WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1982

ENROLLED

Com. Sub. for
HOUSE BILL No. 1887

(By Mr. Allbright and Mr. Tompkins)

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Passed March 12, 1982

In Effect

From Passage
AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-seven, relating to the West Virginia education loan bond; short title; declaration of purpose; definitions; functions and powers of board of regents; expenses of board; acquisition of assets; conveyance of loan funding deposit; issuance of bonds; trust agreement to secure bonds; credit of state not pledged; collection of revenues; application of funds from sale of bonds; rights of bondholders; refunding of bonds; investment of board funds; bonds as legal investments; annual report of board; competitive bidding waived; powers of board unrestricted; article to be construed liberally; and exemption from taxation.

Be it enacted by the Legislature of West Virginia:

That chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty-seven, to read as follows:

ARTICLE 27. WEST VIRGINIA EDUCATION LOAN BOND PROGRAM.


1 This article may be referred to and cited as the "West Virginia Independent Higher Education Loan Bond Program."

It is declared that for the benefit of the people of the state of West Virginia, the conduct and increase of their commerce, the protection and enhancement of their welfare, the development of continued prosperity and the improvement of their health and living conditions, it is essential that this and future generations of youth be given the fullest opportunity to learn and to develop their intellectual and mental capacities and skills; that to achieve these ends it is of the utmost importance that the students attending institutions of higher education located in West Virginia have reasonable alternative to enhance their financial access to such institutions; that reasonable financial access to institutions of higher education will assist such youth in achieving the required levels of learning and development of their intellectual and mental capacities and skills; that it is the purpose of this article to provide a measure of assistance and an alternative method to enable students and the families of students attending institutions of higher education located in West Virginia to appropriately and prudently finance the cost or a portion of the cost of such higher education; and that it is the intent of this article to supplement federal guaranteed higher education loan programs, other student loan programs and grant or scholarship programs to provide the needed additional options for the financing of a student's higher education in execution of the public policy set forth above.


The following words used in this article shall, unless the context clearly indicates a different meaning, be construed as follows:

(a) "Board" means the West Virginia board of regents.

(b) "Bonds" means revenue bonds, notes or other evidences of indebtedness of the board issued under this article.

(c) "Bond resolution" means the resolution or resolutions of the board and the trust agreement, if any, authorizing the issuance of and providing for the terms and conditions applicable to bonds.
(d) "Borrower" means a student who has received an education loan or any parent who has received or agreed to pay an education loan.

(e) "Default insurance" means insurance insuring education loans, authority loans or bonds against default.

(f) "Default reserve fund" means a fund established pursuant to a bond ordinance for the purpose of securing education loans, authority loans or bonds.

(g) Cost of attendance is the amount defined by the institution for the purpose of the guaranteed student loan program as defined under Title IV, part B, of the "Higher Education Act of 1965" as now or hereafter amended.

(h) "Education loan" means a loan which is made by an institution of higher education to a student or parents of a student, or both, in amounts not in excess of the maximum amounts specified in this section, to finance the student's attendance at the institution. The maximum loan amount may not exceed:

(1) In the case of a borrower who is a student, the student's cost of attendance for the period of time for which the loan is made minus the following amounts applicable to such period of time:

(i) The amount of grant which the student receives or could receive under the federal Pell Grant program authorized under Title IV, part A, of the "Higher Education Act of 1965," as now or hereafter amended, whether or not the student has made application for such grant;

(ii) The maximum net guaranteed student loan proceeds which the student receives or could receive pursuant to Title IV, part B, of the "Higher Education Act of 1965," as now or hereafter amended, whether or not the student has made application for such loan;

(iii) The amount of scholarships, grants or other non-repayable assistance received from government agencies, educational institutions or private institutions or organizations;
(2) (A) In the case of a borrower who is a parent of an eligible student, the student’s cost of attendance minus:

(i) The amounts determined pursuant to subparagraphs (i), (ii) and (iii) of paragraph (1) of this subdivision; and

(ii) The amount of loan which the student receives pursuant to paragraph (1) of this subdivision.

