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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1992



ENROLLED

HOUSE BILL No. 4731

(By Delegates MEZZATESTA AND FAIRCLOTH)



Passed MARCH 7, 1992

In Effect From Passage

ENROLLED
H. B. 4731

(By DELEGATES MEZZATESTA AND FAIRCLOTH)

[Passed March 7, 1992; in effect from passage.]

AN ACT to amend and reenact section thirty, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article two, and section nine-d, article six, chapter twelve of said code, all relating to extending for twelve months the governor's authority to borrow money from the consolidated pension fund to finance needed public improvements in education; providing for the redesignation of certain funds; and providing for repayment of such borrowing from consumers sales tax collections.

Be it enacted by the Legislature of West Virginia:

That section thirty, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section two, article two and section nine-d, article six, chapter twelve of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-30. Proceeds of tax; dedication of certain revenues.

- 1 The proceeds of the tax imposed by this article shall
- 2 be deposited in the general revenue fund of the state:
- 3 *Provided*, That beginning the first day of July, one

4 thousand nine hundred eighty-nine, and continuing each
5 month thereafter through the last day of July, one
6 thousand nine hundred ninety-two, the first five million
7 dollars of proceeds of this tax for each month shall be
8 paid into the "Fiscal Responsibility Fund" created by
9 section nineteen, article one, chapter five of this code
10 and used for the purposes specified therein, and that on
11 and after the first day of August, one thousand nine
12 hundred ninety-two, and continuing each month thereaf-
13 ter until any money borrowed under section nine-d,
14 article six, chapter twelve of this code is repaid, the first
15 five million dollars of proceeds of this tax for each
16 month shall be paid into the "Education Enhancement
17 Fund" created by section nine-d, article six, chapter
18 twelve of this code: *Provided, however,* That if no money
19 is borrowed under section nine-d, article six of said
20 chapter twelve, before the first day of August, one
21 thousand nine hundred ninety-two, then no tax collected
22 under this article shall be deposited into the "Education
23 Enhancement Fund", and if money is borrowed after the
24 thirtieth day of June, one thousand nine hundred ninety-
25 two, then payment into the "Education Enhancement
26 Fund" shall begin the first day of the calendar month
27 succeeding the month in which funds are borrowed
28 under section nine-d, article six of said chapter twelve:
29 *Provided further,* That if less than sixty million dollars
30 is borrowed under said section nine-d, then the amount
31 to be paid into the "Education Enhancement Fund" each
32 month, as provided in this section, shall be that
33 proportion of five million dollars that the amount of
34 money borrowed bears to sixty million dollars.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

§12-2-2. Itemized record of moneys received for deposit; regulations governing deposits; credit to state fund; exceptions.

1 (a) All officials and employees of the state authorized
2 by statute to accept moneys due the state of West
3 Virginia shall keep a daily itemized record of such
4 moneys so received for deposit in the state treasury and
5 shall deposit within twenty-four hours with the state
6 board of investments all moneys received or collected by

7 them for or on behalf of the state for any purpose
8 whatsoever. The treasurer and the board of investments
9 shall promulgate rules and regulations, in accordance
10 with the provisions of chapter twenty-nine-a of this code
11 governing the procedure for such deposits.

12 The official or employee making such deposits with
13 the state board of investments shall prepare such deposit
14 lists in such manner and upon such report forms as may
15 be prescribed by the board of investments. Once the
16 board has satisfied itself that all deposits have been
17 promptly prepared and deposited, it shall transfer all
18 such funds to a special bank account of the state
19 treasurer and provide him with such deposit report. The
20 original of this report shall accompany the deposit to the
21 treasurer. Certified or receipted copies shall be imme-
22 diately forwarded by the state treasurer to the state
23 auditor and to the secretary of administration, and a
24 copy shall be provided to the board of investments. The
25 original of the deposit report shall become a part of the
26 treasurer's permanent record.

