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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.

§18-9D-2. Definitions.

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

3 (1) "Authority" means the School Building Authority
4 of West Virginia;

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

7 (3) "Construction project" means a project in the
8 furtherance of a facilities plan with a cost greater than
9 one million dollars for the new construction, expansion
10 or major renovation of facilities, buildings and
11 structures for school purposes, including:

12 (A) The acquisition of land for current or future use in
13 connection with the construction project;

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

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

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

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

36 (5) "Facilities plan" means the ten-year countywide
37 comprehensive educational facilities plan established by
38 a county board in accordance with guidelines adopted
39 by the authority to meet the goals and objectives of this

40 article that:

41 (A) Addresses the existing school facilities and facility
42 needs of the county to provide a thorough and efficient
43 education in accordance with the provisions of this code
44 and policies of the state board;

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

48 (C) Includes the school major improvement plan;

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

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

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

59 (6) "Project" means a construction project or a major
60 improvement project;

61 (7) "Region" means the area encompassed within and
62 serviced by a regional educational service agency
63 established pursuant to section twenty-six, article two
64 of this chapter;

65 (8) "Revenue" or "revenues" means moneys:

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

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

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

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

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

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

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

86 (9) "School major improvement plan" means a ten-
87 year school maintenance plan that:

88 (A) Is prepared by a county board in accordance with

89 the guidelines established by the authority and
90 incorporated in its Countywide Comprehensive
91 Educational Facilities Plan, or is prepared by the state
92 board or the administrative council of an area
93 vocational educational center in accordance with the
94 guidelines if the entities seek funding from the
95 authority for a major improvement project;

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

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

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

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

109 (10) "School major improvement project" means a
110 project with a cost greater than fifty thousand dollars
111 and less than one million dollars for the renovation,
112 expansion, repair and safety upgrading of existing
113 school facilities, buildings and structures, including the
114 substantial repair or upgrading of equipment,
115 machinery, building systems, utilities and other similar
116 items related to the renovation, repair or upgrading in

117 the furtherance of a school major improvement plan. A
118 major improvement project does not include such items
119 as books, computers or equipment used for instructional
120 purposes; fuel; supplies; routine utility services fees;
121 routine maintenance costs; ordinary course of business
122 improvements; or other items which are customarily
123 considered to result in a current or ordinary course of
124 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.**

1 The School Building Authority is expressly authorized
2 to issue bonds and pay debt service on bonds pursuant
3 to the provisions of this article with funds distributed
4 from the State Excess Lottery Fund under section
5 eighteen-a, article twenty-two, chapter twenty-nine of
6 this code and deposited into the Excess Lottery School
7 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.**

1 (a) There is continued in the State Treasury a School
2 Building Capital Improvements Fund to be expended by
3 the authority as provided in this article. The School
4 Building Capital Improvements Fund shall be an
5 interest-bearing account with interest credited to and
6 deposited in the School Building Capital Improvements
7 Fund and expended in accordance with the provisions
8 of this article.

9 The School Building Authority may pledge all or any
10 part of the revenues paid into the School Building
11 Capital Improvements Fund that are needed to meet the
12 requirements of any revenue bond issue or issues
13 authorized by this article prior to the twentieth day of
14 July, one thousand nine hundred ninety-three, or
15 revenue bonds issued to refund revenue bonds issued
16 prior to that date, including the payment of principal of,
17 interest and redemption premium, if any, on the revenue
18 bonds and the establishing and maintaining of a reserve
19 fund or funds for the payment of the principal of,
20 interest and redemption premium, if any, on the revenue
21 bond issue or issues when other moneys pledged may be
22 insufficient for the payment of the principal, interest
23 and redemption premium, including any additional
24 protective pledge of revenues that the authority in its
25 discretion has provided by resolution authorizing the
26 issuance of the bonds or in any trust agreement made in
27 connection with the bond issue. Additionally, the
28 authority may provide in the resolution and in the trust
29 agreement for priorities on the revenues paid into the
30 School Building Capital Improvements Fund that are
31 necessary for the protection of the prior rights of the
32 holders of bonds issued at different times under the

33 provisions of this article.

