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2001 APR 30 P 4: 42

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

ENROLLED

Committee Substitute for
SENATE BILL NO. 692

(By Senator Tomblin, Mr. President and Clerk**)**

PASSED April 12, 2001

In Effect 90 days from **Passage**

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 692

(SENATORS TOMBLIN, MR. PRESIDENT,
AND CHAFIN, *original sponsors*)

[Passed April 12, 2001; in effect ninety days from passage.]

AN ACT to amend and reenact section twenty-one, article two-c, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to an increase in the allocation of the state ceiling for private activity bonds to the West Virginia housing development fund.

Be it enacted by the Legislature of West Virginia:

That section 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 to read as follows:

ARTICLE 2C. INDUSTRIAL DEVELOPMENT AND COMMERCIAL DEVELOPMENT BOND ACT.

§13-2C-21. Ceiling on issuance of private activity bonds; establishing procedure for allocation and disbursements; 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 may not exceed the ceiling established by Section 146(d) of
10 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; and (iii) that it is in
23 the best interest of this state and its citizens to facilitate
24 the acquisition, construction and equipping of projects
25 within designated empowerment zones and enterprise
26 communities by providing an orderly mechanism for the
27 commitment of the annual ceiling for private activity
28 bonds for these projects. It is hereby further determined
29 and declared as a matter of legislative finding: (i) That the
30 production of bituminous coal in this state has resulted in
31 coal waste which is stored in areas generally referred to as
32 gob piles; (ii) that gob piles are unsightly and have the
33 potential to pollute the environment in this state; (iii) that
34 the utilization of the materials in gob piles to produce

35 alternative forms of energy needs to be encouraged;
36 (iv) that Section 142(a)(6) of the United States Internal
37 Revenue Code of 1986 permits the financing of solid waste
38 disposal facilities through the issuance of private activity
39 bonds; and (v) that it is in the best interest of this state and
40 its citizens to facilitate the construction of facilities for the
41 generation of power through the utilization of coal waste
42 by providing an orderly mechanism for the commitment of
43 the annual ceiling for private activity bonds for these
44 projects.

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

52 (1) For the calendar year two thousand one, fifty million
53 dollars and for each subsequent calendar year, forty
54 percent of the state ceiling for that year shall be allocated
55 to the West Virginia housing development fund for the
56 purpose of issuing qualified mortgage bonds, qualified
57 mortgage certificates or bonds for qualified residential
58 rental projects;

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

64 (3) Thirty-five percent of the state allocation shall be set
65 aside by the development office to be made available for
66 lessees, purchasers or owners of proposed projects, hereaf-
67 ter in this section referred to as "nonexempt projects",
68 which do not qualify as exempt facilities as defined by
69 United States Internal Revenue Code. All reservations of
70 private activity bonds for nonexempt projects shall be

71 approved and awarded by the committee based upon an
72 evaluation of general economic benefit and any rule that
73 the council for community and economic development
74 promulgates pursuant to section three, article two, chapter
75 five-b of this code: *Provided*, That all requests or reserva-
76 tions of funds from projects described in this subsection
77 are submitted to the development office on or before the
78 first day of November of each calendar year: *Provided*,
79 *however*, That on the fifteenth day of November of each
80 calendar year the uncommitted portion of this part of the
81 state allocation, shall revert to and become part of the
82 state allocation portion described in subsection (g) of this
83 section; and

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

102 (c) The remaining fifty-five percent of the state alloca-
103 tion shall be made available for lessees, purchasers or
104 owners of proposed commercial or industrial projects
105 which qualify as exempt facilities as defined by Section
106 142(a) of the United States Internal Revenue Code. All
107 reservations of private activity bonds for exempt facilities

108 shall be approved and awarded by the committee based
109 upon an evaluation of general economic benefit and any
110 rule that the council for community and economic devel-
111 opment promulgates pursuant to section three, article two,
112 chapter five-b of this code: *Provided*, That no reservation
113 may be in an amount in excess of fifty percent of this
114 portion of the state allocation: *Provided, however*, That
115 all requests for reservations of funds from projects de-
116 scribed in this subsection shall be submitted to the devel-
117 opment office on or before the first day of November of
118 each calendar year: *Provided further*, That on the fif-
119 teenth day of November of each calendar year the uncom-
120 mitted portion of this part of the state allocation shall
121 revert to and become part of the state allocation portion
122 described in subsection (g) of this section.

