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WEST VIRGINIA LEGISLATURE

FIRST EXTRAORDINARY SESSION, 1994

ENROLLED

SENATE BILL NO. 1008

(By Senators Lucht and Burdette,
Mr. President)

PASSED March 18, 1994

In Effect from Passage

E N R O L L E D
Senate Bill No. 1008

(BY SENATORS LUCHT AND BURDETTE, MR. PRESIDENT)

[Passed March 18, 1994; in effect from passage.]

AN ACT to repeal section thirty-a, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three, article one, chapter five-g of said code; to amend and reenact section thirty, article fifteen, chapter eleven of said code; to amend and reenact sections two, three, four, six, eight, fifteen and sixteen, article nine-d, chapter eighteen of said code; and to amend and reenact section eighteen, article twenty-two, chapter twenty-nine of said code, all relating to dedicating lottery net profits for debt service on bonds issued by the school building authority; dedicating consumers sales tax proceeds and authorizing appropriations by the Legislature of lottery revenues for school construction projects; creating the school building debt service fund for the deposit of dedicated lottery revenues; creating the school construction fund and the school major improvement fund for the deposit of dedicated consumers sales tax and appropriated

lottery revenues; providing for the transfer of funds to the school building authority custodial account from specified funds in the state treasury; and limiting the permissible expenditures from the school building capital improvements fund, the school building debt service fund, the school construction fund and the school major improvement fund.

Be it enacted by the Legislature of West Virginia:

That section thirty-a, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section three, article one, chapter five-g of said code be amended and reenacted; that section thirty, article fifteen, chapter eleven of said code be amended and reenacted; that sections two, three, four, six, eight, fifteen and sixteen, article nine-d, chapter eighteen of said code be amended and reenacted; and that section eighteen, article twenty-two, chapter twenty-nine of said code be amended and reenacted, all to read as follows:

**CHAPTER 5G. PROCUREMENT OF ARCHITECT -
ENGINEER SERVICES BY STATE
AND ITS SUBDIVISIONS.**

ARTICLE 1. PROCUREMENT OF ARCHITECT-ENGINEER SERVICES

**§5G-1-3. Contracts for architectural and engineering services;
selection process where total project costs are
estimated to cost two hundred fifty thousand
dollars or more.**

1 In the procurement of architectural and engineering
2 services for projects estimated to cost two hundred fifty
3 thousand dollars or more, the director of purchasing
4 shall encourage such firms engaged in the lawful
5 practice of the profession to submit an expression of
6 interest, which shall include a statement of qualifica-
7 tions and performance data, and may include anticipated
8 concepts and proposed methods of approach to the
9 project. All such jobs shall be announced by public
10 notice published as a Class II legal advertisement in
11 compliance with the provisions of article three, chapter

12 fifty-nine of this code. A committee of three to five
13 representatives of the agency initiating the request shall
14 evaluate the statements of qualifications and perfor-
15 mance data and other material submitted by interested
16 firms and select three firms which, in their opinion, are
17 best qualified to perform the desired service: *Provided*,
18 That on projects funded wholly or in part by school
19 building authority moneys, in accordance with sections
20 fifteen and sixteen, article nine-d, chapter eighteen of
21 this code, two of said three firms shall have had offices
22 within this state for a period of at least one year prior to
23 submitting an expression of interest regarding a project
24 funded by school building authority moneys. Interviews
25 with each firm selected shall be conducted and the
26 committee shall conduct discussions regarding antici-
27 pated concepts and proposed methods of approach to the
28 assignment. The committee shall then rank, in order of
29 preference, no less than three professional firms deemed
30 to be the most highly qualified to provide the services
31 required, and shall commence scope of service and price
32 negotiations with the highest qualified professional firm
33 for architectural or engineering services or both. Should
34 the agency be unable to negotiate a satisfactory contract
35 with the professional firm considered to be the most
36 qualified, at a fee determined to be fair and reasonable,
37 price negotiations with the firm of second choice shall
38 commence. Failing accord with the second most
39 qualified professional firm, the committee shall
40 undertake price negotiations with the third most
41 qualified professional firm. Should the agency be unable
42 to negotiate a satisfactory contract with any of the
43 selected professional firms, it shall select additional
44 professional firms in order of their competence and
45 qualifications and it shall continue negotiations in
46 accordance with this section until an agreement is
47 reached: *Provided, however*, That county boards of
48 education may either elect to start the selection process
49 over in the original order of preference or it may select
50 additional professional firms in order of their compe-
51 tence and qualifications and it shall continue negotia-

52 tions in accordance with this section until an agreement
53 is reached.

CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMERS SALES TAX.

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

1 (a) The proceeds of the tax imposed by this article
2 shall be deposited in the general revenue fund of the
3 state beginning the first day of July, one thousand nine
4 hundred ninety-four, except as otherwise expressly
5 provided in this article. Prior to the said first day of
6 July, the proceeds of this tax shall, except as otherwise
7 expressly provided in this article, be deposited as
8 provided in chapter three, acts of the Legislature, second
9 extraordinary session, one thousand nine hundred
10 ninety-three, and, for such purpose, such prior law is
11 fully preserved. On the said first day of July, the balance
12 in "WVFIMS" account number fund 6676, fiscal year one
13 thousand nine hundred ninety-four, organization 0615,
14 shall be transferred to the general revenue fund. On the
15 said first day of July, the balance in "WVFIMS" account
16 number fund 3962, fiscal year one thousand nine
17 hundred ninety-four, organization 0402, shall be
18 transferred to the school construction fund created
19 pursuant to section six, article nine-d, chapter eighteen
20 of this code.

21 (b) *School major improvement fund.* —

22 After the payment or commitment of the proceeds or
23 collections of this tax for the purposes set forth in
24 sections sixteen and eighteen of this article:

25 (1) On the first day of July, one thousand nine hundred
26 ninety-four, there shall be dedicated from the collections
27 of this tax, an amount appropriated by the Legislature to
28 this fund in the general revenue budget for the fiscal
29 year beginning on the first day of July, one thousand
30 nine hundred ninety-four, and the amount dedicated
31 shall be deposited into the school major improvement

32 fund created pursuant to section six, article nine-d,
33 chapter eighteen of this code, as soon as such amount has
34 been accumulated from the collections of this tax.

35 (2) Beginning on the first day of July, one thousand
36 nine hundred ninety-five, and continuing on the first day
37 of each succeeding month thereafter through the
38 thirtieth day of June, two thousand five, there shall be
39 dedicated monthly from the collections of this tax, the
40 amount of four hundred sixteen thousand six hundred
41 sixty-seven dollars and the amount dedicated shall be
42 deposited on a monthly basis into the school major
43 improvement fund created pursuant to section six,
44 article nine-d, chapter eighteen of this code.

45 (c) *School construction fund.* —

46 After the payment or commitment of the proceeds or
47 collections of this tax for the purposes set forth in
48 sections sixteen and eighteen of this article:

49 (1) Beginning the first day of July, one thousand nine
50 hundred ninety-five, and continuing on the first day of
51 each succeeding month thereafter through the last day of
52 June, one thousand nine hundred ninety-six, there shall
53 be dedicated monthly from the collections of this tax, the
54 amount of five hundred eighty-three thousand three
55 hundred thirty-three dollars and the amount dedicated
56 shall be deposited into the school construction fund
57 created pursuant to section six, article nine-d, chapter
58 eighteen of this code.

