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STATE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2004



ENROLLED

House Bill No. 4601

(By Delegates Mezzatesta, Williams, Tabb, Renner,
Swartzmiller, Kuhn and Hartman)



Passed March 13, 2004

In Effect from Passage

FILED

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OFFICE WEST VIRGINIA
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H. B. 4601

(BY DELEGATES MEZZATESTA, WILLIAMS, TABB, RENNER,
SWARTZMILLER, KUHN AND HARTMAN)

[Passed March 13, 2004; in effect from passage.]

AN ACT to amend and reenact §18-9A-7 of the code of West Virginia, 1931, as amended; and to amend and reenact §18-9D-2, §18-9D-6, §18-9D-8, §18-9D-15 and §18-9D-16 of said code, all relating to public education; suspending basic foundation allocation for bus replacement and providing allocation for academic trips for one school year; school building authority; redefining certain terms; correcting references; allowing expenditure of certain moneys for vocational programs at comprehensive high schools and vocational schools cooperating with community and technical college programs; encouraging cooperation relating to vocational technical facilities; authorizing appropriation of up to certain amount of school construction funds for budget purposes for next school year only; providing that excess lottery revenues not be transferred to school construction fund for the next school year only, with funds made available for legislative appropriation; project submission and evaluation; requiring facilities plan as condition of receiving funds; providing for certain guidelines and procedures by authority for plans, plan modifications and evaluating projects; clarifying that certain revenues can only be expended on projects authorized in accor-

dance with the guidelines and procedures section; and providing for certified list of projects to joint committee.

Be it enacted by the Legislature of West Virginia:

That §18-9A-7 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that §18-9D-2, §18-9D-6, §18-9D-8, §18-9D-15 and §18-9D-16 of said code be amended and reenacted, all to read as follows:

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-7. Foundation allowance for transportation cost.

1 The allowance in the foundation school program for each
2 county for transportation shall be the sum of the following
3 computations:

4 (1) Eighty-five percent of the transportation cost within
5 each high-density county and ninety percent of the transporta-
6 tion cost within each low-density county for maintenance,
7 operation and related costs, exclusive of all salaries: *Provided,*
8 That for any county that uses an alternative fuel such as
9 compressed natural gas or other acceptable alternative fuel for
10 the operation of all or any portion of its school bus system, the
11 allowance in the foundation school program for the county for
12 that portion of its school bus system shall be ninety-five percent
13 of the transportation cost for maintenance, operation and related
14 costs, exclusive of all salaries, incurred by the use of the
15 alternatively fueled school buses: *Provided, however,* That any
16 county using an alternative fuel and qualifying for the addi-
17 tional allowance shall submit a plan regarding the intended
18 future use of alternatively fueled school buses;

19 (2) The total cost, within each county, of insurance premi-
20 ums on buses, buildings and equipment used in transportation:

21 *Provided*, That the premiums were procured through competi-
22 tive bidding;

23 (3) An amount equal to eight and one-third percent of the
24 current replacement value of the bus fleet within each county as
25 determined by the state board. The amount shall only be used
26 for the replacement of buses. Buses purchased after the first day
27 of July, one thousand nine hundred ninety-nine, that are driven
28 one hundred eighty thousand miles, regardless of year model,
29 will be subject to the replacement value of eight and one-third
30 percent as determined by the state board: *Provided*, That for the
31 school year beginning on the first day of July, two thousand
32 four, only, the allowance in the foundation school program for
33 each county for transportation shall not include an amount for
34 the replacement of buses. In addition, in any school year in
35 which its net enrollment increases when compared to the net
36 enrollment the year immediately preceding, a school district
37 may apply to the state superintendent for funding for an
38 additional bus. The state superintendent shall make a decision
39 regarding each application based upon an analysis of the
40 individual school district's net enrollment history and transpor-
41 tation needs: *Provided, however*, That the superintendent shall
42 not consider any application which fails to document that the
43 county has applied for federal funding for additional buses. If
44 the state superintendent finds that a need exists, a request for
45 funding shall be included in the budget request submitted by the
46 state board for the upcoming fiscal year;

47 (4) Eighty-five percent of the cost of contracted transporta-
48 tion services and public utility transportation within each high-
49 density county and ninety percent of the cost of contracted
50 transportation services and public utility transportation within
51 each low-density county;

52 (5) Aid in lieu of transportation equal to the state average
53 amount per pupil for each pupil receiving the aid within each
54 county; and

55 (6) Ninety-five percent of the transportation cost for
56 maintenance, operation and related costs, exclusive of all
57 salaries, for transporting students to and from classes at a
58 multicounty vocational center.

59 The total state share for this purpose shall be the sum of the
60 county shares: *Provided*, That no county shall receive an
61 allowance which is greater than one-third above the computed
62 state average allowance per transportation mile multiplied by
63 the total transportation mileage in the county: *Provided*,
64 *however*, That one half of one percent of the transportation
65 allowance distributed to each county shall be for the purpose of
66 trips related to academic classroom curriculum and not related
67 to any extracurricular activity: *Provided further*, That for the
68 school year beginning on the first day of July, two thousand
69 four, only the transportation allowance of each county shall
70 include an allocation for the purpose of trips related to aca-
71 demic classroom curriculum and not related to any extracurric-
72 ular activity. The allocation shall equal the amount distributed
73 to the county for this purpose in the school year beginning on
74 the first day of July, two thousand three: *And provided further*,
75 That any remaining funds credited to a county for the purpose
76 of trips related to academic classroom curriculum during the
77 fiscal year shall be carried over for use in the same manner the
78 next fiscal year and shall be separate and apart from, and in
79 addition to, the appropriation for the next fiscal year: *And*
80 *provided further*, That the state board may request a county to
81 document the use of funds for trips related to academic class-
82 room curriculum if the board determines that it is necessary.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-2. Definitions.

