

FILED

2005 FEB 18 P 3:53

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
*1st Extraordinary Session, 2005*

---

**ENROLLED**

SENATE BILL NO. 1002

(By Senators TOMAHN, MR. PRESIDENT, AND SPROUSE *By Request of the Executive*)

---

PASSED JANUARY 29, 2005

In Effect from Passage

FILED

2005 FEB 18 P 3: 53

OFFICE WEST VIRGINIA  
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

§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  
2 five, bonds may not be issued or refunded by the state of  
3 West Virginia or any of its agencies, boards or commis-  
4 sions without the express written direction of the gover-  
5 nor, if:

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

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

11 (b) Prior to any state agency, board or commission  
12 participating in any formal presentation to any nationally  
13 recognized rating agency, with respect to the proposed  
14 issuance or refunding of bonds where the ultimate user of  
15 the proceeds of the bonds is the state of West Virginia or

16 any of its agencies, boards, commissions or departments,  
17 or the issuance or refunding of the bonds implicates the  
18 state's credit rating, the chair or director of the state  
19 agency, board or commission shall provide written notice  
20 to the governor, the president of the Senate and the  
21 speaker of the House of Delegates of the date, time and  
22 place of the formal presentation at least ten days in  
23 advance.

24 (c) All bond sale requirements established in this code  
25 shall apply unless contrary to the provisions of this  
26 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.**

1 (a) The secretary of commerce is the chief executive  
2 officer of the department. The governor shall appoint the  
3 secretary, by and with the advice and consent of the  
4 Senate, for the term for which the governor is elected. Any  
5 reference in this code to the bureau of commerce means  
6 the department of commerce. Any reference in this code  
7 to the commissioner of the department of commerce means  
8 the secretary of commerce. As used in this article, "sec-  
9 retary" means the secretary of commerce and "department"  
10 means department of commerce.

11 (b) The department may receive federal funds.

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

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

1 The department of commerce consists of the following  
2 agencies, boards, commissions, divisions and offices,

3 including all of the allied, advisory, affiliated or related  
4 entities which are incorporated in and shall be adminis-  
5 tered as part of the department of commerce:

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

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

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

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

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

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

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

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

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

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



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

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

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

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

7 (c) The secretary may assess agencies, boards, commis-  
8 sions, divisions and offices in the department for the  
9 payment of expenses of the office of the secretary.

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

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

**§5B-1-4. Reports by secretary.**

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

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

1 The secretary may delegate his or her powers and duties  
2 to assistants and employees, but the secretary is responsi-  
3 ble for all official acts of the department.

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

1 (a) *Information provided to secretary under expectation*  
2 *of confidentiality.* - Information that would be confiden-

3 tial under the laws of this state when provided to a  
4 division, agency, board, commission or office within the  
5 department is confidential when that information is  
6 provided to the secretary or an employee in the office of  
7 the secretary. The confidential information may be  
8 disclosed only: (1) To the applicable agency, board,  
9 commission or division of the department to which the  
10 information relates; or (2) in the manner authorized by  
11 provisions of this code applicable to that agency, board,  
12 commission or division. This confidentiality rule is a  
13 specific exemption from disclosure under article one,  
14 chapter twenty-nine-b of this code.

15 (b) *Interdepartmental communication of confidential*  
16 *information.* – Notwithstanding any provision of this code  
17 to the contrary, information that is confidential pursuant  
18 to this code in the possession of any division, agency,  
19 board, commission or office of the department may be  
20 disclosed to the secretary or an employee in the office of  
21 the secretary. The secretary or employee shall safeguard  
22 the information and may not further disclose the informa-  
23 tion except under the same conditions, restrictions and  
24 limitations applicable to the administrator of the agency,  
25 board, commission, division or office of the department in  
26 whose hands the information is confidential. This subsec-  
27 tion does not require disclosure of individually identifiable  
28 health care or other information that is prohibited from  
29 disclosure by federal law. This subsection is a specific  
30 exemption from the disclosure requirements of article one,  
31 chapter twenty-nine-b of this code.

32 (c) The provisions of this section:

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

37 (2) Do not authorize disclosure or exempt from the  
38 provisions of article one, chapter twenty-nine-b of this

39 code any confidential information of a division, agency,  
40 board, commission or office within a department to any  
41 person or entity other than the secretary, or an employee  
42 in the office of the secretary, of that department;

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

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

1 Any governmental entity may appeal to the governor for  
2 review upon a showing that application of the secretary's  
3 authority may interfere with the successful functioning of  
4 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.**

1 (a) The council for community and economic develop-  
2 ment, within the West Virginia development office, is a  
3 body corporate and politic, constituting a public corpora-  
4 tion and government instrumentality. Membership on the  
5 council consists of:

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

18 (2) Four at-large members to be appointed by the  
19 governor with the advice and consent of the Senate;

20 (3) The president of the West Virginia economic develop-  
21 ment council; and

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

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

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

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

47 (d) The governor shall appoint an executive director of  
48 the West Virginia development office who is qualified for  
49 the position by reason of his or her extensive education  
50 and experience in the field of professional economic  
51 development. The executive director shall serve at the will  
52 and pleasure of the governor. The salary of the director

53 shall annually be fixed by the council. The director shall  
54 have overall management responsibility and administra-  
55 tive control and supervision within the West Virginia  
56 development office. It is the intention of the Legislature  
57 that the director provide professional and technical  
58 expertise in the field of professional economic and tourism  
59 development in order to support the policy-making  
60 functions of the council, but that the director not be a  
61 public officer, agent, servant or contractor within the  
62 meaning of section thirty-eight, article VI of the constitu-  
63 tion of West Virginia and not be a statutory officer within  
64 the meaning of section one, article two, chapter five-f of  
65 this code. Subject to the provisions of the contract  
66 provided in section four of this article, the director may  
67 hire and fire economic development representatives  
68 employed pursuant to the provisions of section five of this  
69 article.

70 (e) The executive director of the West Virginia develop-  
71 ment office may promulgate rules to carry out the pur-  
72 poses and programs of the West Virginia development  
73 office to include generally the programs available and the  
74 procedure and eligibility of applications relating to  
75 assistance under the programs. These rules are not subject  
76 to the provisions of chapter twenty-nine-a of this code, but  
77 shall be filed with the secretary of state. The executive  
78 director may adopt any of the rules previously promul-  
79 gated by the council for community and economic devel-  
80 opment.

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

1 The council for community and economic development  
2 shall enhance economic growth and development through  
3 the development of a comprehensive economic develop-  
4 ment strategy for West Virginia. "Comprehensive eco-  
5 nomic development strategy" means a plan that outlines  
6 strategies and activities designed to continue, diversify or  
7 expand the economic base of the state as a whole; create

8 jobs; develop a highly skilled workforce; facilitate business  
9 access to capital, including venture capital; advertise and  
10 market the resources offered by the state with respect to  
11 the needs of business and industry; facilitate cooperation  
12 among local, regional and private economic development  
13 enterprises; improve infrastructure on a state, regional and  
14 community level; improve the business climate generally;  
15 and leverage funding from sources other than the state,  
16 including federal and private sources.

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

1 (a) There is hereby created within the West Virginia  
2 development office the division of tourism and an inde-  
3 pendent tourism commission, which is a body corporate  
4 and politic, constituting a public corporation and govern-  
5 ment instrumentality. The commission consists of thirteen  
6 members:

7 (1) Nine members to be appointed by the governor, with  
8 the advice and consent of the Senate, representing partici-  
9 pants in the state's tourism industry. At least seven of the  
10 members shall be from the private sector. Of the nine  
11 members so appointed, one shall represent a convention  
12 and visitors bureau and another shall be a member of a  
13 convention and visitors bureau. In making the appoint-  
14 ments the governor may select from a list provided by the  
15 West Virginia hospitality and travel association of quali-  
16 fied applicants. Of the nine members so appointed, no  
17 more than three shall be from each congressional district  
18 within the state and shall be appointed to provide the  
19 broadest geographic distribution which is feasible;

20 (2) One member to be appointed by the governor from  
21 the membership of the council for community and eco-  
22 nomic development created pursuant to the provisions of  
23 section two of this article;

24 (3) One member to be appointed by the governor to  
25 represent public sector nonstate participants in the  
26 tourism industry within the state;

27 (4) The secretary of transportation or his or her designee,  
28 ex officio; and

29 (5) The director of the division of natural resources or his  
30 or her designee, ex officio.

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

39 (c) Members of the commission shall not be entitled to  
40 compensation for services performed as members. A  
41 majority of these members shall constitute a quorum for  
42 the purpose of conducting business. The governor shall  
43 appoint a chair of the commission for a term to run  
44 concurrent with the term of the office of the member  
45 appointed to be the chair. The chair is eligible for succes-  
46 sive terms in that position.

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

1 The certified development community program is  
2 continued and is transferred to, incorporated in and  
3 administered as a program of the West Virginia develop-  
4 ment office. The program shall provide funding assistance  
5 to the participating economic development corporations or  
6 authorities through a matching grant program. The West  
7 Virginia development office shall establish criteria for  
8 awarding matching grants to the corporations or authori-  
9 ties within the limits of funds appropriated by the Legisla-  
10 ture for the program. The matching grants to eligible  
11 corporations or authorities are in the amount of thirty  
12 thousand dollars for each fiscal year, if sufficient funds are  
13 appropriated by the Legislature. The West Virginia  
14 development office shall recognize existing county,

15 regional or multicounty corporations or authorities where  
16 appropriate.

17 In developing its plan, the West Virginia development  
18 office shall consider resources and technical support  
19 available through other agencies, both public and private,  
20 including, but not limited to, the state college and univer-  
21 sity systems; the West Virginia housing development fund;  
22 the West Virginia economic development authority; the  
23 West Virginia parkways, economic development and  
24 tourism authority; the West Virginia round table; the West  
25 Virginia chamber of commerce; regional planning and  
26 development councils; regional partnership for progress  
27 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 indi-  
2 cates otherwise:

3 (1) "Agreement" means a tourism development agree-  
4 ment entered into, pursuant to section six of this article,  
5 between the development office and an approved company  
6 with respect to a tourism development project.

7 (2) "Approved company" means any eligible company  
8 approved by the development office pursuant to section  
9 five of this article seeking to undertake a tourism develop-  
10 ment project.

11 (3) "Approved costs" means:

12 (A) Included costs:

13 (i) Obligations incurred for labor and to vendors, con-  
14 tractors, subcontractors, builders, suppliers, delivery  
15 persons and material persons in connection with the  
16 acquisition, construction, equipping, installation or  
17 expansion of a tourism development project;



18 (ii) The costs of acquiring real property or rights in real  
19 property and any costs incidental thereto;

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

26 (iv) All costs of architectural and engineering services,  
27 including, but not limited to: Estimates, plans and specifi-  
28 cations, preliminary investigations and supervision of  
29 construction, installation, as well as for the performance  
30 of all the duties required by or consequent to the acquisi-  
31 tion, construction, equipping, installation or expansion of  
32 a tourism development project;

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

37 (vi) All costs required for the installation of utilities,  
38 including, but not limited to: Water, sewer, sewer treat-  
39 ment, gas, electricity, communications and off-site con-  
40 struction of utility extensions to the boundaries of the real  
41 estate on which the facilities are located, all of which are  
42 to be used to improve the economic situation of the  
43 approved company in a manner that allows the approved  
44 company to attract persons; and

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

47 (B) *Excluded costs.* – The term “approved costs” does  
48 not include any portion of the cost required to be paid for  
49 the acquisition, construction, equipping and installation or  
50 expansion of a tourism development project that is  
51 financed with governmental incentives, grants or bonds or  
52 for which the eligible taxpayer elects to qualify for other

53 tax credits, including, but not limited to, those provided by  
54 article thirteen-q, chapter eleven of this code.