(B) The combined maximum loan amount of both parents may not exceed the maximum amount as determined under paragraph (2) of this subdivision:

(i) “Loan funding deposit” means moneys, guarantees or other property deposited by an institution of higher education with the board or a trustee for the purpose of (1) providing security for bonds, (2) funding a default reserve fund, (3) acquiring default insurance or (4) defraying costs of the board, such moneys or properties to be in such amounts as deemed necessary by the board as a condition for such institution’s participation in the board’s programs.

(j) “Institution” means a not for profit educational institution which is not owned or controlled by the state or any political subdivision, agency, instrumentality, district or municipality thereof, which is authorized by law to provide a program of education beyond the high school level and which:

(1) Admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such certificate;

(2) Provides an educational program for which it awards a bachelor’s degree or provides an educational program, admission into which is conditioned upon the prior attainment of a bachelor’s degree or its equivalent, for which it awards a postgraduate degree, or provides not less than a two-year program which is acceptable for full credit toward an associate degree, or offers not less than a two-year program in engineering, mathematics or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific or other technological fields which require the understanding and application of basic engineering, scientific or mathematical principles or knowledge;
(3) Is accredited by a nationally recognized accrediting agency or association such as the north central association of colleges and high schools;

(4) Does not discriminate in the admission of students on the basis of race, color or creed;

(5) Has a governing board which possesses its own sovereignty; and

(6) Has a governing board, or its delegated institutional officials, which possess final authority in all matters of local control, including educational policy, choice of personnel, determination of program and financial management.

(k) "Parent" means any parent or guardian of a student at an institution of higher education.

§18-27-4. Powers of board; determination of qualified financings and establishment of financing programs; establishing criteria for and guidelines encompassing the types of and qualifications for education loan financing programs.

The board may:

(a) Issue bonds for the purpose of making board loans to institutions of higher education participating in a program of the board for the express purpose of providing education loans. The criteria and guidelines established by the board for its education loan financing programs shall include such eligibility standards for borrowers as the board determines are necessary or desirable in order to effectuate the purposes of this article, including the following: (i) Each student shall have a certificate of admission or enrollment at a specific participating institution of higher education, (ii) each student or his or her parents shall satisfy such financial qualifications as the board shall establish to effectuate the purposes of this article, (iii) each student and his or her parents shall submit such information as may be required by the board to his or her institution of higher education.

The board is authorized to contract with financial institutions and other qualified loan origination and servicing organi-

...zations, which shall assist in prequalifying borrowers for education loans and which shall service and administer each education loan. Each education loan’s fees shall include a portion, if necessary, to cover the applicable pro rata cost of such a servicing organization.

The board is authorized to establish specific criteria governing the eligibility of institutions of higher education to participate in its programs, the making of board and education loans and provisions for default.

(b) Receive and accept from any source, loans, contributions or grants for or in aid of a board education loan financing program or any portion thereof and, when required, to use such funds, property or labor only for the purposes for which it was loaned, contributed or granted.

(c) Make board loans to institutions of higher education and require that the proceeds thereof be used for making education loans and paying costs and fees in connection therewith.

(d) Charge to and apportion among participating institutions of higher education its administrative and operating costs and expenses incurred in the exercise of the powers and duties conferred by this article.

(e) Borrow working capital funds and other funds as may be necessary for start-up and continuing operations, as long as such funds are borrowed in the name of the board only. Such borrowings shall be limited obligations of the character described in section ten of this article and shall be payable solely from revenues of the board or the proceeds of bonds pledged for that purpose.

(f) Examine records and financial reports of participating institutions of higher education, and to examine records and financial reports of any contractor organization or institution retained under this section.

(g) Authorize its officers, agents and employees to take such action and do such things as are necessary or desirable in order to carry out and effectuate the purposes of this article.
(h) The board shall require that board loans be used solely to make education loans. The board shall require that institutions of higher education require that each borrower under an education loan use the proceeds solely for the cost of attendance and that each such borrower shall so certify.

