WEST VIRGINIA LEGISLATURE
1st Extraordinary Session, 2001

ENROLLED

SENATE BILL NO. 1007

(By Senator Craig, et al)

PASSED April 23, 2001

In Effect from Passage
ENROLLED

Senate Bill No. 1007

(BY SENATORS CRAIGO, PLYMALE AND JACKSON)

[Passed April 23, 2001; in effect from passage.]

AN ACT to amend and reenact sections thirteen, fourteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two and twenty-three, article twenty-three, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to higher education revenue bonds generally; uses for bond proceeds, including motor vehicle parking facilities; removing certain requirement on bond trustee; authorizing gross revenues of facilities to be pledged; and authorizing certain fees to be paid from bond proceeds.

Be it enacted by the Legislature of West Virginia:

That sections thirteen, fourteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two and twenty-three, article twenty-three, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:
ARTICLE 23. ADDITIONAL POWERS, DUTIES AND RESPONSIBILITIES OF GOVERNING BOARDS OF STATE INSTITUTIONS OF HIGHER EDUCATION.

§18-23-13. Construction and operation of dormitories, housing facilities, food service facilities and motor vehicle parking facilities for teachers and students.

The governing boards are hereby authorized to provide, construct, erect, improve, equip, maintain and operate dormitories, housing facilities, food service facilities and motor vehicle parking facilities on land owned by the state for students or teachers at the various state institutions of higher education under their control and the cost of construction, erection, improvement or equipment may be payable by means of or with the proceeds of the revenue bonds hereinafter authorized. The governing boards have power and authority to employ engineering, architectural and construction experts and other employees as may be necessary in their judgment and fix their compensation, all of whom shall do the work as the governing boards direct, all of which shall be included as part of the cost of construction and equipment thereof.

§18-23-14. Construction and operation of gymnasiums, etc.

The governing boards, within their discretion, are hereby authorized to provide, construct, erect, improve, equip, maintain and operate gymnasiums or stadia for athletic games, contests or exhibitions or physical training, dormitories, housing facilities, food service facilities and motor vehicle parking facilities, swimming pools or such other structures or buildings, for students, teachers, officers and employees at the various state institutions of higher education under their control and management subject to the provisions and limitations of sections thirteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three and twenty-four of this article.
§18-23-16. Cost of dormitories, housing facilities, food service facilities and motor vehicle parking facilities to be paid from proceeds of revenue bonds.

The governing boards may pay the cost, as defined in sections thirteen through twenty-four, inclusive, of this article, of any one or more of the dormitories, housing facilities, food service facilities and motor vehicle parking facilities out of the proceeds of revenue bonds of the state. The governing boards are authorized to issue revenue bonds of the state by a resolution of the board which shall recite an estimate by the board of the cost, the principal and interest of which bonds shall be payable solely from the special fund or funds herein provided for the payment. The board, after any issue of bonds or simultaneously therewith, may issue further issues of bonds to pay the cost of any other one or more of the dormitories, housing facilities, food service facilities and motor vehicle parking facilities in the manner and subject to all of the provisions herein contained as to the bonds first mentioned in this section. All these bonds shall have and are hereby declared to have all the qualities of negotiable instruments under the Uniform Commercial Code. These bonds shall bear interest at such rates, payable at such times, and shall mature in not more than thirty years from their date or dates and may be made redeemable at the option of the state, to be exercised by the governing boards, at a price and under terms and conditions as they may fix prior to the issuance of the bonds. They shall determine the form of the bonds, which bonds shall be signed by the governor and the president of the appropriate governing board, under the great seal of the state and attested by the secretary of state. In case any of the officers whose signatures appear on the bonds shall cease to be officers before the delivery of the bonds, the signatures shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until the delivery. The governing boards shall fix the denominations of the bonds, the principal and interest of which shall be payable at the
office of the treasurer of the state of West Virginia, at the capitol of the state or, at the option of the holder, at some bank or trust company within or outside of the state, to be named in the bonds, in lawful money of the United States of America. The bonds and the interest thereon shall be exempt from taxation by the state of West Virginia or any county, school district or municipality therein. The governing boards may provide for the registration of the bonds in the name of the owner as to principal alone or as to both principal and interest under the terms and conditions as the governing boards may determine and shall sell the bonds in such manner as they may determine to be for the best interest of the state, taking into consideration the financial responsibility of the purchaser and the terms and conditions of the purchase and especially the availability of the proceeds of the bonds when required for payment of the cost of the dormitories, housing facilities, food service facilities and motor vehicle parking facilities.

