

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3197

By Delegate McGeehan

[Introduced January 31, 2023; Referred to the
Committee on Government Organization then
Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §4-7A-1, §4-7A-2, §4-7A-3, §4-7A-4, §4-7A-5, §4-7A-6, and §4-7A-7, relating
 3 generally to creating the Legislative Infrastructure Commission; its composition;
 4 appointment of commission members; filling of vacancies on commission; election of
 5 commission officers; compensation and expenses of commission members; powers and
 6 duties of commission generally; providing for the creation of the Legislative Infrastructure
 7 Commission Economic Enhancement Grant Fund; establishing regulations for the fund;
 8 establishing a matching grant subaccount; providing a purpose for the fund and the
 9 subaccount; authorizing the Legislative Infrastructure Commission to enter into certain
 10 grant agreements; allowing for an audit process; providing article is not authority to create
 11 state debt; and severability.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7A. LEGISLATIVE INFRASTRUCTURE COMMISSION.

§4-7a-1. Definitions.

1 The following terms, wherever used or referred to in this article, shall have the following
 2 meanings, unless a different meaning clearly appears from the context:

3 (1) "Commission" means the Legislative Infrastructure Commission of West Virginia or if
 4 said commission shall be abolished, any board or officer succeeding to the principal functions
 5 thereof, or to whom the powers given to said commission shall be given by law.

6 (2) "Bonds" means bonds issued by any agency of the state of West Virginia in furtherance
 7 of the purposes of this article.

8 (3) "Project" has the same meaning as in §22C-1-3 of this code.

9 (4) "Cost of project" includes the cost of construction, the cost of equipping and furnishing
 10 same, the cost of all land, property, material, and labor which are deemed essential thereto, the
 11 cost of improvements, financing charges, interest during construction, and all other expenses,
 12 including legal fees, trustees', engineers', and architects' fees which are necessarily or properly

13 incidental _____ to _____ the _____ project.

§4-7a-2. Legislative infrastructure commission created; its composition; appointment of members; vacancies; election of officers; compensation and expenses of members.

1 There is hereby created the Legislative Infrastructure Commission of West Virginia as a
2 body corporate and agency of the State of West Virginia. The commission shall consist of seven
3 members and shall be comprised of three persons who have previously served in the Senate, who
4 shall be appointed by the President of the Senate; three persons who have previously served in
5 the House of Delegates, who shall be appointed by the Speaker of the House of Delegates; and
6 one person who shall be appointed by the Governor. No member of the commission shall
7 otherwise be an officer, employee, or member of the executive, legislative, or judicial branches of
8 federal or state government or any political subdivision thereof. Persons appointed to the
9 commission shall be residents and citizens of the state.

10 All commission members shall be appointed no later than July 1, 2024, and they shall
11 continue to serve until the completion of the duties assigned to the commission.

12 Any vacancy occurring in the membership of the commission shall be filled by appointment
13 in the same manner as provided for the initial appointments.

14 The members of the commission annually shall elect from their number a chairman, vice
15 chairman, and secretary. Each commission member shall be paid compensation of \$150 for each
16 day or substantial part thereof that the member is engaged in the work of the commission and
17 shall, in addition thereto, be reimbursed for all reasonable and necessary expenses actually
18 incurred in the performance of his or her duties as such commission member.

§4-7a-3. Powers and duties of commission generally.

1 The commission shall have the following powers and duties:

2 (a) To sue and be sued, plead, and be impleaded.

3 (b) To have a seal.

4 (c) To make bylaws for the management and regulation of its affairs.

5 (d) With the consent of the Attorney General of the state, to use the facilities of his or her
6 office, assistants, and employees in all legal matters relating to or pertaining to the commission; or
7 use legal services made available by the Legislature and its staff; or if necessary, employ
8 attorneys-at-law.

9 (e) To make all contracts and execute all instruments necessary or convenient to effectuate
10 the intent of, and to exercise the powers granted to it by the provisions of this article.

11 (f) To accept and expend any gift, grant, or contribution of money or any other thing to, or
12 for the benefit of the commission, from the state or any other source for the purposes specified in
13 this article.

14 (g) To report to the Legislature at each regular session thereof and at the same time report
15 to the Governor concerning the action taken by the commission during the previous year in
16 carrying out the provisions of this article and make such special reports as may be required by the
17 Legislature and Governor.

