

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5370

By Delegate Dillon

[Introduced January 30, 2024; Referred to the
Committee on Economic Development and Tourism
then the Judiciary]

1 A BILL to amend and reenact §31-15-6 of the Code of West Virginia, 1931, as amended, relating to
 2 a legislative finding that citizens and businesses should be the priority of any attempt at
 3 economic development or stimulus; and requiring that agreements with a business entity
 4 for purposes of incentivizing economic development or economic stimulus to contain a
 5 binding statement of commitment to hire 90 percent of employees for West Virginia
 6 locations from citizens of West Virginia.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

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

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

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

6 (2) 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 (3) 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 (4) 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 it
 14 to conduct any hearing.

15 (5) 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 (6) To authorize any member of the authority to conduct hearings, administer oaths, take
19 affidavits, and issue subpoenas.

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

22 (8) 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 (9) 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 (10) To issue and deliver revenue bonds or notes in exchange for a project.

38 (11) 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 and
42 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 (12) 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 (13) To sue and be sued, implead and be impleaded, and complain and defend in any
48 court.

49 (14) To adopt, use, and alter a corporate seal.

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

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

54 (17) To make contracts and to execute all instruments necessary to carry out the powers
55 and duties of the authority, as provided in this article: *Provided*, That the provisions of §5A-3-3 of
56 this code do not apply to contracts made pursuant to this subdivision: *Provided, however*, That
57 nothing in this article authorizes the authority to enter into contracts or agreements with financial
58 institutions, as that term is defined in §31A-1-2 of this code, for banking goods and services
59 without approval of the State Treasurer, in accordance with §12-1-1 *et seq.* of this code.

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

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

65 (20) To participate in any reorganization proceeding pending pursuant to the United States
66 Code (being the act of Congress establishing a uniform system of bankruptcy throughout the
67 United States, as amended) or in any receivership proceeding in a state or federal court for the
68 reorganization or liquidation of an enterprise. The authority may file its claim against any such
69 enterprise in any of the foregoing proceedings, vote upon any questions pending therein which

70 requires the approval of the creditors participating in any reorganization proceeding or
71 receivership, exchange any evidence of such indebtedness for any property, security, or evidence
72 of indebtedness offered as a part of the reorganization of such enterprise or of any other entity
73 formed to acquire the assets thereof and may compromise or reduce the amount of any
74 indebtedness owing to it as a part of any such reorganization.

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

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

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

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

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

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

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

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

105 (29) To sell loans, security interests, or other obligations in the loan portfolio of the
106 authority. Such security interests shall be evidenced by instruments issued by the authority.
107 Proceeds from the sale of loans, security interests, or other obligations may be used in the same
108 manner and for the same purposes as bond and note revenues.

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

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

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

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

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

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

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

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

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

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

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

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

142 (42) To manage the Jobs Investment Trust described in §12-7-1 *et seq.* of this code, and to
143 exercise those powers and responsibilities previously vested in the Jobs Investment Trust Board,
144 as outlined in §12-7-6 of this code.

145 (b) Notwithstanding any provision of this code to the contrary, the Legislature finds that
146 West Virginia's citizens and businesses should be the priority of any attempt at economic
147 development or stimulus. Therefore, neither the West Virginia Economic Development Authority,

148 nor any agency or authority of state or local government, nor political subdivision, may enter into
149 an agreement with a business entity for purposes of incentivizing economic development or
150 economic stimulus unless that entity provides written proof of ability and a legally binding
151 statement of commitment to hire 90 percent of employees for West Virginia locations from persons
152 who have been citizens and residents of West Virginia for at least two years prior to their date of
153 hire. This requirement may not be waived for any reason: *Provided*, That the 90 percent
154 requirement shall remain in effect for as long as the business entity maintains an operating
155 location in West Virginia: *Provided, however*, That business entities which fail to maintain
156 compliance with this requirement shall refund any previous monetary support provided by the
157 State of West Virginia.

NOTE: The purpose of this bill is to declare a legislative finding that citizens and businesses should be the priority of any attempt at economic development or stimulus; and to require that agreements with a business entity for purposes of incentivizing economic development or economic stimulus to contain a binding statement of commitment to hire 90 percent of employees for West Virginia locations from citizens of West Virginia.

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