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
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article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section three, article one, chapter five-g of said code be amended and reenacted; that section thirty, article fifteen, chapter eleven of said code be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 services for projects estimated to cost two hundred fifty thousand dollars or more, the director of purchasing shall encourage such firms engaged in the lawful practice of the profession to submit an expression of interest, which shall include a statement of qualifications and performance data, and may include anticipated concepts and proposed methods of approach to the project. All such jobs shall be announced by public notice published as a Class II legal advertisement in compliance with the provisions of article three, chapter
fifty-nine of this code. A committee of three to five representatives of the agency initiating the request shall evaluate the statements of qualifications and performance data and other material submitted by interested firms and select three firms which, in their opinion, are best qualified to perform the desired service: Provided, That on projects funded wholly or in part by school building authority moneys, in accordance with sections fifteen and sixteen, article nine-d, chapter eighteen of this code, two of said three firms shall have had offices within this state for a period of at least one year prior to submitting an expression of interest regarding a project funded by school building authority moneys. Interviews with each firm selected shall be conducted and the committee shall conduct discussions regarding anticipated concepts and proposed methods of approach to the assignment. The committee shall then rank, in order of preference, no less than three professional firms deemed to be the most highly qualified to provide the services required, and shall commence scope of service and price negotiations with the highest qualified professional firm for architectural or engineering services or both. Should the agency be unable to negotiate a satisfactory contract with the professional firm considered to be the most qualified, at a fee determined to be fair and reasonable, price negotiations with the firm of second choice shall commence. Failing accord with the second most qualified professional firm, the committee shall undertake price negotiations with the third most qualified professional firm. Should the agency be unable to negotiate a satisfactory contract with any of the selected professional firms, it shall select additional professional firms in order of their competence and qualifications and it shall continue negotiations in accordance with this section until an agreement is reached: Provided, however, That county boards of education may either elect to start the selection process over in the original order of preference or it may select additional professional firms in order of their competence and qualifications and it shall continue negotia-
CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMERS SALES TAX.


(a) The proceeds of the tax imposed by this article shall be deposited in the general revenue fund of the state beginning the first day of July, one thousand nine hundred ninety-four, except as otherwise expressly provided in this article. Prior to the said first day of July, the proceeds of this tax shall, except as otherwise expressly provided in this article, be deposited as provided in chapter three, acts of the Legislature, second extraordinary session, one thousand nine hundred ninety-three, and, for such purpose, such prior law is fully preserved. On the said first day of July, the balance in “WVFIMS” account number fund 6676, fiscal year one thousand nine hundred ninety-four, organization 0615, shall be transferred to the general revenue fund. On the said first day of July, the balance in “WVFIMS” account number fund 3962, fiscal year one thousand nine hundred ninety-four, organization 0402, shall be transferred to the school construction fund created pursuant to section six, article nine-d, chapter eighteen of this code.

(b) School major improvement fund. —

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

(1) On the first day of July, one thousand nine hundred ninety-four, there shall be dedicated from the collections of this tax, an amount appropriated by the Legislature to this fund in the general revenue budget for the fiscal year beginning on the first day of July, one thousand nine hundred ninety-four, and the amount dedicated shall be deposited into the school major improvement
fund created pursuant to section six, article nine-d, chapter eighteen of this code, as soon as such amount has been accumulated from the collections of this tax.

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

(c) *School construction fund.* —

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

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

(2) Beginning the first day of July, one thousand nine hundred ninety-six, and continuing on the first day of each succeeding month thereafter through the thirtieth day of June, two thousand five, there shall be dedicated monthly from the collections of this tax, the amount of one million four hundred sixteen thousand six hundred sixty-seven dollars and the amount dedicated shall be deposited into the school construction fund created pursuant to section six, article nine-d, chapter eighteen of this code.
CHAPTER 18. EDUCATION.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.


