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WEST VIRGINIA LEGISLATURE

SECOND EXTRAORDINARY SESSION, 1993

ENROLLED

Committee Substitute for
SENATE BILL NO. 101

(By Senator *Spindler, Mr. President, and*
Boley, By Request of the Executive)

PASSED October 18, 1993

In Effect from Passage

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E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 101

(BY SENATORS BURDETTE, MR. PRESIDENT, AND BOLEY,
BY REQUEST OF THE EXECUTIVE)

[Passed October 18, 1993; in effect from passage.]

AN ACT to amend article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended by adding thereto a new section, designated section thirty-a; to amend and reenact section ten, article twenty, chapter thirty-one of said code; and to further amend said article by adding thereto a new section, designated section twenty-eight, all relating to dedicating consumers sales tax proceeds for the payment of bonds to be issued by the regional jail and correctional facility authority; providing for the disposition of the balance of collections of said tax; creating a special fund for the deposit of dedicated tax proceeds; providing for the issuance of bonds for which the dedicated revenue is pledged for repayment; providing for the repayment of lease-purchase obligations to be incurred; setting forth legislative findings and intent; limiting the total face value of bonds which may be issued; and providing limitations on contracting for the sale of bonds by the authority.

Be it enacted by the Legislature of West Virginia:

That article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section thirty-a; that section ten, article twenty, chapter thirty-one of said code be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section twenty-eight, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMERS SALES TAX.

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

1 After the proceeds of the tax under this article have
2 been dedicated under the provisions of section thirty
3 of this article, the proceeds of the tax imposed by this
4 article shall be distributed as provided in subdivisions
5 (a) and (b) of this section.

6 (a) Beginning the first day of November, one thou-
7 sand nine hundred ninety-three, and continuing on
8 the first day of each succeeding month thereafter,
9 there shall be dedicated monthly from the collections
10 of this tax, prior to the payment or commitment of the
11 proceeds or collections of this tax for any other
12 purpose, other than the dedication from the collections
13 of this tax for the school building debt service fund as
14 set forth in section thirty of this article, an amount
15 equal to one eighth of the projected annual principal
16 and interest requirements on any and all revenue
17 bonds or refunding bonds issued, or to be issued, or to
18 be incurred, or lease-purchase obligations entered into
19 by the authority with another state entity on or after
20 the first day of January, one thousand nine hundred
21 ninety-four, for which moneys in the regional jail and
22 correctional facility development fund have been
23 pledged, or will be pledged for repayment pursuant to
24 section ten, article twenty, chapter thirty-one of this
25 code, such principal and interest requirements having
26 been certified to the tax commissioner in accordance
27 with the provisions of said section: *Provided*, That in

28 no event shall the proceeds of this tax, to be paid
29 annually into the regional jail and correctional facility
30 development fund, in any fiscal year exceed the lesser
31 of the principal and interest requirements certified to
32 the tax commissioner as aforesaid, or four million
33 dollars. The amount dedicated shall be deposited
34 monthly into the regional jail and correctional facility
35 development fund created by said section.

36 (b) The proceeds from the tax imposed by this
37 article remaining after compliance with the provisions
38 of section thirty of this article and subdivision (a) of
39 this section shall be deposited in the general revenue
40 fund of the state.

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-10. Regional jail and correctional facility development fund.

1 (a) The regional jail and correctional facility devel-
2 opment fund is hereby created and shall be a special
3 account in the state treasury. The fund shall operate
4 as a revolving fund whereby all appropriations and
5 payments thereto may be applied and reapplied by the
6 authority for the purposes of this article. Separate
7 accounts may be established within the special account
8 for the purpose of identification of various revenue
9 resources and payment of specific obligations.

10 (b) Revenues deposited into the fund shall be used to
11 make payments of interest and shall be pledged as
12 security for bonds, security interests or notes issued or
13 lease-purchase obligations entered into with another
14 state entity by the authority pursuant to this article.