55 (4) "Base tax revenue amount" means the average  
56 monthly amount of consumer sales and service tax col-  
57 lected by an approved company, based on the  
58 twelve-month period ending immediately prior to the  
59 opening of a new tourism development project for busi-  
60 ness, as certified by the state tax commissioner.

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

64 (6) "Crafts and products center" means a facility primar-  
65 ily devoted to the display, promotion and sale of West  
66 Virginia products and at which a minimum of eighty  
67 percent of the sales occurring at the facility are of West  
68 Virginia arts, crafts or agricultural products.

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

77 (8) "Entertainment destination center" means a facility  
78 containing a minimum of two hundred thousand square  
79 feet of building space adjacent or complementary to an  
80 existing tourism attraction, an approved tourism develop-  
81 ment project or a major convention facility and which  
82 provides a variety of entertainment and leisure options  
83 that contain at least one major theme restaurant and at  
84 least three additional entertainment venues, including, but  
85 not limited to, live entertainment, multiplex theaters,  
86 large-format theaters, motion simulators, family enter-  
87 tainment centers, concert halls, virtual reality or other

88 interactive games, museums, exhibitions or other cultural  
89 and leisure time activities. Entertainment and food and  
90 drink options shall occupy a minimum of sixty percent of  
91 total gross area, as defined in the application, available for  
92 lease and other retail stores shall occupy no more than  
93 forty percent of the total gross area available for lease.

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

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

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

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

111 (A) Lodging facility, unless:

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

119 (ii) The facility involves the restoration or rehabilitation  
120 of a structure that is listed individually in the national  
121 register of historic places or is located in a national

122 register historic district and certified by the state historic  
123 preservation officer as contributing to the historic signifi-  
124 cance of the district and the rehabilitation or restoration  
125 project has been approved in advance by the state historic  
126 preservation officer; or

127 (iii) The facility involves the construction, reconstruc-  
128 tion, restoration, rehabilitation or upgrade of a full-service  
129 lodging facility or the reconstruction, restoration, rehabili-  
130 tation or upgrade of an existing structure into a  
131 full-service lodging facility having not less than five  
132 hundred guest rooms, with construction, reconstruction,  
133 restoration, rehabilitation or upgrade costs exceeding ten  
134 million dollars;

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

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

145 (13) "Tourism development project" means the acquisi-  
146 tion, including the acquisition of real estate by a leasehold  
147 interest with a minimum term of ten years, construction  
148 and equipping of a tourism attraction; the construction  
149 and installation of improvements to facilities necessary or  
150 desirable for the acquisition, construction, installation or  
151 expansion of a tourism attraction, including, but not  
152 limited to, surveys, installation of utilities, which may  
153 include water, sewer, sewage treatment, gas, electricity,  
154 communications and similar facilities; and off-site con-  
155 struction of utility extensions to the boundaries of the real  
156 estate on which the facilities are located, all of which are  
157 to be used to improve the economic situation of the

158 approved company in a manner that allows the approved  
159 company to attract persons.

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

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

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

5 (1) Make preliminary and final approvals of all applica-  
6 tions for tourism development projects and enter into  
7 agreements pertaining to tourism development projects  
8 with approved companies;

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

14 (3) Impose and collect fees and charges in connection  
15 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.**

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

5 (b) With respect to each eligible company making an  
6 application to the development office for the tourism  
7 development project tax credit, the development office

8 shall make inquiries and request documentation, including  
9 a completed application, from the applicant that shall  
10 include: A description and location of the project; capital  
11 and other anticipated expenditures for the project and the  
12 sources of funding therefor; the anticipated employment  
13 and wages to be paid at the project; business plans that  
14 indicate the average number of days in a year in which the  
15 project will be in operation and open to the public; and the  
16 anticipated revenues and expenses generated by the  
17 project.

18 (c) Based upon a review of the application and addi-  
19 tional documentation provided by the eligible company, if  
20 the executive director of the development office deter-  
21 mines that the applicant and the tourism development  
22 project may reasonably satisfy the criteria for final  
23 approval set forth in subsection (d) of this section, then the  
24 director of the development office may grant a preliminary  
25 approval of the applicant and the tourism development  
26 project.

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

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

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

38 (3) Will have a significant and positive economic impact  
39 on the state considering, among other factors, the extent  
40 to which the tourism development project will compete  
41 directly with or complement existing tourism attractions  
42 in the state and the amount by which increased tax

43 revenues from the tourism development project will  
44 exceed the credit given to the approved company;

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

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

50 (e) The applicant shall pay to the development office,  
51 prior to the engagement of the services of a competent  
52 consulting firm or firms pursuant to the provisions of  
53 subsection (d) of this section, for the cost of the consulting  
54 report or reports and shall cooperate with the consulting  
55 firm or firms to provide all of the data that the consultant  
56 considers necessary or convenient to make its determina-  
57 tion under subsection (d) of this section.

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

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

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

72 (3) Whether the tourism development project will,  
73 directly or indirectly, improve the opportunities in the  
74 area where the tourism development project will be  
75 located for the successful establishment or expansion of  
76 other industrial or commercial businesses;

77 (4) Whether the tourism development project will,  
78 directly or indirectly, assist in the creation of additional  
79 employment opportunities in the area where the tourism  
80 development project will be located;

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

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

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

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

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

92 (h) The executive director of the development office may  
93 give its final approval to the applicant's application for a  
94 tourism development project and may grant to the appli-  
95 cant the status of an approved company: *Provided*, That  
96 the total amount of tourism development project tax  
97 credits for all approved companies may not exceed one  
98 million five hundred thousand dollars each calendar year.  
99 The executive director of the development office shall act  
100 to approve or not approve any application within sixty  
101 days following the receipt of the consultant's report or  
102 reports or the receipt of any additional information  
103 requested by the development office, whichever is later.  
104 The decision by the executive director of the development  
105 office is final.

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

1 The development office, upon final approval of an  
2 application by the executive director, may enter into an  
3 agreement with any approved company with respect to its



4 tourism development project. The terms and provisions of  
5 each agreement shall include, but not be limited to:

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

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

**§5B-2E-9. Promulgation of rules.**

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

**CHAPTER 5D. PUBLIC ENERGY AUTHORITY.**

**ARTICLE 1. 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.**

1 (a) The West Virginia public energy authority is contin-  
2 ued. The authority is a governmental instrumentality of

3 the state and a body corporate. The exercise by the  
4 authority of the powers conferred by this article and the  
5 carrying out of its purposes and duties are essential  
6 governmental functions and for a public purpose.

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

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

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

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

38 in the advocacy of environmental protection. Board  
39 members may be reappointed to serve additional terms.

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

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

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

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

63 (j) Each public member receives the same compensation  
64 and expense reimbursement as is paid to members of the  
65 Legislature for their interim duties as recommended by the  
66 citizens legislative compensation commission and autho-  
67 rized by law for each day or portion thereof engaged in the  
68 discharge of official duties. All expenses incurred by the  
69 board shall be paid in a manner consistent with guidelines  
70 of the travel management office of the department of  
71 administration and are payable solely from funds of the  
72 authority or from funds appropriated to the authority for

73 such purpose by the Legislature. Liability or obligation is  
74 not incurred by the authority beyond the extent to which  
75 moneys are available from funds of the authority or from  
76 such appropriations.

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

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

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

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

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

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

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

19 (5) Foster, encourage and promote the mineral develop-  
20 ment industry. The authority is encouraged to maximize  
21 the use of the West Virginia mineral development industry,

22 but is not prohibited from utilizing nonstate mineral  
23 resources.

24 (6) Represent the state with respect to national initia-  
25 tives concerning the mineral development industry and  
26 international marketing activities affecting the mineral  
27 development industry.

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

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

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

51 (10) Finance one or more electric power projects or  
52 natural gas transmission projects by making secured loans  
53 to persons other than governmental agencies to provide  
54 funds for the acquisition, by purchase, construction or  
55 otherwise, of any such project or projects.

56 (11) Issue bonds for the purpose of financing the cost of  
57 acquisition and construction of one or more electric power  
58 projects or natural gas transmission projects or any  
59 additions, extensions or improvements thereto which will  
60 be sold, leased with an option by the lessee to purchase,  
61 leased or otherwise disposed of to persons other than  
62 governmental agencies or for the purpose of loaning the  
63 proceeds thereof to persons other than governmental  
64 agencies for the acquisition and construction of said  
65 projects or both. Such bonds shall be issued and the  
66 payment of such bonds secured in the manner provided by  
67 the applicable provisions of sections seven, eight, nine, ten,  
68 eleven, twelve, thirteen and seventeen, article two-c,  
69 chapter thirteen of this code: *Provided*, That the principal  
70 and interest on such bonds shall be payable out of the  
71 revenues derived from the lease, lease with an option by  
72 the lessee to purchase, sale or other disposition of or from  
73 loan payments in connection with the electric power  
74 project or natural gas transmission project for which the  
75 bonds are issued, or any other revenue derived from such  
76 electric power project or natural gas transmission project.

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

91 (13) Acquire by gift or purchase, hold and dispose of real  
92 and personal property in the exercise of its powers and the  
93 performance of its duties as set forth in this article.

94 (14) Acquire in the name of the state, by purchase or  
95 otherwise, on such terms and in such manner as it deems  
96 proper, or by the exercise of the right of eminent domain  
97 in the manner provided in chapter fifty-four of this code,  
98 such real property or parts thereof or rights therein,  
99 rights-of-way, property, rights, easements and interests it  
100 deems necessary for carrying out the provisions of this  
101 article and compensation shall be paid for public or  
102 private lands so taken; and the authority may sell any of  
103 the real property or parts thereof or rights therein,  
104 rights-of-way, property, rights, easements and interests  
105 acquired hereunder in such manner and upon such terms  
106 and conditions as the authority deems proper: *Provided,*  
107 That if the authority determines that land or an interest  
108 therein acquired by the authority through the exercise of  
109 the power of eminent domain for the purpose of this  
110 article is no longer necessary or useful for such purposes,  
111 and if the authority desires to sell such land or interest  
112 therein, the authority shall first offer to sell such land or  
113 interest to the owner or owners from whom it was ac-  
114 quired, at a price equal to its fair market value: *Provided,*  
115 *however,* That if the prior owner or owners shall decline to  
116 reacquire the land or interest therein, the authority shall  
117 be authorized to dispose of such property by direct sale,  
118 auction, or competitive bidding. In no case shall such land  
119 or an interest therein acquired under this subdivision be  
120 sold for less than its fair market value. This article does  
121 not authorize the authority to take or disturb property or  
122 facilities belonging to any public utility or to a common  
123 carrier, which property or facilities are required for the  
124 proper and convenient operation of such public utility or  
125 common carrier, except for the acquisition of easements or  
126 rights-of-way which will not unreasonably interfere with  
127 the operation of the property or facilities of such public  
128 utility or common carrier, and in the event of the taking or  
129 disturbance of property or facilities of public utility or  
130 common carrier, provision shall be made for the restora-  
131 tion, relocation or duplication of such property or facilities  
132 elsewhere at the sole cost of the authority.

133 The term "real property" as used in this article is defined  
134 to include lands, structures, franchises and interests in  
135 land, including lands under water and riparian rights, and  
136 any and all other things and rights usually included within  
137 the said term, and includes also any and all interests in  
138 such property less than full title, such as easements,  
139 rights-of-way, uses, leases, licenses and all other incorpo-  
140 real hereditaments and every estate, interest or right, legal  
141 or equitable, including terms for years and liens thereon  
142 by way of judgments, mortgages or otherwise, and also all  
143 claims for damages for such real estate.

