

Senate Bill No. 331

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

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

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
4 courthouse facilities” means any modification or construction
5 of 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 with
18 placing a courthouse facility in operation; and the cost of
19 financing, interest during construction, professional service
20 fees and all other charges or expenses necessary, appurtenant
21 or incidental to the modification or construction of a
22 courthouse facility; ~~and~~

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

30 (f) “Refunding bonds” means bonds issued by the
31 authority pursuant to this article to refund all, or any part of,
32 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 when
3 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 authority
8 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 its
24 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 county
34 applicants in the securing of alternative sources of funding;
35 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
3 Courthouse 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 condition
8 and state of need of every courthouse facility throughout the
9 State of West Virginia, and shall determine the estimated cost
10 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
19 Facilities Improvement Fund shall be disbursed by the
20 authority for the payment of debt service on bonds issued
21 pursuant to the provisions of this article, funding of approved
22 modifications or construction of ~~court~~ courthouse facilities
23 and to pay expenses of the authority in administering the
24 provisions of this article.

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

31 (e) Nothing in this article may be construed to mandate
32 funding for the West Virginia ~~Court~~ Courthouse Facilities
33 Improvement Fund or to require any appropriation by the
34 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, be
10 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

15 the 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 authority
18 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 this
26 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
33 Improvement Fund may be used by the authority in its

34 discretion to fund approved modification or construction of
35 courthouse facilities and to pay expenses of the authority in
36 administering the provisions of this article, all in accordance
37 with the provisions of this article, on a cash basis. All
38 amounts deposited in the West Virginia Courthouse Facilities
39 Improvement 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 this
42 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 article,
2 in the discretion of the authority, any bonds, including
3 refunding bonds issued by the authority, may be secured by

4 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 and
10 security of such bonds and may also contain such other
11 provisions with respect thereto as the authority may authorize
12 and approve. Any resolution adopted by the authority or any
13 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 to
4 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
10 therewith. Any such refunding may be effected by whether
11 the bonds to be refunded have then matured or thereafter
12 mature, either by sale of the refunding bonds and the
13 application of the proceeds thereof for the redemption of the
14 bonds to be refunded thereby or by exchange of the refunding
15 bonds for the bonds to be refunded thereby. Such refunding
16 bonds shall be issued in conformance with the provisions of
17 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 undertaken
3 by the authority pursuant to this article, do not constitute a
4 debt or a pledge of the faith and credit or taxing power of this
5 state or of any county, municipality or any other political

6 subdivision of this state, and the holders and owners thereof
7 have no right to have taxes levied by the Legislature or the
8 taxing authority of any county, municipality or any other
9 political subdivision of this state for the payment of the
10 principal thereof or interest thereon, but such bonds and other
11 obligations are payable solely from the revenues and funds
12 pledged for their payment as authorized by this article unless
13 the bonds are refunded by refunding bonds issued under the
14 authority of this article, which bonds or refunding bonds shall
15 be payable solely from revenues and funds pledged for their
16 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 statement
19 to the effect that the bonds or such other obligation as to both
20 principal and interest are not debts of the state or any county,
21 municipality or political subdivision thereof, but are payable
22 solely from revenues and funds pledged for their payment as
23 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, are exempt from all taxation by this state and any
3 county, municipality, political subdivision or agency thereof,
4 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, are
4 liable personally on such bonds or subject to any personal
5 liability or accountability by reason of the issuance thereof.

**§29-26-14. Cumulative authority as to powers conferred;
applicability 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 for
3 the exercise of the various powers herein conferred, and
4 neither the powers nor any bonds issued hereunder are
5 affected or limited by any other statutory or charter provision
6 now or hereafter in force, other than as may be provided in
7 this article, it being the purpose and intention of this article
8 to create full, separate and complete additional powers. The
9 various powers conferred herein may be exercised
10 independently and notwithstanding that no bonds are issued
11 hereunder.

(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.)

GOVERNMENT ORGANIZATION COMMITTEE AMENDMENT

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