15 (c) Whenever the authority determines that the
16 balance in the fund is in excess of the immediate
17 requirements of this article, it may request that such
18 excess be invested until needed. In such case such
19 excess shall be invested in a manner consistent with
20 the investment of the temporary state funds. Interest
21 earned on any money invested pursuant to this section

22 shall be credited to the fund.

23 (d) If the authority determines that funds held in
24 the fund are in excess of the amount needed to carry
25 out the purposes of this article, it shall take such
26 action as is necessary to release such excess and
27 transfer it to the general fund of the state treasury.

28 (e) The fund shall consist of the following:

29 (1) Amounts raised by the authority by the sale of
30 bonds or other borrowing authorized by this article;

31 (2) Moneys collected and deposited in the state
32 treasury which are specifically designated by acts of
33 the Legislature for inclusion into the fund;

34 (3) Contributions, grants and gifts from any source,
35 both public and private, which may be used by the
36 authority for any project or projects;

37 (4) All sums paid by the counties pursuant to
38 subsection (h) of this section; and

39 (5) All interest earned on investments made by the
40 state from moneys deposited in this fund.

41 (f) The amounts deposited in the fund shall be
42 accounted for and expended in the following manner:

43 (1) Amounts raised by the sale of bonds or other
44 borrowing authorized by this article shall be deposited
45 in a separate account within the fund and expended
46 for the purpose of construction and renovation of
47 correctional facilities and regional jails for which need
48 has been determined by the authority;

49 (2) Amounts deposited from all other sources shall
50 be pledged first to the debt service on any bonded
51 indebtedness, including lease-purchase obligations
52 entered into by the authority with another state entity
53 or other obligation incurred by borrowing of the
54 authority;

55 (3) After any requirements of debt service have
56 been satisfied, the authority shall requisition from the
57 fund such amounts as are necessary to provide for
58 payment of the administrative expenses of this article;

59 (4) The authority shall requisition from the fund
60 after any requirements of debt service have been
61 satisfied such amounts as are necessary for the main-
62 tenance and operation of the correctional facilities or
63 regional jails or both that are constructed pursuant to
64 the plan required by this article and shall expend such
65 amounts for such purpose. The fund shall make an
66 accounting of all amounts received from each county
67 by virtue of any filing fees, court costs or fines
68 required by law to be deposited in the fund and
69 amounts from the jail improvement funds of the
70 various counties. After the expenses of administration
71 have been deducted, the amounts expended in the
72 respective regions from such sources shall be in
73 proportion to the percentage the amount contributed
74 to the fund by the counties in each region bears to the
75 total amount received by the fund from such sources;

76 (5) Notwithstanding any other provisions of this
77 article, sums paid into the fund by each county
78 pursuant to subsection (h) of this section for each
79 inmate shall be placed in a separate account and shall
80 be requisitioned from the fund to pay for the costs
81 specified in that subsection incurred at the regional
82 jail facility at which each such inmate was incarcerat-
83 ed; and

84 (6) Any amounts deposited in the fund from other
85 sources permitted by this article shall be expended in
86 the respective regions based on particular needs to be
87 determined by the authority.

88 (g) After a regional jail facility becomes available
89 pursuant to this article for the incarceration of
90 inmates, each county within the region shall incarcer-
91 ate all persons whom the county would have incarcer-
92 ated in any jail prior to the availability of the regional
93 jail facility in the regional jail facility except those
94 whose incarceration in a local jail facility used as a
95 local holding facility is specified as appropriate under
96 the standards and procedures developed pursuant to
97 section nine of this article and who the sheriff or the
98 circuit court elects to incarcerate therein.

