WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1998

ENROLLED

Committee Substitute for
SENATE BILL NO. 533

(By Senators Morgan, Mr. President, and Bucklew, by request of the Executive)

PASSED March 14, 1998
In Effect July 1, 1998
AN ACT to amend and reenact section thirty, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section ten, article nine-a, chapter eighteen of said code; to amend and reenact section fifteen, article nine-d of said chapter; and to amend and reenact section eighteen, article twenty-two, chapter twenty-nine of said code, all relating to a funding plan for continuing public school construction; deleting outdated language; continuing monthly state sales tax payments into the school major improvement fund by eliminating the termination date for such payments; continuing monthly state sales tax payments into the school
construction fund by eliminating the termination date for such payments; providing for the payment of the annual difference between the allocation made in the one thousand nine hundred ninety-seven fiscal year and the amount of funds required for debt service on school improvement bonds under the better school building amendment for any succeeding current year to be deposited into the school construction fund; authorizing use of certain moneys for study and implementation of a charter school pilot program; providing that, upon retirement of school construction bonds secured through allocations from the school building capital improvements fund, certain moneys allocated for that purpose are to be deposited into the school construction fund; school building authority generally; distribution of funds; submission of construction designs for school building authority approval; and providing that, upon the retirement of the school improvement bonds secured by profits from the lottery and deposited in the school debt service fund, an annual amount of eighteen million dollars of such funds shall be deposited into the school construction fund.

Be it enacted by the Legislature of West Virginia:

That section thirty, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section ten, article nine-a, chapter eighteen of said code be amended and reenacted; that section fifteen, article nine-d of said chapter 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 11. TAXATION.

ARTICLE 15. CONSUMERS SALES TAX.


1 (a) The proceeds of the tax imposed by this article shall 2 be deposited in the general revenue fund of the state
except as otherwise expressly provided in this article.

(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, on the first day of each month, 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) On the first day of each month, 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.

(2) Effective the first day of July, one thousand nine hundred ninety-eight, there shall be dedicated from the collections of this tax, an amount equal to any annual difference that may occur between the debt service payment for the one thousand nine hundred ninety-seven fiscal year for school improvement bonds issued under the better school building amendment under the provisions of article nine-c, chapter eighteen of this code and the amount of funds required for debt service on these school improvement bonds in any current fiscal year thereafter. This annual difference shall be prorated monthly, added to the monthly deposit in subdivision (1) of this subsection and deposited into the school construction fund created
pursuant to section six, article nine-d, chapter eighteen of this code.

CHAPTER 18. EDUCATION.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-10. Foundation allowance to improve instructional programs.

(a) For each school year beginning on the first day of July, one thousand nine hundred ninety-eight, and thereafter, the sum of the allocations shall be the amount appropriated by the Legislature for those purposes:

(1) One hundred fifty thousand dollars shall be allocated to each county;

(2) Distribution to the counties of the remainder of these funds shall be made proportional to the average of each county's average daily attendance for the preceding year and the county's second month net enrollment. Moneys allocated by provision of this section shall be used to improve instructional programs according to a plan for instructional improvement which the affected county board shall file with the state board by the first day of August of each year, to be approved by the state board by the first day of September of that year if the plan substantially complies with standards to be adopted by the state board: Provided, That notwithstanding any other provision of this code to the contrary, moneys allocated by provision of this section may also be used in the implementation and maintenance of the uniform integrated regional computer information system.

(3) Up to twenty-five percent of this allocation may be used to employ professional educators and service personnel in counties after all applicable provisions of sections four and five of this article have been fully utilized.

Prior to the use of any funds from this section for personnel costs, the county board must receive authoriza-
tion from the state superintendent of schools. The state superintendent shall require the district board to demonstrate: (1) The need for the allocation; (2) efficiency and fiscal responsibility in staffing; and (3) the sharing of services with adjoining counties and the regional educational service agency for that county in the use of the total local district board budget. District boards shall make application for available funds for the next fiscal year by the first day of May of each year. On or before the first day of June, the state superintendent shall review all applications and notify applying district boards of the distribution of the allocation. The funds shall be distributed during the fiscal year as appropriate. The state superintendent shall require the county board to demonstrate the need for an allocation for personnel based upon the county's inability to meet the requirements of state law or state board policy: Provided, That the funds available for personnel under this section may not be used to increase the total number of professional noninstructional personnel in the central office beyond four. The instructional improvement plan shall be made available for distribution to the public at the office of each affected county board.

