WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2008

ENROLLED

Senate Bill No. 297

(By Senators Tomblin, Mr. President, and Caruth, By Request of the Executive)

[Passed March 7, 2008; in effect from passage.]
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AN ACT to amend and reenact §18-9D-2, §18-9D-6, §18-9D-8, §18-9D-13 and §18-9D-15 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §18-9D-4b; and to amend and reenact §29-22-18a of said code, all relating generally to the School Building Authority; modifying definitions and qualifications of construction projects and major improvement projects; authorizing the School Building Authority to issue bonds by using moneys deposited in the Excess Lottery School Building Debt Service Fund from the State Excess Lottery Fund; creating Excess Lottery
School Building Debt Service Fund; providing that moneys from the State Excess Lottery Fund are deposited into the Excess Lottery School Building Debt Service Fund; and clarifying the powers of the authority in issuing bonds.

Be it enacted by the Legislature of West Virginia:

That §18-9D-2, §18-9D-6, §18-9D-8, §18-9D-13 and §18-9D-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §18-9D-4b; and that §29-22-18a of said code be amended and reenacted, all to read as follows:

CHAPTER 18. EDUCATION.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.


1 For the purposes of this article, unless a different meaning clearly appears from the context:

3 (1) “Authority” means the School Building Authority of West Virginia;

5 (2) “Bonds” means bonds issued by the authority pursuant to this article;

7 (3) “Construction project” means a project in the furtherance of a facilities plan with a cost greater than one million dollars for the new construction, expansion or major renovation of facilities, buildings and structures for school purposes, including:
(A) The acquisition of land for current or future use in connection with the construction project;

(B) New or substantial upgrading of existing equipment, machinery and furnishings;

(C) Installation of utilities and other similar items related to making the construction project operational;

(D) Construction project does not include such items as books, computers or equipment used for instructional purposes; fuel; supplies; routine utility services fees; routine maintenance costs; ordinary course of business improvements; other items which are customarily considered to result in a current or ordinary course of business operating charge or a major improvement project;

(4) “Cost of project” means the cost of construction, expansion, renovation, repair and safety upgrading of facilities, buildings and structures for school purposes; the cost of land, equipment, machinery, furnishings, installation of utilities and other similar items related to making the project operational; and the cost of financing, interest during construction, professional service fees and all other charges or expenses necessary, appurtenant or incidental to the foregoing, including the cost of administration of this article;

(5) “Facilities plan” means the ten-year countywide comprehensive educational facilities plan established by a county board in accordance with guidelines adopted by the authority to meet the goals and objectives of this
Addresses the existing school facilities and facility needs of the county to provide a thorough and efficient education in accordance with the provisions of this code and policies of the state board;

(B) Best serves the needs of individual students, the general school population and the communities served by the facilities;

(C) Includes the school major improvement plan;

(D) Includes the county board’s school access safety plan required by section three, article nine-f of this chapter;

(E) Is updated annually to reflect projects completed, current enrollment projections and new or continuing needs; and

(F) Is approved by the state board and the authority prior to the distribution of state funds pursuant to this article to any county board or other entity applying for funds;

(6) “Project” means a construction project or a major improvement project;

(7) “Region” means the area encompassed within and serviced by a regional educational service agency established pursuant to section twenty-six, article two of this chapter;
(8) “Revenue” or “revenues” means moneys:

(A) Deposited in the School Building Capital Improvements Fund pursuant to section ten, article nine-a of this chapter;

(B) Deposited in the School Construction Fund pursuant to section thirty, article fifteen, chapter eleven of this code and section eighteen, article twenty-two, chapter twenty-nine of this code;

(C) Deposited in the School Building Debt Service Fund pursuant to section eighteen, article twenty-two, chapter twenty-nine of this code;

(D) Deposited in the School Major Improvement Fund pursuant to section thirty, article fifteen, chapter eleven of this code;

(E) Received, directly or indirectly, from any source for use in any project completed pursuant to this article;

(F) Received by the authority for the purposes of this article; and

(G) Deposited in the Excess Lottery School Building Debt Service Fund pursuant to section eighteen-a, article twenty-two, chapter twenty-nine of this code;

(9) “School major improvement plan” means a ten-year school maintenance plan that:

(A) Is prepared by a county board in accordance with
the guidelines established by the authority and incorporated in its Countywide Comprehensive Educational Facilities Plan, or is prepared by the state board or the administrative council of an area vocational educational center in accordance with the guidelines if the entities seek funding from the authority for a major improvement project;

(B) Addresses the regularly scheduled maintenance for all school facilities of the county or under the jurisdiction of the entity seeking funding;

(C) Includes a projected repair and replacement schedule for all school facilities of the county or of entity seeking funding;

(D) Addresses the major improvement needs of each school within the county or under the jurisdiction of the entity seeking funding; and

(E) Is required prior to the distribution of state funds for a major improvement project pursuant to this article to the county board, state board or administrative council; and

(10) “School major improvement project” means a project with a cost greater than fifty thousand dollars and less than one million dollars for the renovation, expansion, repair and safety upgrading of existing school facilities, buildings and structures, including the substantial repair or upgrading of equipment, machinery, building systems, utilities and other similar items related to the renovation, repair or upgrading in
the furtherance of a school major improvement plan. A major improvement project does not include such items as books, computers or equipment used for instructional purposes; fuel; supplies; routine utility services fees; routine maintenance costs; ordinary course of business improvements; or other items which are customarily considered to result in a current or ordinary course of business operating charge.

§18-9D-4b. School Building Authority authorized to issue bonds and pay debt service on bonds with funds distributed from State Excess Lottery Fund.

The School Building Authority is expressly authorized to issue bonds and pay debt service on bonds pursuant to the provisions of this article with funds distributed from the State Excess Lottery Fund under section eighteen-a, article twenty-two, chapter twenty-nine of this code and deposited into the Excess Lottery School Building Debt Service Fund.

§18-9D-6. School Building Capital Improvements Fund in State Treasury; School Construction Fund in State Treasury; School Building Debt Service Fund in State Treasury; School Improvement Fund in State Treasury; collections to be paid into special funds; Excess Lottery School Building Debt Service Fund in State Treasury; authority to pledge the collections as security for refunding revenue bonds; authority to finance projects on a cash basis.
(a) There is continued in the State Treasury a School Building Capital Improvements Fund to be expended by the authority as provided in this article. The School Building Capital Improvements Fund shall be an interest-bearing account with interest credited to and deposited in the School Building Capital Improvements Fund and expended in accordance with the provisions of this article.