59 (2) Beginning the first day of July, one thousand nine
60 hundred ninety-six, and continuing on the first day
61 of each succeeding month thereafter through the
62 thirtieth day of June, two thousand five, there shall be
63 dedicated monthly from the collections of this tax, the
64 amount of one million four hundred sixteen thousand six
65 hundred sixty-seven dollars and the amount dedicated
66 shall be deposited into the school construction fund
67 created pursuant to section six, article nine-d, chapter
68 eighteen of this code.

CHAPTER 18. EDUCATION.**ARTICLE 9D. SCHOOL BUILDING AUTHORITY.****§18-9D-2. Definitions.**

1 The following terms, wherever used or referred to in
2 this article, have the following meanings, unless a
3 different meaning clearly appears from the context:

4 (1) "Authority" means the school building authority of
5 West Virginia or, if said authority shall be abolished,
6 any board or officer succeeding to the principal
7 functions thereof, or to whom the powers given to said
8 authority shall be given by law;

9 (2) "Bonds" means bonds issued by the authority
10 pursuant to this article;

11 (3) "Construction project" means a project with a cost
12 of project greater than five hundred thousand dollars
13 for the new construction, major renovation of facilities,
14 buildings and structures for school purposes including
15 the acquisition of land for current or future use in
16 connection therewith, as well as new or substantial
17 upgrading of existing equipment, machinery, furnis-
18 ings, installation of utilities and other similar items
19 convenient in connection with placing the foregoing into
20 operation: *Provided*, That a construction project may
21 not include such items as books, computers or equipment
22 used for instructional purposes, fuel, supplies, routine
23 utility services fees, routine maintenance costs, ordinary
24 course of business improvements and other items which
25 are customarily deemed to result in a current or ordinary
26 course of business operating charge: *Provided, however*,
27 That a construction project may not include a major
28 improvement project;

29 (4) "Cost of project" means the cost of construction,
30 renovation, repair and safety upgrading of facilities,
31 buildings and structures for school purposes; the cost of
32 land, equipment, machinery, furnishings, installation of
33 utilities and other similar items convenient in connection

34 with placing the foregoing into operation; and the cost of
35 financing, interest during construction, professional
36 service fees and all other charges or expenses necessary,
37 appurtenant or incidental to the foregoing, including the
38 cost of administration of this article;

39 (5) "Facilities plan" means the county-wide compre-
40 hensive educational facilities plan for school facilities
41 required prior to the distribution of state funds to any
42 county board pursuant to subsection (a), section sixteen
43 of this article;

44 (6) "Project" means a construction project or a major
45 improvement project;

46 (7) "Region" means the area encompassed within and
47 serviced by a regional educational service agency
48 established pursuant to section twenty-six, article two of
49 this chapter;

50 (8) "Revenue" or "revenues" means moneys deposited
51 in the school building capital improvements fund
52 pursuant to the operation of section ten, article nine-a of
53 this chapter; moneys deposited in the school construction
54 fund pursuant to the operation of section thirty, article
55 fifteen, chapter eleven of this code and pursuant to the
56 operation of section eighteen, article twenty-two,
57 chapter twenty-nine of this code; moneys deposited in
58 the school building debt service fund pursuant to section
59 eighteen, article twenty-two, chapter twenty-nine of this
60 code; moneys deposited in the school major improvement
61 fund pursuant to the operation of section thirty, article
62 fifteen, chapter eleven of this code; any moneys received,
63 directly or indirectly, from any source for use in any
64 project completed pursuant to this article; and any other
65 moneys received by the authority for the purposes of this
66 article;

67 (9) "School major improvement plan" means the ten-
68 year school maintenance plan to be prepared by each
69 county board of education and by the state board of
70 education or the administrative council of an area

71 vocational educational center if such entity seeks
72 funding from the authority for a major improvement
73 project, which school major improvement plan is
74 required prior to the distribution of state funds for a
75 major improvement project pursuant to subsection (b),
76 section sixteen of this article; and

77 (10) "School major improvement project" means a
78 project with a cost greater than fifty thousand dollars
79 and less than five hundred thousand dollars for the
80 renovation, the repair and safety upgrading of existing
81 school facilities, buildings and structures, including the
82 substantial repair or upgrading of equipment, machin-
83 ery, building systems, utilities and other similar items
84 convenient in connection with such renovation, repair or
85 upgrading: *Provided*, That a major improvement project
86 may not include such items as books, computers or
87 equipment used for instructional purposes, fuel,
88 supplies, routine utility services fees, routine mainte-
89 nance costs, ordinary course of business improvements
90 and other items which are customarily deemed to result
91 in a current or ordinary course of business operating
92 charge.

§18-9D-3. Powers of authority.

- 1 The school building authority has the power:
- 2 (1) To sue and be sued, plead and be impleaded;
- 3 (2) To have a seal and alter the same at pleasure;
- 4 (3) To contract to acquire and to acquire, in the name
5 of the authority by purchase, lease-purchase not to
6 exceed a term of twenty-five years, or otherwise, real
7 property or rights or easements necessary or convenient
8 for its corporate purposes and to exercise the power of
9 eminent domain to accomplish such purposes;
- 10 (4) To acquire, hold and dispose of real and personal
11 property for its corporate purposes;
- 12 (5) To make bylaws for the management and rule of its
13 affairs;

14 (6) To appoint, contract with and employ attorneys,
15 bond counsel, accountants, construction and financial
16 experts, underwriters, financial advisers, trustees,
17 managers, officers and such other employees and agents
18 as may be necessary in the judgment of the authority and
19 to fix their compensation: *Provided*, That contracts
20 entered into by the school building authority in
21 connection with the issuance of bonds under this article
22 to provide professional and technical services, including
23 without limitation, accounting, actuarial, underwriting,
24 consulting, trustee, bond counsel, legal services and
25 contracts relating to the purchase or sale of bonds shall
26 be subject to the provisions of article three, chapter five-
27 a of this code: *Provided, however*, That notwithstanding
28 any other provisions of this code, any authority of the
29 attorney general of this state relating to the review of
30 contracts and other documents to effectuate the issuance
31 of bonds under this article shall be exclusively limited to
32 the form of the contract and document: *Provided further*,
33 That the attorney general of this state shall complete all
34 reviews of contracts and documents relating to the
35 issuance of bonds under this article within ten calendar
36 days of receipt of such contract and document for
37 review;

38 (7) To make contracts and to execute all instruments
39 necessary or convenient to effectuate the intent of and to
40 exercise the powers granted to it by this article;

41 (8) To renegotiate all contracts entered into by it
42 whenever, due to a change in situation, it appears to the
43 authority that its interests will be best served;

44 (9) To acquire by purchase, eminent domain or
45 otherwise all real property or interests therein necessary
46 or convenient to accomplish the purposes of this article;

47 (10) To require proper maintenance and insurance of
48 any project authorized hereunder;

49 (11) To charge rent for the use of all or any part of a
50 project or buildings at any time financed, constructed,

51 acquired or improved, in whole or in part, with the
52 revenues of the authority;

53 (12) To assist any county board of education that
54 chooses to acquire land, buildings and capital improve-
55 ments to existing school buildings and property for use
56 as public school facilities, by lease from a private or
57 public lessor for a term not to exceed twenty-five years
58 with an option to purchase pursuant to an investment
59 contract with said lessor on such terms and conditions as
60 may be determined to be in the best interests of the
61 authority, the state board of education and such county
62 board of education, consistent with the purposes of this
63 article, by transferring funds to the state board of
64 education as provided in subsection (d), section fifteen of
65 this article for the use of such county board of education;

