

SB 229

FILED

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WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
**SEVENTY-NINTH LEGISLATURE**  
**REGULAR SESSION, 2010**

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 229**

(By SENATORS TOMBLIN (MR. PRESIDENT) AND CARUTH,  
By REQUEST OF THE EXECUTIVE)

[Passed March 13, 2010; in effect from passage.]

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[Passed March 13, 2010; in effect from passage.]

AN ACT to amend and reenact §18-9D-4b, §18-9D-6 and §18-9D-8 of the Code of West Virginia, 1931, as amended, all relating to authorizing the School Building Authority to issue bonds in the maximum aggregate amount of \$500 million outstanding at any time; authorizing the School Building Authority to receive and expend federal subsidies received with respect to bonds issued by the School Building Authority; authorizing the expenditure of surpluses in certain debt service funds; requiring that copies of resolutions authorizing revenue bonds be provided to the Governor, the President of the Senate and the Speaker of the House of Delegates; changing the persons required to sign the bonds; and removing obsolete provisions.

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

That §18-9D-4b, §18-9D-6 and §18-9D-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 9D. SCHOOL BUILDING AUTHORITY.**

**§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 to  
3 the provisions of this article with funds distributed from  
4 the State Excess Lottery Fund under section eighteen-a,  
5 article twenty-two, chapter twenty-nine of this code and  
6 deposited into the Excess Lottery School Building Debt  
7 Service Fund and any federal subsidies received by the  
8 School Building Authority and deposited into the Excess  
9 Lottery School Building Debt Service Fund with respect  
10 to bonds authorized by this section.

**§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 re-funding 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 interest-  
5 bearing account with interest credited to and deposited in  
6 the School Building Capital Improvements Fund and  
7 expended in accordance with the provisions of this article.

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

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

44 shall immediately be canceled and shall not again be  
45 issued.

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

59 (b) There is continued in the State Treasury a special  
60 revenue fund named the School Building Debt Service  
61 Fund into which shall be deposited the amounts specified  
62 in section eighteen, article twenty-two, chapter twenty-  
63 nine of this code together with any federal subsidies  
64 received by the authority with respect to bonds authorized  
65 by this article for which moneys deposited in the School  
66 Building Debt Service Fund have been pledged. If the  
67 amounts deposited in the School Building Debt Service  
68 Fund exceed the amount which the authority is authorized  
69 to expend, the excess shall be set aside in a special surplus  
70 fund for the authority. Expenditures from this special  
71 surplus fund shall be made only in accordance with the  
72 procedures established in section eighteen, article two,  
73 chapter eleven-b. All amounts deposited in the fund shall  
74 be pledged to the repayment of the principal, interest and  
75 redemption premium, if any, on any revenue bonds or  
76 refunding revenue bonds authorized by this article for  
77 which moneys deposited in the School Building Debt  
78 Service Fund have been pledged by the authority: *Pro-*  
79 *vided*, That deposited moneys may not be pledged to the

80 repayment of any revenue bonds issued prior to the first  
81 day of January, one thousand nine hundred ninety-four, or  
82 with respect to revenue bonds issued for the purpose of  
83 refunding revenue bonds issued prior to the first day of  
84 January, one thousand nine hundred ninety-four. Addi-  
85 tionally, the authority may provide in the resolution and  
86 in the trust agreement for priorities on the revenues paid  
87 into the School Building Debt Service Fund that are  
88 necessary for the protection of the prior rights of the  
89 holders of bonds issued at different times under the  
90 provisions of this article. On or prior to the first day of  
91 May of each year, the authority shall certify to the State  
92 Lottery Director the principal and interest and coverage  
93 ratio requirements for the following fiscal year on any  
94 revenue bonds issued on or after the first day of January,  
95 one thousand nine hundred ninety-four, and for which  
96 moneys deposited in the School Building Debt Service  
97 Fund have been pledged, or will be pledged, for repayment  
98 pursuant to this section.

99 After the authority has issued bonds authorized by this  
100 article for which moneys deposited in the School Building  
101 Debt Service Fund have been pledged and after the  
102 requirements of all funds have been satisfied, including  
103 coverage and reserve funds established in connection with  
104 the bonds issued pursuant to this article, any balance  
105 remaining in the School Building Debt Service Fund may  
106 be used for the redemption of any of the outstanding  
107 bonds issued under this article, for which moneys depos-  
108 ited in the School Building Debt Service Fund have been  
109 pledged, which, by their terms, are then redeemable or for  
110 the purchase of the outstanding bonds at the market price,  
111 but not to exceed the price, if any, at which the bonds are  
112 redeemable and all bonds redeemed or purchased shall be  
113 immediately canceled and shall not again be issued:  
114 *Provided*, That after the authority has issued bonds  
115 authorized by this article and after the requirements of

116 debt service and all associated funds have been satisfied  
117 for the fiscal year for which moneys deposited in the  
118 School Building Debt Service Fund have been pledged,  
119 including coverage and reserve funds established in  
120 connection with the bonds issued pursuant to this article,  
121 any remaining balance in the School Building Debt  
122 Service Fund may be transferred to the School Construc-  
123 tion Fund created in subsection (c) of this section and used  
124 by the School Building Authority in its discretion to  
125 finance the cost of school construction or improvement  
126 projects authorized in accordance with the provisions of  
127 section sixteen of this article on a cash basis.

