WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2008

COMMITTEE SUBSTITUTE
FOR
ENROLLED
Senate Bill No. 682
(Senators Plymale, Edgell, Unger, Bailey, Green, Hunter, Oliverio, Stollings, Wells, White, Guills and Hall, original sponsors)

[Passed March 8, 2008; in effect from passage.]
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[Passed March 8, 2008; in effect from passage.]

AN ACT to amend and reenact §18B-10-8 of the Code of West Virginia, 1931, as amended; and to amend and reenact §29-22-18 of said code, all relating to creating a special revenue fund known as the Community and Technical College Capital Improvement Fund; providing for depositing funds pledged to repay principal, interest and/or redemption premium on certain bonds authorized by the
commission for community and technical college capital improvements; and allocating five million dollars to the Higher Education Policy Commission Community and Technical College Capital Improvement Fund for community and technical college education capital improvements.

Be it enacted by the Legislature of West Virginia:

That §18B-10-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §29-22-18 of said code be amended and reenacted, all to read as follows:

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-10-8. Collection; disposition and use of capital and auxiliary capital fees; creation of special capital and auxiliary capital improvements funds; revenue bonds.

(a) This section and any rules adopted by the commission, council or both, in accordance with this section and article three-a, chapter twenty-nine-a of this code, governs the collection, disposition and use of the capital and auxiliary capital fees authorized by section one of this article. The statutory provisions governing collection and disposition of capital funds in place prior to the enactment of this section remain in effect.

(b) Fees for full-time students. — The governing boards shall fix capital and auxiliary capital fees for full-time students at each state institution of higher
education per semester. For institutions under its jurisdiction, a governing board may fix the fees at higher rates for students who are not residents of this state.

(c) Fees for part-time students. — For all part-time students and for all summer school students, the governing boards shall impose and collect the fees in proportion to, but not exceeding, the fees paid by full-time students. Refunds of the fees may be made in the same manner as any other fee collected at state institutions of higher education.

(d) There is continued in the State Treasury a special capital improvements fund and special auxiliary capital improvements fund for each state institution of higher education and the commission into which shall be paid all proceeds, respectively, of:

(1) The capital and auxiliary capital fees collected from students at all state institutions of higher education pursuant to this section; and

(2) The fees collected from the students pursuant to section one of this article. The fees shall be expended by the commission and governing boards for the payment of the principal of or interest on any revenue bonds issued by the board of regents or the succeeding governing boards for which the fees were pledged prior to the enactment of this section.

(e) The governing boards may make expenditures from any of the special capital improvements funds or special auxiliary capital improvement funds established in this section to finance, in whole or in part, together
with any federal, state or other grants or contributions, for any one or more of the following projects:

(1) The acquisition of land or any rights or interest in land;

(2) The construction or acquisition of new buildings;

(3) The renovation or construction of additions to existing buildings;

(4) The acquisition of furnishings and equipment for the buildings; and

(5) The construction or acquisition of any other capital improvements or capital education facilities at the state institutions of higher education, including any roads, utilities or other properties, real or personal, or for other purposes necessary, appurtenant or incidental to the construction, acquisition, financing and placing in operation of the buildings, capital improvements or capital education facilities, including student unions, dormitories, housing facilities, food service facilities, motor vehicle parking facilities and athletic facilities.

(f) The governing boards, in their discretion, may use the moneys in the special capital improvements funds and special auxiliary improvement funds to finance the costs of the purposes set forth in this section on a cash basis. The commission, when singly or jointly requested by the governing boards, periodically may issue revenue bonds of the state as provided in this section to finance all or part of the purposes and pledge all or any part of the moneys in such special funds for the payment of the principal of and interest on the revenue bonds, and for
reserves for the revenue bonds. Any pledge of the
special funds for the revenue bonds shall be a prior and
superior charge on the special funds over the use of any
of the moneys in the funds to pay for the cost of any of
the purposes on a cash basis. Any expenditures from
the special funds, other than for the retirement of
revenue bonds, may be made by the commission or
governing boards only to meet the cost of a
predetermined capital improvements program for one
or more of the state institutions of higher education, in
the order of priority agreed upon by the governing
board or boards and the commission and for which the
aggregate revenue collections projected are presented
to the Governor for inclusion in the annual budget bill,
and are approved by the Legislature for expenditure.