66 (13) To accept and expend any gift, grant, contribution,
67 bequest or endowment of money to, or for the benefit of,
68 the authority, from the state of West Virginia or any
69 other source for any or all of the purposes specified in
70 this article or for any one or more of such purposes as
71 may be specified in connection with such gift, grant,
72 contribution, bequest or endowment;

73 (14) To enter on any lands and premises for the purpose
74 of making surveys, soundings and examinations;

75 (15) To contract for architectural, engineering or other
76 professional services considered necessary or economical
77 by the authority to provide consultative or other services
78 to the authority or to any regional educational service
79 agency or county board requesting professional services
80 offered by the authority, to evaluate any facilities plan
81 or any project encompassed therein, to inspect existing
82 facilities or any project that has received or may receive
83 funding from the authority, or to perform any other
84 service considered by the authority to be necessary or
85 economical. Assistance to the region or district may
86 include the development of preapproved systems, plans,
87 designs, models or documents; advice or oversight on any
88 plan or project; or any other service that may be

89 efficiently provided to regional educational service
90 agencies or county boards by the authority;

91 (16) To provide funds on an emergency basis to repair
92 or replace property damaged by fire, flood, wind, storm,
93 earthquake or other natural occurrence, such funds to
94 be made available in accordance with guidelines of the
95 school building authority;

96 (17) To transfer moneys to custodial accounts
97 maintained by the school building authority with a state
98 financial institution from the school construction fund
99 and the school improvement fund created in the state
100 treasury pursuant to the provisions of section six of this
101 article, as necessary to the performance of any contracts
102 executed by the school building authority in accordance
103 with the provisions of this article; and

104 (18) To do all things necessary or convenient to carry
105 out the powers given in this article.

**§18-9D-4. School building authority authorized to issue
refunding revenue bonds and/or general
obligation bonds for school building capital
improvement projects.**

1 (a) The school building authority may by resolution, in
2 accordance with the provisions of this article, issue
3 revenue bonds of the authority from time to time, either
4 to finance the cost of construction projects for public
5 schools in this state, or to refund, at the discretion of the
6 authority, bonds issued to finance the cost of the
7 construction projects for public schools in this state and
8 outstanding under and pursuant to the provisions of this
9 article as in effect prior to the twentieth day of July, one
10 thousand nine hundred ninety-three. The principal of,
11 interest and redemption premium, if any, on such bonds
12 shall be payable solely from the special fund herein
13 provided for such payment.

14 (b) The school building authority may, in accordance
15 with the provisions of the constitution of West Virginia,
16 issue general obligation bonds from time to time as

17 authorized by referendum pursuant to resolution duly
18 adopted by the Legislature, to finance the cost of
19 construction projects for public schools in this state.

**§18-9D-6. School building capital improvements fund in state
treasury; school construction fund in state
treasury; school building debt service fund in
state treasury; school improvement fund in
state treasury; collections to be paid into
special funds; authority to pledge such collec-
tions as security for refunding revenue bonds;
authority to finance projects on a cash basis.**

1 (a) There is continued in the state treasury a school
2 building capital improvements fund to be expended by
3 the authority as provided in this article.

4 The school building authority shall have authority to
5 pledge all or such part of the revenues paid into the
6 school building capital improvements fund as may be
7 needed to meet the requirements of any revenue bond
8 issue or issues authorized by this article prior to the
9 twentieth day of July, one thousand nine hundred
10 ninety-three, or revenue bonds issued to refund revenue
11 bonds issued prior to that date, including the payment of
12 principal of, interest and redemption premium, if any,
13 on, such revenue bonds and the establishing and
14 maintaining of a reserve fund or funds for the payment
15 of the principal of, interest and redemption premium, if
16 any, on such revenue bond issue or issues when other
17 moneys pledged may be insufficient therefor, including
18 such additional protective pledge of revenues as the
19 authority in its discretion has provided by resolution
20 authorizing the issue of such bonds or in any trust
21 agreement made in connection therewith. The authority
22 may further provide in such resolution and in such trust
23 agreement for such priorities on the revenues paid into
24 such school building capital improvements fund as may
25 be necessary for the protection of the prior rights of the
26 holders of bonds issued at different times under the
27 provisions of this article.

28 Any balance remaining in the school building capital
29 improvements fund after the authority has issued bonds
30 authorized by this article, and after the requirements of
31 all funds including reserve funds established in
32 connection with the bonds issued prior to the twentieth
33 day of July, one thousand nine hundred ninety-three,
34 pursuant to this article have been satisfied, may be used
35 for the redemption of any of the outstanding bonds
36 issued hereunder which by their terms are then redeem-
37 able, or for the purchase of such bonds at the market
38 price, but not exceeding the price, if any, at which such
39 bonds shall in the same year be redeemable, and all
40 bonds redeemed or purchased shall forthwith be
41 canceled and shall not again be issued.

42 The school building authority, in its discretion, may
43 use the moneys in the school building capital improve-
44 ments fund to finance the cost of projects on a cash
45 basis. Any pledge of moneys in such fund for revenue
46 bonds issued prior to the twentieth day of July, one
47 thousand nine hundred ninety-three, shall be a prior and
48 superior charge on such fund over the use of any of the
49 moneys in such fund to pay for the cost of any project on
50 a cash basis: *Provided*, That any expenditures from such
51 fund, other than for the retirement of revenue bonds,
52 may only be made by the authority in accordance with
53 the provisions of this article.

54 (b) There is hereby created in the state treasury a
55 special fund named the school building debt service fund
56 into which shall be deposited on and after the first day
57 of April, one thousand nine hundred ninety-four, the
58 amounts specified in section eighteen, article twenty-
59 two, chapter twenty-nine of this code. All amounts
60 deposited in the fund shall be pledged to the repayment
61 of the principal, interest and redemption premium, if
62 any, on any revenue bonds or refunding revenue bonds
63 authorized by this article: *Provided*, That moneys so
64 deposited may not be pledged to the repayment of any
65 revenue bonds issued prior to the first day of January,
66 one thousand nine hundred ninety-four, or with respect

67 to revenue bonds issued for the purpose of refunding
68 revenue bonds issued prior to the first day of January,
69 one thousand nine hundred ninety-four. The authority
70 may further provide in the resolution and in the trust
71 agreement for priorities on the revenues paid into the
72 school building debt service fund as may be necessary
73 for the protection of the prior rights of the holders of
74 bonds issued at different times under the provisions of
75 this article. On or prior to the first day of May of each
76 year, commencing the first day of May, one thousand
77 nine hundred ninety-four, the authority shall certify to
78 the state lottery director the principal and interest and
79 coverage ratio requirements for the following fiscal year
80 on any revenue bonds issued on or after the first day of
81 January, one thousand nine hundred ninety-four, and for
82 which moneys deposited in the school building debt
83 service fund have been pledged, or will be pledged, for
84 repayment pursuant to this section: *Provided, however,*
85 That before the first day of May, one thousand nine
86 hundred ninety-four, the authority shall also certify to
87 the lottery director of the state the principal, interest
88 and coverage ratio requirements for the fiscal year
89 ending on the thirtieth day of June, one thousand nine
90 hundred ninety-five, on any revenue bonds issued, or to
91 be issued, on or after the first day of January, one
92 thousand nine hundred ninety-four.

