

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 2160**

5 (By Delegates Rowan, Cowles, Perry, Williams, Hamilton, Anderson, Pasdon, Duke, Espinosa,
6 Miley and E. Nelson)
7

8 [Passed March 14, 2015; in effect from passage
9

10 AN ACT to amend and reenact §18-9D-2, §18-9D-3, §18-9D-4c and §18-9D-16 of the Code of
11 West Virginia, 1931, as amended; and to amend said code by adding thereto a new section,
12 designated §18-9D-22, all relating to making the West Virginia Schools for the Deaf and
13 Blind eligible to participate in any and all funding administered or distributed by the West
14 Virginia School Building Authority.

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

16 That §18-9D-2, §18-9D-3, §18-9D-4c and §18-9D-16 of the Code of West Virginia, 1931,
17 as amended, be amended and reenacted; and that said code be amended by adding thereto a new
18 section, designated §18-9D-22, all to read as follows:

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

20 **§18-9D-2. Definitions.**

21 For the purposes of this article, unless a different meaning clearly appears from the context:

22 (1) “Authority” means the School Building Authority of West Virginia;

1 (2) “Bonds” means bonds issued by the authority pursuant to this article;

2 (3) “Construction project” means a project in the furtherance of a facilities plan with a cost
3 greater than \$1 million for the new construction, expansion or major renovation of facilities,
4 buildings and structures for school purposes, including:

5 (A) The acquisition of land for current or future use in connection with the construction
6 project;

7 (B) New or substantial upgrading of existing equipment, machinery and furnishings;

8 (C) Installation of utilities and other similar items related to making the construction project
9 operational.

10 (D) Construction project does not include such items as books, computers or equipment used
11 for instructional purposes; fuel; supplies; routine utility services fees; routine maintenance costs;
12 ordinary course of business improvements; other items which are customarily considered to result
13 in a current or ordinary course of business operating charge or a major improvement project;

14 (4) “Cost of project” means the cost of construction, expansion, renovation, repair and safety
15 upgrading of facilities, buildings and structures for school purposes; the cost of land, equipment,
16 machinery, furnishings, installation of utilities and other similar items related to making the project
17 operational; and the cost of financing, interest during construction, professional service fees and all
18 other charges or expenses necessary, appurtenant or incidental to the foregoing, including the cost
19 of administration of this article;

20 (5) “County board” or “county” means a county board of education as provided in article five
21 of this chapter and includes the West Virginia Schools for the Deaf and the Blind as provided in

1 article seventeen of this chapter when acting with the approval of the West Virginia Board of
2 Education to submit, request and receive an award of funds or services for projects under the
3 provisions of this article.

4 (6) “Facilities plan” means the ten-year countywide comprehensive educational facilities plan
5 established by a county board in accordance with guidelines adopted by the authority to meet the
6 goals and objectives of this article, or a facilities plan established by the administration of the West
7 Virginia Schools for the Deaf and Blind that:

8 (A) Addresses the existing school facilities and facility needs of the county, or the Schools
9 for the Deaf and Blind, to provide a thorough and efficient education in accordance with the
10 provisions of this code and policies of the state board;

11 (B) Best serves the needs of individual students, the general school population and the
12 communities served by the facilities, including, but not limited to, providing for a facility
13 infrastructure that avoids excessive school bus transportation times for students consistent with
14 sound educational policy and within the budgetary constraints for staffing and operating the schools
15 of the county;

16 (C) Includes the school major improvement plan;

17 (D) Includes the county board’s school access safety plan required by section three, article
18 nine-f of this chapter;

19 (E) Is updated annually to reflect projects completed, current enrollment projections and new
20 or continuing needs; and

21 (F) Is approved by the state board and the authority prior to the distribution of state funds

1 pursuant to this article to any county board or other entity applying for funds;

2 (7) “Project” means a construction project or a major improvement project;

3 (8) “Region” means the area encompassed within and serviced by a regional educational
4 service agency established pursuant to section twenty-six, article two of this chapter;

5 (9) “Revenue” or “revenues” means moneys:

6 (A) Deposited in the School Building Capital Improvements Fund pursuant to section ten,
7 article nine-a of this chapter;

8 (B) Deposited in the School Construction Fund pursuant to section thirty, article fifteen,
9 chapter eleven of this code and section eighteen, article twenty-two, chapter twenty-nine of this code;

10 (C) Deposited in the School Building Debt Service Fund pursuant to section eighteen, article
11 twenty-two, chapter twenty-nine of this code;

12 (D) Deposited in the School Major Improvement Fund pursuant to section thirty, article
13 fifteen, chapter eleven of this code;

