

HB 113

FILED

2009 JUN 17 PM 4: 32

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
FIRST EXTRAORDINARY SESSION, 2009



ENROLLED

House Bill No. 113

(By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]



Passed June 2, 2009

In Effect from Passage

E N R O L L E D

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H. B. 113

OFFICE WEST VIRGINIA
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(BY MR. SPEAKER, MR. THOMPSON, AND DELEGATE ARMSTEAD)
[BY REQUEST OF THE EXECUTIVE]

[Passed June 2, 2009; in effect from passage.]

AN ACT to amend and reenact §31-15-6 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §31-15-16a; to amend and reenact §18B-10-8 of said code; and to amend and reenact §29-22-18 of said code, all relating to providing funding for institutions of higher education, state parks, the state capitol complex, other state facilities or tourism sites; authorizing the Economic Development Authority to issue and refund revenue bonds from time to time for capital improvement projects; providing for bond amounts and maturity; allocating bond proceeds; establishing procedures for project selection; providing for the allocation of lottery revenues for the bond debt payments; and authorizing the use of moneys in the Community and Technical College Capital Improvement Fund for capital improvements and capital projects.

Be it enacted by the Legislature of West Virginia:

That §31-15-6 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 §31-15-16a; that §18B-10-8 of said code be amended and reenacted; and that §29-22-18 of said code be amended and reenacted, all to read as follows:

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-6. General powers of authority.

1 The authority, as a public corporation and governmental
2 instrumentality exercising public powers of the state, shall
3 have and may exercise all powers necessary or appropriate to
4 carry out the purposes of this article, including the power:

5 (a) To cooperate with industrial development agencies in
6 efforts to promote the expansion of industrial, commercial,
7 manufacturing and tourist activity in this state.

8 (b) To determine, upon the proper application of an
9 industrial development agency or an enterprise, whether the
10 declared public purposes of this article have been or will be
11 accomplished by the establishment by such agency or
12 enterprise of a project in this state.

13 (c) To conduct examinations and investigations and to
14 hear testimony and take proof, under oath or affirmation, at
15 public or private hearings, on any matter relevant to this
16 article and necessary for information on the establishment of
17 any project.

18 (d) To issue subpoenas requiring the attendance of
19 witnesses and the production of books and papers relevant to
20 any hearing before such authority or one or more members
21 appointed by it to conduct any hearing.

22 (e) To apply to the circuit court having venue of such
23 offense to have punished for contempt any witness who
24 refuses to obey a subpoena, to be sworn or affirmed or to
25 testify or who commits any contempt after being summoned
26 to appear.

27 (f) To authorize any member of the authority to conduct
28 hearings, administer oaths, take affidavits and issue
29 subpoenas.

30 (g) To financially assist projects by insuring obligations
31 in the manner provided in this article through the use of the
32 insurance fund.

33 (h) To finance any projects by making loans to industrial
34 development agencies or enterprises upon such terms as the
35 authority shall deem appropriate: *Provided*, That nothing
36 contained in this subsection (h) or under any other provision
37 in this article shall be construed as permitting the authority to
38 make loans for working capital: *Provided, however*, That
39 nothing contained in this article shall be construed as
40 prohibiting the authority from insuring loans for working
41 capital made to industrial development agencies or to
42 enterprises by financial institutions: *Provided further*, That
43 nothing contained in this subsection or any other provision of
44 this article shall be construed as permitting the authority to
45 refinance existing debt except when such refinancing will
46 result in the expansion of the enterprise whose debt is to be
47 refinanced or in the creation of new jobs.

48 (i) To issue revenue bonds or notes to fulfill the purposes
49 of this article, and to secure the payment of such bonds or
50 notes, all as hereinafter provided.

51 (j) To issue and deliver revenue bonds or notes in
52 exchange for a project.

