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OFFICE OF THE SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
**SEVENTY-EIGHTH LEGISLATURE**  
**REGULAR SESSION, 2008**

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**ENROLLED**

**Senate Bill No. 297**

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

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[Passed March 7, 2008; in effect from passage.]

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AN ACT to amend and reenact §18-9D-2, §18-9D-6, §18-9D-8, §18-9D-13 and §18-9D-15 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §18-9D-4b; and to amend and reenact §29-22-18a of said code, all relating generally to the School Building Authority; modifying definitions and qualifications of construction projects and major improvement projects; authorizing the School Building Authority to issue bonds by using moneys deposited in the Excess Lottery School Building Debt Service Fund from the State Excess Lottery Fund; creating Excess Lottery

School Building Debt Service Fund; providing that moneys from the State Excess Lottery Fund are deposited into the Excess Lottery School Building Debt Service Fund; and clarifying the powers of the authority in issuing bonds.

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

That §18-9D-2, §18-9D-6, §18-9D-8, §18-9D-13 and §18-9D-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §18-9D-4b; and that §29-22-18a of said code be amended and reenacted, all to read as follows:

## **CHAPTER 18. EDUCATION.**

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

#### **§18-9D-2. Definitions.**

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

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

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

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

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

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

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

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

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

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

40 article that:

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

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

48 (C) Includes the school major improvement plan;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**§18-9D-4b. School Building Authority authorized to issue  
bonds and pay debt service on bonds with  
funds distributed from State Excess Lottery  
Fund.**

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

**§18-9D-6. School Building Capital Improvements Fund in  
State Treasury; School Construction Fund in  
State Treasury; School Building Debt Service  
Fund in State Treasury; School Improvement  
Fund in State Treasury; collections to be paid  
into special funds; Excess Lottery School  
Building Debt Service Fund in State Treasury;  
authority to pledge the collections as security  
for refunding revenue bonds; authority to  
finance projects on a cash basis.**



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

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

33 provisions of this article.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**§18-9D-15. Legislative intent; allocation of money among  
categories of projects; lease-purchase options;  
limitation on time period for expenditure of**



**project allocation; county maintenance budget requirements; project disbursements over period of years; preference for multicounty arrangements; submission of project designs; set-aside to encourage local participation.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

319 than one year subject to the following:

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

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

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

## **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

### **ARTICLE 22. STATE LOTTERY ACT.**

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

284 (B) Health clinics and other health facilities;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

391 revenues are available to transfer the deficiency.

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

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

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

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

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

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

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

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

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

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

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

Originated in the Senate.

In effect from passage.

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

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

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

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

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

*[Signature]*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 18 2008

Time 3:05 pm