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

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

62 (b) There is continued in the State Treasury a special

63 revenue fund named the School Building Debt Service
64 Fund into which shall be deposited the amounts
65 specified in section eighteen, article twenty-two,
66 chapter twenty-nine of this code. All amounts
67 deposited in the fund shall be pledged to the repayment
68 of the principal, interest and redemption premium, if
69 any, on any revenue bonds or refunding revenue bonds
70 authorized by this article for which moneys deposited in
71 the School Building Debt Service Fund have been
72 pledged by the authority: *Provided*, That deposited
73 moneys may not be pledged to the repayment of any
74 revenue bonds issued prior to the first day of January,
75 one thousand nine hundred ninety-four, or with respect
76 to revenue bonds issued for the purpose of refunding
77 revenue bonds issued prior to the first day of January,
78 one thousand nine hundred ninety-four. Additionally,
79 the authority may provide in the resolution and in the
80 trust agreement for priorities on the revenues paid into
81 the School Building Debt Service Fund that are
82 necessary for the protection of the prior rights of the
83 holders of bonds issued at different times under the
84 provisions of this article. On or prior to the first day of
85 May of each year, the authority shall certify to the State
86 Lottery Director the principal and interest and coverage
87 ratio requirements for the following fiscal year on any
88 revenue bonds issued on or after the first day of
89 January, one thousand nine hundred ninety-four, and
90 for which moneys deposited in the School Building Debt
91 Service Fund have been pledged, or will be pledged, for
92 repayment pursuant to this section.

93 After the authority has issued bonds authorized by
94 this article for which moneys deposited in the School

95 Building Debt Service Fund have been pledged and
96 after the requirements of all funds have been satisfied,
97 including coverage and reserve funds established in
98 connection with the bonds issued pursuant to this
99 article, any balance remaining in the School Building
100 Debt Service Fund may be used for the redemption of
101 any of the outstanding bonds issued under this article,
102 for which moneys deposited in the School Building Debt
103 Service Fund have been pledged, which, by their terms,
104 are then redeemable or for the purchase of the
105 outstanding bonds at the market price, but not to
106 exceed the price, if any, at which the bonds are
107 redeemable and all bonds redeemed or purchased shall
108 be immediately canceled and shall not again be issued:
109 *Provided*, That after the authority has issued bonds
110 authorized by this article and after the requirements of
111 debt service and all associated funds have been satisfied
112 for the fiscal year for which moneys deposited in the
113 School Building Debt Service Fund have been pledged,
114 including coverage and reserve funds established in
115 connection with the bonds issued pursuant to this
116 article, any remaining balance in the School Building
117 Debt Service Fund may be transferred to the School
118 Construction Fund created in subsection (c) of this
119 section and used by the School Building Authority in its
120 discretion to finance the cost of school construction or
121 improvement projects authorized in accordance with
122 the provisions of section sixteen of this article on a cash
123 basis.

124 (c) There is continued in the State Treasury a special
125 revenue fund named the School Construction Fund into
126 which shall be deposited the amounts specified in

127 section thirty, article fifteen, chapter eleven of this
128 code, together with any moneys appropriated to the
129 fund by the Legislature: *Provided*, That for the school
130 year beginning the first day of July, two thousand four,
131 only, funds from the excess lottery allocated in section
132 eighteen-a, article twenty-two, chapter twenty-nine of
133 this code shall not be transferred to the School
134 Construction Fund and, in lieu thereof, made available
135 for legislative appropriation: *Provided, however*, That
136 for the school year beginning the first day of July, two
137 thousand four, only, up to five million dollars of the
138 amounts in the fund may be appropriated by the
139 Legislature for budget shortfalls.

140 Expenditures from the School Construction Fund
141 shall be for the purposes set forth in this article,
142 including lease-purchase payments under agreements
143 made pursuant to subsection (f), section fifteen of this
144 article and section nine, article five of this chapter and
145 are authorized from collections in accordance with the
146 provisions of article three, chapter twelve of this code
147 and from other revenues annually appropriated by the
148 Legislature from lottery revenues as authorized by
149 section eighteen, article twenty-two, chapter twenty-
150 nine of this code pursuant to the provisions set forth in
151 article two, chapter five-a of this code. Amounts
152 collected which are found, from time to time, to exceed
153 the funds needed for purposes set forth in this article
154 may be transferred to other accounts or funds and
155 redesignated for other purposes by appropriation of the
156 Legislature. The School Construction Fund shall be an
157 interest-bearing account, with the interest credited to
158 and deposited in the School Construction Fund and

159 expended in accordance with the provisions of this
160 article. Deposits to and expenditures from the School
161 Construction Fund are subject to the provisions of
162 subsection (k), section fifteen of this article.

163 (d) There is continued in the State Treasury a special
164 revenue fund named the School Major Improvement
165 Fund into which shall be deposited the amounts
166 specified in section thirty, article fifteen, chapter eleven
167 of this code, together with any moneys appropriated to
168 the fund by the Legislature. Expenditures from the
169 School Major Improvement Fund shall be for the
170 purposes set forth in this article and are authorized
171 from collections in accordance with the provisions of
172 article three, chapter twelve of this code and from other
173 revenues annually appropriated by the Legislature from
174 lottery revenues as authorized by section eighteen,
175 article twenty-two, chapter twenty-nine of this code
176 pursuant to the provisions set forth in article two,
177 chapter five-a of this code. Amounts collected which
178 are found, from time to time, to exceed the funds needed
179 for purposes set forth in this article may be transferred
180 to other accounts or funds and redesignated for other
181 purposes by appropriation of the Legislature. The
182 School Major Improvement Fund shall be an interest-
183 bearing account, with interest being credited to and
184 deposited in the School Major Improvement Fund and
185 expended in accordance with the provisions of this
186 article.

