WEST VIRGINIA LEGISLATURE
SECOND EXTRAORDINARY SESSION, 1993

ENROLLED
Committee Substitute for
SENATE BILL NO. 101

(By Senator [Signature], Mr. President, and
[Signature], 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.


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

2. (a) Beginning the first day of November, one thousand nine hundred ninety-three, and continuing on the first day of each succeeding month thereafter, there shall be dedicated monthly from the collections of this tax, prior to the payment or commitment of the proceeds or collections of this tax for any other purpose, other than the dedication from the collections of this tax for the school building debt service fund as set forth in section thirty of this article, an amount equal to one eighth of the projected annual principal and interest requirements on any and all revenue bonds or refunding bonds issued, or to be issued, or to be incurred, or lease-purchase obligations entered into by the authority with another state entity on or after the first day of January, one thousand nine hundred ninety-four, for which moneys in the regional jail and correctional facility development fund have been pledged, or will be pledged for repayment pursuant to section ten, article twenty, chapter thirty-one of this code, such principal and interest requirements having been certified to the tax commissioner in accordance with the provisions of said section: Provided, That in
no event shall the proceeds of this tax, to be paid annually into the regional jail and correctional facility development fund, in any fiscal year exceed the lesser of the principal and interest requirements certified to the tax commissioner as aforesaid, or four million dollars. The amount dedicated shall be deposited monthly into the regional jail and correctional facility development fund created by said section.

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

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

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

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

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

(e) The fund shall consist of the following:

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

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

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

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

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

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

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

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

(3) After any requirements of debt service have been satisfied, the authority shall requisition from the fund such amounts as are necessary to provide for payment of the administrative expenses of this article;
(4) The authority shall requisition from the fund after any requirements of debt service have been satisfied such amounts as are necessary for the maintenance and operation of the correctional facilities or regional jails or both that are constructed pursuant to the plan required by this article and shall expend such amounts for such purpose. The fund shall make an accounting of all amounts received from each county by virtue of any filing fees, court costs or fines required by law to be deposited in the fund and amounts from the jail improvement funds of the various counties. After the expenses of administration have been deducted, the amounts expended in the respective regions from such sources shall be in proportion to the percentage the amount contributed to the fund by the counties in each region bears to the total amount received by the fund from such sources;

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

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

(g) After a regional jail facility becomes available pursuant to this article for the incarceration of inmates, each county within the region shall incarcerate all persons whom the county would have incarcerated in any jail prior to the availability of the regional jail facility in the regional jail facility except those whose incarceration in a local jail facility used as a local holding facility is specified as appropriate under the standards and procedures developed pursuant to section nine of this article and who the sheriff or the circuit court elects to incarcerate therein.
(h) When inmates are placed in a regional jail facility pursuant to subsection (g) of this section, the county shall pay into the regional jail and correctional facility development fund a cost per day for each inmate so incarcerated to be determined by the regional jail and correctional facility authority according to criteria and by procedures established by regulations pursuant to article three, chapter twenty-nine-a of this code to cover the costs of operating the regional jail facilities of this state to maintain each such inmate which costs shall not include the cost of construction, acquisition or renovation of said regional jail facilities: Provided, That each regional jail facility operating in this state shall keep a record of the date and time of the incarceration of an inmate, and a county may not be charged for a second day of incarceration for an individual inmate until that inmate has remained incarcerated for more than twenty-four hours. Thereafter, in cases of continuous incarceration, subsequent per diem charges shall be made upon a county only as subsequent intervals of twenty-four hours pass from the original time of incarceration.

(i) On and after the first day of November, one thousand nine hundred ninety-three, the amounts as and when specified in section thirty-a, article fifteen, chapter eleven of this code shall be paid into the regional jail and correctional facility development fund. All of the specified amounts deposited in this fund shall be pledged to the repayment of the principal and interest on any revenue bonds or refunding bonds authorized by article twenty, chapter thirty-one of this code, or any lease-purchase obligations entered into with another state entity. On or prior to the first day of January of each year, commencing the first day of January, one thousand nine hundred ninety-four, the authority shall certify to the tax commissioner of the state the principal and interest requirements for the following fiscal year on any revenue bonds or refunding bonds issued or to be issued or lease-purchase obligations entered into or to be entered into with another state entity, on or after the first day of
January, one thousand nine hundred ninety-four, and for which moneys contained within the regional jail and correctional facility development fund have been, or will be, pledged for repayment pursuant to this section: Provided, That before the first day of November, one thousand nine hundred ninety-three, the authority shall also certify to the state tax commissioner the principal and interest requirements or lease-purchase obligations entered into by the authority with another state entity for the fiscal year ending on the thirtieth day of June, one thousand nine hundred ninety-four, on any revenue bonds or refunding bonds issued or lease-purchase obligations entered into by the authority with another state entity, by the authority on or after the first day of January, one thousand nine hundred ninety-four. The maximum aggregate face value of bonds that may be issued by the authority, for which moneys in the regional jail and correctional facility development fund are to be pledged, is sixty-one million dollars.