144 For the purposes of this section, "fair market value"  
145 shall be determined by an appraisal made by an independ-  
146 ent person or firm chosen by the authority. The appraisal  
147 shall be performed using the principles contained in the  
148 "Uniform Appraisal Standards for Federal Land Acquisi-  
149 tions" published under the auspices of the Interagency  
150 Land Acquisition Conference, United States Government  
151 Printing Office, 1972.

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

163 (16) Employ managers, superintendents and other  
164 employees, and retain or contract with consulting engi-  
165 neers, financial consultants, accountants, architects,  
166 attorneys, and such other consultants and independent  
167 contractors as are necessary in its judgment to carry out  
168 the provisions of this article, and fix the compensation or  
169 fees thereof. All expenses thereof shall be payable solely



170 from the proceeds of bonds issued by the economic devel-  
171 opment authority, from the proceeds of bonds issued by or  
172 loan payments, lease payments or other payments received  
173 by the authority, from revenues and from funds appropri-  
174 ated for such purpose by the Legislature.

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

184 (18) Purchase property coverage and liability insurance  
185 for any electric power project or natural gas transmission  
186 project or other energy project and for the principal office  
187 and suboffices of the authority, insurance protecting the  
188 authority and its officers and employees against liability,  
189 if any, for damage to property or injury to or death of  
190 persons arising from its operations and any other insur-  
191 ance which may be provided for under a resolution  
192 authorizing the issuance of bonds or in any trust agree-  
193 ment securing the same.

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

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

199 (21) When the electric power project is owned and  
200 operated by the authority, charge reasonable fees in  
201 connection with the making and providing of electric  
202 power and the sale thereof to corporations, states, munici-  
203 palities or other entities in the furtherance of the purposes  
204 of this article.

205 (22) Purchase and sell electricity or other energy pro-  
206 duced by an electric power project in and out of the state  
207 of West Virginia.

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

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

215 (25) Make and enter into joint ownership agreements.

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

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

228 (28) Engage in market research, feasibility studies,  
229 commercial research, and other studies and research  
230 pertaining to electric power projects and natural gas  
231 transmission projects or any other functions of the author-  
232 ity pursuant to this article.

233 (29) Enter upon any lands, waters and premises in the  
234 state for the purpose of making surveys and examinations  
235 as it may deem necessary or convenient for the purpose of  
236 this article, and such entry shall not be deemed a trespass,  
237 nor shall an entry for such purposes be deemed an entry  
238 under any condemnation proceedings which may be then

239 pending and the authority shall make reimbursement for  
240 any actual damages resulting to such lands, waters and  
241 premises as a result of such activities.

242 (30) Participate in any reorganization proceeding  
243 pending pursuant to the United States Code (being the act  
244 of congress establishing a uniform system of bankruptcy  
245 throughout the United States, as amended) or any receiv-  
246 ership proceeding in a state or federal court for the  
247 reorganization or liquidation of a responsible buyer or  
248 responsible tenant. The authority may file its claim  
249 against any such responsible buyer or responsible tenant  
250 in any of the foregoing proceedings, vote upon any ques-  
251 tion pending therein, which requires the approval of the  
252 creditors participating in any reorganization proceeding  
253 or receivership, exchange any evidence of such indebted-  
254 ness for any property, security or evidence of indebtedness  
255 offered as a part of the reorganization of such responsible  
256 buyer or responsible tenant or of any entity formed to  
257 acquire the assets thereof and may compromise or reduce  
258 the amount of any indebtedness owing to it as a part of  
259 any such reorganization.

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

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

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

270 (34) The authority shall, after consultation with other  
271 agencies of state government having environmental  
272 regulatory functions, promulgate legislative rules pursuant  
273 to chapter twenty-nine-a of this code, to establish stan-

274 dards and principles to be applied to all projects in  
275 assessing the effects of projects on the environment:  
276 *Provided*, That when a proposed project requires an  
277 environmental impact statement pursuant to the National  
278 Environmental Policy Act of 1969, a copy of the environ-  
279 mental impact statement shall be filed with the authority  
280 and be made available prior to any final decision or final  
281 approval of any project and prior to the conducting of any  
282 public hearings regarding the project, and in any such  
283 case, no assessment pursuant to the legislative rule need be  
284 made.

**§5D-1-24. Continuation of board.**

1 The West Virginia public energy authority board shall  
2 continue to exist, pursuant to the provisions of article ten,  
3 chapter four of this code, until the first day of July, two  
4 thousand ten, unless sooner terminated, continued or  
5 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.**

1 (a) There are created, within the executive branch of the  
2 state government, the following departments:  
3 (1) Department of administration;  
4 (2) Department of education and the arts;  
5 (3) Department of environmental protection;  
6 (4) Department of health and human resources;  
7 (5) Department of military affairs and public safety;  
8 (6) Department of revenue;  
9 (7) Department of transportation; and

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;

25 (9) Division of personnel provided in article six, chapter  
26 twenty-nine of this code;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

86 (2) Solid waste management board provided in article  
87 three, chapter twenty-two-c of this code;

88 (3) Environmental quality board, or its successor board,  
89 provided in article three, chapter twenty-two-b of this  
90 code;

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

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

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

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

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

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

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

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

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

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

117 (1) Human rights commission provided for in article  
118 eleven, chapter five of this code;



119 (2) Division of human services provided for in article  
120 two, chapter nine of this code;

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

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

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

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

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

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

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

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

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

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

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

147 (5) Office of emergency services and disaster recovery  
148 board provided for in article five, chapter fifteen of this

149 code and emergency response commission provided for in  
150 article five-a of said chapter;

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

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

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

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

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

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

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

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

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

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

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

178 (5) Office of alcohol beverage control commissioner  
179 provided for in article sixteen, chapter eleven of this code  
180 and article two, chapter sixty of this code;

181 (6) Board of banking and financial institutions provided  
182 for in article three, chapter thirty-one-a of this code;

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

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

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

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

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

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

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

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

205 (2) Parkways, economic development and tourism  
206 authority provided for in article sixteen-a, chapter seven-  
207 teen of this code;

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

210 (4) Driver's licensing advisory board provided for in  
211 article two, chapter seventeen-b of this code;

212 (5) Aeronautics commission provided for in article  
213 two-a, chapter twenty-nine of this code;

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

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

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

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

234 (o) Any department previously transferred to and  
235 incorporated in a department created in section two,  
236 article one of this chapter by prior enactment of this  
237 section in chapter three, acts of the Legislature, first  
238 extraordinary session, one thousand nine hundred  
239 eighty-nine, and subsequent amendments means a division  
240 of the appropriate department. Wherever reference is  
241 made to any department transferred to and incorporated  
242 in a department created in section two, article one of this  
243 chapter, the reference means a division of the appropriate  
244 department and any reference to a division of a depart-  
245 ment so transferred and incorporated means a section of  
246 the appropriate division of the department.

247 (p) When an agency, board or commission is transferred  
248 under a bureau or agency other than a department headed  
249 by a secretary pursuant to this section, that transfer is  
250 solely for purposes of administrative support and liaison  
251 with the office of the governor, a department secretary or  
252 a bureau. Nothing in this section extends the powers of  
253 department secretaries under section two of this article to  
254 any person other than a department secretary and nothing  
255 limits or abridges the statutory powers and duties of  
256 statutory commissioners or officers pursuant to this code.

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

1 (a) Notwithstanding any other provision of this code to  
2 the contrary, the secretary of each department shall have  
3 plenary power and authority within and for the depart-  
4 ment to:

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

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

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

17 (4) Delegate, assign, transfer or combine responsibilities  
18 or duties to or among employees, other than administra-  
19 tors or board members;

20 (5) Reorganize internal functions or operations;

21 (6) Formulate comprehensive budgets for consideration  
22 by the governor, and transfer within the department funds  
23 appropriated to the various agencies of the department

24 which are not expended due to cost savings resulting from  
25 the implementation of the provisions of this chapter:  
26 *Provided*, That no more than twenty-five percent of the  
27 funds appropriated to any one agency or board may be  
28 transferred to other agencies or boards within the depart-  
29 ment: *Provided, however*, That no funds may be trans-  
30 ferred from a special revenue account, dedicated account,  
31 capital expenditure account or any other account or funds  
32 specifically exempted by the Legislature from transfer,  
33 except that the use of appropriations from the state road  
34 fund transferred to the office of the secretary of the  
35 department of transportation is not a use other than the  
36 purpose for which such funds were dedicated and is  
37 permitted: *Provided further*, That if the Legislature by  
38 subsequent enactment consolidates agencies, boards or  
39 functions, the secretary may transfer the funds formerly  
40 appropriated to such agency, board or function in order to  
41 implement such consolidation. The authority to transfer  
42 funds under this section shall expire on the thirtieth day  
43 of June, two thousand six;

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

56 (8) Acquire by lease or purchase property of whatever  
57 kind or character and convey or dispose of any property of  
58 whatever kind or character as authorized by law: *Pro-*  
59 *vided*, That the powers granted to the secretary to lease,  
60 purchase, convey or dispose of such property shall not

61 exceed or be interpreted as authority to exceed the powers  
62 heretofore granted by the Legislature to the various  
63 commissioners, directors or board members of the various  
64 departments, agencies or boards that comprise and are  
65 incorporated into each secretary's department under this  
66 chapter;

67 (9) Conduct internal audits;

68 (10) Supervise internal management;

69 (11) Promulgate rules, as defined in section two, article  
70 one, chapter twenty-nine-a of this code, to implement and  
71 make effective the powers, authority and duties granted  
72 and imposed by the provisions of this chapter, such  
73 promulgation to be in accordance with the provisions of  
74 chapter twenty-nine-a of this code;

75 (12) Grant or withhold written consent to the proposal  
76 of any rule, as defined in section two, article one, chapter  
77 twenty-nine-a of this code, by any administrator, agency  
78 or board within the department, without which written  
79 consent no proposal of a rule shall have any force or effect;

80 (13) Delegate to administrators such duties of the  
81 secretary as the secretary may deem appropriate from time  
82 to time to facilitate execution of the powers, authority and  
83 duties delegated to the secretary; and

84 (14) Take any other action involving or relating to  
85 internal management not otherwise prohibited by law.

86 (b) The secretaries of the departments hereby created  
87 shall engage in a comprehensive review of the practices,  
88 policies and operations of the agencies and boards within  
89 their departments to determine the feasibility of cost  
90 reductions and increased efficiency which may be achieved  
91 therein, including, but not limited to, the following:

92 (1) The elimination, reduction and restrictions in the use  
93 of the state's vehicle or other transportation fleet;

94 (2) The elimination, reduction and restrictions in the  
95 preparation of state government publications, including  
96 annual reports, informational materials and promotional  
97 materials;

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

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

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

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

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

119 (d) The layoff and recall rights of employees within the  
120 classified service of the state as provided in subsections  
121 five and six, section ten, article six, chapter twenty-nine of  
122 this code shall be limited to the organizational unit within  
123 the agency or board and within the occupational group  
124 established by the classification and compensation plan  
125 for the classified service of the agency or board in which  
126 the employee was employed prior to the agency or board's  
127 transfer or incorporation into the department: *Provided,*  
128 That the employee shall possess the qualifications estab-



129 lished for the job class. The duration of recall rights  
130 provided in this subsection shall be limited to two years or  
131 the length of tenure, whichever is less. Except as provided  
132 in this subsection, nothing contained in this section shall  
133 be construed to abridge the rights of employees within the  
134 classified service of the state as provided in sections ten  
135 and ten-a, article six, chapter twenty-nine of this code or  
136 the right of classified employees of the board of regents to  
137 the procedures and protections set forth in article  
138 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  
3 a county of this state;

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

9 (3) "District" means an economic opportunity develop-  
10 ment district created pursuant to this article;

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

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

##### **§7-22-6. Notice; hearing.**

1 (a) *General.* - A county commission desiring to create an  
2 economic opportunity development district shall conduct  
3 a public hearing.

