

H. B. 2194

(By Delegates Gearheart, R. Smith and Storch)

[Introduced January 21, 2015; referred to the

Committee on Education then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §18-9D-15 and §18-9D-16 of the Code of West Virginia, 1931, as amended, all relating to the School Building Authority; eliminating local participation in funding school construction projects and the associated limited funding reserve; eliminating certain regional planning activities when evaluating proposed construction projects; eliminating the requirement of a county board’s efforts in school bond issues being a consideration when evaluating proposed projects; eliminating the requirement that counties receive explanations detailing the authority’s decision concerning the funding of projects; requiring funds awarded by the School Building Authority must be consistent with the evaluation report of the School Building Authority; and declaring certain documents related to funding consideration to be public documents and available to the public upon request.

Be it enacted by the Legislature of West Virginia:

That §18-9D-15 and §18-9D-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

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

2 **§18-9D-15. Legislative intent; allocation of money among categories of projects;**
3 **lease-purchase options; limitation on time period for expenditure of project**
4 **allocation; county maintenance budget requirements; project disbursements**
5 **over period of years; preference for multicounty arrangements; submission**
6 **of project designs; set-aside to encourage local participation.**

7 (a) It is the intent of the Legislature to empower the School Building Authority to facilitate
8 and provide state funds and to administer all federal funds provided for the construction and major
9 improvement of school facilities so as to meet the educational needs of the people of this state in an
10 efficient and economical manner. The authority shall make funding determinations in accordance
11 with the provisions of this article and shall assess existing school facilities and each facility's school
12 major improvement plan in relation to the needs of the individual student, the general school
13 population, the communities served by the facilities and facility needs statewide.

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

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

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

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

21 (4) Any other moneys received by the authority, except moneys paid into the School Major
22 Improvement Fund pursuant to section six of this article and moneys deposited into the School

1 Access Safety Fund pursuant to section five, article nine-f of this chapter, may be allocated and may
2 be expended by the authority for projects authorized in accordance with the provisions of section
3 sixteen of this article that service the educational community statewide or, upon application by the
4 state board, for educational programs that are under the jurisdiction of the state board. In addition,
5 upon application by the state board or the administrative council of an area vocational educational
6 center established pursuant to article two-b of this chapter, the authority may allocate and expend
7 under this subsection moneys for school major improvement projects authorized in accordance with
8 the provisions of section sixteen of this article proposed by the state board or an administrative
9 council for school facilities under the direct supervision of the state board or an administrative
10 council, respectively. Furthermore, upon application by a county board, the authority may allocate
11 and expend under this subsection moneys for school major improvement projects for vocational
12 programs at comprehensive high schools, vocational programs at comprehensive middle schools,
13 vocational schools cooperating with community and technical college programs, or any combination
14 of the three. Each county board is encouraged to cooperate with community and technical colleges
15 in the use of existing or development of new vocational technical facilities. All projects eligible for
16 funds from this subsection shall be submitted directly to the authority which shall be solely
17 responsible for the project's evaluation, subject to the following:

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

21 (B) The authority shall, before allocating any moneys to the state board or the administrative
22 council of an area vocational educational center for a school improvement project, consider all other

1 funding sources available for the project.

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

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

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

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

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

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

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

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

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

20 (4) Any other moneys received by the authority, except moneys deposited into the School
21 Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to
22 section five, article nine-f of this chapter, may be reserved by the authority for multiuse

1 vocational-technical education facilities projects that may include post-secondary programs as a first
2 priority use. The authority may allocate and expend under this subsection moneys for any purposes
3 authorized in this article on multiuse vocational-technical education facilities projects, including
4 equipment and equipment updates at the facilities, authorized in accordance with the provisions of
5 section sixteen of this article. If the projects approved under this subsection do not require the full
6 amount of moneys reserved, moneys above the amount required may be allocated and expended in
7 accordance with other provisions of this article. A county board, the state board, an administrative
8 council or the joint administrative board of a vocational-technical education facility which includes
9 post-secondary programs may propose projects for facilities or equipment, or both, which are under
10 the direct supervision of the respective body: *Provided*, That the authority shall, before allocating
11 any moneys for a project under this subsection, consider all other funding sources available for the
12 project.

