit of the West Virginia economic
55 development authority financial records.

56 (c) The interest rates and maturity dates on the loans made
57 by the West Virginia economic development authority for
58 business and industrial development projects authorized by
59 section seven, article fifteen, chapter thirty-one of this code
60 must be at competitive rates and maturities as determined by
61 the West Virginia economic development authority board.

62 (d) Any and all outstanding loans made by the board, or any
63 predecessor entity, to the West Virginia economic development
64 authority must be refunded by proceeds of the revolving loan
65 contained in this section and no loans may be made hereafter by
66 the board to the West Virginia economic development authority
67 pursuant to section twenty, article fifteen, chapter thirty-one of
68 this code or article eighteen-b of said chapter.

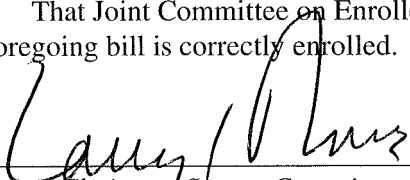
69 (e) The trustees of the board bear no fiduciary responsibility
70 as provided in section eleven of this article with specific regard
71 to the revolving loan contemplated in this section.

72 (f) Subject to cash availability, the board shall make
73 available to the West Virginia economic development authority
74 from the consolidated fund a nonrecourse loan in an amount up
75 to twenty-five million dollars, for the purpose of the West
76 Virginia economic development authority making a loan or
77 loans from time to time to the West Virginia enterprise ad-
78 vancement corporation, an affiliated nonprofit corporation of
79 the West Virginia economic development authority. The
80 respective loans authorized by this subsection by the board to
81 the West Virginia economic development authority and by the
82 West Virginia economic development authority to the West
83 Virginia enterprise advancement corporation must each be
84 evidenced by one note and must each bear interest at the rate of
85 three percent per annum. The proceeds of any and all loans
86 made by the West Virginia economic development authority to
87 the West Virginia enterprise advancement corporation pursuant
88 to this subsection must be invested by the West Virginia
89 enterprise advancement corporation in the West Virginia
90 enterprise capital fund, LLC, the manager of which is the West
91 Virginia enterprise advancement corporation. The loan to West
92 Virginia economic development authority authorized by this
93 subsection must be nonrevolving, and advances thereunder
94 must be made at times and in amounts as may be requested or
95 directed by the West Virginia economic development authority,
96 upon reasonable notice to the board, the loan authorized by this
97 subsection is not subject to or included in the limitations set
98 forth in subsection (b) of this section with respect to the fifteen
99 million dollar limitation for any one business or industrial
100 development project and limitation of one hundred three
101 percent of outstanding loans, and may not be included in the
102 revolving fund loan principal balance for purposes of calculat-
103 ing the loan amortization in subsection (b) of this section. The

104 loan authorized by this subsection to the West Virginia eco-
105 nomic development authority must be classified by the board as
106 a long-term, fixed income investment, must bear interest on the
107 outstanding principal balance thereof at the rate of three percent
108 per annum payable annually on or before the thirtieth day of
109 June of each year, and the principal of which must be repaid no
110 later than the thirtieth day of June, two thousand twenty-two, in
111 annual installments due on or before the thirtieth day of June of
112 each year, which annual installments must commence no later
113 than the thirtieth day of June, two thousand three, in annual
114 principal amounts as may be agreed upon between the board
115 and the West Virginia economic development authority, and
116 which annual installments need not be equal. The loan autho-
117 rized by this subsection must be nonrecourse and must be
118 payable by the West Virginia economic development authority
119 solely from amounts or returns received by the West Virginia
120 economic development authority in respect of the loan autho-
121 rized by this subsection to the West Virginia enterprise ad-
122 vancement corporation, whether in the form of interest,
123 dividends, realized capital gains, return of capital or otherwise,
124 in all of which the board must have a security interest to secure
125 repayment of the loan to the West Virginia economic develop-
126 ment authority authorized by this subsection. Any and all loans
127 from the West Virginia economic development authority to the
128 West Virginia enterprise advancement corporation made
129 pursuant to this subsection must also bear interest on the
130 outstanding principal balance thereof at the rate of three percent
131 per annum payable annually on or before the thirtieth day of
132 June of each year, must be nonrecourse and must be payable by
133 the West Virginia enterprise advancement corporation solely
134 from amounts of returns received by the West Virginia enter-
135 prise advancement corporation in respect of its investment in
136 the West Virginia enterprise capital fund, LLC, whether in the
137 form of interest, dividends, realized capital gains, return of
138 capital or otherwise, in all of which the board must have a

139 security interest to secure repayment of the loan to the West
140 Virginia economic development authority authorized by this
141 subsection. In the event the amounts or returns received by the
142 West Virginia enterprise advancement corporation in respect of
143 its investment in the West Virginia enterprise capital fund,
144 LLC, are not adequate to pay when due the principal or interest
145 installments, or both, with respect to the loan from the West
146 Virginia economic development authority and, as a result
147 thereof, the West Virginia economic development authority is
148 unable to pay the principal or interest installments, or both, with
149 respect to the loan authorized by this subsection by the board to
150 the West Virginia economic development authority, the
151 principal or interest, or both, as the case may be due on the loan
152 made to the West Virginia economic development authority
153 pursuant to this subsection must be deferred, and any and all of
154 these past-due principal and interest payments must promptly
155 be paid to the fullest extent possible upon receipt by the West
156 Virginia enterprise advancement corporation of moneys in
157 respect of its investments in the West Virginia enterprise capital
158 fund, LLC. The trustees or the board bear no fiduciary responsi-
159 bility as provided in section eleven, article six, chapter twelve
160 of this code with regard to the loan authorized by this subsec-
161 tion.

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



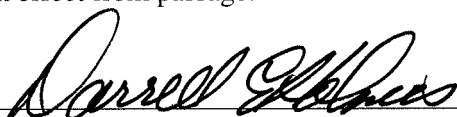
Chairman Senate Committee



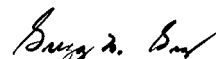
Chairman House Committee

Originating in the House.

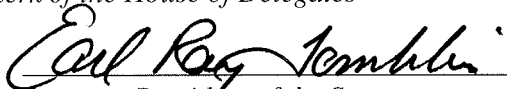
In effect from passage.



Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within is approved this the 19th
day of June _____ 2003.



Governor

PRESENTED TO THE
GOVERNOR

Date 6/16/03

Time 9:45am

FILED

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**OFFICE WEST VIRGINIA
SECRETARY OF STATE**