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

1. (1) “Authority” means the school building authority of West Virginia or, if said authority shall be abolished, any board or officer succeeding to the principal functions thereof, or to whom the powers given to said authority shall be given by law;

2. (2) “Bonds” means bonds issued by the authority pursuant to this article;

3. (3) “Construction project” means a project with a cost of project greater than five hundred thousand dollars for the new construction, major renovation of facilities, buildings and structures for school purposes including the acquisition of land for current or future use in connection therewith, as well as new or substantial upgrading of existing equipment, machinery, furnishings, installation of utilities and other similar items convenient in connection with placing the foregoing into operation: Provided, That a construction project may not include such items as books, computers or equipment used for instructional purposes, fuel, supplies, routine utility services fees, routine maintenance costs, ordinary course of business improvements and other items which are customarily deemed to result in a current or ordinary course of business operating charge: Provided, however, That a construction project may not include a major improvement project;

4. (4) “Cost of project” means the cost of construction, renovation, repair and safety upgrading of facilities, buildings and structures for school purposes; the cost of land, equipment, machinery, furnishings, installation of utilities and other similar items convenient in connection
with placing the foregoing into operation; and the cost of
financing, interest during construction, professional
service fees and all other charges or expenses necessary,
appurtenant or incidental to the foregoing, including the
cost of administration of this article;

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

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

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

(8) "Revenue" or "revenues" means moneys deposited in the school building capital improvements fund
pursuant to the operation of section ten, article nine-a of
this chapter; moneys deposited in the school construction
fund pursuant to the operation of section thirty, article
fifteen, chapter eleven of this code and pursuant to the
operation of section eighteen, article twenty-two,
chapter twenty-nine of this code; moneys deposited in
the school building debt service fund pursuant to section
eighteen, article twenty-two, chapter twenty-nine of this
code; moneys deposited in the school major improvement
fund pursuant to the operation of section thirty, article
fifteen, chapter eleven of this code; any moneys received,
directly or indirectly, from any source for use in any
project completed pursuant to this article; and any other
moneys received by the authority for the purposes of this
article;

(9) "School major improvement plan" means the ten-
year school maintenance plan to be prepared by each county board of education and by the state board of education or the administrative council of an area
vocational educational center if such entity seeks funding from the authority for a major improvement project, which school major improvement plan is required prior to the distribution of state funds for a major improvement project pursuant to subsection (b), section sixteen of this article; and

(10) "School major improvement project" means a project with a cost greater than fifty thousand dollars and less than five hundred thousand dollars for the renovation, the repair and safety upgrading of existing school facilities, buildings and structures, including the substantial repair or upgrading of equipment, machinery, building systems, utilities and other similar items convenient in connection with such renovation, repair or upgrading: Provided, That a major improvement project may not include such items as books, computers or equipment used for instructional purposes, fuel, supplies, routine utility services fees, routine maintenance costs, ordinary course of business improvements and other items which are customarily deemed to result in a current or ordinary course of business operating charge.


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 of the authority by purchase, lease-purchase not to exceed a term of twenty-five years, or otherwise, real property or rights or easements necessary or convenient for its corporate purposes and to exercise the power of eminent domain to accomplish such purposes;

5 (4) To acquire, hold and dispose of real and personal property for its corporate purposes;

6 (5) To make bylaws for the management and rule of its affairs;
(6) To appoint, contract with and employ attorneys, 
bond counsel, accountants, construction and financial 
experts, underwriters, financial advisers, trustees, 
managers, officers and such other employees and agents 
as may be necessary in the judgment of the authority and 
to fix their compensation: Provided, That contracts 
entered into by the school building authority in 
connection with the issuance of bonds under this article 
to provide professional and technical services, including 
without limitation, accounting, actuarial, underwriting, 
consulting, trustee, bond counsel, legal services and 
contracts relating to the purchase or sale of bonds shall 
be subject to the provisions of article three, chapter five-
a of this code: Provided, however, That notwithstanding 
any other provisions of this code, any authority of the 
attorney general of this state relating to the review of 
contracts and other documents to effectuate the issuance 
of bonds under this article shall be exclusively limited to 
the form of the contract and document: Provided further, 
That the attorney general of this state shall complete all 
reviews of contracts and documents relating to the 
is issuance of bonds under this article within ten calendar 
days of receipt of such contract and document for 
review;

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

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

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

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

(11) To charge rent for the use of all or any part of a 
project or buildings at any time financed, constructed,
acquired or improved, in whole or in part, with the revenues of the authority;

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

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

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

(15) To contract for architectural, engineering or other professional services considered necessary or economical by the authority to provide consultative or other services to the authority or to any regional educational service agency or county board requesting professional services offered by the authority, to evaluate any facilities plan or any project encompassed therein, to inspect existing facilities or any project that has received or may receive funding from the authority, or to perform any other service considered by the authority to be necessary or economical. Assistance to the region or district may include the development of preapproved systems, plans, designs, models or documents; advice or oversight on any plan or project; or any other service that may be
efficiently provided to regional educational service agencies or county boards by the authority;

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

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

(18) To do all things necessary or convenient to carry 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.