14 (E) Received, directly or indirectly, from any source for use in any project completed
15 pursuant to this article;

16 (F) Received by the authority for the purposes of this article; and

17 (G) Deposited in the Excess Lottery School Building Debt Services Fund pursuant to section
18 eighteen-a, article twenty-two, chapter twenty-nine of this code;

19 (10) “School major improvement plan” means a ten-year school maintenance plan that:

20 (A) Is prepared by a county board in accordance with the guidelines established by the
21 authority and incorporated in its Countywide Comprehensive Educational Facilities Plan, or is

1 prepared by the state board or the administrative council of an area vocational educational center in
2 accordance with the guidelines if the entities seek funding from the authority for a major
3 improvement project, or is prepared by the administration of the West Virginia Schools for the Deaf
4 and Blind;

5 (B) Addresses the regularly scheduled maintenance for all school facilities of the county or
6 under the jurisdiction of the entity seeking funding;

7 (C) Includes a projected repair and replacement schedule for all school facilities of the county
8 or of the entity seeking funding;

9 (D) Addresses the major improvement needs of each school within the county or under the
10 jurisdiction of the entity seeking funding; and

11 (E) Is required prior to the distribution of state funds for a major improvement project
12 pursuant to this article to the county board, state board or administrative council; and

13 (11) “School major improvement project” means a project with a cost greater than \$50
14 thousand and less than \$1 million for the renovation, expansion, repair and safety upgrading of
15 existing school facilities, buildings and structures, including the substantial repair or upgrading of
16 equipment, machinery, building systems, utilities and other similar items related to the renovation,
17 repair or upgrading in the furtherance of a school major improvement plan. A major improvement
18 project does not include such items as books, computers or equipment used for instructional
19 purposes; fuel; supplies; routine utility services fees; routine maintenance costs; ordinary course of
20 business improvements; or other items which are customarily considered to result in a current or
21 ordinary course of business operating charge;

1 (12) “Schools for the Deaf and Blind” or “West Virginia Schools for the Deaf and Blind”
2 means the Schools for the Deaf and Blind established or continued under article seventeen of this
3 chapter.

4 **§18-9D-3. Powers of authority.**

5 The School Building Authority has the power:

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

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

8 (3) To contract to acquire and to acquire, in the name of the authority, by purchase,
9 lease-purchase not to exceed a term of twenty-five years, or otherwise, real property or rights or
10 easements necessary or convenient for its corporate purposes and to exercise the power of eminent
11 domain to accomplish those purposes;

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

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

14 (6) To appoint, contract with and employ attorneys, bond counsel, accountants, construction
15 and financial experts, underwriters, financial advisers, trustees, managers, officers and such other
16 employees and agents as may be necessary in the judgment of the authority and to fix their
17 compensation: *Provided*, That contracts entered into by the School Building Authority in connection
18 with the issuance of bonds under this article to provide professional and technical services,
19 including, without limitation, accounting, actuarial, underwriting, consulting, trustee, bond counsel,
20 legal services and contracts relating to the purchase or sale of bonds are subject to the provisions of
21 article three, chapter five-a of this code: *Provided, however*, That notwithstanding any other

1 provisions of this code, any authority of the Attorney General of this state relating to the review of
2 contracts and other documents to effectuate the issuance of bonds under this article shall be
3 exclusively limited to the form of the contract and document: *Provided further*, That the Attorney
4 General of this state shall complete all reviews of contracts and documents relating to the issuance
5 of bonds under this article within ten calendar days of receipt of the contract and document for
6 review;

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

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

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

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

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

18 (12) To assist the West Virginia Schools for the Deaf and Blind or any county board of
19 education that chooses to acquire land, buildings and capital improvements to existing school
20 buildings and property for use as public school facilities, by lease from a private or public lessor for
21 a term not to exceed twenty-five years with an option to purchase pursuant to an investment contract

1 with the lessor on such terms and conditions as may be determined to be in the best interests of the
2 authority, the State Board of Education and, if applicable, the county board of education, consistent
3 with the purposes of this article, by transferring funds to the State Board of Education as provided
4 in subsection (d), section fifteen of this article for the use of the county board of education;

5 (13) To accept and expend any gift, grant, contribution, bequest or endowment of money and
6 equipment to, or for the benefit of, the authority or any project under this article, from the State of
7 West Virginia or any other source for any or all of the purposes specified in this article or for any one
8 or more of such purposes as may be specified in connection with the gift, grant, contribution, bequest
9 or endowment;