187 (e) There is created in the State Treasury a special
188 revenue fund named the Excess Lottery School Building
189 Debt Service Fund into which shall be deposited the

190 amounts specified in section eighteen-a, article twenty-
191 two, chapter twenty-nine of this code. All amounts
192 deposited in the fund shall be pledged, as designated by
193 the authority, to the repayment of the principal, interest
194 and redemption premium, if any, on revenue bonds or
195 refunding revenue bonds authorized by section four-b
196 of this article. On or prior to the first day of May of
197 each year, the authority shall certify to the State
198 Lottery Director the principal and interest and coverage
199 ratio requirements for the following fiscal year on any
200 revenue bonds issued for which moneys deposited in the
201 Excess Lottery School Building Debt Service Fund have
202 been pledged, or will be pledged, for repayment
203 pursuant to this section.

204 After the authority has issued bonds authorized by
205 this article for which moneys deposited in the Excess
206 Lottery School Building Debt Service Fund have been
207 pledged and after the requirements of all funds have
208 been satisfied, including coverage and reserve funds
209 established in connection with the bonds issued
210 pursuant to this article, any balance remaining in the
211 Excess Lottery School Building Debt Service Fund may
212 be used for the redemption of any of the outstanding
213 bonds issued under this article, for which moneys
214 deposited in the Excess Lottery School Building Debt
215 Service Fund have been pledged, which, by their terms,
216 are then redeemable or for the purchase of the
217 outstanding bonds at the market price, but not to
218 exceed the price, if any, at which the bonds are
219 redeemable and all bonds redeemed or purchased shall
220 be immediately canceled and shall not again be issued:
221 *Provided*, That after the authority has issued bonds

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

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

247 The Legislature further finds and declares that the
248 financial capacity of a county to construct, lease and
249 improve school facilities depends upon the county's
250 bonding capacity (local property wealth), voter
251 willingness to pass bond issues and the county's ability
252 to reallocate other available county funds instead of

253 criteria related to educational needs or upon the ability
254 of the School Building Authority created in this article
255 to issue bonds that comply with the holding of the West
256 Virginia Supreme Court of Appeals or otherwise assist
257 counties with the financing of facilities construction
258 and improvement. The Legislature further finds and
259 declares that this section, as well as section eighteen,
260 article twenty-two, chapter twenty-nine of this code,
261 had been reenacted during the first extraordinary
262 session of the West Virginia Legislature in the year one
263 thousand nine hundred ninety-four in an attempt to
264 comply with the holding of the Supreme Court of
265 Appeals of West Virginia.

266 The Legislature further finds and declares that it
267 intends, through the reenactment of this section and
268 section eighteen, article twenty-two, chapter twenty-
269 nine of this code, to dedicate a source of state revenues
270 to special revenue funds for the purposes of paying the
271 debt service on bonds and refunding bonds issued
272 subsequent to the first day of January, one thousand
273 nine hundred ninety-four, the proceeds of which will be
274 used for the construction and improvement of school
275 building facilities. The Legislature further finds and
276 declares that it intends, through the reenactment of this
277 section and section thirty, article fifteen, chapter eleven
278 of this code and section eighteen, article twenty-two,
279 chapter twenty-nine of this code, to appropriate
280 revenues to two special revenue funds for the purposes
281 of construction and improvement of school building
282 facilities. Furthermore, the Legislature intends to
283 encourage county boards to maintain existing levels of
284 county funding for construction, improvement and

285 maintenance of school building facilities and to
286 generate additional county funds for those purposes
287 through bonds and special levies whenever possible.
288 The Legislature further encourages the School Building
289 Authority, the state board and county boards of
290 education to propose uniform project specifications for
291 comparable projects whenever possible to meet county
292 needs at the lowest possible cost.

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

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

1 (a) The maximum aggregate face value of bonds that
2 may be issued by the authority, for which the moneys in
3 the School Building Debt Service Fund or the Excess
4 Lottery School Building Debt Service Fund are to be
5 pledged, is five hundred million dollars. The issuance
6 of revenue bonds under the provisions of this article
7 shall be authorized, from time to time, by resolution or
8 resolutions of the School Building Authority which
9 shall set forth the proposed projects authorized in
10 accordance with the provisions of section sixteen of this
11 article and provide for the issuance of bonds in amounts
12 sufficient, when sold as provided in this section, to
13 provide moneys considered sufficient by the authority

