

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Originating

House Bill 4959

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[Originating in the Committee on Government

Organization; Reported on February 19, 2020]

1 A BILL to amend and reenact §31-15-5 and §31-15-6 of the Code of West Virginia, 1931, as
2 amended, relating to clarifying the ability of the Economic Development Authority Board
3 of Directors to enter into any contracts necessary to carry out its duties; clarifying the ability
4 of the Board of Directors to delegate to the Executive Director the authority to enter into
5 said contracts; and to clarify the exemption from the requirements to use the Purchasing
6 Division for contracts made in furtherance of the agency's statutory purpose.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

**§31-15-5. West Virginia economic development authority; composition; appointment;
terms; delegation of authority by chairman; voting; compensation and expenses.**

1 (a) The West Virginia economic development authority is continued as a body corporate
2 and politic, constituting a public corporation and government instrumentality.

3 (b) The authority shall be composed of a board of members consisting of a chairman, who
4 shall be the Governor, or his or her designated representative, the Tax Commissioner and seven
5 members who shall be appointed by the Governor, by and with the advice and consent of the
6 Senate, and who shall be broadly representative of the geographic regions of the state. One
7 member of the House of Delegates to be appointed by the Speaker and one member of the
8 Senate to be appointed by the President shall serve on the board in an advisory capacity as ex
9 officio, nonvoting members. The board shall direct the exercise of all the powers given to the
10 authority in this article. The Governor shall also be the chief executive officer of the authority, and
11 shall designate the treasurer and the secretary of the board.

12 (c) As appointments expire, each subsequent appointment shall be for a full four-year
13 term. Any member whose term has expired shall serve until his or her successor has been duly
14 appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired
15 term. Any member is eligible for reappointment.

(d) The Governor may, by written notice filed with the secretary of the authority, from time to time, delegate to any subordinate the power to represent him or her at any meeting of the authority. In that case, the subordinate has the same power and privileges as the Governor and may vote on any question.

(e) Members of the authority are not entitled to compensation for services performed as members, but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties.

(f) A majority of the members constitutes a quorum for the purpose of conducting business. Except in the case of a loan or insurance application or unless the bylaws require a larger number, action may be taken by majority vote of the members present. Approval or rejection of a loan or insurance application shall be made by majority vote of the full membership of the board.

(g) The board shall manage the property and business of the authority and may prescribe, amend, adopt and repeal bylaws and rules and regulations governing the manner in which the business of the authority is conducted.

(h) The board shall, without regard to the provisions of civil service laws applicable to officers and employees of the State of West Virginia, appoint any necessary managers, assistant managers, officers, employees, attorneys and agents for the transaction of its business, fix their compensation, define their duties and provide a system of organization to fix responsibility and promote efficiency. Any appointee of the board may be removed at the discretion of the board. The authority may reimburse any state spending unit for any special expense actually incurred in providing any service or the use of any facility to the authority.

(i) The board may delegate to the Executive Director the authority to make and execute all contracts and other agreements or instruments necessary for the exercise of its powers or to carry out its corporate purpose.

~~(j)~~ (i) In cases of any vacancy in the office of a voting member, the vacancy shall be filled by the Governor. Any member appointed to fill a vacancy in the board occurring prior to the

42 expiration of the term for which his or her predecessor was appointed shall be appointed for the
43 remainder of the term.

44 ~~(j)~~ (k) The Governor may remove a member in the case of incompetence, neglect of duty,
45 gross immorality or malfeasance in office, and may declare the member's office vacant and
46 appoint a person for the vacancy as provided in other cases of vacancy.

47 ~~(k)~~ (l) The secretary of the board shall keep a record of the proceedings of the board and
48 perform any other duties determined appropriate by the board. The treasurer shall be custodian
49 of all funds of the authority and shall be bonded in the amount designated by other members of
50 the board.

§31-15-6. General powers of authority.

1 The authority, as a public corporation and governmental instrumentality exercising public
2 powers of the state, shall have and may exercise all powers necessary or appropriate to carry out
3 the purposes of this article, including the power:

4 (a) To cooperate with industrial development agencies in efforts to promote the expansion
5 of industrial, commercial, manufacturing and tourist activity in this state.