99 (h) When inmates are placed in a regional jail
100 facility pursuant to subsection (g) of this section, the
101 county shall pay into the regional jail and correctional
102 facility development fund a cost per day for each
103 inmate so incarcerated to be determined by the
104 regional jail and correctional facility authority accord-
105 ing to criteria and by procedures established by
106 regulations pursuant to article three, chapter twenty-
107 nine-a of this code to cover the costs of operating the
108 regional jail facilities of this state to maintain each
109 such inmate which costs shall not include the cost of
110 construction, acquisition or renovation of said regional
111 jail facilities: *Provided*, That each regional jail facility
112 operating in this state shall keep a record of the date
113 and time of the incarceration of an inmate, and a
114 county may not be charged for a second day of
115 incarceration for an individual inmate until that
116 inmate has remained incarcerated for more than
117 twenty-four hours. Thereafter, in cases of continuous
118 incarceration, subsequent per diem charges shall be
119 made upon a county only as subsequent intervals of
120 twenty-four hours pass from the original time of
121 incarceration.

122 (i) On and after the first day of November, one
123 thousand nine hundred ninety-three, the amounts as
124 and when specified in section thirty-a, article fifteen,
125 chapter eleven of this code shall be paid into the
126 regional jail and correctional facility development
127 fund. All of the specified amounts deposited in this
128 fund shall be pledged to the repayment of the princi-
129 pal and interest on any revenue bonds or refunding
130 bonds authorized by article twenty, chapter thirty-one
131 of this code, or any lease-purchase obligations entered
132 into with another state entity. On or prior to the first
133 day of January of each year, commencing the first day
134 of January, one thousand nine hundred ninety-four,
135 the authority shall certify to the tax commissioner of
136 the state the principal and interest requirements for
137 the following fiscal year on any revenue bonds or
138 refunding bonds issued or to be issued or lease-
139 purchase obligations entered into or to be entered into
140 with another state entity, on or after the first day of

141 January, one thousand nine hundred ninety-four, and
142 for which moneys contained within the regional jail
143 and correctional facility development fund have been,
144 or will be, pledged for repayment pursuant to this
145 section: *Provided*, That before the first day of Novem-
146 ber, one thousand nine hundred ninety-three, the
147 authority shall also certify to the state tax commission-
148 er the principal and interest requirements or lease-
149 purchase obligations entered into by the authority
150 with another state entity for the fiscal year ending on
151 the thirtieth day of June, one thousand nine hundred
152 ninety-four, on any revenue bonds or refunding bonds
153 issued or lease-purchase obligations entered into by
154 the authority with another state entity, by the author-
155 ity on or after the first day of January, one thousand
156 nine hundred ninety-four. The maximum aggregate
157 face value of bonds that may be issued by the author-
158 ity, for which moneys in the regional jail and correc-
159 tional facility development fund are to be pledged, is
160 sixty-one million dollars.

161 (j) The Legislature hereby finds and declares that
162 the supreme court of appeals of West Virginia has held
163 that the revenue bonds authorized under the school
164 building authority act, as enacted in article nine-d,
165 chapter eighteen of this code prior to the twentieth
166 day of July, one thousand nine hundred ninety-three,
167 constituted an indebtedness of the state in violation of
168 section four, article ten of the constitution of West
169 Virginia. The Legislature hereby further finds and
170 declares that this section, as well as section thirty,
171 article fifteen, chapter eleven of this code have been
172 reenacted during the second extraordinary session of
173 the West Virginia Legislature in the year one thousand
174 nine hundred ninety-three, and that section thirty-a of
175 said article has been enacted in an attempt to comply
176 with the holding of the supreme court of appeals of
177 West Virginia. The Legislature hereby further finds
178 and declares that the continued construction and
179 improvement of jail and prison facilities and the
180 dedication of the consumers sales tax pursuant to said
181 section to finance such construction and improvement
182 are for the use and benefit of the state, its counties, its