14 to pay the costs, less the amounts of any other funds
15 available for the costs or from any appropriation, grant
16 or gift for the costs: *Provided*, That bond issues from
17 which bond revenues are to be distributed in
18 accordance with section fifteen of this article for
19 projects authorized pursuant to the provisions of section
20 sixteen of this article are not required to set forth the
21 proposed projects in the resolution. The resolution shall
22 prescribe the rights and duties of the bondholders and
23 the School Building Authority and, for that purpose,
24 may prescribe the form of the trust agreement referred
25 to in this section. The bonds may be issued, from time
26 to time, in such amounts; shall be of such series; bear
27 such date or dates; mature at such time or times not
28 exceeding forty years from their respective dates; bear
29 interest at such rate or rates; be in such denominations;
30 be in such form, either coupon or registered, carrying
31 such registration, exchangeability and
32 interchangeability privileges; be payable in such
33 medium of payment and at such place or places within
34 or without the state; be subject to such terms of
35 redemption at such prices not exceeding one hundred
36 five percent of the principal amount of the bonds; and
37 be entitled to such priorities on the revenues paid into
38 the fund pledged for repayment of the bonds as may be
39 provided in the resolution authorizing the issuance of
40 the bonds or in any trust agreement made in connection
41 with the bonds: *Provided, however*, That revenue bonds
42 issued on or after the first day of January, one thousand
43 nine hundred ninety-four, and prior to the first day of
44 January, two thousand eight, which are secured by
45 lottery proceeds from section eighteen, article
46 twenty-two, chapter twenty-nine of this code shall

47 mature at such time or times not exceeding ten years
48 from their respective dates: *Provided further*, That
49 revenue bonds issued on or after the first day of
50 January, two thousand eight, which are secured by
51 lottery proceeds from sections eighteen or eighteen-a,
52 article twenty-two, chapter twenty-nine of this code,
53 shall mature at such time or times not exceeding twenty
54 years from their respective dates.

55 (b) The bonds shall be signed by the Governor, and by
56 the president or vice president of the authority, under
57 the great seal of the state, attested by the Secretary of
58 State, and the coupons attached to the bonds shall bear
59 the facsimile signature of the president or vice president
60 of the authority. In case any of the officers whose
61 signatures appear on the bonds or coupons cease to be
62 officers before the delivery of the bonds, the signatures
63 shall nevertheless be valid and sufficient for all
64 purposes the same as if the officers had remained in
65 office until the delivery. The revenue bonds shall be
66 sold in the manner determined by the authority to be for
67 the best interests of the state.

68 (c) Any pledge of revenues made by the School
69 Building Authority for revenue bonds issued prior to the
70 twentieth day of July, one thousand nine hundred
71 ninety-three, pursuant to this article is valid and
72 binding between the parties from the time the pledge is
73 made; and the revenues pledged shall immediately be
74 subject to the lien of the pledge without any further
75 physical delivery of the revenues pledged or further act.
76 The lien of the pledge is valid and binding against all
77 parties having claims of any kind in tort, contract or

78 otherwise, irrespective of whether the parties have
79 notice of the lien of the pledge and the pledge shall be
80 a prior and superior charge over any other use of the
81 revenues pledged.

82 (d) The proceeds of any bonds shall be used solely for
83 the purpose or purposes as may be generally or
84 specifically set forth in the resolution authorizing those
85 bonds and shall be disbursed in the manner and with
86 the restrictions, if any, that the authority provides in
87 the resolution authorizing the issuance of the bonds or
88 in the trust agreement referred to in this section
89 securing the bonds. If the proceeds of the bonds, by
90 error in calculations or otherwise, are less than the cost
91 of any projects specifically set forth in the resolution,
92 additional bonds may in like manner be issued to
93 provide the amount of the deficiency; and unless
94 otherwise provided for in the resolution or trust
95 agreement hereinafter mentioned, the additional bonds
96 shall be considered to be of the same issue and are
97 entitled to payment from the same fund, without
98 preference or priority, as the bonds before issued for the
99 projects. If the proceeds of bonds issued for the projects
100 specifically set forth in the resolution authorizing the
101 bonds issued by the authority exceed the cost of the
102 bonds, the surplus may be used for any other projects
103 authorized in accordance with the provisions of section
104 sixteen of this article or in any other manner that the
105 resolution authorizing the bonds provides. Prior to the
106 preparation of definitive bonds, the authority may,
107 under like restrictions, issue temporary bonds with or
108 without coupons, exchangeable for definitive bonds
109 upon the issuance of the definitive bonds.

110 (e) After the issuance of any revenue bonds, the
111 revenues pledged for the revenue bonds shall not be
112 reduced as long as any of the revenue bonds are
113 outstanding and unpaid except under the terms,
114 provisions and conditions that are contained in the
115 resolution, trust agreement or other proceedings under
116 which the revenue bonds were issued.

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

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

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

§18-9D-13. Sinking fund for payment of bonds.