4 (b) *Notice of hearing.* – Notice of the public hearing shall  
5 be published as a Class I-0 legal advertisement in compli-  
6 ance with article three, chapter fifty-nine of this code at  
7 least twenty days prior to the scheduled hearing. In  
8 addition to the time and place of the hearing, the notice  
9 must also state:

10 (1) The purpose of the hearing;

11 (2) The name of the proposed district;

12 (3) The general purpose of the proposed district;

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

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

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

25 (d) *Application to West Virginia development office.* – If  
26 the county commission, following the public hearing,  
27 determines it advisable and in the public interest to  
28 establish an economic opportunity development district,  
29 it shall apply to the West Virginia development office for  
30 approval of the economic opportunity development district  
31 project pursuant to the procedures provided in section  
32 seven of this article.

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

1 (a) *General.* – The development office shall receive and  
2 act on applications filed with it by county commissions

3 pursuant to section six of this article. Each application  
4 must include:

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

7 (2) The total cost of the project;

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

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

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

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

28 (7) A description of the financial contribution of the  
29 county commission to the funding of development expen-  
30 ditures;

31 (8) Identification of any businesses that the county  
32 commission expects to relocate their business locations  
33 from the district to another place in the state in connection  
34 with the establishment of the district or from another  
35 place in this state to the district: *Provided*, That for

36 purposes of this article, any entities shall be designated  
37 "relocated entities";

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

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

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

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

57 (13) The tax commissioner's certification of: (i) The  
58 amount of consumers sales and service taxes collected  
59 from businesses located in the economic opportunity  
60 district during the twelve calendar months preceding the  
61 calendar quarter during which the application will be  
62 submitted to the development office; (ii) the estimated  
63 amount of economic opportunity district excise tax that  
64 will be collected during the first twelve months after the  
65 month in which the tax commissioner would first begin to  
66 collect that tax; and (iii) the estimated amount of economic  
67 opportunity district excise tax that will be collected  
68 during the first thirty-six months after the month in which  
69 the tax commissioner would first begin to collect that tax;  
70 and

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

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

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

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

84 (3) Whether the project is supported by significant  
85 private sector investment and substantial credible evi-  
86 dence that, but for the existence of sales tax increment  
87 financing, the project would not be feasible;

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

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

95 (6) Whether the project will, directly or indirectly,  
96 improve the opportunities in the area where the project  
97 will be located for the successful establishment or expan-  
98 sion of other industrial or commercial businesses;

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

104 (8) Whether the project will fulfill a pressing need for the  
105 area, or part of the area, in which the economic opportu-  
106 nity district is located;

107 (9) Whether the county commission has a strategy for  
108 economic development in the county and whether the  
109 project is consistent with that strategy;

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

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

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

117 (13) The ability of the county commission and the project  
118 developer or project team to carry out the project: *Pro-*  
119 *vided*, That no project may be approved by the develop-  
120 ment office unless the amount of all development expendi-  
121 tures proposed to be made in the first twenty-four months  
122 following the creation of the district results in capital  
123 investment of more than fifty million dollars in the district  
124 and the county submits clear and convincing information,  
125 to the satisfaction of the development office, that such  
126 investment will be made if the development office ap-  
127 proves the project and the Legislature authorizes the  
128 county commission to levy an excise tax on sales of goods  
129 and services made within the economic opportunity  
130 district as provided in this article.

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

134 (d) *Action on the application.* – The executive director of  
135 the development office shall act to approve or not approve  
136 any application within thirty days following the receipt of  
137 the application or the receipt of any additional informa-

138 tion requested by the development office, whichever is the  
139 later.

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

145 The certificate shall expressly state a base tax revenue  
146 amount, the gross annual district tax revenue amount and  
147 the estimated net annual district tax revenue amount  
148 which, for purposes of this article, is the difference  
149 between the gross annual district tax revenue amount and  
150 the base tax revenue amount, all of which the development  
151 office has determined with respect to the district's applica-  
152 tion based on any investigation it considers reasonable and  
153 necessary, including, but not limited to, any relevant  
154 information the development office requests from the tax  
155 commissioner and the tax commissioner provides to the  
156 development office: *Provided*, That in determining the net  
157 annual district tax revenue amount, the development  
158 office may not use a base tax revenue amount less than  
159 that amount certified by the tax commissioner but, in lieu  
160 of confirmation from the tax commissioner of the gross  
161 annual district tax revenue amount, the development  
162 office may use the estimate of the gross annual district tax  
163 revenue amount provided by the county commission  
164 pursuant to subsection (a) of this section.

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

172 The certificate shall expressly state a base tax revenue  
173 amount, the gross annual district tax revenue amount and

174 the estimated net annual district tax revenue amount  
175 which, for purposes of this article, is the difference  
176 between the gross annual district tax revenue amount and  
177 the base tax revenue amount, all of which the development  
178 office has determined with respect to the district's applica-  
179 tion based on any investigation it considers reasonable and  
180 necessary, including, but not limited to, any relevant  
181 information the development office requests from the tax  
182 commissioner and the tax commissioner provides to the  
183 development office: *Provided*, That in determining the net  
184 annual district tax revenue amount, the development  
185 office may not use a base tax revenue amount less than  
186 that amount certified by the tax commissioner but, in lieu  
187 of confirmation from the tax commissioner of the gross  
188 annual district tax revenue amount, the development  
189 office may use the estimate of the gross annual district tax  
190 revenue amount provided by the county commission  
191 pursuant to subsection (a) of this section.

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

**§7-22-8. Establishment of the economic opportunity develop-  
ment district fund.**

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

8 (b) *District subaccount.* – A separate and segregated  
9 subaccount within the account shall be established for



10 each economic opportunity development district that is  
11 approved by the executive director of the development  
12 office. In addition to the economic opportunity district  
13 excise tax levied and collected as provided in this article,  
14 funds paid into the account for the credit of any  
15 subaccount may also be derived from the following  
16 sources:

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

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

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

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

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

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

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

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

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

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

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

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

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

51 (E) To, unless otherwise provided in, and subject to the  
52 provisions of any contracts or leases to operate, repair,

53 manage and maintain buildings and structures and  
54 provide adequate insurance of all types and in connection  
55 with the primary use thereof and incidental thereto to  
56 provide services, such as retail stores and restaurants, and  
57 to effectuate incidental purposes, grant leases, permits,  
58 concessions or other authorizations to any person or  
59 persons upon the terms and conditions for consideration  
60 and for the term of duration as agreed upon by the district  
61 board and any person, agency, governmental department,  
62 firm or corporation;

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

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

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

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

78 (J) Pursuant to a determination by the district board that  
79 there exists a continuing need for redevelopment expendi-  
80 tures and that moneys or funds of the district are neces-  
81 sary therefor, to borrow money and execute and deliver  
82 the district's negotiable notes and other evidences of  
83 indebtedness therefor, on the terms as the district shall  
84 determine, and give security therefor as is requisite,  
85 including, without limitation, a pledge of the district's  
86 rights in its subaccount of the economic opportunity  
87 development district fund;

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

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

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

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

**§7-22-11. District board; duties.**

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

9 (b) *Composition of board.* – If a separate district board  
10 is to be appointed, it shall be made up of at least seven

11 members, two of which shall be owners, or representatives  
12 of owners, of real property situated in the economic  
13 opportunity development district and the other five shall  
14 be residents of the county within which the district is  
15 located.

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

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

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

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

27 (4) A proposed budget to accomplish its objectives.

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

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

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

1 (a) *General.* – The county commission of a county,  
2 authorized by the Legislature to levy a special district  
3 excise tax for the benefit of an economic opportunity

4 development district, may, by order entered of record,  
5 impose that tax on the privilege of selling tangible per-  
6 sonal property and rendering select services in the district  
7 in accordance with this section.

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

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

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

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

36 (1) The order of the county commission imposing a  
37 special district excise tax shall provide that the tax  
38 commissioner deposit the net amount of tax collected in

39 the special economic opportunity development district  
40 fund to the credit of the county commission's subaccount  
41 therein for the economic opportunity development district  
42 and that the money in the subaccount may only be used to  
43 pay for development expenditures as provided in this  
44 article except as provided in subsection (f) of this section.

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

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

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

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

1 (a) *General.* – The order creating an economic opportu-  
2 nity development district may not be amended to include  
3 additional contiguous property until after the amendment  
4 is approved by the executive director of the development  
5 office in the same manner as an application to approve the  
6 establishment of the district is acted upon under section  
7 seven of this article and the amendment is authorized by  
8 the Legislature.

9 (b) *Limitations.* – Additional property may not be  
10 included in the district unless it is situated within the  
11 boundaries of the county and is contiguous to the then  
12 current boundaries of the district.

13 (c) *Public hearing required.* –

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

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

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

28 (e) *Consideration by the executive director of the devel-*  
29 *opment office.* – Before the executive director of the  
30 development office approves inclusion of the additional  
31 property in the district, the development office shall  
32 determine the amount of taxes levied by article fifteen,  
33 chapter eleven of this code that were collected by busi-  
34 nesses located in the area the county commission proposes  
35 to add to the district in the same manner as the base  
36 amount of tax was determined when the district was first  
37 created. The state treasurer shall also deposit one twelfth  
38 of this additional tax base amount into the general reve-  
39 nue fund each month, as provided in section twelve of this  
40 article.

41 (f) *Legislative action required.* – After the executive  
42 director of the development office approves amending the  
43 boundaries of the district, the Legislature must amend



44 section nine of this article to allow levy of the special  
45 district excise tax on business located in geographic area  
46 to be included in the district. After the Legislature  
47 amends said section, the county commission may then  
48 amend its order: *Provided*, That the order may not be  
49 effective any earlier than the first day of the calendar  
50 month that begins sixty days after the effective date of the  
51 act of the Legislature authorizing the levy on the special  
52 district excise tax on businesses located in the geographic  
53 area to be added to the boundaries of the district for which  
54 the tax is levied or a later date as set forth in the order of  
55 the county commission.

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

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

1 (a) *General.* – Except upon the express written consent  
2 of the executive director of the development office and of  
3 all the holders or obligees of any indebtedness or other  
4 instruments the proceeds of which were applied to any  
5 development or redevelopment expenditures or any  
6 indebtedness the payment of which is secured by revenues  
7 payable into the fund provided under section eight of this  
8 article or by any public property, a district may only be  
9 abolished by the county commission when there is no  
10 outstanding indebtedness, the proceeds of which were  
11 applied to any development or redevelopment expendi-  
12 tures or the payment of which is secured by revenues  
13 payable into the fund provided under section eight of this  
14 article, or by any public property, and following a public  
15 hearing upon the proposed abolishment.

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

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

33 (d) *Reinstatement of district.* – Following abolishment of  
34 a district pursuant to this section, its reinstatement  
35 requires compliance with all requirements and procedures  
36 set forth in this article for the initial development, ap-  
37 proval, establishment and creation of an economic oppor-  
38 tunity development district.

