

**H. B. 2139**

(By Delegates Williams and Shaver)

[Introduced January 12, 2011; referred to the  
Committee on Education then Finance.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-9c; and to amend and reenact §18-9D-3 and §18-9D-15 of said code, all relating to allowing a county board of education to enter into lease-purchase agreements and allowing the School Building Authority to provide one-time grants to a county board of education for the purpose of entering into lease-purchase agreements for the construction of school facilities.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-5-9c; and that §18-9D-3 and §18-9D-15 of said code be amended and reenacted, all to read as follows:

**ARTICLE 5. COUNTY BOARD OF EDUCATION.**

**§18-5-9c. Lease-purchase agreements to provide school facilities.**

1 Notwithstanding section twenty-six, article eight, chapter  
2 eleven of this code or any other contrary provision of this code,  
3 a county board may enter into a lease-purchase agreement for land,  
4 buildings and capital improvements.

5 **ARTICLE 9D. SCHOOL BUILDING AUTHORITY.**

6 **§18-9D-3. Powers of authority.**

7 The School Building Authority has the power:

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

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

10 (3) To contract to acquire and to acquire, in the name of the  
11 authority, by purchase, lease-purchase or otherwise, not to exceed  
12 a term of twenty-five years, ~~or otherwise~~, real property or rights  
13 or easements necessary or convenient for its corporate purposes,  
14 ~~and~~ to exercise the power of eminent domain to accomplish those  
15 purposes, and to accomplish the purposes as provided in subsection  
16 twelve of this section;

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

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

20 (6) To appoint, contract with and employ attorneys, bond  
21 counsel, accountants, construction and financial experts,  
22 underwriters, financial advisers, trustees, managers, officers and  
23 such other employees and agents as may be necessary in the judgment  
24 of the authority and to fix their compensation: *Provided, That*

1 contracts entered into by the School Building Authority in  
2 connection with the issuance of bonds under this article to provide  
3 professional and technical services, including, without limitation,  
4 accounting, actuarial, underwriting, consulting, trustee, bond  
5 counsel, legal services and contracts relating to the purchase or  
6 sale of bonds are subject to the provisions of article three,  
7 chapter five-a of this code. ~~Provided, however, That~~  
8 Notwithstanding any other provisions of this code, any authority of  
9 the Attorney General of this state relating to the review of  
10 contracts and other documents to effectuate the issuance of bonds  
11 under this article shall be exclusively limited to the form of the  
12 contract and document. ~~Provided further, That~~ The Attorney General  
13 of this state shall complete all reviews of contracts and documents  
14 relating to the issuance of bonds under this article within ten  
15 calendar days of receipt of the contract and document for review;

16 (7) To make contracts and to execute all instruments necessary  
17 or convenient to effectuate the intent of and to exercise the  
18 powers granted to it by this article;

19 (8) To renegotiate all contracts entered into by it whenever,  
20 due to a change in situation, it appears to the authority that its  
21 interests will be best served;

22 (9) To acquire by purchase, eminent domain or otherwise all  
23 real property or interests in the property necessary or convenient  
24 to accomplish the purposes of this article;

1           (10) To require proper maintenance and insurance of any  
2 project authorized under this section, including flood insurance  
3 for any facility within the one hundred year flood plain at which  
4 authority funds are expended;

5           (11) To charge rent for the use of all or any part of a  
6 project or buildings at any time financed, constructed, acquired or  
7 improved, in whole or in part, with the revenues of the authority;

8           (12) To assist any county board of education that chooses to  
9 acquire land, buildings and capital improvements to existing school  
10 buildings and property for use as public school facilities, by  
11 lease from a private or public lessor for a term not to exceed  
12 twenty-five years with an option to purchase pursuant to an  
13 investment contract with the lessor on such terms and conditions as  
14 may be determined to be in the best interests of the authority, the  
15 State Board of Education and the county board of education,  
16 consistent with the purposes of this article, by transferring funds  
17 to ~~the state Board of Education~~ county board of education as  
18 provided in ~~subsection (d)~~ subsections (f) and/or (g), section  
19 fifteen of this article for the use of the county board of  
20 education;