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

(b) The school building authority may, in accordance with the provisions of the constitution of West Virginia, issue general obligation bonds from time to time as
Enr. S. B. No. 1008] 12

authorized by referendum pursuant to resolution duly
adopted by the Legislature, to finance the cost of
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 collections as security for refunding revenue bonds; authority to finance projects on a cash basis.

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

The school building authority shall have authority to pledge all or such part of the revenues paid into the school building capital improvements fund as may be needed to meet the requirements of any revenue bond issue or issues authorized by this article prior to the twentieth day of July, one thousand nine hundred ninety-three, or revenue bonds issued to refund revenue bonds issued prior to that date, including the payment of principal of, interest and redemption premium, if any, on, such revenue bonds and the establishing and maintaining of a reserve fund or funds for the payment of the principal of, interest and redemption premium, if any, on such revenue bond issue or issues when other moneys pledged may be insufficient therefor, including such additional protective pledge of revenues as the authority in its discretion has provided by resolution authorizing the issue of such bonds or in any trust agreement made in connection therewith. The authority may further provide in such resolution and in such trust agreement for such priorities on the revenues paid into such school building capital improvements fund as may be necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this article.
Any balance remaining in the school building capital improvements fund after the authority has issued bonds authorized by this article, and after the requirements of all funds including reserve funds established in connection with the bonds issued prior to the twentieth day of July, one thousand nine hundred ninety-three, pursuant to this article have been satisfied, may be used for the redemption of any of the outstanding bonds issued hereunder which by their terms are then redeemable, or for the purchase of such bonds at the market price, but not exceeding the price, if any, at which such bonds shall in the same year be redeemable, and all bonds redeemed or purchased shall forthwith be canceled and shall not again be issued.

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

(b) There is hereby created in the state treasury a special fund named the school building debt service fund into which shall be deposited on and after the first day of April, one thousand nine hundred ninety-four, the amounts specified in section eighteen, article twenty-two, chapter twenty-nine of this code. All amounts deposited in the fund shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds authorized by this article: Provided, That moneys so deposited may not be pledged to the repayment of any revenue bonds issued prior to the first day of January, one thousand nine hundred ninety-four, or with respect
to revenue bonds issued for the purpose of refunding revenue bonds issued prior to the first day of January, one thousand nine hundred ninety-four. The authority may further provide in the resolution and in the trust agreement for priorities on the revenues paid into the school building debt service fund as may be necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this article. On or prior to the first day of May of each year, commencing the first day of May, one thousand nine hundred ninety-four, the authority shall certify to the state lottery director the principal and interest and coverage ratio requirements for the following fiscal year on any revenue bonds issued on or after the first day of January, one thousand nine hundred ninety-four, and for which moneys deposited in the school building debt service fund have been pledged, or will be pledged, for repayment pursuant to this section: Provided, however, That before the first day of May, one thousand nine hundred ninety-four, the authority shall also certify to the lottery director of the state the principal, interest and coverage ratio requirements for the fiscal year ending on the thirtieth day of June, one thousand nine hundred ninety-five, on any revenue bonds issued, or to be issued, on or after the first day of January, one thousand nine hundred ninety-four.

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

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

(e) The Legislature hereby finds and declares that the
supreme court of appeals of West Virginia has held that
the issuance of additional revenue bonds authorized
under the school building authority act, as enacted in
this article 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, but that
revenue bonds issued hereunder prior to the twentieth
day of July, one thousand nine hundred ninety-three, are
not invalid. The Legislature further finds and declares
that the financial capacity of a county to construct, lease
and improve school facilities depends upon the county's
bonding capacity (local property wealth), voter
willingness to pass bond issues and the county's ability
to reallocate other available county funds instead of
criteria related to educational needs or upon the ability
of the school building authority created in this article to
issue bonds that comply with said holding of the West
Virginia supreme court of appeals or otherwise assist
counties with the financing of facilities construction and
improvement. The Legislature hereby further finds and
declares that this section, as well as section eighteen,
article twenty-two, chapter twenty-nine of this code,
have been reenacted during the first extraordinary
session of the West Virginia Legislature in the year one
thousand nine hundred ninety-four, in an attempt to
comply with said holding of the supreme court of appeals
of West Virginia.

