WEST VIRGINIA LEGISLATURE
Regular Session, 2003

ENROLLED
Committee Substitute for
SENATE BILL NO. 437

(By Senator Tomblin, Mr. President)

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 commission or of the state, by purchase, lease, lease-purchase or otherwise, real property or rights or easements necessary or convenient for its corporate purposes and to exercise the power of eminent domain to accomplish those purposes;

5 (4) Acquire, hold and dispose of personal property for its corporate purposes;

6 (5) Make bylaws for the management and regulation of its affairs;

7 (6) With the consent of the attorney general of the state of West Virginia, use the facilities of his or her office, assistants and employees in all legal matters relating to or pertaining to the commission;

8 (7) Appoint officers, agents and employees and fix their compensation;
(8) Make contracts, and execute all instruments necessary or convenient to effectuate the intent of, and to exercise the powers granted to it by this article;

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

(10) Construct a building or buildings on real property, which it may acquire, or which may be owned by the state of West Virginia, in the city of Charleston, as convenient as may be to the capitol building, together with incidental approaches, structures and facilities, subject to the consent and approval of the city of Charleston in any case that is necessary; and, in addition, to acquire or construct a warehouse, including office space in the warehouse in Kanawha County for the West Virginia alcohol beverage control commissioner, and equip and furnish the office space; and to acquire or construct, through lease, purchase, lease-purchase or bond financing, hospitals or other facilities, buildings, or additions or renovations to buildings that are necessary for the safety and care of patients, inmates and guests at facilities under the jurisdiction of and supervision of the division of health and at institutions under the jurisdiction of the division of corrections or the regional jail and correctional facility authority; and to formulate and program plans for the orderly and timely capital improvement of all of the hospitals and institutions and the state capitol buildings; and to construct a building or buildings in Kanawha County to be used as a general headquarters by the state police to accommodate that division's executive staff, clerical offices, technical services, supply facilities and dormitory accommodations; and to develop, improve and expand state parks and recreational facilities to be operated by the division of natural resources; and to establish one or more systems or complexes of buildings and projects under control of the commission; and, subject to prior agreements with holders of bonds previously issued, to change the systems, com-
plexes of buildings and projects, in order to facilitate the
issuance and sale of bonds of different series on a parity
with each other or having the priorities between series
determined by the commission; and to acquire by pur-
chase, eminent domain or otherwise all real property or
interests in the real property necessary or convenient to
accomplish the purposes of this subdivision. The rights
and powers set forth in this subdivision shall not be
construed as in derogation of any rights and powers now
vested in the West Virginia alcohol beverage control
commissioner, the department of health and human
resources, the division of corrections or the division of
natural resources;

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

(12) Charge rentals for the use of all or any part of a
project or buildings at any time financed, constructed,
acquired or improved, in whole or in part, with the
proceeds of sale of bonds issued pursuant to this article,
subject to and in accordance with any agreements with
bondholders made as provided in this article: Provided,
That on and after the effective date of the amendments to
this section, to charge rentals for the use of all or any part
of a project or buildings at any time financed, constructed,
acquired, maintained or improved, in whole or in part,
with the proceeds of sale of bonds issued pursuant to this
article, subject to and in accordance with any agreements
with bondholders made as provided in this section, or with
any funds available to the state building commission,
including, but not limited to, all buildings and property
owned by the state of West Virginia or by the state build-
ing commission, but no rentals shall be charged to the
governor, attorney general, secretary of state, state
auditor, state treasurer, the Legislature and the members
of the Legislature, the supreme court of appeals, nor for
their offices, agencies, official functions and duties;
(13) Issue negotiable bonds and provide for the rights of
the holders of the negotiable bonds;

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

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

(16) Invest in United States government obligations, on
a short-term basis, any surplus funds which the commis-

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

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

(b) The power and authority granted to the state building
commission pursuant to this section and sections seven,
eight and eleven-a of this article to initiate, acquire,
construct, finance or develop projects; to issue revenue
bonds; or to exercise the power of eminent domain with
respect to any project, terminated on the effective date of
this section: Provided, That nothing in this section shall be
construed to affect the validity of any act of the state
building commission prior to the effective date of this
section or to impair the rights of bondholders with respect
to bonds or other evidence of indebtedness issued prior to
the effective date of this section. Following the effective
date of this section, the secretary of administration may
exercise any power expressly granted pursuant to this
article with respect to any project or facility previously
constructed or acquired, any existing contractual obliga-
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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
137 (c) Any purchases of real estate, any lease-purchase
138 agreement and any construction of new buildings or other
139 acquisition of buildings, office space or grounds resulting
140 therefrom, by any state agency in an aggregate amount
141 equal to or in excess of the sum of one million dollars
142 (exclusive of interest and financing costs) shall be pre-
143 sented by the secretary of administration to the joint
144 committee on government and finance for prior review.
145 The secretary of administration shall provide to the joint
146 committee on government and finance a copy of the
147 contract or agreement to be entered and a report setting
148 forth a detailed summary of the terms of the contract or
149 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
grounds, buildings, office space or other space is not available on grounds and in buildings then owned or leased by the state. The secretary shall, before executing any rental contract or lease, determine the fair rental value for the rental of the requested grounds, buildings, office space or other space, in the condition in which they exist, and shall contract for or lease those premises at a price not to exceed the fair rental value of those premises.

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

(c) Notwithstanding any other provision of this code, any purchases of real estate, any lease-purchase agreement and any construction of new buildings or other acquisitions of buildings, office space or grounds resulting therefrom, by any state agency in an aggregate amount equal to or in excess of the sum of one million dollars, exclusive of interest and financing costs shall be presented by the
secretary of administration to the joint committee on government and finance for prior review. The secretary of administration shall provide to the joint committee on government and finance a copy of the contract or agreement to be entered and a report setting forth a detailed summary of the terms of the contract or agreement.

(d) Real and personal property taxation exemptions, exemptions relating to transfers of real property, exemptions from the payment of business and occupation, franchise and licensing taxes and exemptions from taxation relating to operations or facilities owned, leased or exchanged by the state that are set forth elsewhere in this code and available to the state and its spending units shall not be affected by any transaction in which, for the purpose of obtaining financing, the state, directly or indirectly, leases or otherwise transfers the property to a private entity whose property would not otherwise be exempt and immediately thereafter enters into a leaseback or other agreement that, directly or indirectly, gives the state or its spending units the right to use, control and possess the property. Notwithstanding anything in this code to the contrary, the exemptions from taxation described in this subsection available to the state and its spending units shall also be available to any private entity that is a party to a leaseback, exchange or other agreement that, directly or indirectly, gives the state or its spending units the right to use, control and possess the property. Any real or personal property that is acquired for the benefit of the state as provided in this section shall at the time be considered a public improvement of the state and shall be insured against hazards and other liabilities as are similar properties and public improvements within the state. Any private entity that is a party to a leaseback, exchange or other agreement that, directly or indirectly, gives the state or its spending units the right to use, control and possess the property is exempt from any personal liability relating to the use, control or possession of the property.
A spending unit which is granted any grounds, buildings, office space or other space leased in accordance with this section may not order or make permanent changes of any type to the property, unless the secretary has first determined that the change is necessary for the proper, efficient and economically sound operation of the spending unit. For purposes of this section, a “permanent change” means any addition, alteration, improvement, remodeling, repair or other change involving the expenditure of state funds for the installation of any tangible thing which cannot be economically removed from the grounds, buildings, office space or other space when vacated by the spending unit.
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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 3rd Day of April, 2003.

Governor