27 (b) When so paid, such moneys shall be credited to the
28 state fund and treated by the auditor and treasurer as
29 part of the general revenue of the state: *Provided*, That
30 all moneys received out of appropriations made by the
31 Congress of the United States shall be recorded in
32 special fund accounts, apart from the general revenues
33 of the state, in the state treasury and all such moneys
34 shall not be used for any purpose whatsoever unless and
35 until authorized and directed by the Legislature,
36 excepting the following funds which shall be recorded
37 in separate accounts:

38 (1) All funds excluded by the provisions of section six,
39 article eleven, chapter four of this code;

40 (2) All funds derived from the sale of farm and dairy
41 products from farms operated by any agency of the state
42 government other than the farm management
43 commission;

44 (3) All endowment funds, bequests, donations, execu-
45 tive emergency funds, and death and disability funds;

46 (4) All fees and funds collected at state educational
47 institutions for student activities;

48 (5) All funds derived from collections from dormito-
49 ries, boardinghouses, cafeterias and road camps;

50 (6) All moneys received from counties by institutions
51 for the deaf and blind on account of clothing for indigent
52 pupils;

53 (7) All insurance collected on account of losses by fire
54 and refunds;

55 (8) All funds derived from bookstores and sales of
56 blank paper and stationery, and collections by the chief
57 inspector of public offices;

58 (9) All moneys collected and belonging to the capitol
59 building fund, state road fund, state road sinking funds,
60 general school fund, school fund, state fund (moneys
61 belonging to counties, districts and municipalities), state
62 interest and sinking funds, state compensation funds,
63 the fund maintained by the public service commission
64 for the investigation and supervision of applications, all
65 funds and moneys payable to or received by the natural
66 resources commission of West Virginia and moneys
67 collected and received by the division of natural resour-
68 ces pursuant to article two, article two-a and article two-
69 b, chapter twenty of this code;

70 (10) All moneys collected or received under any act of
71 the Legislature providing that funds collected or
72 received thereunder shall be used for specific purposes.

73 (c) All moneys, excepted as provided in subdivisions
74 one through nine inclusive of subsection b of this section,
75 shall be paid into the state treasury in the same manner
76 as collections not so excepted, and shall be recorded in
77 separate accounts to be used and expended only for the
78 purposes for which the same are authorized to be
79 collected by law: *Provided*, That amounts collected
80 pursuant to subdivision ten, subsection b this section,
81 which are found from time to time to exceed funds
82 needed for the purposes set forth in general law may be
83 transferred to other accounts or funds and redesignated
84 for other purposes by appropriation of the Legislature.

85 The gross amount collected in all cases shall be paid into
 86 the state treasury, and commissions, costs and expenses
 87 of collection authorized by general law to be paid out
 88 of the gross collection are hereby authorized to be paid
 89 out of the moneys collected and paid into the state
 90 treasury in the same manner as other payments are
 91 made from the state treasury.

92 (d) The state board of investments shall have authority
 93 to establish an imprest fund or funds in the office of any
 94 state agency or institution making proper application to
 95 the board. To implement this authority the board shall
 96 promulgate rules and regulations, in accordance with
 97 the provisions of chapter twenty-nine-a of this code. The
 98 board or its designee shall annually audit all such funds
 99 and prepare a list of all such funds showing the location
 100 and amount as of fiscal year end, retaining such list as
 101 a permanent record of the board until such time as the
 102 legislative auditor shall have completed an audit of the
 103 imprest funds of all agencies and institutions involved.

ARTICLE 6. WEST VIRGINIA BOARD OF INVESTMENTS.

