

1 **Senate Bill No. 331**

2 (By Senators Kessler (Mr. President), Unger, Miller, Laird, D.  
3 Hall, Beach, Williams and Plymale)

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5 [Introduced February 20, 2013; referred to the Committee on  
6 Government Organization; and then to the Committee on Finance.]

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

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

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

15 That §29-26-2, §29-26-5 and §29-26-6 of the Code of West  
16 Virginia, 1931, as amended, be amended and reenacted; and that said  
17 code be amended by adding thereto eight new sections, designated  
18 §29-26-7, §29-26-8, §29-26-9, §29-26-10, §29-26-11, §29-26-12,  
19 §29-26-13 and §29-26-14, all to read as follows:

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

22 **§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 courthouse  
4 facilities" means any modification or construction of a courthouse  
5 facility which has been recommended for assistance by the authority  
6 according to the requirements of section four of this article;

7           (b) "Authority" means the West Virginia Courthouse Facilities  
8 Improvement Authority;

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

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

21          ~~(d)~~ (e) "Courthouse facility" means buildings or structures,  
22 or any portion thereof, which are owned by the county and occupied  
23 exclusively by offices of county and judicial officials or by

1 courtrooms, county jails, ~~or~~ detention centers, day report centers  
2 or other offices in which activities related to the operations of  
3 county governments take place; and

4 (f) "Refunding bonds" means bonds issued by the authority  
5 pursuant to this article to refund all, or any part of, bonds  
6 issued by the authority pursuant to this article.

7 **§29-26-5. Powers of the authority.**

8 In addition to the powers set forth elsewhere in this article,  
9 the authority may exercise the following powers when it considers  
10 the exercise of these powers necessary and appropriate to carry out  
11 and effectuate its responsibilities as defined by this article. The  
12 authority may:

13 (a) Employ an executive director and an executive assistant as  
14 may be necessary in the judgment of the authority and fix their  
15 compensation;

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

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

19 (d) Contract with and employ attorneys, bond counsel,  
20 accountants, underwriters, financial advisors, trustees,  
21 construction and financial experts, architects, engineers, managers  
22 and such other employees and agents that are necessary in the  
23 judgment of the authority and fix their compensation;

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

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

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

9 (h) Issue bonds from time to time, in accordance with the  
10 provisions of this article, to fulfill the purposes set forth in  
11 this article;

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

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

17 **§29-26-6. The Courthouse Facilities Improvement Fund.**

18 (a) There is hereby created in the State Treasury a special  
19 revenue account to be known as the West Virginia Courthouse  
20 Facilities Improvement Fund. The West Virginia Courthouse  
21 Facilities Improvement Fund may receive any gifts, grants,  
22 contributions or other money from any source which is specifically  
23 designated for deposit in the fund.

1           (b) The authority shall undertake a study on the condition and  
2 state of need of every courthouse facility throughout the State of  
3 West Virginia, and shall determine the estimated cost of the  
4 improvements which are necessary to bring each facility into  
5 conformity with requirements outlined in this article. ~~The~~  
6 ~~authority shall submit to the Legislature, on or before the first~~  
7 ~~day of January, two thousand two, a report which shall contain the~~  
8 ~~estimate of the cost, a plan for the financing of the cost, and an~~  
9 ~~estimated prioritized schedule for the implementation and financing~~  
10 ~~of the improvements to be made pursuant to the provisions of this~~  
11 ~~article.~~

12           (c) The moneys of the West Virginia Courthouse Facilities  
13 Improvement Fund shall be disbursed by the authority for the  
14 payment of debt service on bonds issued pursuant to the provisions  
15 of this article, funding of approved modifications or construction  
16 of ~~court~~ courthouse facilities and to pay expenses of the authority  
17 in administering the provisions of this article.

18           (d) Any disbursements from the West Virginia Courthouse  
19 Facilities Improvement Fund allocated for approved modifications or  
20 construction of courthouse facilities may be made contingent upon  
21 local appropriations or gifts in money or in kind for the support  
22 of the modifications or construction.

