

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2202

By Delegates Hornbuckle and Young

[Introduced January 11, 2023; Referred to the Committee
on Economic Development and Tourism then Finance]

1 A BILL to amend and reenact §31-15-6 of the Code of West Virginia, 1931, as amended, relating to
 2 the West Virginia Economic Development Authority; and its obligation to provide effective
 3 technical and business advisory services to African-Americans and minority-owned and-
 4 operated enterprises that are available under the Community Development and Financial
 5 Institutions Act of 1994 and the Federal emergency Capital Investment Program (ECIP)
 6 established by the Consolidated Appropriations Act of 2021.

Be it enacted by the Legislature of West Virginia:

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~~ the authority or one or more members appointed
 14 by it to conduct any hearing.

15 (e) To apply to the circuit court having venue of such offense to have punished for contempt
 16 any witness who refuses to obey a subpoena, to be sworn or affirmed or to testify or who commits
 17 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~~ consider appropriate: *Provided*, That
24 nothing contained in this subsection or under any other provision in this article shall may be
25 construed as permitting the authority to make loans for working capital: *Provided, however*, That
26 nothing contained in this article shall may be construed as prohibiting the authority from insuring
27 loans for working capital made to industrial development agencies or to enterprises by financial
28 institutions: *Provided further*, That nothing contained in this subsection or any other provision of
29 this article shall may be construed as permitting the authority to refinance existing debt except
30 when such refinancing will result in the expansion of the enterprise whose debt is to be refinanced
31 or in the creation of new jobs: *And provided further*, That nothing contained in this subsection or
32 any other provision of this article shall may be construed as prohibiting the authority from making
33 working capital loans from a revolving loan fund capitalized with federal grant funds including, but
34 not limited to, federal grant funds received from the United States Economic Development
35 Administration.

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

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

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

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

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

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

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

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

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

55 (q) To make contracts and to execute all instruments necessary to carry out the powers
56 and duties of the authority, as provided in this article: *Provided*, That the provisions of §5A-3-3 of
57 this code do not apply to contracts made pursuant to this subdivision: *Provided, however*, That
58 nothing in this article authorizes the authority to enter into contracts or agreements with financial
59 institutions, as that term is defined in §31A-1-2 of this code, for banking goods and services
60 without approval of 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 any
62 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 the 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 and
78 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, or
111 assets in such amounts and from such insurers as the authority ~~deems~~ considers 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 as
115 it deems appropriate.

116 (ff) To participate with the state and federal agencies in efforts to promote the expansion of
117 commercial and industrial development in this state and to fulfil the purposes of the West Virginia
118 Economic Development Authority as specifically stated in §31-15-3 of this code by recognizing
119 that an urgent need exists to encourage and assist African-Americans and minority business
120 ownership and higher employment and that such aid and financial assistance is available under
121 the Community Development and Financial Institutions Act of 1994 and the Federal emergency

122 Capital Investment Program (ECIP) established by the Consolidated Appropriations Act of 2021.

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

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

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

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

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

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

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

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

146 (oo) To exercise the powers and responsibilities previously vested in the State Building
147 Commission by §5-6-11a of this code, including, but not limited to, the authority to refund bonds

148 issued in accordance with ~~said~~ that section.

NOTE: The purpose of this bill is to state the obligation of the West Virginia Economic Development Authority to provide effective technical and business advisory services to African-Americans and minority-owned and-operated enterprises that are available under the Community Development and Financial Institutions Act of 1994 and the Federal emergency Capital Investment Program (ECIP) established by the Consolidated Appropriations Act of 2021.

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