

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 534

BY SENATORS TARR, PLYMALE, NELSON, AND STOLLINGS

[Passed April 9, 2021; in effect 90 days from passage (July 8, 2021)]

1 AN ACT to amend and reenact §12-6C-11 of the Code of West Virginia, 1931, as amended; and
2 to amend and reenact §31-15-5 and §31-15-6 of said code, all relating generally to the
3 Economic Development Authority; increasing the revolving loan capacity from the Board
4 of Treasury Investments to the Economic Development Authority to an amount not to
5 exceed \$200 million; establishing the interest rate by which the revolving loan will be
6 secured; providing that the State Treasurer shall be a member of the Economic
7 Development Authority Board; authorizing the Economic Development Authority to make
8 working capital loans from a revolving loan fund capitalized with federal grant funds
9 including those federal grant funds received from the United States Economic
10 Development Administration; and clarifying that the authority is not authorized to enter into
11 contracts or agreements with financial institutions for banking goods or services without
12 the approval of the State Treasurer.

Be it enacted by the Legislature of West Virginia:

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 6C. WEST VIRGINIA BOARD OF TREASURY INVESTMENTS.

§12-6C-11. Legislative findings; loans for industrial development; availability of funds and interest rates.

1 (a) The Legislature finds and declares that the citizens of the state benefit from the creation
2 of jobs and businesses within the state; that business and industrial development loan programs
3 provide for economic growth and stimulation within the state; that loans from pools established in
4 the Consolidated Fund will assist in providing the needed capital to assist business and industrial
5 development; and that time constraints relating to business and industrial development projects
6 prohibit duplicative review by both the board and West Virginia Economic Development Authority
7 Board.

8 (b) Subject to a liquidity determination, the West Virginia Board of Treasury Investments
9 shall make a revolving loan available to the West Virginia Economic Development Authority in an
10 amount of up to \$200 million. The revolving loan shall be used for business or industrial
11 development projects authorized by §31-15-7 of this code and to consolidate existing loans
12 authorized to be made to the West Virginia Economic Development Authority pursuant to this
13 section and pursuant to §31-15-20 of this code which authorizes a \$150 million revolving loan
14 and §31-18B-1 *et seq.* of this code which authorizes a \$50 million investment pool: *Provided, That*
15 the West Virginia Economic Development Authority may not loan more than \$15 million for any
16 one business or industrial development project. The revolving loan authorized by this subsection
17 shall be secured by one note at a variable interest rate equal to 50% of the West Virginia
18 Economic Development Authority's weighted average interest rate for outstanding loans in the
19 Business and Industrial Development Loan Program authorized by §31-15-7 of this code. The
20 rate may not be lower than 1.50% and must be reset on July 1 of each year. Monthly payments
21 made by the West Virginia Economic Development Authority to the board shall be calculated on
22 a 120-month amortization. The revolving loan is secured by a security interest that pledges and
23 assigns the cash proceeds of collateral from all loans under this revolving loan pool. The West
24 Virginia Economic Development Authority may also pledge as collateral certain revenue streams
25 from other revolving loan pools which source of funds does not originate from federal sources or
26 from the board.

27 (c) The outstanding principal balance of the revolving loan from the board to the West
28 Virginia Economic Development Authority may at no time exceed 103 percent of the aggregate
29 outstanding principal balance of the business and industrial loans from the West Virginia
30 Economic Development Authority to economic development projects funded from this revolving
31 loan pool. The independent audit of the West Virginia Economic Development Authority financial
32 records shall annually certify that 103 percent requirement.

33 (d) The interest rates and maturity dates on the loans made by the West Virginia Economic
34 Development Authority for business and industrial development projects authorized by §31-15-7
35 of this code shall be at competitive rates and maturities as determined by the West Virginia
36 Economic Development Authority Board.

37 (e) Any and all outstanding loans made by the West Virginia Board of Treasury
38 Investments, or any predecessor entity, to the West Virginia Economic Development Authority
39 are refundable by proceeds of the revolving loan contained in this section and the board shall
40 make no loans to the West Virginia Economic Development Authority pursuant to §31-15-20 of
41 this code or §31-18B-1 *et seq.* of this code.

42 (f) The directors of the West Virginia Board of Treasury Investments shall bear no fiduciary
43 responsibility with regard to any of the loans contemplated in this section.

