

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 468

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

[Originating in the Committee on the Judiciary;
reported February 10, 2012.]

A BILL to amend and reenact §29-26-2, §29-26-5 and §29-26-6 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto eight new sections, designated §29-26-7, §29-26-8, §29-26-9, §29-26-10, §29-26-11, §29-26-12, §29-26-13 and §29-26-14, all relating to providing the West Virginia Courthouse Facilities Improvement Authority with the ability to issue bonds to raise funds for paying the costs of approved modifications or construction of courthouse facilities; defining terms; adding bond-related activities to the powers of the authority; providing that moneys from the West

Virginia Courthouse Facilities Improvement Fund may be disbursed for payment of debt service on bonds; authorizing the authority to issue bonds; setting circumstances for bond issuance and potential terms of bonds; authorizing repayment of debt; permitting bonds be secured by trust agreement and setting certain parameters; permitting refunding bonds; clarifying that bonds by the authority are not a pledge of faith and credit of the state, county, municipality or other subdivision of the state; declaring bonds issued as negotiable instruments under the Uniform Commercial Code; exempting all bonds by the authority, as well as interest and income thereon, from taxation by the state or any subdivision; declaring that certain individuals have no personal liability in relation to issuance of bonds; and granting cumulative authority for exercising certain powers, including if no bonds are issued by the authority.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 26. WEST VIRGINIA COURTHOUSE FACILITIES IMPROVEMENT AUTHORITY.

§29-26-2. Definitions.

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

3 (a) “Approved modifications or construction of court-
4 house facilities” means any modification or construction of
5 a courthouse facility which has been recommended for
6 assistance by the authority according to the requirements of
7 section four of this article;

8 (b) “Authority” means the West Virginia Courthouse
9 Facilities Improvement Authority;

10 (c) “Bonds” means bonds, revenue bonds, notes or other
11 debt instruments issued by the authority pursuant to this
12 article, whether the interest thereon is taxable or tax exempt
13 for federal income tax purposes;

14 ~~(c)~~ (d) “Cost” means the cost of construction, renovation,
15 repair and safety upgrading of courthouse facilities; the cost
16 of land, equipment, machinery, furnishings, installation of
17 utilities and other similar items convenient in connection
18 with placing a courthouse facility in operation; and the cost
19 of financing, interest during construction, professional

20 service fees and all other charges or expenses necessary,
21 appurtenant or incidental to the modification or construction
22 of a courthouse facility; ~~and~~

23 ~~(d)~~ (e) “Courthouse facility” means buildings or struc-
24 tures, or any portion thereof, which are owned by the county
25 and occupied exclusively by offices of county and judicial
26 officials or by courtrooms, county jails, ~~or~~ detention centers,
27 day report centers or other offices in which activities related
28 to the operations of county governments take place; and

29 (f) “Refunding bonds” means bonds issued by the
30 authority pursuant to this article to refund all or any part of
31 bonds issued by the authority pursuant to this article.

§29-26-5. Powers of the authority.

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

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

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

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

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

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

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

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

29 (h) Issue bonds from time to time, in accordance with the
30 provisions of this article, to fulfill the purposes set forth in
31 this article;

32 ~~(h)~~ (i) Identify any alternative sources of funding,
33 whether privately or publicly administered, and assist
34 county applicants in the securing of alternative sources of
35 funding; and

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

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

1 (a) There is hereby created in the State Treasury a special
2 revenue account to be known as the West Virginia Court-
3 house Facilities Improvement Fund. The West Virginia
4 Courthouse Facilities Improvement Fund may receive any
5 gifts, grants, contributions or other money from any source
6 which is specifically designated for deposit in the fund.

7 (b) The authority shall undertake a study on the condi-
8 tion and state of need of every courthouse facility throughout
9 the State of West Virginia, and shall determine the estimated
10 cost of the improvements which are necessary to bring each
11 facility into conformity with requirements outlined in this
12 article. ~~The authority shall submit to the Legislature, on or~~
13 ~~before the first day of January, two thousand two, a report~~
14 ~~which shall contain the estimate of the cost, a plan for the~~
15 ~~financing of the cost, and an estimated prioritized schedule~~

16 ~~for the implementation and financing of the improvements to~~
17 ~~be made pursuant to the provisions of this article.~~

18 (c) The moneys of the West Virginia Courthouse Facilities
19 Improvement Fund shall be disbursed by the authority for
20 the payment of debt service on bonds issued pursuant to the
21 provisions of this article, funding of approved modifications
22 or construction of ~~court~~ courthouse facilities and to pay
23 expenses of the authority in administering the provisions of
24 this article.

25 (d) Any disbursements from the West Virginia Court-
26 house Facilities Improvement Fund allocated for approved
27 modifications or construction of courthouse facilities may be
28 made contingent upon local appropriations or gifts in money
29 or in kind for the support of the modifications or construc-
30 tion.