93 After the authority has issued bonds authorized by this
94 article, and after the requirements of all funds have been
95 satisfied, including coverage and reserve funds estab-
96 lished in connection with the bonds issued pursuant to
97 this article, any balance remaining in the school building
98 debt service fund may be used for the redemption of any
99 of the outstanding bonds issued hereunder which, by
100 their terms, are then redeemable or for the purchase of
101 the outstanding bonds at the market price, but not to
102 exceed the price, if any, at which redeemable, and all
103 bonds redeemed or purchased shall be forthwith
104 canceled and shall not again be issued.

105 (c) There is hereby created in the state treasury a

106 special fund named the school construction fund into
107 which shall be deposited on and after the first day of
108 July, one thousand nine hundred ninety-four, the
109 amounts specified in section thirty, article fifteen,
110 chapter eleven of this code, together with any moneys
111 appropriated thereto by the Legislature. Expenditures
112 from the school construction fund shall be for the
113 purposes set forth in this article, including lease-
114 purchase payments under agreements made pursuant to
115 subsection (e), section fifteen of this article and section
116 nine, article five of this chapter and are authorized from
117 collections in accordance with the provisions of article
118 three, chapter twelve of this code and from other
119 revenues annually appropriated by the Legislature from
120 lottery revenues as authorized by section eighteen,
121 article twenty-two, chapter twenty-nine of this code,
122 pursuant to the provisions set forth in article two,
123 chapter five-a of this code. Amounts collected which
124 are found from time to time to exceed the funds needed
125 for purposes set forth in this article may be transferred
126 to other accounts or funds and redesignated for other
127 purposes by appropriation of the Legislature.

128 (d) There is hereby created in the state treasury a
129 special fund named the school major improvement fund
130 into which shall be deposited on and after the first day
131 of July, one thousand nine hundred ninety-four, the
132 amounts specified in section thirty, article fifteen,
133 chapter eleven of this code, together with any moneys
134 appropriated thereto by the Legislature. Expenditures
135 from the school major improvement fund shall be for the
136 purposes set forth in this article and are authorized from
137 collections in accordance with the provisions of article
138 three, chapter twelve of this code and from other
139 revenues annually appropriated by the Legislature from
140 lottery revenues as authorized by section eighteen,
141 article twenty-two, chapter twenty-nine of this code,
142 pursuant to the provisions set forth in article two,
143 chapter five-a of this code. Amounts collected which are
144 found from time to time to exceed the funds needed for

145 purposes set forth in this article may be transferred to
146 other accounts or funds and redesignated for other
147 purposes by appropriation of the Legislature.

148 (e) The Legislature hereby finds and declares that the
149 supreme court of appeals of West Virginia has held that
150 the issuance of additional revenue bonds authorized
151 under the school building authority act, as enacted in
152 this article prior to the twentieth day of July, one
153 thousand nine hundred ninety-three, constituted an
154 indebtedness of the state in violation of section four,
155 article ten of the constitution of West Virginia, but that
156 revenue bonds issued hereunder prior to the twentieth
157 day of July, one thousand nine hundred ninety-three, are
158 not invalid. The Legislature further finds and declares
159 that the financial capacity of a county to construct, lease
160 and improve school facilities depends upon the county's
161 bonding capacity (local property wealth), voter
162 willingness to pass bond issues and the county's ability
163 to reallocate other available county funds instead of
164 criteria related to educational needs or upon the ability
165 of the school building authority created in this article to
166 issue bonds that comply with said holding of the West
167 Virginia supreme court of appeals or otherwise assist
168 counties with the financing of facilities construction and
169 improvement. The Legislature hereby further finds and
170 declares that this section, as well as section eighteen,
171 article twenty-two, chapter twenty-nine of this code,
172 have been reenacted during the first extraordinary
173 session of the West Virginia Legislature in the year one
174 thousand nine hundred ninety-four, in an attempt to
175 comply with said holding of the supreme court of appeals
176 of West Virginia.

177 The Legislature hereby further finds and declares that
178 it intends, through the reenactment of this section and
179 section eighteen, article twenty-two, chapter twenty-
180 nine of this code, to dedicate a source of state revenues
181 to special funds for the purposes of paying the debt
182 service on bonds and refunding bonds issued subsequent
183 to the first day of January, one thousand nine hundred

184 ninety-four, the proceeds of which will be utilized for
185 the construction and improvement of school building
186 facilities. The Legislature hereby further finds and
187 declares that it intends, through the reenactment of
188 this section and section thirty, article fifteen, chapter
189 eleven of this code and section eighteen, article twenty-
190 two, chapter twenty-nine of this code, to appropriate
191 revenues to two special funds for the purposes of
192 construction and improvement of school building
193 facilities. Furthermore, the Legislature intends to
194 encourage county boards of education to maintain
195 existing levels of county funding for construction,
196 improvement and maintenance of school building
197 facilities and to generate additional county funds for
198 such purposes through bonds and special levies
199 whenever possible. The Legislature further encourages
200 the school building authority, the state board of
201 education and county boards of education to propose
202 uniform project specifications for comparable projects
203 whenever possible to meet county needs at the lowest
204 possible cost.

205 The Legislature hereby further finds and declares that
206 it intends, through the reenactment of this section and
207 section eighteen, article twenty-two, chapter twenty-
208 nine of this code, to comply with the provisions of
209 sections four and six, article ten; and section one, article
210 twelve of the constitution of West Virginia.

**§18-9D-8. Use of proceeds of bonds; bonds exempt from
taxation.**

1 The maximum aggregate face value of bonds that may
2 be issued by the authority, for which the moneys in the
3 school building debt service fund are to be pledged, is
4 one hundred sixty million dollars. The issuance of
5 revenue bonds under the provisions of this article shall
6 be authorized from time to time by resolution or
7 resolutions of the school building authority, which shall
8 set forth the proposed projects and provide for the
9 issuance of bonds in amounts sufficient, when sold as

10 hereinafter provided, to provide moneys considered
11 sufficient by the authority to pay such costs, less the
12 amounts of any other funds available for said costs or
13 from any appropriation, grant or gift therefor: *Provided,*
14 That bond issues from which bond revenues are to be
15 distributed in accordance with section fifteen of this
16 article shall not be required to set forth the proposed
17 projects in the resolution. Such resolution shall prescribe
18 the rights and duties of the bondholders and the school
19 building authority, and for such purpose may prescribe
20 the form of the trust agreement hereinafter referred to.
21 The bonds may be issued from time to time, in such
22 amounts; shall be of such series; bear such date or dates;
23 mature at such time or times not exceeding forty years
24 from their respective dates; bear interest at such rate or
25 rates; be in such denominations; be in such form, either
26 coupon or registered, carrying such registration,
27 exchangeability and interchangeability privileges; be
28 payable in such medium of payment and at such place or
29 places within or without the state; be subject to such
30 terms of redemption at such prices not exceeding one
31 hundred five percent of the principal amount thereof;
32 and be entitled to such priorities on the revenues paid
33 into the fund pledged for repayment of the bonds as may
34 be provided in the resolution authorizing the issuance of
35 the bonds or in any trust agreement made in connection
36 therewith: *Provided, however,* That revenue bonds
37 issued on or after the first day of January, one thousand
38 nine hundred ninety-four, which are secured by lottery
39 proceeds shall mature at such time or times not
40 exceeding ten years from their respective dates.