21           (13) To accept and expend any gift, grant, contribution,  
22 bequest or endowment of money and equipment to, or for the benefit  
23 of, the authority or any project under this article, from the State  
24 of West Virginia or any other source for any or all of the purposes

1 specified in this article or for any one or more of such purposes  
2 as may be specified in connection with the gift, grant,  
3 contribution, bequest or endowment;

4       (14) To enter on any lands and premises for the purpose of  
5 making surveys, soundings and examinations;

6       (15) To contract for architectural, engineering or other  
7 professional services considered necessary or economical by the  
8 authority to provide consultative or other services to the  
9 authority or to any regional educational service agency or county  
10 board requesting professional services offered by the authority, to  
11 evaluate any facilities plan or any project encompassed in the  
12 plan, to inspect existing facilities or any project that has  
13 received or may receive funding from the authority or to perform  
14 any other service considered by the authority to be necessary or  
15 economical. Assistance to the region or district may include the  
16 development of preapproved systems, plans, designs, models or  
17 documents; advice or oversight on any plan or project; or any other  
18 service that may be efficiently provided to regional educational  
19 service agencies or county boards by the authority;

20       (16) To provide funds on an emergency basis to repair or  
21 replace property damaged by fire, flood, wind, storm, earthquake or  
22 other natural occurrence, the funds to be made available in  
23 accordance with guidelines of the School Building Authority;

24       (17) To transfer moneys to custodial accounts maintained by

1 the School Building Authority with a state financial institution  
2 from the School Construction Fund and the School Improvement Fund  
3 created in the State Treasury pursuant to the provisions of section  
4 six of this article, as necessary to the performance of any  
5 contracts executed by the School Building Authority in accordance  
6 with the provisions of this article;

7       (18) To enter into agreements with county boards and persons,  
8 firms or corporations to facilitate the development of county board  
9 projects and county board facilities plans. The county board  
10 participating in an agreement shall pay at least twenty-five  
11 percent of the cost of the agreement. Nothing in this section  
12 shall be construed to supersede, limit or impair the authority of  
13 county boards to develop and prepare their projects or plans;

14       (19) To encourage any project or part thereof to provide  
15 opportunities for students to participate in supervised, unpaid  
16 work-based learning experiences related to the student's program of  
17 study approved by the county board. The work-based learning  
18 experience must be conducted in accordance with a formal training  
19 plan approved by the instructor, the employer and the student and  
20 which sets forth at a minimum the specific skills to be learned,  
21 the required documentation of work-based learning experiences, the  
22 conditions of the placement, including duration and safety  
23 provisions, and provisions for supervision and liability insurance  
24 coverage as applicable. Projects involving the new construction

1 and renovation of vocational-technical and adult education  
2 facilities should provide opportunities for students to participate  
3 in supervised work-based learning experiences, to the extent  
4 practical, which meet the requirements of this subdivision.  
5 Nothing in this subdivision may be construed to affect registered  
6 youth apprenticeship programs or the provisions governing those  
7 programs; and

8 (20) To do all things necessary or convenient to carry out the  
9 powers given in this article.

10 **§18-9D-15. Legislative intent; allocation of money among**  
11 **categories of projects; lease-purchase options;**  
12 **limitation on time period for expenditure of**  
13 **project allocation; county maintenance budget**  
14 **requirements; project disbursements over period of**  
15 **years; preference for multicounty arrangements;**  
16 **submission of project designs; set-aside to**  
17 **encourage local participation.**

18 (a) It is the intent of the Legislature to empower the School  
19 Building Authority to facilitate and provide state funds and to  
20 administer all federal funds provided for the construction and  
21 major improvement of school facilities so as to meet the  
22 educational needs of the people of this state in an efficient and  
23 economical manner. The authority shall make funding determinations

1 in accordance with the provisions of this article and shall assess  
2 existing school facilities and each facility's school major  
3 improvement plan in relation to the needs of the individual  
4 student, the general school population, the communities served by  
5 the facilities and facility needs statewide.