128 (c) There is continued in the State Treasury a special  
129 revenue fund named the School Construction Fund into  
130 which shall be deposited the amounts specified in section  
131 thirty, article fifteen, chapter eleven of this code, together  
132 with any moneys appropriated to the fund by the Legisla-  
133 ture.

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

152 and expended in accordance with the provisions of this  
153 article. Deposits to and expenditures from the School  
154 Construction Fund are subject to the provisions of subsec-  
155 tion (k), section fifteen of this article.

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

178 (e) There is created in the State Treasury a special  
179 revenue fund named the Excess Lottery School Building  
180 Debt Service Fund into which shall be deposited the  
181 amounts specified in section eighteen-a, article twenty-  
182 two, chapter twenty-nine of this code, together with any  
183 federal subsidies received by the authority with respect to  
184 bonds authorized by section four-b, article nine-d, chapter  
185 eighteen of this code. If the amounts deposited in the  
186 Excess Lottery School Building Debt Service Fund exceed  
187 the amount which the authority is authorized to expend,



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

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

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

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

244 The Legislature further finds and declares that the  
245 financial capacity of a county to construct, lease and  
246 improve school facilities depends upon the county's  
247 bonding capacity (local property wealth), voter willingness  
248 to pass bond issues and the county's ability to reallocate  
249 other available county funds instead of criteria related to  
250 educational needs or upon the ability of the School  
251 Building Authority created in this article to issue bonds  
252 that comply with the holding of the West Virginia Su-  
253 preme Court of Appeals or otherwise assist counties with  
254 the financing of facilities construction and improvement.  
255 The Legislature further finds and declares that this  
256 section, as well as section eighteen, article twenty-two,  
257 chapter twenty-nine of this code, had been reenacted  
258 during the first extraordinary session of the West Virginia  
259 Legislature in the year one thousand nine hundred

260 ninety-four in an attempt to comply with the holding of  
261 the Supreme Court of Appeals of West Virginia.

262 The Legislature further finds and declares that it  
263 intends, through the reenactment of this section and  
264 section eighteen, article twenty-two, chapter twenty-nine  
265 of this code, to dedicate a source of state revenues to  
266 special revenue funds for the purposes of paying the debt  
267 service on bonds and refunding bonds issued subsequent  
268 to the first day of January, one thousand nine hundred  
269 ninety-four, the proceeds of which will be used for the  
270 construction and improvement of school building facili-  
271 ties. The Legislature further finds and declares that it  
272 intends, through the reenactment of this section and  
273 section thirty, article fifteen, chapter eleven of this code  
274 and section eighteen, article twenty-two, chapter twenty-  
275 nine of this code, to appropriate revenues to two special  
276 revenue funds for the purposes of construction and  
277 improvement of school building facilities. Furthermore,  
278 the Legislature intends to encourage county boards to  
279 maintain existing levels of county funding for construc-  
280 tion, improvement and maintenance of school building  
281 facilities and to generate additional county funds for those  
282 purposes through bonds and special levies whenever  
283 possible. The Legislature further encourages the School  
284 Building Authority, the state board and county boards to  
285 propose uniform project specifications for comparable  
286 projects whenever possible to meet county needs at the  
287 lowest possible cost.