1 The following terms, wherever used or referred to in this
2 article, have the following meanings unless a different meaning
3 clearly appears from the context:

4 (1) "Authority" means the school building authority of
5 West Virginia or, if the authority is abolished, any board or
6 officer succeeding to the principal functions of the school
7 building authority or to whom the powers given to the authority
8 are given by law;

9 (2) "Bonds" means bonds issued by the authority pursuant
10 to this article;

11 (3) "Construction project" means a project in the further-
12 ance of a facilities plan with a cost of the project greater than
13 five hundred thousand dollars for the new construction,
14 expansion or major renovation of facilities, buildings and
15 structures for school purposes, including the acquisition of land
16 for current or future use in connection with the construction
17 project, as well as new or substantial upgrading of existing
18 equipment, machinery, furnishings, installation of utilities and
19 other similar items convenient in connection with placing the
20 construction project into operation: *Provided*, That a construc-
21 tion project may not include such items as books, computers or
22 equipment used for instructional purposes, fuel, supplies,
23 routine utility services fees, routine maintenance costs, ordinary
24 course of business improvements and other items which are
25 customarily considered to result in a current or ordinary course
26 of business operating charge: *Provided, however*, That a
27 construction project may not include a major improvement
28 project;

29 (4) "Cost of project" means the cost of construction,
30 expansion, renovation, repair and safety upgrading of facilities,
31 buildings and structures for school purposes; the cost of land,
32 equipment, machinery, furnishings, installation of utilities and

33 other similar items convenient in connection with placing the
34 project into operation; and the cost of financing, interest during
35 construction, professional service fees and all other charges or
36 expenses necessary, appurtenant or incidental to the foregoing,
37 including the cost of administration of this article;

38 (5) "Facilities plan" means a ten-year countywide compre-
39 hensive educational facilities plan established by the county
40 board in accordance with guidelines adopted by the authority to
41 meet the goals and objectives of this article that: (i) Addresses
42 the existing school facilities and facility needs of the county to
43 provide a thorough and efficient education in accordance with
44 the provisions of this code and policies of the state board; (ii)
45 best serves the needs of the individual student, the general
46 school population and the communities served by the facilities;
47 (iii) includes a school major improvement plan as defined in
48 this section; (iv) is updated annually to reflect projects com-
49 pleted, current enrollment projections and new or continuing
50 needs; and (v) is approved by the state board and the authority
51 prior to the distribution of state funds pursuant to this article to
52 any county board or other entity applying for funds;

53 (6) "Project" means a construction project or a major
54 improvement project;

55 (7) "Region" means the area encompassed within and
56 serviced by a regional educational service agency established
57 pursuant to section twenty-six, article two of this chapter;

58 (8) "Revenue" or "revenues" means moneys deposited in
59 the school building capital improvements fund pursuant to the
60 operation of section ten, article nine-a of this chapter; moneys
61 deposited in the school construction fund pursuant to the
62 operation of section thirty, article fifteen, chapter eleven of this
63 code and pursuant to the operation of section eighteen, article
64 twenty-two, chapter twenty-nine of this code; moneys deposited

65 in the school building debt service fund pursuant to section
66 eighteen, article twenty-two, chapter twenty-nine of this code;
67 moneys deposited in the school major improvement fund
68 pursuant to the operation of section thirty, article fifteen,
69 chapter eleven of this code; any moneys received, directly or
70 indirectly, from any source for use in any project completed
71 pursuant to this article; and any other moneys received by the
72 authority for the purposes of this article;

73 (9) "School major improvement plan" means a ten-year
74 school maintenance plan that: (i) Is prepared by a county board
75 of education in accordance with the guidelines established by
76 the authority and incorporated in its countywide comprehensive
77 educational facilities plan or is prepared by the state board of
78 education or the administrative council of an area vocational
79 educational center in accordance with the guidelines if the
80 entities seek funding from the authority for a major improve-
81 ment project; (ii) addresses the regularly scheduled mainte-
82 nance for all school facilities of the county or under the
83 jurisdiction of the entity seeking funding; (iii) includes a
84 projected repair and replacement schedule for all school
85 facilities of the county or of entity seeking funding; (iv)
86 addresses the major improvement needs of each school within
87 the county or under the jurisdiction of the entity seeking
88 funding; and (v) is required prior to the distribution of state
89 funds for a major improvement project pursuant to this article
90 to the county board, state board or administrative council; and

91 (10) "School major improvement project" means a project
92 with a cost greater than fifty thousand dollars and less than five
93 hundred thousand dollars for the renovation, expansion, repair
94 and safety upgrading of existing school facilities, buildings and
95 structures, including the substantial repair or upgrading of
96 equipment, machinery, building systems, utilities and other
97 similar items convenient in connection with such renovation,
98 repair or upgrading in the furtherance of a school major

99 improvement plan: *Provided*, That a major improvement project
100 may not include such items as books, computers or equipment
101 used for instructional purposes, fuel, supplies, routine utility
102 services fees, routine maintenance costs, ordinary course of
103 business improvements and other items which are customarily
104 considered to result in a current or ordinary course of business
105 operating charge.

§18-9D-6. School building capital improvements fund in state treasury; school construction fund in state treasury; school building debt service fund in state treasury; school improvement fund in state treasury; collections to be paid into special funds; authority to pledge the collections as security for refunding revenue bonds; authority to finance projects on a cash basis.

1 (a) There is continued in the state treasury a school building
2 capital improvements fund to be expended by the authority as
3 provided in this article. The school building capital improve-
4 ments fund shall be an interest-bearing account with interest
5 credited to and deposited in the school building capital im-
6 provements fund and expended in accordance with the provi-
7 sions of this article.

8 The school building authority may pledge all or any part of
9 the revenues paid into the school building capital improvements
10 fund that are needed to meet the requirements of any revenue
11 bond issue or issues authorized by this article prior to the
12 twentieth day of July, one thousand nine hundred ninety-three,
13 or revenue bonds issued to refund revenue bonds issued prior to
14 that date, including the payment of principal of, interest and
15 redemption premium, if any, on the revenue bonds and the
16 establishing and maintaining of a reserve fund or funds for the
17 payment of the principal of, interest and redemption premium,
18 if any, on the revenue bond issue or issues when other moneys
19 pledged may be insufficient for the payment of the principal,

20 interest and redemption premium, including any additional
21 protective pledge of revenues that the authority in its discretion
22 has provided by resolution authorizing the issuance of the
23 bonds or in any trust agreement made in connection with the
24 bond issue. Additionally, the authority may provide in the
25 resolution and in the trust agreement for priorities on the
26 revenues paid into the school building capital improvements
27 fund that are necessary for the protection of the prior rights of
28 the holders of bonds issued at different times under the provi-
29 sions of this article.