41 The bonds shall be signed by the governor, and by the
42 president or vice president of the authority, under the
43 great seal of the state, attested by the secretary of state,
44 and the coupons attached thereto shall bear the facsimile
45 signature of the president or vice president of the
46 authority. In case any of the officers whose signatures
47 appear on the bonds or coupons cease to be such officers
48 before the delivery of such bonds, such signatures shall

49 nevertheless be valid and sufficient for all purposes the
50 same as if such officers had remained in office until such
51 delivery. Such revenue bonds shall be sold in such
52 manner as the authority may determine to be for the best
53 interests of the state.

54 Any pledge of revenues made by the school building
55 authority for revenue bonds issued prior to the twentieth
56 day of July, one thousand nine hundred ninety-three,
57 pursuant to this article shall be valid and binding
58 between the parties from the time the pledge is made;
59 and the revenues so pledged shall immediately be subject
60 to the lien of such pledge without any further physical
61 delivery thereof or further act. The lien of such pledge
62 shall be valid and binding against all parties having
63 claims of any kind in tort, contract or otherwise,
64 irrespective of whether such parties have notice of the
65 lien of such pledge, and such pledge shall be a prior and
66 superior charge over any other use of such revenues so
67 pledged.

68 The proceeds of such any bonds shall be used solely
69 for the purpose or purposes as may be generally or
70 specifically set forth in the resolution authorizing those
71 bonds and shall be disbursed in such manner and with
72 such restrictions, if any, as the authority may provide in
73 the resolution authorizing the issuance of such bonds or
74 in the trust agreement hereinafter referred to securing
75 the same. If the proceeds of such bonds, by error in
76 calculations or otherwise, shall be less than the cost of
77 any projects specifically set forth in the resolution,
78 additional bonds may in like manner be issued to provide
79 the amount of the deficiency; and unless otherwise
80 provided for in the resolution or trust agreement
81 hereinafter mentioned, such additional bonds shall be
82 considered to be of the same issue, and shall be entitled
83 to payment from the same fund, without preference or
84 priority, as the bonds before issued for such projects. If
85 the proceeds of bonds issued for such projects specifi-
86 cally set forth in the resolution authorizing such bonds
87 issued by the authority exceed the cost thereof, the

88 surplus may be used for such other projects as the school
89 building authority may determine or in such other
90 manner as the resolution authorizing such bonds may
91 provide. Prior to the preparation of definitive bonds, the
92 authority may, under like restrictions, issue temporary
93 bonds with or without coupons, exchangeable for
94 definitive bonds upon the issuance of such definitive
95 bonds.

96 After the issuance of any of such revenue bonds, the
97 revenues therefore pledged shall not be reduced as long
98 as any of such revenue bonds are outstanding and unpaid
99 except under such terms, provisions and conditions as
100 shall be contained in the resolution, trust agreement or
101 other proceedings under which such revenue bonds were
102 issued.

103 Such revenue bonds and the revenue refunding bonds,
104 and bonds issued for combined purposes shall, together
105 with the interest thereon, be exempt from all taxation by
106 the state of West Virginia, or by any county, school
107 district, municipality or political subdivision thereof.

108 To meet the operational costs of the school building
109 authority, the school building authority may transfer to
110 a special revenue account in the state treasury interest
111 on any debt service reserve funds created within any
112 resolution authorizing the issue of bonds or any trust
113 agreement made in connection therewith, for expendi-
114 ture in accordance with legislative appropriation or
115 allocation of appropriation.

§18-9D-15. Legislative intent; distribution of money.

1 (a) It is the intent of the Legislature to empower the
2 school building authority to facilitate and provide state
3 funds for the construction and major improvement of
4 school facilities so as to meet the educational needs of
5 the people of this state in an efficient and economical
6 manner. The authority shall make funding determina-
7 tions in accordance with the provisions of this article
8 and shall assess existing school facilities and each

9 facility's school major improvement plan in relation to
10 the needs of the individual student, the general school
11 population, the communities served by the facilities and
12 facility needs statewide.

13 (b) An amount that is no more than three percent of the
14 sum of moneys that are determined by the authority to
15 be available for distribution during the then current
16 fiscal year from: (1) Moneys paid into the school
17 building capital improvements fund pursuant to section
18 ten, article nine-a of this chapter; (2) the issuance of
19 revenue bonds for which moneys in the school building
20 debt service fund are pledged as security; (3) moneys
21 paid into the school construction fund pursuant to
22 section six of this article; and (4) any other moneys
23 received by the authority, except moneys paid into the
24 school major improvement fund pursuant to section six
25 of this article, may be allocated and may be expended by
26 the authority for projects that service the educational
27 community statewide or, upon application by the state
28 board, for educational programs that are under the
29 jurisdiction of the state board. In addition, upon
30 application by the state board or the administrative
31 council of an area vocational educational center
32 established pursuant to article two-b of this chapter, the
33 authority may allocate and expend hereunder moneys for
34 school major improvement projects proposed by the state
35 board or such administrative council for school facilities
36 under the direct supervision of the state board or such
37 administrative council, respectively: *Provided*, That the
38 authority may not expend any moneys for a school major
39 improvement project proposed by the state board or the
40 administrative council of an area vocational educational
41 center unless the state board or such administrative
42 council has submitted a ten-year school major improve-
43 ment plan, to be updated annually, pursuant to section
44 sixteen of this article: *Provided, however*, That the
45 authority shall, before allocating any moneys to the state
46 board or the administrative council of an area vocational
47 educational center for a school improvement project,

48 consider all other funding sources available for such
49 project.

50 (c) An amount that is no more than two percent of the
51 moneys that are determined by the authority to be
52 available for distribution during the current fiscal year
53 from: (1) Moneys paid into the school building capital
54 improvements fund pursuant to section ten, article nine-
55 a of this chapter; (2) the issuance of revenue bonds for
56 which moneys in the school building debt service fund
57 are pledged as security; (3) moneys paid into the school
58 construction fund pursuant to section six of this article;
59 and (4) any other moneys received by the authority,
60 except moneys deposited into the school major improve-
61 ment fund, shall be set aside by the authority as an
62 emergency fund to be distributed in accordance with the
63 guidelines adopted by the school building authority.

64 (d) The remaining moneys determined by the authority
65 to be available for distribution during the then current
66 fiscal year from: (1) Moneys paid into the school building
67 capital improvements fund pursuant to section ten,
68 article nine-a of this chapter; (2) the issuance of revenue
69 bonds for which moneys in the school building debt
70 service fund are pledged as security; (3) moneys paid into
71 the school construction fund pursuant to section six of
72 this article; and (4) any other moneys received by the
73 authority, except moneys deposited into the school major
74 improvement fund, shall be allocated and expended on
75 the basis of need and efficient use of resources, such
76 basis to be determined by the authority in accordance
77 with the provisions of section sixteen of this article.

