

ENROLLED

Senate Bill No. 169

(By Senators Browning and Plymale)

[Passed March 13, 2010; in effect ninety days from passage.]

AN ACT to amend and reenact §31-15-2 and §31-15-4 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §31-15-12b, all relating to the West Virginia Economic Development Authority; adding legislative findings; defining terms; and providing requirements for loan criteria for loans to tourism projects.

Be it enacted by the Legislature of West Virginia:

That §31-15-2 and §31-15-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §31-15-12b, all to read as follows:

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-2. Legislative findings.

It is hereby determined and declared as a matter of legislative finding:

- (a) That unemployment exists in many areas of the state and may well come about, from time to time, in other areas of the state;
- (b) That in some areas of the state, unemployment is a serious problem and has been for so long a period of time that, without remedial measures, it may become so in other areas of the state;
- (c) That economic insecurity due to unemployment is a serious menace to the health, safety, morals and general welfare of the people of the entire state;
- (d) That widespread industry unemployment produces indigency which falls with crushing force upon all unemployed workers and ultimately upon the state in the form of welfare and unemployment compensation;
- (e) That the absence of employment and business opportunities for youth is a serious threat to the strength and permanence of their faith in our American political and economic institutions and the philosophy of freedom on which those institutions are based;
- (f) That lack of employment and business opportunities has resulted in thousands of

workers and their families leaving the state to find such opportunities elsewhere and that this exodus has adversely affected the tax base of counties and municipalities resulting in an impairment of their financial ability to support education and other local government services;

(g) That security against unemployment and the spread of indigency and economic stagnation can best be provided by the promotion, attraction, stimulation, rehabilitation and revitalization of commerce, tourism, industry and manufacturing;

(h) That the present and future health, safety, morals, right to gainful employment and general welfare of the people of the state require as a public purpose the promotion and development of new and expanded coal and other energy production, industrial, commercial, tourist and manufacturing enterprises within this state;

(i) That the means and measures being authorized for the financing of projects, including the insuring of loans or other debt issued for working capital or the refinancing of existing debt of an enterprise, are, as a matter of public policy, for the public purposes of the several counties, municipalities and the state;

(j) That the device under which private community industrial development organizations in the state acquire or build industrial buildings or sites and equip the same with funds raised through popular subscription, loans or otherwise for lease and sale to new or expanding industries has proven effective in creating new employment and business opportunities locally, is in accord with the American tradition of community initiative and enterprise and requires and deserves encouragement and support from the state as a means toward alleviation of unemployment and economic distress; (k) That community industrial development corporations in the state have invested substantial funds in successful coal production, industrial projects and are experiencing difficulty in undertaking additional projects by reason of the partial inadequacy of their own funds potentially available from local subscription sources and by reason of limitations of local financial institutions in providing additional and sufficiently sizable first deed of trust or mortgage loans or letters of credit and other forms of credit enhancement;

(l) That minority business ownership, especially among African-Americans in the area of Charleston, West Virginia, is proportionately less than minority business ownership nationwide and statewide, the unemployment rate for African-Americans recently has been about twice the unemployment rate for caucasians and significantly higher in some counties with a greater concentration of African-Americans and an urgent need exists to encourage African-Americans and minority business ownership and higher employment;

(m) That an urgent need exists to stimulate a larger flow of private investment funds from banks, investment houses, insurance companies and other financial institutions into projects;

(n) That by increasing the number of projects presenting attractive opportunities for private investment, a larger portion of the private capital available in this state for

investment can be put to use for the general economic development of the state;

(o) That the availability of financial assistance through the creation of an insurance fund will promote the economic development of the state; and that it is in the public interest, in order to address the needs aforesaid, that a state instrumentality be created as a public body corporate with full powers to accept grants, gifts and appropriations, to generate revenues, to borrow money and issue its bonds, notes, commercial paper, other debt instruments and security interests to the end that funds obtained thereby may be used to furnish money and credit to approved industrial development agencies or enterprises or to promote the establishment of new projects or to retain existing projects;

(p) That tourism is one of the mainstays of the state's economy and has a high potential for growth;

(q) That the success of tourism projects should not be measured so much in the number of jobs or capital created, but in the value created by patrons of such projects and their ancillary economic contributions to the state; and

(r) That the authority must consider the uniqueness of tourism in the state's economic picture in determining participation of tourism projects under this article.