30 Any balance remaining in the school building capital
31 improvements fund after the authority has issued bonds
32 authorized by this article and after the requirements of all funds,
33 including reserve funds established in connection with the
34 bonds issued prior to the twentieth day of July, one thousand
35 nine hundred ninety-three, pursuant to this article have been
36 satisfied may be used for the redemption of any of the outstand-
37 ing bonds issued under this article which by their terms are then
38 redeemable, or for the purchase of the bonds at the market
39 price, but not exceeding the price, if any, at which the bonds are
40 in the same year redeemable and all bonds redeemed or
41 purchased shall immediately be canceled and shall not again be
42 issued.

43 The school building authority, in its discretion, may use the
44 moneys in the school building capital improvements fund to
45 finance the cost of projects authorized in accordance with the
46 provisions of section sixteen of this article on a cash basis. Any
47 pledge of moneys in the fund for revenue bonds issued prior to
48 the twentieth day of July, one thousand nine hundred
49 ninety-three, is a prior and superior charge on the fund over the
50 use of any of the moneys in the fund to pay for the cost of any
51 project on a cash basis: *Provided*, That any expenditures from
52 the fund, other than for the retirement of revenue bonds, may

53 only be made by the authority in accordance with the provisions
54 of this article.

55 (b) There is continued in the state treasury a special revenue
56 fund named the school building debt service fund into which
57 shall be deposited the amounts specified in section eighteen,
58 article twenty-two, chapter twenty-nine of this code. All
59 amounts deposited in the fund shall be pledged to the repay-
60 ment of the principal, interest and redemption premium, if any,
61 on any revenue bonds or refunding revenue bonds authorized by
62 this article: *Provided*, That deposited moneys may not be
63 pledged to the repayment of any revenue bonds issued prior to
64 the first day of January, one thousand nine hundred ninety-four,
65 or with respect to revenue bonds issued for the purpose of
66 refunding revenue bonds issued prior to the first day of January,
67 one thousand nine hundred ninety-four. Additionally, the
68 authority may provide in the resolution and in the trust agree-
69 ment for priorities on the revenues paid into the school building
70 debt service fund that are necessary for the protection of the
71 prior rights of the holders of bonds issued at different times
72 under the provisions of this article. On or prior to the first day
73 of May of each year, the authority shall certify to the state
74 lottery director the principal and interest and coverage ratio
75 requirements for the following fiscal year on any revenue bonds
76 issued on or after the first day of January, one thousand nine
77 hundred ninety-four, and for which moneys deposited in the
78 school building debt service fund have been pledged, or will be
79 pledged, for repayment pursuant to this section.

80 After the authority has issued bonds authorized by this
81 article and after the requirements of all funds have been
82 satisfied, including coverage and reserve funds established in
83 connection with the bonds issued pursuant to this article, any
84 balance remaining in the school building debt service fund may
85 be used for the redemption of any of the outstanding bonds
86 issued under this article which, by their terms, are then redeem-

87 able or for the purchase of the outstanding bonds at the market
88 price, but not to exceed the price, if any, at which the bonds are
89 redeemable and all bonds redeemed or purchased shall be
90 immediately canceled and shall not again be issued: *Provided*,
91 That after the authority has issued bonds authorized by this
92 article and after the requirements of debt service and all
93 associated funds have been satisfied for the fiscal year, includ-
94 ing coverage and reserve funds established in connection with
95 the bonds issued pursuant to this article, any remaining balance
96 in the school building debt service fund may be transferred to
97 the school construction fund created in subsection (c) of this
98 section and used by the school building authority in its discre-
99 tion to finance the cost of school construction or improvement
100 projects authorized in accordance with the provisions of section
101 sixteen of this article on a cash basis.

102 (c) There is continued in the state treasury a special revenue
103 fund named the school construction fund into which shall be
104 deposited the amounts specified in section thirty, article fifteen,
105 chapter eleven of this code and section eighteen-a, article
106 twenty-two, chapter twenty-nine of this code, together with any
107 moneys appropriated to the fund by the Legislature: *Provided*,
108 That for the school year beginning the first day of July, two
109 thousand and four, only, funds from the excess lottery allocated
110 in section eighteen-a, article twenty-two, chapter twenty-nine
111 of this code shall not be transferred to the school construction
112 fund and, in lieu thereof, made available for legislative appro-
113 priation: *Provided however*, That for the school year beginning
114 the first day of July, two thousand and four, only, up to five
115 million dollars of the amounts in the fund may be appropriated
116 by the Legislature for budget shortfalls. Expenditures from the
117 school construction fund shall be for the purposes set forth in
118 this article, including lease-purchase payments under agree-
119 ments made pursuant to subsection (e), section fifteen of this
120 article and section nine, article five of this chapter and are
121 authorized from collections in accordance with the provisions

122 of article three, chapter twelve of this code and from other
123 revenues annually appropriated by the Legislature from lottery
124 revenues as authorized by section eighteen, article twenty-two,
125 chapter twenty-nine of this code pursuant to the provisions set
126 forth in article two, chapter five-a of this code. Amounts
127 collected which are found, from time to time, to exceed the
128 funds needed for purposes set forth in this article may be
129 transferred to other accounts or funds and redesignated for other
130 purposes by appropriation of the Legislature. The school
131 construction fund shall be an interest-bearing account, with the
132 interest credited to and deposited in the school construction
133 fund and expended in accordance with the provisions of this
134 article. Deposits to and expenditures from the school construc-
135 tion fund are subject to the provisions of subsection (k), section
136 fifteen of this article.

137 (d) There is continued in the state treasury a special revenue
138 fund named the school major improvement fund into which
139 shall be deposited the amounts specified in section thirty, article
140 fifteen, chapter eleven of this code, together with any moneys
141 appropriated to the fund by the Legislature. Expenditures from
142 the school major improvement fund shall be for the purposes set
143 forth in this article and are authorized from collections in
144 accordance with the provisions of article three, chapter twelve
145 of this code and from other revenues annually appropriated by
146 the Legislature from lottery revenues as authorized by section
147 eighteen, article twenty-two, chapter twenty-nine of this code
148 pursuant to the provisions set forth in article two, chapter five-a
149 of this code. Amounts collected which are found, from time to
150 time, to exceed the funds needed for purposes set forth in this
151 article may be transferred to other accounts or funds and
152 redesignated for other purposes by appropriation of the Legisla-
153 ture. The school major improvement fund shall be an interest-
154 bearing account, with interest being credited to and deposited
155 in the school major improvement fund and expended in
156 accordance with the provisions of this article.

