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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1993



ENROLLED

Com. Sub. For
HOUSE BILL No. *2002*

(By Delegate *Kiss*)



Passed *April 10,* 1993

In Effect *From* Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2002
(By DELEGATE KISS)

[Passed April 10, 1993; in effect from passage.]

AN ACT to repeal section seventeen, article nine-d, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section eight, article six, chapter five of said code; and to amend and reenact sections three, five, eight, nine, thirteen, fifteen and sixteen, article nine-d, chapter eighteen of said code, all relating to bonding; authorizing state building commission to issue stated amount of financing and refinancing bonds for specified purposes; addressing powers and duties of school building authority; requiring attorney general be used for litigation matters; authorizing use of other professionals; authorizing emergency funds in accordance with authority guidelines; providing for individual higher education savings plans, tax treatment thereof and issuance of revenue bonds therefor; providing for disbursement of bond proceeds in accordance with resolution or trust agreement; deleting requirement that such proceeds and payments to sinking fund be deposited in state treasury; authorizing transfer of interest on debt service reserve funds to state treasury for authority's operational costs; authorizing deposit of county's net enrollment moneys to county's credit for three years rather than redistribution; acknowledging districts' comprehensive facilities

plans; and providing that priority list of region-wide plan is one criteria rather than the basis for determining expenditure of funds.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article nine-d, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section eight, article six, chapter five of said code be amended and reenacted; and that sections three, five, eight, nine, thirteen, fifteen and sixteen, article nine-d, chapter eighteen of said code be amended and reenacted, all to read as follows:

**CHAPTER 5. GENERAL POWERS AND
AUTHORITY OF THE GOVERNOR,
SECRETARY OF STATE
AND ATTORNEY GENERAL;
BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.**

ARTICLE 6. STATE BUILDING COMMISSION.

§5-6-8. Commission empowered to issue state building revenue bonds after legislative authorization; form and requirements for bonds; procedure for issuance; temporary bonds; funds, grants and gifts.

1 (a) The commission is hereby empowered to raise the
2 cost of a project, as defined in this article, by the
3 issuance of state building revenue bonds of the state, the
4 principal of and interest on which bonds shall be
5 payable solely from the special fund herein provided for
6 such payment. Subject to the proceedings pursuant to
7 which any bonds outstanding were authorized and
8 issued pursuant to this article, the commission shall
9 pledge the moneys in such special fund, except such part
10 of the proceeds of sale of any bonds to be used to pay
11 the cost of a project, for the payment of the principal
12 of and interest on bonds issued pursuant to this article,
13 such pledge to apply equally and ratably to separate
14 series of bonds or upon such priorities as the commission
15 shall determine. Such bonds shall be authorized by

16 resolution of the commission which shall recite an
17 estimate by the commission of such cost, and shall
18 provide for the issuance of bonds in an amount suffi-
19 cient, when sold as hereinafter provided, to produce
20 such cost, less the amount of any funds, grant or grants,
21 gift or gifts, contribution or contributions received, or
22 in the opinion of the commission expected to be received,
23 from the United States of America or from any other
24 source. The acceptance by the commission of any and all
25 such funds, grants, gifts and contributions, whether in
26 money or in land, labor or materials, is hereby expressly
27 authorized. All such bonds shall have and are hereby
28 declared to have all the qualities of negotiable instru-
29 ments. Such bonds shall bear interest at not more than
30 twelve percent per annum, payable semiannually, and
31 shall mature in not more than forty years from their
32 date or dates, and may be made redeemable at the
33 option of the state, to be exercised by the commission,
34 at such price and under such terms and conditions, all
35 as the commission may fix prior to the issuance of such
36 bonds. The commission shall determine the form of such
37 bonds, including coupons, if any, to be attached thereto
38 to evidence the right of interest payments, which bonds
39 shall be signed by the chairman and secretary of the
40 commission, under the great seal of the state, attested
41 by the secretary of state, and the coupons, if any,
42 attached thereto shall bear the facsimile signature of the
43 chairman of the commission. In case any of the officers
44 whose signatures appear on the bonds or coupons issued
45 as hereinbefore authorized shall cease to be such officers
46 before the delivery of such bonds, such signatures shall
47 nevertheless be valid and sufficient for all purposes the
48 same as if they had remained in office until such
49 delivery. The commission shall fix the denominations of
50 such bonds, the principal and interest of which shall be
51 payable at the office of the treasurer of the state of West
52 Virginia, at the capitol of the state, or, at the option of
53 the holder, at some bank or trust company within or
54 without the state of West Virginia to be named in the
55 bonds, in such medium as may be determined by the
56 commission. The bonds and interest thereon shall be
57 exempt from taxation by the state of West Virginia, or