§31-15-4. Definitions.

Unless the context clearly indicates otherwise, as used in this article:

(a) "Authority" means the West Virginia Economic Development Authority;

(b) "Board" means the governing body of the authority;

(c) "Board of investments" means the board of investments established by article six, chapter twelve of this code;

(d) "Bonds" means bonds or other debt instruments of the authority issued under this article, whether the interest thereon is taxable or tax-exempt for federal income tax purposes;

(e) "Business plan" means a document detailing the sales, production and distribution plans of an enterprise, together with the expenditures necessary to carry out those plans (including budget and cash flow projections) on an annual basis, and an employment plan setting forth steps to be taken by the enterprise to retain jobs or reduce unemployment in this state;

(f) "Costs of establishing an industrial development project" means the cost of acquiring existing facilities, cost of machinery, cost of equipment and fixtures, the cost of construction, including with out limitation, cost of improvements, repairs, and renovations, costs of all lands, water areas, property rights and easements, financing charges, interest prior to and during construction, cost of architectural, engineering, legal and financial or other consulting services, plans, site assessments, site remediation costs, specifications and surveys, estimates of costs and any other expenses necessary or incident to determining the feasibility or practicability of any project, together with such other costs and expenses as may be necessary or incidental

to the financing and the construction or acquisition of the project and the placing of the same in operation;

(g) "County" means any county of this state;

(h) "Enterprise" means an entity which is or proposes to be engaged in this state in any business activity for profit. The entity may be owned, operated, controlled or under the management of a person, partnership, corporation, trust, community-based development organization or council, local commerce group, employee stock ownership plan, pension or profit-sharing plan, a group of participating employees who desire to own an entity which does not presently exist, or any similar entity or organization;

(i) "Federal agency" means the United States of America and any department, corporation, agency or instrumentality created, designated or established by the United States of America;

(j) "Financing plan" means a plan designed to meet the financing needs of an enterprise as reflected in the business plan; (k) "Fund" means the Economic Development Fund provided in section twenty-three of this article;

(l) "Government" means state and federal government, and any political subdivision, agency or instrumentality thereof, corporate or otherwise;

(m) "Industrial development agency" means any incorporated organization, foundation, association or agency to whose members or shareholders no profit inures, which has as its primary function the promotion, encouragement and development of industrial, commercial, manufacturing and tourist enterprises or projects in this state;

(n) "Insurance fund" means the insurance fund created in this article;

(o) "Loan" means an extension of financing by the authority to an industrial development agency or an enterprise, including, but not limited to, a loan, a lease or an installment sale;

(p) "Municipality" means any city or town in this state;

(q) "Notes" means any notes, including commercial paper, of the authority issued under this article whether the interest thereon is taxable or tax-exempt for federal income tax purposes;

(r) "Project" means a commercial or industrial undertaking and all of the assets reasonably and necessarily required therefor, all as determined by the authority, which determination shall be conclusive, and shall include, without limiting the generality of the foregoing, industrial projects and commercial projects as presently defined in section three, article two-c, chapter thirteen;

(s) "Revenues" means all fees, premiums, charges, moneys, profits, payment or principal of or interest on, loans and other investments, gifts, grants, appropriations, contributions and all other income derived or to be derived by the authority under this article;

(t) "Security interest" means an interest in the loan portfolio of the authority which interest is secured by an underlying loan or loans and is evidenced by a note issued by

the authority; and

(u) "Tourism project" means a commercial undertaking which receives or projects to receive more than seventy-five percent of its revenue from nonresident sources and is not a retail operation.

§31-15-12b. Tourism projects; criteria for loans.

Notwithstanding any other provision of this article to the contrary, in developing criteria for loans to a tourism project under this article, the authority shall consider many factors including, but not limited to, whether any specific number of jobs are or will be created by the project, whether any existing jobs or jobs to be created by the project are to meet any specific compensation levels, or whether any existing jobs or jobs to be created by the project provide any specific employee benefits: *Provided*, That no tourism project may be denied a loan for the sole reason that a specific number of jobs will not be created by the project or that existing jobs or jobs to be created by the project will not meet specific compensation levels or offer any specific employee benefits. Any criteria for a loan application for a tourism project under this article shall include a requirement that the applicant provide a jobs impact statement with information as required by the authority.