

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

Senate Bill 534

BY SENATORS TARR, PLYMALE, NELSON, AND STOLLINGS

[Originating in the Committee on Finance; reported on

March 24, 2021]

1 A BILL to amend and reenact §12-6C-11 of the Code of West Virginia, 1931, as amended; and to
2 amend and reenact §31-15-6 and §31-15-20 of said code, all relating generally to
3 economic development loans and loan insurance issued by the state; clarifying provision
4 stating that the Board of Treasury Investments has no fiduciary duty with regard to
5 economic development loans administered by the Economic Development Authority;
6 providing that the Board of Treasury Investments may inspect and copy, upon written
7 notice, all records related to loans made available by the board to the Economic
8 Development Authority; increasing the revolving loan capacity from the Board of Treasury
9 Investments to the Economic Development Authority to an amount not to exceed \$250
10 million; authorizing the Economic Development Authority to make working capital loans
11 from a revolving loan fund capitalized with federal grant funds including those federal grant
12 funds received from the United States Economic Development Administration; and
13 clarifying that the authority is not authorized to enter into contracts or agreements with
14 financial institutions for banking goods or services without the approval of the State
15 Treasurer.

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. ~~The Legislature further finds and declares that an investment in the West Virginia~~
8 ~~Enterprise Capital Fund, LLC, of moneys in the Consolidated Fund as hereinafter provided will~~
9 ~~assist in creating jobs and businesses within the state and provide the needed risk capital to assist~~
10 ~~business and industrial development. This section is enacted in view of these findings.~~

11 (b) The West Virginia Board of Treasury Investments shall make available, subject to a
12 liquidity determination, in the form of a revolving loan, up to ~~\$175-~~\$250 million from the
13 Consolidated Fund to loan the West Virginia Economic Development Authority for business or
14 industrial development projects authorized by ~~section seven, article fifteen, chapter thirty one~~ §31-
15 15-7 of this code, and to consolidate existing loans authorized to be made to the West Virginia
16 Economic Development Authority pursuant to this section and pursuant to ~~section twenty, article~~
17 ~~fifteen, chapter thirty one~~ §31-15-20 of this code, which authorizes a ~~\$175-~~\$250 million revolving
18 loan and ~~article eighteen-b of said chapter~~ §31-18B-1 et seq. of this code, which authorizes a \$50
19 million investment pool: *Provided*, That the West Virginia Economic Development Authority may
20 not loan more than \$15 million for any one business or industrial development project. The
21 revolving loan authorized by this subsection shall be secured by one note at a variable interest
22 rate equal to the 12-month average of the board's yield on its ~~cash liquidity~~ West Virginia Money
23 Market pool. The rate shall be set on July 1 and adjusted annually on the same date. The
24 maximum annual adjustment may not exceed one percent. Monthly payments made by the West
25 Virginia Economic Development Authority to the board shall be calculated on a 120-month
26 amortization. The revolving loan is secured by a security interest that pledges and assigns the
27 cash proceeds of collateral from all loans under this revolving loan pool. The West Virginia
28 Economic Development Authority may also pledge as collateral certain revenue streams from
29 other revolving loan pools which source of funds does not originate from federal sources or from
30 the board.

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

37 (d) The interest rates and maturity dates on the loans made by the West Virginia Economic
38 Development Authority for business and industrial development projects authorized by ~~section~~
39 ~~seven, article fifteen, chapter thirty one~~ §31-15-7 of this code shall be at competitive rates and
40 maturities as determined by the West Virginia Economic Development Authority Board.

41 (e) Any and all outstanding loans made by the West Virginia Board of Treasury
42 Investments, or any predecessor entity, to the West Virginia Economic Development Authority
43 are refundable by proceeds of the revolving loan contained in this section and the board shall
44 make no loans to the West Virginia Economic Development Authority pursuant to ~~section twenty,~~
45 ~~article fifteen, chapter thirty one~~ §31-15-20 of this code or ~~article eighteen b of said chapter~~ §31-
46 18B-1 et seq. of this code.