(b) An amount not less than the amount required to meet debt service requirements on any revenue bonds issued prior to the first day of January, one thousand nine hundred ninety-four, and the debt service requirements on any revenue bonds issued for the purpose of refunding revenue bonds issued prior to the first day of January, one thousand nine hundred ninety-four, shall be paid into the school building capital improvements fund created by section six, article nine-d of this chapter, and shall be used solely for the purposes of that article. The school building capital improvements fund shall not be utilized to meet the debt services requirement on any revenue bonds or revenue refunding bonds for which moneys contained within the school building debt service fund have been
pledged for repayment pursuant to that section.

When the school improvement bonds secured by funds from the school building capital improvements fund mature, the state board of education shall annually deposit an amount equal to twenty-four million dollars from the funds allocated in this section into the school construction fund created pursuant to the provisions of section six, article nine-d, chapter eighteen of this code to continue funding school facility construction and improvements.

(c) Any project funded by the school building authority shall be in accordance with a comprehensive educational facility plan which must be approved by the state board and the school building authority.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§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 and to administer all federal funds provided 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 determinations 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 under this
section moneys for school major improvement projects
proposed by the state board or an administrative council
for school facilities under the direct supervision of the
state board or an 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 an
administrative council has submitted a ten-year school
major improvement 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
the 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 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, the 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 the county board in connection with the project: Provided, That the authority may transfer moneys to the state board of education, which, with the authority, shall lend the amount transferred to the 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) The 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 and the county board;

(2) The loan agreement shall provide for the state board and the authority to defer the payment of principal and interest upon any loan made to the county board during the term of the investment contract, and annual renewals of the investment contract, among the state board, the authority, the county board and a lessor: *Provided, That* in the event a county board, which has received a loan from the 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, the county board is in default and the principal of the loan, together with all unpaid interest accrued to the date of the 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 the county board: *Provided, however, That* if a county board renews 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 the county board to make a scheduled payment pursuant to the investment contract constitutes an event of default under the loan agreement: *And provided further, That* upon a default by a county board, the principal of the loan, together with all unpaid interest accrued to the date of the 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 the 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 the
outstanding principal balance; and

(3) The 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 perfor-
mance of the investment contract in its entirety.

(f) 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 to the county board
shall forfeit the allocation and thereafter is 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 forfei-
ture period not to exceed an additional two years. Any
amount forfeited shall be added to the total funds avail-
able in the school construction fund of the authority for
future allocation and distribution.

(g) 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, the basis to be determined by
the authority in accordance with the provisions of section
sixteen of this article: Provided, That the 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
the funds during the fiscal year in which the moneys are
distributed: Provided, however, That any moneys allo-
cated to a county board and not distributed to that county board shall be deposited in an account to the credit of that county board, the 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.

(h) 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 are not negated by the provisions of this article. 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 the county board's maintenance budget over any three of the previous five years and must have budgeted an amount equal to or greater than the 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 in the budgets.

(i) 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 guidelines adopted by the authority.

(j) Funds in the school construction fund shall first be transferred and expended as follows:

Any funds deposited in the school construction fund shall be expended first in accordance with an appropria-
tion by the Legislature. To the extent that funds are available in the school construction fund in excess of that amount appropriated in any fiscal year, the excess funds may be expended in accordance with the provisions of this article. Any projects which the authority identified and announced for funding on or before the first day of August, one thousand nine hundred ninety-five, or identified and announced for funding on or before the thirty-first day of December, one thousand nine hundred ninety-five, shall be funded by the authority in an amount which is not less than the amount specified when the project was identified and announced.