18 (h) The Legislative Infrastructure Commission shall create and establish a special fund of
19 moneys made available by appropriations, grants, contributions, or other sources to be known as
20 the Legislative Infrastructure Commission Economic Enhancement Grant Fund. This fund shall be
21 governed, administered, and accounted for by the Legislative Infrastructure Commission as a
22 special program account. The Legislative Infrastructure Commission Economic Enhancement
23 Grant Fund shall consist of subaccounts as deemed necessary by the Water Development
24 Authority for the deposit of any appropriations, grants, gifts, contributions, or other moneys
25 received by the Legislative Infrastructure Commission Economic Enhancement Grant Fund from
26 any source, public, or private, and all income earned on moneys held in the Legislative
27 Infrastructure Commission Economic Enhancement Grant Fund. Amounts in the Legislative
28 Infrastructure Commission Economic Enhancement Grant Fund shall be administered by the
29 Legislative Infrastructure Commission separate and apart from any other assets and programs.
30 Amounts in the Legislative Infrastructure Commission Economic Enhancement Grant Fund may

31 not be transferred to any other fund or account or used for the payment of any other programs of
32 the Legislative Infrastructure Commission except the Legislative Infrastructure Commission may
33 use funds in the Legislative Infrastructure Commission Economic Enhancement Grant Fund to
34 reimburse itself for any administration costs incurred by it. Pending distribution of any money in the
35 Legislative Infrastructure Commission Economic Enhancement Grant Fund the Legislative
36 Infrastructure Commission is hereby authorized and empowered to invest any funds not needed
37 for immediate disbursement in any of the following securities:

38 (1) Direct obligations of or obligations guaranteed by the United States of America;

39 (2) Bonds, debentures, notes, or other evidence of indebtedness issued by any of the
40 following agencies: Banks for cooperatives; federal intermediate credit banks; federal home loan
41 bank system; Export-Import Bank of the United States; federal land banks; the Federal National
42 Mortgage Association or the Government National Mortgage Association;

43 (3) Public housing bonds issued by public agencies or municipalities and fully secured as
44 to the payment of both principal and interest by a pledge of annual contributions under an annual
45 contributions contract or contracts with the United States of America; or temporary notes issued by
46 public agencies or municipalities or preliminary loan notes issued by public agencies or
47 municipalities, in each case, fully secured as to the payment of both principal and interest by a
48 requisition or payment agreement with the United States of America;

49 (4) Certificates of deposit secured by obligations of the United States of America;

50 (5) Direct obligations of or obligations guaranteed by the State of West Virginia;

51 (6) Direct and general obligations of any other state within the territorial United States, to
52 the payment of the principal of and interest on which the full faith and credit of such state is
53 pledged: *Provided*, That at the time of their purchase, such obligations are rated in either of the two
54 highest rating categories by a nationally recognized bond-rating agency; and

55 (7) Any fixed interest bond, note or debenture of any corporations organized and operating
56 within the United States: *Provided*, That such corporation shall have a minimum net worth of \$15

57 million and its securities or its parent corporation's securities are listed on one or more of the
58 national stock exchanges: *Provided, however,* That (i) such corporation has earned a profit in eight
59 of the preceding 10 fiscal years as reflected in its statements, and (ii) such corporation has not
60 defaulted in the payment of principal or interest on any of its outstanding funded indebtedness
61 during its preceding 10 fiscal years, and (iii) the bonds, notes, or debentures of such corporation to
62 be purchased are rated "AA" or the equivalent thereof or better than "AA" or the equivalent thereof
63 at least two or more nationally recognized rating services such as Standard and Poor's, Dun &
64 Bradstreet or Moody's.

65 (i) The Legislative Infrastructure Commission shall establish the Matching Grant
66 Subaccount in the Legislative Infrastructure Commission Economic Enhancement Grant Fund to
67 be expended to provide the local or state match for any federal or other programs that require a
68 match for projects and infrastructure projects as defined in §31-15A-2 of this code and where the
69 commitment of the matching funds is required to be made and submitted with the application for
70 the federal or other grant. Upon receipt of a recommendation from the West Virginia Infrastructure
71 and Jobs Development Council and/or the West Virginia Department of Economic Development,
72 the Legislative Infrastructure Commission shall review the application of a governmental agency
73 or not-for-profit and if the governmental agency or not-for-profit is eligible for the federal or other
74 matching grant funding, set aside moneys in the subaccount and provide a written binding
75 commitment to the governmental agency or not-for-profit to submit with its application. If the
76 federal or other programs subsequently approve funding to the governmental agency or not-for-
77 profit, the Legislative Infrastructure Commission shall enter into a grant agreement with the
78 governmental agency or not-for-profit providing the grant funding if the governmental agency or
79 not-for-profit is in compliance with §12-4-14 of this code. The Legislative Infrastructure
80 Commission shall disperse funds under the grant agreement from time to time to comply with the
81 terms of the other funding sources.