The School Building Authority may pledge all or any part of the revenues paid into the School Building Capital Improvements Fund that are needed to meet the requirements of any revenue bond issue or issues authorized by this article prior to the twentieth day of July, one thousand nine hundred ninety-three, or revenue bonds issued to refund revenue bonds issued prior to that date, including the payment of principal of, interest and redemption premium, if any, on the revenue bonds and the establishing and maintaining of a reserve fund or funds for the payment of the principal of, interest and redemption premium, if any, on the revenue bond issue or issues when other moneys pledged may be insufficient for the payment of the principal, interest and redemption premium, including any additional protective pledge of revenues that the authority in its discretion has provided by resolution authorizing the issuance of the bonds or in any trust agreement made in connection with the bond issue. Additionally, the authority may provide in the resolution and in the trust agreement for priorities on the revenues paid into the School Building Capital Improvements Fund that are necessary for the protection of the prior rights of the holders of bonds issued at different times under the
provisions of this article.

Any balance remaining in the School Building Capital Improvements Fund after the authority has issued bonds authorized by this article and after the requirements of all funds, including reserve funds established in connection with the bonds issued prior to the twentieth day of July, one thousand nine hundred ninety-three, pursuant to this article have been satisfied may be used for the redemption of any of the outstanding bonds issued under this article which by their terms are then redeemable, or for the purchase of the bonds at the market price, but not exceeding the price, if any, at which the bonds are in the same year redeemable and all bonds redeemed or purchased shall immediately be canceled and shall not again be issued.

The School Building Authority, in its discretion, may use the moneys in the School Building Capital Improvements Fund to finance the cost of projects authorized in accordance with the provisions of section sixteen of this article on a cash basis. Any pledge of moneys in the fund for revenue bonds issued prior to the twentieth day of July, one thousand nine hundred ninety-three, is a prior and superior charge on the fund over the use of any of the moneys in the fund to pay for the cost of any project on a cash basis: Provided, That any expenditures from the fund, other than for the retirement of revenue bonds, may only be made by the authority in accordance with the provisions of this article.

(b) There is continued in the State Treasury a special
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revenue fund named the School Building Debt Service Fund into which shall be deposited the amounts specified in section eighteen, article twenty-two, chapter twenty-nine of this code. All amounts deposited in the fund shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds authorized by this article for which moneys deposited in the School Building Debt Service Fund have been pledged by the authority: Provided, That deposited moneys may not be pledged to the repayment of any revenue bonds issued prior to the first day of January, one thousand nine hundred ninety-four, or with respect to revenue bonds issued for the purpose of refunding revenue bonds issued prior to the first day of January, one thousand nine hundred ninety-four. Additionally, the authority may provide in the resolution and in the trust agreement for priorities on the revenues paid into the School Building Debt Service Fund that are necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this article. On or prior to the first day of May of each year, the authority shall certify to the State Lottery Director the principal and interest and coverage ratio requirements for the following fiscal year on any revenue bonds issued on or after the first day of January, one thousand nine hundred ninety-four, and for which moneys deposited in the School Building Debt Service Fund have been pledged, or will be pledged, for repayment pursuant to this section.

After the authority has issued bonds authorized by this article for which moneys deposited in the School
Building Debt Service Fund have been pledged and after the requirements of all funds have been satisfied, including coverage and reserve funds established in connection with the bonds issued pursuant to this article, any balance remaining in the School Building Debt Service Fund may be used for the redemption of any of the outstanding bonds issued under this article, for which moneys deposited in the School Building Debt Service Fund have been pledged, which, by their terms, are then redeemable or for the purchase of the outstanding bonds at the market price, but not to exceed the price, if any, at which the bonds are redeemable and all bonds redeemed or purchased shall be immediately canceled and shall not again be issued: Provided, That after the authority has issued bonds authorized by this article and after the requirements of debt service and all associated funds have been satisfied for the fiscal year for which moneys deposited in the School Building Debt Service Fund have been pledged, including coverage and reserve funds established in connection with the bonds issued pursuant to this article, any remaining balance in the School Building Debt Service Fund may be transferred to the School Construction Fund created in subsection (c) of this section and used by the School Building Authority in its discretion to finance the cost of school construction or improvement projects authorized in accordance with the provisions of section sixteen of this article on a cash basis.

(c) There is continued in the State Treasury a special revenue fund named the School Construction Fund into which shall be deposited the amounts specified in
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section thirty, article fifteen, chapter eleven of this code, together with any moneys appropriated to the fund by the Legislature: Provided, That for the school year beginning the first day of July, two thousand four, only, funds from the excess lottery allocated in section eighteen-a, article twenty-two, chapter twenty-nine of this code shall not be transferred to the School Construction Fund and, in lieu thereof, made available for legislative appropriation: Provided, however, That for the school year beginning the first day of July, two thousand four, only, up to five million dollars of the amounts in the fund may be appropriated by the Legislature for budget shortfalls.

Expenditures from the School Construction Fund shall be for the purposes set forth in this article, including lease-purchase payments under agreements made pursuant to subsection (f), section fifteen of this article and section nine, article five of this chapter and are authorized from collections in accordance with the provisions of article three, chapter twelve of this code and from other revenues annually appropriated by the Legislature from lottery revenues as authorized by section eighteen, article twenty-two, chapter twenty-nine of this code pursuant to the provisions set forth in article two, chapter five-a of this code. Amounts collected which are found, from time to time, to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature. The School Construction Fund shall be an interest-bearing account, with the interest credited to and deposited in the School Construction Fund and
expended in accordance with the provisions of this article. Deposits to and expenditures from the School Construction Fund are subject to the provisions of subsection (k), section fifteen of this article.

(d) There is continued in the State Treasury a special revenue fund named the School Major Improvement Fund into which shall be deposited the amounts specified in section thirty, article fifteen, chapter eleven of this code, together with any moneys appropriated to the fund by the Legislature. Expenditures from the School Major Improvement Fund shall be for the purposes set forth in this article and are authorized from collections in accordance with the provisions of article three, chapter twelve of this code and from other revenues annually appropriated by the Legislature from lottery revenues as authorized by section eighteen, article twenty-two, chapter twenty-nine of this code pursuant to the provisions set forth in article two, chapter five-a of this code. Amounts collected which are found, from time to time, to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature. The School Major Improvement Fund shall be an interest-bearing account, with interest being credited to and deposited in the School Major Improvement Fund and expended in accordance with the provisions of this article.

