

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**Introduced**

**Senate Bill 683**

By Senator Taylor

[Introduced February 20, 2023; referred  
to the Committee on Education]

1 A BILL to amend and reenact §18-9D-1, §18-9D-2, §18-9D-3, §18-9D-4, §18-9D-4a, §18-9D-4b,  
 2 §18-9D-4c, §18-9D-4d, §18-9D-6, §18-9D-7, §18-9D-8, §18-9D-9, §18-9D-10, §18-9D-12,  
 3 §18-9D-13, §18-9D-14, §18-9D-15, §18-9D-16, §18-9D-17, §18-9D-20, and §18-9D-21 of  
 4 the Code of West Virginia, 1931, as amended; and to repeal §18-9D-5 of said code, all  
 5 relating to changing the name of the School Building Authority to the School Maintenance  
 6 Authority.

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

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

**§18-9D-1. School Building Maintenance Authority; powers.**

1 (a) The School Building Maintenance Authority consists of 11 members, including the  
 2 Governor or designee; the State Superintendent of Schools, ex officio; three members of the state  
 3 Board of Education, elected by the state board; and six citizens of the state, appointed by the  
 4 Governor, by and with the advice and consent of the Senate, who are knowledgeable in matters  
 5 relevant to the issues addressed by the authority, one of whom is representative of the interests of  
 6 the construction trades.

7 (b) Citizen members are appointed for three-year terms, which are staggered in  
 8 accordance with the initial appointments under prior enactment of this section. State Board of  
 9 Education members are elected for three-year terms and may not be elected to serve additional  
 10 consecutive terms or portions thereof.

11 (c) The Governor or designee serves as chair. The authority shall annually elect one of its  
 12 public members as vice chair and shall appoint a secretary, who need not be a member of the  
 13 Authority and who shall keep records of its proceedings.

14 (d) The Governor appoints an executive director of the Authority, with the advice and  
 15 consent of the Senate, who serves at the Governor's will and pleasure. The director is responsible  
 16 for managing and administering the daily functions of the authority and for performing all other  
 17 functions necessary to the effective operation of the authority.

18 (e) The Governor may remove any appointed member for incompetency, neglect of duty,  
19 moral turpitude or malfeasance in office. If the Governor removes a member, the Governor shall fill  
20 the vacancy for the remainder of the unexpired term in the same manner as the original  
21 appointment.

22 (f) The School ~~Building~~ Maintenance Authority shall meet at least quarterly and the citizen  
23 members shall be reimbursed for reasonable and necessary expenses actually incurred in the  
24 performance of their official duties in a manner consistent with guidelines of the travel  
25 management office of the Department of Administration from funds appropriated or otherwise  
26 made available for such purpose upon submission of an itemized statement.

27 (g) The acts performed by the members of the state Board of Education in their capacity as  
28 members of the School ~~Building~~ Maintenance Authority are solely the acts of the authority.

29 (h) The intent of the amendments to this article during the 2023 regular session of the  
30 Legislature is to transition the purpose of the Authority from an entity that focuses primarily on  
31 financing school construction and improvements to an entity that focuses primarily on financing  
32 school maintenance. Unless the context clearly indicates otherwise, any reference in this Code to  
33 the "School Building Authority" after the effective date of this Act means the "School Maintenance  
34 Authority".

#### **§18-9D-2. Definitions.**

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

3 (1) "Authority" means the School ~~Building~~ Maintenance Authority of West Virginia;

4 (2) "Bonds" means bonds issued by the authority pursuant to this article;

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

8 (A) The acquisition of land for current or future use in connection with the construction

9 project;

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

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

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

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

23 (5) "Facilities plan" means the ten-year countywide comprehensive educational facilities  
24 plan established by a county board in accordance with guidelines adopted by the authority to meet  
25 the goals and objectives of this article that:

26 (A) Addresses the existing school facilities and facility needs of the county to provide a  
27 thorough and efficient education in accordance with the provisions of this code and policies of the  
28 state board;

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

34 (C) Includes the school major improvement plan;

35 (D) Includes the county board's school access safety plan required by §18-9F-3 *et seq.*, of  
36 this code;

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

39 (F) Is approved by the state board and the authority prior to the distribution of state funds  
40 pursuant to this article to any county board or other entity applying for funds;

41 (6) "Maintenance" means the upkeep and repair of land, buildings, and equipment to keep  
42 in good condition and includes but is not limited to landscaping, gutter cleaning, drain cleaning,  
43 inspecting for and repairing leaks and any water damage, servicing HVAC systems including  
44 replacing filters, painting, pressure washing, replacing windows, replacing flooring, replacing  
45 electrical outlets or switches, repairing or replacing rotted wood or rusted metal, repairing or  
46 replacing roof, repairing or repaving parking lots, or removing rotted trees that pose a risk to  
47 people, buildings, or equipment.

