

SB 454

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WEST VIRGINIA SENATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



ENROLLED

SENATE BILL NO. 454

(By Senators TAMBLIN, MR. PRESIDENT, AND BUCKALEW,
By Request of the Executive)



PASSED APRIL 10, 1997

In Effect NINETY DAYS FROM Passage

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STATE OF WEST VIRGINIA
STATE ARCHIVES

ENROLLED

Senate Bill No. 454

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND BUCKALEW,
BY REQUEST OF THE EXECUTIVE)

[Passed April 10, 1997; in effect ninety days from passage.]

AN ACT to amend and reenact sections three-a and twenty-one, article two-c, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to allowing the executive director of the development office to designate a representative to the industrial revenue bond allocation review committee; and permitting uncommitted bonds as of the fifteenth day of November of each year or forfeited bonds to go to applicants in any industrial classification.

Be it enacted by the Legislature of West Virginia:

That sections three-a and twenty-one, article two-c, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2C. INDUSTRIAL DEVELOPMENT AND COMMERCIAL DEVELOPMENT BOND ACT.**13-2C-3a. Creation of industrial revenue bond allocation review committee; appointment, term, etc., of private members; voting; expenses; duties.**

1 (a) There is hereby created the West Virginia industrial
2 revenue bond allocation review committee consisting of
3 five members, as follows: The secretary of tax and
4 revenue, who shall serve as chair of the committee, and
5 the executive director of the development office or his or
6 her designee, and three members chosen from the general
7 public as private members.

8 (b) The three private members shall be appointed by the
9 governor, with the advice and consent of the Senate:
10 *Provided*, That one private member shall be appointed
11 from each congressional district of the state, in such a
12 manner as to provide a broad geographical distribution of
13 members of the committee: *Provided, however*, That at
14 least one private member appointed pursuant to this
15 subdivision shall have significant experience in economic
16 development. No more than two private members shall be
17 from the same political party.

18 (c) Appointment of the three members shall be for
19 staggered terms of three years. Any member whose term
20 has expired shall serve until a successor has been duly
21 appointed and qualified. Any member shall be eligible for
22 reappointment. In case of any vacancy in the office of a
23 private member, such vacancy shall be filled by appoint-
24 ment by the governor for the unexpired term. The gover-
25 nor may remove any private member in case of incompete-
26 ncy, neglect of duty, gross immorality or malfeasance in
27 office; and he may declare the office vacant and may
28 appoint a person for such vacancy as provided in other
29 cases of vacancy.

30 (d) Members shall not be entitled to compensation for
31 services performed as members, but shall be entitled to
32 reimbursement for all reasonable and necessary expenses
33 actually incurred in the performance of their duties.

34 (e) A majority of the members of the committee shall

35 constitute a quorum for the purpose of conducting busi-
36 ness. The affirmative vote of at least the majority of the
37 members present is necessary for any action taken by vote
38 of the committee. No vacancy in the membership of the
39 committee shall impair the right of a quorum to exercise
40 all the rights and perform all the duties of the committee.

41 (f) The committee shall review and evaluate all applica-
42 tions for reservation of funds submitted to the develop-
43 ment office by a governmental body pursuant to the
44 provisions of subsections (d) and (e), section twenty-one of
45 this article, and shall make reservations of the state
46 allocation (as defined in subdivision (2), subsection (b) of
47 said section) pursuant to subdivision (3), subsection (b)
48 and subsection (c) of said section.

