

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 831

BY SENATORS SWOPE AND CLINE

[Introduced February 17, 2020; referred
to the Committee on Economic Development]

1 A BILL to amend and reenact §31-15-5 and §31-15-6 of the Code of West Virginia, 1931, as
2 amended, all relating to clarifying the ability of the Economic Development Authority Board
3 of Directors to enter into any contracts necessary to carry out its duties; clarifying the ability
4 of the board of directors to delegate to the executive director the authority to enter into
5 said contracts; and to clarify the exemption from the requirements to use the Purchasing
6 Division for contracts made in furtherance of the agency's statutory purpose.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

**§31-15-5. West Virginia Economic Development Authority; composition; appointment;
terms; delegation of authority by chairman; voting; compensation and expenses.**

1 (a) The West Virginia Economic Development Authority is continued as a body corporate
2 and politic, constituting a public corporation and government instrumentality.

3 (b) The authority shall be composed of a board of members consisting of a chairman, who
4 shall be the Governor, or his or her designated representative, the Tax Commissioner and seven
5 members who shall be appointed by the Governor, by and with the advice and consent of the
6 Senate, and who shall be broadly representative of the geographic regions of the state. One
7 member of the House of Delegates to be appointed by the speaker and one member of the Senate
8 to be appointed by the president shall serve on the board in an advisory capacity as ex officio,
9 nonvoting members. The board shall direct the exercise of all the powers given to the authority in
10 this article. The Governor shall also be the chief executive officer of the authority, and shall
11 designate the treasurer and the secretary of the board.

12 (c) As appointments expire, each subsequent appointment shall be for a full four-year
13 term. Any member whose term has expired shall serve until his or her successor has been duly
14 appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired
15 term. Any member is eligible for reappointment.

16 (d) The Governor may, by written notice filed with the secretary of the authority, from time
17 to time, delegate to any subordinate the power to represent him or her at any meeting of the
18 authority. In that case, the subordinate has the same power and privileges as the Governor and
19 may vote on any question.

20 (e) Members of the authority are not entitled to compensation for services performed as
21 members, but are entitled to reimbursement for all reasonable and necessary expenses actually
22 incurred in the performance of their duties.

23 (f) A majority of the members constitutes a quorum for the purpose of conducting business.
24 Except in the case of a loan or insurance application or unless the bylaws require a larger number,
25 action may be taken by majority vote of the members present. Approval or rejection of a loan or
26 insurance application shall be made by majority vote of the full membership of the board.

27 (g) The board shall manage the property and business of the authority and may prescribe,
28 amend, adopt, and repeal bylaws and rules and regulations governing the manner in which the
29 business of the authority is conducted.

30 (h) The board shall, without regard to the provisions of civil service laws applicable to
31 officers and employees of the State of West Virginia, appoint any necessary managers, assistant
32 managers, officers, employees, attorneys, and agents for the transaction of its business, fix their
33 compensation, define their duties, and provide a system of organization to fix responsibility and
34 promote efficiency. Any appointee of the board may be removed at the discretion of the board.
35 The authority may reimburse any state spending unit for any special expense actually incurred in
36 providing any service or the use of any facility to the authority.

37 (i) The board may delegate to the executive director the authority to make and execute all
38 contracts and other agreements or instruments necessary for the exercise of its powers or to carry
39 out its corporate purpose.

40 (†) (j) In cases of any vacancy in the office of a voting member, the vacancy shall be filled
41 by the Governor. Any member appointed to fill a vacancy in the board occurring prior to the

42 expiration of the term for which his or her predecessor was appointed shall be appointed for the
43 remainder of the term.

44 ~~(j)~~ (k) The Governor may remove a member in the case of incompetence, neglect of duty,
45 gross immorality, or malfeasance in office and may declare the member's office vacant and
46 appoint a person for the vacancy as provided in other cases of vacancy.

47 ~~(k)~~ (l) The secretary of the board shall keep a record of the proceedings of the board and
48 perform any other duties determined appropriate by the board. The treasurer shall be custodian
49 of all funds of the authority and shall be bonded in the amount designated by other members of
50 the board.

§31-15-6. General powers of authority.

1 The authority, as a public corporation and governmental instrumentality exercising public
2 powers of the state, shall have and may exercise all powers necessary or appropriate to carry out
3 the purposes of this article, including the power:

4 (a) To cooperate with industrial development agencies in efforts to promote the expansion
5 of industrial, commercial, manufacturing, and tourist activity in this state.