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

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

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

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

20 (4) Any other moneys received by the authority, except moneys deposited into the School
21 Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to
22 section five, article nine-f of this chapter, shall be allocated and expended on the basis of need and

1 efficient use of resources for projects funded in accordance with the provisions of section sixteen of
2 this article.

3 (f) If a county board proposes to finance a project that is authorized in accordance with
4 section sixteen of this article through a lease with an option to purchase leased premises upon the
5 expiration of the total lease period pursuant to an investment contract, the authority may not allocate
6 moneys to the county board in connection with the project: *Provided*, That the authority may transfer
7 moneys to the state board which, with the authority, shall lend the amount transferred to the county
8 board to be used only for a one-time payment due at the beginning of the lease term, made for the
9 purpose of reducing annual lease payments under the investment contract, subject to the following
10 conditions:

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

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

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

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

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

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

8 (D) Upon a default by a county board, the principal of the loan, together with all unpaid
9 interest accrued to the date of the default, shall, at the option of the authority, in consultation with
10 the state board, become due and payable immediately or subject to renegotiation among the state
11 board, the authority and the county board; and

12 (E) If the loan becomes due and payable immediately, the authority, in consultation with the
13 state board, shall use all means available under the loan agreement and law to collect the outstanding
14 principal balance of the loan, together with all unpaid interest accrued to the date of payment of the
15 outstanding principal balance; and

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

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

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

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

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

17 (2) Any moneys allocated to a project and not distributed for that project shall be deposited
18 in an account to the credit of the project, the principal amount to remain to the credit of and available
19 to the project for a period of two years; and

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

22 (i) Local matching funds may not be required under the provisions of this section. However,

1 this article does not negate the responsibilities of the county boards to maintain school facilities. To
2 be eligible to receive an allocation of school major improvement funds from the authority, a county
3 board must have expended in the previous fiscal year an amount of county moneys equal to or
4 exceeding the lowest average amount of money included in the county board's maintenance budget
5 over any three of the previous five years and must have budgeted an amount equal to or greater than
6 the average in the current fiscal year: *Provided*, That the state board shall promulgate rules relating
7 to county boards' maintenance budgets, including items which shall be included in the budgets.

8 (j) Any county board may use moneys provided by the authority under this article in
9 conjunction with local funds derived from bonding, special levy or other sources. Distribution to
10 a county board, or to the state board or the administrative council of an area vocational educational
11 center pursuant to subsection (b) of this section, may be in a lump sum or in accordance with a
12 schedule of payments adopted by the authority pursuant to guidelines adopted by the authority.

13 (k) Funds in the School Construction Fund shall first be transferred and expended as follows:

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

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

19 (l) It is the intent of the Legislature to encourage county boards to explore and consider
20 arrangements with other counties that may facilitate the highest and best use of all available funds,
21 which may result in improved transportation arrangements for students or which otherwise may
22 create efficiencies for county boards and the students. In order to address the intent of the

1 Legislature contained in this subsection, the authority shall grant preference to those projects which
2 involve multicounty arrangements as the authority shall determine reasonable and proper.

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

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

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

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

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

1 eyele.

2 **§18-9D-16. Authority to establish guidelines and procedures for facilities and major**
3 **improvement plans; guidelines for modifications and updates, etc.; guidelines**
4 **for project evaluation; submission of certified list of projects to be funded;**
5 **department on-site inspection of facilities; enforcement of required changes**
6 **or additions to project plans.**

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

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

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

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

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

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

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

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

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

22 (H) Any other matters considered by the authority to be important reflections of how a

1 construction project or a major improvement project or projects will further the overall goals of this
2 article.

