

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 468**

4 (By Senators Kessler (Mr. President), Unger, Browning, Laird,
5 Miller, Palumbo, Beach, Yost, Williams, Plymale, Klempa and
6 McCabe)

7 _____
8 [Originating in the Committee on the Judiciary;
9 reported February 10, 2012.]
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13 A BILL to amend and reenact §29-26-2, §29-26-5 and §29-26-6 of the
14 Code of West Virginia, 1931, as amended; and to amend said
15 code by adding thereto eight new sections, designated
16 §29-26-7, §29-26-8, §29-26-9, §29-26-10, §29-26-11, §29-26-12,
17 §29-26-13 and §29-26-14, all relating to providing the West
18 Virginia Courthouse Facilities Improvement Authority with the
19 ability to issue bonds to raise funds for paying the costs of
20 approved modifications or construction of courthouse
21 facilities; defining terms; adding bond-related activities to
22 the powers of the authority; providing that moneys from the
23 West Virginia Courthouse Facilities Improvement Fund may be
24 disbursed for payment of debt service on bonds; authorizing
25 the authority to issue bonds; setting circumstances for bond
26 issuance and potential terms of bonds; authorizing repayment

1 of debt; permitting bonds be secured by trust agreement and
2 setting certain parameters; permitting refunding bonds;
3 clarifying that bonds by the authority are not a pledge of
4 faith and credit of the state, county, municipality or other
5 subdivision of the state; declaring bonds issued as negotiable
6 instruments under the Uniform Commercial Code; exempting all
7 bonds by the authority, as well as interest and income
8 thereon, from taxation by the state or any subdivision;
9 declaring that certain individuals have no personal liability
10 in relation to issuance of bonds; and granting cumulative
11 authority for exercising certain powers, including if no bonds
12 are issued by the authority.

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

14 That §29-26-2, §29-26-5 and §29-26-6 of the Code of West
15 Virginia, 1931, as amended, be amended and reenacted; and that said
16 code be amended by adding thereto eight new sections, designated
17 §29-26-7, §29-26-8, §29-26-9, §29-26-10, §29-26-11, §29-26-12, §29-
18 26-13 and §29-26-14, all to read as follows:

19 **ARTICLE 26. WEST VIRGINIA COURTHOUSE FACILITIES IMPROVEMENT**
20 **AUTHORITY.**

21 **§29-26-2. Definitions.**

22 The following terms, wherever used or referred to in this
23 article, have the following meaning:

24 (a) "Approved modifications or construction of courthouse
25 facilities" means any modification or construction of a courthouse

1 facility which has been recommended for assistance by the authority
2 according to the requirements of section four of this article;

3 (b) "Authority" means the West Virginia Courthouse Facilities
4 Improvement Authority;

5 (c) "Bonds" means bonds, revenue bonds, notes or other debt
6 instruments issued by the authority pursuant to this article,
7 whether the interest thereon is taxable or tax exempt for federal
8 income tax purposes;

9 ~~(c)~~ (d) "Cost" means the cost of construction, renovation,
10 repair and safety upgrading of courthouse facilities; the cost of
11 land, equipment, machinery, furnishings, installation of utilities
12 and other similar items convenient in connection with placing a
13 courthouse facility in operation; and the cost of financing,
14 interest during construction, professional service fees and all
15 other charges or expenses necessary, appurtenant or incidental to
16 the modification or construction of a courthouse facility; ~~and~~

17 ~~(d)~~ (e) "Courthouse facility" means buildings or structures,
18 or any portion thereof, which are owned by the county and occupied
19 exclusively by offices of county and judicial officials or by
20 courtrooms, county jails, or detention centers, day report centers
21 or other offices in which activities related to the operations of
22 county governments take place; and

23 (f) "Refunding bonds" means bonds issued by the authority
24 pursuant to this article to refund all or any part of bonds issued
25 by the authority pursuant to this article.

26 **§29-26-5. Powers of the authority.**

1 In addition to the powers set forth elsewhere in this article,
2 the authority may exercise the following powers when it considers
3 the exercise of these powers necessary and appropriate to carry out
4 and effectuate its responsibilities as defined by this article. The
5 authority may:

6 (a) Employ an executive director and an executive assistant as
7 may be necessary in the judgment of the authority and fix their
8 compensation;

9 (b) Acquire, hold and dispose of real and personal property
10 for its corporate purposes;

11 (c) Make bylaws for the management and rule of its affairs;

12 (d) Contract with and employ attorneys, bond counsel,
13 accountants, underwriters, financial advisors, trustees,
14 construction and financial experts, architects, engineers, managers
15 and such other employees and agents that are necessary in the
16 judgment of the authority and fix their compensation;

17 (e) Make contracts and execute all instruments necessary or
18 convenient to exercise the powers granted to it by this article;

19 (f) Renegotiate all contracts entered into by it whenever, due
20 to a change in situation, it appears to the authority that its
21 interests will be best served;

22 (g) Accept and expend any gift, grant, contribution, bequest
23 or endowment of money to, or for the benefit of, the authority,
24 from the State of West Virginia or any other source;

25 (h) Issue bonds from time to time, in accordance with the
26 provisions of this article, to fulfill the purposes set forth in

1 this article;

2 ~~(h)~~ (i) Identify any alternative sources of funding, whether
3 privately or publicly administered, and assist county applicants in
4 the securing of alternative sources of funding; and

5 ~~(i)~~ (j) Do all things necessary or convenient to carry out the
6 powers given in this article.