58 any county or municipality therein. The commission
59 may provide for the registration of such bonds in the
60 name of the owners as to principal alone, and as to both
61 principal and interest under such terms and conditions
62 as the commission may determine, and shall sell such
63 bonds in such manner as it may determine to be for the
64 best interest of the state, taking into consideration the
65 financial responsibility of the purchaser, and the terms
66 and conditions of the purchase, and especially the
67 availability of the proceeds of the bonds when required
68 for payment of the cost of the project, such sale to be
69 made at a price not lower than a price which, computed
70 upon standard tables of bond values, will show a net
71 return of not more than thirteen percent per annum to
72 the purchaser upon the amount paid therefor. The
73 proceeds of such bonds shall be used solely for the
74 payment of the cost of the project for which bonds were
75 issued, and shall be deposited and checked out as
76 provided by section five of this article, and under such
77 further restrictions, if any, as the commission may
78 provide. If the proceeds of bonds issued for a project or
79 a specific group of projects shall exceed the cost thereof,
80 the surplus shall be paid into the fund hereinafter
81 provided for payment of the principal and interest of
82 such bonds. Such fund may be used for the purchase of,
83 any of the outstanding bonds payable from such fund at
84 the market price, but at not exceeding the price, if any,
85 at which such bonds shall in the same year be redeem-
86 able, and all bonds redeemed or purchased shall
87 forthwith be cancelled, and shall not again be issued.
88 Prior to the preparation of definitive bonds, the
89 commission may, under like restrictions, issue tempor-
90 ary bonds with or without coupons, exchangeable for
91 definitive bonds upon the issuance of the latter.
92 Notwithstanding the provisions of sections nine and ten,
93 article six, chapter twelve of this code, revenue bonds
94 issued under the authority herein granted shall be
95 eligible as investments for the workers' compensation
96 fund, teachers retirement fund, division of public safety
97 death, disability and retirement fund, West Virginia
98 public employees retirement system and as security for
99 the deposit of all public funds. Such revenue bonds may

100 be issued without any other proceedings or the happen-
101 ing of any other conditions or things than those
102 proceedings, conditions and things which are specified
103 and required by this article, or by the constitution of the
104 state. For all projects authorized under the provisions
105 of this article other than projects to be leased by the
106 commission to the regional jail and correctional facilities
107 authority, the aggregate amount of all issues of bonds
108 outstanding at one time shall not exceed sixty-two
109 million five hundred thousand dollars including the
110 renegotiation, reissuance or refinancing of any such
111 bonds, and no such project in connection with which
112 bonds are to be issued shall be initiated by the commis-
113 sion unless and until the Legislature, through enactment
114 of general law, approves the purpose, the amount of
115 bonds to be issued, and the total cost for such project,
116 construction or acquisition.

117 For projects which are to be leased by the commission
118 to the regional jail and correctional facilities authority,
119 legislative approval pursuant to the provisions of this
120 section shall not be required if such projects have
121 otherwise been approved by the Legislature in accord-
122 ance with the provisions of subsection (m), section five,
123 article twenty, chapter thirty-one of this code, and the
124 limitations on the amount of revenue bonds which may
125 be issued by the commission and the project costs shall
126 be governed by the terms of any concurrent resolution
127 adopted pursuant to said subsection.

128 (b) Notwithstanding anything in this article to the
129 contrary, the commission is authorized to issue bonds or
130 otherwise finance or refinance the following projects,
131 including the costs of issuance and sale of the bonds or
132 financing, all necessary financial and legal expenses and
133 creation of debt service reserve funds, in an amount not
134 to exceed twenty-one million dollars:

135 (1) Any or all of the state office buildings and
136 adjoining real property being lease-purchased in
137 Beckley, Clarksburg, Fairmont, Huntington and Par-
138 kersburg: *Provided*, That no such building and adjoining
139 real property shall be financed or refinanced unless
140 such financing or refinancing is at an interest rate at

141 one and one-half percent below the interest rate being
142 paid by the current owner under the lease-purchase
143 agreement;

144 (2) A facility to be obtained or constructed by the
145 commission and leased to the division of motor vehicles;
146 and

147 (3) Property and buildings needed for state spending
148 units in an amount not to exceed three million dollars.

CHAPTER 18. EDUCATION

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-3. Powers of authority.

