

FILED

2001 MAY -2 P 4: 29

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

FILED

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H. B. 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.

FILED

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.

1 (a) The Legislature finds and declares:

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

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

14 (3) That while the supreme court of appeals is empowered
15 to interpret the laws, including the constitution of the state,
16 section one, article ten of the constitution grants to the Legisla-
17 ture the power of taxation; section fifty-one, article six of the

18 constitution grants to the Legislature the power of appropria-
19 tion; and section one, article five of the constitution prohibits
20 any branch of government from exercising powers properly
21 belonging to another;

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

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

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

46 (b) The investment management board shall upon request
47 of the regional jail and correctional facility authority transfer
48 moneys as an investment, from funds available for investment
49 from the public employees retirement system, to the regional

50 jail and correctional facility authority. The amount transferred
51 may not exceed one hundred fifty million dollars in the aggre-
52 gate and shall be used for the purposes of financing construc-
53 tion of regional jails, correctional facilities, juvenile detention
54 facilities, juvenile correctional facilities, or extensions, renova-
55 tions, improvements or additions thereto, or for the replacement
56 or renovation of existing facilities. If the board has loaned
57 money to the state building commission under subsection (b),
58 section nineteen of this article, the total amount loaned shall be
59 repaid to the board from funds made available under the
60 investment made pursuant to this section. Prior to the expendi-
61 ture of any of the funds, the regional jail and correctional
62 facility authority shall certify to the joint committee on govern-
63 ment and finance a list of projects that are to be funded from the
64 invested funds. This certified list may not thereafter be altered
65 or amended other than by legislative enactment. Funds shall be
66 invested with the regional jail and correctional facility authority
67 as requested by the regional jail and correctional facility
68 authority. The money invested shall earn a return at a rate equal
69 to the annualized rate of return earned by the core fixed-income
70 portfolio of the public employees retirement system over the
71 previous five years, plus one tenth of one percent: *Provided,*
72 That in all events this rate of return may not be less than five
73 percent per annum. The monthly rate of return shall be calcu-
74 lated every quarter. The manner and timing of the investment
75 shall be determined by the board. The total of the amounts
76 invested may not exceed a total of one hundred fifty million
77 dollars during fiscal year one thousand nine hundred ninety-
78 eight, and fiscal year one thousand nine hundred ninety-nine,
79 cumulatively. The authority to make the investment authorized
80 by this section expires on the thirtieth day of June, one thousand
81 nine hundred ninety-nine.

82 (c) There is created in the state treasury a regional jail and
83 correctional facility investment fund dedicated to the payment
84 of investment earnings and the return of capital invested under

85 this section. The treasurer shall administer the fund. The fund
86 is an interest-bearing account with interest earned credited to
87 and deposited back into the fund. The fund consists of amounts
88 required to be deposited by section fourteen, article three,
89 chapter thirty-three of this code.

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

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

108 (f) As a condition precedent to the transfer and investment
109 of moneys by the investment management board pursuant to
110 subsection (b) of this section, either the investment manage-
111 ment board or the regional jail and correctional authority shall
112 have first caused a judicial determination to be made by an
113 appropriate action initiated in the West Virginia supreme court
114 of appeals regarding the transfer of moneys by the investment
115 management board to the regional jail and correctional facility
116 authority as an investment from funds available for investment
117 from the public employees retirement system, and to otherwise
118 determine the constitutionality of the provisions of Enrolled

119 House Bill 4702, as enacted by the Legislature in the year one
120 thousand nine hundred ninety-eight. This judicial determination
121 shall be brought as soon as practicable, but not later than thirty
122 days following the effective date of the amendments to this
123 section made by the Legislature in the year one thousand nine
124 hundred ninety-eight.

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

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

138 (i) The regional jail and correctional facility authority may
139 return the total remaining capital invested upon thirty days
140 written notice to the board and at the time of such return shall
141 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.