82 (j) The Legislative Infrastructure Commission shall establish the Enhancement Grant
83 Subaccount in the Legislative Infrastructure Commission Economic Enhancement Grant Fund to
84 be expended as grants to governmental agencies or not-for-profits to cover all or a portion of the
85 costs of projects or infrastructure projects as defined in §31-15A-2 of this code and more
86 specifically:

87 (1) To cover the cost of bid overruns for projects and infrastructure projects approved by
88 the West Virginia Infrastructure and Jobs Development Council;

89 (2) To cover all or a portion of the costs of extending or expanding water, stormwater and/or
90 wastewater service to enhance economic development and/or tourism when recommended by the
91 Secretary of Commerce, the Secretary of Economic Development and/or the Secretary of the
92 Department of Tourism;

93 (3) To cover the costs of facilitating the merger and/or consolidation of water or wastewater
94 providers where all parties to the proposed merger make joint applications to the West Virginia
95 Infrastructure and Jobs Development Council;

96 (4) To cover the cost of water, stormwater, and/or wastewater projects for governmental
97 agencies where the combined rates for water, stormwater, and wastewater exceed 1.5 percent of
98 the governmental agency's Median Household Income;

99 (5) To cover the startup costs for governmental utilities that are providing or extending
100 service to unserved areas of the state;

101 (6) To provide a commitment to cover the difference between the cost of funded projects
102 and the updated cost estimate, and when the project is bid, to provide a grant for the dollar
103 difference between the committed funding and the bid results; and

104 (7) To cover all or a portion of the infrastructure projects to enhance economic
105 development and/or tourism when recommended by the Secretary of Commerce, the Secretary of
106 Economic Development and/or the Secretary of Tourism.

107 (k) The Legislative Infrastructure Commission is hereby authorized to enter into grant
 108 agreements with governmental agencies and not-for-profits to evidence the grant which
 109 agreements shall include the following provisions:

110 (1) The estimated cost of the project or infrastructure project, the amount of the grant and
 111 the other funding sources;

112 (2) The specific purpose for which the grant proceeds shall be expended and the
 113 conditions and procedures for distributing the grant proceeds;

114 (3) The duties and obligations imposed regarding the acquisition, construction,
 115 improvement, or operation of the project or infrastructure project; and

116 (4) The agreement of the governmental agency or not-for-profit to comply with all
 117 applicable federal and state laws, and all rules and regulations issued or imposed by the
 118 Legislative Infrastructure Commission or other state, federal, or local bodies regarding the
 119 acquisition, construction, improvement, or operation of the infrastructure project or project.

120 (l) The Legislative Infrastructure Commission shall cause an annual audit to be made by an
 121 independent certified public accountant of its books, accounts, and records with respect to the
 122 system and distributions and all matters relating to the financial application of the Legislative
 123 Infrastructure Commission Economic Enhancement Grant Fund including all subaccounts therein.
 124 The Water Development Authority shall provide copies of the audit report to the Legislature.

§4-7a-4. Funds and expenditures of commission.

1 To pay the compensation and expenses incurred by its members and to carry out the
 2 provisions of this article, the commission may expend any general or special revenues, profits,
 3 fees, or charges designated and appropriated by act of the Legislature for such.

§4-7a-5. Deposit and disbursement of funds of commission; security for deposits; audits.

1 All moneys of the commission from whatever source derived shall be paid to the treasurer
 2 of the State of West Virginia, who shall not commingle said moneys with any other moneys, but
 3 shall deposit them in a separate bank account or accounts. The moneys in said accounts shall be

4 impressed with and subject to the lien or liens thereon in favor of the bondholders provided in the
5 proceedings for issuance of bonds pursuant to this article. The moneys in said accounts shall be
6 paid out on check of the treasurer on requisition of the chairman of the commission. All deposits of
7 such moneys shall, if required by the treasurer or the commission, be secured by obligations of the
8 United States, of the State of West Virginia, or of the commission, of a market value equal at all
9 times to the amount of the deposit, and all banking institutions are authorized to give such security
10 for such deposits. The State Auditor and his or her legally authorized representatives are hereby
11 authorized and empowered from time to time to examine the accounts and books of the
12 commission, including its receipts, disbursements, contracts, leases, sinking funds, investments,
13 and any other matters relating to its financial standing.

§4-7a-6. Article not authority to create state debt.

1 Nothing in this article contained shall be so construed or interpreted as to authorize or
2 permit the incurring of state debt of any kind or nature as contemplated by the provisions of the
3 Constitution of the State of West Virginia in relation to state debt.

§4-7a-7. Severability.

1 If any provision or any part or clause of any provision of this article, or the application
2 thereof to any person or circumstance, is held unconstitutional or invalid, such unconstitutionality
3 or invalidity shall not affect other provisions, or other parts or other clauses of any provision, or
4 applications of this article, and to this end the provisions of this article are declared to be
5 severable.

NOTE: The purpose of this bill is to create the Legislative Infrastructure Commission; provide for its composition, appointment of commission members, establish a procedure for the filling of vacancies on commission and the election of commission officers, provide for compensation and expenses of commission members, delineates the powers and duties of commission generally, provide for the creation of the Legislative Infrastructure Commission Economic Enhancement Grant Fund, establish regulations for the fund; establish a matching grant subaccount; provide a purpose for the fund and the subaccount; authorize the Legislative Infrastructure Commission to enter into certain grant agreements; allow for an audit process; provides that article is not granting authority to create state debt; and addresses severability.

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