53 (k) To borrow money for its purposes and issue bonds or
54 notes for the money and provide for the rights of the holders
55 of the bonds or notes or other negotiable instruments, to
56 secure the bonds or notes by a deed of trust on, or an
57 assignment or pledge of, any or all of its property and
58 property of the project, including any part of the security for
59 loans, and the authority may issue and sell its bonds and
60 notes, by public or private sale, in such principal amounts as
61 it shall deem necessary to provide funds for any purposes
62 under this article, including the making of loans for the
63 purposes set forth in this article.

64 (l) To maintain such sinking funds and reserves as the
65 board shall determine appropriate for the purposes of meeting
66 future monetary obligations and needs of the authority.

67 (m) To sue and be sued, implead and be impleaded, and
68 complain and defend in any court.

69 (n) To adopt, use and alter at will a corporate seal.

70 (o) To make, amend, repeal and adopt both bylaws and
71 rules and regulations for the management and regulation of
72 its affairs.

73 (p) To appoint officers, agents and employees and to
74 contract for and engage the services of consultants.

75 (q) To make contracts of every kind and nature to execute
76 all instruments necessary or convenient for carrying on its
77 business.

78 (r) To accept grants and loans from and enter into
79 contracts and other transactions with any federal agency.

80 (s) To take title by conveyance or foreclosure to any
81 project where acquisition is necessary to protect any loan
82 previously made by the authority and to sell, by public or
83 private sale, transfer, lease or convey such project to any
84 enterprise.

85 (t) To participate in any reorganization proceeding
86 pending pursuant to the United States Code (being the act of
87 Congress establishing a uniform system of bankruptcy
88 throughout the United States, as amended) or in any
89 receivership proceeding in a state or federal court for the
90 reorganization or liquidation of an enterprise. The authority
91 may file its claim against any such enterprise in any of the
92 foregoing proceedings, vote upon any questions pending
93 therein which requires the approval of the creditors
94 participating in any reorganization proceeding or
95 receivership, exchange any evidence of such indebtedness for
96 any property, security or evidence of indebtedness offered as
97 a part of the reorganization of such enterprise or of any other
98 entity formed to acquire the assets thereof and may
99 compromise or reduce the amount of any indebtedness owing
100 to it as a part of any such reorganization.

101 (u) To acquire, construct, maintain, improve, repair,
102 replace and operate projects within this state, as well as
103 streets, roads, alleys, sidewalks, crosswalks and other means
104 of ingress and egress to and from projects located within this
105 state.

106 (v) To acquire, construct, maintain, improve, repair and
107 replace and operate pipelines, electric transmission lines,
108 waterlines, sewer lines, electric power substations,
109 waterworks systems, sewage treatment and disposal facilities
110 and any combinations thereof for the use and benefit of any
111 enterprise located within this state.

112 (w) To acquire watersheds, water and riparian rights,
113 rights-of-way, easements, licenses and any and all other
114 property, property rights and appurtenances for the use and
115 benefit of any enterprise located within this state.

116 (x) To acquire, by purchase, lease, donation or eminent
117 domain, any real or personal property, or any right or interest
118 therein, as may be necessary or convenient to carry out the
119 purposes of the authority. Title to all property, property rights
120 and interests acquired by the authority shall be taken in the
121 name of the authority.

122 (y) To issue renewal notes, or security interests, to issue
123 bonds to pay notes or security interests and, whenever it
124 deems refunding expedient, to refund any bonds or notes by
125 the issuance of new bonds or notes, whether the bonds or
126 notes to be refunded have or have not matured and whether
127 or not the authority originally issued the bonds or notes to be
128 refunded.

129 (z) To apply the proceeds from the sale of renewal notes,
130 security interests or refunding bonds or notes to the purchase,
131 redemption or payment of the notes, security interests or
132 bonds or notes to be refunded.

133 (aa) To accept gifts or grants of property, funds, security
134 interests, money, materials, labor, supplies or services from
135 the United States of America or from any governmental unit
136 or any person, firm or corporation, and to carry out the terms
137 or provisions of, or make agreements with respect to, or
138 pledge, any gifts or grants, and to do any and all things
139 necessary, useful, desirable or convenient in connection with
140 the procuring, acceptance or disposition of gifts or grants.