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

49 ~~(g) Subject to cash availability, the board shall make available to the West Virginia~~
50 ~~Economic Development Authority, from the Consolidated Fund, a nonrecourse loan in an amount~~
51 ~~up to \$25 million, for the purpose of the West Virginia Economic Development Authority making~~
52 ~~a loan or loans from time to time to the West Virginia Enterprise Advancement Corporation, an~~
53 ~~affiliated nonprofit corporation of the West Virginia Economic Development Authority. The~~
54 ~~respective loans authorized by this subsection by the board to the West Virginia Economic~~
55 ~~Development Authority to the West Virginia Enterprise Advancement Corporation shall each be~~
56 ~~evidenced by one note and shall each bear interest at the rate of three percent per annum. The~~

57 ~~proceeds of any and all loans made by the West Virginia Economic Development Authority to the~~
58 ~~West Virginia Enterprise Advancement Corporation pursuant to this subsection shall be invested~~
59 ~~by the West Virginia Enterprise Corporation in the West Virginia Enterprise Capital Fund, LLC,~~
60 ~~the manager of which is the West Virginia Enterprise Advancement Corporation. The loan to West~~
61 ~~Virginia Economic Development Authority authorized by this subsection shall be nonrevolving,~~
62 ~~and advances under the loan shall be made at times and in amounts requested or directed by the~~
63 ~~West Virginia Economic Development Authority, upon reasonable notice to the board. The loan~~
64 ~~authorized by this subsection is not subject to or included in the limitations set forth in subsection~~
65 ~~(b) of this section with respect to the \$15 million limitation for any one business or industrial~~
66 ~~development project and limitation of one hundred three percent of outstanding loans, and may~~
67 ~~not be included in the revolving fund loan principal balance for purposes of calculating the loan~~
68 ~~amortization in subsection (b) of this section. The loan authorized by this subsection to the West~~
69 ~~Virginia Economic Development Authority shall be classified by the board as a long-term fixed~~
70 ~~income investment, shall bear interest on the outstanding principal balance of the loan at the rate~~
71 ~~of three percent per annum payable annually on or before June 30 of each year, and the principal~~
72 ~~of which shall be repaid no later than June 30, 2022, in annual installments due on or before June~~
73 ~~30 of each year. The annual installments, which need not be equal shall commence no later than~~
74 ~~June 30, 2005, in annual principal amounts agreed upon between the board and the West Virginia~~
75 ~~Economic Development Authority. The loan authorized by this subsection shall be nonrecourse~~
76 ~~and shall be payable by the West Virginia Economic Development Authority solely from amounts~~
77 ~~or returns received by the West Virginia Economic Development Authority in respect of the loan~~
78 ~~authorized by this subsection to the West Virginia Enterprise Advancement Corporation, whether~~
79 ~~in the form of interest, dividends, realized capital gains, return of capital or otherwise, in all of~~
80 ~~which the board shall have a security interest to secure repayment of the loan to the West Virginia~~
81 ~~Economic Development Authority authorized by this subsection. Any and all loans from the West~~
82 ~~Virginia Enterprise Advancement Corporation made pursuant to this subsection shall also bear~~

83 ~~interest on the outstanding principal balance of the loan at the rate of three percent per annum~~
84 ~~payable annually on or before June 30 of each year, shall be nonrecourse and shall be payable~~
85 ~~by the West Virginia Enterprise Advancement Corporation solely from amounts of returns~~
86 ~~received by the West Virginia Enterprise Advancement Corporation in respect to its investment in~~
87 ~~the West Virginia Enterprise Capital Fund, LLC, whether in the form of interest, dividends, realized~~
88 ~~capital gains, return of capital or otherwise, in all of which that board shall have a security interest~~
89 ~~to secure repayment of the loan to the West Virginia Economic Development Authority authorized~~
90 ~~by this subsection. In the event the amounts or returns received by the West Virginia Enterprise~~
91 ~~Corporation in respect to its investment in the West Virginia Enterprise Capital Fund, LLC, are not~~
92 ~~adequate to pay when due the principal or interest installments, or both, with respect to the loan~~
93 ~~authorized by this subsection by the board to the West Virginia Economic Development Authority,~~
94 ~~the principal or interest, or both, as the case may be, due on the loan made to the West Virginia~~
95 ~~Economic Development Authority pursuant to this subsection shall be deferred and any and all~~
96 ~~past due principal and interest payments shall promptly be paid to the fullest extent possible upon~~
97 ~~receipt by the West Virginia Enterprise Advancement Corporation of moneys in respect to its~~
98 ~~investments in the West Virginia Enterprise Capital Fund, LLC. The directors or the board shall~~
99 ~~bear no fiduciary responsibility as provided in section thirteen of this article with regard to the loan~~
100 ~~authorized by this subsection.~~