(e) There is created in the State Treasury a special revenue fund named the Excess Lottery School Building Debt Service Fund into which shall be deposited the
amounts specified in section eighteen-a, article twenty-
two, chapter twenty-nine of this code. All amounts
deposited in the fund shall be pledged, as designated by
the authority, to the repayment of the principal, interest
and redemption premium, if any, on revenue bonds or
refunding revenue bonds authorized by section four-b
of this article. On or prior to the first day of May of
each year, the authority shall certify to the State
Lottery Director the principal and interest and coverage
ratio requirements for the following fiscal year on any
revenue bonds issued for which moneys deposited in the
Excess Lottery School Building Debt Service Fund have
been pledged, or will be pledged, for repayment
pursuant to this section.

After the authority has issued bonds authorized by
this article for which moneys deposited in the Excess
Lottery School Building Debt Service Fund have been
pledged and after the requirements of all funds have
been satisfied, including coverage and reserve funds
established in connection with the bonds issued
pursuant to this article, any balance remaining in the
Excess Lottery School Building Debt Service Fund may
be used for the redemption of any of the outstanding
bonds issued under this article, for which moneys
deposited in the Excess Lottery School Building Debt
Service Fund have been pledged, which, by their terms,
are then redeemable or for the purchase of the
outstanding bonds at the market price, but not to
exceed the price, if any, at which the bonds are
redeemable and all bonds redeemed or purchased shall
be immediately canceled and shall not again be issued:

Provided, That after the authority has issued bonds
authorized by this article and after the requirements of
debt service and all associated funds have been satisfied
for the fiscal year, including coverage and reserve funds
established in connection with the bonds issued
pursuant to this article for which moneys deposited in
the Excess Lottery School Building Debt Service Fund
have been pledged, any remaining balance in the Excess
Lottery School Building Debt Service Fund may be
transferred to the School Construction Fund created in
subsection (c) of this section and used by the School
Building Authority in its discretion to finance the cost
of school construction or improvement projects
authorized in accordance with the provisions of section
sixteen of this article on a cash basis.

(f) The Legislature finds and declares that the
Supreme Court of Appeals of West Virginia has held
that the issuance of additional revenue bonds
authorized under the School Building Authority Act, as
enacted in this article prior to the twentieth day of July,
one thousand nine hundred ninety-three, constituted an
indebtedness of the state in violation of section four,
article X of the Constitution of West Virginia, but that
revenue bonds issued under this article prior to the
twentieth day of July, one thousand nine hundred
ninety-three, are not invalid.

The Legislature further finds and declares that the
financial capacity of a county to construct, lease and
improve school facilities depends upon the county's
bonding capacity (local property wealth), voter
willingness to pass bond issues and the county's ability
to reallocate other available county funds instead of
criteria related to educational needs or upon the ability of the School Building Authority created in this article to issue bonds that comply with the holding of the West Virginia Supreme Court of Appeals or otherwise assist counties with the financing of facilities construction and improvement. The Legislature further finds and declares that this section, as well as section eighteen, article twenty-two, chapter twenty-nine of this code, had been reenacted during the first extraordinary session of the West Virginia Legislature in the year one thousand nine hundred ninety-four in an attempt to comply with the holding of the Supreme Court of Appeals of West Virginia.

The Legislature further finds and declares that it intends, through the reenactment of this section and section eighteen, article twenty-two, chapter twenty-nine of this code, to dedicate a source of state revenues to special revenue funds for the purposes of paying the debt service on bonds and refunding bonds issued subsequent to the first day of January, one thousand nine hundred ninety-four, the proceeds of which will be used for the construction and improvement of school building facilities. The Legislature further finds and declares that it intends, through the reenactment of this section and section thirty, article fifteen, chapter eleven of this code and section eighteen, article twenty-two, chapter twenty-nine of this code, to appropriate revenues to two special revenue funds for the purposes of construction and improvement of school building facilities. Furthermore, the Legislature intends to encourage county boards to maintain existing levels of county funding for construction, improvement and
maintenance of school building facilities and to generate additional county funds for those purposes through bonds and special levies whenever possible. The Legislature further encourages the School Building Authority, the state board and county boards of education to propose uniform project specifications for comparable projects whenever possible to meet county needs at the lowest possible cost.

The Legislature further finds and declares that it intends, through the reenactment of this section and section eighteen, article twenty-two, chapter twenty-nine of this code, to comply with the provisions of sections four and six, article X of the Constitution of West Virginia; and section one, article XII of said constitution.

§18-9D-8. Use of proceeds of bonds; bonds exempt from taxation.

(a) The maximum aggregate face value of bonds that may be issued by the authority, for which the moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are to be pledged, is five hundred million dollars. The issuance of revenue bonds under the provisions of this article shall be authorized, from time to time, by resolution or resolutions of the School Building Authority which shall set forth the proposed projects authorized in accordance with the provisions of section sixteen of this article and provide for the issuance of bonds in amounts sufficient, when sold as provided in this section, to provide moneys considered sufficient by the authority
to pay the costs, less the amounts of any other funds available for the costs or from any appropriation, grant or gift for the costs: Provided, That bond issues from which bond revenues are to be distributed in accordance with section fifteen of this article for projects authorized pursuant to the provisions of section sixteen of this article are not required to set forth the proposed projects in the resolution. The resolution shall prescribe the rights and duties of the bondholders and the School Building Authority and, for that purpose, may prescribe the form of the trust agreement referred to in this section. The bonds may be issued, from time to time, in such amounts; shall be of such series; bear such date or dates; mature at such time or times not exceeding forty years from their respective dates; bear interest at such rate or rates; be in such denominations; be in such form, either coupon or registered, carrying such registration, exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places within or without the state; be subject to such terms of redemption at such prices not exceeding one hundred five percent of the principal amount of the bonds; and be entitled to such priorities on the revenues paid into the fund pledged for repayment of the bonds as may be provided in the resolution authorizing the issuance of the bonds or in any trust agreement made in connection with the bonds: Provided, however, That revenue bonds issued on or after the first day of January, one thousand nine hundred ninety-four, and prior to the first day of January, two thousand eight, which are secured by lottery proceeds from section eighteen, article twenty-two, chapter twenty-nine of this code shall
mature at such time or times not exceeding ten years from their respective dates: Provided further, That revenue bonds issued on or after the first day of January, two thousand eight, which are secured by lottery proceeds from sections eighteen or eighteen-a, article twenty-two, chapter twenty-nine of this code, shall mature at such time or times not exceeding twenty years from their respective dates.