**§13-2C-21. Ceiling on issuance of private activity bonds;
establishing procedure for allocation and dis-
bursements; reservation of funds; limitations;
unused allocation; expirations and carryovers.**

1 (a) Private activity bonds (as defined in Section 141(a) of
2 the United States Internal Revenue Code of 1986, other
3 than those described in Section 146(g) of the Internal
4 Revenue Code) issued pursuant to this article, including
5 bonds issued by the West Virginia public energy authority
6 pursuant to subsection (11), section five, article one,
7 chapter five-d of this code, or under article eighteen,
8 chapter thirty-one of this code, during any calendar year
9 shall not exceed the ceiling established by Section 146(d)
10 of the United States Internal Revenue Code. It is hereby
11 determined and declared as a matter of legislative finding:
12 (i) That, in an attempt to promote economic revitalization
13 of distressed urban and rural areas, certain special tax
14 incentives will be provided for empowerment zones and
15 enterprise communities to be designated from qualifying
16 areas nominated by state and local governments, all as set
17 forth by Section 1391 et seq. of the United States Internal
18 Revenue Code; (ii) that qualified businesses operating in
19 enterprise communities and empowerment zones will be
20 eligible to finance property and provide other forms of
21 financial assistance as provided for in Section 1394 of the
22 United States Internal Revenue Code; (iii) that it is in the

23 best interest of this state and the citizens thereof to
24 facilitate the acquisition, construction and equipping of
25 projects within designated empowerment zones and
26 enterprise communities by providing an orderly mecha-
27 nism for the commitment of the annual ceiling for private
28 activity bonds for such projects. It is hereby further
29 determined and declared as a matter of legislative finding:
30 (iv) that the production of bituminous coal in this state
31 has resulted in coal waste, which coal waste is stored in
32 areas generally referred to as gob piles; (v) that such gob
33 piles are unsightly and have the potential to pollute the
34 environment in this state; (vi) that the utilization of the
35 materials in such gob piles to produce alternative forms of
36 energy needs to be encouraged; (vii) that Section 142(a)(6)
37 of the United States Internal Revenue Code of 1986,
38 permits the financing of solid waste disposal facilities
39 through the issuance of such private activity bonds; and
40 (viii) that it is in the best interest of this state and the
41 citizens thereof to facilitate the construction of facilities
42 for the generation of power through the utilization of coal
43 waste by providing an orderly mechanism for the commit-
44 ment of the annual ceiling for private activity bonds for
45 such projects.

46 (b) On or before the first day of each calendar year, the
47 executive director of the development office shall deter-
48 mine the state ceiling for such year based on the criteria of
49 the United States Internal Revenue Code, which annual
50 ceiling shall be allocated among the several issuers of
51 bonds under this article or under article eighteen, chapter
52 thirty-one of this code, as follows:

53 (1) Fifty million dollars shall be allocated to the West
54 Virginia housing development fund for the purpose of
55 issuing qualified mortgage bonds, qualified mortgage
56 certificates or bonds for qualified residential rental
57 projects;

58 (2) The amount remaining after the allocation to the
59 West Virginia housing development fund described in
60 subdivision (1) of this subsection shall be retained by the
61 West Virginia development office and shall be referred to
62 in this section as the "state allocation";

63 (3) For calendar year one thousand nine hundred ninety-
64 five, twenty-five and one-half percent of the state alloca-
65 tion and for all subsequent calendar years, thirty-five
66 percent of the state allocation shall be set aside by the
67 development office to be made available for lessees,
68 purchasers or owners of proposed projects, hereafter in
69 this section referred to as “nonexempt projects”, which do
70 not qualify as exempt facilities as defined by United
71 States Internal Revenue Code. All reservations of private
72 activity bonds for nonexempt projects shall be approved
73 and awarded by the committee based upon an evaluation
74 of general economic benefit and any rule or regulation
75 that the council for community and economic develop-
76 ment may promulgate pursuant to section three, article
77 two, chapter five-b of this code: *Provided*, That all
78 requests for reservations of funds from projects described
79 in this subsection shall be submitted to the development
80 office on or before the first day of November of each
81 calendar year: *Provided, however*, That on the fifteenth
82 day of November of each calendar year, the uncommitted
83 portion of this part of the state allocation, shall revert to
84 and become part of the state allocation portion described
85 in subsection (g) of this section; and

