

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 554

BY SENATOR BALDWIN

[Introduced February 15, 2018; Referred
to the Committee on Education; and then to the
Committee on Finance]

1 A BILL to amend and reenact §18-9D-15 and §18-9D-16 of the Code of West Virginia, 1931, as
2 amended, all relating to the School Building Authority; requiring certain funds to be split
3 into two portions with one for smaller counties and one for larger counties based on total
4 student enrollment; prohibiting the School Building Authority application process from
5 including an interview; prohibiting authority staff from ranking or providing subjective
6 analyses of projects; ensuring that the authority shall use objective criteria in distributing
7 funds; removing certain preliminary plan and outline requirements from code; adjusting
8 the objective criteria for analyzing projects to provide more of a focus on educational
9 outcomes and less on economies of scale and history of levee passage; requiring
10 procedures of guidelines be set in place to ensure the authority views objective information
11 on each project without knowing which county is associated with the project and without
12 hearing subjective information or rankings from staff; reiterating that the authority shall use
13 an objective criteria to evaluate and determine which projects to fund; and clarifying that
14 certain guidelines and procedures are for project eligibility purposes rather than for
15 evaluating projects for funding.

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 §18-9A-
11 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 §18-9A-
43 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 §18-9A-
54 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 §18-9A-
76 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 Provided, That beginning July 1, 2018, all of these moneys shall be split into two equal portions,
85 designated portion A and portion B, such that counties with total student enrollment at or above
86 4,000 are only eligible for funds in portion A and counties with total student enrollment below
87 4,000 are only eligible for funds in portion B.

88 (f) If a county board proposes to finance a project that is authorized in accordance with
89 §18-9D-16 of this code through a lease with an option to purchase leased premises upon the
90 expiration of the total lease period pursuant to an investment contract, the authority may not
91 allocate moneys to the county board in connection with the project: *Provided, That the authority*
92 *may transfer moneys to the state board which, with the authority, shall lend the amount transferred*
93 *to the county board to be used only for a one-time payment due at the beginning of the lease*
94 *term, made for the purpose of reducing annual lease payments under the investment contract,*
95 *subject to the following conditions:*

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

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

105 (A) In the event a county board which has received a loan from the authority for a one-
106 time payment at the beginning of the lease term does not renew the lease annually until
107 performance of the investment contract in its entirety is completed, the county board is in default
108 and the principal of the loan, together with all unpaid interest accrued to the date of the default,

109 shall, at the option of the authority, in consultation with the state board, become due and payable
110 immediately or subject to renegotiation among the state board, the authority and the county board;

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

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

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

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

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

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

135 the responsible entity has a facilities plan approved by the state board and the School Building
136 Authority and is prepared to commence expenditure of the funds during the fiscal year in which
137 the moneys are distributed.

138 (h) The remaining moneys that are determined by the authority to be available for
139 distribution during the then current fiscal year from moneys paid into the School Major
140 Improvement Fund pursuant to §18-9D-6 of this code shall be allocated and distributed on the
141 basis of need and efficient use of resources for projects authorized in accordance with the
142 provisions of §18-9D-16 of this code, 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 (i) Local matching funds may not be required under the provisions of this section. However,
152 this article does not negate the responsibilities of the county boards to maintain school facilities.
153 Therefore, as a prerequisite for eligibility to receive an allocation of school major improvement
154 funds from the authority, a county board must provide annual school facility maintenance
155 expenditure data to the authority which shall be jointly reviewed by the authority and the state
156 Department of Education Office of School Facilities and Transportation to assist the authority in
157 its determination of the most meritorious projects to be funded through the School Major
158 Improvement Fund. The state board shall promulgate rules relating to county boards' school
159 facility maintenance budgets, including items which shall be included in these budgets.

160 (j) Any county board may use moneys provided by the authority under this article in

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

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

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

169 (2) To the extent that funds are available in the School Construction Fund in excess of
170 that amount appropriated in any fiscal year, the excess funds may be expended for projects
171 authorized in accordance with the provisions of §18-9D-16 of this code.