(j) The Legislature hereby finds and declares that the supreme court of appeals of West Virginia has held that the revenue bonds authorized under the school building authority act, as enacted in article nine-d, chapter eighteen of this code prior to the twentieth day of July, one thousand nine hundred ninety-three, constituted an indebtedness of the state in violation of section four, article ten of the constitution of West Virginia. The Legislature hereby further finds and declares that this section, as well as section thirty, article fifteen, chapter eleven of this code have been reenacted during the second extraordinary session of the West Virginia Legislature in the year one thousand nine hundred ninety-three, and that section thirty-a of said article has been enacted in an attempt to comply with the holding of the supreme court of appeals of West Virginia. The Legislature hereby further finds and declares that the continued construction and improvement of jail and prison facilities and the dedication of the consumers sales tax pursuant to said section to finance such construction and improvement are for the use and benefit of the state, its counties, its
municipalities and its other political subdivisions, and
such construction and improvement serves the vital
public purpose of assuring the physical safety of each
citizen and the public at large. The Legislature hereby
further finds and declares that it intends, through the
reenactment of this section and section thirty, article
fifteen, chapter eleven of this code and the enactment
of section thirty-a of said article to dedicate a source
of state revenue to a special fund for the purpose of
paying a portion of the debt service on bonds and
refunding bonds issued and lease-purchase obligations
entered into by the authority with another state
entity, subsequent to the first day of January, one
thousand nine hundred ninety-four, the proceeds of
which will be utilized for the construction and
improvement of jail and prison facilities. The Legisla-
ture hereby further finds and declares that it intends,
through the reenactment of this section and section
thirty, article fifteen, chapter eleven of this code, and
the enactment of section thirty-a of said article to
comply with the provisions of section four, article ten;
section six, article ten; section six-a, article ten; and
section one, article twelve of the constitution of West
Virginia.

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

1 (a) When issuing its bonds or other securities pursu-
ant to the provisions of this article, the regional jail
and correctional facility authority shall not employ or
contract with any person or business entity acting as
an investment adviser, underwriter, broker, dealer,
government securities broker, government securities
dealer, transfer agent, attorney, bond counsel, trustee
or accountant, if the authority finds, on the record
after notice and opportunity for hearing, that employ-
ing or contracting with such person or business entity
would be contrary to the public interest, and that such
person or business entity, or any person associated
with such person or entity, whether prior to or
subsequent to becoming so associated, has been con-
victed, within the five years preceding the date when
such bonds or other securities are proposed to be issued, of a felony or misdemeanor under the laws of this state, a sister state or the United States of America, involving the sale or purchase of any government security, and if the authority further finds that the offense committed involves:

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

(2) Perjury;

(3) Larceny;

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

or

(5) The conspiracy to commit any such offense.

(b) When issuing its bonds or other securities, the regional jail and correctional facility authority shall not employ or contract with any person or business entity acting as an investment adviser, underwriter, broker, dealer, government securities broker, government securities dealer, transfer agent, attorney, bond counsel, trustee or accountant, if the authority finds, on the record after notice and opportunity for hearing, that employing or contracting with such person or business entity would be contrary to the public interest, and that such person or business entity, or any person associated with such person or entity, whether prior to or subsequent to becoming so associated, has, within the five years preceding the date when such bonds or other securities are proposed to be issued:

(1) Directly or indirectly given, offered or promised money, services, or any other thing of value having a value of greater than one hundred dollars to a public officer or employee or a member of the immediate family of a public officer or employee when the money, service or other thing of value constituted a material part of the factual basis upon which the public officer or employee or a member of the imme-
diately family of the public officer or employee was convicted of a felony or misdemeanor under the laws of this state, a sister state or the United States of America, involving the sale or purchase of any government security; or

(2) Willfully aided, abetted, counseled, commanded, induced, or procured a violation which constitutes the basis for a misdemeanor or felony conviction as described in subsection (a) of this section or subdivision (1) of this subsection.

(c) When issuing its bonds or other securities pursuant to the provisions of this article, the regional jail and correctional facility authority shall not employ or contract with any person or business entity acting as an investment adviser, underwriter, broker, dealer, government securities broker, government securities dealer, transfer agent, attorney, bond counsel, trustee or accountant, if the authority finds, on the record after notice and opportunity for hearing, that employing or contracting with such person or business entity would be contrary to the public interest, and that such person or business entity, or any person associated with such person or entity, whether prior to or subsequent to becoming so associated, has conducted or is conducting any business or transaction in which a financial interest is held by a public officer or employee, agent or attorney of the government of this state, or a member of the immediate family of such persons, if the public officer or employee, agent or attorney is in a position whereby he or she may personally and substantially influence the discretionary actions of the authority in connection with the issuance of bonds or other securities, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise: Provided, That the ethics commission shall, on or before the fifteenth day of December, one thousand nine hundred ninety-three, promulgate an emergency rule to establish guidelines and standards for the implementation of this subsection by the authority.

(d) For purposes of this section, the term "immedi-
"ate family" means a spouse and any unemancipated child of a person.

(e) The regional jail and correctional facility authority may declare void and rescind any contract with any person or business entity acting as an investment adviser, underwriter, broker, dealer, government securities broker, government securities dealer, transfer agent, attorney, bond counsel, trustee or accountant, if the authority finds, on the record after notice and opportunity for hearing, that continuing to employ or contract with such person or business entity would be contrary to the public interest, and that such person or business entity, or any person associated with such person or entity, whether prior to or subsequent to becoming so associated, has engaged in conduct which would prohibit the authority, under the provisions of this section, from entering into a contract with such person or business entity if the contract was yet to be executed.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Deloris Cook

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 accepted this the 22nd day of

day of , 1993.

Governor
PRESENTED TO THE
GOVERNOR
Date 10/30/43
Time 1:43 pm