(k) It is the intent of the Legislature to encourage county boards to explore and consider arrangements with other counties that may facilitate the highest and best use of all available funds, which may result in improved transportation arrangements for students, or which otherwise may create efficiencies for county boards and the students. In order to address the intent of the Legislature contained in this subsection, the authority shall grant preference to those projects which involve multicounty arrangements as the authority shall determine reasonable and proper.

(l) County boards shall submit all designs for construction of new school buildings to the school building authority for review and approval prior to preparation of final bid documents.

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
(a) There is hereby continued a special revenue 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 contributions 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 provided in this section for the purposes stated in this section 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. In the event that the percentage allotted for operations and administration generates a surplus, the surplus shall 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 first 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, and then satisfying the requirements for funds dedicated to the education, arts, sciences and tourism debt service fund in subsection (i) of this section to retire the bonds authorized to be issued pursuant to section eleven-a, article six, chapter five of this code, the Legislature shall annually appropriate all of the remaining amounts allocated as net profits in subsection (e) of this section, in such proportions as it considers beneficial to the citizens of this state, to: (1) The lottery education fund created in subsection (g) of this section; (2) the school construction fund created in section six, article nine-d, chapter eighteen of this code; (3) the lottery senior citizens fund created in subsection (j) of this section; and (4) the division of natural resources created in section four, article five, chapter twenty of this code and the West Virginia development office as created in section one, article two, chapter five-b of this code, in accordance with subsection (k) of this section. No transfer to any account other than the school building debt service account and the education, arts, sciences and tourism debt service fund may be made in any period of time in which a default exists in respect to debt service on bonds issued by the school building authority and the state building commission which are secured by lottery proceeds. No additional transfer shall be made to any account other than the school building debt service account and the education, arts, sciences and tourism debt service fund when net profits for the preceding twelve months are not at least equal to one hundred fifty percent of debt service on bonds issued by the school building authority and the state building commission which are secured by net profits.
(g) There is hereby continued a special revenue 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 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 these educational programs it considers beneficial to the citizens of this state.

(h) On or before the twenty-eighth day of each month through the twentieth 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 section six, article nine-d, chapter eighteen of this code. In no event shall the monthly amount allocated exceed one million eight hundred thousand dollars, nor shall the total allocation of the 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 or
eighteen million dollars. 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 the deficiency. 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 school building authority in favor of the bonds it issues which are secured by the net lottery profits.

When the school improvement bonds, secured by profits from the lottery and deposited in the school debt service fund, mature, the lottery director shall allocate monthly, from the net profits of the lottery for the preceding month, an amount equal to one million five hundred thousand dollars into the school construction fund created pursuant to the provisions of section six, article nine-d, chapter eighteen of this code.

(i) On or before the twenty-eighth day of each month through the twenty-eighth day of June, two thousand twenty-one, the lottery director shall allocate to the education, arts, sciences and tourism debt service fund created pursuant to the provisions of section eleven-a, article six, chapter five of this code, as a second 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-six, as certified to the lottery director in accordance with the provisions of that section. In no event shall the monthly amount allocated exceed one million dollars nor shall the total allocation paid into the education, arts, sciences and tourism 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 or ten million dollars. In the event there are insufficient funds available in any month to transfer the amount required pursuant to this subsection to the education, arts, sciences and tourism debt service fund, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency. A second-in-priority 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 fifteen million dollars annually, may be granted by the state building commission in favor of the bonds it issues which are secured by the net lottery profits.

(j) There is hereby continued a special revenue 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 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 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.

(k) The division of natural resources and the West Virginia development office, as appropriated by the Legislature, may use the amounts allocated to them 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,
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183 reconstruction, maintenance or repair of any project or
184 recreational facility, as these terms are defined in section
185 four, article five, chapter twenty of this code, pursuant to
186 the authority granted to it under article five, chapter
187 twenty of this code; (2) the payment, funding or refunding
188 of the principal of, interest on or redemption premiums on
189 any bonds, security interests or notes issued by the parks
190 and recreation section of the division of natural resources
191 under article five, chapter twenty of this code; or (3) the
192 payment of any advertising and marketing expenses for
193 the promotion and development of tourism or any tourist
194 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.

To take effect July 1, 1998.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ................ approved ................ this the 1st day of April, 1998.

Governor