141 (bb) To the extent permitted under its contracts with the
142 holders of bonds, security interests or notes of the authority,

143 to consent to any modification of the rate of interest, time of
144 payment of any installment of principal or interest, security
145 or any other term of any bond, security interests, note or
146 contract or agreement of any kind to which the authority is a
147 party.

148 (cc) To sell loans, security interests or other obligations
149 in the loan portfolio of the authority. Such security interests
150 shall be evidenced by instruments issued by the authority.
151 Proceeds from the sale of loans, security interests, or other
152 obligations may be used in the same manner and for the same
153 purposes as bond and note revenues.

154 (dd) To procure insurance against any losses in
155 connection with its property, operations or assets in such
156 amounts and from such insurers as the authority deems
157 desirable.

158 (ee) To sell, license, lease, mortgage, assign, pledge or
159 donate its property, both real and personal, or any right or
160 interest therein to another or authorize the possession,
161 occupancy or use of such property or any right or interest
162 therein by another, in such manner and upon such terms as it
163 deems appropriate.

164 (ff) To participate with the state and federal agencies in
165 efforts to promote the expansion of commercial and industrial
166 development in this state.

167 (gg) To finance, organize, conduct, sponsor, participate
168 and assist in the conduct of special institutes, conferences,
169 demonstrations and studies relating to the stimulation and
170 formation of business, industry and trade endeavors.

171 (hh) To conduct, finance and participate in technological,
172 business, financial and other studies related to business and
173 economic development.

174 (ii) To conduct, sponsor, finance, participate and assist
175 in the preparation of business plans, financing plans and other
176 proposals of new or established businesses suitable for
177 support by the authority.

178 (jj) To prepare, publish and distribute, with or without
179 charge as the authority may determine, such technical studies,
180 reports, bulletins and other materials as it deems appropriate,
181 subject only to the maintenance and respect for
182 confidentiality of client proprietary information.

183 (kk) To exercise such other and additional powers as
184 may be necessary or appropriate for the exercise of the
185 powers herein conferred.

186 (ll) To exercise all of the powers which a corporation
187 may lawfully exercise under the laws of this state.

188 (mm) To contract for the provision of legal services by
189 private counsel, and notwithstanding the provisions of article
190 three, chapter five, such counsel may, but is not limited to,
191 represent the authority in court, negotiate contracts and other
192 agreements on behalf of the authority, render advice to the
193 authority on any matter relating thereto, prepare contracts and
194 other agreements, and provide such other legal services as
195 may be requested by the authority.

196 (nn) To develop, maintain, operate and apply for the
197 establishment of foreign trade zones pursuant to and in
198 accordance with all applicable provisions of federal law.

199 (oo) To exercise the powers and responsibilities
200 previously vested in the state building commission by section
201 eleven-a, article six, chapter five including, but not limited to,
202 the authority to refund bonds issued in accordance with that
203 section.

§31-15-16a. Bonds for capital improvements at institutions of higher education, state parks, the state capitol complex, other state facilities or tourism sites; limitations; authority to issue revenue bonds; use of funds to pay for projects.

1 (a)(1) The economic development authority shall, in
2 accordance with the provisions of this article, issue revenue
3 bonds from time to time, to pay for a portion of the cost of
4 constructing, equipping, improving or maintaining capital
5 improvement projects under this section or to refund the
6 bonds, at the discretion of the authority. The principal
7 amount of the bonds issued under this section shall not
8 exceed, in the aggregate, \$150 million. Any revenue bonds
9 issued on or after the effective date of this section which are
10 secured by lottery proceeds shall mature at a time or times
11 not exceeding thirty years from their respective dates. The
12 principal of, and the interest and redemption premium, if any,
13 on the bonds shall be payable solely from the "Education,
14 Arts, Sciences and Tourism Debt Service Fund" established
15 in section eleven-a, article six, chapter five and continued by
16 this section.

