WEST VIRGINIA CODE: §18B-10-8

§18B-10-8. Collection; disposition and use of capital and auxiliary capital fees; creation of special capital and auxiliary capital improvements funds; revenue bonds.

(a) This section and any rules adopted by the commission, council, or both, in accordance with this section and §29A-3a-1 *et seq*. of this code, govern the collection, disposition, and use of the capital and auxiliary capital fees authorized by §18B-10-1 of this code. The statutory provisions governing collection and disposition of capital funds in place prior to the enactment of this section remain in effect.

(b) Fees for full-time students. — The governing boards shall fix capital and auxiliary capital fees for full-time students at each state institution of higher education per semester. For institutions under its jurisdiction, a governing board may fix the fees at higher rates for students who are not residents of this state.

(c) Fees for part-time students. — For all part-time students and for all summer school students, the governing boards shall impose and collect the fees in proportion to, but not exceeding, the fees paid by full-time students. Refunds of the fees may be made in the same manner as any other fee collected at state institutions of higher education.

(d) There is continued in the State Treasury a special capital improvements fund and special auxiliary capital improvements fund for each state institution of higher education and the commission into which shall be paid all proceeds, respectively, of the following:

(1) The capital and auxiliary capital fees collected from students at all state institutions of higher education pursuant to this section; and

(2) The fees collected from the students pursuant to section one of this article. The fees shall be expended by the commission and governing boards for the payment of the principal of or interest on any revenue bonds issued by the board of regents or the succeeding governing boards for which the fees were pledged prior to the enactment of this section.

(e) The governing boards may make expenditures from any of the special capital improvements funds or special auxiliary capital improvement funds established in this section, and up to 50 percent of its gross tuition revenues to finance or fund on a cash basis, in whole or in part, in combination with any federal, state or other grants or contributions, for any one or more of the following projects:

(1) The acquisition of land or any rights or interest in land;

(2) The construction or acquisition of new buildings;

(3) The renovation or construction of additions to existing buildings;

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(4) The acquisition of furnishings and equipment for the buildings;

(5) The costs of information technology projects, including, but not limited to, costs associated with planning, designing, implementing, upgrading, modifying and replacing new and existing enterprise resource planning, data, student, critical, or foundational technology systems, without regard to whether such costs are capitalizable, and which may include costs relating to the improvement of business practices to maximize the use of such systems, design, development, infrastructure, software licenses and subscriptions, testing, training, data transfers and relevant labor costs and consultant costs; and

(6) The construction or acquisition of any other capital improvements or capital education facilities at the state institutions of higher education, including any roads, utilities or other properties, real or personal, or for other purposes necessary, appurtenant or incidental to the construction, acquisition, financing, and placing in operation of the buildings, capital improvements, or capital education facilities, including student unions, dormitories, housing facilities, food service facilities, motor vehicle parking facilities, and athletic facilities.

(f) The commission, when singly or jointly requested by the council or governing boards, periodically may issue revenue bonds of the state as provided in this section to finance all or part of the purposes and pledge all or any part of the moneys in the special funds for the payment of the principal of and interest on the revenue bonds, and for reserves for the revenue bonds. Any pledge of the special funds for the revenue bonds shall be a prior and superior charge on the special funds over the use of any of the moneys in the funds to pay for the cost of any of the purposes on a cash basis. Any expenditures from the special funds, other than for the retirement of revenue bonds, may be made by the commission or governing boards only to meet the cost of a predetermined capital improvements program for one or more of the state institutions of higher education, in the order of priority agreed upon by the governing board or boards and the commission and for which the aggregate revenue collections projected are presented to the Governor for inclusion in the annual budget bill, and are approved by the Legislature for expenditure. Any expenditure made pursuant to subsection (e) of this section shall be part of the 10-year campus development plan approved by the governing board pursuant to §18B-19-3 of this chapter.

(g) The revenue bonds periodically may be authorized and issued by the commission or governing boards to finance, in whole or in part, the purposes provided in this section in an aggregate principal amount not exceeding the amount which the commission determines can be paid as to both principal and interest and reasonable margins for a reserve therefor from the moneys in the special funds.

(h) The issuance of the revenue bonds by schools other than the exempted schools shall be authorized by a resolution adopted by the governing board receiving the proceeds and the commission, and the revenue bonds shall bear the date or dates; mature at such time or times not exceeding 40 years from their respective dates; be in such form either coupon or registered, with such 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

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such terms of prior redemption at such prices not exceeding 105 percent of the principal amount thereof; and have the other terms and provisions determined by the governing board receiving the proceeds and by the commission. The revenue bonds issued by schools other than the exempted schools shall be signed by the Governor and by the chancellor of the commission or the chair of the governing boards authorizing the issuance of the revenue bonds, under the Great Seal of the state, attested by the Secretary of State, and the coupons attached to the revenue bonds shall bear the facsimile signature of the chancellor of the commission or the chair of the appropriate governing boards. The revenue bonds shall be sold in the manner the commission or governing board determines is in the best interests of the state.