The Legislature hereby further finds and declares that
it intends, through the reenactment of this section and
section eighteen, article twenty-two, chapter twenty-
nine of this code, to dedicate a source of state revenues
to special funds for the purposes of paying the debt
service on bonds and refunding bonds issued 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 school building facilities. 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 section eighteen, article twenty-two, chapter twenty-nine of this code, to appropriate revenues to two special funds for the purposes of construction and improvement of school building facilities. Furthermore, the Legislature intends to encourage county boards of education to maintain existing levels of county funding for construction, improvement and maintenance of school building facilities and to generate additional county funds for such purposes through bonds and special levies whenever possible. The Legislature further encourages the school building authority, the state board of education and county boards of education to propose uniform project specifications for comparable projects whenever possible to meet county needs at the lowest possible cost.

The Legislature hereby further finds and declares that it intends, through the reenactment of this section and section eighteen, article twenty-two, chapter twenty-nine of this code, to comply with the provisions of sections four and six, article ten; and section one, article 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 be issued by the authority, for which the moneys in the school building debt service fund are to be pledged, is one hundred sixty million dollars. The issuance of revenue bonds under the provisions of this article shall be authorized from time to time by resolution or resolutions of the school building authority, which shall set forth the proposed projects and provide for the issuance of bonds in amounts sufficient, when sold as
hereinafter provided, to provide moneys considered sufficient by the authority to pay such costs, less the amounts of any other funds available for said costs or from any appropriation, grant or gift therefor: Provided, That bond issues from which bond revenues are to be distributed in accordance with section fifteen of this article shall not be required to set forth the proposed projects in the resolution. Such resolution shall prescribe the rights and duties of the bondholders and the school building authority, and for such purpose may prescribe the form of the trust agreement hereinafter referred to. The bonds may be issued from time to time, in such amounts; shall be of such series; bear such date or dates; mature at such time or times not exceeding forty years from their respective dates; bear interest at such rate or rates; be in such denominations; be in such form, either coupon or registered, carrying such registration, exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places within or without the state; be subject to such terms of redemption at such prices not exceeding one hundred five percent of the principal amount thereof; and be entitled to such priorities on the revenues paid into the fund pledged for repayment of the bonds as may be provided in the resolution authorizing the issuance of the bonds or in any trust agreement made in connection therewith: Provided, however, That revenue bonds issued on or after the first day of January, one thousand nine hundred ninety-four, which are secured by lottery proceeds shall mature at such time or times not exceeding ten years from their respective dates.

The bonds shall be signed by the governor, and by the president or vice president of the authority, under the great seal of the state, attested by the secretary of state, and the coupons attached thereto shall bear the facsimile signature of the president or vice president of the authority. In case any of the officers whose signatures appear on the bonds or coupons cease to be such officers before the delivery of such bonds, such signatures shall
nevertheless be valid and sufficient for all purposes the
same as if such officers had remained in office until such
delivery. Such revenue bonds shall be sold in such
manner as the authority may determine to be for the best
interests of the state.

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

The proceeds of such any bonds shall be used solely
for the purpose or purposes as may be generally or
specifically set forth in the resolution authorizing those
bonds and shall be disbursed in such manner and with
such restrictions, if any, as the authority may provide in
the resolution authorizing the issuance of such bonds or
in the trust agreement hereinafter referred to securing
the same. If the proceeds of such bonds, by error in
calculations or otherwise, shall be less than the cost of
any projects specifically set forth in the resolution,
additional bonds may in like manner be issued to provide
the amount of the deficiency; and unless otherwise
provided for in the resolution or trust agreement
hereinafter mentioned, such additional bonds shall be
considered to be of the same issue, and shall be entitled
to payment from the same fund, without preference or
priority, as the bonds before issued for such projects. If
the proceeds of bonds issued for such projects specifi-
cally set forth in the resolution authorizing such bonds
issued by the authority exceed the cost thereof, the
surplus may be used for such other projects as the school
building authority may determine or in such other
manner as the resolution authorizing such bonds may
provide. Prior to the preparation of definitive bonds, the
authority may, under like restrictions, issue temporary
bonds with or without coupons, exchangeable for
definitive bonds upon the issuance of such definitive
bonds.