86 (4) For calendar year one thousand nine hundred ninety-
87 five, four and one-half percent of the state allocation and
88 for all subsequent calendar years, ten percent of the state
89 allocation shall be made available for lessees, purchasers
90 or owners of proposed commercial or industrial projects
91 which qualify as exempt facilities under Section 1394 of
92 the United States Internal Revenue Code. All reservations
93 of private activity bonds for the projects shall be approved
94 and awarded by the committee based upon an evaluation
95 of general economic benefit and any rule or regulation
96 that the council for community and economic develop-
97 ment may promulgate pursuant to section three, article
98 two, chapter five-b of this code: *Provided*, That all
99 requests for reservations of funds from projects described
100 in this subsection shall be submitted to the development
101 office on or before the first day of November of each
102 calendar year: *Provided, however*, That on the fifteenth
103 day of November of each calendar year, the uncommitted

104 portion of this part of the state allocation shall revert to
105 and become part of the state allocation portion described
106 in subsection (g) of this section.

107 (c) For calendar year one thousand nine hundred ninety-
108 five, the remaining seventy percent and for all subsequent
109 calendar years, the remaining fifty-five percent of the
110 state allocation shall be made available for lessees,
111 purchasers or owners of proposed commercial or indus-
112 trial projects which qualify as exempt facilities as defined
113 by Section 142(a) of the United States Internal Revenue
114 Code. All reservations of private activity bonds for
115 exempt facilities shall be approved and awarded by the
116 committee based upon an evaluation of general economic
117 benefit and any rule or regulation that the council for
118 community and economic development may promulgate
119 pursuant to section three, article two, chapter five-b of
120 this code: *Provided*, That no reservation shall be in an
121 amount in excess of fifty percent of this portion of the
122 state allocation: *Provided, however*, That all requests for
123 reservations of funds from projects described in this
124 subsection shall be submitted to the development office on
125 or before the first day of November of each calendar year:
126 *Provided further*, That on the fifteenth day of November
127 of each calendar year, the uncommitted portion of this
128 part of the state allocation shall revert to and become part
129 of the state allocation portion described in subsection (g)
130 of this section.

131 (d) No reservation shall be made for any project until the
132 governmental body seeking the same shall submit a notice
133 of reservation of funds as provided in subsection (e) of this
134 section. The governmental body must first adopt an
135 inducement resolution approving the prospective issuance
136 of bonds and setting forth the maximum amount of bonds
137 to be issued. Each governmental body seeking a reserva-
138 tion of funds following the adoption of such inducement
139 resolution shall submit a notice of inducement signed by
140 its clerk, secretary or recorder or other appropriate
141 official to the development office. Such notice shall
142 include information as may be required by the develop-
143 ment office pursuant to any rule or regulation of the

144 council for community and economic development.
145 Notwithstanding the foregoing, when a governmental
146 body proposes to issue bonds for the purpose of: (i)
147 Constructing, acquiring or equipping a project described
148 in subdivision (3) or (4), subsection (b) of this section; or
149 (ii) constructing an energy producing project which relies,
150 in whole or in part, upon coal waste as fuel, to the extent
151 such project qualifies as a solid waste facility under
152 Section 142(a)(6) of the United States Internal Revenue
153 Code of 1986, the project may be awarded a reservation of
154 funds from the state allocation available for three years
155 subsequent to the year in which the notice of reservation
156 of funds is submitted, at the discretion of the executive
157 director of the development office: *Provided*, That no
158 discretionary reservation may be made for any single
159 project described in this subsection in an amount in excess
160 of thirty-five percent of the state allocation available for
161 the year subsequent to the year in which the request is
162 made. A discretionary reservation of the state allocation
163 for a project described in this subsection shall not be
164 granted by the executive director of the development
165 office unless the project for which the request is made has
166 received a certification from the federal energy regulatory
167 commission as a qualifying facility or a cogeneration
168 project.

169 (e) Currently with or following the submission of its
170 notice of inducement, the governmental body at any time
171 deemed expedient by it may submit its notice of reserva-
172 tion of funds which shall include the following informa-
173 tion:

174 (1) The date of the notice of reservation of funds;

175 (2) The identity of the governmental body issuing the
176 bonds;

177 (3) The date of inducement and the prospective date of
178 issuance;

179 (4) The name of the entity for which the bonds are to be
180 issued;

181 (5) The amount of the bond issue or, if the amount of the

182 bond issue for which a reservation of funds has been made
183 has been increased, the amount of the increase;

184 (6) The type of issue; and

185 (7) A description of the project for which the bonds are
186 to be issued.