6 (b) To determine, upon the proper application of an industrial development agency or an
7 enterprise, whether the declared public purposes of this article have been or will be accomplished
8 by the establishment by such agency or enterprise of a project in this state.

9 (c) To conduct examinations and investigations and to hear testimony and take proof,
10 under oath or affirmation, at public or private hearings, on any matter relevant to this article and
11 necessary for information on the establishment of any project.

12 (d) To issue subpoenas requiring the attendance of witnesses and the production of books
13 and papers relevant to any hearing before such authority or one or more members appointed by
14 it to conduct any hearing.

15 (e) To apply to the circuit court having venue of such offense to have punished for
16 contempt any witness who refuses to obey a subpoena, to be sworn or affirmed or to testify or
17 who commits any contempt after being summoned to appear.

18 (f) To authorize any member of the authority to conduct hearings, administer oaths, take
19 affidavits and issue subpoenas.

20 (g) To financially assist projects by insuring obligations in the manner provided in this
21 article through the use of the insurance fund.

22 (h) To finance any projects by making loans to industrial development agencies or
23 enterprises upon such terms as the authority shall deem appropriate: *Provided*, That nothing
24 contained in this subsection or under any other provision in this article shall be construed as
25 permitting the authority to make loans for working capital: *Provided, however*, That nothing
26 contained in this article shall be construed as prohibiting the authority from insuring loans for
27 working capital made to industrial development agencies or to enterprises by financial institutions:
28 *Provided further*, That nothing contained in this subsection or any other provision of this article
29 shall be construed as permitting the authority to refinance existing debt except when such
30 refinancing will result in the expansion of the enterprise whose debt is to be refinanced or in the
31 creation of new jobs.

32 (i) To issue revenue bonds or notes to fulfill the purposes of this article, and to secure the
33 payment of such bonds or notes, all as hereinafter provided.

34 (j) To issue and deliver revenue bonds or notes in exchange for a project.

35 (k) To borrow money for its purposes and issue bonds or notes for the money and provide
36 for the rights of the holders of the bonds or notes or other negotiable instruments, to secure the
37 bonds or notes by a deed of trust on, or an assignment or pledge of, any or all of its property and
38 property of the project, including any part of the security for loans, and the authority may issue
39 and sell its bonds and notes, by public or private sale, in such principal amounts as it shall deem

40 necessary to provide funds for any purposes under this article, including the making of loans for
41 the purposes set forth in this article.

42 (l) To maintain such sinking funds and reserves as the board shall determine appropriate
43 for the purposes of meeting future monetary obligations and needs of the authority.

44 (m) To sue and be sued, implead and be impleaded, and complain and defend in any
45 court.

46 (n) To adopt, use, and alter at will a corporate seal.

47 (o) To make, amend, repeal, and adopt both bylaws and rules and regulations for the
48 management and regulation of its affairs.

49 (p) To appoint officers, agents, and employees and to contract for and engage the services
50 of consultants.

51 (q) To make contracts of every kind and nature to execute all instruments necessary or
52 convenient for carrying on its business: Provided, That the provisions of §5A-3-3 of this code do
53 not apply to contracts made pursuant to this subdivision.

54 (r) To accept grants and loans from and enter into contracts and other transactions with
55 any federal agency.

56 (s) To take title by conveyance or foreclosure to any project where acquisition is necessary
57 to protect any loan previously made by the authority and to sell, by public or private sale, transfer,
58 lease, or convey such project to any enterprise.

59 (t) To participate in any reorganization proceeding pending pursuant to the United States
60 Code (being the act of Congress establishing a uniform system of bankruptcy throughout the
61 United States, as amended) or in any receivership proceeding in a state or federal court for the
62 reorganization or liquidation of an enterprise. The authority may file its claim against any such
63 enterprise in any of the foregoing proceedings, vote upon any questions pending therein which
64 requires the approval of the creditors participating in any reorganization proceeding or
65 receivership, exchange any evidence of such indebtedness for any property, security or evidence

66 of indebtedness offered as a part of the reorganization of such enterprise or of any other entity
67 formed to acquire the assets thereof and may compromise or reduce the amount of any
68 indebtedness owing to it as a part of any such reorganization.

69 (u) To acquire, construct, maintain, improve, repair, replace, and operate projects within
70 this state, as well as streets, roads, alleys, sidewalks, crosswalks, and other means of ingress
71 and egress to and from projects located within this state.

72 (v) To acquire, construct, maintain, improve, repair, and replace and operate pipelines,
73 electric transmission lines, waterlines, sewer lines, electric power substations, waterworks
74 systems, sewage treatment and disposal facilities, and any combinations thereof for the use and
75 benefit of any enterprise located within this state.

