# WEST VIRGINIA CODE CHAPTER 18 ARTICLE 12B

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## §18-12B-1. Board of regents authorized to issue revenue bonds for certain capital improvements; payment of relocation costs.

The West Virginia board of regents shall have authority, as provided in this article, to issue revenue bonds of the state from time to time, either to finance the cost of major renovations, repairs and safety upgrading and providing new capital improvements consisting of facilities, buildings and structures, for those state institutions of higher education as determined by resolution of the board of regents, including any college, university or community college under its supervision, management and control, or to refund, at the discretion of the board of regents, bonds issued and outstanding under and pursuant to the provisions of this article or article eleven-b of this chapter, or both. Such major renovations, repairs and safety upgrading and capital improvements may, in each case, include land for current or future use in connection therewith and equipment and machinery and other similar items essential or convenient in connection with the foregoing but shall not include such items as books, fuel, supplies or other items which are customarily deemed to result in a current operating charge. The principal of, interest and redemption premium, if any, on such bonds shall be payable solely from the special fund herein provided for such payment. The costs of any such major renovations, repairs and safety upgrading and capital improvements shall include the cost of acquisition of land, the construction and acquisition of any such major renovations, repairs and safety upgrading and capital improvements and equipment and machinery therefor, and the provision of roads, utilities, and other services necessary, appurtenant or incidental to the foregoing; and shall also include all other charges or expenses necessary, appurtenant or incidental to the construction, acquisition, and financing including, but not limited to, debt service reserve requirements and capitalized interest, and placing in operation of any such major renovations, repairs and safety upgrading and capital improvements: Provided, That from time to time but not later than March 1, 1978, the board shall issue and sell bonds pursuant to this article in an amount which, when combined with cash available under the provisions of section two of this article, will be sufficient to finance the costs of the following purposes and projects:

(1) Refunding of all bonds issued and outstanding under and pursuant to the provisions of article eleven-b of this chapter;

(2) A building to house the music, arts and theatre programs at Shepherd College, at a cost not to exceed $2,500,000;

(3) A field house at West Liberty State College at a cost not to exceed ,700,000;

(4) A shop and laboratory building at West Virginia State College at a cost not to exceed ,600,000;

(5) A multipurpose physical education facility at Marshall University, at a cost not to exceed 18,000,000;

(6) A new football stadium at West Virginia University (at a different location than the

existing stadium) at a cost not to exceed 20,000,000; and

(7) An all-purpose shell building for sports and physical education at West Virginia University, at a cost not to exceed $4,500,000.

In the event that private real property is acquired in connection with the above enumerated projects or any board projects initiated on or after July 1, 1988, the board shall reimburse individuals, families and business concerns for relocation costs incurred as a consequence of being displaced by such acquisition. With respect to payment of such relocation costs, the board shall follow the same procedure and be subject to the same limitations as required for the commissioner of highways under section twenty, article two-a, chapter seventeen of this code and regulations promulgated pursuant thereto.

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**§18-12B-2. State system tuition fee special capital improvements fund in State Treasury; collections to be paid into special fund; authority of board of regents to pledge such collections as security for revenue bonds; authority of board to finance projects on a cash basis.**

There is created in the State Treasury a state system tuition fee special capital improvements fund to be expended by the board of regents for the benefit of the state institutions of higher education, which shall include any college, university or community college under its supervision, management and control.