1 The school building authority has the power:

2 (1) To sue and be sued, plead and be impleaded;

3 (2) To have a seal and alter the same at pleasure;

4 (3) To contract to acquire and to acquire, in the name
5 of the authority by purchase, lease-purchase, or other-
6 wise, real property or rights or easements necessary or
7 convenient for its corporate purposes and to exercise the
8 power of eminent domain to accomplish such purposes;

9 (4) To acquire, hold and dispose of real and personal
10 property for its corporate purposes;

11 (5) To make bylaws for the management and rule of
12 its affairs;

13 (6) To use the facilities, office, assistants and em-
14 ployees of the attorney general in all legal matters
15 relating to litigation involving the authority;

16 (7) Except as limited in subdivision (6), to appoint,
17 contract with and employ attorneys, bond counsel,
18 accountants, construction and financial experts, un-
19 derwriters, financial advisers, trustees, managers,
20 officers and such other employees and agents as may be
21 necessary in the judgment of the authority and to fix
22 their compensation;

23 (8) To make contracts and to execute all instruments
24 necessary or convenient to effectuate the intent of, and
25 to exercise the powers granted to it by this article;

26 (9) To renegotiate all contracts entered into by it
27 whenever, due to a change in situation, it appears to the
28 authority that its interests will be best served;

29 (10) To acquire by purchase, eminent domain or
30 otherwise all real property or interests therein necessary
31 or convenient to accomplish the purposes of this article;

32 (11) To require proper maintenance and insurance of
33 any project authorized hereunder;

34 (12) To charge rent for the use of all or any part of
35 a project or buildings at any time financed, constructed,
36 acquired or improved in whole or in part with the
37 revenues of the authority;

38 (13) To acquire land, buildings and capital improve-
39 ments to existing school buildings and property, by lease
40 from a private or public lessor for a term not to exceed
41 twenty-five years, with or without an option to purchase
42 pursuant to an investment contract with said lessor, for
43 use as public school facilities on such terms and
44 conditions as may be determined to be in the best
45 interests of the authority and consistent with the
46 purposes of this article;

47 (14) To accept and expend any gift, grant, contribu-
48 tion, bequest or endowment of money to, or for the
49 benefit of, the authority, from the state of West Virginia
50 or any other source for any or all of the purposes
51 specified in this article or for any one or more of such
52 purposes as may be specified in connection with such
53 gift, grant, contribution, bequest or endowment;

54 (15) To enter on any lands and premises for the
55 purpose of making surveys, soundings and
56 examinations;

57 (16) To contract for architectural, engineering or
58 other professional services considered necessary or
59 economical by the authority to provide consultative or
60 other services to the authority or to any regional
61 educational service agency or county board requesting
62 professional services offered by the authority, to
63 evaluate any facilities plan or any project encompassed
64 therein, to inspect existing facilities or any project that

65 has received or may receive funding from the authority,
66 or to perform any other service considered by the
67 authority to be necessary or economical. Assistance to
68 the region or district may include the development of
69 preapproved systems, plans, designs, models or docu-
70 ments; advice or oversight on any plan or project; or any
71 other service that may be efficiently provided to
72 regional educational service agencies or county boards
73 by the authority;

74 (17) To provide funds on an emergency basis to repair
75 or replace property damaged by fire, flood, wind, storm,
76 earthquake or other natural occurrence, such funds to
77 be made available in accordance with guidelines of the
78 school building authority; and

79 (18) To do all things necessary or convenient to carry
80 out the powers given in this article.

**§18-9D-5. School building authority authorized to offer
individual higher education savings plans.**

1 (a) *Legislative findings.* — The Legislature hereby
2 finds and declares that:

3 (1) It is an essential function of state government to
4 encourage postsecondary education in order to increase
5 the education level of the residents of the state of West
6 Virginia.

7 (2) Tuition, fee and other costs at institutions of
8 higher education are difficult for many to afford and are
9 difficult to predict in order to enable individuals and
10 families to plan for the payment of such costs.

11 (3) Students in elementary and secondary schools tend
12 to achieve a higher standard of performance when the
13 payment of tuition, fees and other costs for their higher
14 education is secured.

15 (4) It is in the best interest of the people of the state
16 of West Virginia and is necessary for the public health,
17 safety and welfare to encourage state residents desiring
18 a higher education to enroll in institutions of higher
19 education in order to provide well-educated and in-
20 formed citizens.

21 (b) *Purpose.* — In light of the findings described in
22 subsection (a) of this section and in light of the purposes
23 of this article, the Legislature declares that the purpose
24 of this section is to encourage higher education and the
25 means of paying costs relating thereto by (1) authorizing
26 establishment of higher education savings plan pro-
27 grams; and (2) providing funding for such programs
28 through the sale and purchase of school building
29 authority revenue bonds to be used to make capital
30 improvements for primary and secondary educational
31 facilities in this state, or through the sale and purchase
32 of refunding revenue bonds, as provided in this article.

33 (c) *Authorization.* — The school building authority is
34 authorized to offer to the general public one or more
35 higher education savings plan programs. In order to
36 establish, operate and maintain an efficient and effec-
37 tive program or programs, the school building authority
38 shall have such additional powers as are necessary or
39 reasonably desirable to implement such a program or
40 programs. These additional powers shall include, but
41 are not limited to, the power to:

42 (1) Issue revenue bonds in accordance with the
43 provisions of this section and as authorized by this
44 article;

45 (2) Permit employees of the state of West Virginia
46 and its subdivisions to purchase through payroll
47 deductions by their employer bonds of not less than one
48 thousand dollar maturity increments when issued
49 pursuant to this section.