(g) The revenue bonds periodically may be authorized
and issued by the commission or governing boards to
finance, in whole or in part, the purposes provided in
this section in an aggregate principal amount not
exceeding the amount which the commission
determines can be paid as to both principal and interest
and reasonable margins for a reserve therefor from the
moneys in the special funds.

(h) The issuance of the revenue bonds shall be
authorized by a resolution adopted by the governing
board receiving the proceeds and the commission and
the revenue bonds shall bear the date or dates; mature
at such time or times not exceeding forty years from
their respective dates; be in such form either coupon or
registered, with such 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 prior
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105 redemption at such prices not exceeding one hundred
106 five per centum of the principal amount thereof; and
107 shall have the other terms and provisions determined
108 by the governing board receiving the proceeds and the
109 commission. The revenue bonds shall be signed by the
110 Governor and by the chancellor of the commission or
111 the chair of the governing boards authorizing the
112 issuance thereof, under the Great Seal of the State,
113 attested by the Secretary of State, and the coupons
114 attached to the revenue bonds shall bear the facsimile
115 signature of the chancellor of the commission or the
116 chair of the appropriate governing boards. The revenue
117 bonds shall be sold in the manner the commission or
118 governing board determines is for the best interests of
119 the state.

120 (i) The commission or governing boards may enter
121 into trust agreements with banks or trust companies,
122 within or without the state, and in the trust agreements
123 or the resolutions authorizing the issuance of the bonds
124 may enter into valid and legally binding covenants with
125 the holders of the revenue bonds as to the custody,
126 safeguarding and disposition of the proceeds of the
127 revenue bonds, the moneys in the special funds, sinking
128 funds, reserve funds or any other moneys or funds; as to
129 the rank and priority, if any, of different issues of
130 revenue bonds by the commission or governing boards
131 under the provisions of this section; as to the
132 maintenance or revision of the amounts of the fees; as
133 to the extent to which swap agreements, as defined in
134 subsection (h), section two, article two-g, chapter
135 thirteen of this code shall be used in connection with
136 the revenue bonds, including such provisions as
137 payment, term, security, default and remedy provisions
138 as the commission shall consider necessary or desirable,
if any, under which the fees may be reduced; and as to
any other matters or provisions which are considered
necessary and advisable by the commission or
governing boards in the best interests of the state and
to enhance the marketability of the revenue bonds.

(j) After the issuance of any revenue bonds, the fees at
the state institutions of higher education pledged to the
payment thereof may not be reduced as long as any of
the revenue bonds are outstanding and unpaid except
under such terms, provisions and conditions as shall be
contained in the resolution, trust agreement or other
proceedings under which the revenue bonds were
issued. The revenue bonds are and constitute
negotiable instruments under the Uniform Commercial
Code of this state; together with the interest thereon, be
exempt from all taxation by the state of West Virginia,
or by any county, school district, municipality or
political subdivision thereof; and the revenue bonds
may not be considered to be obligations or debts of the
state and the credit or taxing power of the state may
not be pledged therefor, but the revenue bonds shall be
payable only from the revenue pledged therefor as
provided in this section.

(k) Additional revenue bonds may be issued by the
commission or governing boards pursuant to this
section and financed by additional revenues or funds
dedicated from other sources. There is hereby created
in the State Treasury a special revenue fund known as
the Community and Technical College Capital
Improvement Fund into which shall be deposited the
amounts specified in subsection (j), 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 the commission for
community and technical college capital improvements.

(l) Funding of systemwide and campus-specific
revenue bonds under any other section of this code is
continued and authorized pursuant to the terms of this
section. Revenues of any state institution of higher
education pledged to the repayment of any revenue
bonds issued pursuant to this code shall remain
pledged.

(m) Any revenue bonds for state institutions of higher
education proposed to be issued under this section or
other sections of this code first must be approved by the
commission.

(n) Revenue bonds issued pursuant to this code may
be issued by the commission or governing boards, either
singly or jointly.

(o) Fees pledged for repayment of revenue bonds
issued under this section or article twelve-b, chapter
eighteen prior to the effective date of this section shall
be transferred to the commission in a manner
prescribed by the commission. The commission may
transfer funds from the accounts of institutions pledged
for the repayment of revenue bonds issued prior to the
effective date of this section or issued subsequently by
the commission upon the request of institutions, if an
institution fails to transfer the pledged revenues to the
commission in a timely manner.