On and after July 1, 1977, the board of regents may periodically transfer from the special nonrevolving West Virginia University capital improvements fund created in the State Treasury pursuant to the provisions of article eleven-b of this chapter and from the special nonrevolving Marshall University capital improvements fund created in the State Treasury pursuant to the provisions of article twelve-a of this chapter, into the state system tuition fee special capital improvements fund moneys in excess of the amount pledged for the payment of the principal of, interest and redemption premium, if any, on any revenue bonds or revenue refunding bonds issued pursuant to such articles eleven-b or twelve-a prior to July 1, 1977. Said Marshall University capital improvements fund is hereby continued notwithstanding the retirement of outstanding bonds issued pursuant to such article twelve-a, but on and after July 1, 1977, no bonds shall be issued pursuant to article twelve-a, nor shall any moneys be expended (unless the board of regents shall by board action have made a commitment with respect thereto) pursuant to such article twelve-a. On and after July 1, 1977, there shall be paid directly into such state system tuition fee special capital improvements fund subject to the prior lien and pledge, if any, of outstanding bonds issued pursuant to the provisions of articles eleven-b and twelve-a of this chapter all tuition fees collected under the provisions of section one, article twenty-four, chapter eighteen of this code, from students at West Virginia and Marshall Universities; and on and after July 1, 1978, in addition to said fees from students at West Virginia University and Marshall University (and subject to said prior lien and pledge, if any) there shall be paid directly into such state system tuition fee special capital improvements fund all tuition fees collected under the provisions of section one, article twenty-four, chapter eighteen of this code, from students at all other state institutions of higher education which are under the supervision, management and control of the board of regents: Provided, That tuition fees from students at community colleges shall not be paid into the state system tuition fee special capital improvements fund unless the board shall otherwise determine by resolution.

The board of regents shall have authority to pledge all or such part of the revenues and tuition fees paid into the state system tuition fee special capital improvements fund as may be needed to meet the requirements of any revenue bond issue or issues authorized by this article, including the payment of principal of, interest and redemption premium, if any, on such revenue bonds, the establishing and maintaining of a reserve fund or funds for the payment of the principal of, interest and redemption premium, if any, on such revenue bond issue or issues when other moneys pledged may be insufficient therefor and including such

additional protective pledge of revenues and fees as the board of regents in its discretion may provide by resolution authorizing the issue of such bonds and in any trust agreement made in connection therewith, and the board of regents may further provide in such resolution and in such trust agreement, for such priorities on the revenues and fees paid into such state system tuition fee special capital improvements fund as may be necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this article.

Any balance remaining in the state system tuition fee special capital improvements fund after the board of regents has issued bonds authorized by this article, and after the requirements of all funds including reserve funds established in connection with the bonds issued pursuant to this article have been satisfied, may be used (i) for the redemption of any of the outstanding bonds issued hereunder which by their terms are then redeemable, or for the purchase of such bonds at the market price, but at not exceeding the price, if any, at which such bonds shall in the same year be redeemable, and all bonds redeemed or purchased shall forthwith be canceled and shall not again be issued or (ii) for any lawful purpose for which the board of regents may expend funds.

The board of regents, in its discretion, may use the moneys in such state system tuition fee special capital improvements fund to finance the cost of projects and purposes on a cash basis. Any pledge of moneys in such fund for revenue bonds shall be a prior and superior charge on such fund over the use of any of the moneys in such fund to pay for the cost of any project or purpose on a cash basis: Provided, That except for the projects and purposes expressly enumerated in section one of this article, any expenditures from such fund, other than for the retirement of revenue bonds, may only be made by the board to meet the cost of a predetermined capital improvements program for one or more of the state institutions of higher education, in such order or priority as shall have been agreed upon by the board of regents and presented to the Governor for inclusion in the annual budget bill, and only with the approval of the Legislature as indicated by direct appropriation for the purpose.

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## §18-12B-3. Board of regents to fix and collect fees.

The board of regents shall fix, establish, maintain and collect the tuition fees provided for in section one, article twenty-four, chapter eighteen of this code, from students at all state institutions of higher education other than (unless the board of regents shall otherwise determine by resolution) tuition fees from students attending community colleges, in amounts at least sufficient, at all times, after depositing (subject to, or until termination of, the lien and pledge referred to in section two of this article) in the special nonrevolving Marshall University capital improvements fund, and the special nonrevolving West Virginia University capital improvements fund referred to in section two of this article such tuition fees as are now required to be deposited therein pursuant to section one, article twenty-four, chapter eighteen of this code, to provide revenues for deposit in the state system tuition fee special capital improvements fund which are adequate to pay the principal of, interest and redemption premium, if any, on the bonds authorized to be issued pursuant to this article as the same mature and become due and to make all reserve and other payments to be required by the proceedings which authorize such bonds, and to provide any additional protective pledge of revenues and fees and reserve or other payments as the board of regents may in its discretion require by the resolution authorizing any issue of bonds pursuant to this article and any trust agreement made in connection therewith, and to make all other payments required by this article or any such proceedings, resolutions or trust agreements.