78 (e) If a county board of education proposes to finance
79 a project that is approved pursuant to section sixteen of
80 this article through a lease with an option to purchase
81 leased premises upon the expiration of the total lease
82 period pursuant to an investment contract, the authority
83 may allocate no moneys to such county board in
84 connection therewith: *Provided*, That the authority may
85 transfer moneys to the state board of education, which,

86 with the authority, shall lend the amount so transferred
87 to such county board to be used only for a one-time
88 payment due at the beginning of the lease term, made for
89 the purpose of reducing annual lease payments under the
90 investment contract, subject to the following conditions:

91 (1) Such a loan shall be secured in the manner required
92 by the authority, in consultation with the state board,
93 and shall be repaid in a period and bear interest at a rate
94 as determined by the state board and the authority and
95 shall have such terms and conditions as are required by
96 the authority, all of which shall be set forth in a loan
97 agreement among the authority, the state board of
98 education and such county board;

99 (2) Such loan agreement shall provide for the state
100 board and the authority to defer the payment of
101 principal and interest upon any loan made to such
102 county board during the term of such investment
103 contract, and annual renewals thereof, among the state
104 board, the authority, such county board and a lessor:
105 *Provided*, That in the event a county board of education,
106 which has received a loan from the state building
107 authority for a one-time payment at the beginning of the
108 lease term, does not renew the subject lease annually
109 until performance of the investment contract in its
110 entirety is completed: *Provided, however*, That if a
111 county board renews the lease annually through the
112 performance of the investment contract in its entirety,
113 the county board shall exercise its option to purchase
114 the leased premises: *Provided further*, That the failure
115 of such county board to make a scheduled payment
116 pursuant to the investment contract shall constitute an
117 event of default under the loan agreement: *And provided*
118 *further*, That upon such a default by a county board, the
119 principal of the loan, together with all unpaid interest
120 accrued to the date of such default, shall at the option of
121 the authority, in consultation with the state board,
122 become due and payable immediately or subject to
123 renegotiation among the state board, the authority
124 and such county board: *And provided further*, That if

125 the loan becomes due and payable immediately, the
126 authority, in consultation with the state board, shall use
127 all means available under the loan agreement and law to
128 collect the outstanding principal balance of the loan,
129 together with all unpaid interest accrued to the date of
130 payment of such outstanding principal balance; and

131 (3) Such loan agreement shall provide for the state
132 board and the authority to forgive all principal and
133 interest of the loan upon the county board purchasing
134 the leased premises pursuant to the investment contract
135 and performance of the investment contract in its
136 entirety.

137 To encourage county boards to proceed promptly with
138 facilities planning and to prepare for the expenditure of
139 any state moneys derived from the sources described in
140 this subsection, any county board failing to expend
141 money within three years of the allocation thereto shall
142 forfeit such allocation and thereafter shall be ineligible
143 for further allocations pursuant to this subsection until
144 the county board is ready to expend funds in accordance
145 with an approved facilities plan: *Provided*, That the
146 authority may authorize an extension beyond the three-
147 year forfeiture period not to exceed an additional two
148 years. Any amount so forfeited shall be added to the total
149 funds available in the school construction fund of the
150 authority for future allocation and distribution.

151 (f) The remaining moneys that are determined by the
152 authority to be available for distribution during the then
153 current fiscal year from moneys paid into the school
154 major improvement fund pursuant to section six of this
155 article shall be allocated and distributed on the basis of
156 need and efficient use of resources, such basis to be
157 determined by the authority in accordance with the
158 provisions of section sixteen of this article: *Provided*,
159 That such moneys may not be distributed to any county
160 board that does not have an approved school major
161 improvement plan or to any county board that is not
162 prepared to commence expenditures of such funds

163 during the fiscal year in which the moneys are distrib-
164 uted: *Provided, however*, That any moneys allocated to
165 a county board and not distributed to that county board
166 shall be deposited in an account to the credit of that
167 county board, such principal amount to remain to the
168 credit of and available to the county board for a period
169 of two years. Any moneys which are unexpended after a
170 two-year period shall be redistributed on the basis of
171 need from the school major improvement fund in that
172 fiscal year.

173 (g) No local matching funds may be required under the
174 provisions of this section. However, the responsibilities
175 of the county boards of education to maintain school
176 facilities shall not be negated by the provisions of this
177 article, and therefore, to be eligible to receive an
178 allocation of school major improvement funds from the
179 authority, a county board must have expended in the
180 previous fiscal year an amount of county moneys equal
181 to or exceeding the lowest average amount of money
182 included in such county board's maintenance budget
183 over any three of the previous five years and must have
184 budgeted an amount equal to or greater than said
185 average in the current fiscal year: *Provided*, That the
186 state board of education shall promulgate rules relating
187 to county boards' maintenance budgets, including items
188 which shall be included therein, as soon as practical and
189 submitted for legislative review no later than the first
190 day of December, one thousand nine hundred ninety-
191 four.

192 (h) Any county board may use moneys provided by the
193 authority under this article in conjunction with local
194 funds derived from bonding, special levy or other
195 sources. Distribution to a county board, or to the state
196 board or the administrative council of an area vocational
197 educational center pursuant to subsection (b) of this
198 section, may be in a lump sum or in accordance with a
199 schedule of payments adopted by the authority pursuant
200 to such guidelines as it shall adopt.

§18-9D-16. Facilities and major improvement plans generally; need-based eligibility.

1 (a) To facilitate the goals as stated in section fifteen of
2 this article and to assure the prudent and resourceful
3 expenditure of state funds for construction projects as
4 described in subsection (d) of said section, each county
5 board of education shall submit a county-wide compre-
6 hensive educational facilities plan that addresses the
7 facilities and major improvement needs of the county
8 pursuant to such guidelines as shall be adopted by the
9 authority in accordance with this section and in
10 accordance with each county's facilities plan approved
11 by the state board of education. Any project receiving
12 funding shall be in furtherance of such approved county-
13 wide facilities plan.

14 (1) To assure efficiency and productivity in the project
15 approval process, the county-wide facilities plan shall be
16 submitted only after a preliminary plan, a plan outline or
17 a proposal for a plan has been submitted to the author-
18 ity. Selected members of the authority, which selection
19 shall include citizen members, shall then meet promptly
20 with those persons designated by the county board to
21 attend the facilities plan consultation. The purpose of
22 the consultation is to assure understanding of the
23 general goals of the school building authority and the
24 specific goals encompassed in the following criteria and
25 to discuss ways the plan may be structured to meet those
26 goals.

27 (2) The guidelines for the development of a facilities
28 plan shall state the manner, timeline and process for
29 submission of any plan to the authority; such project
30 specifications as may be deemed appropriate by the
31 authority; and those matters which are deemed by the
32 authority to be important reflections of how the project
33 will further the overall goals of the authority.

34 (b) To facilitate the goals as stated in section fifteen of
35 this article and to assure the prudent and resourceful
36 expenditure of state funds derived from the school major

37 improvement fund, each county board of education shall
38 submit to the authority a ten-year county-wide school
39 major improvement plan that addresses the major
40 improvement needs of each school within the county. If
41 the state board of education or the administrative
42 council of an area vocational educational center chooses
43 to seek funding for a major improvement project from
44 the authority pursuant to subsection (f) of said section,
45 the state board or such administrative council shall
46 submit a ten-year school major improvement plan that
47 addresses the major improvement needs of the school or
48 area vocational educational center for which funding is
49 sought. Each ten-year school major improvement plan
50 shall be prepared pursuant to such guidelines as shall be
51 adopted by the authority in accordance with this section
52 and shall be updated annually to reflect projects
53 completed and new or continuing needs. Any school
54 major improvement project funded by the authority shall
55 be in furtherance of such approved school major
56 improvement plan.

57 The guidelines for the development and annual updates
58 of a ten-year school major improvement plan shall state
59 the manner, timeline and process for submission of any
60 plan, including a repair and replacement schedule for
61 school facilities, to the authority; such maintenance
62 specifications as may be deemed appropriate by the
63 authority; and those matters which are deemed by the
64 authority to be important reflections of how the major
65 improvement project or projects will further the overall
66 goals of the authority.

