WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2001

ENROLLED

House Bill No. 3156
(By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

Passed April 14, 2001
In Effect from Passage
AN ACT to amend and reenact section twenty-one, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article fifteen, chapter thirty-one of said code by adding thereto a new section, designated six-b; and to amend and reenact section fourteen, article three, chapter thirty-three of said code, all relating to the construction and permanent financing of new regional jail, juvenile detention and correctional facilities; providing for the permanent financing of new regional jail and juvenile detention facilities; authorizing the return of certain investment capital to the investment management board; authorizing the issuance of bonds by the West Virginia economic development authority to prepay certain investment capital and to finance the construction of new regional jail and juvenile detention facilities; and providing for the dedication and transfer of certain amounts from the insurance tax fund to the regional jail and correctional facility debt service fund.
Be it enacted by the Legislature of West Virginia:

That section twenty-one, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that article fifteen, chapter thirty-one of said code be amended by adding thereto a new section, designated section six-b; and that section fourteen, article three, chapter thirty-three of said code be amended and reenacted, all to read as follows:

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§12-6-21. Investment with regional jail and correctional facility authority.

(a) The Legislature finds and declares:

(1) That the supreme court of appeals has determined and ordered that the constitution of this state imposes a duty on behalf of the state to make significant improvements in the jail and correctional facility system, including the duty to make capital improvements to facilities and to pay for the cost of those improvements;

(2) That construction of capital improvements requires that the cost of the facilities be financed over time; that capital improvements cannot be funded out of the current year appropriations of the Legislature; and that section fifty-one, article six of the constitution prohibits the Legislature amending the budget bill so as to create a deficit;

(3) That while the supreme court of appeals is empowered to interpret the laws, including the constitution of the state, section one, article ten of the constitution grants to the Legislature the power of taxation; section fifty-one, article six of the
constitution grants to the Legislature the power of appropria-
tion; and section one, article five of the constitution prohibits
any branch of government from exercising powers properly
belonging to another;

(4) That the enacting of new taxes, or the diversion of
revenues from other essential departments and functions of
government, in order to support capital improvements in jails
and correctional facilities, is not in the interests of the people of
the state represented in the Legislature, and is specifically
rejected by the Legislature in its exercise of its legitimate
constitutional powers;

(5) That the decision of the supreme court of appeals,
imposing a duty on the state to construct and pay for capital
improvements to jails and correctional facilities arising out of
the Bill of Rights of the United States constitution declared
ratified in the year one thousand seven hundred ninety-one, and
the state constitution of the year one thousand eight hundred
sixty-three, constitutes a prior liability of the state within the
meaning of section four, article ten of the constitution and an
exception to the constitutional limitation on contracting state
debt;

(6) That the construction of capital improvements of jail
and correctional facilities may be funded through funds
available for investment through the West Virginia investment
management board, invested in such a manner as to be assured
as high a rate of return as would be earned if these funds were
otherwise invested, and repaid by the state as provided in this
article.

(b) The investment management board shall upon request
of the regional jail and correctional facility authority transfer
moneys as an investment, from funds available for investment
from the public employees retirement system, to the regional
jail and correctional facility authority. The amount transferred may not exceed one hundred fifty million dollars in the aggregate and shall be used for the purposes of financing construction of regional jails, correctional facilities, juvenile detention facilities, juvenile correctional facilities, or extensions, renovations, improvements or additions thereto, or for the replacement or renovation of existing facilities. If the board has loaned money to the state building commission under subsection (b), section nineteen of this article, the total amount loaned shall be repaid to the board from funds made available under the investment made pursuant to this section. Prior to the expenditure of any of the funds, the regional jail and correctional facility authority shall certify to the joint committee on government and finance a list of projects that are to be funded from the invested funds. This certified list may not thereafter be altered or amended other than by legislative enactment. Funds shall be invested with the regional jail and correctional facility authority as requested by the regional jail and correctional facility authority. The money invested shall earn a return at a rate equal to the annualized rate of return earned by the core fixed-income portfolio of the public employees retirement system over the previous five years, plus one tenth of one percent: Provided, That in all events this rate of return may not be less than five percent per annum. The monthly rate of return shall be calculated every quarter. The manner and timing of the investment shall be determined by the board. The total of the amounts invested may not exceed a total of one hundred fifty million dollars during fiscal year one thousand nine hundred ninety-eight, and fiscal year one thousand nine hundred ninety-nine, cumulatively. The authority to make the investment authorized by this section expires on the thirtieth day of June, one thousand nine hundred ninety-nine.

(c) There is created in the state treasury a regional jail and correctional facility investment fund dedicated to the payment of investment earnings and the return of capital invested under
this section. The treasurer shall administer the fund. The fund is an interest-bearing account with interest earned credited to and deposited back into the fund. The fund consists of amounts required to be deposited by section fourteen, article three, chapter thirty-three of this code.