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## §18-12B-4. Issuance of revenue bonds; use of proceeds; bonds exempt from taxation.

The issuance of revenue bonds under the provisions of this article shall be authorized from time to time by resolution or resolutions of the board of regents, which shall set forth the proposed major renovations, repairs and safety upgrading and capital improvements authorized by section one of this article; and shall provide for the issuance of bonds in amounts sufficient, when sold as hereinafter provided, to provide moneys deemed by the board of regents sufficient to pay such costs, less the amounts of any other funds available for said costs from any other moneys of the board of regents available therefor or from any appropriation, grant or gift therefor. Such resolution shall prescribe the rights and duties of the bondholders and the board of regents, and for such purpose may prescribe the form of the trust agreement hereinafter referred to. The bonds may be issued from time to time, in such amounts, shall be of such series, bear such date or dates, mature at such time or times not exceeding forty years from their respective dates, bear interest at such rate or rates; be in such denominations; be in such form, either coupon or registered, carrying such registration, exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places within or without the state; be subject to such terms of redemption at such prices not exceeding one hundred five percent of the principal amount thereof; and be entitled to such priorities on the revenues and fees paid into the state system tuition fee special capital improvements fund as may be provided in the resolution authorizing the issuance of the bonds or in any trust agreement made in connection therewith. The bonds shall be signed by the Governor, and by the president or vice president of the board of regents, under the great seal of the state, attested by the Secretary of State, and the coupons attached thereto shall bear the facsimile signature of the president or vice president of the board of regents. In case any of the officers whose signatures appear on the bonds or coupons cease to be such officers before the delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes the same as if such officers had remained in office until such delivery. Such revenue bonds shall be sold in such manner as the board of regents may determine to be for the best interests of the state.

Any pledge of funds and fees for such revenue bonds made by the board of regents shall be valid and binding between the parties from the time the pledge is made; and the funds so pledged shall immediately be subject to the lien of such pledge without any further physical delivery thereof or further act. The lien of such pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise, irrespective of whether such parties have notice of the lien of such pledge, and such pledge shall be a prior and superior charge over any other use of such funds so pledged.

The proceeds of such bonds shall be used solely for the payment of the cost of those major renovations, repairs and safety upgrading and capital improvements as generally and specifically set forth in section one of this article, and shall be deposited in the State Treasury in a special fund to be disbursed as provided by law for the disbursement of any other state funds. If the proceeds of such bonds, by error in calculations or otherwise, shall

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be less than the cost of such major renovations, repairs and safety upgrading and capital improvements, additional bonds may in like manner be issued to provide the amount of the deficiency; and unless otherwise provided for in the resolution or trust agreement hereinafter mentioned, such additional bonds shall be deemed to be of the same issue, and shall be entitled to payment from the same fund, without preference or priority, as the bonds before issued for major renovations, repairs and safety upgrading and capital improvements. If the proceeds of bonds issued for such major renovations, repairs and safety upgrading and capital improvements shall exceed the cost thereof, the surplus may be used for such other capital improvements as the board of regents may determine or in such other manner as the resolution authorizing such bonds may provide. Prior to the preparation of definitive bonds, the board may, under like restrictions, issue temporary bonds with or without coupons, exchangeable for definitive bonds upon the issuance of such definitive bonds. The term "cost," as used in this section, shall be deemed to include all of the items contemplated by the use of that term in section one of this article.

After the issuance of any of such revenue bonds, the tuition fees at the state institutions of higher education pledged therefor shall not be reduced as long as any of such revenue bonds are outstanding and unpaid except under such terms, provisions and conditions as shall be contained in the resolution, trust agreement or other proceedings under which such revenue bonds were issued.

Such revenue bonds and the revenue refunding bonds, and bonds issued for combined purposes shall, together with the interest thereon, be exempt from all taxation by the State of West Virginia, or by any county, school district, municipality or political subdivision thereof.

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## §18-12B-5. Issuance of revenue refunding bonds; use of moneys; power to enter into escrow agreements; call for redemption.