(p) Effective the first day of July, two thousand four,
the capital and auxiliary capital fees authorized by this
section and section one of this article are in lieu of any
other fees set out in this code for capital and auxiliary
capital projects to benefit public higher education
institutions. Notwithstanding any other provisions of
this code to the contrary, in the event any capital,
tuition, registration or auxiliary fees are pledged to the
payment of any revenue bonds issued pursuant to any
general bond resolutions of the commission, any of its
predecessors or any institution, adopted prior to the
effective date of this section, such fees shall remain in
effect in amounts not less than the amounts in effect as
of that date, until the revenue bonds payable from any
of the fees have been paid or the pledge of the fees is
otherwise legally discharged.

CHAPTER 29. MISCELLANEOUS
BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18. State Lottery Fund; appropriations and deposits;
not part of general revenue; no transfer of state funds after initial appropriation; use and
repayment of initial appropriation; allocation of fund for prizes, net profit and expenses; surplus;
State Lottery Education Fund; State Lottery Senior Citizens Fund; allocation and appropriation of net profits.

(a) There is continued a special revenue fund in the
State Treasury which shall be designated and known as
the State Lottery 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 from the sale of lottery tickets, materials and
games shall be deposited with the State Treasurer and
placed into the State Lottery 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 Treasurer as part of the
general revenue of the state.

(b) No appropriation, loan or other transfer of state
funds may be made to the commission or Lottery Fund
after the initial appropriation.

(c) A minimum annual average of forty-five percent of
the gross amount received from each lottery shall be
allocated and disbursed as prizes.

(d) Not more than fifteen percent of the gross amount
received from each lottery may be allocated to and may
be disbursed as necessary for fund operation and
administration expenses: Provided, That for the period
beginning the first day of the month following the first
passage of a referendum election held pursuant to
section seven, article twenty-two-c of this chapter and
for eighteen months thereafter, not more than seventeen
percent of the gross amount received from each lottery
shall be allocated to and may be disbursed as necessary
for fund operation and administration expenses.

(e) The excess of the aggregate of the gross amount
received from all lotteries over the sum of the amounts
allocated by subsections (c) and (d) of this section shall
be allocated as net profit. In the event that the
percentage allotted for operations and administration
generates a surplus, the surplus shall be allowed to
accumulate to an amount not to exceed two hundred
fifty thousand dollars. On a monthly basis, the director shall report to the Joint Committee on Government and Finance of the Legislature any surplus in excess of two hundred fifty thousand dollars and remit to the State Treasurer the entire amount of those surplus funds in excess of two hundred fifty thousand dollars which shall be allocated as net profit.

(f) After first satisfying the requirements for funds dedicated to the School Building Debt Service Fund in subsection (h) of this section to retire the bonds authorized to be issued pursuant to section eight, article nine-d, chapter eighteen of this code, then satisfying the requirements for funds dedicated to the Education, Arts, Sciences and Tourism Debt Service Fund in subsection (i) of this section to retire the bonds authorized to be issued pursuant to section eleven-a, article six, chapter five of this code, and then satisfying the requirements for funds dedicated to the Community and Technical College Capital Improvement Fund in subsection (j) of this section to retire the bonds for community and technical college capital improvements authorized to be issued pursuant to section eight, article ten, chapter eighteen-b of this code, any and all remaining funds in the State Lottery Fund shall be made available to pay debt service in connection with any revenue bonds issued pursuant to section eighteen-a of this article, if and to the extent needed for such purpose from time to time. The Legislature shall annually appropriate all of the remaining amounts allocated as net profits in subsection (e) of this section, in such proportions as it considers beneficial to the citizens of this state, to: (1) The Lottery Education Fund created in subsection (g) of this section; (2) the School Construction Fund created in section six, article nine-d,
chapter eighteen of this code; (3) the Lottery Senior Citizens Fund created in subsection (k) of this section; and (4) the Division of Natural Resources created in section three, article one, chapter twenty of this code and the West Virginia Development Office as created in section one, article two, chapter five-b of this code, in accordance with subsection (l) of this section. No transfer to any account other than the School Building Debt Service Fund, the Education, Arts, Sciences and Tourism Debt Service Fund, the Community and Technical College Capital Improvement Fund, the Economic Development Project Fund created under section eighteen-a, article twenty-two, chapter twenty-nine of this code, or any fund from which debt service is paid under subsection (c), section eighteen-a of this article may be made in any period of time in which a default exists in respect to debt service on bonds issued by the School Building Authority, the State Building Commission, the Higher Education Policy Commission, the Economic Development Authority or which are otherwise secured by lottery proceeds. No additional transfer may be made to any account other than the School Building Debt Service Account and the Education, Arts, Sciences and Tourism Debt Service Fund and the Community and Technical College Capital Improvement Fund when net profits for the preceding twelve months are not at least equal to one hundred fifty percent of debt service on bonds issued by the School Building Authority, the State Building Commission and the Higher Education Policy Commission which are secured by net profits.