§18-27-5. Expenses of authority; limitation of liability for expense.

All expenses incurred in carrying out the provisions of this article shall be payable solely from funds provided under the authority of this article and, except as authorized under subdivision (e) of section four, no liability may be incurred by the board beyond the extent to which moneys have been provided under this article.

§18-27-6. Acquisition of certain moneys, endowments and properties and guarantees thereto.

The board may establish specific guidelines relating to the deposits of certain moneys, guarantees, endowments or properties by institutions of higher education which would provide prudent security for education loans funding programs, authority loans, education loans or for bonds and establish guidelines relating to guarantees of or contracts to purchase education loans or bonds by such institutions or by financial institutions or others. A default reserve fund may be established for each series or issue of bonds. In this regard, the board may receive such moneys, endowments, properties and guarantees as it considers appropriate and, if necessary, to take title in the name of the board or in the name of a participating institution of higher education or a trustee. A guarantee for one hundred percent of principal and interest by the higher education assistance foundation or by a letter of credit from a financial institution chartered in West Virginia or a nationally chartered financial institution with stockholders reserve of at least twenty-five million dollars may constitute an alternate security option.

§18-27-7. Conveyance of loan funding deposit after payment of principal and interest.

When the principal of and interest on bonds of the board issued to finance the cost of an education loan financing program or programs, including any refunding bonds issued to
refund and refinance such bonds, have been fully paid and retired or when adequate provision has been made to fully pay and retire the same, and all other conditions of the bond resolution authorizing the same have been satisfied and the lien created by such bond resolution has been released in accordance with the provisions thereof, the board shall promptly do such things and execute such deeds and conveyances as are necessary and required to convey any remaining moneys, properties and other assets comprising loan funding deposits to the institutions of higher education which furnished the same in proportion to the amounts furnished by the respective institutions of higher education.


(a) The board may from time to time issue bonds for any purpose authorized under this article and all such bonds or other obligations of the board issued pursuant to this article shall be and are hereby declared to be negotiable for all purposes notwithstanding their payment from limited source and without regard to any other law or laws.

(b) The board may not have outstanding at any one time bonds in an aggregate principal amount exceeding thirty million dollars, excluding bonds issued to refund the bonds of the board.

(c) The bonds of each issue shall be payable solely out of revenues of the board pertaining to the program relating to such bond issue, including principal and interest on board loans and education loans, payments by institutions of higher education, banks, insurance companies or others pursuant to letters of credit or purchase agreements, investment earnings from funds or accounts maintained pursuant to the bond resolution, insurance proceeds, loan funding deposits, proceeds of sales of education loans, proceeds of refunding bonds and fees, charges and other revenues of the board from such program.

(d) The bonds may be issued as serial bonds or as term bonds, or both. The bonds shall be authorized by a bond resolution of the board and shall bear such date or dates, mature at such time or times not exceeding the year following the
last year in which the final payments in an education loan series portfolio are due, or thirty years, whichever is sooner, from their respective dates of issue, bear interest at such rate or rates, be payable at such time or times, be in such denominations, be in such form, either coupon or fully registered, carry such registration and conversion privileges, be payable in lawful money of the United States of America at such places, and be subject to such terms of redemption as such bond resolution may provide. The bonds shall be executed by the manual or facsimile signatures of such officers of the board as are designated by the board. The bonds shall be sold in such manner and at such prices as the board determines. Pending preparation of the definitive bonds, the board may issue interim receipts or certificates which shall be exchanged for such definitive bonds.