1 (a) From the School Building Capital Improvements
2 Fund the School Building Authority shall make periodic

3 payments in an amount sufficient to meet the
4 requirements of any issue of bonds sold under the
5 provisions of this article prior to the first day of
6 January, one thousand nine hundred ninety-four, or for
7 refunding bonds issued prior to that date as may be
8 specified in the resolution of the authority authorizing
9 the issue thereof and in any trust agreement entered
10 into in connection therewith. The payments so made
11 shall be placed as specified in such resolution or trust
12 agreement in a special sinking fund which is hereby
13 pledged to and charged with the payment of the
14 principal of the bonds of such issue and the interest
15 thereon, and to the redemption or repurchase of such
16 bonds, such sinking fund to be a fund for all bonds of
17 such issue without distinction or priority of one over
18 another, except as may be provided in the resolution
19 authorizing such issue of bonds. The moneys in the
20 special sinking fund, less such reserve for payment of
21 principal and interest and redemption premium, if any,
22 as may be required by the resolution of the School
23 Building Authority, authorizing the issue or any trust
24 agreement made in connection therewith, may be used
25 for the redemption of any of the outstanding bonds
26 payable from such fund which by their terms are then
27 redeemable, or for the purchase of bonds at the market
28 price, but not exceeding the price, if any, at which such
29 bonds shall in the same year be redeemable; and all
30 bonds redeemed or purchased shall forthwith be
31 canceled and shall not again be issued.

32 (b) From the School Building Debt Service Fund or
33 the Excess Lottery School Building Debt Service Fund,
34 the authority shall make periodic payments in an

35 amount sufficient to meet the requirements of any issue
36 of bonds sold under the provisions of this article on or
37 after the first day of January, one thousand nine
38 hundred ninety-four, and for which the authority has
39 pledged revenues in such fund for the payment of such
40 bonds, as may be specified in the resolution of the
41 authority authorizing the issue thereof or in any trust
42 agreement entered into in connection therewith. The
43 payments so made shall be placed as specified in the
44 resolution or trust agreement in a special sinking fund
45 which is hereby pledged to and charged with the
46 payment of the principal of the bonds of the issue and
47 the interest thereon, and to the redemption or
48 repurchase of the bonds, the sinking fund to be a fund
49 for all bonds of the particular issue without distinction
50 or priority of one over another, except as may be
51 provided in the resolution authorizing the issuance of
52 the bonds. The moneys in the special sinking fund, less
53 the reserve for payment of principal and interest and
54 redemption premium, if any, as may be required by the
55 resolution of the School Building Authority authorizing
56 the issue or any trust agreement made in connection
57 therewith, may be used for redemption of any of the
58 outstanding bonds payable from the fund which by
59 their terms are then redeemable, or for the purchase of
60 bonds at the market price, but not exceeding the price,
61 if any, at which such bonds shall in the same year be
62 redeemable; and all bonds redeemed or purchased shall
63 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.

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

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

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

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

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

27 (4) Any other moneys received by the authority,
28 except moneys paid into the School Major Improvement
29 Fund pursuant to section six of this article and moneys
30 deposited into the School Access Safety Fund pursuant
31 to section five, article nine-f of this chapter, may be
32 allocated and may be expended by the authority for
33 projects authorized in accordance with the provisions of
34 section sixteen of this article that service the
35 educational community statewide or, upon application
36 by the state board, for educational programs that are
37 under the jurisdiction of the state board. In addition,
38 upon application by the state board or the
39 administrative council of an area vocational educational
40 center established pursuant to article two-b of this
41 chapter, the authority may allocate and expend under
42 this subsection moneys for school major improvement
43 projects authorized in accordance with the provisions of
44 section sixteen of this article proposed by the state
45 board or an administrative council for school facilities
46 under the direct supervision of the state board or an
47 administrative council, respectively. Furthermore, upon
48 application by a county board, the authority may
49 allocate and expend under this subsection moneys for
50 school major improvement projects for vocational
51 programs at comprehensive high schools, vocational
52 schools cooperating with community and technical
53 college programs, or both. Each county board is
54 encouraged to cooperate with community and technical
55 colleges in the use of existing or development of new
56 vocational technical facilities. All projects eligible for

57 funds from this subsection shall be submitted directly
58 to the authority which shall be solely responsible for the
59 project's evaluation, subject to the following:

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

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

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

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

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

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

84 (4) Any other moneys received by the authority,
85 except moneys deposited into the School Major
86 Improvement Fund and moneys deposited into the
87 School Access Safety Fund pursuant to section five,
88 article nine-f of this chapter, shall be set aside by the
89 authority as an emergency fund to be distributed in
90 accordance with the guidelines adopted by the
91 authority.