50 (3) As deemed appropriate and practical, offer bond
51 issues which take into consideration the various needs
52 of different individuals participating in a higher
53 education savings plan program.

54 (4) Offer a rate or rates of interest on bonds pur-
55 chased pursuant to such a program which encourages
56 maximum participation.

57 (5) Execute a separate trust agreement or agreements
58 under section twelve of this article for bonds sold
59 pursuant to an individual higher education savings plan
60 program established under this section.

61 (6) Transfer available moneys of the school building
62 authority, including revenues, investment earnings on
63 funds or accounts established in connection with the
64 issuance of bonds and moneys available from any other
65 source, to funds or accounts as may be necessary or
66 desirable in establishing a higher education savings
67 plan program, including, but not limited to, escrow
68 funds, investment agreements or similar instruments.

69 (7) Establish program guidelines for the administra-
70 tion of a higher education savings plan program.

71 (d) *Construction.* — Other sections of this article
72 which apply generally to bonds issued under this article
73 shall apply to the revenue bonds or refunding revenue
74 bonds issued under this section. If any language in this
75 section conflicts with language in another section of this
76 article, the language of this section shall control unless
77 such a construction would be unlawful, or would not be
78 in the public interest, or would be contrary to the
79 statements of finding and purpose of this section.

80 (e) *Tax treatment.* —

81 (1) The amount which an individual expends during
82 a taxable year in the purchase of revenue bonds or
83 refunding revenue bonds issued pursuant to this section
84 shall be allowed as a deduction from federal adjusted
85 gross income for such year, or, if not fully deducted
86 during such year, for the remaining four years, until
87 fully deducted, for purposes of the tax imposed by
88 article twenty-one, chapter eleven of this code, except as
89 provided in subdivision (3) of this subsection.

90 (2) The interest which an individual earns on revenue
91 bonds or refunding revenue bonds issued under this
92 section shall not be subject to the tax imposed by article
93 twenty-one, chapter eleven of this code, except as
94 provided in subdivision (3) of this subsection.

95 (3) If the owner of a revenue bond or refunding
96 revenue bonds purchased under this section sells it or
97 receives the proceeds of such bond at maturity or
98 otherwise during a taxable year and does not, within
99 four years of the date of such sale or other disposition,

100 expend an amount equal to such proceeds for tuition,
 101 fees, books, reasonable room and board, and child care
 102 costs necessary to enable a person to attend an institu-
 103 tion of higher education, such proceeds of sale or other
 104 disposition not so spent shall be taxed under article
 105 twenty-one, chapter eleven of this code, by application
 106 of the applicable rate to the taxpayer to the amount not
 107 so spent. The amount of tax imposed shall be due and
 108 payable on the fifteenth day of April of the taxable year
 109 immediately succeeding the fourth taxable year in
 110 which the bond was sold or otherwise disposed of.

111 (f) *Confidentiality* — The identity of any individual
 112 purchasing revenue bonds under this section, the
 113 amount of the bonds so purchased by any individual and
 114 the amount allowed as an income tax deduction shall be
 115 and remain confidential information: *Provided*, That
 116 nothing herein shall prohibit the disclosure of the
 117 number of individuals purchasing the bonds, the
 118 aggregate amount of bond purchased, or other general
 119 information which does not breach any individual's
 120 confidentiality.

121 (g) *Reports*. — The school building authority and the
 122 indenture trustee of an individual higher education
 123 savings plan program shall make such reports regard-
 124 ing such bonds to the tax commissioner and to the
 125 individuals of record who own the bonds with respect
 126 to bond principal and interest (and the years to which
 127 they relate) and such other matters as the tax commis-
 128 sioner may reasonably require. The reports required by
 129 this section shall be filed with the tax commissioner at
 130 least annually, at such time and in such manner as the
 131 tax commissioner may by regulation require.

**§18-9D-8. Issuance of revenue bonds; use of proceeds;
 bonds exempt from taxation.**

1 The issuance of revenue bonds under the provisions of
 2 this article shall be authorized from time to time by
 3 resolution or resolutions of the school building authority,
 4 which shall set forth the proposed projects and provide
 5 for the issuance of bonds in amounts sufficient, when
 6 sold as hereinafter provided, to provide moneys consi-