6 (b) An amount that is not more than three percent of the sum  
7 of moneys that are determined by the authority to be available for  
8 distribution during the then current fiscal year from:

9 (1) Moneys paid into the School Building Capital Improvements  
10 Fund pursuant to section ten, article nine-a of this chapter;

11 (2) The issuance of revenue bonds for which moneys in the  
12 School Building Debt Service Fund or the Excess Lottery School  
13 Building Debt Service Fund are pledged as security;

14 (3) Moneys paid into the School Construction Fund pursuant to  
15 section six of this article; and

16 (4) Any other moneys received by the authority, except moneys  
17 paid into the School Major Improvement Fund pursuant to section six  
18 of this article and moneys deposited into the School Access Safety  
19 Fund pursuant to section five, article nine-f of this chapter, may  
20 be allocated and may be expended by the authority for projects  
21 authorized in accordance with the provisions of section sixteen of  
22 this article that service the educational community statewide or,  
23 upon application by the state board, for educational programs that  
24 are under the jurisdiction of the state board. In addition, upon



1 application by the state board or the administrative council of an  
2 area vocational educational center established pursuant to article  
3 two-b of this chapter, the authority may allocate and expend under  
4 this subsection moneys for school major improvement projects  
5 authorized in accordance with the provisions of section sixteen of  
6 this article proposed by the state board or an administrative  
7 council for school facilities under the direct supervision of the  
8 state board or an administrative council, respectively.

9 Furthermore, upon application by a county board, the authority may  
10 allocate and expend under this subsection moneys for school major  
11 improvement projects for vocational programs at comprehensive high  
12 schools, vocational schools cooperating with community and  
13 technical college programs, or both. Each county board is  
14 encouraged to cooperate with community and technical colleges in  
15 the use of existing or development of new vocational technical  
16 facilities. All projects eligible for funds from this subsection  
17 shall be submitted directly to the authority which shall be solely  
18 responsible for the project's evaluation, subject to the following:

19       (A) The authority may not expend any moneys for a school major  
20 improvement project proposed by the state board or the  
21 administrative council of an area vocational educational center  
22 unless the state board or an administrative council has submitted  
23 a ten-year facilities plan; and

24       (B) The authority shall, before allocating any moneys to the

1 state board or the administrative council of an area vocational  
2 educational center for a school improvement project, consider all  
3 other funding sources available for the project.

4 (c) An amount that is not more than two percent of the moneys  
5 that are determined by the authority to be available for  
6 distribution during the current fiscal year from:

7 (1) Moneys paid into the School Building Capital Improvements  
8 Fund pursuant to section ten, article nine-a of this chapter;

9 (2) The issuance of revenue bonds for which moneys in the  
10 School Building Debt Service Fund or the Excess Lottery School  
11 Building Debt Service Fund are pledged as security;

12 (3) Moneys paid into the School Construction Fund pursuant to  
13 section six of this article; and

14 (4) Any other moneys received by the authority, except moneys  
15 deposited into the School Major Improvement Fund and moneys  
16 deposited into the School Access Safety Fund pursuant to section  
17 five, article nine-f of this chapter, shall be set aside by the  
18 authority as an emergency fund to be distributed in accordance with  
19 the guidelines adopted by the authority.

20 (d) An amount that is not more than five percent of the moneys  
21 that are determined by the authority to be available for  
22 distribution during the current fiscal year from:

23 (1) Moneys paid into the School Building Capital Improvements  
24 Fund pursuant to section ten, article nine-a of this chapter;

1           (2) The issuance of revenue bonds for which moneys in the  
2 School Building Debt Service Fund or the Excess Lottery School  
3 Building Debt Service Fund are pledged as security;

4           (3) Moneys paid into the School Construction Fund pursuant to  
5 section six of this article; and