(d) The treasurer shall, monthly, transfer amounts from the regional jail and correctional facility investment fund to the board that are sufficient to allow investment earnings to be paid and the capital invested returned in substantially equal amounts by the thirty-first day of August, two thousand twenty-three: Provided, That the amount of investment earnings paid and the capital invested returned during the fiscal year beginning the first day of July, one thousand nine hundred ninety-eight, may not exceed ten million dollars. Payment representing investment earnings and the return of capital invested shall begin six months from the date the initial funds are invested, or by the tenth day of January, one thousand nine hundred ninety-nine, whichever is later.

(e) The board shall calculate the amount of the projected annual investment earnings to be paid and the capital invested to be returned and certify the amount to the treasurer on the first day of December of each year, until all investment earnings are paid and the total capital invested is returned.

(f) As a condition precedent to the transfer and investment of moneys by the investment management board pursuant to subsection (b) of this section, either the investment management board or the regional jail and correctional authority shall have first caused a judicial determination to be made by an appropriate action initiated in the West Virginia supreme court of appeals regarding the transfer of moneys by the investment management board to the regional jail and correctional facility authority as an investment from funds available for investment from the public employees retirement system, and to otherwise determine the constitutionality of the provisions of Enrolled
House Bill 4702, as enacted by the Legislature in the year one thousand nine hundred ninety-eight. This judicial determination shall be brought as soon as practicable, but not later than thirty days following the effective date of the amendments to this section made by the Legislature in the year one thousand nine hundred ninety-eight.

(g) The Legislature recognizes the fiduciary liability and responsibility imposed on the board by this article and by article six, chapter forty-four of this code. The board, its trustees and employees, have no liability, either personally or corporately with respect to the investment provided for in this section and the loans made under section nineteen of this article, if the investment and loans are made in accordance with the respective provisions of this section and section nineteen of this article.

(h) The regional jail and correctional facility authority shall expend the funds invested under the provisions of this section to proceed with the projects identified pursuant to subsection (b) of this section.

(i) The regional jail and correctional facility authority may return the total remaining capital invested upon thirty days written notice to the board and at the time of such return shall pay the investment earnings accrued to the return date.

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-6b. Special power of authority to issue bonds or notes to repay and refinance capital investment of investment management board in regional jail and correctional facility authority; authorizing issuance of bonds or notes to finance local and re-
gional jail facilities, including juvenile detention centers; creation of regional jail and correctional facility debt service fund.

(a) The Legislature finds and declares that the supreme court of appeals has determined and ordered that the constitution of this state imposes a duty on behalf of the state to make significant improvements in the jail and correctional facility system, including the duty to make capital improvements to facilities and to pay for the cost of those improvements; that construction of capital improvements requires that the cost of the facilities be financed over time; that capital improvements cannot be funded out of current year appropriations of the Legislature; and that section fifty-one, article six of the constitution prohibits the Legislature amending the budget bill so as to create a deficit; that the enacting of new taxes, or the diversion of revenues from other essential departments and functions of government, in order to support capital improvements in jails and correctional facilities, including juvenile detention centers, is not in the interests of the people of the state represented in the Legislature, and is specifically rejected by the Legislature in its exercise of its legitimate constitutional powers; that there have been previously funded certain jail and correctional facilities through funds available for investment through the West Virginia investment management board, the proceeds of which have and are being used by the regional jail and correctional facility authority to finance the cost of capital improvements to jail and correctional facilities, the repayment of such investment being made from transfers to the regional jail and correctional facility investment fund established under section twenty-one, article six, chapter twelve of this code, from funds on deposit in the insurance tax fund established under subsection (b), section fourteen, article three, chapter thirty-three of this code, such transfers undertaken in the manner set forth in subsection (c), section fourteen, article three, chapter thirty-three of this code; that the supreme court of appeals has
previously made a judicial determination that the insurance tax
fund is a special revenue fund from which repayment of the
investment may be made without violating any constitutional
limitation on contracting state debt; that the rate of return being
paid under subsection (b), section twenty-one, article six,
chapter twelve for the investment is subject to annual adjust-
ment and theretofore subject to the volatility of the financial
markets and it is anticipated that the rate of return paid on such
investment will be in excess of the interest rate that would be
payable with respect to bonds issued under this article to repay
and refinance such investment; that a lower interest rate payable
with respect to bonds issued under this article issued to repay
and refinance such investment would provide sufficient money
for repayment of the investment in full as well as additional
money for capital expenditures for jail and correctional
facilities, including juvenile detention centers, without increas-
ing the amounts currently transferable from the insurance tax
fund for repayment of the investment; and that the use of the
insurance tax fund, as a special revenue fund, for the repayment
of debt service on bonds or notes issued under this article to
finance capital expenditures for jail and correctional facilities,
including juvenile detention centers, is a means by which the
state may make significant improvements to the jail and
 correctional facility system without enacting new taxes or
diverting revenues from other essential departments and
functions of government.

(b) In order to provide (1) for the repayment of all or a
portion of the investment, and (2) for the financing of construc-
tion or improvements to regional jail and correctional facilities,
including juvenile detention centers, bonds of the authority may
be issued in accordance with the provisions of this article.

