WEST virginia legislature

2022 regular session

ENROLLED

Senate Bill 729

By Senators Tarr, Sypolt, Baldwin, Brown, Clements, Geffert, Hamilton, Jeffries, Maroney, Martin, Nelson, Plymale, Roberts, Stollings, and Swope

[Passed March 12, 2022; in effect from passage]

AN ACT to repeal §31‑15‑20 of the Code of West Virginia, 1931, as amended; to amend and reenact §12‑6C‑11 of said code; to amend said code by adding thereto a new section, designated §12‑6C‑11b; and to amend said code by adding thereto a new section, designated §31‑15‑23a, all relating generally to funding for infrastructure and economic development projects in the state; discontinuing the revolving loan from the Board of Treasury Investments to the Economic Development Authority upon the authority’s receipt of an appropriation by the Legislature; requiring the Board of Treasury Investments to make a revolving loan available to the Department of Transportation; establishing a special revenue fund to receive loan moneys; permitting the Secretary of Transportation to make certain expenditures of loan moneys; requiring the secretary to reimburse the fund upon receipt of federal reimbursement moneys; providing when moneys in the fund will revert to the Consolidated Fund; establishing reporting requirements related to the fund; allowing the Board of Treasury Investments to inspect records related to the fund; defining terms; establishing a special revenue fund to receive moneys appropriated to the Economic Development Authority; allowing the authority to invest the moneys in the fund; providing that a certain amount of moneys in the fund be used for high impact economic development projects; establishing accounting and auditing standards related to the fund; and establishing project status reporting requirements related to the fund.

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.**

(b) Subject to a liquidity determination, the West Virginia Board of Treasury Investments shall make a revolving loan available to the West Virginia Economic Development Authority in an amount of up to $200 million. The revolving loan shall be used for business or industrial development projects authorized by §31-15-7 of this code and to consolidate existing loans authorized to be made to the West Virginia Economic Development Authority pursuant to this section and pursuant to §31-15-20 of this code which authorizes a $150 million revolving loan and §31-18B-1 *et seq*. of this code which authorizes a $50 million investment pool: *Provided*, That the West Virginia Economic Development Authority may not loan more than $15 million for any one business or industrial development project. The revolving loan authorized by this subsection shall be secured by one note at a variable interest rate equal to 50 percent of the West Virginia Economic Development Authority’s weighted average interest rate for outstanding loans in the Business and Industrial Development Loan Program authorized by §31-15-7 of this code. The rate may not be lower than 1.50 percent and must be reset on July 1 of each year. Monthly payments made by the West Virginia Economic Development Authority to the board shall be calculated on a 120-month amortization. The revolving loan is secured by a security interest that pledges and assigns the cash proceeds of collateral from all loans under this revolving loan pool. The West Virginia Economic Development Authority may also pledge as collateral certain revenue streams from other revolving loan pools which source of funds does not originate from federal sources or from the board.

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

(d) The interest rates and maturity dates on the loans made by the West Virginia Economic Development Authority for business and industrial development projects authorized by §31-15-7 of this code shall be at competitive rates and maturities as determined by the West Virginia Economic Development Authority Board.

(e) Any and all outstanding loans made by the West Virginia Board of Treasury Investments, or any predecessor entity, to the West Virginia Economic Development Authority are refundable by proceeds of the revolving loan contained in this section and the board shall make no loans to the West Virginia Economic Development Authority pursuant to §31-15-20 of this code or §31-18B-1 *et seq*. of this code.

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

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

(h) Notwithstanding any other provision of this code to the contrary, the West Virginia Economic Development Authority shall pay to the West Virginia Board of Treasury Investments the entire outstanding balance of the revolving loan authorized by this section within 30 days of the balance in the Economic Development Project Fund created in §31-15-23a of this code becoming $600 million or more. Upon the repayment of the outstanding loan balance, the revolving loan authorized by this section shall terminate and no additional loan moneys shall be made available to the West Virginia Economic Development Authority pursuant to this section.

**§12‑6C‑11b. Infrastructure investment reimbursement fund.**

(a) The West Virginia Board of Treasury Investments shall make available to the Department of Transportation, subject to a liquidity determination, a revolving loan of up to $200 million from the Consolidated Fund for the purposes authorized by this section. The loan moneys shall be deposited in a special revenue fund, known as the Infrastructure Investment Reimbursement Fund.

(b) The Board of Treasury Investments shall make the loan moneys authorized by this section available upon receipt of the following:

(1) A written request by the Secretary of the Department of Transportation that the board deposit a specific amount of loan moneys, subject to the limitations provided in this section, into the Infrastructure Investment Reimbursement Fund;

(2) A written statement by the Secretary of the Department of Transportation certifying that the Department of Transportation will use the loan moneys for expenditures meeting the requirements of subsection (c) of this section; and

(3) Copies of any available documents demonstrating that the planned expenditures of loan moneys meet the requirements of subsection (c) of this section, including but not limited to any agreement or contract entered into by the Department of Transportation and the federal government.

