

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Originating

Senate Bill 729

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SWOPE

[Originating in the Committee on Finance;

reported on February 28, 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 and reenact §31-15-23 of said code, all relating
4 generally to funding for infrastructure and economic development projects in the state;
5 discontinuing the revolving loan from the Board of Treasury Investments to the Economic
6 Development Authority upon the authority's receipt of an appropriation by the Legislature;
7 requiring the Board of Treasury Investments to make a revolving loan available to the
8 Department of Transportation; establishing a special revenue fund to receive loan
9 moneys; permitting the Secretary of Transportation to make certain expenditures of loan
10 moneys; requiring the secretary to reimburse the fund upon receipt of federal
11 reimbursement moneys; providing when moneys in the fund will revert to the Consolidated
12 Fund; establishing reporting requirements related to the fund; allowing the Board of
13 Treasury Investments to inspect records related to the fund; defining terms; establishing
14 a special revenue fund to receive moneys appropriated to the Economic Development
15 Authority; allowing the authority to invest the moneys in the fund; providing that a certain
16 amount of moneys in the fund be used for high impact economic development projects;
17 establishing accounting and auditing standards related to the fund; and establishing
18 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 ~~(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. Notwithstanding any other provision of this code, within 30 days after the West Virginia~~
8 ~~Economic Development Authority receives the appropriation described in §31-15-23a(b) of this~~
9 ~~code in an amount equal to or greater than \$600 million, the West Virginia Economic Development~~
10 ~~Authority shall pay to the West Virginia Board of Treasury Investments the entire outstanding~~
11 ~~balance of the revolving loan authorized by this section. Upon the West Virginia Economic~~
12 ~~Development Authority's payment of said loan balance, the loan authorized by this section shall~~
13 ~~terminate and no additional loan moneys shall be made available to the West Virginia Economic~~
14 ~~Development Authority pursuant to this section.~~

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

30 pledges and assigns the cash proceeds of collateral from all loans under this revolving loan pool.
31 The West Virginia Economic Development Authority may also pledge as collateral certain revenue
32 streams from other revolving loan pools which source of funds does not originate from federal
33 sources or from the board.

34 (c) The outstanding principal balance of the revolving loan from the board to the West
35 Virginia Economic Development Authority may at no time exceed 103 percent of the aggregate
36 outstanding principal balance of the business and industrial loans from the West Virginia
37 Economic Development Authority to economic development projects funded from this revolving
38 loan pool. The independent audit of the West Virginia Economic Development Authority financial
39 records shall annually certify that 103 percent requirement.

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

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

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

51 (g) *Inspection of records.* – Within 30 days of receiving a written request from the board,
52 the authority shall provide the board with the opportunity to inspect and copy any records in the
53 custody of the authority related to any loan issued by the board to the authority or any loan from
54 the authority to a third party funded by a loan issued by the board. Records to be made available
55 pursuant to this subsection include, but are not limited to, accounting records, loan applications,

56 loan agreements, board minutes, audit reports, and transaction records. Records of the authority
57 held, from time to time, by the board pursuant to this subsection that are exempt from disclosure
58 pursuant to the provisions of §31-15-22 of this code or §29B-1-1 *et seq.* of this code shall remain
59 so while held by the board.

§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 that the board deposit a specific amount of loan
9 moneys, subject to the limitations provided in this section, into the Infrastructure Investment
10 Reimbursement Fund;

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

13 (3) Copies of any available documents demonstrating that the planned expenditures of
14 loan moneys meet the requirements of subsection (c) of this section, including but not limited to
15 any agreement or contract entered into by the department and the federal government.

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

20 (d) Upon receiving moneys from the federal government to reimburse the Department for
21 expenditures from the Infrastructure Investment Reimbursement Fund, the secretary shall

22 immediately reimburse the fund in an amount equal to the reimbursement moneys received from
23 the federal government.

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

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

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

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

37 (g) Upon request of the Board of Treasury Investments, the secretary shall provide the
38 board with the opportunity to inspect and copy any records in the custody of the Department
39 related to any transaction involving the Infrastructure Investment Reimbursement Fund. Records
40 to be made available pursuant to this subsection include, but are not limited to, accounting
41 records, contracts or agreements, audit reports, and transaction 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. The fund shall consist of all moneys appropriated to the
11 Economic Development Authority during the regular session of the Legislature, 2022, from
12 available revenue surplus funds, transfers from the Industrial Development Loans (fund 9061),
13 any earnings or interest accruing to said fund, and any other moneys appropriated to said fund
14 by the Legislature. The authority may invest and reinvest moneys in the fund with the West
15 Virginia Investment Management Board or the Board of Treasury Investments.

16 (c) The authority may use moneys in the Economic Development Project Fund to finance
17 projects of industrial development agencies or enterprises according to the requirements of this
18 article: *Provided*, That a minimum of \$400 million in the fund may only be used to finance high
19 impact development projects.

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

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

30 (1) The outstanding amount of authority financing for each project;

31 (2) The total amount of private investment in each project;

32 (3) The number of jobs created by each project since the project's inception; and

33 (4) The number of jobs maintained by each project.