7 dered sufficient by the authority to pay such costs, less
8 the amounts of any other funds available for said costs
9 or from any appropriation, grant or gift therefor:
10 *Provided*, That bond issues from which bond revenues
11 are to be distributed in accordance with section fifteen
12 of this article shall not be required to set forth the
13 proposed projects in the resolution. Such resolution shall
14 prescribe the rights and duties of the bondholders and
15 the school building authority, and for such purpose may
16 prescribe the form of the trust agreement hereinafter
17 referred to. The bonds may be issued from time to time,
18 in such amounts, shall be of such series, bear such date
19 or dates, mature at such time or times not exceeding
20 forty years from their respective dates, bear interest at
21 such rate or rates; be in such denominations; be in such
22 form, either coupon or registered, carrying such
23 registration, exchangeability and interchangeability
24 privileges; be payable in such medium of payment and
25 at such place or places within or without the state; be
26 subject to such terms of redemption at such prices not
27 exceeding one hundred five percent of the principal
28 amount thereof; and be entitled to such priorities on the
29 revenues paid into the school building authority capital
30 improvements fund as may be provided in the resolution
31 authorizing the issuance of the bonds or in any trust
32 agreement made in connection therewith. The bonds
33 shall be signed by the governor, and by the president
34 or vice president of the authority, under the great seal
35 of the state, attested by the secretary of state, and the
36 coupons attached thereto shall bear the facsimile
37 signature of the president or vice president of the
38 authority. In case any of the officers whose signatures
39 appear on the bonds or coupons cease to be such officers
40 before the delivery of such bonds, such signatures shall
41 nevertheless be valid and sufficient for all purposes the
42 same as if such officers had remained in office until such
43 delivery. Such revenue bonds shall be sold in such
44 manner as the authority may determine to be for the
45 best interests of the state.

46 Any pledge of revenues for such revenue bonds made
47 by the school building authority shall be valid and
48 binding between the parties from the time the pledge

49 is made; and the revenues so pledged shall immediately
50 be subject to the lien of such pledge without any further
51 physical delivery thereof or further act. The lien of such
52 pledge shall be valid and binding against all parties
53 having claims of any kind in tort, contract or otherwise,
54 irrespective of whether such parties have notice of the
55 lien of such pledge, and such pledge shall be a prior and
56 superior charge over any other use of such revenues so
57 pledged.

58 The proceeds of such bonds shall be used solely for the
59 purpose or purposes as may be generally or specifically
60 set forth in the resolution authorizing those bonds and
61 shall be disbursed in such manner and with such
62 restrictions, if any, as the authority may provide in the
63 resolution authorizing the issuance of such bonds or in
64 the trust agreement hereinafter referred to securing the
65 same. If the proceeds of such bonds, by error in
66 calculations or otherwise, shall be less than the cost of
67 any projects specifically set forth in the resolution,
68 additional bonds may in like manner be issued to
69 provide the amount of the deficiency; and unless
70 otherwise provided for in the resolution or trust
71 agreement hereinafter mentioned, such additional bonds
72 shall be considered to be of the same issue, and shall be
73 entitled to payment from the same fund, without
74 preference or priority, as the bonds before issued for
75 such projects. If the proceeds of bonds issued for such
76 projects exceed the cost thereof, the surplus may be used
77 for such other projects as the school building authority
78 may determine or in such other manner as the resolution
79 authorizing such bonds may provide. Prior to the
80 preparation of definitive bonds, the authority may,
81 under like restrictions, issue temporary bonds with or
82 without coupons, exchangeable for definitive bonds upon
83 the issuance of such definitive bonds.

84 After the issuance of any of such revenue bonds, the
85 revenues pledged therefor shall not be reduced as long
86 as any of such revenue bonds are outstanding and
87 unpaid except under such terms, provisions and condi-
88 tions as shall be contained in the resolution, trust
89 agreement or other proceedings under which such
90 revenue bonds were issued.

91 Such revenue bonds and the revenue refunding bonds,
92 and bonds issued for combined purposes shall, together
93 with the interest thereon, be exempt from all taxation
94 by the state of West Virginia, or by any county, school
95 district, municipality or political subdivision thereof.

96 To meet the operational costs of the school building
97 authority, the school building authority may transfer to
98 a special revenue account in the state treasury interest
99 on any debt service reserve funds created within any
100 resolution authorizing the issue of bonds or any trust
101 agreement made in connection therewith, for expendi-
102 ture in accordance with legislative appropriation or
103 allocation of appropriation.

