

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 27

BY SENATORS MAYNARD AND RUCKER

[Introduced January 10, 2018; Referred
to the Committee on Education; and then to the
Committee on Finance]

1 A BILL to amend and reenact §18-9D-15 of the Code of West Virginia, 1931, as amended, relating
 2 generally to limiting the School Building Authority’s discretion to disburse funds on an ad
 3 hoc basis by requiring that the School Building Authority distribute specific funds to county
 4 boards on the basis of a county’s net student enrollment; and requiring that county boards
 5 deposit certain funds into a savings account and only use those funds to facilitate school
 6 maintenance, construction or improvement projects.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

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

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

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

10 (1) Moneys paid into the School Building Capital Improvements Fund pursuant to
 11 §18-9A-10 of this code;

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

14 (3) Moneys paid into the School Construction Fund pursuant to §18-9D-6 of this code and

15 (4) Any other moneys received by the authority, except moneys paid into the School Major

16 Improvement Fund pursuant to §18-9D-6 of this code and moneys deposited into the School

17 Access Safety Fund pursuant to §18-9F-5 of this code, may be allocated and may be expended

18 by the authority for projects authorized in accordance with the provisions of §18-9D-16 of this

19 code that service the educational community statewide or, upon application by the state board,

20 for educational programs that are under the jurisdiction of the state board. In addition, upon

21 application by the state board or the administrative council of an area vocational educational

22 center established pursuant to §18-2B-1 *et seq.* of this code, the authority may allocate and

23 expend under this subsection moneys for school major improvement projects authorized in

24 accordance with the provisions of §18-9D-16 of this code proposed by the state board or an

25 administrative council for school facilities under the direct supervision of the state board or an

26 administrative council, respectively. Furthermore, upon application by a county board, the

27 authority may allocate and expend under this subsection moneys for school major improvement

28 projects for vocational programs at comprehensive high schools, vocational programs at

29 comprehensive middle schools, vocational schools cooperating with community and technical

30 college programs, or any combination of the three. Each county board is encouraged to cooperate

31 with community and technical colleges in the use of existing or development of new vocational

32 technical facilities. All projects eligible for funds from this subsection shall be submitted directly to

33 the authority which shall be solely responsible for the project's evaluation, subject to the following:

34 (A) The authority may not expend any moneys for a school major improvement project

35 proposed by the state board or the administrative council of an area vocational educational center

36 unless the state board or an administrative council has submitted a ten-year facilities plan; and

37 (B) The authority shall, before allocating any moneys to the state board or the

38 administrative council of an area vocational educational center for a school improvement project,

39 consider all other funding sources available for the project.

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

42 (1) Moneys paid into the School Building Capital Improvements Fund pursuant to
43 §18-9A-10 of this code;

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

46 (3) Moneys paid into the School Construction Fund pursuant to §18-9D-6 of this code; and

47 (4) Any other moneys received by the authority, except moneys deposited into the School
48 Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to
49 §18-9F-5 of this code, shall be set aside by the authority as an emergency fund to be distributed
50 in accordance with the guidelines adopted by the authority.

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

53 (1) Moneys paid into the School Building Capital Improvements Fund pursuant to
54 §18-9A-10 of this code;

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

57 (3) Moneys paid into the School Construction Fund pursuant to §18-9D-6 of this code; and

58 (4) Any other moneys received by the authority, except moneys deposited into the School
59 Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to
60 §18-9F-5 of this code, may be reserved by the authority for multiuse vocational-technical
61 education facilities projects that may include post-secondary programs as a first priority use. The
62 authority may allocate and expend under this subsection moneys for any purposes authorized in
63 this article on multiuse vocational-technical education facilities projects, including equipment and
64 equipment updates at the facilities, authorized in accordance with the provisions of §18-9D-16 of
65 this code. If the projects approved under this subsection do not require the full amount of moneys

66 reserved, moneys above the amount required may be allocated and expended in accordance with
67 other provisions of this article. A county board, the state board, an administrative council or the
68 joint administrative board of a vocational-technical education facility which includes post-
69 secondary programs may propose projects for facilities or equipment, or both, which are under
70 the direct supervision of the respective body: *Provided*, That the authority shall, before allocating
71 any moneys for a project under this subsection, consider all other funding sources available for
72 the project.

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

75 (1) Moneys paid into the School Building Capital Improvements Fund pursuant to
76 §18-9A-10 of this code;

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

79 (3) Moneys paid into the School Construction Fund pursuant to §18-9D-6 of this code; and

80 (4) Any other moneys received by the authority, except moneys deposited into the School
81 Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to
82 §18-9F-5 of this code, shall be allocated ~~and expended on the basis of need and efficient use of~~
83 ~~resources for projects funded in accordance with the provisions of section sixteen of this article~~
84 and distributed to each county board on the basis of its net enrollment as defined in §18-9A-2 of
85 this code. The county board shall deposit the funds into a savings account and shall only use said
86 funds to facilitate or fund school maintenance, improvement or construction projects.