17 (2) All amounts deposited in the fund shall be pledged to
18 the repayment of the principal, interest and redemption
19 premium, if any, on any revenue bonds or refunding revenue
20 bonds authorized by this section. The authority may further
21 provide in the trust agreement for priorities on the revenues
22 paid into the Education, Arts, Sciences and Tourism Debt
23 Service Fund as may be necessary for the protection of the
24 prior rights of the holders of bonds issued at different times
25 under the provisions of this section or section eleven-a,
26 article six, chapter five of this code. The bonds issued
27 pursuant to this section shall be separate from all other bonds
28 which may be or have been issued from time to time under
29 the provisions of section eleven-a, article six, chapter five of

30 this code. The Education, Arts, Sciences and Tourism Debt
31 Service Fund shall be pledged solely for the repayment of
32 bonds issued pursuant to this section and section eleven-a,
33 article six, chapter five of this code. On or prior to May 1 of
34 each year, commencing May 1, 2010, the authority shall
35 certify to the state lottery director the principal and interest
36 and coverage ratio requirements for the following fiscal year
37 on any revenue bonds or refunding revenue bonds issued
38 pursuant to this section, and for which moneys deposited in
39 the Education, Arts, Sciences and Tourism Debt Service
40 Fund have been pledged, or will be pledged, for repayment
41 pursuant to this section.

42 (3) After the authority has issued bonds authorized by
43 this section, and after the requirements of all funds have been
44 satisfied, including coverage and reserve funds established in
45 connection with the bonds issued pursuant to this section, any
46 balance remaining in the Education, Arts, Sciences and
47 Tourism Debt Service Fund may be used for the redemption
48 of any of the outstanding bonds issued under this section
49 which, by their terms, are then redeemable or for the
50 purchase of the outstanding bonds at the market price, but not
51 to exceed the price, if any, at which redeemable, and all
52 bonds redeemed or purchased shall be immediately canceled
53 and shall not again be issued.

54 (b) The authority shall expend sixty percent of the bond
55 proceeds, net of issuance costs, reserve funds and refunding
56 costs, for certified capital improvement projects at state
57 institutions of higher education. The Higher Education
58 Policy Commission shall submit a proposed list of projects
59 which will receive funds from the bond proceeds to the
60 Governor on or before January 1, 2010. Thereafter, the
61 Governor shall certify to the authority on or before February
62 1, 2010, a list of those capital improvement projects at state
63 institutions of higher education which will receive funds from

64 the proceeds of bonds issued pursuant to this section. Once
65 certified, the list may not thereafter be altered or amended
66 other than by legislative enactment.

67 (c) The authority shall expend the balance of the bond
68 proceeds for certified projects at state parks, the capitol
69 complex, other state facilities or tourism sites. The secretary
70 of the department of administration, the director of the
71 division of natural resources, the director of the West
72 Virginia development office and a representative of the
73 capitol building commission, other than the secretary of the
74 department of administration, who shall be selected by the
75 capitol building commission shall submit a proposed list of
76 projects which will receive funds from the bond proceeds to
77 the Governor on or before January 1, 2010. Thereafter, the
78 Governor shall certify to the authority on or before February
79 1, 2010, a list of those capital improvement projects at state
80 parks, the state capitol complex, other state facilities or
81 tourism sites which will receive funds from the proceeds of
82 bonds issued pursuant to this section. Once certified, the list
83 may not thereafter be altered or amended other than by
84 legislative enactment.

CHAPTER 18B. HIGHER EDUCATION.

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

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

1 (a) This section and any rules adopted by the
2 commission, council or both, in accordance with this section

3 and article three-a, chapter twenty-nine-a of this code,
4 governs the collection, disposition and use of the capital and
5 auxiliary capital fees authorized by section one of this article.
6 The statutory provisions governing collection and disposition
7 of capital funds in place prior to the enactment of this section
8 remain in effect.