6 (b) To determine, upon the proper application of an industrial development agency or an
7 enterprise, whether the declared public purposes of this article have been or will be accomplished
8 by the establishment by such agency or enterprise of a project in this state.

9 (c) To conduct examinations and investigations and to hear testimony and take proof,
10 under oath or affirmation, at public or private hearings, on any matter relevant to this article and
11 necessary for information on the establishment of any project.

12 (d) To issue subpoenas requiring the attendance of witnesses and the production of books
13 and papers relevant to any hearing before such authority or one or more members appointed by
14 it to conduct any hearing.

15 (e) To apply to the circuit court having venue of such offense to have punished for
16 contempt any witness who refuses to obey a subpoena, to be sworn or affirmed or to testify or
17 who commits any contempt after being summoned to appear.

18 (f) To authorize any member of the authority to conduct hearings, administer oaths, take
19 affidavits and issue subpoenas.

20 (g) To financially assist projects by insuring obligations in the manner provided in this
21 article through the use of the insurance fund.

22 (h) To finance any projects by making loans to industrial development agencies or
23 enterprises upon such terms as the authority shall deem appropriate: *Provided*, That nothing
24 contained in this subsection (h) or under any other provision in this article shall be construed as
25 permitting the authority to make loans for working capital: *Provided, however*, That nothing
26 contained in this article shall be construed as prohibiting the authority from insuring loans for
27 working capital made to industrial development agencies or to enterprises by financial institutions:
28 *Provided further*, That nothing contained in this subsection or any other provision of this article
29 shall be construed as permitting the authority to refinance existing debt except when such
30 refinancing will result in the expansion of the enterprise whose debt is to be refinanced or in the
31 creation of new jobs.

32 (i) To issue revenue bonds or notes to fulfill the purposes of this article, and to secure the
33 payment of such bonds or notes, all as hereinafter provided.

34 (j) To issue and deliver revenue bonds or notes in exchange for a project.

35 (k) To borrow money for its purposes and issue bonds or notes for the money and provide
36 for the rights of the holders of the bonds or notes or other negotiable instruments, to secure the
37 bonds or notes by a deed of trust on, or an assignment or pledge of, any or all of its property and
38 property of the project, including any part of the security for loans, and the authority may issue
39 and sell its bonds and notes, by public or private sale, in such principal amounts as it shall deem

necessary to provide funds for any purposes under this article, including the making of loans for the purposes set forth in this article.

(l) To maintain such sinking funds and reserves as the board shall determine appropriate for the purposes of meeting future monetary obligations and needs of the authority.

(m) To sue and be sued, implead and be impleaded, and complain and defend in any court.

(n) To adopt, use and alter at will a corporate seal.

(o) To make, amend, repeal and adopt both bylaws and rules and regulations for the management and regulation of its affairs.

(p) To appoint officers, agents and employees and to contract for and engage the services of consultants.

(q) To make contracts of every kind and nature to execute all instruments necessary or convenient for carrying on its business: Provided, That the provisions of §5A-3-3 of this code do not apply to contracts made pursuant to this subdivision.

(r) To accept grants and loans from and enter into contracts and other transactions with any federal agency.

(s) To take title by conveyance or foreclosure to any project where acquisition is necessary to protect any loan previously made by the authority and to sell, by public or private sale, transfer, lease or convey such project to any enterprise.

(t) To participate in any reorganization proceeding pending pursuant to the United States Code (being the act of Congress establishing a uniform system of bankruptcy throughout the United States, as amended) or in any receivership proceeding in a state or federal court for the reorganization or liquidation of an enterprise. The authority may file its claim against any such enterprise in any of the foregoing proceedings, vote upon any questions pending therein which requires the approval of the creditors participating in any reorganization proceeding or receivership, exchange any evidence of such indebtedness for any property, security or evidence

of indebtedness offered as a part of the reorganization of such enterprise or of any other entity formed to acquire the assets thereof and may compromise or reduce the amount of any indebtedness owing to it as a part of any such reorganization.

(u) To acquire, construct, maintain, improve, repair, replace and operate projects within this state, as well as streets, roads, alleys, sidewalks, crosswalks and other means of ingress and egress to and from projects located within this state.