7 **§29-26-6. The Courthouse Facilities Improvement Fund.**

8 (a) There is hereby created in the State Treasury a special
9 revenue account to be known as the West Virginia Courthouse
10 Facilities Improvement Fund. The West Virginia Courthouse
11 Facilities Improvement Fund may receive any gifts, grants,
12 contributions or other money from any source which is specifically
13 designated for deposit in the fund.

14 (b) The authority shall undertake a study on the condition and
15 state of need of every courthouse facility throughout the State of
16 West Virginia, and shall determine the estimated cost of the
17 improvements which are necessary to bring each facility into
18 conformity with requirements outlined in this article. ~~The~~
19 ~~authority shall submit to the Legislature, on or before the first~~
20 ~~day of January, two thousand two, a report which shall contain the~~
21 ~~estimate of the cost, a plan for the financing of the cost, and an~~
22 ~~estimated prioritized schedule for the implementation and financing~~
23 ~~of the improvements to be made pursuant to the provisions of this~~
24 ~~article.~~

25 (c) The moneys of the West Virginia Courthouse Facilities
26 Improvement Fund shall be disbursed by the authority for the

1 payment of debt service on bonds issued pursuant to the provisions
2 of this article, funding of approved modifications or construction
3 of ~~court~~ courthouse facilities and to pay expenses of the authority
4 in administering the provisions of this article.

5 (d) Any disbursements from the West Virginia Courthouse
6 Facilities Improvement Fund allocated for approved modifications or
7 construction of courthouse facilities may be made contingent upon
8 local appropriations or gifts in money or in kind for the support
9 of the modifications or construction.

10 (e) Nothing in this article may be construed to mandate
11 funding for the West Virginia Court Facilities Improvement Fund or
12 to require any appropriation by the Legislature.

13 **§29-26-7. West Virginia Courthouse Facilities Improvement**
14 **Authority authorized to issue bonds and pay debt**
15 **service on bonds with funds from West Virginia**
16 **Courthouse Facilities Improvement Fund.**

17 (a) The authority is expressly authorized to issue bonds and
18 pay debt service on bonds pursuant to the provisions of this
19 article with funds deposited into the West Virginia Courthouse
20 Facilities Improvement Fund.

21 (b) The bonds shall be authorized to be issued by the
22 authority pursuant to the provisions of this article, and shall be
23 secured, shall bear such date and shall mature at such time, not
24 exceeding thirty years from the date of issue, shall bear interest
25 at such rate or rates, including variable rates, be in such

1 denominations, be in such form, carry such registration privileges,
2 be payable in such medium of payment and at such place or places
3 and such time or times and be subject to such terms of redemption
4 as the authority may authorize. The bonds of the authority may be
5 sold by the authority, at public or private sale, at or not less
6 than the price the authority determines. The bonds shall be
7 executed by manual or facsimile signature by the chair of the
8 authority and attested, manually or by facsimile signature, by the
9 secretary of the board. In case any officer whose signature, or a
10 facsimile of whose signature, appears on any bonds ceases to be
11 such officer before delivery of such bonds, such signature or
12 facsimile is nevertheless sufficient for all purposes the same as
13 if he or she had remained in office until such delivery.

14 (c) After the authority has issued bonds authorized by this
15 article and after the requirements of debt service and all
16 associated funds have been satisfied for the fiscal year for which
17 moneys deposited in the West Virginia Courthouse Facilities
18 Improvement Fund have been pledged, including coverage and reserve
19 funds established in connection with the bonds issued pursuant to
20 this article, any remaining balance in the West Virginia Courthouse
21 Facilities Improvement Fund may be used by the authority in its
22 discretion to fund approved modification or construction of
23 courthouse facilities and to pay expenses of the authority in
24 administering the provisions of this article, all in accordance
25 with the provisions of this article, on a cash basis. All amounts
26 deposited in the West Virginia Courthouse Facilities Improvement

1 Fund shall be pledged to the repayment of the principal, interest
2 and redemption premium, if any, on any bonds or refunding bonds
3 authorized by the provisions of this article. The authority may
4 further provide in any trust agreement for priorities on the funds
5 deposited into the West Virginia Courthouse Facilities Improvement
6 Fund as may be necessary for the protection of the prior rights of
7 the holders of bonds issued at different times under the provisions
8 of this article.