157 (e) The Legislature finds and declares that the supreme
158 court of appeals of West Virginia has held that the issuance of
159 additional revenue bonds authorized under the school building
160 authority act, as enacted in this article prior to the twentieth day
161 of July, one thousand nine hundred ninety-three, constituted an
162 indebtedness of the state in violation of section four, article X
163 of the constitution of West Virginia, but that revenue bonds
164 issued under this article prior to the twentieth day of July, one
165 thousand nine hundred ninety-three, are not invalid. The
166 Legislature further finds and declares that the financial capacity
167 of a county to construct, lease and improve school facilities
168 depends upon the county's bonding capacity (local property
169 wealth), voter willingness to pass bond issues and the county's
170 ability to reallocate other available county funds instead of
171 criteria related to educational needs or upon the ability of the
172 school building authority created in this article to issue bonds
173 that comply with the holding of the West Virginia supreme
174 court of appeals or otherwise assist counties with the financing
175 of facilities construction and improvement. The Legislature
176 further finds and declares that this section, as well as section
177 eighteen, article twenty-two, chapter twenty-nine of this code,
178 have been reenacted during the first extraordinary session of the
179 West Virginia Legislature in the year one thousand nine
180 hundred ninety-four in an attempt to comply with the holding
181 of the supreme court of appeals of West Virginia.

182 The Legislature further finds and declares that it intends,
183 through the reenactment of this section and section eighteen,
184 article twenty-two, chapter twenty-nine of this code, to dedicate
185 a source of state revenues to special revenue funds for the
186 purposes of paying the debt service on bonds and refunding
187 bonds issued subsequent to the first day of January, one
188 thousand nine hundred ninety-four, the proceeds of which will
189 be used for the construction and improvement of school
190 building facilities. The Legislature further finds and declares
191 that it intends, through the reenactment of this section and

192 section thirty, article fifteen, chapter eleven of this code and
193 section eighteen, article twenty-two, chapter twenty-nine of this
194 code, to appropriate revenues to two special revenue funds for
195 the purposes of construction and improvement of school
196 building facilities. Furthermore, the Legislature intends to
197 encourage county boards to maintain existing levels of county
198 funding for construction, improvement and maintenance of
199 school building facilities and to generate additional county
200 funds for those purposes through bonds and special levies
201 whenever possible. The Legislature further encourages the
202 school building authority, the state board and county boards of
203 education to propose uniform project specifications for compa-
204 rable projects whenever possible to meet county needs at the
205 lowest possible cost.

206 The Legislature further finds and declares that it intends,
207 through the reenactment of this section and section eighteen,
208 article twenty-two, chapter twenty-nine of this code, to comply
209 with the provisions of sections four and six, article X of the
210 constitution of West Virginia; and section one, article XII of
211 said constitution.

§18-9D-8. Use of proceeds of bonds; bonds exempt from taxation.

1 (a) The maximum aggregate face value of bonds that may
2 be issued by the authority, for which the moneys in the school
3 building debt service fund are to be pledged, is four hundred
4 million dollars. The issuance of revenue bonds under the
5 provisions of this article shall be authorized, from time to time,
6 by resolution or resolutions of the school building authority
7 which shall set forth the proposed projects authorized in
8 accordance with the provisions of section sixteen of this article
9 and provide for the issuance of bonds in amounts sufficient,
10 when sold as provided in this section, to provide moneys
11 considered sufficient by the authority to pay the costs, less the
12 amounts of any other funds available for the costs or from any

13 appropriation, grant or gift for the costs: *Provided*, That bond
14 issues from which bond revenues are to be distributed in
15 accordance with section fifteen of this article for projects
16 authorized pursuant to the provisions of section sixteen of this
17 article are not required to set forth the proposed projects in the
18 resolution. The resolution shall prescribe the rights and duties
19 of the bondholders and the school building authority and, for
20 that purpose, may prescribe the form of the trust agreement
21 referred to in this section. The bonds may be issued, from time
22 to time, in such amounts; shall be of such series; bear such date
23 or dates; mature at such time or times not exceeding forty years
24 from their respective dates; bear interest at such rate or rates; be
25 in such denominations; be in such form, either coupon or
26 registered, carrying such registration, exchangeability and
27 interchangeability privileges; be payable in such medium of
28 payment and at such place or places within or without the state;
29 be subject to such terms of redemption at such prices not
30 exceeding one hundred five percent of the principal amount of
31 the bonds; and be entitled to such priorities on the revenues
32 paid into the fund pledged for repayment of the bonds as may
33 be provided in the resolution authorizing the issuance of the
34 bonds or in any trust agreement made in connection with the
35 bonds: *Provided, however*, That revenue bonds issued on or
36 after the first day of January, one thousand nine hundred ninety-
37 four, which are secured by lottery proceeds shall mature at such
38 time or times not exceeding ten years from their respective
39 dates.

40 (b) The bonds shall be signed by the governor, and by the
41 president or vice president of the authority, under the great seal
42 of the state, attested by the secretary of state, and the coupons
43 attached to the bonds shall bear the facsimile signature of the
44 president or vice president of the authority. In case any of the
45 officers whose signatures appear on the bonds or coupons cease
46 to be officers before the delivery of the bonds, the signatures
47 shall nevertheless be valid and sufficient for all purposes the

48 same as if the officers had remained in office until the delivery.
49 The revenue bonds shall be sold in the manner determined by
50 the authority to be for the best interests of the state.

51 (c) Any pledge of revenues made by the school building
52 authority for revenue bonds issued prior to the twentieth day of
53 July, one thousand nine hundred ninety-three, pursuant to this
54 article is valid and binding between the parties from the time
55 the pledge is made; and the revenues pledged shall immediately
56 be subject to the lien of the pledge without any further physical
57 delivery of the revenues pledged or further act. The lien of the
58 pledge is valid and binding against all parties having claims of
59 any kind in tort, contract or otherwise, irrespective of whether
60 the parties have notice of the lien of the pledge, and the pledge
61 shall be a prior and superior charge over any other use of the
62 revenues pledged.