183 municipalities and its other political subdivisions, and
 184 such construction and improvement serves the vital
 185 public purpose of assuring the physical safety of each
 186 citizen and the public at large. The Legislature hereby
 187 further finds and declares that it intends, through the
 188 reenactment of this section and section thirty, article
 189 fifteen, chapter eleven of this code and the enactment
 190 of section thirty-a of said article to dedicate a source
 191 of state revenue to a special fund for the purpose of
 192 paying a portion of the debt service on bonds and
 193 refunding bonds issued and lease-purchase obligations
 194 entered into by the authority with another state
 195 entity, subsequent to the first day of January, one
 196 thousand nine hundred ninety-four, the proceeds of
 197 which will be utilized for the construction and
 198 improvement of jail and prison facilities. The Legisla-
 199 ture hereby further finds and declares that it intends,
 200 through the reenactment of this section and section
 201 thirty, article fifteen, chapter eleven of this code, and
 202 the enactment of section thirty-a of said article to
 203 comply with the provisions of section four, article ten;
 204 section six, article ten; section six-a, article ten; and
 205 section one, article twelve of the constitution of West
 206 Virginia.

§31-20-28. Limitations on contracts for sale of bonds or other securities.

1 (a) When issuing its bonds or other securities pursu-
 2 ant to the provisions of this article, the regional jail
 3 and correctional facility authority shall not employ or
 4 contract with any person or business entity acting as
 5 an investment adviser, underwriter, broker, dealer,
 6 government securities broker, government securities
 7 dealer, transfer agent, attorney, bond counsel, trustee
 8 or accountant, if the authority finds, on the record
 9 after notice and opportunity for hearing, that employ-
 10 ing or contracting with such person or business entity
 11 would be contrary to the public interest, and that such
 12 person or business entity, or any person associated
 13 with such person or entity, whether prior to or
 14 subsequent to becoming so associated, has been con-
 15 victed, within the five years preceding the date when

16 such bonds or other securities are proposed to be
17 issued, of a felony or misdemeanor under the laws of
18 this state, a sister state or the United States of
19 America, involving the sale or purchase of any govern-
20 ment security, and if the authority further finds that
21 the offense committed involves:

22 (1) The bribery of a public officer or employee or a
23 member of the immediate family of a public officer or
24 employee;

25 (2) Perjury;

26 (3) Larceny;

27 (4) Any substantially equivalent activity, however
28 denominated by the laws of the relevant jurisdiction;
29 or

30 (5) The conspiracy to commit any such offense.

31 (b) When issuing its bonds or other securities, the
32 regional jail and correctional facility authority shall
33 not employ or contract with any person or business
34 entity acting as an investment adviser, underwriter,
35 broker, dealer, government securities broker, govern-
36 ment securities dealer, transfer agent, attorney, bond
37 counsel, trustee or accountant, if the authority finds,
38 on the record after notice and opportunity for hearing,
39 that employing or contracting with such person or
40 business entity would be contrary to the public
41 interest, and that such person or business entity, or
42 any person associated with such person or entity,
43 whether prior to or subsequent to becoming so asso-
44 ciated, has, within the five years preceding the date
45 when such bonds or other securities are proposed to be
46 issued:

47 (1) Directly or indirectly given, offered or promised
48 money, services, or any other thing of value having a
49 value of greater than one hundred dollars to a public
50 officer or employee or a member of the immediate
51 family of a public officer or employee when the
52 money, service or other thing of value constituted a
53 material part of the factual basis upon which the
54 public officer or employee or a member of the imme-

55 diate family of the public officer or employee was
56 convicted of a felony or misdemeanor under the laws
57 of this state, a sister state or the United States of
58 America, involving the sale or purchase of any govern-
59 ment security; or

60 (2) Willfully aided, abetted, counseled, commanded,
61 induced, or procured a violation which constitutes the
62 basis for a misdemeanor or felony conviction as
63 described in subsection (a) of this section or subdivi-
64 sion (1) of this subsection.