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

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

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

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

(a) It is the intent of the Legislature to empower the
school building authority to facilitate and provide state
funds for the construction and major improvement of
school facilities so as to meet the educational needs of
the people of this state in an efficient and economical
manner. The authority shall make funding determina-
tions in accordance with the provisions of this article
and shall assess existing school facilities and each
facility's school major improvement plan in relation to
the needs of the individual student, the general school
population, the communities served by the facilities and
facility needs statewide.

(b) An amount that is no more than three percent of the
sum of moneys that are determined by the authority to
be available for distribution during the then current
fiscal year from: (1) Moneys paid into the school
building capital improvements fund pursuant to section
ten, article nine-a of this chapter; (2) the issuance of
revenue bonds for which moneys in the school building
debt service fund are pledged as security; (3) moneys
paid into the school construction fund pursuant to section
six of this article; and (4) any other moneys
received by the authority, except moneys paid into the
school major improvement fund pursuant to section six
of this article, may be allocated and may be expended by
the authority for projects that service the educational
community statewide or, upon application by the state
board, for educational programs that are under the
jurisdiction of the state board. In addition, upon
application by the state board or the administrative
council of an area vocational educational center
established pursuant to article two-b of this chapter, the
authority may allocate and expend hereunder moneys for
school major improvement projects proposed by the state
board or such administrative council for school facilities
under the direct supervision of the state board or such
administrative council, respectively: Provided, That the
authority may not expend any moneys for a school major
improvement project proposed by the state board or the
administrative council of an area vocational educational
center unless the state board or such administrative
council has submitted a ten-year school major improve-
ment plan, to be updated annually, pursuant to section
sixteen of this article: Provided, however, That the
authority shall, before allocating any moneys to the state
board or the administrative council of an area vocational
educational center for a school improvement project,
consider all other funding sources available for such project.

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

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

(e) If a county board of education proposes to finance a project that is approved pursuant to section sixteen of this article through a lease with an option to purchase leased premises upon the expiration of the total lease period pursuant to an investment contract, the authority may allocate no moneys to such county board in connection therewith: Provided, That the authority may transfer moneys to the state board of education, which,
with the authority, shall lend the amount so transferred
to such county board to be used only for a one-time
payment due at the beginning of the lease term, made for
the purpose of reducing annual lease payments under the
investment contract, subject to the following conditions:

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

(2) Such loan agreement shall provide for the state
board and the authority to defer the payment of
principal and interest upon any loan made to such
county board during the term of such investment
contract, and annual renewals thereof, among the state
board, the authority, such county board and a lessor:

Provided, That in the event a county board of education,
which has received a loan from the state building
authority for a one-time payment at the beginning of the
lease term, does not renew the subject lease annually
until performance of the investment contract in its
entirety is completed: Provided, however, That if a
county board renew the lease annually through the
performance of the investment contract in its entirety,
the county board shall exercise its option to purchase
the leased premises: Provided further, That the failure
of such county board to make a scheduled payment
pursuant to the investment contract shall constitute an
event of default under the loan agreement: And provided
further, That upon such a default by a county board, the
principal of the loan, together with all unpaid interest
accrued to the date of such default, shall at the option of
the authority, in consultation with the state board,
become due and payable immediately or subject to
renegotiation among the state board, the authority
and such county board: And provided further, That if
the loan becomes due and payable immediately, the
authority, in consultation with the state board, shall use
all means available under the loan agreement and law to
collect the outstanding principal balance of the loan,
together with all unpaid interest accrued to the date of
payment of such outstanding principal balance; and