## CHAPTER 8. MUNICIPAL CORPORATIONS.

### ARTICLE 38. MUNICIPAL ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.

#### §8-38-3. Definitions.

1 For purposes of this article, the term:

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

7 (2) “District” means an economic opportunity develop-  
8 ment district created pursuant to this article;

9 (3) "District board" means a district board created  
10 pursuant to section ten of this article;

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

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

**§8-38-6. Notice; hearing.**

1 (a) *General.* – A municipality desiring to create an  
2 economic opportunity development district shall conduct  
3 a public hearing.

4 (b) *Notice of hearing.* – Notice of the public hearing shall  
5 be published as a Class I-0 legal advertisement in compli-  
6 ance with article three, chapter fifty-nine of this code at  
7 least twenty days prior to the scheduled hearing. In  
8 addition to the time and place of the hearing, the notice  
9 must also state:

10 (1) The purpose of the hearing;

11 (2) The name of the proposed district;

12 (3) The general purpose of the proposed district;

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

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

20 (c) *Opportunity to be heard.* – At the time and place set  
21 forth in the notice, the municipality shall afford the  
22 opportunity to be heard to any owner of real property

23 situated in the proposed district and any residents of the  
24 municipality.

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

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

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

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

7 (2) The total cost of the project;

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

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

14 (5) A description of the proposed method of financing  
15 the development expenditures, together with a description  
16 of the reserves to be established for financing ongoing  
17 development or redevelopment expenditures necessary to  
18 permanently maintain the optimum economic viability of  
19 the district following its inception: *Provided*, That the  
20 amounts of the reserves shall not exceed the amounts that

21 would be required by ordinary commercial capital market  
22 considerations;

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

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

30 (8) Identification of any businesses that the municipality  
31 expects to relocate their business locations from the  
32 district to another place in the state in connection with the  
33 establishment of the district or from another place in this  
34 state to the district: *Provided*, That for purposes of this  
35 article, any entities shall be designated "relocated enti-  
36 ties";

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

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

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

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

56 (13) The tax commissioner's certification of: (i) The  
57 amount of consumers sales and service taxes collected  
58 from businesses located in the economic opportunity  
59 district during the twelve calendar months preceding the  
60 calendar quarter during which the application will be  
61 submitted to the development office; (ii) the estimated  
62 amount of economic opportunity district excise tax that  
63 will be collected during the first twelve months after the  
64 month in which the tax commissioner would first begin to  
65 collect that tax; and (iii) the estimated amount of economic  
66 opportunity district excise tax that will be collected  
67 during the first thirty-six months after the month in which  
68 the tax commissioner would first begin to collect that tax;  
69 and

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

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

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

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

83 (3) Whether the project is supported by significant  
84 private sector investment and substantial credible evi-  
85 dence that, but for the existence of sales tax increment  
86 financing, the project would not be feasible;

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

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

94 (6) Whether the project will, directly or indirectly,  
95 improve the opportunities in the area where the project  
96 will be located for the successful establishment or expan-  
97 sion of other industrial or commercial businesses;

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

103 (8) Whether the project will fulfill a pressing need for the  
104 area, or part of the area, in which the economic opportu-  
105 nity district is located;

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

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

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

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

116 (13) The ability of the municipality and the project  
117 developer or project team to carry out the project: *Pro-*  
118 *vided,* That no project may be approved by the develop-  
119 ment office unless the amount of all development expendi-  
120 tures proposed to be made in the first twenty-four months  
121 following the creation of the district results in capital  
122 investment of more than fifty million dollars in the district  
123 and the municipality submits clear and convincing infor-  
124 mation, to the satisfaction of the development office, that

125 such investment will be made if the development office  
126 approves the project and the Legislature authorizes the  
127 municipality to levy an excise tax on sales of goods and  
128 services made within the economic opportunity develop-  
129 ment district as provided in this article.

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

133 (d) *Action on the application.* – The executive director of  
134 the development office shall act to approve or not approve  
135 any application within thirty days following the receipt of  
136 the application or the receipt of any additional informa-  
137 tion requested by the development office, whichever is the  
138 later.

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

144 The certificate shall expressly state a base tax revenue  
145 amount, the gross annual district tax revenue amount and  
146 the estimated net annual district tax revenue amount  
147 which, for purposes of this article, is the difference  
148 between the gross annual district tax revenue amount and  
149 the base tax revenue amount, all of which the development  
150 office has determined with respect to the district's applica-  
151 tion based on any investigation it considers reasonable and  
152 necessary, including, but not limited to, any relevant  
153 information the development office requests from the tax  
154 commissioner and the tax commissioner provides to the  
155 development office: *Provided*, That in determining the net  
156 annual district tax revenue amount, the development  
157 office may not use a base tax revenue amount less than  
158 that amount certified by the tax commissioner but, in lieu  
159 of confirmation from the tax commissioner of the gross  
160 annual district tax revenue amount, the development



161 office may use the estimate of the gross annual district tax  
162 revenue amount provided by the municipality pursuant to  
163 subsection (a) of this section.

164 (f) *Certification of enlargement of geographic boundaries*  
165 *of previously certified district.* – If the executive director  
166 of the development office approves a municipality's  
167 economic opportunity district project application to  
168 expand the geographic boundaries of a previously certified  
169 district, he or she shall issue to the municipality a written  
170 certificate evidencing the approval.

171 The certificate shall expressly state a base tax revenue  
172 amount, the gross annual district tax revenue amount and  
173 the estimated net annual district tax revenue amount  
174 which, for purposes of this article, is the difference  
175 between the gross annual district tax revenue amount and  
176 the base tax revenue amount, all of which the development  
177 office has determined with respect to the district's applica-  
178 tion based on any investigation it considers reasonable and  
179 necessary, including, but not limited to, any relevant  
180 information the development office requests from the tax  
181 commissioner and the tax commissioner provides to the  
182 development office: *Provided*, That in determining the net  
183 annual district tax revenue amount, the development  
184 office may not use a base tax revenue amount less than  
185 that amount certified by the tax commissioner but, in lieu  
186 of confirmation from the tax commissioner of the gross  
187 annual district tax revenue amount, the development  
188 office may use the estimate of the gross annual district tax  
189 revenue amount provided by the municipality pursuant to  
190 subsection (a) of this section.

191 (g) *Promulgation of rules.* – The executive director of the  
192 development office may promulgate rules to implement the  
193 economic opportunity development district project  
194 application approval process and to describe the criteria  
195 and procedures it has established in connection therewith.  
196 These rules are not subject to the provisions of chapter

197 twenty-nine-a of this code but shall be filed with the  
198 secretary of state.

**§8-38-8. Establishment of the economic opportunity development district fund.**

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

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

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

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

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

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

1 (a) *General.* – If an economic opportunity development  
2 district project has been approved by the executive  
3 director of the development office and the levying of a  
4 special district excise tax for the district has been autho-

5 rized by the Legislature, all in accordance with this article,  
6 the municipality may create the district by ordinance  
7 entered of record as provided in article one of this chapter:  
8 *Provided*, That the municipality may not amend, alter or  
9 change in any manner the boundaries of the economic  
10 opportunity development district authorized by the  
11 Legislature. In addition to all other requirements, the  
12 ordinance shall contain the following:

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

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

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

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

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

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

35 (C) To enter into contracts with any person, agency,  
36 government entity, agency or instrumentality, firm,  
37 partnership, limited partnership, limited liability company  
38 or corporation, including both public and private corpora-

39 tions, and for-profit and not-for-profit organizations and  
40 generally to do any and all things necessary or convenient  
41 for the purpose of promoting, developing and advancing  
42 the purposes described in section two of this article;

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

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

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

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

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

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

78 (J) Pursuant to a determination by the district board that  
79 there exists a continuing need for redevelopment expendi-  
80 tures and that moneys or funds of the district are neces-  
81 sary therefor, to borrow money and execute and deliver  
82 the district's negotiable notes and other evidences of  
83 indebtedness therefor, on the terms as the district shall  
84 determine, and give security therefor as is requisite,  
85 including, without limitation, a pledge of the district's  
86 rights in its subaccount of the economic opportunity  
87 development district fund;

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

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

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

106 (c) *Mailing of certified copies of ordinance.* - Upon  
107 enactment of an ordinance establishing an economic  
108 opportunity development district excise tax, a certified  
109 copy of the ordinance shall be mailed to the state auditor,

110 as ex officio the chief inspector and supervisor of public  
111 offices, the state treasurer and the tax commissioner.

**§8-38-11. District board; duties.**

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

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

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

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

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

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

27 (4) A proposed budget to accomplish its objectives.

28 (d) *Conflict of interest exception.* – Nothing in this  
29 article prohibits any member of the district board from  
30 also serving on the board of directors of a nonprofit

31 corporation with which the municipality may contract to  
32 provide specified services within the district.

33 (e) *Compensation of board members.* – Each member of  
34 the district board may receive reasonable compensation  
35 for services on the board in the amount determined by the  
36 municipality: *Provided*, That when a district board is not  
37 created for the district but the work of the board is done  
38 by the municipality, the members shall receive no addi-  
39 tional compensation.

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

1 (a) *General.* – The council of a municipality, authorized  
2 by the Legislature to levy a special district excise tax for  
3 the benefit of an economic opportunity development  
4 district, may, by ordinance, impose that tax on the privi-  
5 lege of selling tangible personal property and rendering  
6 select services in the district in accordance with this  
7 section.

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

20 (c) *Tax rate.* – The rate of a special district excise tax  
21 levied pursuant to this section shall be stated in an ordi-  
22 nance enacted by the municipality and equal to the  
23 general rate of tax on each dollar of gross proceeds from  
24 sales of tangible personal property and services subject to  
25 the tax levied by section three, article fifteen, chapter

26 eleven of this code. The tax on fractional parts of a dollar  
27 shall be levied and collected in conformity with the  
28 provision of said section.

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

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

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

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

53 (f) *Effective date of special district excise tax.* – Any  
54 taxes imposed pursuant to the authority of this section  
55 shall be effective on the first day of the calendar month  
56 that begins at least sixty days after the date of enactment  
57 of the ordinance imposing the tax or at any later date  
58 expressly designated in the ordinance that begins on the  
59 first day of a calendar month.



60 (g) *Copies of ordinance.* – Upon enactment of an ordi-  
61 nance levying a special district excise tax, a certified copy  
62 of the ordinance shall be mailed to the state auditor, as ex  
63 officio the chief inspector and supervisor of public offices,  
64 the state treasurer and the tax commissioner.

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

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

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

12 (c) *Public hearing required.* –

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

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

23 (d) *Application to West Virginia development office.* –  
24 Following the hearing, the municipality may, by resolu-  
25 tion, apply to the development office to approve inclusion  
26 of the additional property in the district.

27 (e) *Consideration by the executive director of the devel-*  
28 *opment office.* – Before the executive director of the

29 development office approves inclusion of the additional  
30 property in the district, the development office shall  
31 determine the amount of taxes levied by article fifteen,  
32 chapter eleven of this code that were collected by busi-  
33 nesses located in the area the municipality proposes to add  
34 to the district in the same manner as the base amount of  
35 tax was determined when the district was first created.  
36 The state treasurer shall also deposit one twelfth of this  
37 additional tax base amount into the general revenue fund  
38 each month, as provided in section twelve of this article.

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

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

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

1 (a) *General.* – Except upon the express written consent  
2 of the executive director of the development office and of

3 all the holders or obligees of any indebtedness or other  
4 instruments the proceeds of which were applied to any  
5 development or redevelopment expenditures or any  
6 indebtedness, the payment of which is secured by revenues  
7 payable into the fund provided under section eight of this  
8 article or by any public property, a district may only be  
9 abolished by the municipality when there is no outstand-  
10 ing indebtedness the proceeds of which were applied to  
11 any development or redevelopment expenditures or the  
12 payment of which is secured by revenues payable into the  
13 fund provided under section eight of this article, or by any  
14 public property, and following a public hearing upon the  
15 proposed abolishment.

