

WEST VIRGINIA LEGISLATURE
2022 SECOND EXTRAORDINARY SESSION

Introduced

Senate Bill 2001

BY SENATORS BLAIR (MR. PRESIDENT) AND BALDWIN

(By Request of the Executive)

[Introduced April 25, 2022]

1 A BILL to repeal §31-15-20 of the Code of West Virginia, 1931, as amended; to amend and
2 reenact §12-6C-11 of said code; to amend said code by adding thereto a new section,
3 designated §12-6C-11b; and to amend said code by adding thereto a new section,
4 designated §31-15-23a, all relating generally to funding for infrastructure and economic
5 development projects in the state; discontinuing the revolving loan from the Board of
6 Treasury Investments to the Economic Development Authority upon the authority's receipt
7 of an appropriation by the Legislature; requiring the Board of Treasury Investments to
8 make a revolving loan available to the Department of Transportation; establishing a
9 special revenue fund to receive loan moneys; permitting the Secretary of Transportation
10 to make certain expenditures of loan moneys; requiring the secretary to reimburse the
11 fund upon receipt of federal reimbursement moneys; providing when moneys in the fund
12 will revert to the Consolidated Fund; establishing reporting requirements related to the
13 fund; allowing the Board of Treasury Investments to inspect records related to the fund;
14 providing a sunset date of June 30, 2027, for the revolving loan available to the
15 Department of Transportation; defining terms; establishing a special revenue fund to
16 receive moneys appropriated to the Economic Development Authority; allowing the
17 authority to invest the moneys in the fund; providing that a certain amount of moneys in
18 the fund be used for high impact economic development projects; establishing accounting
19 and auditing standards related to the fund; and establishing project status reporting
20 requirements related to the fund, and providing that documents and materials related to
21 high impact economic development projects are exempt from certain provisions of the
22 code, except that certain required records and reports and final agreements or resolutions
23 of the authority are not exempt from certain provisions of the code.

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

24 The West Virginia Economic Development Authority may also pledge as collateral certain revenue
25 streams from other revolving loan pools which source of funds does not originate from federal
26 sources or from the board.

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

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

44 ~~(g)~~ (f) *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.

53 (g) Notwithstanding any other provision of this code to the contrary, the West Virginia
54 Economic Development Authority shall pay to the West Virginia Board of Treasury Investments
55 the entire outstanding balance of the revolving loan authorized by this section within 30 days of
56 the deposit of sufficient funds for such repayment in the Economic Development Project Fund
57 created in §31-15-23a of this code. Upon repayment of the outstanding loan balance, the
58 revolving loan authorized by this section shall terminate and no additional loan moneys shall be
59 made available to the West Virginia Economic Development Authority pursuant to this section.

§12-6C-11b. Infrastructure investment reimbursement fund.

1 (a) The West Virginia Board of Treasury Investments shall make available to the
2 Department of Transportation, subject to a liquidity determination, a revolving loan of up to \$200
3 million from the Consolidated Fund for the purposes authorized by this section. The loan moneys
4 requested and authorized pursuant to subsection (b) of this section shall be deposited in a special
5 revenue fund, to be known as the Infrastructure Investment Reimbursement Fund.

6 (b) The Board of Treasury Investments shall make the loan moneys authorized by this
7 section available upon receipt of the following:

8 (1) A written request by the Secretary of the Department of Transportation that the board
9 deposit a specific amount of loan moneys, subject to the limitations provided in this section, into
10 the Infrastructure Investment Reimbursement Fund;

11 (2) A written statement by the Secretary of the Department of Transportation certifying
12 that the department will use the loan moneys for expenditures meeting the requirements of
13 subsection (c) of this section; and

14 (3) Copies of any available documents demonstrating that the planned expenditures of
15 loan moneys meet the requirements of subsection (c) of this section, including but not limited to

16 any agreement or contract entered into by the Department of Transportation and the federal
17 government.

18 (c) The Secretary of the Department of Transportation may authorize expenditures from
19 the Infrastructure Investment Reimbursement Fund that qualify for cost reimbursement according
20 to an agreement with the federal government pursuant to the Infrastructure Investment and Jobs
21 Act, Public Law 117-58, 135 Stat. 443 (2021).

22 (d) Upon receiving moneys from the federal government to reimburse for expenditures as
23 authorized by subsection (c) of this section from the Infrastructure Investment Reimbursement
24 Fund, the Secretary of the Department of Transportation shall immediately reimburse the
25 Infrastructure Investment Reimbursement Fund from said reimbursed moneys from the federal
26 government.

27 (e) Any balance remaining in the fund at the end of each fiscal year shall be transferred to
28 the Consolidated Fund. If, at any time during a fiscal year, the secretary determines that the
29 balance in the fund exceeds the amount required for expenditures authorized in subsection (c) of
30 this section, the secretary shall provide notice of said determination to the Board of Treasury
31 Investments and the excess balance of the fund shall be transferred to the Consolidated Fund.

32 (f) The secretary shall prepare and submit a quarterly report to the Joint Committee on
33 Government and Finance, the Board of Treasury Investments, and the Governor which shall
34 include, at a minimum:

35 (1) The aggregate outstanding amount of the loan authorized by this section; and

36 (2) For each project for which loan moneys were expended, the status of the project, the
37 estimated completion date of the project, the amount of loan moneys expended for the project,
38 the amount of federal reimbursement moneys received for the project, and the remaining amount
39 of federal reimbursement moneys projected to be received for the project.