(b) The bonds shall be signed by the Governor, and by the president or vice president of the authority, under the great seal of the state, attested by the Secretary of State, and the coupons attached to the bonds shall bear the facsimile signature of the president or vice president of the authority. In case any of the officers whose signatures appear on the bonds or coupons 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 the officers had remained in office until the delivery. The revenue bonds shall be sold in the manner determined by the authority to be for the best interests of the state.

(c) Any pledge of revenues made by the School Building Authority for revenue bonds issued prior to the twentieth day of July, one thousand nine hundred ninety-three, pursuant to this article is valid and binding between the parties from the time the pledge is made; and the revenues pledged shall immediately be subject to the lien of the pledge without any further physical delivery of the revenues pledged or further act. The lien of the pledge is valid and binding against all parties having claims of any kind in tort, contract or
otherwise, irrespective of whether the parties have notice of the lien of the pledge and the pledge shall be a prior and superior charge over any other use of the revenues pledged.

(d) The proceeds of any bonds shall be used solely for the purpose or purposes as may be generally or specifically set forth in the resolution authorizing those bonds and shall be disbursed in the manner and with the restrictions, if any, that the authority provides in the resolution authorizing the issuance of the bonds or in the trust agreement referred to in this section securing the bonds. If the proceeds of the bonds, by error in calculations or otherwise, are less than the cost of any projects specifically set forth in the resolution, additional bonds may in like manner be issued to provide the amount of the deficiency; and unless otherwise provided for in the resolution or trust agreement hereinafter mentioned, the additional bonds shall be considered to be of the same issue and are entitled to payment from the same fund, without preference or priority, as the bonds before issued for the projects. If the proceeds of bonds issued for the projects specifically set forth in the resolution authorizing the bonds issued by the authority exceed the cost of the bonds, the surplus may be used for any other projects authorized in accordance with the provisions of section sixteen of this article or in any other manner that the resolution authorizing the bonds provides. Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue temporary bonds with or without coupons, exchangeable for definitive bonds upon the issuance of the definitive bonds.
(e) After the issuance of any revenue bonds, the revenues pledged for the revenue bonds shall not be reduced as long as any of the revenue bonds are outstanding and unpaid except under the terms, provisions and conditions that are contained in the resolution, trust agreement or other proceedings under which the revenue bonds were issued.

(f) The revenue bonds and the revenue refunding bonds and bonds issued for combined purposes, together with the interest on the bonds, are exempt from all taxation by the State of West Virginia, or by any county, school district, municipality or political subdivision thereof.

(g) To meet the operational costs of the School Building Authority, the School Building Authority may transfer to a special revenue account in the State Treasury interest on any debt service reserve funds created within any resolution authorizing the issue of bonds or any trust agreement made in connection with the bonds for expenditure in accordance with legislative appropriation or allocation of appropriation.

(h) Any school construction bonds issued under this section shall be issued on parity with any existing School Building Authority bonds previously issued under this article.


(a) From the School Building Capital Improvements Fund the School Building Authority shall make periodic
payments in an amount sufficient to meet the requirements of any issue of bonds sold under the provisions of this article prior to the first day of January, one thousand nine hundred ninety-four, or for refunding bonds issued prior to that date as may be specified in the resolution of the authority authorizing the issue thereof and in any trust agreement entered into in connection therewith. The payments so made shall be placed as specified in such resolution or trust agreement in a special sinking fund which is hereby pledged to and charged with the payment of the principal of the bonds of such issue and the interest thereon, and to the redemption or repurchase of such bonds, such sinking fund to be a fund for all bonds of such issue without distinction or priority of one over another, except as may be provided in the resolution authorizing such issue of bonds. The moneys in the special sinking fund, less such reserve for payment of principal and interest and redemption premium, if any, as may be required by the resolution of the School Building Authority, authorizing the issue or any trust agreement made in connection therewith, may be used for the redemption of any of the outstanding bonds payable from such fund which by their terms are then redeemable, or for the purchase of bonds at the market price, but not exceeding the price, if any, at which such bonds shall in the same year be redeemable; and all bonds redeemed or purchased shall forthwith be canceled and shall not again be issued.

(b) From the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund, the authority shall make periodic payments in an
amount sufficient to meet the requirements of any issue
of bonds sold under the provisions of this article on or
after the first day of January, one thousand nine
hundred ninety-four, and for which the authority has
pledged revenues in such fund for the payment of such
bonds, as may be specified in the resolution of the
authority authorizing the issue thereof or in any trust
agreement entered into in connection therewith. The
payments so made shall be placed as specified in the
resolution or trust agreement in a special sinking fund
which is hereby pledged to and charged with the
payment of the principal of the bonds of the issue and
the interest thereon, and to the redemption or
repurchase of the bonds, the sinking fund to be a fund
for all bonds of the particular issue without distinction
or priority of one over another, except as may be
provided in the resolution authorizing the issuance of
the bonds. The moneys in the special sinking fund, less
the reserve for payment of principal and interest and
redemption premium, if any, as may be required by the
resolution of the School Building Authority authorizing
the issue or any trust agreement made in connection
therewith, may be used for redemption of any of the
outstanding bonds payable from the fund which by
their terms are then redeemable, or for the purchase of
bonds at the market price, but not exceeding the price,
if any, at which such bonds shall in the same year be
redeemable; and all bonds redeemed or purchased shall
forthwith be canceled and shall not again be issued.

§18-9D-15. Legislative intent; allocation of money among
categories of projects; lease-purchase options;
limitation on time period for expenditure of
project allocation; county maintenance budget requirements; project disbursements over period of years; preference for multicounty arrangements; submission of project designs; set-aside to encourage local participation.

(a) It is the intent of the Legislature to empower the School Building Authority to facilitate and provide state funds and to administer all federal funds provided for the construction and major improvement of school facilities so as to meet the educational needs of the people of this state in an efficient and economical manner. The authority shall make funding determinations in accordance with the provisions of this article and shall assess existing school facilities and each facility’s school major improvement plan in relation to the needs of the individual student, the general school population, the communities served by the facilities and facility needs statewide.