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

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

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

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

186 (2) The authority may not approve the use of more than 50 percent of the revenue

187 available for distribution in any given fiscal year for projects that are to be funded over a period of
 188 more than one year; and

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

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

1 (a) ~~The authority shall establish guidelines and procedures to promote the intent and~~
 2 ~~purposes of this article and~~ Legislature finds that to assure the prudent and resourceful
 3 expenditure of state funds for projects under this article, the guidelines and procedures set in
 4 place by the authority may not include an interview requirement and may not grant permission to
 5 the authority staff to rank projects, but rather the authority shall use objective criteria in
 6 determining where funds shall be distributed. Consistent with this finding and the provisions of
 7 this section, the authority may establish guidelines and procedures to promote the intent and
 8 purpose of this article including, but not limited to, the following:

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

11 following:

12 (A) All of the elements of the respective plans as defined in §18-9D-2 of this code;

13 (B) The procedures for a county to submit a preliminary plan, a plan outline or a proposal
14 for 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
19 projects will be evaluated, to discuss ways the plan may be structured to meet those goals, and
20 to assure 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;

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

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

32 (F) A prioritization by the county board, the state board or the administrative council
33 submitting the plan of each project contained in the plan. In prioritizing the projects, the county
34 board, the state board or the administrative council submitting the plan shall make determinations
35 in accordance with the objective criteria formulated by the School Building Authority in accordance
36 with this section; The priority list is one of the criteria that shall be considered by the authority

37 deciding how the available funds should be expended;

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

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

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

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

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

62 (B) If a project is to benefit more than one county in the region, the facilities plan must

63 state the manner in which the cost and funding of the project will be apportioned among the
64 counties;

65 (C) If a county board proposes to finance a construction project through a lease with an
66 option to purchase pursuant to an investment contract as described in §18-9D-15(f) of this code,
67 the specifications for the project must include the term of the lease, the amount of each lease
68 payment, including the payment due upon exercise of the option to purchase, and the terms and
69 conditions of the proposed investment contract; and

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

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

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

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

77 ~~(III)~~ (II) Reasonable travel time and practical means of addressing other demographic
78 considerations. The authority may not approve a project after July 1, 2008, that includes a school
79 closure, consolidation or new construction for which a new bus route will be created for the
80 transportation of students in any of the grade levels prekindergarten through grade five to and
81 from any school included in the project, which new bus route exceeds by more than 15 minutes
82 the recommended duration of the one-way school bus transportation time for elementary students
83 adopted by the state board as provided in §18-2E-5d of this code, unless the county has received
84 the written permission of the state board to create the route in accordance with §18-2E-5d of this
85 code.

86 (III) Improvement in educational outcomes through evidenced-based factors including, but
87 not limited to, methods of teaching available both in the facility and to the student outside of the
88 facility;

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

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

94 (VI) Innovations in education;

95 (VII) Adequate space for projected student enrollments; and

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

98 ~~(IX) Regularly scheduled preventive maintenance; and~~

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

102 (iii) How the staff of the authority shall prepare and deliver the objective information
103 required by this section on each project to the authority in a manner that allows the authority to
104 make a determination regarding prioritization of projects without knowing which project is in which
105 county. As part of these guidelines and procedures, the staff of the authority is prohibited from
106 providing a ranking of projects or any other subjective recommendation or preferences to the
107 authority. The authority shall determine the prioritization of the projects from the objective
108 information.

109 (4) Guidelines and procedures ~~for evaluating projects for funding~~ for project eligibility that
110 address, but are not limited to, the following:

111 (A) Requiring each county board's facilities plan and school major improvement plan to
112 prioritize all the construction projects or major improvement projects, respectively, within the
113 county. A school major improvement plan submitted by the state board or the administrative
114 council of an area vocational educational center shall prioritize all the school improvement

115 projects contained in the plan. The priority list shall be one of the criteria to be considered by the
116 authority in determining how available funds shall be expended. In prioritizing the projects, the
117 county board, the state board or the administrative council submitting a plan shall make
118 determinations in accordance with the objective criteria formulated by the School Building
119 Authority;

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

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

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

126 (c) The State Department of Education shall conduct on-site inspections, at least annually,
127 of all facilities which have been funded wholly or in part by moneys from the authority or state
128 board to ensure compliance with the county board's facilities plan and school major improvement
129 plan as related to the facilities; to preserve the physical integrity of the facilities to the extent
130 possible; and to otherwise extend the useful life of the facilities: *Provided*, That the state board
131 shall submit reports regarding its on-site inspections of facilities to the authority within 30 days of
132 completion of the on-site inspections: *Provided, however*, That the state board shall promulgate
133 rules regarding the on-site inspections and matters relating thereto, in consultation with the
134 authority, as soon as practical and shall submit proposed rules for legislative review no later than
135 December 1, 1994.

136 (d) Based on its on-site inspection or notification by the authority to the state board that
137 the changes or additions to a county's board facilities plan or school major improvement plan
138 required by the authority have not been implemented within the time period prescribed by the
139 authority, the state board shall restrict the use of the necessary funds or otherwise allocate funds
140 from moneys appropriated by the Legislature for those purposes set forth in §18-9A-9 of this code.

NOTE: The purpose of this bill is to allow a more objective process in the distribution of SBA funds and to provide a greater ability for smaller counties to obtain SBA funds.

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