6           (4) Any other moneys received by the authority, except moneys  
7 deposited into the School Major Improvement Fund and moneys  
8 deposited into the School Access Safety Fund pursuant to section  
9 five, article nine-f of this chapter, may be reserved by the  
10 authority for multiuse vocational-technical education facilities  
11 projects that may include post-secondary programs as a first  
12 priority use. The authority may allocate and expend under this  
13 subsection moneys for any purposes authorized in this article on  
14 multiuse vocational-technical education facilities projects,  
15 including equipment and equipment updates at the facilities,  
16 authorized in accordance with the provisions of section sixteen of  
17 this article. If the projects approved under this subsection do  
18 not require the full amount of moneys reserved, moneys above the  
19 amount required may be allocated and expended in accordance with  
20 other provisions of this article. A county board, the state board,  
21 an administrative council or the joint administrative board of a  
22 vocational-technical education facility which includes post-  
23 secondary programs may propose projects for facilities or  
24 equipment, or both, which are under the direct supervision of the

1 respective body: *Provided*, That the authority shall, before  
2 allocating any moneys for a project under this subsection, consider  
3 all other funding sources available for the project.

4 (e) The remaining moneys determined by the authority to be  
5 available for distribution during the then current fiscal year  
6 from:

7 (1) Moneys paid into the School Building Capital Improvements  
8 Fund pursuant to section ten, article nine-a of this chapter;

9 (2) The issuance of revenue bonds for which moneys in the  
10 School Building Debt Service Fund or the Excess Lottery School  
11 Building Debt Service Fund are pledged as security;

12 (3) Moneys paid into the School Construction Fund pursuant to  
13 section six of this article; and

14 (4) Any other moneys received by the authority, except moneys  
15 deposited into the School Major Improvement Fund and moneys  
16 deposited into the School Access Safety Fund pursuant to section  
17 five, article nine-f of this chapter, shall be allocated and  
18 expended on the basis of need and efficient use of resources for  
19 projects funded in accordance with the provisions of section  
20 sixteen of this article.

21 (f) If a county board proposes to finance a project that is  
22 authorized in accordance with section nine-c, article five of this  
23 chapter or section sixteen of this article through a lease with an  
24 option to purchase leased premises upon the expiration of the total

1 lease period pursuant to an investment contract, the authority may  
2 ~~not~~ allocate moneys in the form of a grant to the county board in  
3 connection with the project: *Provided*, That the authority may  
4 transfer moneys to the ~~state~~ county board ~~which, with the~~  
5 ~~authority, shall lend the amount transferred to the county board to~~  
6 be used only for a one-time payment due at the beginning of the  
7 lease term, made for the purpose of reducing annual lease payments  
8 under the investment contract. In the event of default by the  
9 county board of the lease-purchase contract under this section, the  
10 authority shall have no liability on the lease-purchase contract:  
11 In such an event of default, the county board may fulfill the terms  
12 of the lease-purchase contract for up to two consecutive years from  
13 the event of default utilizing funds granted to the county pursuant  
14 to section ten, article nine-a of this chapter in order to fulfill  
15 the terms of the lease-purchase contract. At any time during the  
16 term of a lease-purchase contract under this section, the State  
17 Board of Education takes control of a county board pursuant to  
18 section five, article two-e of this chapter, the authority may, in  
19 the sole discretion of the authority, assume responsibility for the  
20 lease purchase contract.

21 (g) If a county board proposes to finance a project that is  
22 authorized in accordance with section nine-c, article five of this  
23 chapter or section sixteen of this article through a lease with an  
24 option to purchase leased premises upon the expiration of the total

1 lease period pursuant to an investment contract, the authority may  
2 allocate moneys in the form of a loan to the county board in  
3 connection with the project. The authority may lend moneys to the  
4 county board to be used only for a one-time payment due at the  
5 beginning of the lease term, made for the purpose of reducing  
6 annual lease payments under the investment contract, subject to the  
7 following conditions:

8       (1) The loan shall be secured in the manner required by the  
9 authority, in consultation with the state board, and shall be  
10 repaid in a period and bear interest at a rate as determined by the  
11 ~~state board and the~~ authority and shall have any terms and  
12 conditions that are required by the authority, all of which shall  
13 be set forth in a loan agreement among the authority ~~the state~~  
14 ~~board~~ and the county board;