The proceeds of the bonds shall be used solely for the payment of the cost of the dormitories, housing facilities, food service facilities and motor vehicle parking facilities and costs of issuance of the bonds, which costs shall be deemed to include the cost of site acquisition or construction thereof, the cost of all property, rights, easements and franchises deemed necessary or convenient therefor and for the improvements determined upon as provided in this article; interest upon bonds prior to and during construction or acquisition and for a reasonable period after completion of construction or of acquisition of the improvements; engineering, architectural and legal expenses; expense for estimates of cost and of revenues; expenses for plans, specifications and surveys; other expenses necessary or incidental to determining the feasibility or practicability of the improvements; and other expenses as may be necessary or incidental to the financing herein authorized and the construction or acquisition of the improvements and the placing thereof in operation. The bonds shall be authorized and approved by resolution of the appropriate
governing board. If the proceeds of the bonds, by error or
otherwise, shall be less than the cost of the dormitories,
housing facilities, food service facilities and motor vehicle
parking facilities, additional parity bonds may in like
manner be issued to provide the amount of the deficit and,
unless otherwise provided in the trust agreement hereinafter
mentioned, shall be deemed to be of the same issue and
shall be entitled to payment from the same fund, without
preference or priority of the bonds first issued for the same
dormitories, housing facilities, food service facilities and
motor vehicle parking facilities. If the proceeds of bonds
issued for any dormitories, housing facilities, food service
facilities and motor vehicle parking facilities shall exceed
the cost thereof, the surplus shall be paid into the fund
hereinafter provided for payment of the principal and
interest of the bonds. The fund may be used for the
purchase of any of the outstanding bonds payable from the
fund at the market price, but not exceeding the price, if
any, at which the bonds in the same year shall be redeemable
and all bonds redeemed or purchased shall forthwith
be cancelled and shall not again be issued.

Prior to the preparation of definitive bonds, the govern-
ing boards may under like restrictions issue temporary
bonds, exchangeable for definitive bonds upon the issu-
ance of the latter. The revenue bonds may be issued
without any other proceedings or the happening of any
other conditions and things than those proceedings,
conditions and things which are specified and required by
this article or by the constitution of the state.

§18-23-17. Agreements with trustees for bondholders.

The governing boards may enter into an agreement or
agreements with any trust company or with any bank
having trust powers, either within or outside of the state,
as trustee for the holders of the bonds issued hereunder,
setting forth therein such duties of the state and of the
governing boards in respect of the acquisition, construc-
tion, erection, improvement, maintenance, operation,
repair and insurance of the dormitories, housing facilities, food service facilities and motor vehicle parking facilities, the conservation and application of all moneys, the insurance of moneys on hand or on deposit and the rights and remedies of the trustee and the holders of the bonds, as may be agreed on with the original purchasers of the bonds, and including therein provisions restricting the individual right of action of bondholders as is customary in trust agreements respecting bonds and debentures of corporations, protecting and enforcing the rights and remedies of the trustee and the bondholders and providing for approval by the original purchasers of the bonds, of the appointment of consulting engineers and of the security given by those who contract to make improvements and by any bank or trust company in which the proceeds of bonds or rents, fees or charges shall be deposited and for approval by the consulting engineers of all contracts for improvements. All expenses incurred in carrying out an agreement may be treated as a part of the cost of maintenance, operation and repair of the dormitories, housing facilities, food service facilities and motor vehicle parking facilities affected by the agreement. Any agreement entered into by the governing boards shall be binding in all respects on the governing boards from time to time in accordance with its terms and all the provisions thereof shall be enforceable by appropriate proceedings at law or in equity, or otherwise.

§18-23-18. Operation and control of fiscal affairs of dormitories, housing facilities, food service facilities and motor vehicle parking facilities.