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

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

1 (a) The maximum aggregate amount of bonds outstand-  
2 ing at any time, for which the moneys in the School  
3 Building Debt Service Fund or the Excess Lottery School  
4 Building Debt Service Fund are to be pledged, is \$500  
5 million; however, any amount of bonds for which moneys  
6 have been deposited in a sinking fund, reserve fund or  
7 other fund established to provide payment of principal or  
8 interest on the bonds shall be excluded from the calcula-  
9 tion of the maximum aggregate amount of bonds out-  
10 standing at any time. The issuance of revenue bonds  
11 under the provisions of this article shall be authorized,  
12 from time to time, by resolution or resolutions of the  
13 School Building Authority, copies of which shall be  
14 provided to the Governor, the President of the Senate and  
15 the Speaker of the House of Delegates within five days of  
16 their approval, which shall set forth the proposed projects  
17 authorized in accordance with the provisions of section  
18 sixteen of this article and provide for the issuance of  
19 bonds in amounts sufficient, when sold as provided in this  
20 section, to provide moneys considered sufficient by the  
21 authority to pay the costs, less the amounts of any other  
22 funds available for the costs or from any appropriation,  
23 grant or gift for the costs: *Provided*, That bond issues from  
24 which bond revenues are to be distributed in accordance  
25 with section fifteen of this article for projects authorized  
26 pursuant to the provisions of section sixteen of this article  
27 are not required to set forth the proposed projects in the  
28 resolution. The resolution shall prescribe the rights and  
29 duties of the bondholders and the School Building Author-  
30 ity and, for that purpose, may prescribe the form of the  
31 trust agreement referred to in this section. The bonds may  
32 be issued, from time to time, in such amounts; shall be of  
33 such series; bear such date or dates; mature at such time or  
34 times not exceeding forty years from their respective

35 dates; bear interest at such rate or rates; be in such  
36 denominations; be in such form, either coupon or regis-  
37 tered, carrying such registration, exchangeability and  
38 interchangeability privileges; be payable in such medium  
39 of payment and at such place or places within or without  
40 the state; be subject to such terms of redemption at such  
41 prices not exceeding one hundred five percent of the  
42 principal amount of the bonds; and be entitled to such  
43 priorities on the revenues paid into the fund pledged for  
44 repayment of the bonds as may be provided in the resolu-  
45 tion authorizing the issuance of the bonds or in any trust  
46 agreement made in connection with the bonds: *Provided,*  
47 *however,* That revenue bonds issued on or after January 1,  
48 1994, and prior to January 1, 2008, which are secured by  
49 lottery proceeds from section eighteen, article twenty-two,  
50 chapter twenty-nine of this code shall mature at such time  
51 or times not exceeding ten years from their respective  
52 dates: *Provided further,* That revenue bonds issued on or  
53 after January 1, 2008, which are secured by lottery  
54 proceeds from section eighteen or eighteen-a, article  
55 twenty-two, chapter twenty-nine of this code, shall mature  
56 at such time or times not exceeding twenty years from  
57 their respective dates.

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

71 (c) Any pledge of revenues made by the School Building  
72 Authority for revenue bonds issued prior to July 20, 1993,  
73 pursuant to this article is valid and binding between the  
74 parties from the time the pledge is made; and the revenues  
75 pledged shall immediately be subject to the lien of the  
76 pledge without any further physical delivery of the  
77 revenues pledged or further act. The lien of the pledge is  
78 valid and binding against all parties having claims of any  
79 kind in tort, contract or otherwise, irrespective of whether  
80 the parties have notice of the lien of the pledge and the  
81 pledge shall be a prior and superior charge over any other  
82 use of the revenues pledged.

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

107 bonds with or without coupons, exchangeable for defini-  
108 tive bonds upon the issuance of the definitive bonds.

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

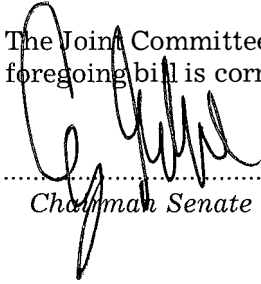
115 (f) The revenue bonds and the revenue refunding bonds  
116 and bonds issued for combined purposes, together with the  
117 interest on the bonds, are exempt from all taxation by the  
118 State of West Virginia, or by any county, school district,  
119 municipality or political subdivision thereof.

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

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

15 [Enr. Com. Sub. for Com. Sub. for S. B. No. 229

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



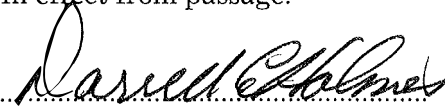
.....  
Chairman Senate Committee



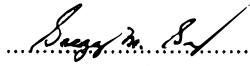
.....  
Chairman House Committee

Originated in the Senate.

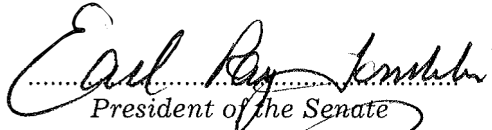
In effect from passage.



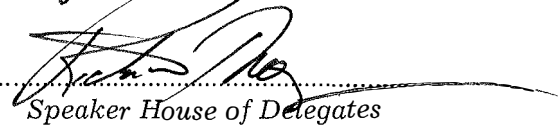
.....  
Clerk of the Senate



.....  
Clerk of the House of Delegates



.....  
President of the Senate



.....  
Speaker House of Delegates

The within *is approved* ..... this the *3/8* .....

Day of *March* ....., 2010.



.....  
Governor



PRESENTED TO THE  
GOVERNOR

MAR 30 2010

Time

4:20 pm