(e) Any bond resolution may contain provisions, which shall be a part of the contract with the holders of the bonds to be authorized, as to:

(i) Pledging or assigning the revenues derived from the authority loans and education loans with respect to which such bonds are to be issued; (ii) the fees and other amounts to be charged, and the sums to be raised in each year thereby, and the use, investment and disposition of such sums; (iii) the setting aside of loan funding deposits, debt service reserves, capitalized interest accounts, cost of issuance accounts and sinking funds, and the regulation, investment and disposition thereof; (iv) limitations on the use of the education loans; (v) limitations on the purpose to which or the investments in which the proceeds of sale of any issue of bonds then or thereafter to be issued may be applied; (vi) limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, the terms upon which additional bonds may rank on a parity with, or be subordinate or superior to, other bonds; (vii) the refunding of outstanding bonds; (viii) the procedure, if any, by which the terms of any contract with bondholders may be amended, or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given; (ix) defining the acts or omissions to act which shall constitute a default in
the duties of the board to holders of its obligations and pro-
viding the rights or remedies of such holders in the event of a
default; (x) providing for guarantees, pledges of endowments,
letters of credit, property or other security for the benefit of
the holders of such bonds; and (xi) any other matters relating
to the bonds which the board considers desirable.

(f) Neither the members of the board nor any person exe-
cuting the bonds shall be liable personally on the bonds or be
subject to any personal liability or accountability by reason of
the issuance thereof.

(g) The board may purchase its bonds out of any funds
available therefor. The board may hold, pledge, cancel or re-
sell such bonds subject to and in accordance with agree-
ments with bondholders.

(h) The board may refund any of its bonds. Such refund-
ing bonds shall be issued in the same manner as other bonds
of the board.


In the discretion of the board any bonds issued under
the provisions of this article may be secured by a trust
agreement by and between the board and a corporate trustee
or trustees, which may be any trust company or bank in the
state of West Virginia having the powers of a trust company.
The bond resolution providing for the issuance of bonds so
secured shall pledge the revenues to be received by the
board, including any or all of the revenues specified in
subsection (c), section eight. This article may contain
such provisions for protecting and enforcing the rights and
remedies of the bondholders as may be reasonable and proper
and not in violation of law, including particularly such
provisions as have hereinabove been specifically authorized
to be included in any bond resolution of the board, and may
restrict the individual right of action by bondholders. In
addition to the foregoing, any trust agreement may contain
such other provisions as the board considers reasonable and
proper for the security of the bondholders. All expenses
incurred in carrying out the provisions of the trust agree-

Bonds issued under authority of this article shall be obligations of the board only, and not of the state of West Virginia. Bonds issued under authority of this article shall state upon the face of each bond that they represent and constitute a debt of the board, but not of the state of West Virginia within the meaning of the provisions of the constitution or statutes of the state of West Virginia; and they do not constitute a pledge of the full faith and credit of the board or of the state of West Virginia. The bonds may not grant to the owners or holders thereof any right to have the board or the Legislature levy any taxes or appropriate any funds for the payment of the principal thereof or interest thereon. Such bonds are payable, and shall state that they are payable, solely from the revenues pledged for their payment in accordance with the bond resolution.

Nothing in this article may be construed to authorize the board or any department, board, commission or other agency to create an obligation of the state of West Virginia within the meaning of the constitution or the code of West Virginia.


The board shall fix, revise, charge and collect fees and is empowered to contract with any person, partnership, association or corporation, or other body, public or private, in respect thereof. Each agreement entered into by the board with an institution of higher education shall provide that the fees and other amounts payable by the institution of higher education with respect to any program of the board shall be sufficient at all times, (a) to pay its share of the administrative costs and expenses of such program, (b) to pay the principal of, the premium, if any, and the interest on outstanding bonds of the board, issued in respect of such program to the extent that other revenues of the board pledged for the payment of the bonds are insufficient to pay the bonds as they become due and payable, (c) to
create and maintain reserves which may but need not be
required or provided for in the bond resolution relating
to such bonds of the board, and (d) to establish and maintain
whatever education loan servicing, control or audit procedures
are deemed to be necessary to the prudent operations of the
board. The board shall pledge the revenues from each pro-
gram, as described in subsection (c), section eight of this
article, as security for the issue of bonds relating to such
program. Such pledge shall be valid and binding from the
time when the pledge is made; the revenues so pledged by
the board shall immediately be subject to the lien of such
pledge without any physical delivery thereof or further act,
and the lien of any such pledge shall be valid and binding
against all parties having claims of any kind in tort, contract
or otherwise against the board or any participating institution
of higher education, irrespective of whether such parties have
notice thereof. Neither the bond resolution nor any financing
statement, continuation statement or other instrument by
which a pledge is created or by which the board’s interest
in revenues is assigned need be filed or recorded in any
public records in order to perfect the lien thereof as against
third parties except that a copy thereof shall be filed in the
records of the board and with the state treasurer.