63 (d) The proceeds of any bonds shall be used solely for the
64 purpose or purposes as may be generally or specifically set
65 forth in the resolution authorizing those bonds and shall be
66 disbursed in the manner and with the restrictions, if any, that
67 the authority provides in the resolution authorizing the issuance
68 of the bonds or in the trust agreement referred to in this section
69 securing the bonds. If the proceeds of the bonds, by error in
70 calculations or otherwise, are less than the cost of any projects
71 specifically set forth in the resolution, additional bonds may in
72 like manner be issued to provide the amount of the deficiency;
73 and unless otherwise provided for in the resolution or trust
74 agreement hereinafter mentioned, the additional bonds shall be
75 considered to be of the same issue and are entitled to payment
76 from the same fund, without preference or priority, as the bonds
77 before issued for the projects. If the proceeds of bonds issued
78 for the projects specifically set forth in the resolution authoriz-
79 ing the bonds issued by the authority exceed the cost of the
80 bonds, the surplus may be used for any other projects autho-
81 rized in accordance with the provisions of section sixteen of this

82 article or in any other manner that the resolution authorizing the
83 bonds provides. Prior to the preparation of definitive bonds, the
84 authority may, under like restrictions, issue temporary bonds
85 with or without coupons, exchangeable for definitive bonds
86 upon the issuance of the definitive bonds.

87 (e) After the issuance of any of revenue bonds, the revenues
88 pledged for the revenue bonds shall not be reduced as long as
89 any of the revenue bonds are outstanding and unpaid except
90 under the terms, provisions and conditions that are contained in
91 the resolution, trust agreement or other proceedings under
92 which the revenue bonds were issued.

93 (f) The revenue bonds and the revenue refunding bonds and
94 bonds issued for combined purposes, together with the interest
95 on the bonds, are exempt from all taxation by the state of West
96 Virginia, or by any county, school district, municipality or
97 political subdivision thereof.

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

105 (h) Any school construction bonds issued under this section
106 shall be issued on parity with any existing school building
107 authority bonds previously issued under this article.

§18-9D-15. Legislative intent; allocation of money among categories of projects; lease purchase options; limitation on time period for expenditure of project allocation; county maintenance budget requirements; project disbursements over period of years; preference for multicounty arrangements; sub-

mission of project designs; set-aside to encourage local participation; etc.

1 (a) It is the intent of the Legislature to empower the school
2 building authority to facilitate and provide state funds and to
3 administer all federal funds provided for the construction and
4 major improvement of school facilities so as to meet the
5 educational needs of the people of this state in an efficient and
6 economical manner. The authority shall make funding determi-
7 nations in accordance with the provisions of this article and
8 shall assess existing school facilities and each facility's school
9 major improvement plan in relation to the needs of the individ-
10 ual 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 the sum
13 of moneys that are determined by the authority to be available
14 for distribution during the then current fiscal year from: (1)
15 Moneys paid into the school building capital improvements
16 fund pursuant to section ten, article nine-a of this chapter; (2)
17 the issuance of revenue bonds for which moneys in the school
18 building debt service fund are pledged as security; (3) moneys
19 paid into the school construction fund pursuant to section six of
20 this article; and (4) any other moneys received by the authority,
21 except moneys paid into the school major improvement fund
22 pursuant to section six of this article, may be allocated and may
23 be expended by the authority for projects authorized in accor-
24 dance with the provisions of section sixteen of this article that
25 service the educational community statewide or, upon applica-
26 tion by the state board, for educational programs that are under
27 the jurisdiction of the state board. In addition, upon application
28 by the state board or the administrative council of an area
29 vocational educational center established pursuant to article
30 two-b of this chapter, the authority may allocate and expend
31 under this subsection moneys for school major improvement
32 projects authorized in accordance with the provisions of section

33 sixteen of this article proposed by the state board or an adminis-
34 trative council for school facilities under the direct supervision
35 of the state board or an administrative council, respectively.
36 Furthermore, upon application by a county board, the authority
37 may allocate and expend under this subsection moneys for
38 school major improvement projects for vocational programs at
39 comprehensive high schools, vocational schools cooperating
40 with community and technical college programs, or both. Each
41 county board is encouraged to cooperate with community and
42 technical colleges in the use of existing or development of new
43 vocational technical facilities. All projects eligible for funds
44 from this subsection shall be submitted directly to the authority
45 which shall be solely responsible for the project's evaluation:
46 *Provided*, That the authority may not expend any moneys for a
47 school major improvement project proposed by the state board
48 or the administrative council of an area vocational educational
49 center unless the state board or an administrative council has
50 submitted a ten-year facilities plan: *Provided, however*, That the
51 authority shall, before allocating any moneys to the state board
52 or the administrative council of an area vocational educational
53 center for a school improvement project, consider all other
54 funding sources available for the project.

55 (c) An amount that is no more than two percent of the
56 moneys that are determined by the authority to be available for
57 distribution during the current fiscal year from: (1) Moneys
58 paid into the school building capital improvements fund
59 pursuant to section ten, article nine-a of this chapter; (2) the
60 issuance of revenue bonds for which moneys in the school
61 building debt service fund are pledged as security; (3) moneys
62 paid into the school construction fund pursuant to section six of
63 this article; and (4) any other moneys received by the authority,
64 except moneys deposited into the school major improvement
65 fund, shall be set aside by the authority as an emergency fund
66 to be distributed in accordance with the guidelines adopted by
67 the authority.