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

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

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

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

29 (2) The fees collected from the students pursuant to
30 section one of this article. The fees shall be expended by the
31 commission and governing boards for the payment of the
32 principal of or interest on any revenue bonds issued by the
33 board of regents or the succeeding governing boards for

34 which the fees were pledged prior to the enactment of this
35 section.

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

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

44 (2) The construction or acquisition of new buildings;

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

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

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

59 (f) The governing boards, in their discretion, may use the
60 moneys in the special capital improvements funds and special
61 auxiliary improvement funds to finance the costs of the
62 purposes set forth in this section on a cash basis. The

63 commission, when singly or jointly requested by the
64 governing boards, periodically may issue revenue bonds of
65 the state as provided in this section to finance all or part of
66 the purposes and pledge all or any part of the moneys in such
67 special funds for the payment of the principal of and interest
68 on the revenue bonds, and for reserves for the revenue bonds.
69 Any pledge of the special funds for the revenue bonds shall
70 be a prior and superior charge on the special funds over the
71 use of any of the moneys in the funds to pay for the cost of
72 any of the purposes on a cash basis. Any expenditures from
73 the special funds, other than for the retirement of revenue
74 bonds, may be made by the commission or governing boards
75 only to meet the cost of a predetermined capital
76 improvements program for one or more of the state
77 institutions of higher education, in the order of priority
78 agreed upon by the governing board or boards and the
79 commission and for which the aggregate revenue collections
80 projected are presented to the Governor for inclusion in the
81 annual budget bill, and are approved by the Legislature for
82 expenditure.

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

90 (h) The issuance of the revenue bonds shall be authorized
91 by a resolution adopted by the governing board receiving the
92 proceeds and the commission and the revenue bonds shall
93 bear the date or dates; mature at such time or times not
94 exceeding forty years from their respective dates; be in such
95 form either coupon or registered, with such exchangeability
96 and interchangeability privileges; be payable in such medium

97 of payment and at such place or places, within or without the
98 state; be subject to such terms of prior redemption at such
99 prices not exceeding one hundred five per centum of the
100 principal amount thereof; and shall have the other terms and
101 provisions determined by the governing board receiving the
102 proceeds and the commission. The revenue bonds shall be
103 signed by the Governor and by the chancellor of the
104 commission or the chair of the governing boards authorizing
105 the issuance thereof, under the Great Seal of the State,
106 attested by the Secretary of State, and the coupons attached
107 to the revenue bonds shall bear the facsimile signature of the
108 chancellor of the commission or the chair of the appropriate
109 governing boards. The revenue bonds shall be sold in the
110 manner the commission or governing board determines is for
111 the best interests of the state.

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

132 governing boards in the best interests of the state and to
133 enhance the marketability of the revenue bonds.

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

151 (k) Additional revenue bonds may be issued by the
152 commission or governing boards pursuant to this section and
153 financed by additional revenues or funds dedicated from
154 other sources. There is hereby created in the State Treasury
155 a special revenue fund known as the Community and
156 Technical College Capital Improvement Fund into which
157 shall be deposited the amounts specified in subsection (j),
158 section eighteen, article twenty-two, chapter twenty-nine of
159 this code. All amounts deposited in the fund shall be pledged
160 to the repayment of the principal, interest and redemption
161 premium, if any, on any revenue bonds or refunding revenue
162 bonds authorized by the commission for community and
163 technical college capital improvements or used by the
164 Council on a cash basis as provided under subdivision (4),
165 subsection (j), section eighteen, article twenty-two, chapter

166 twenty-nine of this code for community and technical college
167 capital improvements or capital projects.