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

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

(f) The remaining moneys that are determined by the
authority to be available for distribution during the then
current fiscal year from moneys paid into the school
major improvement fund pursuant to section six of this
article shall be allocated and distributed on the basis of
need and efficient use of resources, such basis to be
determined by the authority in accordance with the
provisions of section sixteen of this article: Provided,
That such moneys may not be distributed to any county
board that does not have an approved school major
improvement plan or to any county board that is not
prepared to commence expenditures of such funds
during the fiscal year in which the moneys are distrib-
uted: Provided, however, That any moneys allocated to
a county board and not distributed to that county board
shall be deposited in an account to the credit of that
county board, such principal amount to remain to the
credit of and available to the county board for a period
of two years. Any moneys which are unexpended after a
two-year period shall be redistributed on the basis of
need from the school major improvement fund in that
fiscal year.

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

(h) Any county board may use moneys provided by the
authority under this article in conjunction with local
funds derived from bonding, special levy or other
sources. Distribution to a county board, or to the state
board or the administrative council of an area vocational
educational center pursuant to subsection (b) of this
section, may be in a lump sum or in accordance with a
schedule of payments adopted by the authority pursuant
to such guidelines as it shall adopt.
§18-9D-16. Facilities and major improvement plans generally; need-based eligibility.

(a) To facilitate the goals as stated in section fifteen of this article and to assure the prudent and resourceful expenditure of state funds for construction projects as described in subsection (d) of said section, each county board of education shall submit a county-wide comprehensive educational facilities plan that addresses the facilities and major improvement needs of the county pursuant to such guidelines as shall be adopted by the authority in accordance with this section and in accordance with each county’s facilities plan approved by the state board of education. Any project receiving funding shall be in furtherance of such approved county-wide facilities plan.

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

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

(b) To facilitate the goals as stated in section fifteen of this article and to assure the prudent and resourceful expenditure of state funds derived from the school major
improvement fund, each county board of education shall submit to the authority a ten-year county-wide school major improvement plan that addresses the major improvement needs of each school within the county. If the state board of education or the administrative council of an area vocational educational center chooses to seek funding for a major improvement project from the authority pursuant to subsection (f) of said section, the state board or such administrative council shall submit a ten-year school major improvement plan that addresses the major improvement needs of the school or area vocational educational center for which funding is sought. Each ten-year school major improvement plan shall be prepared pursuant to such guidelines as shall be adopted by the authority in accordance with this section and shall be updated annually to reflect projects completed and new or continuing needs. Any school major improvement project funded by the authority shall be in furtherance of such approved school major improvement plan.

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

(c) The guidelines regarding submission of the facilities plans and school major improvement plans shall include requirements for public hearings, comments or other means of providing broad-based input within a reasonable time period as the authority may deem appropriate. The submission of each plan shall be accompanied by a synopsis of all comments received and a formal comment by the county board, the state board or the administrative council of an area vocational educational center
submitting such plan.

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

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

(1) Student health and safety;

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

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

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

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

(6) Innovations in education;

(7) Adequate space for projected student enrollments;
and

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

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

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

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

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

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

(g) Each facilities plan and school major improvement plan shall include the objective means to be utilized in
evaluating implementation of the overall plan and each project included therein. Such evaluation shall measure each project's furtherance of each applicable goal stated in this section and any guidelines adopted hereunder, as well as the overall success of any project as it relates to the facilities plan or school major improvement plan and the overall goals of the authority.

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

(i) The authority may adopt guidelines for requiring that a county board modify, update, supplement or otherwise submit changes or additions to an approved facilities plan or for requiring that a county board, the state board or the administrative council of an area vocational educational center modify, update, supplement or otherwise submit changes or additions to an approved county board facilities plan or school major improvement plan. The authority shall provide reasonable notification and sufficient time for such change or addition as delineated in guidelines developed by the authority.

(j) Based on its on-site inspection or notification by the
authority to the state board that the changes or additions
to a county's board facilities plan or school major
improvement plan required by the authority have not
been implemented within the time period prescribed by
the authority, the state board shall restrict the use of the
necessary funds or otherwise allocate funds from moneys
appropriated by the Legislature for those purposes set
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.

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

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

(c) A minimum annual average of forty-five percent of
the gross amount received from each lottery shall be
allocated and disbursed as prizes.
(d) Not more than fifteen percent of the gross amount received from each lottery shall be allocated to and may be disbursed as necessary for fund operation and administration expenses.