1 (a) The Legislature finds and declares that the supreme
2 court of appeals has determined and ordered that the constitu-
3 tion of this state imposes a duty on behalf of the state to make
4 significant improvements in the jail and correctional facility
5 system, including the duty to make capital improvements to
6 facilities and to pay for the cost of those improvements; that
7 construction of capital improvements requires that the cost of
8 the facilities be financed over time; that capital improvements
9 cannot be funded out of current year appropriations of the
10 Legislature; and that section fifty-one, article six of the consti-
11 tution prohibits the Legislature amending the budget bill so as
12 to create a deficit; that the enacting of new taxes, or the
13 diversion of revenues from other essential departments and
14 functions of government, in order to support capital improve-
15 ments in jails and correctional facilities, including juvenile
16 detention centers, is not in the interests of the people of the state
17 represented in the Legislature, and is specifically rejected by
18 the Legislature in its exercise of its legitimate constitutional
19 powers; that there have been previously funded certain jail and
20 correctional facilities through funds available for investment
21 through the West Virginia investment management board, the
22 proceeds of which have and are being used by the regional jail
23 and correctional facility authority to finance the cost of capital
24 improvements to jail and correctional facilities, the repayment
25 of such investment being made from transfers to the regional
26 jail and correctional facility investment fund established under
27 section twenty-one, article six, chapter twelve of this code, from
28 funds on deposit in the insurance tax fund established under
29 subsection (b), section fourteen, article three, chapter thirty-
30 three of this code, such transfers undertaken in the manner set
31 forth in subsection (c), section fourteen, article three, chapter
32 thirty-three of this code; that the supreme court of appeals has

33 previously made a judicial determination that the insurance tax
34 fund is a special revenue fund from which repayment of the
35 investment may be made without violating any constitutional
36 limitation on contracting state debt; that the rate of return being
37 paid under subsection (b), section twenty-one, article six,
38 chapter twelve for the investment is subject to annual adjust-
39 ment and theretofore subject to the volatility of the financial
40 markets and it is anticipated that the rate of return paid on such
41 investment will be in excess of the interest rate that would be
42 payable with respect to bonds issued under this article to repay
43 and refinance such investment; that a lower interest rate payable
44 with respect to bonds issued under this article issued to repay
45 and refinance such investment would provide sufficient money
46 for repayment of the investment in full as well as additional
47 money for capital expenditures for jail and correctional
48 facilities, including juvenile detention centers, without increas-
49 ing the amounts currently transferable from the insurance tax
50 fund for repayment of the investment; and that the use of the
51 insurance tax fund, as a special revenue fund, for the repayment
52 of debt service on bonds or notes issued under this article to
53 finance capital expenditures for jail and correctional facilities,
54 including juvenile detention centers, is a means by which the
55 state may make significant improvements to the jail and
56 correctional facility system without enacting new taxes or
57 diverting revenues from other essential departments and
58 functions of government.

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

64 (c) There is hereby created a special revenue fund in the
65 state treasury which is designated the "regional jail and
66 correctional facility debt service fund." Moneys deposited into

67 the fund shall be used to make payments of principal, redemp-
 68 tion premium, if any, and interest payments for bonds issued for
 69 the purposes set forth in this section. Separate accounts may be
 70 established within the special revenue fund for the purpose of
 71 identification of payment of specific obligations. The fund shall
 72 consist of amounts transferred from the insurance tax fund in
 73 the manner set forth in subsection (c), section fourteen, article
 74 three, chapter thirty-three of this code. The authority may
 75 further provide in the resolution and in the trust agreement for
 76 priorities on the revenues paid into the regional jail and
 77 correctional facility debt service fund as may be necessary for
 78 the protection of the prior rights of the holders of bonds issued
 79 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.

1 (a) Every insurer transacting insurance in West Virginia
 2 shall file with the commissioner, on or before the first day of
 3 March, each year, a financial statement made under oath of its
 4 president or secretary and on a form prescribed by the commis-
 5 sioner. The insurer shall also, on or before the first day of
 6 March of each year subject to the provisions of section
 7 fourteen-c of this article, under the oath of its president or
 8 secretary, make a premium tax return for the previous calendar
 9 year, on a form prescribed by the commissioner showing the
 10 gross amount of direct premiums, whether designated as a
 11 premium or by some other name, collected and received by it
 12 during the previous calendar year on policies covering risks
 13 resident, located or to be performed in this state and compute
 14 the amount of premium tax chargeable to it in accordance with
 15 the provisions of this article, deducting the amount of quarterly

16 payments as required to be made pursuant to the provisions of
17 section fourteen-c of this article, if any, less any adjustments to
18 the gross amount of the direct premiums made during the
19 calendar year, if any, and transmit with the return to the
20 commissioner a remittance in full for the tax due. The tax is the
21 sum equal to two percent of the taxable premium and also
22 includes any additional tax due under section fourteen-a of this
23 article. All taxes received by the commissioner shall be paid
24 into the insurance tax fund created in subsection (b) of this
25 section.