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

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

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

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

191 (p) Effective July 1, 2004, the capital and auxiliary
192 capital fees authorized by this section and section one of this
193 article are in lieu of any other fees set out in this code for
194 capital and auxiliary capital projects to benefit public higher
195 education institutions. Notwithstanding any other provisions
196 of this code to the contrary, in the event any capital, tuition,

197 registration or auxiliary fees are pledged to the payment of
198 any revenue bonds issued pursuant to any general bond
199 resolutions of the commission, any of its predecessors or any
200 institution, adopted prior to the effective date of this section,
201 such fees shall remain in effect in amounts not less than the
202 amounts in effect as of that date, until the revenue bonds
203 payable from any of the fees have been paid or the pledge of
204 the fees is otherwise legally discharged.

CHAPTER TWENTY-NINE. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

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

1 (a) There is continued a special revenue fund in the State
2 Treasury which shall be designated and known as the State
3 Lottery Fund. The fund consists of all appropriations to the
4 fund and all interest earned from investment of the fund and
5 any gifts, grants or contributions received by the fund. All
6 revenues received from the sale of lottery tickets, materials
7 and games shall be deposited with the State Treasurer and
8 placed into the State Lottery Fund. The revenue shall be
9 disbursed in the manner provided in this section for the
10 purposes stated in this section and shall not be treated by the
11 Auditor and Treasurer as part of the general revenue of the
12 state.

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

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

19 (d) Not more than fifteen percent of the gross amount
20 received from each lottery may be allocated to and may be
21 disbursed as necessary for fund operation and administration
22 expenses.

23 (e) The excess of the aggregate of the gross amount
24 received from all lotteries over the sum of the amounts
25 allocated by subsections (c) and (d) of this section shall be
26 allocated as net profit. In the event that the percentage
27 allotted for operations and administration generates a surplus,
28 the surplus shall be allowed to accumulate to an amount not
29 to exceed \$250,000. On a monthly basis, the director shall
30 report to the Joint Committee on Government and Finance of
31 the Legislature any surplus in excess of \$250,000 and remit
32 to the State Treasurer the entire amount of those surplus
33 funds in excess of \$250,000 which shall be allocated as net
34 profit.

35 (f) After first satisfying the requirements for funds
36 dedicated to the School Building Debt Service Fund in
37 subsection (h) of this section to retire the bonds authorized to
38 be issued pursuant to section eight, article nine-d, chapter
39 eighteen of this code, then satisfying the requirements for
40 funds dedicated to the Education, Arts, Sciences and Tourism
41 Debt Service Fund, in subsection (i) of this section to retire
42 the bonds authorized to be issued pursuant to section eleven-
43 a, article six, chapter five of this code and section sixteen-a,
44 article fifteen, chapter thirty-one of this code, and then

45 satisfying the requirements for funds dedicated to the
46 Community and Technical College Capital Improvement
47 Fund in subsection (j) of this section to retire the bonds for
48 community and technical college capital improvements
49 authorized to be issued pursuant to section eight, article ten,
50 chapter eighteen-b of this code, any and all remaining funds
51 in the State Lottery Fund shall be made available to pay debt
52 service in connection with any revenue bonds issued pursuant
53 to section eighteen-a of this article, if and to the extent
54 needed for such purpose from time to time. The Legislature
55 shall annually appropriate all of the remaining amounts
56 allocated as net profits in subsection (e) of this section, in
57 such proportions as it considers beneficial to the citizens of
58 this state, to: (1) The Lottery Education Fund created in
59 subsection (g) of this section; (2) the School Construction
60 Fund created in section six, article nine-d, chapter eighteen of
61 this code; (3) the Lottery Senior Citizens Fund created in
62 subsection (k) of this section; and (4) the Division of Natural
63 Resources created in section three, article one, chapter twenty
64 of this code and the West Virginia Development Office as
65 created in section one, article two, chapter five-b of this code,
66 in accordance with subsection (l) of this section. No transfer
67 to any account other than the School Building Debt Service
68 Fund, the Education, Arts, Sciences and Tourism Debt
69 Service Fund, the Community and Technical College Capital
70 Improvement Fund, the Economic Development Project Fund
71 created under section eighteen-a, article twenty-two, chapter
72 twenty-nine of this code, or any fund from which debt service
73 is paid under subsection (c), section eighteen-a of this article
74 may be made in any period of time in which a default exists
75 in respect to debt service on bonds issued by the School
76 Building Authority, the State Building Commission, the
77 Higher Education Policy Commission, the Economic
78 Development Authority or which are otherwise secured by
79 lottery proceeds. No additional transfer may be made to any
80 account other than the School Building Debt Service Account