§18-27-12. Funds from sale of bonds as trust funds; application of
funds.

All moneys received by or on behalf of the board pursuant
to the authority of this article, whether as proceeds from the
sale of bonds or as revenues, are trust funds to be held and
applied solely as provided in this article. Any officer with
whom, or any bank or trust company with which such moneys
are deposited shall act as trustee of such moneys and shall hold
and apply the same for the purposes hereof, subject to such
regulations as this article and the bond resolution authorizing
the bonds of any issue may provide.


Any holder of bonds issued pursuant to this article or a
trustee under a trust agreement entered into pursuant to this
article, except to the extent that their rights are restricted by
any bond resolution, may, by any suitable form of legal proceed-
ings, protect and enforce any rights under the laws of this
state or granted by the bond resolution. Such rights include the
right to compel the performance of all duties of the board re-
quired by this article or the bond resolution; to enjoin unlawful
activities; and in the event of default with respect to the pay-
ment of any principal of, premium, if any, and interest on any
bond or in the performance of any covenant or agreement on
the part of the board in the bond resolution, to apply to the
circuit court to appoint a receiver to administer and operate
the education loan program or programs, the revenues of which
are pledged to the payment of principal of, premium, if any,
and interest on such bonds, with full power to pay, and to
provide for payment of, principal of, premium, if any, and
interest on such bonds, and with such powers, subject to the
direction of the court, as are permitted by law and are ac-
corded receivers, excluding any power to pledge additional
revenues of the board to the payment of such principal, pre-
mium and interest.

§18-27-14. Refunding bonds; purpose; proceeds; investment of
proceeds.

(a) The board is authorized to provide for the issuance of
bonds of the board for the purpose of refunding any bonds of
the board then outstanding, including the payment of any
redemption premium thereon and any interest accrued or to
accrue to the earliest or any subsequent date of redemption,
purchase or maturity of such bonds.

(b) The proceeds of any such bonds issued for the purpose
of refunding outstanding bonds may, in the discretion of the
board, be applied to the purchase or retirement at maturity or
redemption of such outstanding bonds either on their earliest or
any subsequent redemption date or upon the purchase or at the
maturity thereof and may, pending such application, be placed
in escrow to be applied to such purchase or retirement at
maturity or redemption on such date as may be determined by
the board.

(c) Any such escrowed proceeds, pending such use, may be
invested and reinvested in direct obligations of the United
States of America, maturing at such time or times as are appropriate to assure the prompt payment of the principal of and interest and redemption premium, if any, on the outstanding bonds to be so refunded. The interest, income and profits, if any, earned or realized on any such investment may also be applied to the payment of the outstanding bonds to be so refunded. After the terms of the escrow have been fully satisfied and carried out, any balance of such proceeds and interest, income and profits, if any, earned or realized on the investments thereof shall be returned to the institution of higher education for use by it in any lawful manner.

(d) All such refunding bonds are subject to this article in the same manner and to the same extent as other revenue bonds issued pursuant to this article.


Except as otherwise provided in subsection (c), section fourteen of this article, the board may invest any funds in (i) direct obligations of the United States of America, (ii) obligations as to which the timely payment of principal and interest is fully guaranteed by the United States of America, (iii) obligations of the federal intermediate credit banks, federal banks for cooperatives, federal land banks, federal home loan banks, federal national mortgage association, government national mortgage association and the student loan marketing association, (iv) certificates of deposit or time deposits constituting direct obligations of any bank: Provided, That investments may be made only in those certificates of deposit or time deposits in banks which are insured by the federal deposit insurance corporation if then in existence, and (v) in withdrawable capital accounts or deposits of state or federal chartered savings and loan associations which are insured by the federal savings and loan insurance corporation. Any such securities may be purchased at the offering or market price thereof at the time of such purchase. All such securities so purchased shall mature or be redeemable on a date or dates prior to the time when, in the judgment of the board, the funds so invested will be required for expenditure. The express judgment of the board as to the time when any funds will be
required for expenditure or be redeemable is final and conclusive.