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

(f) After satisfying the requirements for funds dedicated to the school building debt service fund in subsection (h) of this section to retire the ten-year bonds authorized to be issued pursuant to section eight, article nine-d, chapter eighteen of this code, the Legislature shall annually appropriate all of the remaining amounts allocated as net profits above, in such proportions as it deems beneficial to the citizens of this state, to: (1) The lottery education fund created in subsection (g) of this
(g) There is hereby created a special fund in the state treasury which shall be designated and known as the “lottery education fund”. The fund shall consist of the amounts allocated pursuant to subsection (f) of this section, which amounts shall be deposited into the lottery education fund by the state treasurer. The lottery education fund shall also consist of all interest earned from investment of the lottery education fund and any other appropriations, gifts, grants, contributions or moneys received by the lottery education fund from any source. The revenues received or earned by the lottery education fund shall be disbursed in the manner provided below and shall not be treated by the auditor and treasurer as part of the general revenue of the state. Annually, the Legislature shall appropriate the revenues received or earned by the lottery education fund to the state system of public and higher education for such educational programs as it considers beneficial to the citizens of this state.

(h) Beginning on or before the twenty-eighth day of July, one thousand nine hundred ninety-four, and continuing on or before the twenty-eighth day of each
Enr. S. B. No. 1008] 34

succeeding month thereafter through the thirtieth day of June, two thousand five, the lottery director shall allocate to the school building debt service fund created pursuant to the provisions of section six, article nine-d, chapter eighteen of this code, as a first priority from the net profits of the lottery for the preceding month, an amount equal to one tenth of the projected annual principal, interest and coverage ratio requirements on any and all revenue bonds and refunding bonds issued, or to be issued, on or after the first day of April, one thousand nine hundred ninety-four, as certified to the lottery director in accordance with the provisions of said section: *Provided,* That in no event shall said monthly amount exceed one million eight hundred thousand dollars: *Provided, however,* That in no event shall the total allocation of said net profits to be paid into the school building debt service fund, as provided in this section, in any fiscal year exceed the lesser of the principal and interest requirements certified to the lottery director as aforesaid, or eighteen million dollars: *Provided further,* That in the event there are insufficient funds available in any month to transfer the amount required to be transferred pursuant to this subsection to the school debt service fund, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer said deficiency: *And provided further,* That a lien on the proceeds of the state lottery fund up to a maximum amount equal to the projected annual principal, interest and coverage ratio requirements, not to exceed twenty-seven million dollars annually, may be granted by the authority in favor of the bonds issued by the authority which are secured by the net lottery profits.

(i) There is hereby created a special fund in the state treasury which shall be designated and known as the "lottery senior citizens fund". The fund shall consist of the amounts allocated pursuant to subsection (f) of this section, which amounts shall be deposited into the lottery senior citizens fund by the state treasurer. The
lottery senior citizens fund shall also consist of all
interest earned from investment of the lottery senior
citizens fund and any other appropriations, gifts, grants,
contributions or moneys received by the lottery senior
citizens fund from any source. The revenues received or
earned by the lottery senior citizens fund shall be
disbursed in the manner provided below and shall not be
treated by the auditor or treasurer as part of the general
revenue of the state. Annually, the Legislature shall
appropriate the revenues received or earned by the
lottery senior citizens fund to such senior citizens
medical care and other programs as it considers
beneficial to the citizens of this state.

(j) The commerce division may use the amounts
allocated to it pursuant to subsection (f) of this section
for one or more of the following purposes: (1) The
payment of any or all of the costs incurred in the
development, construction, reconstruction, maintenance
or repair of any project or recreational facility, as such
terms are defined in section thirteen-a, article one,
chapter five-b of this code, pursuant to the authority
granted to it under said article; (2) the payment, funding
or refunding of the principal of, interest on or redemp-
tion premiums on any bonds, security interests or notes
issued by the parks and recreation section of the
commerce division under article one, chapter five-b of
this code; or (3) the payment of any advertising and
marketing expenses for the promotion and development
of tourism or any tourist facility or attraction in this
state.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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

Governor

PRESENTED TO THE
GOVERNOR
Date 3/25/94
Time 10:35 AM