(b) An amount that is not more than three percent of the sum of moneys that are determined by the authority to be available for distribution during the then current fiscal year from:

(1) Moneys paid into the School Building Capital Improvements Fund pursuant to section ten, article nine-a of this chapter;

(2) The issuance of revenue bonds for which moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;
(3) Moneys paid into the School Construction Fund pursuant to section six of this article; and

(4) Any other moneys received by the authority, except moneys paid into the School Major Improvement Fund pursuant to section six of this article and moneys deposited into the School Access Safety Fund pursuant to section five, article nine-f of this chapter, may be allocated and may be expended by the authority for projects authorized in accordance with the provisions of section sixteen of this article that service the educational community statewide or, upon application by the state board, for educational programs that are under the jurisdiction of the state board. In addition, upon application by the state board or the administrative council of an area vocational educational center established pursuant to article two-b of this chapter, the authority may allocate and expend under this subsection moneys for school major improvement projects authorized in accordance with the provisions of section sixteen of this article proposed by the state board or an administrative council for school facilities under the direct supervision of the state board or an administrative council, respectively. Furthermore, upon application by a county board, the authority may allocate and expend under this subsection moneys for school major improvement projects for vocational programs at comprehensive high schools, vocational schools cooperating with community and technical college programs, or both. Each county board is encouraged to cooperate with community and technical colleges in the use of existing or development of new vocational technical facilities. All projects eligible for
funds from this subsection shall be submitted directly to the authority which shall be solely responsible for the project's evaluation, subject to the following:

(A) The authority may not expend any moneys for a school major improvement project proposed by the state board or the administrative council of an area vocational educational center unless the state board or an administrative council has submitted a ten-year facilities plan; and

(B) The authority shall, before allocating any moneys to the state board or the administrative council of an area vocational educational center for a school improvement project, consider all other funding sources available for the project.

(c) An amount that is not more than two percent of the moneys that are determined by the authority to be available for distribution during the current fiscal year from:

(1) Moneys paid into the School Building Capital Improvements Fund pursuant to section ten, article nine-a of this chapter;

(2) The issuance of revenue bonds for which moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;

(3) Moneys paid into the School Construction Fund pursuant to section six of this article; and
(4) Any other moneys received by the authority, except moneys deposited into the School Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to section five, article nine-f of this chapter, shall be set aside by the authority as an emergency fund to be distributed in accordance with the guidelines adopted by the authority.

(d) An amount that is not more than five percent of the moneys that are determined by the authority to be available for distribution during the current fiscal year from:

(1) Moneys paid into the School Building Capital Improvements Fund pursuant to section ten, article nine-a of this chapter;

(2) The issuance of revenue bonds for which moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;

(3) Moneys paid into the School Construction Fund pursuant to section six of this article; and

(4) Any other moneys received by the authority, except moneys deposited into the School Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to section five, article nine-f of this chapter, may be reserved by the authority for multiuse vocational-technical education facilities projects that may include post-secondary
programs as a first priority use. The authority may allocate and expend under this subsection moneys for any purposes authorized in this article on multiuse vocational-technical education facilities projects, including equipment and equipment updates at the facilities, authorized in accordance with the provisions of section sixteen of this article. If the projects approved under this subsection do not require the full amount of moneys reserved, moneys above the amount required may be allocated and expended in accordance with other provisions of this article. A county board, the state board, an administrative council or the joint administrative board of a vocational-technical education facility which includes post-secondary programs may propose projects for facilities or equipment, or both, which are under the direct supervision of the respective body: Provided, That the authority shall, before allocating any moneys for a project under this subsection, consider all other funding sources available for the project.

(e) The remaining moneys determined by the authority to be available for distribution during the then current fiscal year from:

(1) Moneys paid into the School Building Capital Improvements Fund pursuant to section ten, article nine-a of this chapter;

(2) The issuance of revenue bonds for which moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;
(3) Moneys paid into the School Construction Fund pursuant to section six of this article; and

(4) Any other moneys received by the authority, except moneys deposited into the School Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to section five, article nine-f of this chapter, shall be allocated and expended on the basis of need and efficient use of resources for projects funded in accordance with the provisions of section sixteen of this article.

(f) If a county board proposes to finance a project that is authorized in accordance with section sixteen of this article through a lease with an option to purchase leased premises upon the expiration of the total lease period pursuant to an investment contract, the authority may not allocate moneys to the county board in connection with the project: Provided, That the authority may transfer moneys to the state board which, with the authority, shall lend the amount transferred to the county board to be used only for a one-time payment due at the beginning of the lease term, made for the purpose of reducing annual lease payments under the investment contract, subject to the following conditions:

(1) The loan shall be secured in the manner required by the authority, in consultation with the state board, and shall be repaid in a period and bear interest at a rate as determined by the state board and the authority and shall have any terms and conditions that are required by the authority, all of which shall be set forth
in a loan agreement among the authority, the state
board and the county board;

(2) The loan agreement shall provide for the state
board and the authority to defer the payment of
principal and interest upon any loan made to the county
board during the term of the investment contract, and
annual renewals of the investment contract, among the
state board, the authority, the county board and a
lessor, subject to the following:

(A) In the event a county board which has received a
loan from the authority for a one-time payment at the
beginning of the lease term does not renew the lease
annually until performance of the investment contract
in its entirety is completed, the county board is in
default and the principal of the loan, together with all
unpaid interest accrued to the date of the default, shall,
at the option of the authority, in consultation with the
state board, become due and payable immediately or
subject to renegotiation among the state board, the
authority and the county board;

(B) If a county board renews the lease annually
through the performance of the investment contract in
its entirety, the county board shall exercise its option to
purchase the leased premises;

(C) The failure of the county board to make a
scheduled payment pursuant to the investment contract
constitutes an event of default under the loan
agreement;
(D) Upon a default by a county board, the principal of the loan, together with all unpaid interest accrued to the date of the default, shall, at the option of the authority, in consultation with the state board, become due and payable immediately or subject to renegotiation among the state board, the authority and the county board; and

(E) If the loan becomes due and payable immediately, the authority, in consultation with the state board, shall use all means available under the loan agreement and law to collect the outstanding principal balance of the loan, together with all unpaid interest accrued to the date of payment of the outstanding principal balance; and

(3) The loan agreement shall provide for the state board and the authority to forgive all principal and interest of the loan upon the county board purchasing the leased premises pursuant to the investment contract and performance of the investment contract in its entirety.

(g) To encourage county boards to proceed promptly with facilities planning and to prepare for the expenditure of any state moneys derived from the sources described in this section, any county board or other entity to whom moneys are allocated by the authority that fails to expend the money within three years of the allocation shall forfeit the allocation and thereafter is ineligible for further allocations pursuant to this section until it is ready to expend funds in accordance with an approved facilities plan: Provided,
That the authority may authorize an extension beyond the three-year forfeiture period not to exceed an additional two years. Any amount forfeited shall be added to the total funds available in the School Construction Fund of the authority for future allocation and distribution. Funds may not be distributed for any project under this article unless the responsible entity has a facilities plan approved by the state board and the School Building Authority and is prepared to commence expenditure of the funds during the fiscal year in which the moneys are distributed.