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

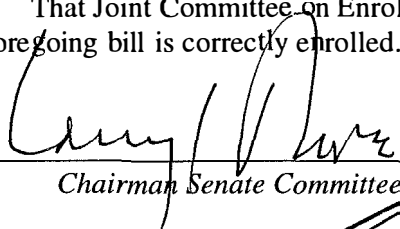
34 (c) The treasurer shall dedicate and transfer from the
35 insurance tax fund to the regional jail and correctional facility
36 investment fund created under the provisions of section twenty-
37 one, article six, chapter twelve of this code, on or before the
38 tenth day of each month, an amount equal to one twelfth of the
39 projected annual investment earnings to be paid and the capital
40 invested to be returned, as certified to the treasurer by the
41 investment management board: *Provided*, That the amount
42 dedicated and transferred may not exceed twenty million dollars
43 in any fiscal year. In the event there are insufficient funds
44 available in any month to transfer the amount required pursuant
45 to this subsection to the regional jail and correctional facility
46 investment fund, the deficiency shall be added to the amount
47 transferred in the next succeeding month in which revenues are
48 available to transfer the deficiency. Each month a lien on the
49 revenues generated from the insurance premium tax, the

50 annuity tax and the minimum tax, provided in this section and
51 sections fifteen and seventeen of this article, up to a maximum
52 amount equal to one twelfth of the projected annual principal
53 and return is granted to the investment management board to
54 secure the investment made with the regional jail and correc-
55 tional facility authority pursuant to section twenty, article six,
56 chapter twelve of this code. The treasurer shall, no later than the
57 last business day of each month, transfer amounts the treasurer
58 determines are not necessary for making refunds under this
59 article to meet the requirements of subsection (d), section
60 twenty-one, article six, chapter twelve of this code, to the credit
61 of the general revenue fund. Commencing on the first day of the
62 month the investment created under the provisions of section
63 twenty-one, article six, chapter twelve of this code, is returned
64 to the investment management board, the treasurer shall
65 dedicate and transfer from the insurance tax fund to the regional
66 jail and correctional facility debt service fund created under the
67 provisions of section six-b, article fifteen, chapter thirty-one of
68 this code, on or before the tenth day of each month, an amount
69 equal to one tenth of the projected annual principal, interest and
70 coverage requirements on any and all revenue bonds and
71 refunding bonds issued, or to be issued, after the first day of
72 May, two thousand and one, as certified to the treasurer by the
73 economic development authority: *Provided*, That the amount
74 transferred may not exceed sixteen million dollars in any fiscal
75 year. In the event there are insufficient funds available in any
76 month to transfer the amount required pursuant to this subsec-
77 tion to the regional jail and correctional facility debt service
78 fund, the deficiency shall be added to the amount transferred in
79 the next succeeding month in which revenues are available to
80 transfer the deficiency. A lien on the revenues generated from
81 the insurance premium tax, the annuity tax and the minimum
82 tax, provided in this section and sections fifteen and seventeen
83 of this article, not to exceed twenty million dollars annually, is
84 granted to the economic development authority to secure the

85 bonds issued by the economic development authority on behalf
86 of the regional jail and correctional facility authority pursuant
87 to section six-b, article fifteen, chapter thirty-one of this code.
88 The treasurer shall, no later than the last business day of the
89 month in which the last annually required transfer is made to
90 the regional jail and correctional facility debt service fund,
91 transfer amounts the treasurer determines are not necessary for
92 making transfers under this article to meet the requirements of
93 section six-b(c), article fifteen, chapter thirty-one of this code,
94 as appropriated by the Legislature.

95 (d) The amendment to this section enacted during the
96 regular session of the Legislature in the year one thousand nine
97 hundred ninety-eight is effective on the first day of July, one
98 thousand nine hundred ninety-eight.

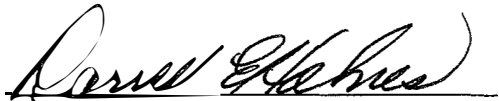
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman Senate Committee

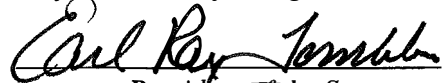

Chairman House Committee


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 is approved this the 1st
day of May, 2001.


Governor

PRESENTED TO THE

GOVERNOR

Date 5/1/01

Time 2:40pm