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

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

1 Deaf or Blind;

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

5 (17) To transfer moneys to custodial accounts maintained by the School Building Authority
6 with a state financial institution from the school construction fund and the school improvement fund
7 created in the State Treasury pursuant to the provisions of section six of this article, as necessary to
8 the performance of any contracts executed by the School Building Authority in accordance with the
9 provisions of this article;

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

15 (19) To encourage any project or part thereof to provide opportunities for students to
16 participate in supervised, unpaid work-based learning experiences related to the student's program
17 of study approved by the county board or the administration of the West Virginia Schools for the
18 Deaf and Blind. The work-based learning experience shall be conducted in accordance with a formal
19 training plan approved by the instructor, the employer and the student. The experience shall set forth
20 at a minimum the specific skills to be learned, the required documentation of work-based learning
21 experiences, the conditions of the placement, including duration and safety provisions, and

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

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

8 **§18-9D-4c. School Building Authority authorized to temporarily finance projects through the**
9 **issuance of loans, notes or other evidences of indebtedness.**

10 The School Building Authority may by resolution, in accordance with the provisions of this
11 article, temporarily finance the cost of projects and other expenditures permitted under this article
12 for public schools in this state, including, but not limited to, comprehensive high schools,
13 comprehensive middle schools and the West Virginia Schools for the Deaf and Blind. The financing
14 may be issued through loans, notes or other evidences of indebtedness: the outstanding principal
15 amount of which may not exceed \$16 million at any one time. The principal of, interest and premium
16 on, and fees associated with any temporary financing shall be payable solely from the proceeds of
17 bonds or the sources from which any bonds are payable under this article.

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

1 **or additions to project plans.**

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

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

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

8 (B) The procedures for a county or the administration of the West Virginia Schools for the
9 Deaf and Blind to submit a preliminary plan, a plan outline or a proposal for a plan to the authority
10 prior to the submission of the facilities plan. The preliminary plan, plan outline or proposal for a
11 plan shall be the basis for a consultation meeting between representatives of the county or the
12 administration of the West Virginia Schools for the Deaf and Blind and members of the authority,
13 including at least one citizen member. The meeting shall be held promptly following submission of
14 the preliminary plan, plan outline or proposal for a plan to assure understanding of the general goals
15 of this article and the objective criteria by which projects will be evaluated, to discuss ways the plan
16 may be structured to meet those goals, and to assure efficiency and productivity in the project
17 approval process;

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

20 (D) The requirements for public hearings, comments or other means of providing
21 broad-based input on plans and projects under this article within a reasonable time period as the

1 authority may consider appropriate. The submission of each plan must be accompanied by a
2 synopsis of all comments received and a formal comment by the county board, the state board or the
3 administrative council of an area vocational educational center submitting the plan;

4 (E) Any project specifications and maintenance specifications considered appropriate by the
5 authority including, but not limited to, such matters as energy efficiency, preferred siting,
6 construction materials, maintenance plan and any other matter related to how the project is to
7 proceed;

8 (F) A prioritization by the county board, the state board or the administrative council
9 submitting the plan of each project contained in the plan. The prioritization shall be determined in
10 accordance with the objective criteria formulated by the School Building Authority in accordance
11 with this section. The priority list is one of the criteria that shall be considered by the authority in
12 deciding how the available funds should be expended;

13 (G) The objective means to be set forth in the plan and used in evaluating implementation
14 of the overall plan and each project included in the plan. The evaluation shall measure how the plan
15 addresses the goals of this article and any guidelines adopted under this article, how each project is
16 in furtherance of the facilities plan and school major improvement plan, as applicable, the
17 importance of the project to the overall success of the facilities plan or school major improvement
18 plan, and the overall goals of the authority; and

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

21 (2) Guidelines and procedures which may be adopted by the authority for requiring that a

1 county board modify, update, supplement or otherwise submit changes or additions to an approved
2 facilities plan or for requiring that a county board, the state board or the administrative council of
3 an area vocational educational center modify, update, supplement or otherwise submit changes or
4 additions to an approved school major improvement plan. The authority shall provide reasonable
5 notification and sufficient time for the change or addition as delineated in its guidelines. The
6 guidelines shall require an update of the estimated duration of school bus transportation times for
7 students associated with any construction project under consideration by the authority that includes
8 the closure, consolidation or construction of a school or schools.