(c) The Secretary of the Department of Transportation may authorize expenditures from the Infrastructure Investment Reimbursement Fund that qualify for cost reimbursement according to an agreement with the federal government pursuant to the Infrastructure Investment and Jobs Act, Public Law 117-58, 135 Stat. 429 (2021): *Provided,* That the secretary may also authorize expenditures to political subdivisions of the state pursuant to agreements they may have with the federal government pursuant to the Infrastructure Investment and Jobs Act, Public Law 117-58, 135 Stat. 429 (2021). If the federal reimbursement to the Department of Transportation or a political subdivision of the state pursuant to an agreement is less than 100 percent of the amount that must be expended by the secretary or political subdivision, the secretary may only request an amount equal to the expected reimbursement.

(d) Upon receiving moneys from the federal government to reimburse for expenditures from the Infrastructure Investment Reimbursement Fund, the Secretary of the Department of Transportation or political subdivision shall immediately reimburse the Infrastructure Investment Reimbursement Fund in an amount equal to the pro rata amount the expenditure from the fund is to the whole reimbursement payment.

(e) Any balance remaining in the fund at the end of each fiscal year shall be transferred to the Consolidated Fund. If, at any time during a fiscal year, the secretary determines that the balance in the fund exceeds the amount required for expenditures authorized in subsection (c) of this section, the secretary shall provide notice of said determination to the Board of Treasury Investments and the balance of the fund shall be transferred to the Consolidated Fund.

(f) The secretary shall prepare and submit a quarterly report to the Joint Committee on Government and Finance, the Board of Treasury Investments, and the Governor which shall include, at a minimum:

(1) The aggregate outstanding amount of the loan authorized by this section; and

(2) For each project for which loan moneys were expended, the status of the project, the estimated completion date of the project, the amount of loan moneys expended for the project, the amount of state road moneys expended for the project, the amount of federal reimbursement moneys received for the project, and the remaining amount of federal reimbursement moneys projected to be received for the project.

(g) Upon request of the Board of Treasury Investments, the Secretary of the Department of Transportation shall provide the board with the opportunity to inspect and copy any records in the custody of the Department related to any transaction involving the Infrastructure Investment Reimbursement Fund. Records to be made available pursuant to this subsection include, but are not limited to, accounting records, contracts or agreements, audit reports, and transaction records.

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

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

[Repealed].

**§31‑15‑23a. Economic Development Project Fund.**

(a) For the purposes of this section, the term “high impact development project” means a project meeting the following criteria, according to a resolution adopted in a meeting of the authority:

(1) The project has been approved for financing by the authority in an amount of $50 million or greater;

(2) The development agency or enterprise undertaking the project will privately invest an amount of $50 million or greater in the project; and

(3) The project is reasonably projected to create 200 or more jobs in the state.

(b) There is hereby created a special revenue fund in the State Treasury known as the Economic Development Project Fund. Expenditures from the fund shall be for the purposes set forth in this section and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1 *et seq.* of this code. The fund shall consist of all moneys appropriated to the Economic Development Authority during the regular session of the Legislature, 2022, from available revenue surplus funds, transfers from the Industrial Development Loans (fund 9061), any earnings or interest accruing to said fund, and any other moneys appropriated to said fund by the Legislature.

(c) The Economic Development Authority shall transfer all funds in the Industrial Development Loans (fund 9061) to the Economic Development Project Fund created by this section and any loan repayments or other amounts that would otherwise have been paid into the Industrial Development Loans (fund 9061) shall be paid into the Economic Development Project Fund created by this section.

(d) The authority may use moneys in the Economic Development Project Fund to finance projects of industrial development agencies or enterprises according to the requirements of this article: *Provided,* That a minimum of $400 million in the fund must be reserved to finance high impact development projects.

(e) The authority shall keep itemized records of all fund transactions and agreements entered into in furtherance of Economic Development Project Fund expenditures. In administering the fund, the authority shall adopt appropriate accounting practices and internal controls, including but not limited to, strict compliance with the requirements of §5A‑8‑9 of this code.Fund transactions shall be subject to an annual audit by an independent firm of certified public accountants.

(f) The authority shall prepare and submit to the Joint Committee on Government and Finance and the Governor an annual report addressing the status of each project with outstanding financing issued pursuant to this section. The report shall, at a minimum, provide project-specific data addressing:

(1) The outstanding amount of authority financing for each project;

(2) The total amount of private investment in each project;

(3) The number of jobs created by each project since the project’s inception; and

(4) The number of jobs maintained by each project.