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

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

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

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

105 (4) Any other moneys received by the authority,
106 except moneys deposited into the School Major
107 Improvement Fund and moneys deposited into the
108 School Access Safety Fund pursuant to section five,
109 article nine-f of this chapter, may be reserved by the
110 authority for multiuse vocational-technical education
111 facilities projects that may include post-secondary

112 programs as a first priority use. The authority may
113 allocate and expend under this subsection moneys for
114 any purposes authorized in this article on multiuse
115 vocational-technical education facilities projects,
116 including equipment and equipment updates at the
117 facilities, authorized in accordance with the provisions
118 of section sixteen of this article. If the projects
119 approved under this subsection do not require the full
120 amount of moneys reserved, moneys above the amount
121 required may be allocated and expended in accordance
122 with other provisions of this article. A county board,
123 the state board, an administrative council or the joint
124 administrative board of a vocational-technical
125 education facility which includes post-secondary
126 programs may propose projects for facilities or
127 equipment, or both, which are under the direct
128 supervision of the respective body: *Provided*, That the
129 authority shall, before allocating any moneys for a
130 project under this subsection, consider all other funding
131 sources available for the project.

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

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

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

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

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

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

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

172 in a loan agreement among the authority, the state
173 board and the county board; .

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

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

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

196 (C) The failure of the county board to make a
197 scheduled payment pursuant to the investment contract
198 constitutes an event of default under the loan
199 agreement;

200 (D) Upon a default by a county board, the principal of
201 the loan, together with all unpaid interest accrued to
202 the date of the default, shall, at the option of the
203 authority, in consultation with the state board, become
204 due and payable immediately or subject to renegotiation
205 among the state board, the authority and the county
206 board; and

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

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

220 (g) To encourage county boards to proceed promptly
221 with facilities planning and to prepare for the
222 expenditure of any state moneys derived from the
223 sources described in this section, any county board or
224 other entity to whom moneys are allocated by the
225 authority that fails to expend the money within three
226 years of the allocation shall forfeit the allocation and
227 thereafter is ineligible for further allocations pursuant
228 to this section until it is ready to expend funds in
229 accordance with an approved facilities plan: *Provided,*

230 That the authority may authorize an extension beyond
231 the three-year forfeiture period not to exceed an
232 additional two years. Any amount forfeited shall be
233 added to the total funds available in the School
234 Construction Fund of the authority for future allocation
235 and distribution. Funds may not be distributed for any
236 project under this article unless the responsible entity
237 has a facilities plan approved by the state board and the
238 School Building Authority and is prepared to commence
239 expenditure of the funds during the fiscal year in which
240 the moneys are distributed.

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

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

255 (2) Any moneys allocated to a project and not
256 distributed for that project shall be deposited in an
257 account to the credit of the project, the principal
258 amount to remain to the credit of and available to the
259 project for a period of two years; and

260 (3) Any moneys which are unexpended after a two-
261 year period shall be redistributed on the basis of need
262 from the School Major Improvement Fund in that fiscal
263 year.

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

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

288 (k) Funds in the School Construction Fund shall first
289 be transferred and expended as follows:

290 (1) Any funds deposited in the School Construction
291 Fund shall be expended first in accordance with an
292 appropriation by the Legislature.

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

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

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

317 (n) The authority may elect to disburse funds for
318 approved construction projects over a period of more

319 than one year subject to the following:

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

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

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

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18a. State Excess Lottery Revenue Fund.

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

19 (b) For the fiscal year beginning the first day of July,
20 two thousand two, the commission shall deposit: (1)
21 Sixty-five million dollars into the subaccount of the
22 State Excess Lottery Revenue Fund hereby created in
23 the State Treasury to be known as the General Purpose
24 Account to be expended pursuant to appropriation of
25 the Legislature; (2) ten million dollars into the
26 Education Improvement Fund for appropriation by the
27 Legislature to the PROMISE Scholarship Fund created
28 in section seven, article seven, chapter eighteen-c of this
29 code; (3) nineteen million dollars into the Economic
30 Development Project Fund created in subsection (d) of

31 this section for the issuance of revenue bonds and to be
32 spent in accordance with the provisions of said
33 subsection; (4) twenty million dollars into the School
34 Building Debt Service Fund created in section six,
35 article nine-d, chapter eighteen of this code for the
36 issuance of revenue bonds; (5) forty million dollars into
37 the West Virginia Infrastructure Fund created in section
38 nine, article fifteen-a, chapter thirty-one of this code to
39 be spent in accordance with the provisions of said
40 article; (6) ten million dollars into the Higher Education
41 Improvement Fund for Higher Education; and (7) five
42 million dollars into the State Park Improvement Fund
43 for Park Improvements. For the fiscal year beginning
44 the first day of July, two thousand three, the
45 commission shall deposit: (1) Sixty-five million dollars
46 into the General Purpose Account to be expended
47 pursuant to appropriation of the Legislature; (2)
48 seventeen million dollars into the Education
49 Improvement Fund for appropriation by the Legislature
50 to the PROMISE Scholarship Fund created in section
51 seven, article seven, chapter eighteen-c of this code; (3)
52 nineteen million dollars into the Economic Development
53 Project Fund created in subsection (d) of this section for
54 the issuance of revenue bonds and to be spent in
55 accordance with the provisions of said subsection; (4)
56 twenty million dollars into the School Building Debt
57 Service Fund created in section six, article nine-d,
58 chapter eighteen of this code for the issuance of revenue
59 bonds; (5) forty million dollars into the West Virginia
60 Infrastructure Fund created in section nine, article
61 fifteen-a, chapter thirty-one of this code to be spent in
62 accordance with the provisions of said article; (6) ten
63 million dollars into the Higher Education Improvement

64 Fund for Higher Education; and (7) five million dollars
65 into the State Park Improvement Fund for Park
66 Improvements.