15       (2) The loan agreement shall provide for ~~the state board and~~  
16 the authority to defer the payment of principal and interest upon  
17 any loan made to the county board during the term of the investment  
18 contract, and annual renewals of the investment contract, among ~~the~~  
19 ~~state board,~~ the authority, the county board and a lessor, subject  
20 to the following:

21       (A) In the event a county board which has received a loan from  
22 the authority for a one-time payment at the beginning of the lease  
23 term does not renew the lease annually until performance of the  
24 investment contract in its entirety is completed, the county board

1 is in default and the principal of the loan, together with all  
2 unpaid interest accrued to the date of the default, shall, at the  
3 option of the authority, in consultation with the state board,  
4 become due and payable immediately or subject to renegotiation  
5 among ~~the state board,~~ the authority and the county board;

6 (B) If a county board renews the lease annually through the  
7 performance of the investment contract in its entirety, the county  
8 board shall exercise its option to purchase the leased premises;

9 (C) The failure of the county board to make a scheduled  
10 payment pursuant to the investment contract constitutes an event of  
11 default under the loan agreement;

12 (D) Upon a default by a county board, the principal of the  
13 loan, together with all unpaid interest accrued to the date of the  
14 default, shall, at the option of the authority, in consultation  
15 with the state board, become due and payable immediately or subject  
16 to renegotiation among ~~the state board,~~ the authority and the  
17 county board; and

18 (E) If the loan becomes due and payable immediately, the  
19 authority, in consultation with the state board, ~~shall~~ may use all  
20 means available under the loan agreement and law to collect the  
21 outstanding principal balance of the loan, together with all unpaid  
22 interest accrued to the date of payment of the outstanding  
23 principal balance. ~~and~~

24 (3) The loan agreement shall provide for ~~the state board and~~

1 the authority to forgive all principal and interest of the loan  
2 upon the county board purchasing the leased premises pursuant to  
3 the investment contract and performance of the investment contract  
4 in its entirety; and

5 (4) In the event of default by the county board of the lease-  
6 purchase contract under this section, the authority has no  
7 liability on the lease-purchase contract. In such an event of  
8 default, the county board may fulfill the terms of the lease-  
9 purchase contract for up to two consecutive years from the event of  
10 default utilizing funds granted to the county pursuant to section  
11 ten, article nine-a of this chapter in order to fulfill the terms  
12 of the lease-purchase contract At any time during the term of a  
13 lease-purchase contract under this section the State Board of  
14 Education takes control of a county board pursuant to section five,  
15 article two-e, of this chapter, the authority may, in the sole  
16 discretion of the authority, assume responsibility for the lease-  
17 purchase contract.

18 ~~(g)~~ (h) To encourage county boards to proceed promptly with  
19 facilities planning and to prepare for the expenditure of any state  
20 moneys derived from the sources described in this section, any  
21 county board or other entity to whom moneys are allocated by the  
22 authority that fails to expend the money within three years of the  
23 allocation shall forfeit the allocation and thereafter is  
24 ineligible for further allocations pursuant to this section until



1 it is ready to expend funds in accordance with an approved  
2 facilities plan: *Provided*, That the authority may authorize an  
3 extension beyond the three-year forfeiture period not to exceed an  
4 additional two years. Any amount forfeited shall be added to the  
5 total funds available in the School Construction Fund of the  
6 authority for future allocation and distribution. Funds may not be  
7 distributed for any project under this article unless the  
8 responsible entity has a facilities plan approved by the state  
9 board and the School Building Authority and is prepared to commence  
10 expenditure of the funds during the fiscal year in which the moneys  
11 are distributed.

12 ~~(h)~~ (i) The remaining moneys that are determined by the  
13 authority to be available for distribution during the then current  
14 fiscal year from moneys paid into the School Major Improvement Fund  
15 pursuant to section six of this article shall be allocated and  
16 distributed on the basis of need and efficient use of resources for  
17 projects authorized in accordance with the provisions of section  
18 sixteen of this article, subject to the following:

19 (1) The moneys may not be distributed for any project under  
20 this section unless the responsible entity has a facilities plan  
21 approved by the state board and the authority and is to commence  
22 expenditures of the funds during the fiscal year in which the  
23 moneys are distributed;

24 (2) Any moneys allocated to a project and not distributed for

1 that project shall be deposited in an account to the credit of the  
2 project, the principal amount to remain to the credit of and  
3 available to the project for a period of two years; and

4       (3) Any moneys which are unexpended after a two-year period  
5 shall be redistributed on the basis of need from the School Major  
6 Improvement Fund in that fiscal year.