(c) There is hereby created a special revenue fund in the
state treasury which is designated the “regional jail and
correctional facility debt service fund.” Moneys deposited into
the fund shall be used to make payments of principal, redemption premium, if any, and interest payments for bonds issued for the purposes set forth in this section. Separate accounts may be established within the special revenue fund for the purpose of identification of payment of specific obligations. The fund shall consist of amounts transferred from the insurance tax fund in the manner set forth in subsection (c), section fourteen, article three, chapter thirty-three of this code. The authority may further provide in the resolution and in the trust agreement for priorities on the revenues paid into the regional jail and correctional facility 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.

CHAPTER 33. INSURANCE.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14. Annual financial statement and premium tax return; remittance by insurer of premium tax, less certain deductions; special revenue fund created.

(a) Every insurer transacting insurance in West Virginia shall file with the commissioner, on or before the first day of March, each year, a financial statement made under oath of its president or secretary and on a form prescribed by the commissioner. The insurer shall also, on or before the first day of March of each year subject to the provisions of section fourteen-c of this article, under the oath of its president or secretary, make a premium tax return for the previous calendar year, on a form prescribed by the commissioner showing the gross amount of direct premiums, whether designated as a premium or by some other name, collected and received by it during the previous calendar year on policies covering risks resident, located or to be performed in this state and compute the amount of premium tax chargeable to it in accordance with the provisions of this article, deducting the amount of quarterly
payments as required to be made pursuant to the provisions of section fourteen-c of this article, if any, less any adjustments to the gross amount of the direct premiums made during the calendar year, if any, and transmit with the return to the commissioner a remittance in full for the tax due. The tax is the sum equal to two percent of the taxable premium and also includes any additional tax due under section fourteen-a of this article. All taxes received by the commissioner shall be paid into the insurance tax fund created in subsection (b) of this section.

(b) There is created in the state treasury a special revenue fund, administered by the treasurer, designated the “insurance tax fund.” This fund is not part of the general revenue fund of the state. It consists of all amounts deposited in the fund pursuant to subsection (a) of this section, sections fifteen and seventeen of this article, any appropriations to the fund, all interest earned from investment of the fund and any gifts, grants or contributions received by the fund.

(c) The treasurer shall dedicate and transfer from the insurance tax fund to the regional jail and correctional facility investment fund created under the provisions of section twenty-one, article six, chapter twelve of this code, on or before the tenth day of each month, an amount equal to one twelfth of the projected annual investment earnings to be paid and the capital invested to be returned, as certified to the treasurer by the investment management board: Provided, That the amount dedicated and transferred may not exceed twenty million dollars in any fiscal year. In the event there are insufficient funds available in any month to transfer the amount required pursuant to this subsection to the regional jail and correctional facility investment fund, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency. Each month a lien on the revenues generated from the insurance premium tax, the
annuity tax and the minimum tax, provided in this section and
sections fifteen and seventeen of this article, up to a maximum
amount equal to one twelfth of the projected annual principal
and return is granted to the investment management board to
secure the investment made with the regional jail and correc-
tional facility authority pursuant to section twenty, article six,
chapter twelve of this code. The treasurer shall, no later than the
last business day of each month, transfer amounts the treasurer
determines are not necessary for making refunds under this
article to meet the requirements of subsection (d), section
twenty-one, article six, chapter twelve of this code, to the credit
of the general revenue fund. Commencing on the first day of the
month the investment created under the provisions of section
twenty-one, article six, chapter twelve of this code, is returned
to the investment management board, the treasurer shall
dedicate and transfer from the insurance tax fund to the regional
jail and correctional facility debt service fund created under the
provisions of section six-b, article fifteen, chapter thirty-one of
this code, on or before the tenth day of each month, an amount
equal to one tenth of the projected annual principal, interest and
coverage requirements on any and all revenue bonds and
refunding bonds issued, or to be issued, after the first day of
May, two thousand and one, as certified to the treasurer by the
economic development authority: Provided, That the amount
transferred may not exceed sixteen million dollars in any fiscal
year. In the event there are insufficient funds available in any
month to transfer the amount required pursuant to this subsec-
tion to the regional jail and correctional facility 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 revenues generated from
the insurance premium tax, the annuity tax and the minimum
tax, provided in this section and sections fifteen and seventeen
of this article, not to exceed twenty million dollars annually, is
granted to the economic development authority to secure the
bonds issued by the economic development authority on behalf of the regional jail and correctional facility authority pursuant to section six-b, article fifteen, chapter thirty-one of this code. The treasurer shall, no later than the last business day of the month in which the last annually required transfer is made to the regional jail and correctional facility debt service fund, transfer amounts the treasurer determines are not necessary for making transfers under this article to meet the requirements of section six-b(c), article fifteen, chapter thirty-one of this code, as appropriated by the Legislature.

(d) The amendment to this section enacted during the regular session of the Legislature in the year one thousand nine hundred ninety-eight is effective on the first day of July, one thousand nine hundred ninety-eight.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within [ ] approved this the 1st day of May, 2001.

Governor