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# WEST VIRGINIA LEGISLATURE

Regular Session, 2003

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# ENROLLED

Committee Substitute for

SENATE BILL NO. 437

(By Senator Tomblin, Mr. President )

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PASSED March 8, 2003

In Effect ninety days from Passage

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COMMITTEE SUBSTITUTE

FOR

## Senate Bill No. 437

(SENATOR TOMBLIN, MR. PRESIDENT, *original sponsor*)

[Passed March 8, 2003; in effect ninety days from passage.]

AN ACT to amend and reenact section four, article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section forty, article three, chapter five-a of said code, all relating to state interest in real property; requiring presentation of certain information to the joint committee on government and finance; tax exemption not affected by leasebacks; exemptions available to private entity who is a party to the leaseback; leasebacks to be considered public improvements; and personal liability of a private entity who is a party to a leaseback.

*Be it enacted by the Legislature of West Virginia:*

That section four, article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section forty, article three, chapter five-a of said code be amended and reenacted, all to read as follows:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY  
OF THE GOVERNOR, SECRETARY OF STATE AND  
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;  
MISCELLANEOUS AGENCIES, COMMISSIONS,  
OFFICES, PROGRAMS, ETC.**

**ARTICLE 6. STATE BUILDING COMMISSION.**

**§5-6-4. Powers of commission.**

- 1 (a) The commission may:
  - 2 (1) Sue and be sued, plead and be impleaded;
  - 3 (2) Have a seal and alter the seal at pleasure;
  - 4 (3) Contract to acquire and acquire, in the name of the  
5 commission or of the state, by purchase, lease, lease-  
6 purchase or otherwise, real property or rights or easements  
7 necessary or convenient for its corporate purposes and to  
8 exercise the power of eminent domain to accomplish those  
9 purposes;
  - 10 (4) Acquire, hold and dispose of personal property for its  
11 corporate purposes;
  - 12 (5) Make bylaws for the management and regulation of  
13 its affairs;
  - 14 (6) With the consent of the attorney general of the state  
15 of West Virginia, use the facilities of his or her office,  
16 assistants and employees in all legal matters relating to or  
17 pertaining to the commission;
  - 18 (7) Appoint officers, agents and employees and fix their  
19 compensation;

20 (8) Make contracts, and execute all instruments neces-  
21 sary or convenient to effectuate the intent of, and to  
22 exercise the powers granted to it by this article;

23 (9) Renegotiate all contracts entered into by it whenever,  
24 due to a change in situation, it appears to the commission  
25 that its interests will be best served;

26 (10) Construct a building or buildings on real property,  
27 which it may acquire, or which may be owned by the state  
28 of West Virginia, in the city of Charleston, as convenient  
29 as may be to the capitol building, together with incidental  
30 approaches, structures and facilities, subject to the consent  
31 and approval of the city of Charleston in any case that is  
32 necessary; and, in addition, to acquire or construct a  
33 warehouse, including office space in the warehouse in  
34 Kanawha County for the West Virginia alcohol beverage  
35 control commissioner, and equip and furnish the office  
36 space; and to acquire or construct, through lease, purchase,  
37 lease-purchase or bond financing, hospitals or other  
38 facilities, buildings, or additions or renovations to build-  
39 ings that are necessary for the safety and care of patients,  
40 inmates and guests at facilities under the jurisdiction of  
41 and supervision of the division of health and at institu-  
42 tions under the jurisdiction of the division of corrections  
43 or the regional jail and correctional facility authority; and  
44 to formulate and program plans for the orderly and timely  
45 capital improvement of all of the hospitals and institutions  
46 and the state capitol buildings; and to construct a building  
47 or buildings in Kanawha County to be used as a general  
48 headquarters by the state police to accommodate that  
49 division's executive staff, clerical offices, technical  
50 services, supply facilities and dormitory accommodations;  
51 and to develop, improve and expand state parks and  
52 recreational facilities to be operated by the division of  
53 natural resources; and to establish one or more systems or  
54 complexes of buildings and projects under control of the  
55 commission; and, subject to prior agreements with holders  
56 of bonds previously issued, to change the systems, com-

57 plexes of buildings and projects, in order to facilitate the  
58 issuance and sale of bonds of different series on a parity  
59 with each other or having the priorities between series  
60 determined by the commission; and to acquire by pur-  
61 chase, eminent domain or otherwise all real property or  
62 interests in the real property necessary or convenient to  
63 accomplish the purposes of this subdivision. The rights  
64 and powers set forth in this subdivision shall not be  
65 construed as in derogation of any rights and powers now  
66 vested in the West Virginia alcohol beverage control  
67 commissioner, the department of health and human  
68 resources, the division of corrections or the division of  
69 natural resources;

70 (11) Maintain, construct and operate a project authorized  
71 under this article;