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

23 (c) *Transfer of district assets and funds.* – Upon the  
24 abolishment of any economic opportunity development  
25 district, any funds or other assets, contractual rights or  
26 obligations, claims against holders of indebtedness or  
27 other financial benefits, liabilities or obligations existing  
28 after full payment has been made on all existing contracts,  
29 bonds, notes or other obligations of the district are trans-  
30 ferred to and assumed by the municipality. Any funds or  
31 other assets transferred shall be used for the benefit of the  
32 area included in the district being abolished.

33 (d) *Reinstatement of district.* – Following abolishment of  
34 a district pursuant to this section, its reinstatement  
35 requires compliance with all requirements and procedures  
36 set forth in this article for the initial development, ap-  
37 proval, establishment and creation of an economic oppor-  
38 tunity 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.**

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

5 (b) The board consists of thirteen members, five of whom  
6 serve by virtue of their respective positions. These five are  
7 the governor or designee; president of West Virginia  
8 university or designee; the president of Marshall university  
9 or designee; the chancellor of the higher education policy  
10 commission or designee; and the executive director of the  
11 West Virginia housing development fund. One member is  
12 appointed by the governor from a list of two names  
13 submitted by the board of directors of the housing devel-  
14 opment fund. One member is appointed by the governor  
15 from a list of two names submitted by the commissioner of  
16 the division of tourism. The other six members are  
17 appointed from the general public by the governor. Of the  
18 general public members appointed by the governor, one is  
19 an attorney with experience in finance and investment  
20 matters; one is a certified public accountant; one is a  
21 representative of labor; one is experienced or involved in  
22 innovative business development; and two are present or  
23 past executive officers of companies listed on a major  
24 stock exchange or large privately held companies. All  
25 appointments made pursuant to the provisions of this  
26 article are by and with the advice and consent of the  
27 Senate.

28 (c) A vacancy on the board is filled by appointment by  
29 the governor in the same manner as the original appoint-  
30 ment. A member appointed to fill a vacancy serves for the  
31 remainder of the unexpired term.

32 (d) The governor may remove any appointed member in  
33 case of incompetency, neglect of duty, moral turpitude or  
34 malfeasance in office and fill the vacancy as provided in  
35 other cases of vacancy.

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

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

46 (g) Members of the board may participate in a meeting  
47 of the board by means of conference telephone or similar  
48 communication equipment by means of which all persons  
49 participating in the meeting can hear each other. Partici-  
50 pation in a board meeting pursuant to this subsection  
51 constitutes presence in person at the meeting.

52 (h) The members of the board are not compensated for  
53 their services as members of the board, but receive reason-  
54 able and necessary expenses actually incurred in discharg-  
55 ing their duties under this article in a manner consistent  
56 with guidelines of the travel management office of the  
57 department of administration.

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

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

64 (k) Additionally, one member of the West Virginia House  
65 of Delegates, appointed by the speaker of the House of

66 Delegates, and one member of the West Virginia Senate,  
67 appointed by the president of the Senate, serve as advisory  
68 members of the jobs investment trust board and, as  
69 advisory members, are ex officio, nonvoting members.

**§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  
2 jobs investment trust. With the advice and consent of the  
3 Senate, the governor appoints an executive director of the  
4 jobs investment trust who is or has been a senior executive  
5 of a major financial institution, brokerage firm, invest-  
6 ment firm or similar institution, with extensive experience  
7 in capital market development. The director serves at the  
8 governor's will and pleasure and is responsible for manag-  
9 ing and administering the daily functions of the jobs  
10 investment trust and for performing other functions  
11 necessary to the effective operation of the trust. The  
12 compensation of the director is annually fixed by the  
13 board.

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

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

20 (d) The acts of the board are solely the acts of its corpo-  
21 ration and are not those of an agent of the state. A debt or  
22 obligation of the board is not a debt or obligation of the  
23 state.

24 (e) Upon the affirmative vote of at least a majority of  
25 those members in attendance or participating by such  
26 other means as described in subsection (g), section four of  
27 this article in a meeting of the board, but in any event not

28 fewer than six of the members serving on the board, the  
29 board may approve any action to be taken and authorize  
30 the executive director for and on behalf of the board to  
31 execute and deliver all instruments, agreements or other  
32 documents that are required or are reasonably necessary  
33 to effectuate the decisions or acts of the board.

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

43 (g) The board and the executive director shall involve  
44 students and faculty members of state institutions of  
45 higher education in the board's activities in order to  
46 enhance the opportunities at the institutions for learning  
47 and for participation in the board's investment activities  
48 and in the economic development of the state, whether in  
49 research, financial analysis, management participation or  
50 in such other ways as the board and the executive director  
51 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.**

1 (a) Private activity bonds (as defined in Section 141(a) of  
2 the United States Internal Revenue Code of 1986, other  
3 than those described in Section 146(g) of the Internal  
4 Revenue Code) issued pursuant to this article, including

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



43 the annual ceiling for private activity bonds for these  
44 projects.

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

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

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

64 (3) Thirty-five percent of the state allocation shall be set  
65 aside by the development office to be made available for  
66 lessees, purchasers or owners of proposed projects, hereaf-  
67 ter in this section referred to as "nonexempt projects",  
68 which do not qualify as exempt facilities as defined by  
69 United States Internal Revenue Code. All reservations of  
70 private activity bonds for nonexempt projects shall be  
71 approved and awarded by the committee based upon an  
72 evaluation of general economic benefit and any rule that  
73 the development office promulgates pursuant to section  
74 two, article two, chapter five-b of this code: *Provided,*  
75 That all requests or reservations of funds from projects  
76 described in this subsection are submitted to the develop-  
77 ment office on or before the first day of November of each  
78 calendar year: *Provided, however,* That on the fifteenth

79 day of November of each calendar year, the uncommitted  
80 portion of this part of the state allocation shall revert to  
81 and become part of the state allocation portion described  
82 in subsection (g) of this section; and

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

101 (c) The remaining fifty-five percent of the state alloca-  
102 tion shall be made available for lessees, purchasers or  
103 owners of proposed commercial or industrial projects  
104 which qualify as exempt facilities as defined by Section  
105 142(a) of the United States Internal Revenue Code. All  
106 reservations of private activity bonds for exempt facilities  
107 shall be approved and awarded by the committee based  
108 upon an evaluation of general economic benefit and any  
109 rule that the development office promulgates pursuant to  
110 section two, article two, chapter five-b of this code:  
111 *Provided*, That no reservation may be in an amount in  
112 excess of fifty percent of this portion of the state alloca-  
113 tion: *Provided, however*, That all requests for reservations  
114 of funds from projects described in this subsection shall be  
115 submitted to the development office on or before the first

116 day of November of each calendar year: *Provided further,*  
117 That on the fifteenth day of November of each calendar  
118 year the uncommitted portion of this part of the state  
119 allocation shall revert to and become part of the state  
120 allocation portion described in subsection (g) of this  
121 section.

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

152 (e) Currently with or following the submission of its  
153 notice of inducement, the governmental body at any time

154 considered expedient by it may submit its notice of  
155 reservation of funds which shall include the following  
156 information:

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

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

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

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

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

167 (6) The type of issue; and

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

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

183 (g) If the bond issue for which a reservation has been  
184 made has not been finally closed within one hundred  
185 twenty days of the date of the reservation to be made by  
186 the committee, or the thirty-first of December following

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

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

## 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 com- missioner.

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

13 (b) The commissioner also has the following powers:

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

16 (2) To investigate, from time to time, the operation and  
17 effect of this article and of the rules promulgated under  
18 this article and to report his or her findings and recom-  
19 mendations to the Legislature and the governor.

20 (c) The provisions of articles two-a and four of this  
21 chapter and the policy, rules, practices and procedures  
22 under those articles shall be followed by the commissioner  
23 in carrying out the purposes of this article.

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

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

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

45 (g) The commissioner may establish a tire disposal  
46 program within the division to provide for a cost effective  
47 and efficient method to accept passenger car and light  
48 truck waste tires at such division of highways county  
49 headquarters as have sufficient space for temporary  
50 storage of waste tires and personnel to accept and handle  
51 waste tires. The commissioner may pay a fee for each tire  
52 an individual West Virginia resident or West Virginia  
53 business brings to the division. The commissioner may  
54 establish a limit on the number of tires an individual or  
55 business may be paid for during any calendar month. The

56 commissioner may in his or her discretion authorize  
57 commercial businesses to participate in the collection  
58 program: *Provided*, That no person or business who has a  
59 waste tire pile subject to remediation under this article  
60 may participate in this program.

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

## CHAPTER 18. EDUCATION.

### ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

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

1 (a) The school building authority consists of eleven  
2 members, including the governor or designee; the state  
3 superintendent of schools, ex officio; three members of the  
4 state board of education, elected by the state board; and



5 six citizens of the state, appointed by the governor, by and  
6 with the advice and consent of the Senate, who are  
7 knowledgeable in matters relevant to the issues addressed  
8 by the authority, one of whom is representative of the  
9 interests of the construction trades.

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

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

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

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

34 (f) The school building authority shall meet at least  
35 quarterly and the citizen members shall be reimbursed for  
36 reasonable and necessary expenses actually incurred in the  
37 performance of their official duties in a manner consistent  
38 with guidelines of the travel management office of the  
39 department of administration from funds appropriated or

40 otherwise made available for such purpose upon submis-  
41 sion of an itemized statement.

42 (g) The acts performed by the members of the state board  
43 of education in their capacity as members of the school  
44 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.**

1 (a) The Legislature finds that a recent statewide study of  
2 the workforce training needs of employers throughout the  
3 state provided a clear message from the business commu-  
4 nity:

5 (1) The needs of employers are rapidly changing and  
6 training providers must be more responsive or the state  
7 economy will suffer;

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

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

22 (b) The Legislature further finds that a study of commu-  
23 nity and technical education in West Virginia performed  
24 by the national center for higher education management

25 systems called attention to problems in providing needed  
26 workforce education and found that there is a need to:

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

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

33 (3) Provide funding for explicit incentives for partner-  
34 ships between employers and public post-secondary  
35 institutions to develop comprehensive community and  
36 technical college and workforce development services; and

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

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

43 (d) It is the intent of the Legislature through the grant of  
44 funds under this article to provide limited seed money to  
45 address some of the specific areas where improvement is  
46 needed, including:

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

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

52 (3) Assisting with the modernization and procurement of  
53 equipment needed for workforce training programs:  
54 *Provided, That any equipment purchased or upgraded*  
55 *with grant funds awarded under the provisions of this*  
56 *article may not be sold, disposed of or used for purposes*

57 other than those specified in the grant without prior  
58 approval of the development office;

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

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

70 (e) It is further the intent of the Legislature that consid-  
71 eration and partnering opportunities be given to small  
72 businesses on an equal basis with larger businesses for the  
73 purposes of this article and that the seed money will assist  
74 providers in becoming self-sustaining through partner-  
75 ships with business and industry which will include  
76 cost-sharing initiatives and fees charged for the use of  
77 services.

78 (f) The Legislature intends that grants of funds made  
79 under the provisions of this article will be competitive  
80 among applicants who meet all of the criteria established  
81 in this article and such other criteria as may be specified  
82 by the development office. Subject to the availability of  
83 funds, more than one competition may be held during the  
84 same fiscal year and the dollar range of awards granted in  
85 successive competitions shall be prorated based on the  
86 number of months remaining in the fiscal year. Subject to  
87 annual review and justification, it is the intent of the  
88 Legislature to renew grant awards made under this article  
89 each year for not more than five years following the initial  
90 grant award.

