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.]
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:
Enr. Com. Sub. for Com. Sub. for S. B. No. 229

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 to issue bonds and pay debt service on bonds pursuant to the provisions of this article with funds distributed from the State Excess Lottery Fund under section eighteen-a, article twenty-two, chapter twenty-nine of this code and deposited into the Excess Lottery School Building Debt Service Fund and any federal subsidies received by the School Building Authority and deposited into the Excess Lottery School Building Debt Service Fund with respect 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 refunding revenue bonds; authority to finance projects on a cash basis.

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

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

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

(b) There is continued in the State Treasury a special
revenue fund named the School Building Debt Service
Fund into which shall be deposited the amounts specified
in section eighteen, article twenty-two, chapter twenty-
nine of this code together with any federal subsidies
received by the authority with respect to bonds authorized
by this article for which moneys deposited in the School
Building Debt Service Fund have been pledged. If the
amounts deposited in the School Building Debt Service
Fund exceed the amount which the authority is authorized
to expend, the excess shall be set aside in a special surplus
fund for the authority. Expenditures from this special
surplus fund shall be made only in accordance with the
procedures established in section eighteen, article two,
chapter eleven-b. All amounts deposited in the fund shall
be pledged to the repayment of the principal, interest and
redemption premium, if any, on any revenue bonds or
refunding revenue bonds authorized by this article for
which moneys deposited in the School Building Debt
Service Fund have been pledged by the authority: Pro-
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. Addition-
85 ally, 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 deposed-
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
deb.t service and all associated funds have been satisfied for the fiscal year for which moneys deposited in the School Building Debt Service Fund have been pledged, including coverage and reserve funds established in connection with the bonds issued pursuant to this article, any remaining balance in the School Building Debt Service Fund may be transferred to the School Construction Fund created in subsection (c) of this section and used by the School Building Authority in its discretion to finance the cost of school construction or improvement projects authorized in accordance with the provisions of section sixteen of this article on a cash basis.

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

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

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

(e) There is created in the State Treasury a special revenue fund named the Excess Lottery School Building Debt Service Fund into which shall be deposited the amounts specified in section eighteen-a, article twenty-two, chapter twenty-nine of this code, together with any federal subsidies received by the authority with respect to bonds authorized by section four-b, article nine-d, chapter eighteen of this code. If the amounts deposited in the Excess Lottery School Building Debt Service Fund exceed the amount which the authority is authorized to expend,
the excess shall be set aside in a special surplus fund for
the authority. Expenditures from this special surplus fund
shall be made only in accordance with the procedures
established in section eighteen, article two, chapter
eleven-b. All amounts deposited in the fund shall be
pledged, as designated by the authority, to the repayment
of the principal, interest and redemption premium, if any,
on revenue bonds or refunding revenue bonds authorized
by section four-b of this article. On or prior to the first
day of May of each year, the authority shall certify to the
State Lottery Director the principal and interest and
coverage ratio requirements for the following fiscal year
on any revenue bonds issued for which moneys deposited
in the Excess Lottery School Building Debt Service Fund
have been pledged, or will be pledged, for repayment
pursuant to this section.

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

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

The Legislature further finds and declares that the financial capacity of a county to construct, lease and improve school facilities depends upon the county's bonding capacity (local property wealth), voter willingness to pass bond issues and the county's ability to reallocate other available county funds instead of criteria related to educational needs or upon the ability of the School Building Authority created in this article to issue bonds that comply with the holding of the West Virginia Supreme Court of Appeals or otherwise assist counties with the financing of facilities construction and improvement.

The Legislature further finds and declares that this section, as well as section eighteen, article twenty-two, chapter twenty-nine of this code, had been reenacted during the first extraordinary session of the West Virginia Legislature in the year one thousand nine hundred
ninety-four in an attempt to comply with the holding of
the Supreme Court of Appeals of West Virginia.