87 (f) If a county board proposes to finance a project that is authorized in accordance with
88 §18-9D-16 of this code through a lease with an option to purchase leased premises upon the
89 expiration of the total lease period pursuant to an investment contract, the authority may not
90 allocate moneys to the county board in connection with the project: *Provided*, That the authority
91 may transfer moneys to the state board which, with the authority, shall lend the amount transferred

92 to the county board to be used only for a one-time payment due at the beginning of the lease
93 term, made for the purpose of reducing annual lease payments under the investment contract,
94 subject to the following conditions:

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

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

104 (A) In the event a county board which has received a loan from the authority for a one-
105 time payment at the beginning of the lease term does not renew the lease annually until
106 performance of the investment contract in its entirety is completed, the county board is in default
107 and the principal of the loan, together with all unpaid interest accrued to the date of the default,
108 shall, at the option of the authority, in consultation with the state board, become due and payable
109 immediately or subject to renegotiation among the state board, the authority and the county board;

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

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

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

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

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

125 (g) To encourage county boards to proceed promptly with facilities planning and to prepare
126 for the expenditure of any state moneys derived from the sources described in this section, any
127 county board or other entity to whom moneys are allocated by the authority that fails to expend
128 the money within three years of the allocation shall forfeit the allocation and thereafter is ineligible
129 for further allocations pursuant to this section until it is ready to expend funds in accordance with
130 an approved facilities plan: *Provided*, That the authority may authorize an extension beyond the
131 three-year forfeiture period not to exceed an additional two years. Any amount forfeited shall be
132 added to the total funds available in the School Construction Fund of the authority for future
133 allocation and distribution. Funds may not be distributed for any project under this article unless
134 the responsible entity has a facilities plan approved by the state board and the School Building
135 Authority and is prepared to commence expenditure of the funds during the fiscal year in which
136 the moneys are distributed.

137 (h) The remaining moneys that are determined by the authority to be available for
138 distribution during the then current fiscal year from moneys paid into the School Major
139 Improvement Fund pursuant to §18-9D-6 of this code shall be allocated and distributed to each
140 county board on the basis of its net enrollment as defined in §18-9A-2 of this code. ~~need and~~
141 ~~efficient use of resources for projects authorized in accordance with the provisions of section~~
142 ~~sixteen of this article, subject to the following:~~

143 (1) ~~The moneys may not be distributed for any project under this section unless the~~

144 ~~responsible entity has a facilities plan approved by the state board and the authority and is to~~
145 ~~commence expenditures of the funds during the fiscal year in which the moneys are distributed;~~

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

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

151 The county board shall deposit the funds distributed under this subsection into a savings
152 account and shall only use those funds to facilitate or fund school maintenance, improvement or
153 construction projects.

154 (i) Local matching funds may not be required under the provisions of this section. However,
155 this article does not negate the responsibilities of the county boards to maintain school facilities.
156 Therefore, as a prerequisite for eligibility to receive an allocation of school major improvement
157 funds from the authority, a county board must provide annual school facility maintenance
158 expenditure data to the authority which shall be jointly reviewed by the authority and the state
159 Department of Education Office of School Facilities and Transportation to assist the authority in
160 its determination of the most meritorious projects to be funded through the School Major
161 Improvement Fund. The state board shall promulgate rules relating to county boards' school
162 facility maintenance budgets, including items which shall be included in these budgets.

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

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

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

172 (2) To the extent that funds are available in the School Construction Fund in excess of
173 that amount appropriated in any fiscal year, the excess funds ~~may be expended for projects~~
174 ~~authorized in accordance with the provisions of section sixteen of this article~~ shall be allocated
175 and distributed to each county board on the basis of its net enrollment as defined in §18-9A-2 of
176 this code. The county board shall deposit the funds into a savings account and shall only use said
177 funds to facilitate or fund school maintenance, improvement or construction projects.

178 (l) It is the intent of the Legislature to encourage county boards to explore and consider
179 arrangements with other counties that may facilitate the highest and best use of all available
180 funds, which may result in improved transportation arrangements for students or which otherwise
181 may create efficiencies for county boards and the students. In order to address the intent of the
182 Legislature contained in this subsection, the authority shall grant preference to those projects
183 which involve multicounty arrangements as the authority shall determine reasonable and proper.

184 (m) County boards shall submit all designs for construction of new school buildings to the
185 School Building Authority for review and approval prior to preparation of final bid documents. A
186 vendor who has been debarred pursuant to the provisions of §5A-3-33a through §5A-3-33f,
187 inclusive, of this code may not bid on or be awarded a contract under this section.

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

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

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

195 (3) In order to encourage local participation in funding school construction projects, the

196 authority may set aside limited funding, not to exceed \$500,000, in reserve for one additional year
197 to provide a county the opportunity to complete financial planning for a project prior to the
198 allocation of construction funds. Any funding shall be on a reserve basis and converted to a part
199 of the construction grant only after all project budget funds have been secured and all county
200 commitments have been fulfilled. Failure of the county to solidify the project budget and meet its
201 obligations to the state within eighteen months of the date the funding is set aside by the authority
202 will result in expiration of the reserve and the funds shall be reallocated by the authority in the
203 succeeding funding cycle.

NOTE: The purpose of this bill is to limit the School Building Authority's discretion to disburse funds on an *ad hoc* basis by requiring that the School Building Authority distribute specific funds to county boards on the basis of a county's net student enrollment. The bill further requires that county boards deposit funds into a savings account and only use said funds to facilitate school maintenance, construction or improvement projects.

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