(v) To acquire, construct, maintain, improve, repair and replace and operate pipelines, electric transmission lines, waterlines, sewer lines, electric power substations, waterworks systems, sewage treatment and disposal facilities and any combinations thereof for the use and benefit of any enterprise located within this state.

(w) To acquire watersheds, water and riparian rights, rights-of-way, easements, licenses and any and all other property, property rights and appurtenances for the use and benefit of any enterprise located within this state.

(x) To acquire, by purchase, lease, donation or eminent domain, any real or personal property, or any right or interest therein, as may be necessary or convenient to carry out the purposes of the authority. Title to all property, property rights and interests acquired by the authority shall be taken in the name of the authority.

(y) To issue renewal notes, or security interests, to issue bonds to pay notes or security interests and, whenever it deems refunding expedient, to refund any bonds or notes by the issuance of new bonds or notes, whether the bonds or notes to be refunded have or have not matured and whether or not the authority originally issued the bonds or notes to be refunded.

(z) To apply the proceeds from the sale of renewal notes, security interests or refunding bonds or notes to the purchase, redemption or payment of the notes, security interests or bonds or notes to be refunded.

(aa) To accept gifts or grants of property, funds, security interests, money, materials, labor, supplies or services from the United States of America or from any governmental unit or any

92 person, firm or corporation, and to carry out the terms or provisions of, or make agreements with
93 respect to, or pledge, any gifts or grants, and to do any and all things necessary, useful, desirable
94 or convenient in connection with the procuring, acceptance or disposition of gifts or grants.

95 (bb) To the extent permitted under its contracts with the holders of bonds, security
96 interests or notes of the authority, to consent to any modification of the rate of interest, time of
97 payment of any installment of principal or interest, security or any other term of any bond, security
98 interests, note or contract or agreement of any kind to which the authority is a party.

99 (cc) To sell loans, security interests or other obligations in the loan portfolio of the authority.
100 Such security interests shall be evidenced by instruments issued by the authority. Proceeds from
101 the sale of loans, security interests, or other obligations may be used in the same manner and for
102 the same purposes as bond and note revenues.

103 (dd) To procure insurance against any losses in connection with its property, operations
104 or assets in such amounts and from such insurers as the authority deems desirable.

105 (ee) To sell, license, lease, mortgage, assign, pledge or donate its property, both real and
106 personal, or any right or interest therein to another or authorize the possession, occupancy or use
107 of such property or any right or interest therein by another, in such manner and upon such terms
108 as it deems appropriate.

109 (ff) To participate with the state and federal agencies in efforts to promote the expansion
110 of commercial and industrial development in this state.

111 (gg) To finance, organize, conduct, sponsor, participate and assist in the conduct of
112 special institutes, conferences, demonstrations and studies relating to the stimulation and
113 formation of business, industry and trade endeavors.

114 (hh) To conduct, finance and participate in technological, business, financial and other
115 studies related to business and economic development.

(ii) To conduct, sponsor, finance, participate and assist in the preparation of business plans, financing plans and other proposals of new or established businesses suitable for support by the authority.

(jj) To prepare, publish and distribute, with or without charge as the authority may determine, such technical studies, reports, bulletins and other materials as it deems appropriate, subject only to the maintenance and respect for confidentiality of client proprietary information.

(kk) To exercise such other and additional powers as may be necessary or appropriate for the exercise of the powers herein conferred.

(ll) To exercise all of the powers which a corporation may lawfully exercise under the laws of this state.

(mm) To contract for the provision of legal services by private counsel, and notwithstanding the provisions of article three, chapter five, such counsel may, but is not limited to, represent the authority in court, negotiate contracts and other agreements on behalf of the authority, render advice to the authority on any matter relating thereto, prepare contracts and other agreements, and provide such other legal services as may be requested by the authority.

(nn) To develop, maintain, operate and apply for the establishment of foreign trade zones pursuant to and in accordance with all applicable provisions of federal law.

(oo) To exercise the powers and responsibilities previously vested in the state building commission by section eleven-a, article six, chapter five including, but not limited to, the authority to refund bonds issued in accordance with that section.

NOTE: The purpose of this bill is to clarify that the West Virginia Economic Development Authority may execute all contracts and other instruments necessary to carry out its purposes independent of the Purchasing Division.

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