44 (g) *Inspection of records.* – Within 30 days of receiving a written request from the board,
45 the authority shall provide the board with the opportunity to inspect and copy any records in the
46 custody of the authority related to any loan issued by the board to the authority or any loan from
47 the authority to a third party funded by a loan issued by the board. Records to be made available
48 pursuant to this subsection include, but are not limited to, accounting records, loan applications,
49 loan agreements, board minutes, audit reports, and transaction records. Records of the authority
50 held, from time to time, by the board pursuant to this subsection that are exempt from disclosure
51 pursuant to the provisions of §31-15-22 of this code or §29B-1-1 *et seq.* of this code shall remain
52 so while held by the board.

CHAPTER 31. CORPORATIONS.

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

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

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

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

24 (f) A majority of the members constitutes a quorum for the purpose of conducting business.
25 Except in the case of a loan or insurance application or unless the bylaws require a larger number,

26 action may be taken by majority vote of the members present. Approval or rejection of a loan or
27 insurance application shall be made by majority vote of the full membership of the board.

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

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

38 (i) The board may delegate to the executive director the authority to make and execute all
39 contracts and other agreements or instruments necessary to carry out the duties and powers of
40 the authority, as provided in this article: *Provided*, That nothing in this article authorizes the
41 authority to enter into contracts or agreements with financial institutions, as that term is defined in
42 §31A-1-2 of this code, for banking goods or services without approval of the State Treasurer, in
43 accordance with §12-1-1 *et seq.* of this code.

44 (j) In cases of any vacancy in the office of a voting member, the vacancy shall be filled by
45 the Governor. Any member appointed to fill a vacancy in the board occurring prior to the expiration
46 of the term for which his or her predecessor was appointed shall be appointed for the remainder
47 of the term.

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

51 (l) The secretary of the board shall keep a record of the proceedings of the board and
52 perform any other duties determined appropriate by the board. The treasurer shall be custodian
53 of all funds of the authority and shall be bonded in the amount designated by other members of
54 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 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: *And provided further*, That nothing contained in this subsection or any other
32 provision of this article shall be construed as prohibiting the authority from making working capital
33 loans from a revolving loan fund capitalized with federal grant funds including, but not limited to,
34 federal grant funds received from the United States Economic Development Administration.

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

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

38 (k) To borrow money for its purposes and issue bonds or notes for the money and provide
39 for the rights of the holders of the bonds or notes or other negotiable instruments, to secure the
40 bonds or notes by a deed of trust on, or an assignment or pledge of, any or all of its property and
41 property of the project, including any part of the security for loans, and the authority may issue
42 and sell its bonds and notes, by public or private sale, in such principal amounts as it shall deem
43 necessary to provide funds for any purposes under this article, including the making of loans for
44 the purposes set forth in this article.

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

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

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

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

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

54 (q) To make contracts and to execute all instruments necessary to carry out the powers
55 and duties of the authority, as provided in this article: *Provided*, That the provisions of §5A-3-3 of
56 this code do not apply to contracts made pursuant to this subdivision: *Provided, however*, That
57 nothing in this article authorizes the authority to enter into contracts or agreements with financial
58 institutions, as that term is defined in §31A-1-2 of this code, for banking goods and services
59 without approval of the State Treasurer, in accordance with §12-1-1 *et seq.* of this code.

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

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

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

73 formed to acquire the assets thereof and may compromise or reduce the amount of any
74 indebtedness owing to it as a part of any such reorganization.

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

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

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

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

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

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

96 (aa) To accept gifts or grants of property, funds, security interests, money, materials, labor,
97 supplies, or services from the United States of America or from any governmental unit or any
98 person, firm, or corporation, and to carry out the terms or provisions of, or make agreements with

99 respect to, or pledge, any gifts or grants, and to do any and all things necessary, useful, desirable,
100 or convenient in connection with the procuring, acceptance, or disposition of gifts or grants.

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

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

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

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

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

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

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

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

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

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

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

132 (mm) To contract for the provision of legal services by private counsel and,
133 notwithstanding the provisions of §5-3-1 *et seq.* of this code, such counsel may, but is not limited
134 to, represent the authority in court, negotiate contracts and other agreements on behalf of the
135 authority, render advice to the authority on any matter relating thereto, prepare contracts and
136 other agreements, and provide such other legal services as may be requested by the authority.

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

139 (oo) To exercise the powers and responsibilities previously vested in the State Building
140 Commission by §5-6-11a of this code, including, but not limited to, the authority to refund bonds
141 issued in accordance with said section.

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

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2021.

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Governor