65 (c) When issuing its bonds or other securities pursu-
66 ant to the provisions of this article, the regional jail
67 and correctional facility authority shall not employ or
68 contract with any person or business entity acting as
69 an investment adviser, underwriter, broker, dealer,
70 government securities broker, government securities
71 dealer, transfer agent, attorney, bond counsel, trustee
72 or accountant, if the authority finds, on the record
73 after notice and opportunity for hearing, that employ-
74 ing or contracting with such person or business entity
75 would be contrary to the public interest, and that such
76 person or business entity, or any person associated
77 with such person or entity, whether prior to or
78 subsequent to becoming so associated, has conducted
79 or is conducting any business or transaction in which
80 a financial interest is held by a public officer or
81 employee, agent or attorney of the government of this
82 state, or a member of the immediate family of such
83 persons, if the public officer or employee, agent or
84 attorney is in a position whereby he or she may
85 personally and substantially influence the discretion-
86 ary actions of the authority in connection with the
87 issuance of bonds or other securities, through decision,
88 approval, disapproval, recommendation, the rendering
89 of advice, investigation, or otherwise: *Provided*, That
90 the ethics commission shall, on or before the fifteenth
91 day of December, one thousand nine hundred ninety-
92 three, promulgate an emergency rule to establish
93 guidelines and standards for the implementation of
94 this subsection by the authority.

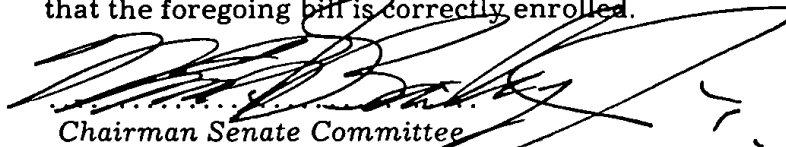
95 (d) For purposes of this section, the term "immedi-

96 ate family" means a spouse and any unemancipated
97 child of a person.

98 (e) The regional jail and correctional facility author-
99 ity may declare void and rescind any contract with
100 any person or business entity acting as an investment
101 adviser, underwriter, broker, dealer, government
102 securities broker, government securities dealer, trans-
103 fer agent, attorney, bond counsel, trustee or account-
104 tant, if the authority finds, ~~on~~ ^{on the} record after notice
105 and opportunity for hearing, that continuing to employ
106 or contract with such person or business entity would
107 be contrary to the public interest, and that such
108 person or business entity, or any person associated
109 with such person or entity, whether prior to or
110 subsequent to becoming so associated, has engaged in
111 conduct which would prohibit the authority, under the
112 provisions of this section, from entering into a contract
113 with such person or business entity if the contract was
114 yet to be executed.

2/25/80 [Signature]

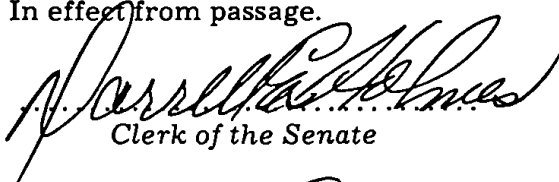
The Joint Committee on Enrolled Bills hereby certifies
that the foregoing bill is correctly enrolled.

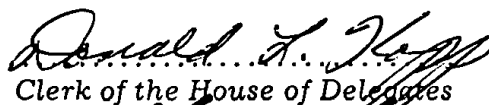

Chairman Senate Committee

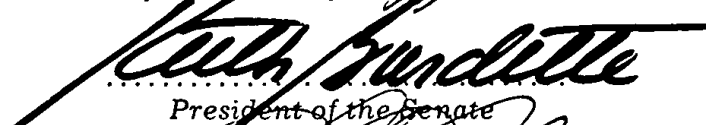

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Chairman House Committee

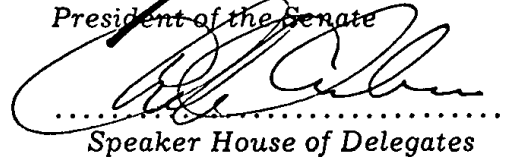
Originated in the Senate.

In effect from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within is approved this the 22nd
day of October, 1993.


Governor

PRESENTED TO THE

GOVERNOR

Date 10/20/92

Time 1:43 pm