68 (d) An amount that is no more than five percent of the
69 moneys that are determined by the authority to be available for
70 distribution during the current fiscal year from: (1) Moneys
71 paid into the school building capital improvements fund
72 pursuant to section ten, article nine-a of this chapter; (2) the
73 issuance of revenue bonds for which moneys in the school
74 building debt service fund are pledged as security; (3) moneys
75 paid into the school construction fund pursuant to section six of
76 this article; and (4) any other moneys received by the authority,
77 except moneys deposited into the school major improvement
78 fund, may be reserved by the authority for multiuse vocational-
79 technical education facilities projects that may include post-
80 secondary programs as a first priority use. The authority may
81 allocate and expend under this subsection moneys for any
82 purposes authorized in this article on multiuse voca-
83 tional-technical education facilities projects, including equip-
84 ment and equipment updates at the facilities, authorized in
85 accordance with the provisions of section sixteen of this article.
86 If the projects approved under this subsection do not require the
87 full amount of moneys reserved, moneys above the amount
88 required may be allocated and expended in accordance with
89 other provisions of this article. A county board, the state board,
90 an administrative council or the joint administrative board of a
91 vocational-technical education facility which includes post-
92 secondary programs may propose projects for facilities or
93 equipment, or both, which are under the direct supervision of
94 the respective body: *Provided*, That the authority shall, before
95 allocating any moneys for a project under this subsection,
96 consider all other funding sources available for the project.

97 (e) The remaining moneys determined by the authority to
98 be available for distribution during the then current fiscal year
99 from: (1) Moneys paid into the school building capital improve-
100 ments fund pursuant to section ten, article nine-a of this
101 chapter; (2) the issuance of revenue bonds for which moneys in
102 the school building debt service fund are pledged as security;

103 (3) moneys paid into the school construction fund pursuant to
104 section six of this article; and (4) any other moneys received by
105 the authority, except moneys deposited into the school major
106 improvement fund, shall be allocated and expended on the basis
107 of need and efficient use of resources for projects funded in
108 accordance with the provisions of section sixteen of this article.

109 (f) If a county board of education proposes to finance a
110 project that is authorized in accordance with section sixteen of
111 this article through a lease with an option to purchase leased
112 premises upon the expiration of the total lease period pursuant
113 to an investment contract, the authority may allocate no moneys
114 to the county board in connection with the project: *Provided,*
115 That the authority may transfer moneys to the state board of
116 education which, with the authority, shall lend the amount
117 transferred to the county board to be used only for a one-time
118 payment due at the beginning of the lease term, made for the
119 purpose of reducing annual lease payments under the invest-
120 ment contract, subject to the following conditions:

121 (1) The loan shall be secured in the manner required by the
122 authority, in consultation with the state board, and shall be
123 repaid in a period and bear interest at a rate as determined by
124 the state board and the authority and shall have any terms and
125 conditions that are required by the authority, all of which shall
126 be set forth in a loan agreement among the authority, the state
127 board and the county board;

128 (2) The loan agreement shall provide for the state board and
129 the authority to defer the payment of principal and interest upon
130 any loan made to the county board during the term of the
131 investment contract, and annual renewals of the investment
132 contract, among the state board, the authority, the county board
133 and a lessor: *Provided,* That in the event a county board which
134 has received a loan from the authority for a one-time payment
135 at the beginning of the lease term does not renew the subject

136 lease annually until performance of the investment contract in
137 its entirety is completed, the county board is in default and the
138 principal of the loan, together with all unpaid interest accrued
139 to the date of the default, shall, at the option of the authority, in
140 consultation with the state board, become due and payable
141 immediately or subject to renegotiation among the state board,
142 the authority and the county board: *Provided, however*, That if
143 a county board renews the lease annually through the perfor-
144 mance of the investment contract in its entirety, the county
145 board shall exercise its option to purchase the leased premises:
146 *Provided further*, That the failure of the county board to make
147 a scheduled payment pursuant to the investment contract
148 constitutes an event of default under the loan agreement: *And*
149 *provided further*, That upon a default by a county board, the
150 principal of the loan, together with all unpaid interest accrued
151 to the date of the default, shall, at the option of the authority, in
152 consultation with the state board, become due and payable
153 immediately or subject to renegotiation among the state board,
154 the authority and the county board: *And provided further*, That
155 if the loan becomes due and payable immediately, the authority,
156 in consultation with the state board, shall use all means avail-
157 able under the loan agreement and law to collect the outstand-
158 ing principal balance of the loan, together with all unpaid
159 interest accrued to the date of payment of the outstanding
160 principal balance; and

161 (3) The loan agreement shall provide for the state board and
162 the authority to forgive all principal and interest of the loan
163 upon the county board purchasing the leased premises pursuant
164 to the investment contract and performance of the investment
165 contract in its entirety.

166 (g) To encourage county boards to proceed promptly with
167 facilities planning and to prepare for the expenditure of any
168 state moneys derived from the sources described in this section,
169 any county board or other entity to whom moneys are allocated

170 by the authority that fails to expend the money within three
171 years of the allocation shall forfeit the allocation and thereafter
172 is ineligible for further allocations pursuant to this section until
173 it is ready to expend funds in accordance with an approved
174 facilities plan: *Provided*, That the authority may authorize an
175 extension beyond the three-year forfeiture period not to exceed
176 an additional two years. Any amount forfeited shall be added to
177 the total funds available in the school construction fund of the
178 authority for future allocation and distribution. Funds may not
179 be distributed for any project under this article unless the
180 responsible entity has a facilities plan approved by the state
181 board and the school building authority and is prepared to
182 commence expenditure of the funds during the fiscal year in
183 which the moneys are distributed.

184 (h) The remaining moneys that are determined by the
185 authority to be available for distribution during the then current
186 fiscal year from moneys paid into the school major improve-
187 ment fund pursuant to section six of this article shall be
188 allocated and distributed on the basis of need and efficient use
189 of resources for projects authorized in accordance with the
190 provisions of section sixteen of this article: *Provided*, That the
191 moneys may not be distributed for any project under this
192 section unless the responsible entity has a facilities plan
193 approved by the state board and the authority and is to com-
194 mence expenditures of the funds during the fiscal year in which
195 the moneys are distributed: *Provided, however*, That any
196 moneys allocated to a project and not distributed for that project
197 shall be deposited in an account to the credit of the project, the
198 principal amount to remain to the credit of and available to the
199 project for a period of two years. Any moneys which are
200 unexpended after a two-year period shall be redistributed on the
201 basis of need from the school major improvement fund in that
202 fiscal year.