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

§29-26-7. West Virginia Courthouse Facilities Improvement

**Authority authorized to issue bonds and pay debt
service on bonds with funds from West Virginia
Courthouse Facilities Improvement Fund.**

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

5 (b) The bonds shall be authorized to be issued by the
6 authority pursuant to the provisions of this article, and shall
7 be secured, shall bear such date and shall mature at such
8 time, not exceeding thirty years from the date of issue, shall
9 bear interest at such rate or rates, including variable rates,
10 be in such denominations, be in such form, carry such
11 registration privileges, be payable in such medium of
12 payment and at such place or places and such time or times
13 and be subject to such terms of redemption as the authority
14 may authorize. The bonds of the authority may be sold by the
15 authority, at public or private sale, at or not less than the
16 price the authority determines. The bonds shall be executed
17 by manual or facsimile signature by the chair of the author-
18 ity and attested, manually or by facsimile signature, by the
19 secretary of the board. In case any officer whose signature,
20 or a facsimile of whose signature, appears on any bonds
21 ceases to be such officer before delivery of such bonds, such
22 signature or facsimile is nevertheless sufficient for all

23 purposes the same as if he or she had remained in office until
24 such delivery.

25 (c) After the authority has issued bonds authorized by
26 this article and after the requirements of debt service and all
27 associated funds have been satisfied for the fiscal year for
28 which moneys deposited in the West Virginia Courthouse
29 Facilities Improvement Fund have been pledged, including
30 coverage and reserve funds established in connection with
31 the bonds issued pursuant to this article, any remaining
32 balance in the West Virginia Courthouse Facilities Improve-
33 ment Fund may be used by the authority in its discretion to
34 fund approved modification or construction of courthouse
35 facilities and to pay expenses of the authority in administer-
36 ing the provisions of this article, all in accordance with the
37 provisions of this article, on a cash basis. All amounts
38 deposited in the West Virginia Courthouse Facilities Im-
39 provement Fund shall be pledged to the repayment of the
40 principal, interest and redemption premium, if any, on any
41 bonds or refunding bonds authorized by the provisions of
42 this article. The authority may further provide in any trust
43 agreement for priorities on the funds deposited into the West
44 Virginia Courthouse Facilities Improvement Fund as may be

45 necessary for the protection of the prior rights of the holders
46 of bonds issued at different times under the provisions of this
47 article.

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

1 For bonds issued pursuant to the provisions of this
2 article, in the discretion of the authority, any bonds, includ-
3 ing refunding bonds issued by the authority, may be secured
4 by a trust agreement between the authority and a corporate
5 trustee, which trustee may be any bank or trust company
6 within or without the state. Any such trust agreement may
7 contain such binding covenants with the holders of such
8 bonds as to any matter or provisions as are deemed necessary
9 or advisable to the authority to enhance the marketability
10 and security of such bonds and may also contain such other
11 provisions with respect thereto as the authority may autho-
12 rize and approve. Any resolution adopted by the authority or
13 any trust agreement may contain a pledge or assignment of
14 revenues to be received in connection with the financing.

§29-26-9. Refunding bonds.

1 Any bonds issued by the authority pursuant to the
2 provisions of this article or any other provision of this code

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

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

1 (a) Bonds, including refunding bonds, issued under the
2 authority of this article and any other obligations under-
3 taken by the authority pursuant to this article, shall not
4 constitute a debt or a pledge of the faith and credit or taxing

5 power of this state or of any county, municipality or any
6 other political subdivision of this state, and the holders and
7 owners thereof shall have no right to have taxes levied by the
8 Legislature or the taxing authority of any county, municipal-
9 ity or any other political subdivision of this state for the
10 payment of the principal thereof or interest thereon, but such
11 bonds and other obligations shall be payable solely from the
12 revenues and funds pledged for their payment as authorized
13 by this article unless the bonds are refunded by refunding
14 bonds issued under the authority of this article, which bonds
15 or refunding bonds shall be payable solely from revenues and
16 funds pledged for their payment as authorized by this article.

17 (b) All such bonds, and all documents evidencing any
18 other obligation, shall contain on the face thereof a state-
19 ment to the effect that the bonds or such other obligation as
20 to both principal and interest are not debts of the state or
21 any county, municipality or political subdivision thereof, but
22 are payable solely from revenues and funds pledged for their
23 payment as authorized by this article.

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

1 Whether or not the bonds issued pursuant to this article
2 are of such form or character as to be negotiable instruments

3 under the Uniform Commercial Code, such bonds are
4 negotiable instruments within the meaning of and for all the
5 purposes of the Uniform Commercial Code, subject only to
6 the provisions of the bonds for registration.

§29-26-12. Exemption from taxation.

1 All bonds of the authority, and all interest and income
2 thereon, shall be exempt from all taxation by this state and
3 any county, municipality, political subdivision or agency
4 thereof, except inheritance taxes.

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

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

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

1 The provisions of this article relating to the issuance of
2 bonds shall be construed as granting cumulative authority

3 for the exercise of the various powers herein conferred, and
4 neither the powers nor any bonds issued hereunder shall be
5 affected or limited by any other statutory or charter provi-
6 sion now or hereafter in force, other than as may be provided
7 in this article, it being the purpose and intention of this
8 article to create full, separate and complete additional
9 powers. The various powers conferred herein may be exer-
10 cised independently and notwithstanding that no bonds are
11 issued hereunder.