(i) The issuance of the revenue bonds by exempted schools shall be authorized by a resolution adopted by the governing board receiving the proceeds, and the revenue bonds shall bear the date or dates; mature at such time or times not exceeding 100 years from their respective dates; be in such form either coupon or registered, with such 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 prior redemption at such prices not exceeding 105 percent of the principal amount thereof; and have the other terms and provisions determined by the governing board receiving the proceeds. The revenue bonds shall be signed by the Governor and the chair of the governing boards authorizing the issuance of the revenue bonds, under the Great Seal of the state, attested by the Secretary of State, and the coupons attached to the revenue bonds shall bear the facsimile signature of the chair of the appropriate governing boards. The revenue bonds shall be sold in the manner the governing board determines is in the best interests of the state.

(j) The commission or governing boards may enter into trust agreements with banks or trust companies, within or without the state, and in the trust agreements or the resolutions authorizing the issuance of the bonds may enter into valid and legally binding covenants with the holders of the revenue bonds as to the custody, safeguarding and disposition of the proceeds of the revenue bonds, the moneys in the special funds, sinking funds, reserve funds, or any other moneys or funds; as to the rank and priority, if any, of different issues of revenue bonds by the commission or governing boards under this section; as to the maintenance or revision of the amounts of the fees; as to the extent to which swap agreements, as defined in §13-2G-2 of this code shall be used in connection with the revenue bonds, including such provisions as payment, term, security, default, and remedy provisions as the commission considers necessary or desirable, if any, under which the fees may be reduced; and as to any other matters or provisions which are considered necessary and advisable by the commission or governing boards in the best interests of the state and to enhance the marketability of the revenue bonds.

(k) After the issuance of any revenue bonds, the fees at the state institutions of higher education pledged to the payment of the revenue bonds may not be reduced as long as any of the revenue bonds are outstanding and unpaid except under the terms, provisions and conditions contained in the resolution, trust agreement or other proceedings under which

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the revenue bonds were issued. The revenue bonds are and constitute negotiable instruments under the Uniform Commercial Code of this state; 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; and the revenue bonds may not be considered to be obligations or debts of the state and the credit or taxing power of the state may not be pledged therefor, but the revenue bonds shall be payable only from the revenue pledged therefor as provided in this section.

(l) Additional revenue bonds may be issued by the commission or governing boards pursuant to this section and financed by additional revenues or funds dedicated from other sources. The special revenue fund in the State Treasury known as the Community and Technical College Capital Improvement Fund into which shall be deposited the amounts specified in §29-22-18(j) of this code is continued. All amounts deposited in the fund shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds authorized by the commission for community and technical college capital improvements or used by the council on a cash basis as provided under §29-22-18(j)(4) of this code for community and technical college capital improvements or capital projects.

(m) Funding of systemwide and campus-specific revenue bonds under any other section of this code is continued and authorized pursuant to the terms of this section. Revenues of any state institution of higher education pledged to the repayment of any revenue bonds issued pursuant to this code shall remain pledged.

(n) Any revenue bonds for state institutions of higher education proposed to be issued under this section or other sections of this code first must be approved by the Governor and:

(1) Approved by the governing board for revenue bonds issued by the exempted schools;

(2) Confirmed by the commission, for revenue bonds issued by institutions under the jurisdiction of the commission, or

(3) Approved by the council and the commission, for revenue bonds issued by institutions under the jurisdiction of the council.

(o) Revenue bonds issued pursuant to this code may be issued by the commission or governing boards, either singly or jointly.

(p) Fees pledged for repayment of revenue bonds issued under this section or §18-12B-1 *et seq*. of this code prior to or after the effective date of this section shall be transferred to the commission in a manner prescribed by the commission. The commission may transfer funds from the accounts of institutions pledged for the repayment of revenue bonds issued prior to the effective date of this section or issued subsequently by the commission upon the request of institutions, if an institution fails to transfer the pledged revenues to the commission in a timely manner.

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(q) Effective July 1, 2004, the capital and auxiliary capital fees authorized by this section and §18B-10-1 of this code are in lieu of any other fees set out in this code for capital and auxiliary capital projects to benefit public higher education institutions. Notwithstanding any other provisions of this code to the contrary, in the event any capital, tuition, registration, or auxiliary fees are pledged to the payment of any revenue bonds issued pursuant to any general bond resolutions of the commission, any of its predecessors or any institution, adopted prior to the effective date of this section, the fees shall remain in effect in amounts not less than the amounts in effect as of that date, until the revenue bonds payable from any of the fees have been paid or the pledge of the fees is otherwise legally discharged.

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