203 (i) No local matching funds may be required under the
204 provisions of this section. However, the responsibilities of the
205 county boards of education to maintain school facilities are not
206 negated by the provisions of this article. To be eligible to
207 receive an allocation of school major improvement funds from
208 the authority, a county board must have expended in the
209 previous fiscal year an amount of county moneys equal to or
210 exceeding the lowest average amount of money included in the
211 county board's maintenance budget over any three of the
212 previous five years and must have budgeted an amount equal to
213 or greater than the average in the current fiscal year: *Provided,*
214 That the state board shall promulgate rules relating to county
215 boards' maintenance budgets, including items which shall be
216 included in the budgets.

217 (j) Any county board may use moneys provided by the
218 authority under this article in conjunction with local funds
219 derived from bonding, special levy or other sources. Distribu-
220 tion to a county board, or to the state board or the adminisra-
221 tive council of an area vocational educational center pursuant
222 to subsection (b) of this section, may be in a lump sum or in
223 accordance with a schedule of payments adopted by the
224 authority pursuant to guidelines adopted by the authority.

225 (k) Funds in the school construction fund shall first be
226 transferred and expended as follows:

227 Any funds deposited in the school construction fund shall
228 be expended first in accordance with an appropriation by the
229 Legislature. To the extent that funds are available in the school
230 construction fund in excess of that amount appropriated in any
231 fiscal year, the excess funds may be expended for projects
232 authorized in accordance with the provisions of section sixteen
233 of this article. Any projects which the authority identified and
234 announced for funding on or before the first day of August, one
235 thousand nine hundred ninety-five, or identified and announced

236 for funding on or before the thirty-first day of December, one
237 thousand nine hundred ninety-five, shall be funded by the
238 authority in an amount which is not less than the amount
239 specified when the project was identified and announced.

240 (l) It is the intent of the Legislature to encourage county
241 boards to explore and consider arrangements with other
242 counties that may facilitate the highest and best use of all
243 available funds, which may result in improved transportation
244 arrangements for students or which otherwise may create
245 efficiencies for county boards and the students. In order to
246 address the intent of the Legislature contained in this subsec-
247 tion, the authority shall grant preference to those projects which
248 involve multicounty arrangements as the authority shall
249 determine reasonable and proper.

250 (m) County boards shall submit all designs for construction
251 of new school buildings to the school building authority for
252 review and approval prior to preparation of final bid docu-
253 ments: *Provided*, That a vendor who has been debarred pursu-
254 ant to the provisions of sections thirty-three-a through thirty-
255 three-f, inclusive, article three, chapter five-a of this code, may
256 not bid on or be awarded a contract under this section.

257 (n) The authority may elect to disburse funds for approved
258 construction projects over a period of more than one year
259 subject to the following:

260 (1) The authority may not approve the funding of a school
261 construction project over a period of more than three years;

262 (2) The authority may not approve the use of more than
263 fifty percent of the revenue available for distribution in any
264 given fiscal year for projects that are to be funded over a period
265 of more than one year; and

266 (3) In order to encourage local participation in funding
267 school construction projects, the authority may set aside limited
268 funding, not to exceed five hundred thousand dollars, in reserve
269 for one additional year to provide a county the opportunity to
270 complete financial planning for a project prior to the allocation
271 of construction funds. Any funding shall be on a reserve basis
272 and converted to a part of the construction grant only after all
273 project budget funds have been secured and all county commit-
274 ments have been fulfilled. Failure of the county to solidify the
275 project budget and meet its obligations to the state within
276 eighteen months of the date the funding is set aside by the
277 authority will result in expiration of the reserve and the funds
278 shall be reallocated by the authority in the succeeding funding
279 cycle.

§18-9D-16. Authority to establish guidelines and procedures for facilities and major improvement plans; guidelines for modifications and updates, etc.; guidelines for project evaluation; submission of certified list of projects to be funded; department on-site inspection of facilities; enforcement of required changes or additions to project plans.

1 (a) The authority shall establish guidelines and procedures
2 to promote the intent and purposes of this article and assure the
3 prudent and resourceful expenditure of state funds for projects
4 under this article including, but not limited to, the following:

5 (1) Guidelines and procedures for the facilities plans,
6 school major improvement plans and projects submitted in the
7 furtherance of the plans that address, but are not limited to, the
8 following:

9 (A) All of the elements of the respective plans as defined in
10 section two of this article;

11 (B) The procedures for a county to submit a preliminary
12 plan, a plan outline or a proposal for a plan to the authority
13 prior to the submission of the facilities plan. The preliminary
14 plan, plan outline or proposal for a plan shall be the basis for a
15 consultation meeting between representatives of the county and
16 members of the authority, including at least one citizen mem-
17 ber, which shall be held promptly following submission of the
18 preliminary plan, plan outline or proposal for a plan to assure
19 understanding of the general goals of this article and the
20 objective criteria by which projects will be evaluated, to discuss
21 ways the plan may be structured to meet those goals, and to
22 assure efficiency and productivity in the project approval
23 process;

24 (C) The manner, time line and process for the submission
25 of each plan and annual plan updates to the authority;

26 (D) The requirements for public hearings, comments or
27 other means of providing broad-based input on plans and
28 projects under this article within a reasonable time period as the
29 authority may consider appropriate. The submission of each
30 plan must be accompanied by a synopsis of all comments
31 received and a formal comment by the county board, the state
32 board or the administrative council of an area vocational
33 educational center submitting the plan;

34 (E) Any project specifications and maintenance specifica-
35 tions considered appropriate by the authority including, but not
36 limited to, such matters as energy efficiency, preferred siting,
37 construction materials, maintenance plan and any other matter
38 related to how the project is to proceed;

39 (F) A prioritization by the county board, the state board or
40 the administrative council submitting the plan of each project
41 contained in the plan. In prioritizing the projects, the county
42 board, the state board or the administrative council submitting

43 the plan shall make determinations in accordance with the
44 objective criteria formulated by the school building authority in
45 accordance with this section. The priority list is one of the
46 criteria that shall be considered by the authority deciding how
47 the available funds should be expended;

48 (G) The objective means to be set forth in the plan and used
49 in evaluating implementation of the overall plan and each
50 project included in the plan. The evaluation must measure how
51 the plan addresses the goals of this article and any guidelines
52 adopted under this article, and how each project is in further-
53 ance of the facilities plan and school major improvement plan,
54 as applicable, as well as the importance of the project to the
55 overall success of the facilities plan or school major improve-
56 ment plan and the overall goals of the authority; and

57 (H) Any other matters considered by the authority to be
58 important reflections of how a construction project or a major
59 improvement project or projects will further the overall goals
60 of this article.