67 (c) For the fiscal year beginning the first day of July,
68 two thousand four, and subsequent fiscal years, the
69 commission shall deposit: (1) Sixty-five million dollars
70 into the General Purpose Account to be expended
71 pursuant to appropriation of the Legislature; (2)
72 twenty-seven million dollars into the Education
73 Improvement Fund for appropriation by the Legislature
74 to the PROMISE Scholarship Fund created in section
75 seven, article seven, chapter eighteen-c of this code; (3)
76 nineteen million dollars into the Economic Development
77 Project Fund created in subsection (d) of this section for
78 the issuance of revenue bonds and to be spent in
79 accordance with the provisions of said subsection; (4)
80 nineteen million dollars into the School Building Debt
81 Service Fund created in section six, article nine-d,
82 chapter eighteen of this code for the issuance of revenue
83 bonds: *Provided*, That for the fiscal year beginning the
84 first day of July, two thousand eight, and subsequent
85 fiscal years, no moneys shall be deposited in the School
86 Building Debt Service Fund pursuant to this subsection
87 and instead nineteen million dollars shall be deposited
88 into the Excess Lottery School Building Debt Service
89 Fund; (5) forty million dollars into the West Virginia
90 Infrastructure Fund created in section nine, article
91 fifteen-a, chapter thirty-one of this code to be spent in
92 accordance with the provisions of said article; (6) ten
93 million dollars into the Higher Education Improvement
94 Fund for Higher Education; and (7) five million dollars
95 into the State Park Improvement Fund for Park

96 Improvements. No portion of the distributions made as
97 provided in this subsection and subsection (b) of this
98 section, except distributions made in connection with
99 bonds issued under subsection (d) of this section, may
100 be used to pay debt service on bonded indebtedness
101 until after the Legislature expressly authorizes issuance
102 of the bonds and payment of debt service on the bonds
103 through statutory enactment or the adoption of a
104 concurrent resolution by both houses of the Legislature.
105 Until subsequent legislative enactment or adoption of a
106 resolution that expressly authorizes issuance of the
107 bonds and payment of debt service on the bonds with
108 funds distributed under this subsection and subsection
109 (b) of this section, except distributions made in
110 connection with bonds issued under subsection (d) of
111 this section, the distributions may be used only to fund
112 capital improvements that are not financed by bonds
113 and only pursuant to appropriation of the Legislature.

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

125 (1) The West Virginia Economic Development
126 Authority created and provided for in article fifteen,

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

143 (2) There is continued in the State Treasury a special
144 revenue fund named the Economic Development Project
145 Fund into which shall be deposited on and after the first
146 day of July, two thousand two, the amounts to be
147 deposited in said fund as specified in subsections (b)
148 and (c) of this section. The Economic Development
149 Project Fund shall consist of all such moneys, all
150 appropriations to the fund, all interest earned from
151 investment of the fund and any gifts, grants or
152 contributions received by the fund. All amounts
153 deposited in the fund shall be pledged to the repayment
154 of the principal, interest and redemption premium, if
155 any, on any revenue bonds or refunding revenue bonds
156 authorized by this section, including any and all
157 commercially customary and reasonable costs and
158 expenses which may be incurred in connection with the

159 issuance, refunding, redemption or defeasance thereof.
160 The West Virginia Economic Development Authority
161 may further provide in the resolution and in the trust
162 agreement for priorities on the revenues paid into the
163 Economic Development Project Fund as may be
164 necessary for the protection of the prior rights of the
165 holders of bonds issued at different times under the
166 provisions of this section. The bonds issued pursuant to
167 this subsection shall be separate from all other bonds
168 which may be or have been issued, from time to time,
169 under the provisions of this article.

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

184 (4) Bonds issued under this subsection shall state on
185 their face that the bonds do not constitute a debt of the
186 State of West Virginia; that payment of the bonds,
187 interest and charges thereon cannot become an
188 obligation of the State of West Virginia; and that the
189 bondholders' remedies are limited in all respects to the

190 Special Revenue Fund established in this subsection for
191 the liquidation of the bonds.

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

212 (6) For the purpose of certifying the projects that will
213 receive funds from the bond proceeds, a committee is
214 hereby established and comprised of the Governor, or
215 his or her designee, the Secretary of the Department of
216 Revenue, the Executive Director of the West Virginia
217 Development Office and six persons appointed by the
218 Governor: *Provided*, That at least one citizen member
219 must be from each of the state's three congressional
220 districts. The committee shall meet as often as

221 necessary and make certifications from bond proceeds
222 in accordance with this subsection. The committee shall
223 meet within thirty days of the effective date of this
224 section.