72 (12) Charge rentals for the use of all or any part of a  
73 project or buildings at any time financed, constructed,  
74 acquired or improved, in whole or in part, with the  
75 proceeds of sale of bonds issued pursuant to this article,  
76 subject to and in accordance with any agreements with  
77 bondholders made as provided in this article: *Provided,*  
78 That on and after the effective date of the amendments to  
79 this section, to charge rentals for the use of all or any part  
80 of a project or buildings at any time financed, constructed,  
81 acquired, maintained or improved, in whole or in part,  
82 with the proceeds of sale of bonds issued pursuant to this  
83 article, subject to and in accordance with any agreements  
84 with bondholders made as provided in this section, or with  
85 any funds available to the state building commission,  
86 including, but not limited to, all buildings and property  
87 owned by the state of West Virginia or by the state build-  
88 ing commission, but no rentals shall be charged to the  
89 governor, attorney general, secretary of state, state  
90 auditor, state treasurer, the Legislature and the members  
91 of the Legislature, the supreme court of appeals, nor for  
92 their offices, agencies, official functions and duties;

93 (13) Issue negotiable bonds and provide for the rights of  
94 the holders of the negotiable bonds;

95 (14) Accept and expend any gift, grant or contribution of  
96 money to, or for the benefit of, the commission, from the  
97 state of West Virginia or any other source for any or all of  
98 the purposes specified in this article or for any one or more  
99 of those purposes specified in connection with the gift,  
100 grant or contribution;

101 (15) Enter on any lands and premises for the purpose of  
102 making surveys, soundings and examinations;

103 (16) Invest in United States government obligations, on  
104 a short-term basis, any surplus funds which the commis-  
105 sion may have on hand pending the completion of any  
106 project or projects;

107 (17) Issue revenue bonds in accordance with the applica-  
108 ble provisions of this article for the purposes set forth in  
109 section eleven-a of this article; and

110 (18) Do all things necessary or convenient to carry out  
111 the powers given in this article.

112 (b) The power and authority granted to the state building  
113 commission pursuant to this section and sections seven,  
114 eight and eleven-a of this article to initiate, acquire,  
115 construct, finance or develop projects; to issue revenue  
116 bonds; or to exercise the power of eminent domain with  
117 respect to any project, terminated on the effective date of  
118 this section: *Provided*, That nothing in this section shall be  
119 construed to affect the validity of any act of the state  
120 building commission prior to the effective date of this  
121 section or to impair the rights of bondholders with respect  
122 to bonds or other evidence of indebtedness issued prior to  
123 the effective date of this section. Following the effective  
124 date of this section, the secretary of administration may  
125 exercise any power expressly granted pursuant to this  
126 article with respect to any project or facility previously  
127 constructed or acquired, any existing contractual obliga-

128 tions, and any outstanding bonded indebtedness. Refund-  
129 ing bonds for any outstanding bonded indebtedness are  
130 authorized, subject to the provisions of article two-e,  
131 chapter thirteen of this code. The West Virginia economic  
132 development authority provided for in article fifteen,  
133 chapter thirty-one of this code is designated to act as the  
134 governing body whose authorizations and determinations  
135 are required for the purpose of refunding bonds.

136 (c) Any purchases of real estate, any lease-purchase  
137 agreement and any construction of new buildings or other  
138 acquisition of buildings, office space or grounds resulting  
139 therefrom, by any state agency in an aggregate amount  
140 equal to or in excess of the sum of one million dollars  
141 (exclusive of interest and financing costs) shall be pre-  
142 sented by the secretary of administration to the joint  
143 committee on government and finance for prior review.  
144 The secretary of administration shall provide to the joint  
145 committee on government and finance a copy of the  
146 contract or agreement to be entered and a report setting  
147 forth a detailed summary of the terms of the contract or  
148 agreement.

## **CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.**

### **ARTICLE 3. PURCHASING DIVISION.**

#### **§5A-3-40. Selection of grounds, etc.; acquisition by contract or lease; long-term leases; requiring approval of secretary for permanent changes.**

1 (a) The secretary has sole authority to select and to  
2 acquire by contract or lease, in the name of the state, all  
3 grounds, buildings, office space or other space, the rental  
4 of which is necessarily required by any spending unit,  
5 upon a certificate from the chief executive officer or his or  
6 her designee that the grounds, buildings, office space or  
7 other space requested is necessarily required for the proper  
8 function of the spending unit, that the spending unit will  
9 be responsible for all rent and other necessary payments in  
10 connection with the contract or lease, and that satisfactory

11 grounds, buildings, office space or other space is not  
12 available on grounds and in buildings then owned or  
13 leased by the state. The secretary shall, before executing  
14 any rental contract or lease, determine the fair rental value  
15 for the rental of the requested grounds, buildings, office  
16 space or other space, in the condition in which they exist,  
17 and shall contract for or lease those premises at a price not  
18 to exceed the fair rental value of those premises.