101 ~~(h) Notwithstanding any provision in this code to the contrary, subject to a liquidity~~
102 ~~determination and cash availability, the board shall make available to the West Virginia Economic~~
103 ~~Development Authority, from the Consolidated Fund, in the form of a nonrecourse revolving loan,~~
104 ~~\$50 million, for the purpose of insuring the payment or repayment of all or any part of the principal,~~
105 ~~the redemption or prepayment premiums or penalties on, and interest on any form of debt~~
106 ~~instrument entered into by an enterprise, public body or authority of the state with a financial~~
107 ~~institution, including, but not limited to, banks, insurance companies and other institutions in the~~
108 ~~business of lending money, as authorized and as set forth in section eight, article fifteen, chapter~~

109 ~~thirty one of this code, but only for the purpose of providing insurance on such debt instruments~~
110 ~~relating solely to the deployment of broadband under said section: *Provided*, That the West~~
111 ~~Virginia Economic Development Authority may not insure more than \$10 million for any one~~
112 ~~enterprise, public body or authority of the state in any single calendar year. The loan authorized~~
113 ~~by this subsection may not be included in the revolving fund loan principal balance for purposes~~
114 ~~of calculating the loan amortization in subsection (b) of this section. The loan authorized by this~~
115 ~~subsection shall be classified by the board as a long term fixed income investment, and shall bear~~
116 ~~interest on the outstanding principal balance of the loan at a variable interest rate equal to the~~
117 ~~twelve month average of the board's yield on its cash liquidity pool. The rate shall be set on July~~
118 ~~1, 2017, and adjusted quarterly during each year thereafter. The maximum annual adjustment~~
119 ~~may not exceed one percent. Quarterly, the West Virginia Economic Development Authority shall~~
120 ~~make a payment sufficient to pay in full all accrued interests on the loan for the prior quarter. The~~
121 ~~loan authorized by this subsection is nonrecourse and is payable by the West Virginia Economic~~
122 ~~Development Authority solely from moneys received by the West Virginia Economic Development~~
123 ~~Authority in respect to insured debt instruments relating to providing broadband service under~~
124 ~~section eight, article fifteen, chapter thirty one of this code. Upon payment in full of any said~~
125 ~~insured debt instruments, the West Virginia Economic Development Authority shall reduce the~~
126 ~~outstanding balance of the loan by a like amount. Additionally, quarterly, the West Virginia~~
127 ~~Economic Development Authority shall determine the outstanding balance of all such insured debt~~
128 ~~instruments and shall accordingly adjust the outstanding balance of the loan to equal the~~
129 ~~outstanding obligations of the West Virginia Economic Development Authority for all said insured~~
130 ~~debt instruments. The loan is hereby secured by a security interest that pledges and assigns the~~
131 ~~cash proceeds of all collateral securing all insurance agreements entered into by the authority~~
132 ~~respecting debt instruments relating to the deployment of broadband under said section. In the~~
133 ~~event moneys received by the West Virginia Economic Development Authority respecting any~~
134 ~~individual insured debt instrument relating to providing broadband service under said section is~~

135 insufficient to pay when due the principal or interest installments, or both, with respect to the loan
136 authorized by this subsection by the board to the authority, the principal or interest, or both, as
137 the case may be, due on the loan made to the authority pursuant to this subsection shall be
138 deferred and any and all past due principal and interest payments shall promptly be paid to the
139 fullest extent possible upon receipt by the authority of all moneys respecting said debt
140 instruments. The directors of the board bear no fiduciary responsibility as provided in section
141 thirteen of this article with regard to the loan authorized by this subsection.