7       ~~(i)~~ (j) Local matching funds may not be required under the  
8 provisions of this section. However, this article does not negate  
9 the responsibilities of the county boards to maintain school  
10 facilities. To be eligible to receive an allocation of school  
11 major improvement funds from the authority, a county board must  
12 have expended in the previous fiscal year an amount of county  
13 moneys equal to or exceeding the lowest average amount of money  
14 included in the county board's maintenance budget over any three of  
15 the previous five years and must have budgeted an amount equal to  
16 or greater than the average in the current fiscal year: *Provided,*  
17 That the state board shall promulgate rules relating to county  
18 boards' maintenance budgets, including items which shall be  
19 included in the budgets.

20       ~~(j)~~ (k) Any county board may use moneys provided by the  
21 authority under this article in conjunction with local funds  
22 derived from bonding, special levy or other sources. Distribution  
23 to a county board, or to the state board or the administrative  
24 council of an area vocational educational center pursuant to

1 subsection (b) of this section, may be in a lump sum or in  
2 accordance with a schedule of payments adopted by the authority  
3 pursuant to guidelines adopted by the authority.

4 ~~(k)~~ (l) Funds in the School Construction Fund shall first be  
5 transferred and expended as follows:

6 (1) Any funds deposited in the School Construction Fund shall  
7 be expended first in accordance with an appropriation by the  
8 Legislature.

9 (2) To the extent that funds are available in the School  
10 Construction Fund in excess of that amount appropriated in any  
11 fiscal year, the excess funds may be expended for projects  
12 authorized in accordance with the provisions of section sixteen of  
13 this article.

14 ~~(l)~~ (m) It is the intent of the Legislature to encourage  
15 county boards to explore and consider arrangements with other  
16 counties that may facilitate the highest and best use of all  
17 available funds, which may result in improved transportation  
18 arrangements for students or which otherwise may create  
19 efficiencies for county boards and the students. In order to  
20 address the intent of the Legislature contained in this subsection,  
21 the authority shall grant preference to those projects which  
22 involve multicounty arrangements as the authority shall determine  
23 reasonable and proper.

24 ~~(m)~~ (n) County boards shall submit all designs for

1 construction of new school buildings to the School Building  
2 Authority for review and approval prior to preparation of final bid  
3 documents. A vendor who has been debarred pursuant to the  
4 provisions of sections thirty-three-a through thirty-three-f,  
5 inclusive, article three, chapter five-a of this code may not bid  
6 on or be awarded a contract under this section.

7 ~~(n)~~ (o) The authority may elect to disburse funds for approved  
8 construction projects over a period of more than one year subject  
9 to the following:

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

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

16 (3) In order to encourage local participation in funding  
17 school construction projects, the authority may set aside limited  
18 funding, not to exceed \$500,000, in reserve for one additional year  
19 to provide a county the opportunity to complete financial planning  
20 for a project prior to the allocation of construction funds. Any  
21 funding shall be on a reserve basis and converted to a part of the  
22 construction grant only after all project budget funds have been  
23 secured and all county commitments have been fulfilled. Failure of  
24 the county to solidify the project budget and meet its obligations

1 to the state within eighteen months of the date the funding is set  
2 aside by the authority will result in expiration of the reserve and  
3 the funds shall be reallocated by the authority in the succeeding  
4 funding cycle.

NOTE: The purpose of this bill is to allow a county board of education to enter into a lease-purchase agreement for land, buildings and capital improvements and to allow the School Building Authority to provide one-time grants to a county board of education for these same purposes.

§18-5-9c is new; therefore, it has been completely underscored.

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