61 (2) Guidelines and procedures which may be adopted by the
62 authority for requiring that a county board modify, update,
63 supplement or otherwise submit changes or additions to an
64 approved facilities plan or for requiring that a county board, the
65 state board or the administrative council of an area vocational
66 educational center modify, update, supplement or otherwise
67 submit changes or additions to an approved school major
68 improvement plan. The authority shall provide reasonable
69 notification and sufficient time for the change or addition as
70 delineated in guidelines developed by the authority.

71 (3) Guidelines and procedures for evaluating project
72 proposals that are submitted to the authority that address, but
73 are not limited to, the following:

74 (A) Any project funded by the authority must be in further-
75 ance of the facilities plan or school major improvement plan
76 and in compliance with the guidelines established by the
77 authority;

78 (B) If a project is to benefit more than one county in the
79 region, the facilities plan must state the manner in which the
80 cost and funding of the project will be apportioned among the
81 counties;

82 (C) If a county board proposes to finance a construction
83 project through a lease with an option to purchase pursuant to
84 an investment contract as described in subsection (f), section
85 fifteen of this article, the specifications for the project must
86 include the term of the lease, the amount of each lease payment,
87 including the payment due upon exercise of the option to
88 purchase, and the terms and conditions of the proposed invest-
89 ment contract; and

90 (D) The objective criteria for the evaluation of projects
91 which shall include, but are not limited to, the following:

92 (i) How the current facilities do not meet and how the plan
93 and any project under the plan meets the following:

94 (I) Student health and safety including, but not limited to,
95 critical health and safety needs;

96 (II) Economies of scale, including compatibility with
97 similar schools that have achieved the most economical
98 organization, facility use and pupil-teacher ratios;

99 (III) Reasonable travel time and practical means of address-
100 ing other demographic considerations;

101 (IV) Multicounty and regional planning to achieve the most
102 effective and efficient instructional delivery system;

103 (V) Curriculum improvement and diversification, including
104 the use of instructional technology, distance learning and access
105 to advanced courses in science, mathematics, language arts and
106 social studies;

107 (VI) Innovations in education;

108 (VII) Adequate space for projected student enrollments;

109 (VIII) The history of efforts taken by the county board to
110 propose or adopt local school bond issues or special levies to
111 the extent constitutionally permissible; and

112 (IX) Regularly scheduled preventive maintenance; and

113 (ii) How the project will assure the prudent and resourceful
114 expenditure of state funds and achieve the purposes of this
115 article for constructing, expanding, renovating or otherwise
116 improving and maintaining school facilities for a thorough and
117 efficient education.

118 (4) Guidelines and procedures for evaluating projects for
119 funding that address, but are not limited to, the following:

120 (A) Requiring each county board's facilities plan and
121 school major improvement plan to prioritize all the construction
122 projects or major improvement projects, respectively, within the
123 county. A school major improvement plan submitted by the
124 state board or the administrative council of an area vocational
125 educational center shall prioritize all the school improvement
126 projects contained in the plan. The priority list shall be one of
127 the criteria to be considered by the authority in determining
128 how available funds shall be expended. In prioritizing the
129 projects, the county board, the state board or the administrative
130 council submitting a plan shall make determinations in accor-
131 dance with the objective criteria formulated by the school
132 building authority;

133 (B) The return to each county submitting a project proposal
134 an explanation of the evaluative factors underlying the decision
135 of the authority to fund or not to fund the project; and

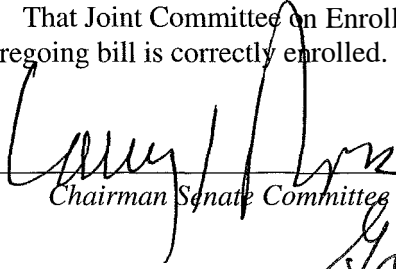
136 (C) The allocation and expenditure of funds in accordance
137 with this article, subject to the availability of funds.

138 (b) Prior to final action on approving projects for funding
139 under this article, the authority shall submit a certified list of
140 the projects to the joint committee on government and finance.

141 (c) The state department of education shall conduct on-site
142 inspections, at least annually, of all facilities which have been
143 funded wholly or in part by moneys from the authority or state
144 board to ensure compliance with the county board's facilities
145 plan and school major improvement plan as related to the
146 facilities; to preserve the physical integrity of the facilities to
147 the extent possible; and to otherwise extend the useful life of
148 the facilities: *Provided*, That the state board shall submit reports
149 regarding its on-site inspections of facilities to the authority
150 within thirty days of completion of the on-site inspections:
151 *Provided, however*, That the state board shall promulgate rules
152 regarding the on-site inspections and matters relating thereto,
153 in consultation with the authority, as soon as practical and shall
154 submit proposed rules for legislative review no later than the
155 first day of December, one thousand nine hundred ninety-four.

156 (d) Based on its on-site inspection or notification by the
157 authority to the state board that the changes or additions to a
158 county's board facilities plan or school major improvement
159 plan required by the authority have not been implemented
160 within the time period prescribed by the authority, the state
161 board shall restrict the use of the necessary funds or otherwise
162 allocate funds from moneys appropriated by the Legislature for
163 those purposes set forth in section nine, article nine-a of this
164 chapter.

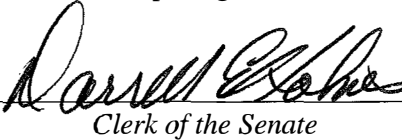
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

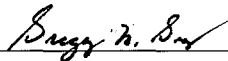

Chairman Senate Committee

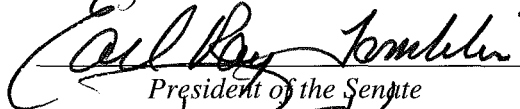

Chairman House Committee

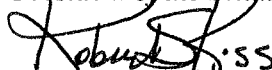
Originating in the House.

In effect from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 7th
day of April, 2004.


Governor

Date 3/26/04

4:00 p