81 and the Education, Arts, Sciences and Tourism Debt Service
82 Fund, and the Community and Technical College Capital
83 Improvement Fund, when net profits for the preceding twelve
84 months are not at least equal to one hundred fifty percent of
85 debt service on bonds issued by the School Building
86 Authority, the State Building Commission and the Higher
87 Education Policy Commission which are secured by net
88 profits.

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

106 (h) On or before the twenty-eighth day of each month, as
107 long as revenue bonds or refunding bonds are outstanding,
108 the lottery director shall allocate to the School Building Debt
109 Service Fund created pursuant to the provisions of section
110 six, article nine-d, chapter eighteen of this code, as a first
111 priority from the net profits of the lottery for the preceding
112 month, an amount equal to one tenth of the projected annual
113 principal, interest and coverage ratio requirements on any and
114 all revenue bonds and refunding bonds issued, or to be

115 issued, on or after April 1, 1994, as certified to the lottery
116 director in accordance with the provisions of section six,
117 article nine-d, chapter eighteen of this code. In no event shall
118 the monthly amount allocated exceed \$1,800,000 nor may the
119 total allocation of the net profits to be paid into the School
120 Building Debt Service Fund, as provided in this section, in
121 any fiscal year exceed the lesser of the principal and interest
122 requirements certified to the lottery director or \$18 million.
123 In the event there are insufficient funds available in any
124 month to transfer the amount required to be transferred
125 pursuant to this subsection to the School Debt Service Fund,
126 the deficiency shall be added to the amount transferred in the
127 next succeeding month in which revenues are available to
128 transfer the deficiency. A lien on the proceeds of the State
129 Lottery Fund up to a maximum amount equal to the projected
130 annual principal, interest and coverage ratio requirements,
131 not to exceed \$27 million annually, may be granted by the
132 School Building Authority in favor of the bonds it issues
133 which are secured by the net lottery profits. When the school
134 improvement bonds, secured by profits from the lottery and
135 deposited in the School Debt Service Fund, mature, the
136 profits shall become available for debt service on additional
137 school improvement bonds as a first priority from the net
138 profits of the lottery or may at the discretion of the authority
139 be placed into the School Construction Fund created pursuant
140 to the provisions of section six, article nine-d, chapter
141 eighteen of this code.

142 (i) Beginning on or before July 28, 1996, and continuing
143 on or before the twenty-eighth day of each succeeding month
144 thereafter, as long as revenue bonds or refunding bonds
145 issued in accordance with section eleven-a, article six,
146 chapter five or section sixteen-a, article fifteen, chapter
147 thirty-one of this code are outstanding, the lottery director
148 shall allocate to the Education, Arts, Sciences and Tourism
149 Debt Service Fund, created pursuant to the provisions of

150 section eleven-a, article six, chapter five of this code, as a
151 second priority from the net profits of the lottery for the
152 preceding month, an amount equal to one tenth of the
153 projected annual principal, interest and coverage ratio
154 requirements on any and all revenue bonds and refunding
155 bonds issued, or to be issued, on or after April 1, 1996, as
156 certified to the lottery director in accordance with the
157 provisions of section eleven-a, article six, chapter five or
158 section sixteen-a, article fifteen, chapter thirty-one of this
159 code. In no event may the monthly amount allocated exceed
160 \$1 million nor may the total allocation paid into the
161 Education, Arts, Sciences and Tourism Debt Service Fund, as
162 provided in this section, in any fiscal year exceed the lesser
163 of the principal and interest requirements certified to the
164 lottery director or \$10 million. In the event there are
165 insufficient funds available in any month to transfer the
166 amount required pursuant to this subsection to the Education,
167 Arts, Sciences and Tourism Debt Service Fund, the
168 deficiency shall be added to the amount transferred in the
169 next succeeding month in which revenues are available to
170 transfer the deficiency. A second-in-priority lien on the
171 proceeds of the State Lottery Fund up to a maximum amount
172 equal to the projected annual principal, interest and coverage
173 ratio requirements, not to exceed \$15 million annually, may
174 be granted by the State Building Commission in favor of the
175 bonds it issues which are secured by the net lottery profits.