**§18-9D-9. Issuance of revenue refunding bonds; use of
moneys; power to enter into escrow agree-
ments; call for redemption.**

1 The issuance of revenue refunding bonds under the
2 provisions of this article shall be authorized by resolu-
3 tion of the school building authority and shall otherwise
4 be subject to the limitations, conditions and provisions
5 of other revenue bonds under this article. Such revenue
6 refunding bonds may be issued in an amount at the
7 option of the authority sufficient to pay either in part
8 or in full, together with interest earned on the invest-
9 ment of the proceeds thereof, whether or not at the time
10 of the issuance of the revenue refunding bonds the
11 hereafter mentioned bonds are payable or callable for
12 optional redemption: (1) The principal of such outstand-
13 ing bonds; (2) the redemption premium, if any, on such
14 outstanding bonds if they are to be redeemed prior to
15 maturity; (3) the interest due and payable on such
16 outstanding bonds to and including the maturity date
17 thereof or the first date upon which said outstanding
18 bonds are to be redeemed, including any interest
19 theretofore accrued and unpaid; and (4) all expenses of
20 the issuance and sale of said revenue refunding bonds,
21 including all necessary financial and legal expenses, and
22 also including the creation of initial debt service reserve
23 funds. Any existing moneys pledged with respect to the
24 outstanding bonds may be used for any or all of the
25 purposes stated in (1), (2), (3) and (4) above or may be

26 deposited in a sinking fund or reserve fund or other
27 funds for the issue of bonds which have been issued
28 wholly or in part for the purpose of such refunding.
29 Such amount of the proceeds of the revenue refunding
30 bonds as shall be sufficient for the payment of the
31 principal, interest and redemption premium, if any, on
32 such outstanding bonds which will not be immediately
33 due and payable shall be deposited in trust, for the sole
34 purpose of making such payments, in a banking
35 institution chosen by the authority and in accordance
36 with any provisions which may be included in the
37 resolution authorizing the issuance of such bonds or in
38 the trust agreement securing the same. Any of the
39 moneys so deposited in trust may, prior to the date on
40 which such moneys will be needed for the payment of
41 principal of, interest and redemption premium, if any,
42 on such outstanding bonds, be invested and reinvested
43 as determined by the authority, in whole or in part: (a)
44 In direct obligations issued by the United States of
45 America or one of its agencies or in direct obligations
46 of the state of West Virginia; (b) in obligations uncon-
47 ditionally guaranteed by the United States of America
48 as to principal and interest; or (c) in certificates of
49 deposit of a banking corporation or association which is
50 a member of the federal deposit insurance corporation,
51 or successor; but any such certificates of deposit must
52 be fully secured as to both principal and interest by
53 pledged collateral consisting of direct obligations of or
54 obligations guaranteed by the United States of America,
55 or direct obligations of the state of West Virginia,
56 having a market value, excluding accrued interest, at
57 all times at least equal to the amount of the principal
58 of and accrued interest on such certificates of deposit.
59 Any such investments must mature, or be payable in
60 advance of maturity at the option of the holder, and
61 must bear interest in such manner as to provide funds
62 which, together with uninvested money, will be suffi-
63 cient to pay when due or called for redemption the bonds
64 refunded, together with interest accrued and to accrue
65 thereon and redemption premiums, if any, and such
66 refunding bonds' proceeds or obligations so purchased
67 therewith shall be deposited in escrow and held in trust

68 for the payment and redemption of the bonds refunded:
69 *Provided*, That if interest earned by any investment in
70 such escrow is shown to be in excess of the amounts
71 required from time to time for the payment of interest
72 on and principal of the refunded bonds, including
73 applicable redemption premium, then such excess may
74 be withdrawn from escrow and disbursed in such
75 manner as the authority shall by resolution determine,
76 subject to the provisions of section five of this article.
77 Any moneys in the sinking or reserve funds or other
78 funds maintained for the outstanding bonds to be
79 refunded may be applied in the same manner and for
80 the same purpose as are the net proceeds of refunding
81 bonds or may be deposited in the special fund or any
82 reserve funds established for account of the refunding
83 bonds.

84 The authority to issue revenue refunding bonds shall
85 be in addition to any other authority to refund bonds
86 conferred by law.

87 The school building authority shall have power to
88 enter into such escrow agreements with such bank or
89 banks and to insert therein such protective and other
90 covenants and provisions as it may consider necessary
91 to permit the carrying out of the provisions of this
92 article and to insure the prompt payment of the
93 principal of and interest and redemption premiums on
94 the revenue bonds refunded.

95 Where any revenue bonds to be refunded are not to
96 be surrendered for exchange or payment and are not to
97 be paid at maturity with escrowed obligations, but are
98 to be paid from such source prior to maturity pursuant
99 to call for redemption exercised under a right of
100 redemption reserved in such revenue bonds, the author-
101 ity shall, prior to the issuance of the refunding bonds,
102 determine which redemption date or dates shall be used,
103 call such revenue bonds for redemption and provide for
104 the giving of the notice of redemption required by the
105 proceedings authorizing such revenue bonds. Where
106 such notice is to be given at a time subsequent to the
107 issuance of the refunding bonds, the necessary notices
108 may be deposited with the state treasurer or the bank

109 acting as escrow agent of the refunding bond proceeds
110 and the escrow agent appropriately instructed and
111 authorized to give the required notices at the prescribed
112 time or times. If any officer of the public body signing
113 any such notice shall no longer be in office at the time
114 of the utilization of the notice, the notice shall neverthe-
115 less be valid and effective for its intended purpose.