23           (e) Nothing in this article may be construed to mandate

1 funding for the West Virginia ~~Court~~ Courthouse Facilities  
2 Improvement Fund or to require any appropriation by the  
3 Legislature.

4 **§29-26-7. West Virginia Courthouse Facilities Improvement**  
5 **Authority authorized to issue bonds and pay debt**  
6 **service on bonds with funds from West Virginia**  
7 **Courthouse Facilities Improvement Fund.**

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

12 (b) The bonds shall be authorized to be issued by the  
13 authority pursuant to the provisions of this article, and shall be  
14 secured, shall bear such date and shall mature at such time, not  
15 exceeding thirty years from the date of issue, shall bear interest  
16 at such rate or rates, including variable rates, be in such  
17 denominations, be in such form, carry such registration privileges,  
18 be payable in such medium of payment and at such place or places  
19 and such time or times and be subject to such terms of redemption  
20 as the authority may authorize. The bonds of the authority may be  
21 sold by the authority, at public or private sale, at or not less  
22 than the price the authority determines. The bonds shall be

1 executed by manual or facsimile signature by the chair of the  
2 authority and attested, manually or by facsimile signature, by the  
3 secretary of the board. In case any officer whose signature, or a  
4 facsimile of whose signature, appears on any bonds ceases to be  
5 such officer before delivery of such bonds, such signature or  
6 facsimile is nevertheless sufficient for all purposes the same as  
7 if he or she had remained in office until such delivery.

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



1 further provide in any trust agreement for priorities on the funds  
2 deposited into the West Virginia Courthouse Facilities Improvement  
3 Fund as may be necessary for the protection of the prior rights of  
4 the holders of bonds issued at different times under the provisions  
5 of this article.

6 **§29-26-8. Trustee for bondholders; contents of trust agreement;**  
7 **pledge or assignment of revenues and funds.**

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

21 **§29-26-9. Refunding bonds.**

22 Any bonds issued by the authority pursuant to the provisions  
23 of this article or any other provision of this code and at any time

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

14 **§29-26-10. Obligations of authority undertaken pursuant to this**  
15 **article not debt of state, county, municipality or**  
16 **any political subdivision.**

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

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

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

16 **§29-26-11. Negotiability of bonds issued pursuant to this article.**

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

23 **§29-26-12. Exemption from taxation.**

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

5 **§29-26-13. Personal liability; persons executing bonds issued**  
6 **pursuant to this article.**

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

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

15 The provisions of this article relating to the issuance of  
16 bonds shall be construed as granting cumulative authority for the  
17 exercise of the various powers herein conferred, and neither the  
18 powers nor any bonds issued hereunder are affected or limited by  
19 any other statutory or charter provision now or hereafter in force,  
20 other than as may be provided in this article, it being the purpose  
21 and intention of this article to create full, separate and complete  
22 additional powers. The various powers conferred herein may be

1 exercised independently and notwithstanding that no bonds are  
2 issued hereunder.

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(NOTE: The purpose of this bill is to provide 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; add bond-related activities to the powers of the authority; provide that moneys from the West Virginia Courthouse Facilities Improvement Fund may be disbursed for payment of debt service on bonds; authorize the authority to issue bonds; set circumstances for bond issuance and potential terms of bonds; authorize repayment of debt; permit bonds be secured by trust agreement and set certain parameters; permit refunding bonds; clarify that bonds by the authority are not a pledge of faith and credit of the state, county, municipality or other subdivision of the state; declare bonds issued as negotiable instruments under the Uniform Commercial Code; exempt all bonds by the authority, as well as interest and income thereon, from taxation by the state or any subdivision; declare that certain individuals have no personal liability in relation to issuance of bonds; and grant cumulative authority for exercising certain powers, including if no bonds are issued by the authority.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

Chapter 29, Article twenty-six, Sections 7 through 14 are new; therefore, strike-throughs and underscoring have been omitted.)

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GOVERNMENT ORGANIZATION COMMITTEE AMENDMENT

On page three, section two, line twenty, after the word "county" by inserting the words "or another governmental entity,".