**§12-6-9d. Legislative findings; loans to the state; purpose
 for which moneys transferred may be dis-
 bursed and expended; terms and conditions
 for repayment; creation of special account in
 state treasury.**

1 (a) The Legislature hereby finds and declares that the
 2 West Virginia supreme court of appeals has determined
 3 that public education has a constitutionally preferred
 4 status; that there is a large amount of investable funds
 5 in the consolidated pension fund; that loans made under
 6 commercially reasonable terms to finance needed public
 7 education improvements are necessary investments in
 8 the future of West Virginia; and that loans from the
 9 consolidated pension fund will assist in financing the
 10 needs of primary and secondary education, without in
 11 any way impairing the solvency or financial soundness
 12 of the consolidated pension fund. This section is enacted
 13 in view of these findings.

14 (b) Whenever the governor determines that there are
 15 insufficient general revenue funds available for the

16 timely payment for necessary improvements in public
17 education as appropriated by the Legislature in the
18 budget bills for the fiscal years one thousand nine
19 hundred ninety-one, one thousand nine hundred ninety-
20 two, or one thousand nine hundred ninety-three the
21 governor may request the state board of investments to
22 lend those moneys necessary to meet such payment and
23 the state board of investments shall transfer moneys
24 from the consolidated pension fund to the special sinking
25 fund account created in the state treasury by subsection
26 (d) of this section, in the amount determined by the
27 governor to be sufficient and necessary to meet such
28 payments, within the amount determined by the board
29 of investments to be prudently available. The manner
30 and timing of such transfers shall be in the discretion
31 of the board of investments. The total of the amounts
32 transferred may not exceed a total of fifty million
33 dollars during fiscal year one thousand nine hundred
34 ninety-two and ten million dollars during fiscal year one
35 thousand nine hundred ninety-three, respectively. On
36 the date the loan is transferred to the special sinking
37 fund created in subsection (d) of this section, interest
38 shall accrue at the current interest rate of the fund from
39 which the loan originated, plus one fourth of one
40 percent, and the current interest rate shall be recalcu-
41 lated every six months.

42 (c) Full repayment of all moneys transferred, with
43 interest, shall be made to the board of investments by
44 payment into such pension fund from amounts appro-
45 priated by the Legislature or in the absence of appro-
46 priations from the amounts specified in section thirty,
47 article fifteen, chapter eleven of this code, by budget
48 action as first priority from the moneys available for
49 each fiscal year. Repayment of the loans shall begin six
50 months from the date the funds were transferred and
51 payments shall be made every six months thereafter, or
52 sooner if agreed to in writing by the board of invest-
53 ments and the governor: *Provided*, That all loans shall
54 be repaid in full by the last day of August, one thousand
55 nine hundred ninety-six.

56 (d) There is hereby created in the state treasury a

57 special account, designated the "Education Enhance-
58 ment Fund", which is a sinking fund for the deposit,
59 withdrawal and repayment of moneys transferred
60 pursuant to this section and section thirty, article
61 fifteen, chapter eleven of this code, in accordance with
62 the special fund doctrine for budgetary transfer
63 activities involving more than one fiscal year. Manage-
64 ment of such fund shall be a responsibility of the board
65 of investments. If any moneys remain in said fund after
66 repayment in full to the appropriate pension fund or
67 funds, such moneys shall be transferred to the general
68 revenue fund within thirty days of the last repayment.

69 (e) Upon the written request of the governor, the
70 board of investments shall transfer to the general
71 revenue fund, from the funds available in the educa-
72 tional enhancement fund, those funds necessary for the
73 timely payment for necessary improvements in public
74 education as appropriated by the Legislature.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James Beck

Chairman Senate Committee

Ernest C Moore

Chairman House Committee

Originating in the House.

Takes effect from passage.

Parulle Adams

Clerk of the Senate

Donald G. Kopp

Clerk of the House of Delegates

Paul Prudette

President of the Senate

Robert

Speaker of the House of Delegates

The within *is approved* this the *1st*
day of *April* 1992.

Yaston Caperton

Governor

PRESENTED TO THE

GOVERNOR

Date 3/27/92

Time 3:45 pm