123 (d) No reservation may be made for any project until the
124 governmental body seeking the reservation submits a
125 notice of reservation of funds as provided in subsection (e)
126 of this section. The governmental body shall first adopt an
127 inducement resolution approving the prospective issuance
128 of bonds and setting forth the maximum amount of bonds
129 to be issued. Each governmental body seeking a reserva-
130 tion of funds following the adoption of the inducement
131 resolution shall submit a notice of inducement signed by
132 its clerk, secretary or recorder or other appropriate official
133 to the development office. The notice shall include
134 information required by the development office pursuant
135 to any rule of the council for community and economic
136 development. Notwithstanding the foregoing, when a
137 governmental body proposes to issue bonds for the purpose
138 of: (i) Constructing, acquiring or equipping a project
139 described in subdivision (3) or (4), subsection (b) of this
140 section; or (ii) constructing an energy producing project
141 which relies, in whole or in part, upon coal waste as fuel,
142 to the extent the project qualifies as a solid waste facility
143 under Section 142(a)(6) of the United States Internal
144 Revenue Code of 1986, the project may be awarded a
145 reservation of funds from the state allocation available for

146 three years subsequent to the year in which the notice of
147 reservation of funds is submitted, at the discretion of the
148 executive director of the development office: *Provided*,
149 That no discretionary reservation may be made for any
150 single project described in this subsection in an amount in
151 excess of thirty-five percent of the state allocation avail-
152 able for the year subsequent to the year in which the
153 request is made. A discretionary reservation of the state
154 allocation for a project described in this subsection may
155 not be granted by the executive director of the develop-
156 ment office unless the project for which the request is
157 made has received a certification from the federal energy
158 regulatory commission as a qualifying facility or a
159 cogeneration project.

160 (e) Currently with or following the submission of its
161 notice of inducement, the governmental body at any time
162 considered expedient by it may submit its notice of
163 reservation of funds which shall include the following
164 information:

- 165 (1) The date of the notice of reservation of funds;
- 166 (2) The identity of the governmental body issuing the
167 bonds;
- 168 (3) The date of inducement and the prospective date of
169 issuance;
- 170 (4) The name of the entity for which the bonds are to be
171 issued;
- 172 (5) The amount of the bond issue or, if the amount of the
173 bond issue for which a reservation of funds has been made
174 has been increased, the amount of the increase;
- 175 (6) The type of issue; and
- 176 (7) A description of the project for which the bonds are
177 to be issued.

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

191 (g) If the bond issue for which a reservation has been
192 made has not been finally closed within one hundred
193 twenty days of the date of the reservation to be made by
194 the committee, or the thirty-first of December following
195 the date of reservation if sooner and a statement of bond
196 closure which has been executed by the clerk, secretary,
197 recorder or other appropriate official of the governmental
198 body reserving the bond issue has not been received by the
199 development office within that time, then the reservation
200 shall expire and be considered to have been forfeited and
201 the funds reserved shall be released and revert to the
202 portion of the state allocation from which the funds were
203 originally reserved and shall then be made available for
204 other qualified issues in accordance with this section and
205 the Internal Revenue Code: *Provided*, That as to any
206 reservation for a nonexempt project or any reservation for
207 a project described in subdivision (4), subsection (b) of this
208 section that is forfeited on or after the first day of Novem-
209 ber in any calendar year, the reservation shall revert to the
210 state allocation for allocation by the industrial revenue
211 bond allocation review committee: *Provided, however*,
212 That as to any notice of reservation of funds received by
213 the development office during the month of December in
214 any calendar year with respect to any project qualifying as
215 an elective carry forward pursuant to Section 146(f)(5) of

216 the Internal Revenue Code, the notice of reservation of
217 funds and the reservation to which the notice relates may
218 not expire or be subject to forfeiture: *Provided further,*
219 That any unused state ceiling as of the thirty-first day of
220 December in any year not otherwise subject to a carry
221 forward pursuant to Section 146(f) of the Internal Revenue
222 Code shall be allocated to the West Virginia housing
223 development fund which shall be considered to have
224 elected to carry forward the unused state ceiling for the
225 purpose of issuing qualified mortgage bonds, qualified
226 mortgage credit certificates or bonds for qualified residen-
227 tial rental projects, each as defined in the Internal Revenue
228 Code. All requests for subsequent reservation of funds
229 upon loss of a reservation pursuant to this section shall be
230 treated in the same manner as a new notice of reservation
231 of funds in accordance with subsections (d) and (e) of this
232 section.

233 (h) Once a reservation of funds has been made for a
234 project described in subdivision (4), subsection (b) of this
235 section or for an energy producing project which relies, in
236 whole or in part, upon coal waste as fuel and otherwise
237 qualifies as a solid waste facility under Section 142(a)(6)
238 of the United States Internal Revenue Code of 1986,
239 notwithstanding the language of subsection (g) of this
240 section, the reservation shall remain fully available with
241 respect to the project until the first day of October in the
242 year from which the reservation was made at which time,
243 if the bond issue has not been finally closed, the reserva-
244 tion shall expire and be considered forfeited and the funds
245 reserved are released as provided in subsection (g) of this
246 section.

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

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *30th*
Day of *April*, 2001.

[Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/24/01

Time 11:20am