142 (g) Inspection of records. — Within 30 days of receiving a written request from the board,
143 the authority shall provide the board with the opportunity to inspect and copy any records in the
144 custody of the authority related to any loan issued by the board to the authority or any loan from
145 the authority to a third party funded by a loan issued by the board. Records to be made available
146 pursuant to this subsection include, but are not limited to, accounting records, loan applications,
147 loan agreements, board minutes, audit reports, and transaction records. Records of the authority
148 held, from time to time, by the board pursuant to this subsection that are exempt from disclosure
149 pursuant to the provisions of §31-15-22 of this code or §29B-1-1 et seq. of this code shall remain
150 so while held by the board.

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§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: *And provided further*, That nothing contained in this subsection or any other

32 provision of this article shall be construed as prohibiting the authority from making working capital
33 loans from a revolving loan fund capitalized with federal grant funds including, but not limited to,
34 federal grant funds received from the United States Economic Development Administration.

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

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

38 (k) To borrow money for its purposes and issue bonds or notes for the money and provide
39 for the rights of the holders of the bonds or notes or other negotiable instruments, to secure the
40 bonds or notes by a deed of trust on, or an assignment or pledge of, any or all of its property and
41 property of the project, including any part of the security for loans, and the authority may issue
42 and sell its bonds and notes, by public or private sale, in such principal amounts as it shall deem
43 necessary to provide funds for any purposes under this article, including the making of loans for
44 the purposes set forth in this article.

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

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

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

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

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

54 (q) To make contracts of ~~every kind and nature to~~ and to execute all instruments
55 ~~necessary or convenient for carrying on its business:~~ to carry out the powers and duties of the
56 authority, as provided in this article: *Provided*, That the provisions of §5A-3-3 of this code do not
57 apply to contracts made pursuant to this subdivision: *Provided, however*, That nothing in this

58 article authorizes the authority to enter into contracts or agreements with financial institutions, as
59 that term is defined in §31A-1-2 of this code, for banking goods or services without approval of
60 the State Treasurer, in accordance with §12-1-1 et seq. of this code.

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

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

66 (t) To participate in any reorganization proceeding pending pursuant to the United States
67 Code (being the act of Congress establishing a uniform system of bankruptcy throughout the
68 United States, as amended) or in any receivership proceeding in a state or federal court for the
69 reorganization or liquidation of an enterprise. The authority may file its claim against any such
70 enterprise in any of the foregoing proceedings, vote upon any questions pending therein which
71 requires the approval of the creditors participating in any reorganization proceeding or
72 receivership, exchange any evidence of such indebtedness for any property, security, or evidence
73 of indebtedness offered as a part of the reorganization of such enterprise or of any other entity
74 formed to acquire the assets thereof and may compromise or reduce the amount of any
75 indebtedness owing to it as a part of any such reorganization.

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

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

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

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

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

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

97 (aa) To accept gifts or grants of property, funds, security interests, money, materials, labor,
98 supplies, or services from the United States of America or from any governmental unit or any
99 person, firm, or corporation, and to carry out the terms or provisions of, or make agreements with
100 respect to, or pledge, any gifts or grants, and to do any and all things necessary, useful, desirable,
101 or convenient in connection with the procuring, acceptance, or disposition of gifts or grants.

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

106 (cc) To sell loans, security interests, or other obligations in the loan portfolio of the
107 authority. Such security interests shall be evidenced by instruments issued by the authority.

108 Proceeds from the sale of loans, security interests, or other obligations may be used in the same
109 manner and for the same purposes as bond and note revenues.

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

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

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

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

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

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

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

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

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

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

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

140 (oo) To exercise the powers and responsibilities previously vested in the State Building
141 Commission by §5-6-11a of this code including, but not limited to, the authority to refund bonds
142 issued in accordance with said section.

§31-15-20. Authority of the Board of Treasury Investments.

1 The Board of Treasury Investments shall, under the provisions of this article, invest
2 moneys, securities, and other assets of the special account for the common investment of state
3 funds designated as the state account within the special investment fund designated as the
4 consolidated fund established under the provisions of ~~subsection (b), section eight, article six,~~
5 ~~chapter twelve~~ §12-6-8(b) of this code as a revolving loan fund with the authority, to enable the
6 authority to make loans approved by the authority and to be funded from such consolidated fund
7 in an amount which shall not at any time exceed ~~\$150~~ \$250 million in the aggregate principal
8 amount outstanding. With respect to loans funded under this article through the consolidated fund
9 of the state, such loans shall be made in the name of the consolidated fund by the authority.