(h) The remaining moneys that are determined by the authority to be available for distribution during the then current fiscal year from moneys paid into the School Major Improvement Fund pursuant to section six of this article shall be allocated and distributed on the basis of need and efficient use of resources for projects authorized in accordance with the provisions of section sixteen of this article, subject to the following:

(1) The moneys may not be distributed for any project under this section unless the responsible entity has a facilities plan approved by the state board and the authority and is to commence expenditures of the funds during the fiscal year in which the moneys are distributed;

(2) Any moneys allocated to a project and not distributed for that project shall be deposited in an account to the credit of the project, the principal amount to remain to the credit of and available to the project for a period of two years; and
(3) Any moneys which are unexpended after a two-year period shall be redistributed on the basis of need from the School Major Improvement Fund in that fiscal year.

(i) Local matching funds may not be required under the provisions of this section. However, this article does not negate the responsibilities of the county boards to maintain school facilities. To be eligible to receive an allocation of school major improvement funds from the authority, a county board must have expended in the previous fiscal year an amount of county moneys equal to or exceeding the lowest average amount of money included in the county board's maintenance budget over any three of the previous five years and must have budgeted an amount equal to or greater than the average in the current fiscal year: Provided, That the state board shall promulgate rules relating to county boards' maintenance budgets, including items which shall be included in the budgets.

(j) Any county board may use moneys provided by the authority under this article in conjunction with local funds derived from bonding, special levy or other sources. Distribution to a county board, or to the state board or the administrative council of an area vocational educational center pursuant to subsection (b) of this section, may be in a lump sum or in accordance with a schedule of payments adopted by the authority pursuant to guidelines adopted by the authority.

(k) Funds in the School Construction Fund shall first be transferred and expended as follows:
(1) Any funds deposited in the School Construction Fund shall be expended first in accordance with an appropriation by the Legislature.

(2) To the extent that funds are available in the School Construction Fund in excess of that amount appropriated in any fiscal year, the excess funds may be expended for projects authorized in accordance with the provisions of section sixteen of this article.

(l) It is the intent of the Legislature to encourage county boards to explore and consider arrangements with other counties that may facilitate the highest and best use of all available funds, which may result in improved transportation arrangements for students or which otherwise may create efficiencies for county boards and the students. In order to address the intent of the Legislature contained in this subsection, the authority shall grant preference to those projects which involve multicounty arrangements as the authority shall determine reasonable and proper.

(m) County boards shall submit all designs for construction of new school buildings to the School Building Authority for review and approval prior to preparation of final bid documents. A vendor who has been debarred pursuant to the provisions of sections thirty-three-a through thirty-three-f, inclusive, article three, chapter five-a of this code may not bid on or be awarded a contract under this section.

(n) The authority may elect to disburse funds for approved construction projects over a period of more
than one year subject to the following:

(1) The authority may not approve the funding of a school construction project over a period of more than three years;

(2) The authority may not approve the use of more than fifty percent of the revenue available for distribution in any given fiscal year for projects that are to be funded over a period of more than one year; and

(3) In order to encourage local participation in funding school construction projects, the authority may set aside limited funding, not to exceed five hundred thousand dollars, in reserve for one additional year to provide a county the opportunity to complete financial planning for a project prior to the allocation of construction funds. Any funding shall be on a reserve basis and converted to a part of the construction grant only after all project budget funds have been secured and all county commitments have been fulfilled. Failure of the county to solidify the project budget and meet its obligations to the state within eighteen months of the date the funding is set aside by the authority will result in expiration of the reserve and the funds shall be reallocated by the authority in the succeeding funding cycle.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

(a) There is continued a special revenue fund within the State Lottery Fund in the State Treasury which is designated and known as the State Excess Lottery Revenue Fund. The fund consists of all appropriations to the fund and all interest earned from investment of the fund and any gifts, grants or contributions received by the fund. All revenues received under the provisions of sections ten-b and ten-c, article twenty-two-a of this chapter and under article twenty-two-b of this chapter, except the amounts due the commission under subdivision (1), subsection (a), section one thousand four hundred eight, article twenty-two-b of this chapter, shall be deposited in the State Treasury and placed into the State Excess Lottery Revenue Fund. The revenue shall be disbursed in the manner provided in this section for the purposes stated in this section and shall not be treated by the Auditor and the State Treasurer as part of the general revenue of the state.

(b) For the fiscal year beginning the first day of July, two thousand two, the commission shall deposit: (1) Sixty-five million dollars into the subaccount of the State Excess Lottery Revenue Fund hereby created in the State Treasury to be known as the General Purpose Account to be expended pursuant to appropriation of the Legislature; (2) ten million dollars into the Education Improvement Fund for appropriation by the Legislature to the PROMISE Scholarship Fund created in section seven, article seven, chapter eighteen-c of this code; (3) nineteen million dollars into the Economic Development Project Fund created in subsection (d) of
this section for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) twenty million dollars into the School Building Debt Service Fund created in section six, article nine-d, chapter eighteen of this code for the issuance of revenue bonds; (5) forty million dollars into the West Virginia Infrastructure Fund created in section nine, article fifteen-a, chapter thirty-one of this code to be spent in accordance with the provisions of said article; (6) ten million dollars into the Higher Education Improvement Fund for Higher Education; and (7) five million dollars into the State Park Improvement Fund for Park Improvements. For the fiscal year beginning the first day of July, two thousand three, the commission shall deposit: (1) Sixty-five million dollars into the General Purpose Account to be expended pursuant to appropriation of the Legislature; (2) seventeen million dollars into the Education Improvement Fund for appropriation by the Legislature to the PROMISE Scholarship Fund created in section seven, article seven, chapter eighteen-c of this code; (3) nineteen million dollars into the Economic Development Project Fund created in subsection (d) of this section for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) twenty million dollars into the School Building Debt Service Fund created in section six, article nine-d, chapter eighteen of this code for the issuance of revenue bonds; (5) forty million dollars into the West Virginia Infrastructure Fund created in section nine, article fifteen-a, chapter thirty-one of this code to be spent in accordance with the provisions of said article; (6) ten million dollars into the Higher Education Improvement
(c) For the fiscal year beginning the first day of July, two thousand four, and subsequent fiscal years, the commission shall deposit: (1) Sixty-five million dollars into the General Purpose Account to be expended pursuant to appropriation of the Legislature; (2) twenty-seven million dollars into the Education Improvement Fund for appropriation by the Legislature to the PROMISE Scholarship Fund created in section seven, article seven, chapter eighteen-c of this code; (3) nineteen million dollars into the Economic Development Project Fund created in subsection (d) of this section for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) nineteen million dollars into the School Building Debt Service Fund created in section six, article nine-d, chapter eighteen of this code for the issuance of revenue bonds: Provided, That for the fiscal year beginning the first day of July, two thousand eight, and subsequent fiscal years, no moneys shall be deposited in the School Building Debt Service Fund pursuant to this subsection and instead nineteen million dollars shall be deposited into the Excess Lottery School Building Debt Service Fund; (5) forty million dollars into the West Virginia Infrastructure Fund created in section nine, article fifteen-a, chapter thirty-one of this code to be spent in accordance with the provisions of said article; (6) ten million dollars into the Higher Education Improvement Fund for Higher Education; and (7) five million dollars into the State Park Improvement Fund for Park Improvements.
Improvements. No portion of the distributions made as provided in this subsection and subsection (b) of this section, except distributions made in connection with bonds issued under subsection (d) of this section, may be used to pay debt service on bonded indebtedness until after the Legislature expressly authorizes issuance of the bonds and payment of debt service on the bonds through statutory enactment or the adoption of a concurrent resolution by both houses of the Legislature. Until subsequent legislative enactment or adoption of a resolution that expressly authorizes issuance of the bonds and payment of debt service on the bonds with funds distributed under this subsection and subsection (b) of this section, except distributions made in connection with bonds issued under subsection (d) of this section, the distributions may be used only to fund capital improvements that are not financed by bonds and only pursuant to appropriation of the Legislature.