**§18B-3D-2. Workforce development initiative program created;  
program administration.**

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

4 (b) There is under the development office a workforce  
5 development initiative program to administer and oversee  
6 grants to community and technical colleges to achieve the  
7 purposes of this article in accordance with legislative  
8 intent. The primary responsibility of the development  
9 office as it relates to the workforce development initiative  
10 program is to administer the state fund for community and  
11 technical college and workforce development including  
12 setting criteria for grant applications, receiving applica-  
13 tions for grants, making determinations on distribution of  
14 funds, and evaluating the performance of workforce  
15 development initiatives.

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

21 (1) To aid in decisionmaking, the executive director of  
22 the development office appoints an advisory committee  
23 consisting of the chancellor of the West Virginia council  
24 for community and technical college education; the  
25 secretary of education and the arts or designee; the  
26 assistant state superintendent for technical and adult  
27 education; the chair of the West Virginia council for  
28 community and technical college education; and the chair  
29 of the West Virginia workforce investment council. The  
30 advisory committee shall review all applications for  
31 workforce development initiative grants and make a  
32 report including recommendations for distributing grant  
33 funds to the executive director of the development office.  
34 The advisory committee also shall make recommendations

35 on methods to share among the community and technical  
36 colleges any curricula developed as a result of a workforce  
37 development initiative grant.

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

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

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

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

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

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

**§18B-3D-3. Mission of the workforce development initiative  
program.**

1 (a) The statewide mission of the workforce development  
2 initiative program is to develop a strategy to strengthen

3 the quality of the state's workforce by linking the existing  
4 post-secondary education capacity to the needs of busi-  
5 ness, industry and other employers. Available funding will  
6 be used to provide explicit incentives for partnerships  
7 between employers and community and technical colleges  
8 to develop comprehensive workforce development services.  
9 Funds will be granted on the basis of proposals developed  
10 according to criteria established by the development  
11 office.

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

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

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

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

22 (4) Develop partnerships with other public and private  
23 providers, including small business development centers  
24 and vocational, technical and adult education centers, and  
25 with business and labor, to fulfill the workforce develop-  
26 ment needs of the service area;

27 (5) Establish cooperative arrangements with the public  
28 school system for the seamless progression of students  
29 through programs of study that begin at the secondary  
30 level and conclude at the community and technical college  
31 level, particularly with respect to career and technical  
32 education certificates, associate of applied science and  
33 selected associate of science degree programs for students  
34 seeking immediate employment, individual entrepreneur-  
35 ship skills, occupational development, skill enhancement  
36 and career mobility.

37 (6) Assist in the on-going assessment of the workforce  
38 development needs of the service area; and

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

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

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

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

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

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

21 (b) To be eligible to receive a workforce development  
22 initiative grant, a community and technical college must  
23 provide at least the following information in its applica-  
24 tion:

25 (1) Identification of the specific business or business  
26 sector training needs that will be met if a workforce  
27 development initiative grant is received;



28 (2) A commitment from the private sector to provide a  
29 match of one dollar, cash and in-kind, for each dollar of  
30 state grant money received except in cases where the  
31 community and technical college can demonstrate in the  
32 grant application that it would be a hardship for the  
33 business being served to provide such a match. In those  
34 cases only, the match required may be reduced to one  
35 private dollar, cash and in-kind, for every three dollars of  
36 state grant money provided. In the case of awards for the  
37 modernization of procurement of equipment, the develop-  
38 ment office may establish a separate match requirement of  
39 up to one dollar, cash and in-kind, for each dollar of state  
40 grant money received;

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

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

48 (5) An acknowledgment that acceptance of a grant under  
49 the provisions of this article commits the community and  
50 technical college and its consortia committee to such  
51 terms, conditions and deliverables as is specified by the  
52 development office in the request for applications, includ-  
53 ing, but not limited to, the measures by which the perfor-  
54 mance of the workforce development initiative will be  
55 evaluated.

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

**§18B-3D-5. Legislative rules.**

1 The executive director of the development office shall  
2 propose a legislative rule pursuant to article three-a,  
3 chapter twenty-nine-a of this code to implement the  
4 provisions of this article and shall file the rule with the  
5 legislative oversight commission on education account-  
6 ability no later than the first day of September, two  
7 thousand five.

8 Any rule in effect as of the effective date of the amend-  
9 ment and reenactment of this section in the year two  
10 thousand five will remain in effect until amended, modi-  
11 fied, 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.**

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

7 (b) The authority is controlled, managed and operated by  
8 a seven-member board known as the water development  
9 board. The governor or designee, the secretary of the  
10 department of environmental protection or designee and  
11 the commissioner of the bureau for public health or  
12 designee are members ex officio of the board. Four  
13 members are appointed by the governor, by and with the  
14 advice and consent of the Senate, for six-year terms, which  
15 are staggered in accordance with the initial appointments

16 under prior enactment of this section. In the event of a  
17 vacancy, appointments are filled in the same manner as  
18 the original appointment for the remainder of the unex-  
19 pired term. A member continues to serve until the ap-  
20 pointment and qualification of the successor. More than  
21 two appointed board members may not at any one time  
22 belong to the same political party. Appointed board  
23 members may be reappointed to serve additional terms.

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

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

45 (e) The governor or designee, the secretary of the depart-  
46 ment of environmental protection and the commissioner of  
47 the bureau for public health do not receive compensation  
48 for serving as board members. Each appointed member  
49 receives an annual salary of twelve thousand dollars,  
50 payable in monthly installments. Each of the seven board  
51 members is reimbursed for all reasonable and necessary  
52 expenses actually incurred in the performance of duties as

53 a member of the board in a manner consistent with  
 54 guidelines of the travel management office of the depart-  
 55 ment of administration. All expenses incurred by the  
 56 board are payable solely from funds of the authority or  
 57 from funds appropriated for that purpose by the Legisla-  
 58 ture. Liability or obligation is not incurred by the author-  
 59 ity beyond the extent to which moneys are available from  
 60 funds of the authority or from such appropriations.

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

## CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

### ARTICLE 8. **BLANNERHASSETT 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  
 2 *Blennerhassett Island historical state park commission.*  
 3 All assets, real and personal property, debts, liabilities,  
 4 duties, powers and authority are the property of the  
 5 division of natural resources. The *Blennerhassett Island*  
 6 *historical state park commission is maintained as an*  
 7 *advisory commission as hereinafter provided. The com-*  
 8 *mission is composed of ten members who must be citizens*  
 9 *and residents of this state, appointed by the governor for*  
 10 *terms of four years, by and with the advice and consent of*  
 11 *the Senate: Provided, That the terms of all members*  
 12 *previously appointed to the Blennerhassett Island histori-*

13 cal state park commission prior to any amendment and  
14 reenactment of this section shall continue for the periods  
15 originally specified and no member serving as of the  
16 effective date of the amendment and reenactment need be  
17 reappointed.

18 (b) Each member must be qualified to carry out the  
19 functions of the commission under this article by reason of  
20 his or her special interest, training, education or experi-  
21 ence.

22 No person may be eligible to appointment as a member  
23 who is an officer or member of any political party execu-  
24 tive committee; or the holder of any other public office or  
25 public employment under the United States government or  
26 the government of this state or a political subdivision of  
27 this state. Not more than six members may belong to the  
28 same political party.

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

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

39 (e) For the purpose of carrying out its powers, duties and  
40 responsibilities under this article, six members of the  
41 commission constitute a quorum for the transaction of  
42 business. Each member is entitled to one vote. The  
43 commission shall meet at a time and place designated by  
44 the chairman at least four times each fiscal year. Addi-  
45 tional meetings may be held when called by the chairman  
46 or when requested by five members of the commission or  
47 by the governor. All meetings shall comply with the

48 provisions of article nine-a, chapter six of this code. Each  
49 member shall be reimbursed for all reasonable and neces-  
50 sary expenses actually incurred in the performance of his  
51 or her duties under this article.

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

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

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

83 (i) Notwithstanding the provisions of section fifty-eight,  
84 article two, chapter twenty of this code, the natural

85 resources commission shall promulgate rules pursuant to  
86 the provisions of section seventeen, article one, chapter  
87 twenty and section three, article one, chapter twenty-nine-  
88 a of this code to permit and regulate the hunting of white-  
89 tailed deer at Blennerhassett Island historical state park.

**ARTICLE 22. STATE LOTTERY ACT.**

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

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

17 (b) For the fiscal year beginning the first day of July, two  
18 thousand two, the commission shall deposit: (1) Sixty-five  
19 million dollars into the subaccount of the state excess  
20 lottery revenue fund hereby created in the state treasury  
21 to be known as the "general purpose account" to be  
22 expended pursuant to appropriation of the Legislature; (2)  
23 ten million dollars into the education improvement fund  
24 for appropriation by the Legislature to the "promise  
25 scholarship fund" created in section seven, article seven,  
26 chapter eighteen-c of this code; (3) nineteen million dollars  
27 into the economic development project fund created in  
28 subsection (d) of this section for the issuance of revenue  
29 bonds and to be spent in accordance with the provisions of

30 said subsection; (4) twenty million dollars into the school  
31 building debt service fund created in section six, article  
32 nine-d, chapter eighteen of this code for the issuance of  
33 revenue bonds; (5) forty million dollars into the West  
34 Virginia infrastructure fund created in section nine, article  
35 fifteen-a, chapter thirty-one of this code to be spent in  
36 accordance with the provisions of said article; (6) ten  
37 million dollars into the higher education improvement  
38 fund for higher education; and (7) five million dollars into  
39 the state park improvement fund for park improvements.  
40 For the fiscal year beginning the first day of July, two  
41 thousand three, the commission shall deposit: (1)  
42 Sixty-five million dollars into the general purpose account  
43 to be expended pursuant to appropriation of the Legisla-  
44 ture; (2) seventeen million dollars into the education  
45 improvement fund for appropriation by the Legislature to  
46 the "promise scholarship fund" created in section seven,  
47 article seven, chapter eighteen-c of this code; (3) nineteen  
48 million dollars into the economic development project  
49 fund created in subsection (d) of this section for the  
50 issuance of revenue bonds and to be spent in accordance  
51 with the provisions of said subsection; (4) twenty million  
52 dollars into the school building debt service fund created  
53 in section six, article nine-d, chapter eighteen of this code  
54 for the issuance of revenue bonds; (5) forty million dollars  
55 into the West Virginia infrastructure fund created in  
56 section nine, article fifteen-a, chapter thirty-one of this  
57 code to be spent in accordance with the provisions of said  
58 article; (6) ten million dollars into the higher education  
59 improvement fund for higher education; and (7) five  
60 million dollars into the state park improvement fund for  
61 park improvements.

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



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-

106 nomic welfare of the citizens of this state, it is necessary to  
107 provide public financial support for constructing, equip-  
108 ping, improving and maintaining economic development  
109 projects, capital improvement projects and infrastructure  
110 which promote economic development in this state.