The issuance of revenue refunding bonds under the provisions of this article shall be authorized by resolution of the board of regents and shall otherwise be subject to the limitations, conditions and provisions of section four of this article. Such revenue refunding bonds may be issued in an amount at the option of the board of regents sufficient to pay either in full or together with interest earned on the investment of the proceeds thereof, whether or not at the time of the issuance of the revenue refunding bonds the hereafter mentioned bonds are payable or callable for optional redemption, (1) the principal of any outstanding bonds heretofore issued pursuant to the provisions of article eleven-b of this chapter or this article (hereinafter referred to as the "outstanding bonds"); (2) the redemption premium, if any, on such outstanding bonds or the prior redemption thereof; (3) the interest due and payable on such outstanding bonds to and including the first date upon which said outstanding bonds are callable prior to maturity, not exceeding, however, ten years from the date of issuance of such revenue refunding bonds, or the dates upon which the principal of said outstanding bonds mature before such first date on which the same are callable prior to maturity, including any interest theretofore accrued and unpaid; and (4) all expenses of the issuance and sale of said revenue refunding bonds, including all necessary financial and legal expenses, and also including the creation of initial debt service reserve funds. Any moneys in funds pledged with respect to the outstanding bonds may be used for any or all of the purposes stated in (1), (2), (3) and (4) above or may be deposited in a sinking fund or reserve fund or other funds for the issue of bonds which have been issued wholly or in part for the purpose of such refunding. Such amount of the proceeds of the revenue refunding bonds as shall be sufficient for the payment of the principal of, interest and redemption premium, if any, on such outstanding bonds which will not be immediately due and payable shall be deposited in trust, for the sole purpose of making such payments, with the treasurer of the State of West Virginia or the state sinking fund commission. Any of the moneys so deposited in trust may, prior to the date on which such moneys will be needed for the payment of principal of, interest and redemption premium, if any, on such outstanding bonds, be invested and reinvested as determined by the board of regents, in whole or in part: (a) In direct obligations issued by the United States of America or one of its agencies or in direct obligations of the State of West Virginia, (b) in obligations unconditionally guaranteed by the United States of America as to principal and interest, or (c) in certificates of deposit of a banking corporation or association which is a member of the federal deposit insurance corporation, or successor; but any such certificates of deposit must be fully secured as to both principal and interest by pledged collateral consisting of direct obligations of or obligations guaranteed by the United States of America, or direct obligations of the State of West Virginia, having a market value, excluding accrued interest, at all times at least equal to the amount of the principal of and accrued interest on such certificates of deposit. Any such investments must mature, or be payable in advance of maturity at the option of the holder, and must bear interest in such manner as to provide funds which, together with uninvested money, will be sufficient to pay when due or called for redemption the bonds refunded, together with interest accrued and to accrue thereon and

redemption premiums, if any, and such refunding bonds' proceeds or obligations so purchased therewith shall be deposited in escrow and held in trust for the payment and redemption of the bonds refunded: Provided, That if interest earned by any investment in such escrow is shown to be in excess of the amounts required from time to time for the payment of interest on and principal of the refunded bonds, including applicable redemption premium, then such excess may be withdrawn from escrow and disbursed in such manner as the board of regents shall by resolution determine, subject to the provisions of section two of this article. Any moneys in the sinking or reserve funds or other funds maintained for the outstanding bonds to be refunded may be applied in the same manner and for the same purpose as are the net proceeds of refunding bonds or may be deposited in the special fund or any reserve funds established for account of the refunding bonds.

The authority to issue revenue refunding bonds shall be in addition to any other authority to refund bonds conferred by law.

The board of regents shall have power to enter into such escrow agreements and to insert therein such protective and other covenants and provisions as it may consider necessary to permit the carrying out of the provisions of this article and to insure the prompt payment of principal of and interest and redemption premiums on the revenue bonds refunded.

Where any revenue bonds to be refunded are not to be surrendered for exchange or payment and are not to be paid at maturity with escrowed obligations, but are to be paid from such source prior to maturity pursuant to call for redemption exercised under a right of redemption reserved in such revenue bonds, the board of regents shall, prior to the issuance of the refunding bonds, determine which redemption date or dates shall be used, call such revenue bonds for redemption and provide for the giving of the notice of redemption required by the proceedings authorizing such revenue bonds. Where such notice is to be given at a time subsequent to the issuance of the refunding bonds, the necessary notices may be deposited with the state sinking fund commission or the bank acting as escrow agent of the refunding bond proceeds and the escrow agent appropriately instructed and authorized to give the required notices at the prescribed time or times. If any officer of the public body signing any such notice shall no longer be in office at the time of the utilization of the notice, the notice shall nevertheless be valid and effective for its intended purpose.