67 (c) The guidelines regarding submission of the facilities
68 plans and school major improvement plans shall include
69 requirements for public hearings, comments or other
70 means of providing broad-based input within a reason-
71 able time period as the authority may deem appropriate.
72 The submission of each plan shall be accompanied by a
73 synopsis of all comments received and a formal comment
74 by the county board, the state board or the administra-
75 tive council of an area vocational educational center

76 submitting such plan.

77 The guidelines regarding project specifications may
78 include such matters as energy efficiency, preferred
79 siting, construction materials, maintenance plan or any
80 other matter related to how the project is to proceed. If
81 a county board of education proposes to finance a
82 construction project through a lease with an option to
83 purchase pursuant to an investment contract as
84 described in subsection (e), section fifteen of this article,
85 the specifications for such project shall include the term
86 of the lease, the amount of each lease payment, including
87 the payment due upon exercise of the option to purchase,
88 and the terms and conditions of the proposed investment
89 contract.

90 (d) The guidelines pertaining to quality educational
91 facilities shall require that a facilities plan address how
92 the current facilities do not meet and how the proposed
93 plan and any project thereunder does meet the following
94 goals:

95 (1) Student health and safety;

96 (2) Economies of scale, including compatibility with
97 similar schools that have achieved the most economical
98 organization, facility utilization and pupil-teacher
99 ratios;

100 (3) Reasonable travel time and practical means of
101 addressing other demographic considerations;

102 (4) Multi-county and regional planning to achieve the
103 most effective and efficient instructional delivery
104 system;

105 (5) Curriculum improvement and diversification,
106 including computerization and technology and advanced
107 senior courses in science, mathematics, language arts
108 and social studies;

109 (6) Innovations in education;

110 (7) Adequate space for projected student enrollments;

111 and

112 (8) To the extent constitutionally permissible, each
113 facilities plan shall address the history of efforts taken
114 by the county board to propose or adopt local school
115 bond issues or special levies.

116 If the project is to benefit more than one county in the
117 region, the facilities plan shall state the manner in which
118 the cost and funding of the project shall be apportioned
119 among the counties.

120 (e) The guidelines pertaining to quality educational
121 facilities shall require that a school major improvement
122 plan address how the proposed plan and any project
123 thereunder meet the following goals:

124 (1) Student health and safety, including, but not
125 limited to, critical health and safety needs; and

126 (2) Economies of scale, including regularly scheduled
127 preventive maintenance: *Provided*, That each county
128 board's school maintenance plan shall address regularly
129 scheduled maintenance for all facilities within the
130 county.

131 (f) Each county board's facilities plan and school major
132 improvement plan shall prioritize all the construction
133 projects or major improvement projects, respectively,
134 within the county. A school major improvement plan
135 submitted by the state board or the administrative
136 council of an area vocational educational center shall
137 prioritize all the school improvement projects contained
138 in such plan. Such priority list shall be one of the criteria
139 to be considered by the authority in determining how
140 available funds shall be expended. In prioritizing the
141 projects, the county board, the state board or the
142 administrative council submitting a plan shall make
143 determinations in accordance with the objective criteria
144 formulated by the school building authority.

145 (g) Each facilities plan and school major improvement
146 plan shall include the objective means to be utilized in

147 evaluating implementation of the overall plan and each
148 project included therein. Such evaluation shall measure
149 each project's furtherance of each applicable goal stated
150 in this section and any guidelines adopted hereunder, as
151 well as the overall success of any project as it relates to
152 the facilities plan or school major improvement plan and
153 the overall goals of the authority.

154 (h) The state department of education shall conduct
155 on-site inspections, at least annually, of all facilities
156 which have been funded wholly or in part by moneys
157 from the authority or state board to ensure compliance
158 with the county board's facilities plan and school major
159 improvement plan as related to such facilities; to
160 preserve the physical integrity of the facilities to the
161 extent possible; and to otherwise extend the useful life of
162 the facilities: *Provided*, That the state board shall submit
163 reports regarding its on-site inspections of facilities to
164 the authority within thirty days of completion of such
165 on-site inspections: *Provided, however*, That the state
166 board shall promulgate rules regarding such on-site
167 inspections and matters relating thereto, in consultation
168 with the authority, as soon as practical and shall submit
169 such proposed rules for legislative review no later than
170 the first day of December, one thousand nine hundred
171 ninety-four.

172 (i) The authority may adopt guidelines for requiring
173 that a county board modify, update, supplement or
174 otherwise submit changes or additions to an approved
175 facilities plan or for requiring that a county board, the
176 state board or the administrative council of an area
177 vocational educational center modify, update, supple-
178 ment or otherwise submit changes or additions to an
179 approved county board facilities plan or school major
180 improvement plan. The authority shall provide reason-
181 able notification and sufficient time for such change or
182 addition as delineated in guidelines developed by the
183 authority.

184 (j) Based on its on-site inspection or notification by the

185 authority to the state board that the changes or additions
 186 to a county's board facilities plan or school major
 187 improvement plan required by the authority have not
 188 been implemented within the time period prescribed by
 189 the authority, the state board shall restrict the use of the
 190 necessary funds or otherwise allocate funds from moneys
 191 appropriated by the Legislature for those purposes set
 192 forth in section nine, article nine-a of this chapter.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

**§29-22-18. State lottery fund; appropriations and deposits;
 not part of general revenue; no transfer of state
 funds after initial appropriation; use and
 repayment of initial appropriation; allocation
 of fund for prizes, net profit and expenses;
 surplus; state lottery education fund; state
 lottery senior citizens fund; allocation and
 appropriation of net profits.**

1 (a) There is hereby created a special fund in the state
 2 treasury which shall be designated and known as the
 3 "state lottery fund". The fund shall consist of all
 4 appropriations to the fund and all interest earned from
 5 investment of the fund and any gifts, grants or contribu-
 6 tions received by the fund. All revenues received from
 7 the sale of lottery tickets, materials and games shall be
 8 deposited with the state treasurer and placed into the
 9 "state lottery fund". The revenue shall be disbursed in
 10 the manner herein provided for the purposes stated
 11 herein and shall not be treated by the auditor and
 12 treasurer as part of the general revenue of the state.

13 (b) No appropriation, loan or other transfer of state
 14 funds may be made to the commission or lottery fund
 15 after the initial appropriation.

16 (c) A minimum annual average of forty-five percent of
 17 the gross amount received from each lottery shall be
 18 allocated and disbursed as prizes.

19 (d) Not more than fifteen percent of the gross amount
20 received from each lottery shall be allocated to and may
21 be disbursed as necessary for fund operation and
22 administration expenses.

23 (e) The excess of the aggregate of the gross amount
24 received from all lotteries over the sum of the amounts
25 allocated by subsections (c) and (d) of this section shall
26 be allocated as net profit. The director is authorized to
27 expend the necessary percentage of the amount allocated
28 as net profit, not to exceed six percent of the gross
29 amount received, for the purposes of entering into
30 contractual arrangements for the acquisition, financing,
31 lease and lease-purchase, and other financing transac-
32 tions, of lottery goods and services, including tickets,
33 equipment, machinery, electronic computer systems and
34 terminals, and supplies and maintenance therefor, for
35 the first thirty-six months of operation, and may
36 apportion the costs, expenses and expenditures related
37 thereto among the commission, vendor or vendors and
38 licensed lottery sales agents. In the event that the
39 percentage allotted for operations and administration
40 generates a surplus, the surplus will be allowed to
41 accumulate to an amount not to exceed two hundred
42 fifty thousand dollars. On a monthly basis the director
43 shall report to the joint committee on government and
44 finance of the Legislature any surplus in excess of two
45 hundred fifty thousand dollars and remit to the state
46 treasurer the entire amount of those surplus funds in
47 excess of two hundred fifty thousand dollars which shall
48 be allocated as net profit.