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

128 (2) There is continued in the state treasury a special  
129 revenue fund named the "economic development project  
130 fund" into which shall be deposited on and after the first  
131 day of July, two thousand two, the amounts to be depos-  
132 ited in said fund as specified in subsections (b) and (c) of  
133 this section. The economic development project fund shall  
134 consist of all such moneys, all appropriations to the fund,  
135 all interest earned from investment of the fund and any  
136 gifts, grants or contributions received by the fund. All  
137 amounts deposited in the fund shall be pledged to the  
138 repayment of the principal, interest and redemption  
139 premium, if any, on any revenue bonds or refunding  
140 revenue bonds authorized by this section, including any  
141 and all commercially customary and reasonable costs and  
142 expenses which may be incurred in connection with the

143 issuance, refunding, redemption or defeasance thereof.  
144 The West Virginia economic development authority may  
145 further provide in the resolution and in the trust agree-  
146 ment for priorities on the revenues paid into the economic  
147 development project fund as may be necessary for the  
148 protection of the prior rights of the holders of bonds issued  
149 at different times under the provisions of this section. The  
150 bonds issued pursuant to this subsection shall be separate  
151 from all other bonds which may be or have been issued  
152 from time to time under the provisions of this article.

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

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

174 (5) The West Virginia economic development authority  
175 shall expend the bond proceeds from the revenue bond  
176 issues authorized and directed by this section for such  
177 projects as may be certified under the provision of this  
178 subsection: *Provided*, That the bond proceeds shall be  
179 expended in accordance with the requirements and

180 provisions of article five-a, chapter twenty-one of this  
181 code and either article twenty-two or twenty-two-a,  
182 chapter five of this code, as the case may be: *Provided,*  
183 *however,* That if such bond proceeds are expended pursu-  
184 ant to article twenty-two-a, chapter five of this code and  
185 if the design-build board created under said article  
186 determines that the execution of a design-build contract in  
187 connection with a project is appropriate pursuant to the  
188 criteria set forth in said article and that a competitive  
189 bidding process was used in selecting the design builder  
190 and awarding such contract, such determination shall be  
191 conclusive for all purposes and shall be deemed to satisfy  
192 all the requirements of said article.

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

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

214 (8) When determining whether or not to certify a project,  
215 the committee shall take into consideration the following:

216 (A) The ability of the project to leverage other sources of  
217 funding;

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

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

227 (D) Whether the project will promote economic develop-  
228 ment in the region and the type of economic development  
229 that will be promoted;

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

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

234 (9) No grant may be awarded to an individual or other  
235 private person or entity. Grants may be awarded only to  
236 an agency, instrumentality or political subdivision of this  
237 state or to an agency or instrumentality of a political  
238 subdivision of this state. The project of an individual or  
239 private person or entity may be certified to receive a  
240 low-interest loan paid from bond proceeds. The terms and  
241 conditions of the loan, including, but not limited to, the  
242 rate of interest to be paid and the period of the repayment,  
243 shall be determined by the economic development author-  
244 ity after considering all applicable facts and circum-  
245 stances.

246 (10) Prior to making each certification, the committee  
247 shall conduct at least one public hearing, which may be  
248 held outside of Kanawha County. Notice of the time,  
249 place, date and purpose of the hearing shall be published

250 in at least one newspaper in each of the three congressio-  
251 nal districts at least fourteen days prior to the date of the  
252 public hearing.

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

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

260 (B) Health clinics and other health facilities;

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

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

265 (E) Biotechnical incubators, development centers and  
266 facilities;

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

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

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

275 (I) Recreational facilities, such as amphitheaters, walk-  
276 ing and hiking trails, bike trails, picnic facilities,  
277 restrooms, boat docking and fishing piers, basketball and  
278 tennis courts, and baseball, football and soccer fields;

279 (J) State-owned buildings that are registered on the  
280 national register of historic places;

281 (K) Retail facilities, including related service, parking  
282 and transportation facilities, appropriate lighting, land-  
283 scaping and security systems to revitalize decaying  
284 downtown areas; and

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

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

295 (13) If any proceeds from sale of bonds remain after  
296 paying costs and making grants and loans as provided in  
297 this subsection, the surplus may be deposited in an ac-  
298 count created in the state treasury to be known as the  
299 "economic development project bridge loan fund" to be  
300 administered by the economic development authority  
301 created in article fifteen, chapter thirty-one of this code.  
302 Expenditures from the fund are not authorized from  
303 collections but are to be made only in accordance with  
304 appropriation by the Legislature and in accordance with  
305 the provisions of article three, chapter twelve of this code  
306 and upon fulfillment of the provisions of article two,  
307 chapter five-a of this code. Loan repayment amounts,  
308 including the portion attributable to interest shall be paid  
309 into the fund created in this subdivision.

310 (e) If the commission receives revenues in an amount  
311 that is not sufficient to fully comply with the requirements  
312 of subsections (b), (c) and (h) of this section, the commis-  
313 sion shall first make the distribution to the economic  
314 development project fund; second, make the distribution  
315 or distributions to the other funds from which debt service  
316 is to be paid; third, make the distribution to the education

317 improvement fund for appropriation by the Legislature to  
318 the promise scholarship fund; and fourth, make the  
319 distribution to the general purpose account: *Provided*,  
320 That, subject to the provisions of this subsection, to the  
321 extent such revenues are not pledged in support of revenue  
322 bonds which are or may be issued from time to time under  
323 this section, the revenues shall be distributed on a pro rata  
324 basis.

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

338 (g) When bonds are issued for projects under subsection  
339 (d) of this section or for the school building authority,  
340 infrastructure, higher education or park improvement  
341 purposes described in this section that are secured by  
342 profits from lotteries deposited in the state excess lottery  
343 revenue fund, the lottery director shall allocate first to the  
344 economic development project fund an amount equal to  
345 one tenth of the projected annual principal, interest and  
346 coverage requirements on any and all revenue bonds  
347 issued, or to be issued, on or after the first day of July, two  
348 thousand two, as certified to the lottery director; and  
349 second, to the fund or funds from which debt service is  
350 paid on bonds issued under this section for the school  
351 building authority, infrastructure, higher education and  
352 park improvements an amount equal to one tenth of the  
353 projected annual principal, interest and coverage require-



354 ments on any and all revenue bonds issued, or to be issued,  
355 on or after the first day of April, two thousand two, as  
356 certified to the lottery director. In the event there are  
357 insufficient funds available in any month to transfer the  
358 amounts required pursuant to this subsection, the defi-  
359 ciency shall be added to the amount transferred in the next  
360 succeeding month in which revenues are available to  
361 transfer the deficiency.

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

369 (i) (1) The Legislature considers the following as priori-  
370 ties in the expenditure of any surplus revenue funds:

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

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

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

378 (2) The provisions of this subsection may not be con-  
379 strued by any court to require any appropriation or any  
380 specific appropriation or level of funding for the purposes  
381 set forth in this subsection.

382 (j) The Legislature further directs the governor to focus  
383 resources on the creation of a prescription drug program  
384 for senior citizens by pursuing a medicaid waiver to offer  
385 prescription drug services to senior citizens; by investigat-  
386 ing the establishment of purchasing agreements with other  
387 entities to reduce costs; by providing discount prices or

388 rebate programs for seniors; by coordinating programs  
389 offered by pharmaceutical manufacturers that provide  
390 reduced cost or free drugs; by coordinating a collaborative  
391 effort among all state agencies to ensure the most efficient  
392 and cost effective program possible for the senior citizens  
393 of this state; and by working closely with the state's  
394 congressional delegation to ensure that a national program  
395 is implemented. The Legislature further directs that the  
396 governor report his progress back to the joint committee  
397 on government and finance on an annual basis beginning  
398 in November of the year two thousand one until a compre-  
399 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.**

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

8 (b) The council shall consist of eleven members, includ-  
9 ing the governor or designee, the executive director of the  
10 housing development fund or his or her designee, the  
11 director of the division of environmental protection or his  
12 or her designee, the director of the economic development  
13 authority or his or her designee, the director of the water  
14 development authority or his or her designee, the director  
15 of the division of health or his or her designee, the chair-  
16 man of the public service commission or his or her  
17 designee, and four members representing the general

18 public: *Provided*, That there shall be at least one member  
19 representing the general public from each congressional  
20 district: *Provided, however*, That after the expiration of  
21 the term of office of the members first appointed as  
22 representatives of the general public, no more than one  
23 member representing the general public may be a resident  
24 of the same county. The governor shall appoint the public  
25 members of the council who shall serve three-year stag-  
26 gered terms. The commissioner of the division of high-  
27 ways, the executive director of the state rail authority, two  
28 members of the West Virginia Senate, two members of the  
29 West Virginia House of Delegates, the chancellor of the  
30 higher education policy commission and the chancellor of  
31 the West Virginia council for community and technical  
32 college education serve as advisory members of the  
33 council. The governor shall appoint the legislative mem-  
34 bers of the council: *Provided further*, That no more than  
35 three of the legislative members may be of the same  
36 political party. The governor shall appoint the representa-  
37 tives of the governing boards from a list of three names  
38 submitted by each governing board. The advisory mem-  
39 bers shall be ex officio, nonvoting members of the council.

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

51 (d) A member of the council who serves by virtue of his  
52 or her office does not receive compensation or reimburse-  
53 ment of expenses for serving as a member. The public  
54 members are reimbursed for actual expenses incurred in

55 the service of the council in a manner consistent with  
56 guidelines of the travel management office of the depart-  
57 ment of administration.

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

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

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

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

1 Eighty percent of the funds deposited in the West  
2 Virginia infrastructure fund shall be dedicated for the  
3 purpose of providing funding for the cost of projects as  
4 defined in subsection (n), section two of this article.  
5 Twenty percent of the funds deposited in the West Virginia

6 infrastructure fund shall be dedicated for the purpose of  
7 providing funding for costs of infrastructure projects as  
8 defined in subsection (l), section two of this article.  
9 Project sponsors of infrastructure projects shall follow the  
10 application process as established by this article: *Pro-*  
11 *vided*, That notwithstanding any provision of this article  
12 to the contrary, all applications for any infrastructure  
13 project shall be submitted to the executive director of the  
14 West Virginia development office for review, recommenda-  
15 tion and approval regarding infrastructure project fund-  
16 ing.

**ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.**

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

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

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

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

19 (d) Upon organization of the housing development fund,  
20 the governor shall appoint, by and with the advice and

21 consent of the Senate, the seven private directors to take  
22 office and to exercise all powers thereof immediately, with  
23 two each appointed for terms of two years and three years,  
24 and with three each appointed for terms of four years,  
25 respectively, as the governor shall designate; at the  
26 expiration of said terms and for all succeeding terms, the  
27 governor shall appoint a successor to the office of private  
28 director for a term of four years in each case.

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

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

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

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

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

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

**§31-18-5. Management and control of housing development  
fund vested in board; officers; liability.**

1 (a) The management and control of the housing develop-  
2 ment fund shall be vested solely in the board of directors  
3 in accordance with the provisions of this article.

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

7 (c) The governor appoints an executive director of the  
8 housing development fund, with the advice and consent of  
9 the Senate, who serves at the governor's will and pleasure.  
10 The director is responsible for managing and administer-  
11 ing the daily functions of the housing development fund  
12 and for performing other functions necessary to the  
13 effective operation of the housing development fund. The  
14 executive director's compensation is fixed annually by the  
15 board of directors.

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

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

25 (f) The directors and officers of the West Virginia  
26 housing development fund shall not be liable personally,  
27 either jointly or severally, for any debt or obligation  
28 created by the West Virginia housing development fund.

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

*Randy White*

Chairman Senate Committee

*H. Reed Brown*  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*Barrie Edwards*

Clerk of the Senate

*Suzanne Smith*  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
President of the Senate

*[Signature]*  
Speaker House of Delegates

The within *is approved* this the *14th* Day of *February*, 2005.

*[Signature]*  
Governor



PRESENTED TO THE  
GOVERNOR

Date 2/7/05

Time 3:45 pm