(g) There is continued a special revenue fund in the State Treasury which shall be designated and known as the Lottery Education Fund. The fund shall consist of
the amounts allocated pursuant to subsection (f) of this section, which shall be deposited into the Lottery Education Fund by the State Treasurer. The Lottery Education Fund shall also consist of all interest earned from investment of the Lottery Education Fund and any other appropriations, gifts, grants, contributions or moneys received by the Lottery Education Fund from any source. The revenues received or earned by the Lottery Education Fund shall be disbursed in the manner provided below and may not be treated by the Auditor and Treasurer as part of the general revenue of the state. Annually, the Legislature shall appropriate the revenues received or earned by the Lottery Education Fund to the state system of public and higher education for these educational programs it considers beneficial to the citizens of this state.

(h) On or before the twenty-eighth day of each month, as long as revenue bonds or refunding bonds are outstanding, the lottery director shall allocate to the School Building Debt Service Fund created pursuant to the provisions of section six, article nine-d, chapter eighteen of this code, as a first priority from the net profits of the lottery for the preceding month, an amount equal to one tenth of the projected annual principal, interest and coverage ratio requirements on any and all revenue bonds and refunding bonds issued, or to be issued, on or after the first day of April, one thousand nine hundred ninety-four, as certified to the lottery director in accordance with the provisions of section six, article nine-d, chapter eighteen of this code. In no event shall the monthly amount allocated exceed one million eight hundred thousand dollars, nor may the total allocation of the net profits to be paid into the School Building Debt Service Fund, as provided in this
section, in any fiscal year exceed the lesser of the principal and interest requirements certified to the lottery director or eighteen million dollars. In the event there are insufficient funds available in any month to transfer the amount required to be transferred pursuant to this subsection to the School Debt Service Fund, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency. A lien on the proceeds of the State Lottery Fund up to a maximum amount equal to the projected annual principal, interest and coverage ratio requirements, not to exceed twenty-seven million dollars annually, may be granted by the School Building Authority in favor of the bonds it issues which are secured by the net lottery profits. When the school improvement bonds, secured by profits from the lottery and deposited in the School Debt Service Fund, mature, the profits shall become available for debt service on additional school improvement bonds as a first priority from the net profits of the lottery or may at the discretion of the authority be placed into the School Construction Fund created pursuant to the provisions of section six, article nine-d, chapter eighteen of this code.

(i) Beginning on or before the twenty-eighth day of July, one thousand nine hundred ninety-six, and continuing on or before the twenty-eighth day of each succeeding month thereafter, as long as revenue bonds or refunding bonds are outstanding, the lottery director shall allocate to the Education, Arts, Sciences and Tourism Debt Service Fund created pursuant to the provisions of section eleven-a, article six, chapter five of this code, as a second priority from the net profits of the lottery for the preceding month, an amount equal to
one tenth of the projected annual principal, interest and
coverage ratio requirements on any and all revenue
bonds and refunding bonds issued, or to be issued, on or
after the first day of April, one thousand nine hundred
ninety-six, as certified to the lottery director in
accordance with the provisions of that section. In no
event may the monthly amount allocated exceed one
million dollars nor may the total allocation paid into
the Education, Arts, Sciences and Tourism Debt Service
Fund, as provided in this section, in any fiscal year
exceed the lesser of the principal and interest
requirements certified to the lottery director or ten
million dollars. In the event there are insufficient funds
available in any month to transfer the amount required
pursuant to this subsection to the Education, Arts,
Sciences and Tourism Debt Service Fund, the
deficiency shall be added to the amount transferred in
the next succeeding month in which revenues are
available to transfer the deficiency. A
second-in-priority lien on the proceeds of the State
Lottery Fund up to a maximum amount equal to the
projected annual principal, interest and coverage ratio
requirements, not to exceed fifteen million dollars
annually, may be granted by the State Building
Commission in favor of the bonds it issues which are
secured by the net lottery profits.