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

1 From the school building capital improvement fund
2 the school building authority shall make periodic
3 payments in an amount sufficient to meet the require-
4 ments of any issue of bonds sold under the provisions
5 of this article, as may be specified in the resolution of
6 the authority authorizing the issue thereof and in any
7 trust agreement entered into in connection therewith.
8 The payments so made shall be placed as specified in
9 such resolution of trust agreement in a special sinking
10 fund which is hereby pledged to and charged with the
11 payment of the principal of the bonds of such issue and
12 the interest thereon, and to the redemption or repur-
13 chase of such bonds, such sinking fund to be a fund for
14 all bonds of such issue without distinction or priority of
15 one over another, except as may be provided in the
16 resolution authorizing such issue of bonds. The moneys
17 in the special sinking fund, less such reserve for
18 payment of principal and interest and redemption
19 premium, if any, as may be required by the resolution
20 of the school building authority, authorizing the issue
21 and any trust agreement made in connection therewith,
22 may be used for the redemption of any of the outstand-
23 ing bonds payable from such fund which by their terms
24 are then redeemable, or for the purchase of bonds at the
25 market price, but at not exceeding the price if any, at
26 which such bonds shall in the same year be redeemable;
27 and all bonds redeemed or purchased shall forthwith be
28 canceled and shall not again be issued.

§18-9D-15. Legislative intent; distribution of money.

1 (a) It is the intent of the Legislature to empower the
2 school building authority to facilitate and provide state
3 funds for the construction and maintenance of school

4 facilities so as to meet the educational needs of the
5 people of this state in an efficient and economical
6 manner. The authority shall make funding determina-
7 tions in accordance with the provisions of this article
8 and shall assess existing school facilities and each
9 facilities plan in relation to the needs of the individual
10 student, the general school population, the communities
11 served by the facilities, and facility needs statewide.

12 (b) An amount that is no more than three percent of
13 the sum of moneys that are determined by the authority
14 to be available for distribution during the then current
15 fiscal year from: (1) The increase in local share paid into
16 the school building capital improvements fund pursuant
17 to section ten, article nine-a of this chapter; (2) the
18 issuance of revenue bonds for which such increase in
19 local share is pledged as security; and (3) any other
20 moneys received by the authority may be allocated and
21 may be expended by the authority for projects that
22 service the educational community statewide or, upon
23 application by the state board, for educational programs
24 that are under the jurisdiction of the state board.

25 Fifty percent of the remaining available funds shall
26 be allocated and distributed to each county board on the
27 basis of its net enrollment as defined in section two,
28 article nine-a of this chapter: *Provided*, That such
29 moneys shall not be distributed to any county board
30 whose region does not have an approved region-wide
31 facilities plan or to any county board that is not
32 prepared to commence expenditures of such funds
33 during the fiscal year in which the moneys are distrib-
34 uted: *Provided, however*, That any moneys allocated to
35 a county board and not distributed to that county board
36 shall be deposited in an account to the credit of that
37 county board, such principal amount to remain to the
38 credit of and available to the county board for a period
39 of three years. Any moneys which are unexpended after
40 a three-year period shall be redistributed on the basis
41 of net enrollment to those county boards then eligible for
42 the receipt of net enrollment distributions in that fiscal
43 year.

44 The remaining fifty percent of moneys available for
45 distribution shall be allocated and expended on the basis

46 of need and efficient use of resources, such basis to be
47 determined by the authority in accordance with the
48 provisions of section sixteen of this article.

49 No local matching funds shall be required under the
50 provisions of this subsection, and any county board may
51 use the state moneys provided herein in conjunction with
52 local funds derived from bonding or other source. Any
53 county board may dedicate any allocations of state
54 moneys pursuant to this subsection to the payment of
55 local bonds used for purposes encompassed in an
56 approved facilities plan or for the payment of bonds that
57 are issued by the authority for the benefit of that county
58 that are in addition to the bond moneys distributed in
59 accordance with this subsection.

60 Moneys made available pursuant to this subsection
61 that shall be expended on projects that benefit more
62 than one district shall be apportioned among the
63 districts in accordance with the formula encompassed in
64 that portion of the facilities plan that addresses the
65 project designed to benefit more than one district.

66 (c) To encourage regional educational service agencies
67 and county boards to proceed promptly with facilities
68 planning and to prepare for the expenditure of any state
69 moneys derived from the sources described in subsection
70 (b) of this section, any county board failing to expend
71 money within three years of the allocation thereto shall
72 forfeit such allocation and thereafter shall be ineligible
73 for further net enrollment or other allocations pursuant
74 to subsection (b) until the county board is ready to
75 expend funds in accordance with an approved facilities
76 plan. Any amount so forfeited shall be added to the total
77 funds available for allocation and distribution in the
78 next ensuing fiscal year.