1 All banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, insurance companies and associations, and all executor, administrators, guardians, trustees and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds issued pursuant to this article.

§18-27-17. Account of activities; receipts and expenditures; annual report; audit.

1 The board shall keep an accurate account of all its activities and of all its receipts and expenditures and shall annually in the month of January make a report thereof to its members, to the governor, the state treasurer, the clerk of the House of Delegates, the clerk of the Senate, and the commissioner of the department of finance and administration.

Such report is a public record and open for inspection at the offices of the board during normal business hours. The report shall include: (a) Summaries of all applications by institutions of higher education for education loan financing assistance presented to the members of the board during such fiscal year; (b) summaries of all education loan programs which have received any form of financial assistance from the board during such year; (c) the nature and amount of all such assistance; (d) a report concerning the financial condition of the various education loan series portfolios; and (e) projected activities of the board for the next fiscal year, including projections of the total amount of financial assistance anticipated and the amount of revenue bonds or other evidences of indebtedness that will be necessary to provide the projected level of assistance during the next fiscal year.

The auditor of the state of West Virginia may investigate the affairs of the board, may examine the properties and records of the board, and may prescribe methods of accounting and the rendering of periodical reports in relation to financings undertaken by the board.

1 Competitive bidding requirements of the code of West Virginia or any other similar requirements that may be lawfully waived are waived by this section and any requirement of competitive bidding or other restriction imposed on the procedure for award of contracts is not applicable to any action taken under authority of this article.


1 Notwithstanding any other provision of law, institutions may borrow money from the board, make education loans and take all other actions and do such things as are necessary or convenient to consummate the transactions contemplated under this article. It is lawful for the board to establish, charge, contract for and receive any amount or rate of interest or compensation with respect to board loans and for participating institutions to charge, contract for and receive any amount or rate of interest or compensation with respect to education loans.

§18-27-20. Article as alternative method; application of bond law; powers not subject to supervision or regulation by other element or government.

1 The foregoing sections of this article provide a complete, additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to, and the limitations imposed by this article do not limit or otherwise affect powers or rights conferred by other laws, and the issuance of bonds and refunding bonds under this article need not comply with the requirements of any other law applicable to the issuance of bonds. Except as otherwise expressly provided in this article, none of the powers granted to the board under this article shall be subject to the supervision or regulation or require the approval or consent of any municipality or political subdivision or any department, division, commission, board, body, bureau, official or agency thereof or of the state.


1 This article being necessary for the welfare of the state
and its inhabitants, shall be liberally construed to effect its purpose.

§18-27-22. Exercise of powers as essential public function; exemption from taxation.

The exercise of the powers granted by this article will be in all respects for the benefit of the people of this state, for the increase of their commerce, welfare and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of a program by the board or its agent will constitute the performance of an essential public function, neither the board nor its agent shall be required to pay any taxes or assessments, including mortgage recording taxes, upon or in respect of a program, and moneys or any property acquired by, retained by or used by the board or its agents under the provisions of this article and the income therefrom shall at all times be free from taxation of every kind by the state and by the municipalities and other political subdivisions of the state.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

R. P. Baylen  
Chairman Senate Committee

Tony E. Whillow  
Chairman House Committee

Originating in the House.

Takes effect from passage.

Todd K. Nichols  
Clerk of the Senate

D.A. Blankenship  
Clerk of the House of Delegates

Warren R. McQuary  
President of the Senate

Speaker House of Delegates

The within is approved this the 29 day of March, 1982.

Governor