

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENROLLED

Senate Bill 729

BY SENATORS TARR, SYPOLT, BALDWIN, BROWN,
CLEMENTS, GEFFERT, HAMILTON, JEFFRIES, MARONEY,
MARTIN, NELSON, PLYMALE, ROBERTS, STOLLINGS, AND
SWOPE

[Passed March 12, 2022; in effect from passage]

1 AN ACT 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 defining terms; establishing a special revenue fund to receive moneys appropriated to the
15 Economic Development Authority; allowing the authority to invest the moneys in the fund;
16 providing that a certain amount of moneys in the fund be used for high impact economic
17 development projects; establishing accounting and auditing standards related to the fund;
18 and establishing project status reporting requirements related to the fund.

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 (b) Subject to a liquidity determination, the West Virginia Board of Treasury Investments
2 shall make a revolving loan available to the West Virginia Economic Development Authority in an
3 amount of up to \$200 million. The revolving loan shall be used for business or industrial

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

20 (c) The outstanding principal balance of the revolving loan from the board to the West
21 Virginia Economic Development Authority may at no time exceed 103 percent of the aggregate
22 outstanding principal balance of the business and industrial loans from the West Virginia
23 Economic Development Authority to economic development projects funded from this revolving
24 loan pool. The independent audit of the West Virginia Economic Development Authority financial
25 records shall annually certify that 103 percent requirement.

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

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

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

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

46 (h) Notwithstanding any other provision of this code to the contrary, the West Virginia
47 Economic Development Authority shall pay to the West Virginia Board of Treasury Investments
48 the entire outstanding balance of the revolving loan authorized by this section within 30 days of
49 the balance in the Economic Development Project Fund created in §31-15-23a of this code
50 becoming \$600 million or more. Upon the repayment of the outstanding loan balance, the
51 revolving loan authorized by this section shall terminate and no additional loan moneys shall be
52 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 shall be deposited in a special revenue fund, known as the Infrastructure Investment
5 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 of Transportation will use the loan moneys for expenditures meeting the
13 requirements of 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. 429 (2021): *Provided*, That the secretary may also authorize
22 expenditures to political subdivisions of the state pursuant to agreements they may have with the
23 federal government pursuant to the Infrastructure Investment and Jobs Act, Public Law 117-58,
24 135 Stat. 429 (2021). If the federal reimbursement to the Department of Transportation or a
25 political subdivision of the state pursuant to an agreement is less than 100 percent of the amount
26 that must be expended by the secretary or political subdivision, the secretary may only request
27 an amount equal to the expected reimbursement.

28 (d) Upon receiving moneys from the federal government to reimburse for expenditures
29 from the Infrastructure Investment Reimbursement Fund, the Secretary of the Department of
30 Transportation or political subdivision shall immediately reimburse the Infrastructure Investment
31 Reimbursement Fund in an amount equal to the pro rata amount the expenditure from the fund is
32 to the whole reimbursement payment.

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

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

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

42 (2) For each project for which loan moneys were expended, the status of the project, the
43 estimated completion date of the project, the amount of loan moneys expended for the project,
44 the amount of state road moneys expended for the project, the amount of federal reimbursement
45 moneys received for the project, and the remaining amount of federal reimbursement moneys
46 projected to be received for the project.

47 (g) Upon request of the Board of Treasury Investments, the Secretary of the Department
48 of Transportation shall provide the board with the opportunity to inspect and copy any records in
49 the custody of the Department related to any transaction involving the Infrastructure Investment
50 Reimbursement Fund. Records to be made available pursuant to this subsection include, but are
51 not limited to, accounting records, contracts or agreements, audit reports, and transaction
52 records.

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 in a meeting of the
3 authority:

4 (1) The project has been approved for financing by the authority in an amount of \$50
5 million or greater;

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

8 (3) The project is reasonably projected to create 200 or more jobs in the state.

9 (b) There is hereby created a special revenue fund in the State Treasury known as the
10 Economic Development Project Fund. Expenditures from the fund shall be for the purposes set
11 forth in this section and are not authorized from collections but are to be made only in accordance
12 with appropriation by the Legislature and in accordance with the provisions of §12-3-1 *et seq.* of
13 this code. The fund shall consist of all moneys appropriated to the Economic Development
14 Authority during the regular session of the Legislature, 2022, from available revenue surplus
15 funds, transfers from the Industrial Development Loans (fund 9061), any earnings or interest
16 accruing to said fund, and any other moneys appropriated to said fund by the Legislature.

17 (c) The Economic Development Authority shall transfer all funds in the Industrial
18 Development Loans (fund 9061) to the Economic Development Project Fund created by this
19 section and any loan repayments or other amounts that would otherwise have been paid into the

20 Industrial Development Loans (fund 9061) shall be paid into the Economic Development Project
21 Fund created by this section.

22 (d) The authority may use moneys in the Economic Development Project Fund to finance
23 projects of industrial development agencies or enterprises according to the requirements of this
24 article: *Provided*, That a minimum of \$400 million in the fund must be reserved to finance high
25 impact development projects.

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

32 (f) The authority shall prepare and submit to the Joint Committee on Government and
33 Finance and the Governor an annual report addressing the status of each project with outstanding
34 financing issued pursuant to this section. The report shall, at a minimum, provide project-specific
35 data addressing:

- 36 (1) The outstanding amount of authority financing for each project;
37 (2) The total amount of private investment in each project;
38 (3) The number of jobs created by each project since the project's inception; and
39 (4) The number of jobs maintained by each project.

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 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, 2022.

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Governor