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

11 (A) Any project funded by the authority shall be in furtherance of the facilities plan or school
12 major improvement plan and in compliance with the guidelines established by the authority;

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

15 (C) If a county board proposes to finance a construction project through a lease with an
16 option to purchase pursuant to an investment contract as described in subsection (f), section fifteen
17 of this article, the specifications for the project must include the term of the lease, the amount of each
18 lease payment, including the payment due upon exercise of the option to purchase, and the terms and
19 conditions of the proposed investment contract; and

20 (D) The objective criteria for the evaluation of projects which shall include, but is not limited
21 to, the following:

1 (i) How the current facilities do not meet and how the plan and any project under the plan
2 meet the following:

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

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

6 (III) Reasonable travel time and practical means of addressing other demographic
7 considerations. The authority may not approve a project that includes a school closure, consolidation
8 or new construction for which a new bus route will be created for transporting any prekindergarten
9 through fifth grade students to and from any school included in the project, if the route exceeds by
10 more than fifteen minutes the recommended one-way school bus transportation duration time for
11 elementary students adopted by the state board pursuant to section five-d, article two-e of this
12 chapter, unless the county has received the written permission of the state board to create the route
13 in accordance with said section five-d;

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

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

19 (VI) Innovations in education;

20 (VII) Adequate space for projected student enrollments;

21 (VIII) The history of efforts taken by the county board to propose or adopt local school bond

1 issues or special levies to the extent Constitutionally permissible; and

2 (IX) Regularly scheduled preventive maintenance; and

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

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

8 (A) Requiring each county board's facilities plan and school major improvement plan to
9 prioritize all the construction projects or major improvement projects, respectively, within the
10 county. A school major improvement plan submitted by the state board or the administrative council
11 of an area vocational educational center shall prioritize all the school improvement projects
12 contained in the plan. The priority list shall be one of the criteria to be considered by the authority
13 in determining how available funds shall be expended. In prioritizing the projects, the county board,
14 the state board or the administrative council submitting a plan shall make determinations in
15 accordance with the objective criteria formulated by the School Building Authority;

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

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

20 (b) Prior to final action on approving projects for funding under this article, the authority
21 shall submit a certified list of the projects to the Joint Committee on Government and Finance.

1 (c) The State Department of Education shall conduct on-site inspections, at least annually,
2 of all facilities which have been funded wholly or in part by moneys from the authority or state board
3 to ensure compliance with the county board's facilities plan and school major improvement plan as
4 related to the facilities; to preserve the physical integrity of the facilities to the extent possible; and
5 to otherwise extend the useful life of the facilities. The state board shall submit reports regarding the
6 inspections to the authority within thirty days of completion. The state board shall promulgate rules
7 regarding the on-site inspections and matters relating thereto, in consultation with the authority, and
8 shall submit proposed rules for legislative review.

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

14 **§18-9D-22. Eligibility of the West Virginia Schools for the Deaf and Blind to participate in all**
15 **types of funding administered or distributed by the authority.**

16 (a) The Legislature finds that:

17 (1) The Legislature's constitutional obligation to provide a thorough and efficient public
18 education for the children of West Virginia includes providing a thorough and efficient education
19 for the children of West Virginia who are deaf and blind;

20 (2) The Legislature has endeavored to fulfill this obligation with the creation, maintenance
21 and operation of the West Virginia Schools for the Deaf and Blind, established and continued under

1 article seventeen of this chapter;

2 (3) The West Virginia Schools for the Deaf and Blind have for generations provided
3 educational services to children from each of West Virginia's fifty-five counties;

4 (4) The facilities of the West Virginia Schools for the Deaf and Blind are in need of
5 substantial improvements;

6 (5) The West Virginia Schools for the Deaf and Blind have no local levy which supports their
7 operations, and depend completely upon the appropriations from the state;

8 (6) The West Virginia Schools for the Deaf and Blind have no borrowing authority nor
9 revenue stream that can serve as a source of servicing debt;

10 (7) Questions have arisen as to whether or not it is permissible for the School Building
11 Authority to distribute to the West Virginia Schools for the Deaf and Blind financial assistance for
12 the construction and improvement of their facilities; and

13 (8) The West Virginia Schools for the Deaf and Blind should have access to and be eligible
14 to receive all types of funding provided to county boards by the authority.

15 (b) Notwithstanding any provision of this code to the contrary:

16 (1) The West Virginia Schools for the Deaf and Blind are eligible to participate in all funding
17 distributed by the authority; and

18 (2) The authority may distribute to the West Virginia Schools for the Deaf and Blind funds
19 as it determines to be appropriate.

20 (c) The authority may not require the contribution of local funds for a project of the West
21 Virginia Schools for the Deaf and Blind, nor penalize the consideration or priority ranking of a

1 project of the schools for lack of local project funds. The state board may apply for funds for
2 education programs under its jurisdiction for projects at the West Virginia Schools for the Deaf and
3 Blind.