187 (f) The development office shall accept the notice of
188 reservation of funds no earlier than the first calendar
189 workday of the year for which a reservation of funds is
190 sought: *Provided*, That a notice of reservation of funds
191 with respect to a project described in subdivision (4),
192 subsection (b) of this section or an energy producing
193 project that is eligible for a reservation of funds for a year
194 subsequent to the year in which the notice of reservation
195 of funds is submitted may contain an application for funds
196 from a subsequent year's state allocation. Upon receipt of
197 the notice of reservation of funds, the development office
198 shall immediately note upon the face of the notice the date
199 and time of reception.

200 (g) If the bond issue for which a reservation has been
201 made has not been finally closed within one hundred
202 twenty days of the date of the reservation to be made by
203 the committee, or the thirty-first day of December follow-
204 ing such date of reservation if sooner and a statement of
205 bond closure which has been executed by the clerk,
206 secretary, recorder or other appropriate official of the
207 governmental body reserving the same has not been
208 received by the development office within that time, then
209 the reservation shall expire and be deemed to have been
210 forfeited and the funds so reserved shall be released and
211 revert to the portion of the state allocation from which the
212 funds were originally reserved and shall then be made
213 available for other qualified issues in accordance with this
214 section and the Internal Revenue Code: *Provided*, That as
215 to any reservation for a nonexempt project or any reserva-
216 tion for a project described in subdivision (4), subsection
217 (b) of this section that is forfeited on or after the first day
218 of November in any calendar year, such reservation shall
219 revert to the state allocation for allocation by the indus-
220 trial revenue bond allocation review committee: *Provided*,

221 *however*, That as to any notice of reservation of funds
222 received by the development office during the month of
223 December in any calendar year with respect to any project
224 qualifying as an elective carry forward pursuant to
225 Section 146(f)(5) of the Internal Revenue Code, the notice
226 of reservation of funds and the reservation to which the
227 same relates shall not expire or be subject to forfeiture:
228 *Provided further*, That any unused state ceiling as of the
229 thirty-first day of December in any year not otherwise
230 subject to a carry forward pursuant to Section 146(f) of
231 the Internal Revenue Code shall be allocated to the West
232 Virginia housing development fund, which shall be
233 deemed to have elected to carry forward the unused state
234 ceiling for the purpose of issuing qualified mortgage
235 bonds, qualified mortgage credit certificates or bonds for
236 qualified residential rental projects, each as defined in the
237 Internal Revenue Code. All requests for subsequent
238 reservation of funds upon loss of a reservation pursuant to
239 this section shall be treated in the same manner as a new
240 notice of reservation of funds in accordance with subsec-
241 tions (d) and (e) of this section.

242 (h) Once a reservation of funds has been made for a
243 project described in subdivision (4), subsection (b) of this
244 section or for an energy producing project which relies, in
245 whole or in part, upon coal waste as fuel and otherwise
246 qualifies as a solid waste facility under Section 142(a)(6)
247 of the United States Internal Revenue Code of 1986,
248 notwithstanding the language of subsection (g) of this
249 section, the reservation shall remain fully available with
250 respect to such project until the first day of October in the
251 year from which the reservation was made at which time,
252 if the bond issue has not been finally closed, the reserva-
253 tion shall expire and be deemed forfeited and the funds so
254 reserved shall be released as provided in subsection (g) of
255 this section.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Randy Schoover
.....
Chairman Senate Committee

Nick Frantasia
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Carroll Adams
.....
Clerk of the Senate

Bugoy M. Bay
.....
Clerk of the House of Delegates

Earl Ray Terrell
.....
President of the Senate

.....
.....
Speaker House of Delegates

The within *is approved* this the *28th* day of *April*, 1997.

Jeff Anderson
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/21/97

Time 11:18 am