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

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

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

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

242 (C) The ability of the project to create or retain jobs,
243 considering the number of jobs, the type of jobs,
244 whether benefits are or will be paid, the type of benefits
245 involved and the compensation reasonably anticipated
246 to be paid persons filling new jobs or the compensation
247 currently paid to persons whose jobs would be retained;

248 (D) Whether the project will promote economic
249 development in the region and the type of economic
250 development that will be promoted;

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

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

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

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

269 (10) Prior to making each certification, the committee
270 shall conduct at least one public hearing, which may be
271 held outside of Kanawha County. Notice of the time,
272 place, date and purpose of the hearing shall be
273 published in at least one newspaper in each of the three
274 congressional districts at least fourteen days prior to the
275 date of the public hearing.

276 (11) The committee may not certify a project unless
277 the committee finds that the project is in the public
278 interest and the grant will be used for a public purpose.
279 For purposes of this subsection, projects in the public
280 interest and for a public purpose include, but are not
281 limited to:

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

284 (B) Health clinics and other health facilities;

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

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

290 (E) Biotechnical incubators, development centers and
291 facilities;

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

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

297 (H) Railroad bridges, switches and track extension or
298 spurs on public or private land necessary to retain
299 existing businesses or attract new businesses;

300 (I) Recreational facilities, such as amphitheaters,
301 walking and hiking trails, bike trails, picnic facilities,
302 restrooms, boat docking and fishing piers, basketball
303 and tennis courts, and baseball, football and soccer
304 fields;

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

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

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

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

321 (13) If any proceeds from sale of bonds remain after
322 paying costs and making grants and loans as provided
323 in this subsection, the surplus may be deposited in an
324 account created in the State Treasury to be known as
325 the Economic Development Project Bridge Loan Fund
326 to be administered by the Economic Development
327 Authority created in article fifteen, chapter thirty-one

328 of this code. Expenditures from the fund are not
329 authorized from collections but are to be made only in
330 accordance with appropriation by the Legislature and
331 in accordance with the provisions of article three,
332 chapter twelve of this code and upon fulfillment of the
333 provisions of article two, chapter five-a of this code.
334 Loan repayment amounts including the portion
335 attributable to interest shall be paid into the fund
336 created in this subdivision.

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

353 (f) For the fiscal year beginning on the first day of
354 July, two thousand two, and each fiscal year thereafter,
355 the commission shall, after meeting the requirements of
356 subsections (b), (c) and (h) of this section and after
357 transferring to the State Lottery Fund created under
358 section eighteen of this article an amount equal to any

359 transfer from the State Lottery Fund to the Excess
360 Lottery Fund pursuant to subsection (f), section
361 eighteen of this article, deposit fifty percent of the
362 amount by which annual gross revenue deposited in the
363 State Excess Lottery Revenue Fund exceeds two
364 hundred twenty-five million dollars in a fiscal year in a
365 separate account in the State Lottery Fund to be
366 available for appropriation by the Legislature.

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

391 revenues are available to transfer the deficiency.

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

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

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

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

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

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

413 (j) The Legislature further directs the Governor to
414 focus resources on the creation of a prescription drug
415 program for senior citizens by pursuing a Medicaid
416 waiver to offer prescription drug services to senior

417 citizens; by investigating the establishment of
418 purchasing agreements with other entities to reduce
419 costs; by providing discount prices or rebate programs
420 for seniors; by coordinating programs offered by
421 pharmaceutical manufacturers that provide reduced
422 cost or free drugs; by coordinating a collaborative effort
423 among all state agencies to ensure the most efficient and
424 cost-effective program possible for the senior citizens of
425 this state; and by working closely with the state's
426 congressional delegation to ensure that a national
427 program is implemented. The Legislature further
428 directs that the Governor report his progress back to the
429 Joint Committee on Government and Finance on an
430 annual basis beginning in November of the year two
431 thousand one until a comprehensive program has been
432 fully implemented.

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

.....*Randy White*.....
Chairman Senate Committee

.....*[Signature]*.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

.....*Darrell Holmes*.....
Clerk of the Senate

.....*[Signature]*.....
Clerk of the House of Delegates

.....*Carl Ray Tomblin*.....
President of the Senate

.....*[Signature]*.....
Speaker House of Delegates

The within *is approved* this
the *27th* Day of *May* 2008.

.....*[Signature]*.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 18 2008

Time 3:05 pm