

# **WEST VIRGINIA LEGISLATURE**

## **2022 REGULAR SESSION**

**Introduced**

### **Senate Bill 523**

BY SENATORS BLAIR (MR. PRESIDENT) AND BALDWIN

(BY REQUEST OF THE EXECUTIVE)

[Introduced February 01, 2022; referred to  
the Committee on Economic Development; and then  
to the Committee on Finance]

1 A BILL to repeal §12-7-8 of the Code of West Virginia, 1931, as amended; to amend and reenact  
 2 §12-7-2, §12-7-3, §12-7-4, and §12-7-5 of said code; and to amend and reenact §31-15-  
 3 6 of said code, all relating to management and control of jobs investment trust to be vested  
 4 in the West Virginia Economic Development Authority; and terminating the Jobs  
 5 Investment Trust Board.

*Be it enacted by the Legislature of West Virginia:*

## **CHAPTER 12. PUBLIC MONEYS AND SECURITIES.**

### **ARTICLE 7. JOBS INVESTMENT TRUST FUND.**

#### **§12-7-2. Legislative findings.**

1 (a) The Legislature finds that the ~~creation of a public body corporate~~ jobs investment trust  
 2 is a necessary tool to make investment funds available to eligible businesses would stimulate  
 3 economic growth and provide or retain jobs within the state. Accordingly, it is declared to be the  
 4 public policy of the state to ~~create~~ continue an investment program to inject needed capital into  
 5 the business community, sustain or improve business profitability and provide jobs to the citizens  
 6 of the state.

7 (b) The Legislature further finds that:

8 (1) The availability of financial assistance through the creation of the jobs investment trust  
 9 ~~will promote~~ economic development in the state and ~~will serve~~ serves the public purposes of the  
 10 state;

11 (2) The public policy of the state ~~will be~~ are served through financing projects, extending  
 12 loans, providing financing or credit for working capital, creating innovative investment plans and  
 13 options, and providing equity financing or the refinancing of existing debt of an enterprise;

14 (3) It is in the public interest, in order to address the needs of the business community and  
 15 the citizens of the state, that ~~a public body corporate be created with~~ the jobs investment trust  
 16 have full power to accept grants, gifts and appropriations; to generate revenues to furnish money

17 and credit to approved businesses or enterprises; to promote the establishment of new and  
18 innovative projects; and to upgrade, expand and retain existing projects; and

19 (4) Fundamental changes are occurring in national and international markets that increase  
20 the need for debt financing, equity capital and near-equity capital for emerging, expanding and  
21 restructuring business opportunities in the state.

22 (c) The Legislature further finds:

23 (1) That ~~due to the creation of~~ through the jobs investment trust, moneys will be available  
24 for venture capital in this state;

25 (2) That the ~~implementation~~ continuation of this innovative program may supplant the need  
26 for the state to otherwise assist private venture capital concerns through other tax credits; and

27 ~~(3) That due to the availability of venture capital funds through this program the granting~~  
28 ~~of venture capital company credits under the capital company act should be reduced for three~~  
29 ~~fiscal years pending the full implementation of the jobs investment trust program;~~

30 ~~(4) That due to this reduction in the certification of tax credits, additional general revenue~~  
31 ~~may become available for new economic development programs;~~

32 ~~(5) These economic development programs may be funded from general revenue in an~~  
33 ~~amount appropriate to effectuate the purposes of these programs; and~~

34 ~~(6)~~ (3) Due to the foregoing findings there shall be an annual line item appropriation, in an  
35 amount determined by the Legislature, to the West Virginia development office for a matching  
36 grant program for regional economic development corporations or authorities.

**§12-7-3. Definitions.**

1 For purposes of this article:

2 (a) "Board" means ~~the jobs investment trust board established pursuant to section four of~~  
3 ~~this article~~ the West Virginia Economic Development Authority, established pursuant to §31-15-1  
4 et seq. of this code.

5 (b) "Eligible business" means any business, including, but not limited to, a business

6 licensed or seeking licensure by the small business administration as a small business investment  
 7 company under the small business investment act, which is qualified to do business in West  
 8 Virginia and is in good standing with all applicable laws affecting the conduct of such business.

9 (c) "Nonincentive Tax Credits" means the nonincentive tax credits issued by the state to  
 10 the jobs investment trust board and authorized for sale and transfer by the jobs investment trust  
 11 board pursuant to section eight-a of this article.

12 (d) "Securities" means all bonds, notes, stocks, units of ownership, debentures or any  
 13 other form of negotiable or nonnegotiable evidence of indebtedness or ownership.