9 **§29-26-8. Trustee for bondholders; contents of trust agreement;
10 pledge or assignment of revenues and funds.**

11 For bonds issued pursuant to the provisions of this article,
12 in the discretion of the authority, any bonds, including refunding
13 bonds issued by the authority, may be secured by a trust agreement
14 between the authority and a corporate trustee, which trustee may be
15 any bank or trust company within or without the state. Any such
16 trust agreement may contain such binding covenants with the holders
17 of such bonds as to any matter or provisions as are deemed
18 necessary or advisable to the authority to enhance the
19 marketability and security of such bonds and may also contain such
20 other provisions with respect thereto as the authority may
21 authorize and approve. Any resolution adopted by the authority or
22 any trust agreement may contain a pledge or assignment of revenues
23 to be received in connection with the financing.

24 **§29-26-9. Refunding bonds.**

25 Any bonds issued by the authority pursuant to the provisions

1 of this article or any other provision of this code and at any time
2 outstanding may at any time and from time to time be refunded by
3 the authority by the issuance of its refunding bonds in such amount
4 as it may deem necessary to refund the principal of the bonds so to
5 be refunded, together with any unpaid interest thereon, to provide
6 additional funds for the purposes of the authority, and to pay any
7 premiums and commissions necessary to be paid in connection
8 therewith. Any such refunding may be effected by whether the bonds
9 to be refunded shall have then matured or shall thereafter mature,
10 either by sale of the refunding bonds and the application of the
11 proceeds thereof for the redemption of the bonds to be refunded
12 thereby or by exchange of the refunding bonds for the bonds to be
13 refunded thereby. Such refunding bonds shall be issued in
14 conformance with the provisions of this article related to issuance
15 of bonds.

16 **§29-26-10. Obligations of authority undertaken pursuant to this**
17 **article not debt of state, county, municipality or**
18 **any political subdivision.**

19 (a) Bonds, including refunding bonds, issued under the
20 authority of this article and any other obligations undertaken by
21 the authority pursuant to this article, shall not constitute a debt
22 or a pledge of the faith and credit or taxing power of this state
23 or of any county, municipality or any other political subdivision
24 of this state, and the holders and owners thereof shall have no
25 right to have taxes levied by the Legislature or the taxing

1 authority of any county, municipality or any other political
2 subdivision of this state for the payment of the principal thereof
3 or interest thereon, but such bonds and other obligations shall be
4 payable solely from the revenues and funds pledged for their
5 payment as authorized by this article unless the bonds are refunded
6 by refunding bonds issued under the authority of this article,
7 which bonds or refunding bonds shall be payable solely from
8 revenues and funds pledged for their payment as authorized by this
9 article.

10 (b) All such bonds, and all documents evidencing any other
11 obligation, shall contain on the face thereof a statement to the
12 effect that the bonds or such other obligation as to both principal
13 and interest are not debts of the state or any county, municipality
14 or political subdivision thereof, but are payable solely from
15 revenues and funds pledged for their payment as authorized by this
16 article.

17 **§29-26-11. Negotiability of bonds issued pursuant to this article.**

18 Whether or not the bonds issued pursuant to this article are
19 of such form or character as to be negotiable instruments under the
20 Uniform Commercial Code, such bonds are negotiable instruments
21 within the meaning of and for all the purposes of the Uniform
22 Commercial Code, subject only to the provisions of the bonds for
23 registration.

24 **§29-26-12. Exemption from taxation.**

25 All bonds of the authority, and all interest and income
26 thereon, shall be exempt from all taxation by this state and any

1 county, municipality, political subdivision or agency thereof,
2 except inheritance taxes.

3 **§29-26-13. Personal liability; persons executing bonds issued**
4 **pursuant to this article.**

5 Neither the members or officers of the authority or of any
6 authority, agency or office, nor any person executing the bonds
7 issued pursuant to the provisions of this article, shall be liable
8 personally on such bonds or be subject to any personal liability or
9 accountability by reason of the issuance thereof.

10 **§29-26-14. Cumulative authority as to powers conferred;**
11 **applicability of other statutes and charters;**
12 **bonds issued pursuant to this article.**

13 The provisions of this article relating to the issuance of
14 bonds shall be construed as granting cumulative authority for the
15 exercise of the various powers herein conferred, and neither the
16 powers nor any bonds issued hereunder shall be affected or limited
17 by any other statutory or charter provision now or hereafter in
18 force, other than as may be provided in this article, it being the
19 purpose and intention of this article to create full, separate and
20 complete additional powers. The various powers conferred herein
21 may be exercised independently and notwithstanding that no bonds
22 are issued hereunder.