The governing boards shall properly maintain, repair, operate, manage and control the fiscal affairs of the dormitories, housing facilities, food service facilities and motor vehicle parking facilities, fix the rates of rents, fees or charges and establish rules and regulations for the use and operation of such dormitories, housing facilities, food service facilities and motor vehicle parking facilities for
the welfare of the students or teachers and may make and
to enter into all contracts or agreements necessary and
incidental to the performance of their duties and the
execution of their powers under this article.

§18-23-19. Payment of principal and interest of construction
bonds from revenues of dormitories, housing
facilities, food service facilities, or motor vehicle
parking facilities; redemption of bonds.

Whenever bonds are issued for the construction, erection
or equipment of dormitories, housing facilities, food
service facilities or motor vehicle parking facilities or for
the improvement or equipment of existing dormitories,
housing facilities, food service facilities or motor vehicle
parking facilities, or for any or all of the purposes, as joint
or several projects, for which a single or several issues of
bonds may be issued within the discretion of the governing
boards, rents, fees and charges shall be fixed, charged and
collected in connection with the use or occupancy of, or
service to be thereby rendered and furnished by, dormito-
ries, housing facilities, food service facilities or motor
vehicle parking facilities of the particular state educa-
tional institution as the governing board thereof shall
determine, and shall be so fixed or adjusted, as to provide
a fund sufficient to pay the principal and interest of each
issue of bonds and to provide an additional fund to pay the
cost of maintaining, repairing, operating and insuring such
dormitories, housing facilities, food service facilities or
motor vehicle parking facilities. Whenever bonds are
issued to finance the construction and erection of dormito-
ries, housing facilities, food service facilities or motor
vehicle parking facilities, together with additions or
extensions to existing dormitories, housing facilities, food
service facilities and motor vehicle parking facilities for
students or teachers at state institutions of higher educa-
tion, either the combined gross revenues derivable from all
the dormitories, housing facilities, food service facilities or
motor vehicle parking facilities or the separate gross
revenues derivable from the dormitories, the housing facilities, the food service facilities or the motor vehicle parking facilities of the particular state institution of higher education as the governing board thereof shall determine, may be pledged to provide a fund sufficient to pay the principal and interest of the issue of bonds and of any other bonds thereafter issued for the same purpose and to provide an additional fund to pay the cost of maintaining, repairing, operating and insuring such dormitories, housing facilities, food service facilities or motor vehicle parking facilities. Except as may otherwise be provided in the trust agreement authorized in section seventeen of this article, the rents, fees and charges from the dormitories, housing facilities, food service facilities or motor vehicle parking facilities for which a single issue of bonds is issued, in an amount sufficient to pay, when due, the principal of, redemption premium, if any, and interest on such bonds shall be transmitted each month to the municipal bond commission and by it placed in a special fund which is hereby pledged to and charged with the payment of the principal of the bonds and the interest thereon and to the redemption or repurchase of the bonds, the special fund to be a fund for all these bonds without distinction or priority of one over another. The moneys in the special fund, less any reserve for payment of interest, if not used by the municipal bond commission within a reasonable time for the purchase of bonds for cancellation at a price not exceeding the market price and not exceeding the redemption price, shall be applied to the redemption by lot of any bonds which by their terms are then redeemable, at the redemption price then applicable: Provided, That if said revenue bonds are sold to and purchased by the United States of America or any federal or public agency or department created under and by virtue of the laws of the United States of America, then at the option of the United States of America or such federal or public agency or department in lieu of the moneys being transmitted to the municipal bond commission and by it
placed in a special fund the rents, fees and charges from
the dormitories, housing facilities, food service facilities or
motor vehicle parking facilities, in an amount sufficient to
pay, when due, the principal of, redemption premium, if
any, and interest on the bonds may be transmitted and
paid to a trustee designated and named by the United
States of America or a federal or public agency or depart-
ment in its agreement and contract with the appropriate
governing board, for the payment of the principal of such
bonds and the interest thereon, under such terms and
conditions as may be agreed upon.

§18-23-20. When dormitories, housing facilities, food service
facilities, or motor vehicle parking facilities
become property of state.