19 (b) The secretary may enter into long-term agreements  
20 for buildings, land and space for periods longer than one  
21 fiscal year: *Provided*, That long-term lease agreements  
22 may not be for periods in excess of forty years, except that  
23 the secretary may, in the case of the adjutant general's  
24 department, enter into lease agreements for a term of fifty  
25 years or a specific term of more than fifty years so as to  
26 comply with federal regulatory requirements, and shall  
27 contain, in substance, all of the following provisions: (1)  
28 That the department of administration, as lessee, has the  
29 right to cancel the lease without further obligation on the  
30 part of the lessee upon giving thirty days' written notice to  
31 the lessor, with the notice being given at least thirty days  
32 prior to the last day of the succeeding month; (2) that the  
33 lease is to be considered canceled without further obliga-  
34 tion on the part of the lessee if the state Legislature or the  
35 federal government does not appropriate sufficient funds  
36 for the lease or otherwise acts to impair the lease or cause  
37 it to be canceled; (3) that the lease is to be considered  
38 renewed for each ensuing fiscal year during the term of the  
39 lease unless it is canceled by the department of adminis-  
40 tration before the end of the then current fiscal year.

41 (c) Notwithstanding any other provision of this code, any  
42 purchases of real estate, any lease-purchase agreement and  
43 any construction of new buildings or other acquisitions of  
44 buildings, office space or grounds resulting therefrom, by  
45 any state agency in an aggregate amount equal to or in  
46 excess of the sum of one million dollars, exclusive of  
47 interest and financing costs shall be presented by the

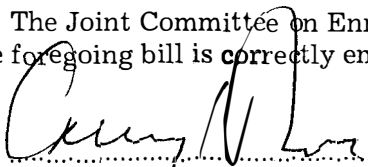


48 secretary of administration to the joint committee on  
49 government and finance for prior review. The secretary of  
50 administration shall provide to the joint committee on  
51 government and finance a copy of the contract or agree-  
52 ment to be entered and a report setting forth a detailed  
53 summary of the terms of the contract or agreement.

54 (d) Real and personal property taxation exemptions,  
55 exemptions relating to transfers of real property, exemp-  
56 tions from the payment of business and occupation,  
57 franchise and licensing taxes and exemptions from taxa-  
58 tion relating to operations or facilities owned, leased or  
59 exchanged by the state that are set forth elsewhere in this  
60 code and available to the state and its spending units shall  
61 not be affected by any transaction in which, for the  
62 purpose of obtaining financing, the state, directly or  
63 indirectly, leases or otherwise transfers the property to a  
64 private entity whose property would not otherwise be  
65 exempt and immediately thereafter enters into a leaseback  
66 or other agreement that, directly or indirectly, gives the  
67 state or its spending units the right to use, control and  
68 possess the property. Notwithstanding anything in this  
69 code to the contrary, the exemptions from taxation  
70 described in this subsection available to the state and its  
71 spending units shall also be available to any private entity  
72 that is a party to a leaseback, exchange or other agreement  
73 that, directly or indirectly, gives the state or its spending  
74 units the right to use, control and possess the property.  
75 Any real or personal property that is acquired for the  
76 benefit of the state as provided in this section shall at the  
77 time be considered a public improvement of the state and  
78 shall be insured against hazards and other liabilities as are  
79 similar properties and public improvements within the  
80 state. Any private entity that is a party to a leaseback,  
81 exchange or other agreement that, directly or indirectly,  
82 gives the state or its spending units the right to use,  
83 control and possess the property is exempt from any  
84 personal liability relating to the use, control or possession  
85 of the property.

86 A spending unit which is granted any grounds, buildings,  
87 office space or other space leased in accordance with this  
88 section may not order or make permanent changes of any  
89 type to the property, unless the secretary has first deter-  
90 mined that the change is necessary for the proper, efficient  
91 and economically sound operation of the spending unit.  
92 For purposes of this section, a “permanent change” means  
93 any addition, alteration, improvement, remodeling, repair  
94 or other change involving the expenditure of state funds  
95 for the installation of any tangible thing which cannot be  
96 economically removed from the grounds, buildings, office  
97 space or other space when vacated by the spending unit.

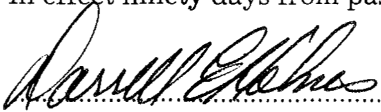
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
.....  
Chairman/Senate Committee

  
.....  
Chairman House Committee


Originated in the Senate.

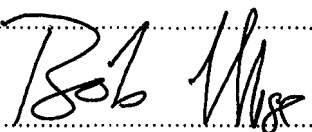
In effect ninety days from passage.

  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within *is disapproved* this the *2nd*  
Day of *April* ....., 2003.  
  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

Date

10/10/03

Time

3/27/03