79 (d) Distribution to the county boards may be in a
80 lump sum or in accordance with a schedule of payments
81 adopted by the authority pursuant to such guidelines as
82 is shall adopt.

**§18-9D-16. Facilities plans generally; need-based
eligibility.**

1 (a) To facilitate the goals as stated in section fifteen
2 of this article and to assure the prudent and resourceful

3 expenditure of state funds, each regional educational
4 service agency created pursuant to section twenty-six,
5 article two of this chapter shall submit a region-wide
6 facilities plan that addresses the facilities needs of each
7 district within the region pursuant to such guidelines as
8 shall be adopted by the authority in accordance with this
9 section and in accordance with each district's compre-
10 hensive school facilities plan approved by the state
11 board of education. Any project receiving funding shall
12 be in furtherance of such approved region-wide facilities
13 plan.

14 (b) To assure efficiency and productivity in the
15 project approval process, the region-wide facilities plan
16 shall be submitted only after a preliminary plan, a plan
17 outline or a proposal for a plan has been submitted to
18 the authority. Selected members of the authority, which
19 selection shall include citizen members, shall then meet
20 promptly with those persons designated by the regional
21 educational service agency, including one person from
22 each county within the region, to attend the facilities
23 plan consultation. The purpose of the consultation is to
24 assure understanding of the general goals of the school
25 building authority and the specific goals encompassed
26 in the following criteria and to discuss ways the plan
27 may be structured to meet those goals.

28 (c) The guidelines for the development of a facilities
29 plan shall state the manner, timeline and process for
30 submission of any plan to the authority; such project
31 specifications as may be deemed appropriate by the
32 authority; and those matters which are deemed by the
33 authority to be important reflections of how the project
34 will further the overall goals of the authority.

35 The guidelines regarding submission of the plans shall
36 include requirements for public hearings, comments or
37 other means of providing broad-based input within a
38 reasonable time period as the authority may deem
39 appropriate. The submission of each facilities plan shall
40 be accompanied by a synopsis of all comments received
41 and a formal comment by each county board included
42 in the region. The guidelines regarding project specifi-
43 cations may include such matters as energy efficiency,

44 preferred siting, construction materials, maintenance
45 plans or any other matter related to how the capital
46 improvement project is to proceed. The guidelines
47 pertaining to quality education shall require that a
48 facilities plan address how the current facilities do not
49 meet and the proposed plan and any project thereunder
50 does meet the following goals:

51 (1) Student health and safety;

52 (2) Economies of scale, including compatibility with
53 similar schools that have achieved the most economical
54 organization, facility utilization and pupil-teacher
55 ratios;

56 (3) Reasonable travel time and practical means of
57 addressing other demographic considerations;

58 (4) Multi-county and regional planning to achieve the
59 most effective and efficient instructional delivery
60 system;

61 (5) Curriculum improvement and diversification,
62 including computerization and technology and advanced
63 senior courses in science, mathematics, language arts
64 and social studies;

65 (6) Innovations in education such as year-round
66 schools and community-based programs; and

67 (7) Adequate space for projected student enrollments.

68 If the project is to benefit more than one county in the
69 region, the facilities plan shall state the manner in
70 which the cost and funding of the project shall be
71 apportioned among the counties.

72 (d) Each plan shall prioritize all the projects both
73 within a county and among the counties, which priority
74 list shall be one of the criteria to be considered by the
75 authority in determining how available funds shall be
76 expended. In prioritizing the projects, each regional
77 educational service agency shall make determinations in
78 accordance with the objective criteria formulated by the
79 school building authority.

80 (e) Each plan shall include the objective means to be

81 utilized in evaluating implementation of the overall plan
82 and each project included therein. Such evaluation shall
83 measure each project's furtherance of each goal stated
84 in this section and any guidelines adopted hereunder, as
85 well as the overall success of any project as it relates
86 to the facilities plan of its region and the overall goals
87 of the authority.

88 (f) The authority may adopt guidelines for requiring
89 that a regional educational service agency modify,
90 update, supplement or otherwise submit changes or
91 additions to an approved plan and shall provide
92 reasonable notification and sufficient time for such
93 change or addition.

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

[Handwritten Signature]

Chairman Senate Committee

Ernest C Moore

Chairman House Committee

Originating in the House.

Takes effect from passage.

[Handwritten Signature]

Clerk of the Senate

Deppell L. Kopp
Clerk of the House of Delegates

[Handwritten Signature]

President of the Senate

[Handwritten Signature]

Speaker of the House of Delegates

The within *is approved* this the *3rd* day of *May*, 1993.

[Handwritten Signature]
Governor

PRESENTED TO THE

GOVERNOR

Date 4/22/93

Time 11:45 am