When the particular bonds for any dormitory or dormi-
tories, housing facilities, food service facilities or motor
vehicle parking facilities and the interest on the bonds
shall have been paid or a sufficient amount has been
provided for their payment and shall continue to be held
for that purpose, the dormitories, housing facilities, food
service facilities or motor vehicle parking facilities shall
thereafter be exclusively the property of the state of West
Virginia and thereafter the rents, fees and charges col-
lected for the use or occupancy of, or service rendered and
furnished by, the dormitories, housing facilities, food
service facilities or motor vehicle parking facilities shall be
paid into the state board of investments as provided by the
provisions of section two, article two, chapter twelve of
this code, as amended, and used and expended for the
benefit of the institution where collected: 

Provided, That
nothing in this section precludes any governing board from
pledging the rents, fees and charges to pay the principal
and interest on any bonds thereafter issued to construct
new or to improve existing dormitories, housing facilities,
food service facilities or motor vehicle parking facilities
pursuant to section nineteen of this article. The rents, fees
and charges shall be paid as may be provided in a trust
agreement authorized pursuant to section seventeen of this
article and in the absence of such trust agreement as
provided in section nineteen of this article.

§18-23-21. State debt not to be incurred for dormitories, hous­
ing facilities, food service facilities, or motor
vehicle parking facilities; federal and private
assistance; provisions separable.

Nothing in these sections dealing with dormitories,
housing facilities, food service facilities or motor vehicle
parking facilities may be so construed or interpreted as to
authorize or permit the incurring of state debt of any kind
or nature as contemplated by the constitution of this state
in relation to the state debt. The dormitories, housing
facilities, food service facilities or motor vehicle parking
facilities herein are of the character described as
self-liquidating projects under the laws of this state.

Any governing board authorized to issue bonds under
the provisions of this article is authorized and empowered
to accept loans or grants or temporary advances for the
purpose of paying part or all of the cost of construction of
the dormitories, housing facilities, food service facilities or
motor vehicle parking facilities and the other purposes
herein authorized, from the United States of America or a
federal or public agency or department of the United
States or any private agency, corporation or individual,
which temporary advances may be repaid out of the
proceeds of the bonds authorized to be issued under the
provisions of this article and to enter into the necessary
contracts and agreements to carry out the purposes hereof
with the United States of America or a federal or public
agency or department of the United States or with any
private agency, corporation or individual. The provisions
and parts of this section are separable and are not matters
of mutual essential inducement and it is the intention to
confer the whole or any part of the powers herein provided
for and if any of the sections or provisions, or parts
thereof, are for any reason illegal or invalid, it is the
intention that the remaining sections and provisions or parts thereof shall remain in full force and effect.

§18-23-22. Sections regarded as supplementary.

Sections thirteen through twenty-four, inclusive, of this article provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplementary and additional to powers conferred by other laws: Provided, That when any revenue bonds are issued hereunder for the purposes provided by sections thirteen through twenty-four, inclusive, of this article, for the benefit of any particular state institution of higher education, no dormitories, housing facilities, food service facilities or motor vehicle parking facilities shall thereafter be constructed, built or erected at the state institution of higher education until the appropriate governing board, by investigation had thereon, under the rules as it may prescribe, determines that there is an imperative public need for the construction, building or erection of the dormitories, housing facilities, food service facilities or motor vehicle parking facilities and that their construction, building or erection and subsequent maintenance or operation will not materially injure the revenues of and from any dormitories, housing facilities, food service facilities or motor vehicle parking facilities constructed, built, erected, maintained or operated at the state institution of higher education under the provisions of sections thirteen to twenty-four, inclusive, of this article.

§18-23-23. Approval of dormitories, housing facilities, food service facilities or motor vehicle parking facilities.

It is not necessary to secure from any officer or board not named in sections thirteen through twenty-four, inclusive, of this article any approval or consent or any certificate or finding or to hold any election or to take any proceedings whatever, either for the acquisition, construc-
tion or erection of such dormitories, housing facilities, food service facilities or motor vehicle parking facilities, or the improvement thereof, or their maintenance, operation, repair or insurance or for the issuance of bonds hereunder, except such as are prescribed in the sections herein named or are required by the constitution of the state.
The 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 approved bill this the ___ Day of May, 2001.

Governor