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

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

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

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

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

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

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

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

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

8 (III) Reasonable travel time and practical means of addressing other demographic
9 considerations. The authority may not approve a project after July 1, 2008, that includes a school
10 closure, consolidation or new construction for which a new bus route will be created for the
11 transportation of students in any of the grade levels prekindergarten through grade five to and from
12 any school included in the project, which new bus route exceeds by more than fifteen minutes the
13 recommended duration of the one-way school bus transportation time for elementary students
14 adopted by the state board as provided in section five-d, article two-e of this chapter, unless the
15 county has received the written permission of the state board to create the route in accordance with
16 ~~said that~~ section; ~~five-d~~;

17 ~~(IV) Multicounty and regional planning to achieve the most effective and efficient~~
18 ~~instructional delivery system;~~

19 ~~(V)~~ (IV) Curriculum improvement and diversification, including the use of instructional
20 technology, distance learning and access to advanced courses in science, mathematics, language arts
21 and social studies;

22 ~~(VI)~~ (V) Innovations in education;

1 ~~(VII)~~ (VI) Adequate space for projected student enrollments; and

2 ~~(VIII)~~ The history of efforts taken by the county board to propose or adopt local school bond
3 ~~issues or special levies to the extent Constitutionally permissible; and~~

4 ~~(IX)~~ (VII) Regularly scheduled preventive maintenance; and

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

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

10 (A) Requiring each county board's facilities plan and school major improvement plan to
11 prioritize all the construction projects or major improvement projects, respectively, within the
12 county. A school major improvement plan submitted by the state board or the administrative council
13 of an area vocational educational center shall prioritize all the school improvement projects
14 contained in the plan. The priority list shall be one of the criteria to be considered by the authority
15 in determining how available funds shall be expended. In prioritizing the projects, the county board,
16 the state board or the administrative council submitting a plan shall make determinations in
17 accordance with the objective criteria formulated by the School Building Authority. The priority list
18 memorializing these determinations and all required reports, including staff reports, and any other
19 of the criteria required to be submitted for funding consideration are public documents and are to be
20 provided to members of the public upon request; and

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

1 ~~(C)~~ (B) The allocation and expenditure of funds in accordance with this article, subject to the
2 availability of funds. Any allocation and expenditure of funds that is awarded by vote of the
3 members of the School Building Authority that is not consistent with the evaluation report of the
4 School Building Authority staff must account for any inconsistency by preparing findings of fact,
5 setting forth the rationales and if need be providing a concise explanation of the reasoning behind
6 such inconsistency in order to provide justification for the funding.

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

9 (c) The State Department of Education shall conduct on-site inspections, at least annually,
10 of all facilities which have been funded wholly or in part by moneys from the authority or state board
11 to ensure compliance with the county board's facilities plan and school major improvement plan as
12 related to the facilities; to preserve the physical integrity of the facilities to the extent possible; and
13 to otherwise extend the useful life of the facilities: *Provided*, That the state board shall submit
14 reports regarding its on-site inspections of facilities to the authority within thirty days of completion
15 of the on-site inspections: *Provided, however*, That the state board shall promulgate rules regarding
16 the on-site inspections and matters relating thereto, in consultation with the authority, as soon as
17 practical and shall submit proposed rules for legislative review no later than December 1, 1994.

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

1 chapter.

NOTE: The purpose of this bill is to eliminate local participation in funding school construction projects and the associated limited funding reserve. The bill eliminates certain regional planning activities when evaluating proposed construction projects. The bill eliminates the requirement of a county board's efforts in school bond issues being a consideration when evaluating proposed projects. The bill eliminates the requirement that counties receive explanations detailing the authority's decision concerning the funding of projects. The bill also declares certain documents related to funding consideration to be public documents and available to the public upon request. The bill requires that funds awarded by the School Building Authority must be consistent with the evaluation report of the School Building Authority.

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