40 (g) Upon request of the Board of Treasury Investments, the secretary shall provide the
41 board with the opportunity to inspect and copy any records in the custody of the Department

42 related to any transaction involving the Infrastructure Investment Reimbursement Fund. Records
 43 to be made available pursuant to this subsection include, but are not limited to, accounting
 44 records, contracts or agreements, audit reports, and transaction records.

45 (h) The provisions of this section shall cease to have effect after June 30, 2027, unless
 46 reauthorized by the West Virginia Legislature, and the Secretary of the Department of
 47 Transportation must reimburse the Infrastructure Investment Reimbursement Fund 100% of the
 48 amount of any expenditures from the Infrastructure Investment Reimbursement Fund by such
 49 date.

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-20. Authority of the Board of Investments.

1 [Repealed].

§31-15-23a. Economic Development Project Fund.

1 (a) For the purposes of this section, the term “high impact development project” means a
 2 project meeting the following criteria, according to a resolution adopted by the authority:

3 (1) The Governor has requested, in writing, that the project be approved for financing by
 4 the authority in an amount of \$50 million or greater;

5 (2) The industrial development agency or enterprise undertaking the project will privately
 6 invest an amount of \$50 million or greater in the project; and

7 (3) The project meets or exceeds the loan per job ratio criteria for high-impact development
 8 projects that may be established, in consultation with the Secretary of the Department of
 9 Economic Development, by the board of directors.

10 (b) There is hereby created a special revenue fund in the State Treasury known as the
 11 Economic Development Project Fund. The fund shall consist of all moneys appropriated to the
 12 authority during the regular session of the Legislature, 2022, from available revenue surplus

13 funds, transfers from the Industrial Development Loans fund, gifts, grants, contributions, any
14 earnings or interest accruing to said fund, and any other moneys appropriated to said fund by the
15 Legislature. The authority may invest and reinvest moneys in the fund with the West Virginia
16 Investment Management Board or the Board of Treasury Investments.

17 (c) The authority may transfer funds in the Industrial Development Loans fund to the
18 Economic Development Project Fund created by this section and any loan repayments or other
19 amounts that would otherwise have been paid into the Industrial Development Loans fund may
20 be paid into the Economic Development Project Fund created by this section.

21 (d) In addition to any powers granted to the authority under any other section of this code,
22 the authority may finance any high impact development project under this section by offering
23 incentives for business formation or expansion to industrial development agencies or enterprises
24 in this state in the form of loans, grants, or other offers of financial assistance or aid upon such
25 terms as the Governor may request and the authority shall deem appropriate.

26 (e) The authority may use moneys in the Economic Development Project Fund to offer
27 incentives for business formation or expansion and provide assistance with site development or
28 other concerns to industrial development agencies or enterprises according to the requirements
29 of this article: *Provided*, That a minimum of \$200 million in the fund may only be used to finance
30 high impact development projects.

31 (f) The authority shall keep itemized records of all fund transactions and agreements
32 entered into in furtherance of Economic Development Project Fund expenditures. In administering
33 the fund, the authority shall adopt appropriate accounting practices and internal controls, including
34 but not limited to, strict compliance with the requirements of §5A-8-9 of this code. Fund
35 transactions shall be subject to an annual audit by an independent firm of certified public
36 accountants.

37 (g) The authority shall prepare and submit to the Joint Committee on Government and
38 Finance and the Governor an annual report addressing the status of each project with outstanding

39 financing issued pursuant to this section. The report shall, at a minimum, provide project-specific
40 data addressing:

41 (1) The outstanding amount of authority financing for each project;
42 (2) The total amount of private investment in each project;
43 (3) The number of jobs created by each project since the project's inception; and
44 (4) The number of jobs maintained by each project.

45 (h) Except for the records and audit required under subsection (f) of this section and the
46 annual reports required under subsection (g) of this section, any documentary material, data, or
47 other writing made or received by the authority relating to high impact development projects under
48 this section, shall be exempt from §29B-1-1 et seq. of this code: *Provided*, That any agreement
49 or resolution entered into or signed by the authority which obligates public funds for any high-
50 impact development project shall be subject to inspection and copying pursuant to §29B-1-1 et
51 seq. of this code as of the date the agreement or resolution is entered into, signed, or otherwise
52 made public.

NOTE: The purpose of this bill is to discontinue the revolving loan from the Board of Treasury Investments to the Economic Development Authority upon the authority's receipt of an appropriation by the Legislature. The bill requires the Board of Treasury Investments to make a revolving loan available to the Department of Transportation. The bill establishes a special revenue fund to receive loan moneys. The bill permits the Secretary of Transportation to make certain expenditures of loan moneys. The bill requires the secretary to reimburse the fund upon receipt of federal reimbursement moneys. The bill provides when moneys in the fund will revert to the Consolidated Fund. The bill establishes reporting requirements related to the fund. The bill allows the Board of Treasury Investments to inspect records related to the fund; providing a sunset date of June 30, 2027 for the revolving loan available to the Department of Transportation. The bill defines terms. The bill establishes a special revenue fund to receive moneys appropriated to the Economic Development Authority. The bill allows the authority to invest the moneys in the fund. The bill provides that a certain amount of moneys in the fund be used for high impact economic development projects. The bill establishes accounting and auditing standards related to the fund. The bill establishes project status reporting requirements related to the fund, and provides that documents and materials related to high impact economic development projects are exempt from §29B-1-1 et seq. of the code, except that certain required records and reports and final agreements or resolutions of the authority are not exempt from §29B-1-1 et seq. of the code.

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