(d) The Legislature finds and declares that in order to attract new business, commerce and industry to this state, to retain existing business and industry providing the citizens of this state with economic security and to advance the business prosperity of this state and the economic welfare of the citizens of this state, it is necessary to provide public financial support for constructing, equipping, improving and maintaining economic development projects, capital improvement projects and infrastructure which promote economic development in this state.

(1) The West Virginia Economic Development Authority created and provided for in article fifteen,
chapter thirty-one of this code shall, by resolution, in accordance with the provisions of this article and article fifteen, chapter thirty-one of this code, and upon direction of the Governor, issue revenue bonds of the Economic Development Authority in no more than two series to pay for all or a portion of the cost of constructing, equipping, improving or maintaining projects under this section or to refund the bonds at the discretion of the authority. Any revenue bonds issued on or after the first day of July, two thousand two, which are secured by state excess lottery revenue proceeds shall mature at a time or times not exceeding thirty years from their respective dates. The principal of, and the interest and redemption premium, if any, on the bonds shall be payable solely from the special fund provided in this section for the payment.

(2) There is continued in the State Treasury a special revenue fund named the Economic Development Project Fund into which shall be deposited on and after the first day of July, two thousand two, the amounts to be deposited in said fund as specified in subsections (b) and (c) of this section. The Economic Development Project Fund shall consist of all such moneys, all appropriations to the fund, all interest earned from investment of the fund and any gifts, grants or contributions received by the fund. All amounts deposited in the fund shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds authorized by this section, including any and all commercially customary and reasonable costs and expenses which may be incurred in connection with the
issuance, refunding, redemption or defeasance thereof. The West Virginia Economic Development Authority may further provide in the resolution and in the trust agreement for priorities on the revenues paid into the Economic Development Project 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 section. The bonds issued pursuant to this subsection shall be separate from all other bonds which may be or have been issued, from time to time, under the provisions of this article.

(3) After the West Virginia Economic Development Authority has issued bonds authorized by this section and after the requirements of all funds have been satisfied, including any coverage and reserve funds established in connection with the bonds issued pursuant to this subsection, any balance remaining in the Economic Development Project Fund may be used for the redemption of any of the outstanding bonds issued under this subsection which, by their terms, are then redeemable or for the purchase of the outstanding bonds at the market price, but not to exceed the price, if any, at which redeemable, and all bonds redeemed or purchased shall be immediately canceled and shall not again be issued.

(4) Bonds issued under this subsection shall state on their face that the bonds do not constitute a debt of the State of West Virginia; that payment of the bonds, interest and charges thereon cannot become an obligation of the State of West Virginia; and that the bondholders' remedies are limited in all respects to the
Special Revenue Fund established in this subsection for the liquidation of the bonds.

(5) The West Virginia Economic Development Authority shall expend the bond proceeds from the revenue bond issues authorized and directed by this section for such projects as may be certified under the provision of this subsection: Provided, That the bond proceeds shall be expended in accordance with the requirements and provisions of article five-a, chapter twenty-one of this code and either article twenty-two or twenty-two-a, chapter five of this code, as the case may be: Provided, however, That if such bond proceeds are expended pursuant to article twenty-two-a, chapter five of this code and if the Design-Build Board created under said article determines that the execution of a design-build contract in connection with a project is appropriate pursuant to the criteria set forth in said article and that a competitive bidding process was used in selecting the design builder and awarding such contract, such determination shall be conclusive for all purposes and shall be deemed to satisfy all the requirements of said article.

(6) For the purpose of certifying the projects that will receive funds from the bond proceeds, a committee is hereby established and comprised of the Governor, or his or her designee, the Secretary of the Department of Revenue, the Executive Director of the West Virginia Development Office and six persons appointed by the Governor: Provided, That at least one citizen member must be from each of the state’s three congressional districts. The committee shall meet as often as
necessary and make certifications from bond proceeds in accordance with this subsection. The committee shall meet within thirty days of the effective date of this section.

(7) Applications for grants submitted on or before the first day of July, two thousand two, shall be considered refiled with the committee. Within ten days from the effective date of this section as amended in the year two thousand three, the lead applicant shall file with the committee any amendments to the original application that may be necessary to properly reflect changes in facts and circumstances since the application was originally filed with the committee.

(8) When determining whether or not to certify a project, the committee shall take into consideration the following:

(A) The ability of the project to leverage other sources of funding;

(B) Whether funding for the amount requested in the grant application is or reasonably should be available from commercial sources;

(C) The ability of the project to create or retain jobs, considering the number of jobs, the type of jobs, whether benefits are or will be paid, the type of benefits involved and the compensation reasonably anticipated to be paid persons filling new jobs or the compensation currently paid to persons whose jobs would be retained;
(D) Whether the project will promote economic development in the region and the type of economic development that will be promoted;

(E) The type of capital investments to be made with bond proceeds and the useful life of the capital investments; and

(F) Whether the project is in the best interest of the public.