(j) Beginning on or before the twenty-eighth day of
July, two thousand eight, and continuing on or before
the twenty-eighth day of each succeeding month
thereafter, as long as revenue bonds or refunding bonds
are outstanding, the lottery director shall allocate to the
Community and Technical College Capital
Improvement Fund, created pursuant to section eight,
article ten, chapter eighteen-b of this code, as a third
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208    priority from net profits of the lottery for the preceding
209    month, an amount equal to one tenth of the projected
210    annual principal, interest and coverage ratio
211    requirements on any and all revenue bonds and
212    refunding bonds issued or to be issued, on or after the
213    first day of April, two thousand eight, as certified by
214    the lottery director in accordance with the provisions of
215    that section. In no event may the monthly amount
216    allocated exceed five hundred thousand dollars nor may
217    the total allocation paid to the Community and
218    Technical Capital Improvement Fund, as provided in
219    this section, in any fiscal year exceed the lesser of the
220    principal and interest requirements certified to the
221    lottery director or five million dollars. In the event
222    there are insufficient funds available in any month to
223    transfer the amount required pursuant to this
224    subsection to the Community and Technical College
225    Capital Improvement Fund, the deficiency shall be
226    added to the amount transferred in the next succeeding
227    month in which revenues are available to transfer the
228    deficiency.

229    (1) A third-in-priority lien on the proceeds of the
230    State Lottery Fund up to a maximum amount equal to
231    the projected annual principal, interest and coverage
232    ratio requirements, not exceeding seven and a half
233    million dollars annually, may be granted by the Higher
234    Education Policy Commission in favor of the bonds it
235    issues which are secured by the net lottery profits.
236    When the bonds secured by the profits from the lottery
237    and deposited in the Education, Arts, Sciences and
238    Tourism Debt Service Fund as provided in subsection
239    (i) of this section mature or are paid in full, the bonds
240    issued by the Higher Education Policy Commission for
241    which lottery profits are pledged as provided in this
subsection shall be considered to have a second-in-
priority lien on the net profits deposited in the State
Lottery Fund.

(2) When the community and technical college capital
improvement bonds secured by profits from the lottery
and deposited in the Community and Technical College
Capital Improvement Fund mature, the profits shall
become available for debt service on additional
community and technical college capital improvement
bonds as a second priority from the net profits of the
lottery.

(3) The Council for Community and Technical College
Education shall approve all community and technical
college capital improvement plans prior to the
distribution of bond proceeds.

(k) There is continued a special revenue fund in the
State Treasury which shall be designated and known as
the Lottery Senior Citizens Fund. The fund shall
consist of the amounts allocated pursuant to subsection
(f) of this section, which amounts shall be deposited
into the Lottery Senior Citizens Fund by the State
Treasurer. The Lottery Senior Citizens Fund shall also
consist of all interest earned from investment of the
Lottery Senior Citizens Fund and any other
appropriations, gifts, grants, contributions or moneys
received by the Lottery Senior Citizens Fund from any
source. The revenues received or earned by the Lottery
Senior Citizens Fund shall be distributed in the manner
provided below and may not be treated by the Auditor
or Treasurer as part of the general revenue of the state.
Annually, the Legislature shall appropriate the
revenues received or earned by the Lottery Senior
Citizens Fund to any senior citizens medical care and other programs it considers beneficial to the citizens of this state.

(1) The Division of Natural Resources and the West Virginia Development Office, as appropriated by the Legislature, may use the amounts allocated to them pursuant to subsection (f) of this section for one or more of the following purposes: (1) The payment of any or all of the costs incurred in the development, construction, reconstruction, maintenance or repair of any project or recreational facility, as these terms are defined in section four, article five, chapter twenty of this code, pursuant to the authority granted to it under article five, chapter twenty of this code; (2) the payment, funding or refunding of the principal of, interest on or redemption premiums on any bonds, security interests or notes issued by the parks and recreation section of the Division of Natural Resources under article five, chapter twenty of this code; or (3) the payment of any advertising and marketing expenses for the promotion and development of tourism or any tourist facility or attraction in this state.
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 27th Day of May, 2008.

Governor