176 (j) Beginning on or before July 28, 2008, and continuing
177 on or before the twenty-eighth day of each succeeding month
178 thereafter, as long as revenue bonds or refunding bonds are
179 outstanding, the lottery director shall allocate to the
180 Community and Technical College Capital Improvement
181 Fund, created pursuant to section eight, article ten, chapter
182 eighteen-b of this code, as a third priority from net profits of
183 the lottery for the preceding month, an amount equal to one
184 tenth of the projected annual principal, interest and coverage

185 ratio requirements on any and all revenue bonds and
186 refunding bonds issued or to be issued, on or after April 1,
187 2008, as certified by the lottery director in accordance with
188 the provisions of that section. In no event may the monthly
189 amount allocated exceed \$500,000 nor may the total
190 allocation paid to the Community and Technical Capital
191 Improvement Fund, as provided in this section, in any fiscal
192 year exceed the lesser of the principal and interest
193 requirements certified to the lottery director or \$5 million. In
194 the event there are insufficient funds available in any month
195 to transfer the amount required pursuant to this subsection to
196 the Community and Technical College Capital Improvement
197 Fund, the deficiency shall be added to the amount transferred
198 in the next succeeding month in which revenues are available
199 to transfer the deficiency.

200 (1) A third-in-priority lien on the proceeds of the State
201 Lottery Fund up to a maximum amount equal to the projected
202 annual principal, interest and coverage ratio requirements,
203 not exceeding \$7,500,000 annually, may be granted by the
204 Higher Education Policy Commission in favor of the bonds
205 it issues which are secured by the net lottery profits.

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

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


217 (4) Prior to the issuance of community and technical
218 college revenue bonds pursuant to this subsection, the lottery
219 director shall transfer \$5 million to the Community and
220 Technical College Improvement Fund, less any amounts
221 needed for initial debt service payments, to be used on a cash
222 basis for community and technical college capital
223 improvements and capital projects.

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

242 (l) The Division of Natural Resources and the West
243 Virginia Development Office, as appropriated by the
244 Legislature, may use the amounts allocated to them pursuant
245 to subsection (f) of this section for one or more of the
246 following purposes: (1) The payment of any or all of the
247 costs incurred in the development, construction,
248 reconstruction, maintenance or repair of any project or
249 recreational facility, as these terms are defined in section
250 four, article five, chapter twenty of this code, pursuant to the

251 authority granted to it under article five, chapter twenty of
252 this code; (2) the payment, funding or refunding of the
253 principal of, interest on or redemption premiums on any
254 bonds, security interests or notes issued by the parks and
255 recreation section of the Division of Natural Resources under
256 article five, chapter twenty of this code; or (3) the payment of
257 any advertising and marketing expenses for the promotion
258 and development of tourism or any tourist facility or
259 attraction in this state.

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



Chairman Senate Committee



Chairman House Committee

Originating in the House.

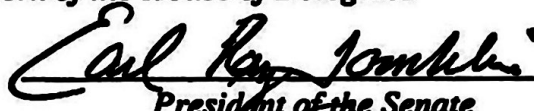
In effect from passage.



Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within is approved this the 17th
day of June, 2009.



Governor

PRESENTED TO THE
GOVERNOR

JUN 16 2009

Time 9:10 am