

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2936

2015 Carryover

(BY DELEGATES MILEY, MILLER, SKINNER, SPONAUGLE,
STORCH, BATES, HAMILTON AND KESSINGER)

[Introduced January 13, 2016; referred to the
Committee on Small Business, Entrepreneurship and
Economic Development then Finance.]

1 A BILL to amend and reenact §31-15-2 and §31-15-4 of the Code of West Virginia, 1931, as
 2 amended; and to amend said code by adding thereto a new section, designated
 3 §31-15-12b, all relating to the West Virginia Economic Development Authority; adding
 4 legislative findings; defining terms; and providing requirements for loan criteria for loans
 5 to tourism projects.

Be it enacted by the Legislature of West Virginia:

1 That §31-15-2 and §31-15-4 of the Code of West Virginia, 1931, as amended, be amended
 2 and reenacted; and that said code be amended by adding thereto a new section, designated
 3 §31-15-12b, all to read as follows:

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-2. Legislative findings.

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

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

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

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

9 (d) That widespread industry unemployment produces indigency which falls with crushing
 10 force upon all unemployed workers and ultimately upon the state in the form of welfare and
 11 unemployment compensation;

12 (e) That the absence of employment and business opportunities for youth is a serious
 13 threat to the strength and permanence of their faith in our American political and economic

14 institutions and the philosophy of freedom on which those institutions are based;

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

19 (g) That security against unemployment and the spread of indigency and economic
20 stagnation can best be provided by the promotion, attraction, stimulation, rehabilitation and
21 revitalization of commerce, tourism, industry and manufacturing;

22 (h) That the present and future health, safety, morals, right to gainful employment and
23 general welfare of the people of the state require as a public purpose the promotion and
24 development of new and expanded coal and other energy production, industrial, commercial,
25 tourist and manufacturing enterprises within this state;

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

30 (j) That the device under which private community industrial development organizations in
31 the state acquire or build industrial buildings or sites and equip the same with funds raised through
32 popular subscription, loans or otherwise for lease and sale to new or expanding industries has
33 proven effective in creating new employment and business opportunities locally, is in accord with
34 the American tradition of community initiative and enterprise and requires and deserves
35 encouragement and support from the state as a means toward alleviation of unemployment and
36 economic distress;

37 (k) That community industrial development corporations in the state have invested

38 substantial funds in successful coal production, industrial projects and are experiencing difficulty
39 in undertaking additional projects by reason of the partial inadequacy of their own funds potentially
40 available from local subscription sources and by reason of limitations of local financial institutions
41 in providing additional and sufficiently sizable first deed of trust or mortgage loans or letters of
42 credit and other forms of credit enhancement;

43 (l) That minority business ownership, especially among African-Americans in the area of
44 Charleston, West Virginia, is proportionately less than minority business ownership nationwide
45 and statewide, the unemployment rate for African-Americans recently has been about twice the
46 unemployment rate for caucasians and significantly higher in some counties with a greater
47 concentration of African-Americans and an urgent need exists to encourage African-Americans
48 and minority business ownership and higher employment;

49 (m) That an urgent need exists to stimulate a larger flow of private investment funds from
50 banks, investment houses, insurance companies and other financial institutions into projects;

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

54 (o) That the availability of financial assistance through the creation of an insurance fund
55 will promote the economic development of the state; and that it is in the public interest, in order
56 to address the needs aforesaid, that a state instrumentality be created as a public body corporate
57 with full powers to accept grants, gifts and appropriations, to generate revenues, to borrow money
58 and issue its bonds, notes, commercial paper, other debt instruments and security interests to the
59 end that funds obtained thereby may be used to furnish money and credit to approved industrial
60 development agencies or enterprises or to promote the establishment of new projects or to retain
61 existing projects;

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

64 (q) That the success of tourism projects should not be measured so much in the number
65 of jobs or capital created, but in the value created by patrons of such projects and their ancillary
66 economic contributions to the state; and

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

§31-15-4. Definitions.

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

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

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

4 (c) "Board of investments" means the board of investments established by article six,
5 chapter twelve of this code;

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

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

12 (f) "Costs of establishing an industrial development project" means the cost of acquiring
13 existing facilities, cost of machinery, cost of equipment and fixtures, the cost of construction
14 ,including with out limitation, cost of improvements, repairs, and renovations, costs of all lands,
15 water areas, property rights and easements, financing charges, interest prior to and during
16 construction, cost of architectural, engineering, legal and financial or other consulting services,

17 plans, site assessments, site remediation costs, specifications and surveys, estimates of costs
18 and any other expenses necessary or incident to determining the feasibility or practicability of any
19 project, together with such other costs and expenses as may be necessary or incidental to the
20 financing and the construction or acquisition of the project and the placing of the same in
21 operation;

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

23 (h) "Enterprise" means an entity which is or proposes to be engaged in this state in any
24 business activity for profit. The entity may be owned, operated, controlled or under the
25 management of a person, partnership, corporation, trust, community-based development
26 organization or council, local commerce group, employee stock ownership plan, pension or
27 profit-sharing plan, a group of participating employees who desire to own an entity which does
28 not presently exist, or any similar entity or organization;

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

31 (j) "Financing plan" means a plan designed to meet the financing needs of an enterprise
32 as reflected in the business plan;

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

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

37 (m) "Industrial development agency" means any incorporated organization, foundation,
38 association or agency to whose members or shareholders no profit inures, which has as its
39 primary function the promotion, encouragement and development of industrial, commercial,
40 manufacturing and tourist enterprises or projects in this state;

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

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

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

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

48 (r) "Project" means a commercial or industrial undertaking and all of the assets reasonably
49 and necessarily required therefor, all as determined by the authority, which determination shall
50 be conclusive, and shall include, without limiting the generality of the foregoing, industrial projects
51 and commercial projects as presently defined in section three, article two-c, chapter thirteen;

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

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

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

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

1 Notwithstanding any other provision of this article to the contrary, in developing criteria for
2 loans to a tourism project under this article, the authority shall consider many factors including,
3 but not limited to, whether any specific number of jobs are or will be created by the project,
4 whether any existing jobs or jobs to be created by the project are to meet any specific

5 compensation levels, or whether any existing jobs or jobs to be created by the project provide any
6 specific employee benefits: *Provided*, That no tourism project may be denied a loan for the sole
7 reason that a specific number of jobs will not be created by the project or that existing jobs or jobs
8 to be created by the project will not meet specific compensation levels or offer any specific
9 employee benefits. Any criteria for a loan application for a tourism project under this article shall
10 include a requirement that the applicant provide a jobs impact statement with information as
11 required by the authority.

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NOTE: The purpose of this bill is to provide that the West Virginia Economic Development Authority, in developing criteria for loans to a tourism project, not require that any specific number of jobs are or will be created by the project, nor that any existing jobs or jobs to be created are to meet any specific compensation levels, nor that any existing jobs or jobs to be created provide any specific employee benefits.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§31-15-12b is new; therefore, it is completely underscored.