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

The Legislature further finds and declares that it
intends, through the reenactment of this section and
section eighteen, article twenty-two, chapter twenty-nine
of this code, to comply with the provisions of sections four
and six, article X of the Constitution of West Virginia; and
section one, article XII of said constitution.
§18-9D-8. Use of proceeds of bonds; bonds exempt from taxation.

(a) The maximum aggregate amount of bonds outstanding at any time, for which the moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are to be pledged, is $500 million; however, any amount of bonds for which moneys have been deposited in a sinking fund, reserve fund or other fund established to provide payment of principal or interest on the bonds shall be excluded from the calculation of the maximum aggregate amount of bonds outstanding at any time. The issuance of revenue bonds under the provisions of this article shall be authorized, from time to time, by resolution or resolutions of the School Building Authority, copies of which shall be provided to the Governor, the President of the Senate and the Speaker of the House of Delegates within five days of their approval, which shall set forth the proposed projects authorized in accordance with the provisions of section sixteen of this article and provide for the issuance of bonds in amounts sufficient, when sold as provided in this section, to provide moneys considered sufficient by the authority to pay the costs, less the amounts of any other funds available for the costs or from any appropriation, grant or gift for the costs: Provided, That bond issues from which bond revenues are to be distributed in accordance with section fifteen of this article for projects authorized pursuant to the provisions of section sixteen of this article are not required to set forth the proposed projects in the resolution. The resolution shall prescribe the rights and duties of the bondholders and the School Building Authority and, for that purpose, may prescribe the form of the trust agreement referred to in this section. The bonds may be issued, from time to time, in such amounts; shall be of such series; bear such date or dates; mature at such time or times not exceeding forty years from their respective

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

(b) The bonds shall be signed by the Governor, his or her
designee or the vice chair of the authority, under the great
seal of the state, attested by the Secretary of State, and the
coupons attached to the bonds shall bear the facsimile
signature of the Governor, his or her designee or the vice
chair of the authority. In case any of the officers whose
signatures appear on the bonds or coupons cease to be
officers before the delivery of the bonds, the signatures
shall nevertheless be valid and sufficient for all purposes
the same as if the officers had remained in office until the
delivery. The revenue bonds shall be sold in the manner
determined by the authority to be for the best interests of
the state.
(c) Any pledge of revenues made by the School Building Authority for revenue bonds issued prior to July 20, 1993, pursuant to this article is valid and binding between the parties from the time the pledge is made; and the revenues pledged shall immediately be subject to the lien of the pledge without any further physical delivery of the revenues pledged or further act. The lien of the pledge is valid and binding against all parties having claims of any kind in tort, contract or otherwise, irrespective of whether the parties have notice of the lien of the pledge and the pledge shall be a prior and superior charge over any other use of the revenues pledged.

(d) The proceeds of any bonds shall be used solely for the purpose or purposes as may be generally or specifically set forth in the resolution authorizing those bonds and shall be disbursed in the manner and with the restrictions, if any, that the authority provides in the resolution authorizing the issuance of the bonds or in the trust agreement referred to in this section securing the bonds. If the proceeds of the bonds, by error in calculations or otherwise, are less than the cost of any projects specifically set forth in the resolution, additional bonds may in like manner be issued to provide the amount of the deficiency; and unless otherwise provided for in the resolution or trust agreement hereinafter mentioned, the additional bonds shall be considered to be of the same issue and are entitled to payment from the same fund, without preference or priority, as the bonds before issued for the projects. If the proceeds of bonds issued for the projects specifically set forth in the resolution authorizing the bonds issued by the authority exceed the cost of the bonds, the surplus may be used for any other projects authorized in accordance with the provisions of section sixteen of this article or in any other manner that the resolution authorizing the bonds provides. Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue temporary
bonds with or without coupons, exchangeable for definitive bonds upon the issuance of the definitive bonds.

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

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

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

(h) Any school construction bonds issued under this section shall be issued on parity with any existing School Building Authority bonds previously issued under this article.
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.................... approved this the........ Day of........... 2010.

Governor