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## §18-12B-6. Bonds may be issued for combined purposes.

The board of regents may authorize by one or more resolutions a single issue of bonds for the combined purposes of refunding the outstanding bonds as herein authorized and financing one or more of the major renovations, repairs and safety upgrading and capital improvements herein authorized.

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## §18-12B-7. Bonds shall be negotiable instruments.

The revenue bonds, revenue refunding bonds and bonds issued for combined purposes under the provisions of this article shall, independently of the requirements of any other provision of law and solely by virtue of the provisions of this section, be and have all the qualities and incidents of negotiable instruments.

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## §18-12B-8. Trust agreements for holders of bonds.

The board of regents may enter into an agreement or agreements with any trust company, or with any bank having the powers of a trust company, either within or outside the state, to act as trustee for the holders of bonds issued hereunder, setting forth therein such duties and containing such legally binding covenants of the board of regents with the holders of the bonds in respect to the payment of the bonds, the fixing, establishing and collecting of the fees hereinbefore referred to; the acquisition, construction, improvement, maintenance, operation, repair and insurance of authorized major renovations, repairs and safety upgrading and capital improvements; the custody, safeguarding and disposition of the proceeds of the bonds, and the moneys in such special funds, sinking funds, reserve funds, or any other moneys or funds, notwithstanding provisions of this article to the contrary; the security for moneys on hand or on deposit, and the rights and remedies of the trustee and the holders of the bonds, as may be agreed upon with the purchasers of such bonds; provisions restricting the individual right of action of bondholders as is customary in trust agreements respecting bonds and debentures of municipal corporations, protecting and enforcing the rights and remedies of the trustee and the bondholders; and provisions as to any other matters which are deemed necessary and advisable by the board of regents in the best interests of the state and to enhance the marketability of the bonds. Any such agreement entered into by the board of regents shall be binding in all respects on such board and its successors from time to time in accordance with the terms thereof; and all the provisions thereof shall be enforceable by appropriate proceedings at law or in equity, or otherwise.

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## §18-12B-9. Sinking fund for payment of bonds.

From the state system tuition fee special capital improvements fund the board of regents shall make periodic payments to the state sinking fund commission in an amount sufficient to meet the requirements of any issue of bonds sold under the provisions of this article, as may be specified in the resolution of the board authorizing the issue thereof and in any trust agreement entered into in connection therewith. The payments so made shall be placed by the commission in a special sinking fund which is hereby pledged to and charged with the payment of the principal of the bonds of such issue and the interest thereon, and to the redemption or repurchase of such bonds, such sinking fund to be a fund for all bonds of such issue without distinction or priority of one over another, except as may be provided in the resolution authorizing such issue of bonds. The moneys in the special sinking fund, less such reserve for payment of principal and interest and redemption premium, if any, as may be required by the resolution of the board of regents, authorizing the issue and any trust agreement made in connection therewith, may be used for the redemption of any of the outstanding bonds payable from such fund which by their terms are then redeemable, or for the purchase of bonds at the market price, but at not exceeding the price if any, at which such bonds shall in the same year be redeemable; and all bonds redeemed or purchased shall forthwith be canceled and shall not again be issued.

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## §18-12B-10. Credit of state not pledged.

No provisions of this article shall be construed to authorize the board of regents at any time or in any manner to pledge the credit or taxing power of the state, nor shall any of the obligations or debts created by the board under the authority herein granted be deemed to be obligations of the state.

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## §18-12B-11. Attorney general or his duly appointed legal representative to serve as bond counsel.

The Attorney General, or his duly appointed legal representative, shall serve as bond counsel and shall be responsible for the issuance of a final approving opinion regarding the legality of the sale of bonds under this article.

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## §18-12B-12. Powers of board are supplemental; conflicting laws superseded.

The powers conferred by this article shall be in addition and supplemental to the existing powers of the board of regents. The provisions of any other law or laws conflicting with the provisions of this article shall be and the same are hereby superseded to the extent of any such conflict.

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