**§12-7-4. Jobs Investment Trust Board terminated; management and control to vest in the  
West Virginia Economic Development Authority. composition; appointment, term  
of private members; chairman; quorum**

1 (a) The Jobs Investment Trust Board is ~~continued~~ hereby terminated, and the  
 2 management and control of jobs investment trust shall be vested in the West Virginia Economic  
 3 Development Authority. ~~The board is a public body corporate and established to improve and~~  
 4 ~~otherwise promote economic development in this state.~~

5 (b) ~~The board consists of thirteen members, five of whom serve by virtue of their respective~~  
 6 ~~positions. These five are the Governor or designee; president of West Virginia University or~~  
 7 ~~designee; the president of Marshall University or designee; the chancellor of the higher education~~  
 8 ~~policy commission or designee; and the executive director of the West Virginia housing~~  
 9 ~~development fund. One member is appointed by the Governor from a list of two names submitted~~  
 10 ~~by the board of directors of the Housing Development Fund. One member is appointed by the~~  
 11 ~~Governor from a list of two names submitted by the commissioner of the division of tourism. The~~  
 12 ~~other six members are appointed from the general public by the Governor. Of the general public~~  
 13 ~~members appointed by the Governor, one is an attorney with experience in finance and~~  
 14 ~~investment matters; one is a certified public accountant; one is a representative of labor; one is~~  
 15 ~~experienced or involved in innovative business development; and two are present or past~~

16 ~~executive officers of companies listed on a major stock exchange or large privately held~~  
17 ~~companies. All appointments made pursuant to the provisions of this article are by and with the~~  
18 ~~advice and consent of the Senate.~~

19 ~~(c) A vacancy on the board is filled by appointment by the Governor in the same manner~~  
20 ~~as the original appointment. A member appointed to fill a vacancy serves for the remainder of the~~  
21 ~~unexpired term.~~

22 ~~(d) The Governor may remove any appointed member in case of incompetency, neglect~~  
23 ~~of duty, moral turpitude or malfeasance in office and fill the vacancy as provided in other cases of~~  
24 ~~vacancy.~~

25 ~~(e) The Governor or designee serves as the chair. The board annually elects one of its~~  
26 ~~public members as vice chair and appoints a secretary to keep records of its proceedings who~~  
27 ~~need not be a member of the board.~~

28 ~~(f) Seven members of the board is a quorum. Action may not be taken by the board except~~  
29 ~~upon the affirmative vote of at least a majority of those members present or participating by any~~  
30 ~~other means as described in subsection (g) of this section, but in any event not fewer than six of~~  
31 ~~the members serving on the board.~~

32 ~~(g) Members of the board may participate in a meeting of the board by means of~~  
33 ~~conference telephone or similar communication equipment by means of which all persons~~  
34 ~~participating in the meeting can hear each other. Participation in a board meeting pursuant to this~~  
35 ~~subsection constitutes presence in person at the meeting.~~

36 ~~(h) The members of the board are not compensated for their services as members of the~~  
37 ~~board, but receive reasonable and necessary expenses actually incurred in discharging their~~  
38 ~~duties under this article in a manner consistent with guidelines of the travel management office of~~  
39 ~~the Department of Administration.~~

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

41 ~~(j) The Governor shall appoint a member for a four-year term. Any member whose term~~

42 ~~has expired serves until a successor is duly appointed and qualified. Any member is eligible for~~  
43 ~~reappointment.~~

44 ~~(k) Additionally, one member of the West Virginia House of Delegates, appointed by the~~  
45 ~~Speaker of the House of Delegates, and one member of the West Virginia Senate, appointed by~~  
46 ~~the President of the Senate, serve as advisory members of the Jobs Investment Trust Board and,~~  
47 ~~as advisory members, are ex officio, nonvoting members~~

48 (b) The board shall meet on a quarterly basis or more often, if necessary, to carry out the  
49 powers and duties of the board with respect to the management of the Jobs Investment Trust, as  
50 set forth in this article.

51 (c) For the purposes of managing the Jobs Investment Trust, the rules related to board  
52 makeup and quorum requirements shall be the same as those set forth in §31-15-5 of this code.

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

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

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

13 (d) The acts of the board are solely the acts of its corporation and are not those of an  
 14 agent of the state. A debt or obligation of the board is not a debt or obligation of the state.

15 (e) Upon the affirmative vote of at least a majority of those members ~~in attendance or~~  
 16 ~~participating by such other means as described in subsection (g), section four of this article~~ in a  
 17 meeting of the board, ~~but in any event not fewer than six of the members serving on the board~~  
 18 the board may approve any action to be taken and authorize the executive director for and on  
 19 behalf of the board to execute and deliver all instruments, agreements or other documents that  
 20 are required or are reasonably necessary to effectuate the decisions or acts of the board.

21 (f) The West Virginia Housing Development Fund shall provide office space and staff  
 22 support services for the director and the board shall act as fiscal agent for the board and, as such,  
 23 shall provide accounting services for the board, invest all funds as directed by the board, service  
 24 all investment activities of the board and shall make the disbursements of all funds as directed by  
 25 the board, for which the West Virginia Housing Development Fund shall be reasonably  
 26 compensated as determined by the board.

27 (g) The board and the executive director shall involve students and faculty members of  
 28 state institutions of higher education in the board's activities in order to enhance the opportunities  
 29 at the institutions for learning and for participation in the board's investment activities and in the  
 30 economic development of the state, whether in research, financial analysis, management  
 31 participation or in such other ways as the board and the executive director may, in their discretion,  
 32 find appropriate.

**§12-7-8. Funding.**

1 [Repealed].

**CHAPTER 31. CORPORATIONS.**

**ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.**

**§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 (ll) 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.

142 (pp) To manage the Jobs Investment Trust established under W. Va. Code § 12-7-1 *et*  
143 *seq.* of this code, and to exercise those powers and responsibilities previously vested in the Jobs  
144 Investment Trust Board, as outlined in §12-7-6 of this code.

NOTE: The purpose of this bill is to streamline the operation of state economic development initiatives in this State by eliminating a board and placing oversight of the Jobs Investment Trust under the existing WV EDA.

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