(9) No grant may be awarded to an individual or other private person or entity. Grants may be awarded only to an agency, instrumentality or political subdivision of this state or to an agency or instrumentality of a political subdivision of this state.

The project of an individual or private person or entity may be certified to receive a low-interest loan paid from bond proceeds. The terms and conditions of the loan, including, but not limited to, the rate of interest to be paid and the period of the repayment, shall be determined by the Economic Development Authority after considering all applicable facts and circumstances.

(10) Prior to making each certification, the committee shall conduct at least one public hearing, which may be held outside of Kanawha County. Notice of the time, place, date and purpose of the hearing shall be published in at least one newspaper in each of the three congressional districts at least fourteen days prior to the date of the public hearing.
(11) The committee may not certify a project unless the committee finds that the project is in the public interest and the grant will be used for a public purpose. For purposes of this subsection, projects in the public interest and for a public purpose include, but are not limited to:

(A) Sports arenas, fields, parks, stadiums and other sports and sports-related facilities;

(B) Health clinics and other health facilities;

(C) Traditional infrastructure, such as water and wastewater treatment facilities, pumping facilities and transmission lines;

(D) State-of-the-art telecommunications infrastructure;

(E) Biotechnical incubators, development centers and facilities;

(F) Industrial parks, including construction of roads, sewer, water, lighting and other facilities;

(G) Improvements at state parks, such as construction, expansion or extensive renovation of lodges, cabins, conference facilities and restaurants;

(H) Railroad bridges, switches and track extension or spurs on public or private land necessary to retain existing businesses or attract new businesses;
(I) Recreational facilities, such as amphitheaters, walking and hiking trails, bike trails, picnic facilities, restrooms, boat docking and fishing piers, basketball and tennis courts, and baseball, football and soccer fields;

(J) State-owned buildings that are registered on the National Register of Historic Places;

(K) Retail facilities, including related service, parking and transportation facilities, appropriate lighting, landscaping and security systems to revitalize decaying downtown areas; and

(L) Other facilities that promote or enhance economic development, educational opportunities or tourism opportunities thereby promoting the general welfare of this state and its residents.

Prior to the issuance of bonds under this subsection, the committee shall certify to the Economic Development Authority a list of those certified projects that will receive funds from the proceeds of the bonds. Once certified, the list may not thereafter be altered or amended other than by legislative enactment.

If any proceeds from sale of bonds remain after paying costs and making grants and loans as provided in this subsection, the surplus may be deposited in an account created in the State Treasury to be known as the Economic Development Project Bridge Loan Fund to be administered by the Economic Development Authority created in article fifteen, chapter thirty-one.
of this code. Expenditures from the fund are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter five-a of this code. Loan repayment amounts including the portion attributable to interest shall be paid into the fund created in this subdivision.

(e) If the commission receives revenues in an amount that is not sufficient to fully comply with the requirements of subsections (b), (c) and (h) of this section, the commission shall first make the distribution to the Economic Development Project Fund; second, make the distribution or distributions to the other funds from which debt service is to be paid; third, make the distribution to the Education Improvement Fund for appropriation by the Legislature to the PROMISE Scholarship Fund; and fourth, make the distribution to the general purpose account: Provided, That, subject to the provisions of this subsection, to the extent such revenues are not pledged in support of revenue bonds which are or may be issued, from time to time, under this section, the revenues shall be distributed on a pro rata basis.

(f) For the fiscal year beginning on the first day of July, two thousand two, and each fiscal year thereafter, the commission shall, after meeting the requirements of subsections (b), (c) and (h) of this section and after transferring to the State Lottery Fund created under section eighteen of this article an amount equal to any
transfer from the State Lottery Fund to the Excess Lottery Fund pursuant to subsection (f), section eighteen of this article, deposit fifty percent of the amount by which annual gross revenue deposited in the State Excess Lottery Revenue Fund exceeds two hundred twenty-five million dollars in a fiscal year in a separate account in the State Lottery Fund to be available for appropriation by the Legislature.

(g) When bonds are issued for projects under subsection (d) of this section or for the School Building Authority, infrastructure, higher education or park improvement purposes described in this section that are secured by profits from lotteries deposited in the State Excess Lottery Revenue Fund, the Lottery Director shall allocate first to the Economic Development Project Fund an amount equal to one tenth of the projected annual principal, interest and coverage requirements on any and all revenue bonds issued, or to be issued, on or after the first day of July, two thousand two, as certified to the Lottery Director; and second, to the fund or funds from which debt service is paid on bonds issued under this section for the School Building Authority, infrastructure, higher education and park improvements an amount equal to one tenth of the projected annual principal, interest and coverage requirements on any and all revenue bonds issued, or to be issued, on or after the first day of April, two thousand two, as certified to the Lottery Director. In the event there are insufficient funds available in any month to transfer the amounts required pursuant to this subsection, the deficiency shall be added to the amount transferred in the next succeeding month in which
revenues are available to transfer the deficiency.

(h) In fiscal year two thousand four and thereafter, prior to the distributions provided in subsection (c) of this section, the Lottery Commission shall deposit into the General Revenue Fund amounts necessary to provide reimbursement for the refundable credit allowable under section twenty-one, article twenty-one, chapter eleven of this code.

(i) (1) The Legislature considers the following as priorities in the expenditure of any surplus revenue funds:

(A) Providing salary and/or increment increases for professional educators and public employees;

(B) Providing adequate funding for the Public Employees Insurance Agency; and

(C) Providing funding to help address the shortage of qualified teachers and substitutes in areas of need, both in number of teachers and in subject matter areas.

(2) The provisions of this subsection may not be construed by any court to require any appropriation or any specific appropriation or level of funding for the purposes set forth in this subsection.

(j) The Legislature further directs the Governor to focus resources on the creation of a prescription drug program for senior citizens by pursuing a Medicaid waiver to offer prescription drug services to senior
citizens; by investigating the establishment of purchasing agreements with other entities to reduce costs; by providing discount prices or rebate programs for seniors; by coordinating programs offered by pharmaceutical manufacturers that provide reduced cost or free drugs; by coordinating a collaborative effort among all state agencies to ensure the most efficient and cost-effective program possible for the senior citizens of this state; and by working closely with the state's congressional delegation to ensure that a national program is implemented. The Legislature further directs that the Governor report his progress back to the Joint Committee on Government and Finance on an annual basis beginning in November of the year two thousand one until a comprehensive program has been fully implemented.
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 is approved       this
the       Day of         2008.

Governor
PRESENTED TO THE GOVERNOR

MAR 1 8 2008

Time 3:05 pm