76 (w) To acquire watersheds, water and riparian rights, rights-of-way, easements, licenses,
77 and any and all other property, property rights, and appurtenances for the use and benefit of any
78 enterprise located within this state.

79 (x) To acquire, by purchase, lease, donation, or eminent domain, any real or personal
80 property, or any right or interest therein, as may be necessary or convenient to carry out the
81 purposes of the authority. Title to all property, property rights, and interests acquired by the
82 authority shall be taken in the name of the authority.

83 (y) To issue renewal notes, or security interests, to issue bonds to pay notes or security
84 interests and, whenever it deems refunding expedient, to refund any bonds or notes by the
85 issuance of new bonds or notes, whether the bonds or notes to be refunded have or have not
86 matured and whether or not the authority originally issued the bonds or notes to be refunded.

87 (z) To apply the proceeds from the sale of renewal notes, security interests or refunding
88 bonds or notes to the purchase, redemption, or payment of the notes, security interests or bonds
89 or notes to be refunded.

90 (aa) To accept gifts or grants of property, funds, security interests, money, materials, labor,
91 supplies, or services from the United States of America or from any governmental unit or any

92 person, firm, or corporation, and to carry out the terms or provisions of, or make agreements with
93 respect to, or pledge, any gifts or grants, and to do any and all things necessary, useful, desirable,
94 or convenient in connection with the procuring, acceptance, or disposition of gifts or grants.

95 (bb) To the extent permitted under its contracts with the holders of bonds, security
96 interests, or notes of the authority, to consent to any modification of the rate of interest, time of
97 payment of any installment of principal or interest, security or any other term of any bond, security
98 interests, note or contract or agreement of any kind to which the authority is a party.

99 (cc) To sell loans, security interests, or other obligations in the loan portfolio of the
100 authority. Such security interests shall be evidenced by instruments issued by the authority.
101 Proceeds from the sale of loans, security interests, or other obligations may be used in the same
102 manner and for the same purposes as bond and note revenues.

103 (dd) To procure insurance against any losses in connection with its property, operations,
104 or assets in such amounts and from such insurers as the authority deems desirable.

105 (ee) To sell, license, lease, mortgage, assign, pledge, or donate its property, both real and
106 personal, or any right or interest therein to another or authorize the possession, occupancy, or
107 use of such property or any right or interest therein by another, in such manner and upon such
108 terms as it deems appropriate.

109 (ff) To participate with the state and federal agencies in efforts to promote the expansion
110 of commercial and industrial development in this state.

111 (gg) To finance, organize, conduct, sponsor, participate, and assist in the conduct of
112 special institutes, conferences, demonstrations, and studies relating to the stimulation and
113 formation of business, industry, and trade endeavors.

114 (hh) To conduct, finance, and participate in technological, business, financial, and other
115 studies related to business and economic development.

116 (ii) To conduct, sponsor, finance, participate, and assist in the preparation of business
117 plans, financing plans, and other proposals of new or established businesses suitable for support
118 by the authority.

119 (jj) To prepare, publish, and distribute, with or without charge as the authority may
120 determine, such technical studies, reports, bulletins, and other materials as it deems appropriate,
121 subject only to the maintenance and respect for confidentiality of client proprietary information.

122 (kk) To exercise such other and additional powers as may be necessary or appropriate for
123 the exercise of the powers herein conferred.

124 (ll) To exercise all of the powers which a corporation may lawfully exercise under the laws
125 of this state.

126 (mm) To contract for the provision of legal services by private counsel and,
127 notwithstanding the provisions of §5-3-1 *et seq.* of this code, such counsel may, but is not limited
128 to, represent the authority in court, negotiate contracts and other agreements on behalf of the
129 authority, render advice to the authority on any matter relating thereto, prepare contracts and
130 other agreements, and provide such other legal services as may be requested by the authority.

131 (nn) To develop, maintain, operate, and apply for the establishment of foreign trade zones
132 pursuant to and in accordance with all applicable provisions of federal law.

133 (oo) To exercise the powers and responsibilities previously vested in the State Building
134 Commission by ~~section eleven a, article six, chapter five~~ §5-6-11a of this code, including, but not
135 limited to, the authority to refund bonds issued in accordance with said section.

NOTE: The purpose of this bill is to clarify that the West Virginia Economic Development Authority or its Executive Director may enter into and execute all contracts and other instruments necessary to carry out its statutory purpose without meeting Purchasing Division requirements for contracts.

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