49 (f) After satisfying the requirements for funds
50 dedicated to the school building debt service fund in
51 subsection (h) of this section to retire the ten-year bonds
52 authorized to be issued pursuant to section eight, article
53 nine-d, chapter eighteen of this code, the Legislature
54 shall annually appropriate all of the remaining amounts
55 allocated as net profits above, in such proportions as it
56 deems beneficial to the citizens of this state, to: (1) The
57 lottery education fund created in subsection (g) of this

58 section; (2) the school construction fund as created in
59 section six, article nine-d, chapter eighteen of this code;
60 (3) the lottery senior citizens fund created in subsection
61 (i) of this section; and (4) the commerce division created
62 in article one, chapter five-b of this code, in accordance
63 with subsection (j) of this section: *Provided*, That no
64 transfer to any account other than the school building
65 debt service account may be made in any period in which
66 a default exists in respect to debt service on bonds issued
67 by the school building authority which are secured by
68 lottery proceeds: *Provided, however*, That no additional
69 transfer shall be made to any account other than the
70 school building debt service account when net profits for
71 the preceding twelve months are not at least equal to one
72 hundred fifty percent of debt service on bonds issued by
73 the school building authority which are secured by net
74 profits.

75 (g) There is hereby created a special fund in the state
76 treasury which shall be designated and known as the
77 "lottery education fund". The fund shall consist of the
78 amounts allocated pursuant to subsection (f) of this
79 section, which amounts shall be deposited into the
80 lottery education fund by the state treasurer. The lottery
81 education fund shall also consist of all interest earned
82 from investment of the lottery education fund and any
83 other appropriations, gifts, grants, contributions or
84 moneys received by the lottery education fund from any
85 source. The revenues received or earned by the lottery
86 education fund shall be disbursed in the manner
87 provided below and shall not be treated by the auditor
88 and treasurer as part of the general revenue of the state.
89 Annually, the Legislature shall appropriate the revenues
90 received or earned by the lottery education fund to the
91 state system of public and higher education for such
92 educational programs as it considers beneficial to the
93 citizens of this state.

94 (h) Beginning on or before the twenty-eighth day of
95 July, one thousand nine hundred ninety-four, and
96 continuing on or before the twenty-eighth day of each

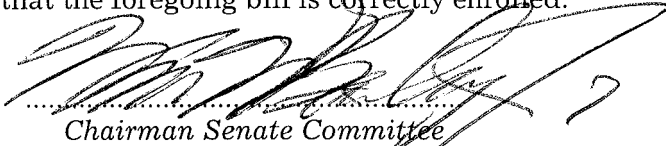
97 succeeding month thereafter through the thirtieth day of
98 June, two thousand five, the lottery director shall
99 allocate to the school building debt service fund created
100 pursuant to the provisions of section six, article nine-d,
101 chapter eighteen of this code, as a first priority from the
102 net profits of the lottery for the preceding month, an
103 amount equal to one tenth of the projected annual
104 principal, interest and coverage ratio requirements on
105 any and all revenue bonds and refunding bonds issued,
106 or to be issued, on or after the first day of April, one
107 thousand nine hundred ninety-four, as certified to the
108 lottery director in accordance with the provisions of said
109 section: *Provided*, That in no event shall said monthly
110 amount exceed one million eight hundred thousand
111 dollars: *Provided, however*, That in no event shall the
112 total allocation of said net profits to be paid into the
113 school building debt service fund, as provided in this
114 section, in any fiscal year exceed the lesser of the
115 principal and interest requirements certified to the
116 lottery director as aforesaid, or eighteen million dollars:
117 *Provided further*, That in the event there are insufficient
118 funds available in any month to transfer the amount
119 required to be transferred pursuant to this subsection to
120 the school debt service fund, the deficiency shall be
121 added to the amount transferred in the next succeeding
122 month in which revenues are available to transfer said
123 deficiency: *And provided further*, That a lien on the
124 proceeds of the state lottery fund up to a maximum
125 amount equal to the projected annual principal, interest
126 and coverage ratio requirements, not to exceed twenty-
127 seven million dollars annually, may be granted by the
128 authority in favor of the bonds issued by the authority
129 which are secured by the net lottery profits.

130 (i) There is hereby created a special fund in the state
131 treasury which shall be designated and known as the
132 "lottery senior citizens fund". The fund shall consist of
133 the amounts allocated pursuant to subsection (f) of this
134 section, which amounts shall be deposited into the
135 lottery senior citizens fund by the state treasurer. The

136 lottery senior citizens fund shall also consist of all
137 interest earned from investment of the lottery senior
138 citizens fund and any other appropriations, gifts, grants,
139 contributions or moneys received by the lottery senior
140 citizens fund from any source. The revenues received or
141 earned by the lottery senior citizens fund shall be
142 disbursed in the manner provided below and shall not be
143 treated by the auditor or treasurer as part of the general
144 revenue of the state. Annually, the Legislature shall
145 appropriate the revenues received or earned by the
146 lottery senior citizens fund to such senior citizens
147 medical care and other programs as it considers
148 beneficial to the citizens of this state.

149 (j) The commerce division may use the amounts
150 allocated to it pursuant to subsection (f) of this section
151 for one or more of the following purposes: (1) The
152 payment of any or all of the costs incurred in the
153 development, construction, reconstruction, maintenance
154 or repair of any project or recreational facility, as such
155 terms are defined in section thirteen-a, article one,
156 chapter five-b of this code, pursuant to the authority
157 granted to it under said article; (2) the payment, funding
158 or refunding of the principal of, interest on or redemp-
159 tion premiums on any bonds, security interests or notes
160 issued by the parks and recreation section of the
161 commerce division under article one, chapter five-b of
162 this code; or (3) the payment of any advertising and
163 marketing expenses for the promotion and development
164 of tourism or any tourist facility or attraction in this
165 state.

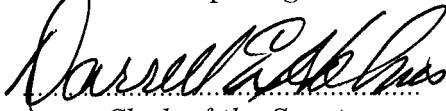
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

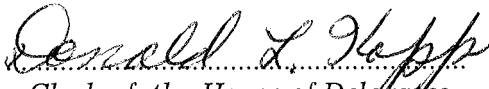

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Chairman Senate Committee

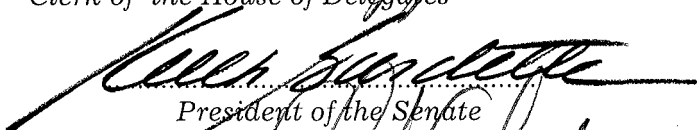

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Chairman House Committee

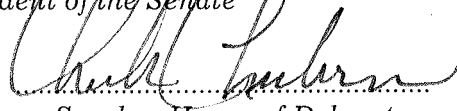
Originated in the Senate.

In effect from passage.



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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within is approved this the 31ST
day of March, 1994.


.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/25/94

Time 10:38 am