48 ~~(6)~~ (7) "Project" means a construction project or a major improvement project;

49 ~~(7) "Region" means the area encompassed within and serviced by a regional educational~~  
50 ~~service agency established pursuant to section twenty-six, article two of this chapter~~

51 (8) "Revenue" or "revenues" means moneys:

52 (A) Deposited in the ~~School Building Capital Improvements Fund~~ School Construction  
53 Fund pursuant to §18-9A-10 of this chapter code;

54 (B) Deposited in the School Construction Fund pursuant to §11-15-30 and §29-22-18 of  
55 this code;

56 (C) Deposited in the School Building Debt Service Fund pursuant to §29-22-18 of this  
57 code;

58 (D) Deposited in the School Major Improvement Fund pursuant to §11-15-30 of this code;

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

- 61 (F) Received by the authority for the purposes of this article; and
- 62 (G) Deposited in the Excess Lottery School Building Debt Services Fund pursuant to §29-  
63 22-18a of this code.
- 64 (9) "School major improvement plan" means a 10-year school maintenance plan that:
- 65 (A) Is prepared by a county board in accordance with the guidelines established by the  
66 authority and incorporated in its Countywide Comprehensive Educational Facilities Plan, or is  
67 prepared by the state board or the administrative council of an area vocational educational center  
68 in accordance with the guidelines if the entities seek funding from the authority for a major  
69 improvement project;
- 70 (B) Addresses the regularly scheduled maintenance for all school facilities of the county or  
71 under the jurisdiction of the entity seeking funding;
- 72 (C) Includes a projected repair and replacement schedule for all school facilities of the  
73 county or of entity seeking funding;
- 74 (D) Addresses the major improvement needs of each school within the county or under the  
75 jurisdiction of the entity seeking funding; and
- 76 (E) Is required prior to the distribution of state funds for a major improvement project  
77 pursuant to this article to the county board, state board or administrative council; and
- 78 (10) "School major improvement project" means a project with a cost greater than \$50,000  
79 and less than \$1 million for the renovation, expansion, repair and safety upgrading of existing  
80 school facilities, buildings and structures, including the substantial repair or upgrading of  
81 equipment, machinery, building systems, utilities and other similar items related to the renovation,  
82 repair or upgrading in the furtherance of a school major improvement plan. A major improvement  
83 project does not include such items as books, computers or equipment used for instructional  
84 purposes; fuel; supplies; routine utility services fees; routine maintenance costs; ordinary course  
85 of business improvements; or other items which are customarily considered to result in a current or  
86 ordinary course of business operating charge.

**§18-9D-3. Powers of authority; School ~~Building~~ Maintenance Authority Fund.**

1 (a) The School ~~Building~~ Maintenance Authority has the power:

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

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

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

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

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

10 (6) To appoint, contract with and employ attorneys, bond counsel, accountants,  
11 construction and financial experts, underwriters, financial advisers, trustees, managers, officers  
12 and such other employees and agents as may be necessary in the judgment of the authority and to  
13 fix their compensation: *Provided*, That contracts entered into by the School ~~Building~~ Maintenance  
14 Authority in connection with the issuance of bonds under this article to provide professional and  
15 technical services, including, without limitation, accounting, actuarial, underwriting, consulting,  
16 trustee, bond counsel, legal services, and contracts relating to the purchase or sale of bonds are  
17 subject to the provisions of §5A-3-1 *et seq.*, of this code: *Provided, however*, That notwithstanding  
18 any other provisions of this code, any authority of the Attorney General of this state relating to the  
19 review of contracts and other documents to effectuate the issuance of bonds under this article  
20 shall be exclusively limited to the form of the contract and document: *Provided further*, That the  
21 Attorney General of this state shall complete all reviews of contracts and documents relating to the  
22 issuance of bonds under this article within ten calendar days of receipt of the contract and  
23 document for review;

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

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

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

30 (10) To require proper maintenance and insurance of any project authorized under this  
31 section, including flood insurance for any facility within the 100-year flood plain at which authority  
32 funds are expended;

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

35 (12) To assist any county board of education that chooses to acquire land, buildings and  
36 capital improvements to existing school buildings and property for use as public school facilities,  
37 by lease from a private or public lessor for a term not to exceed 25 years with an option to  
38 purchase pursuant to an investment contract with the lessor on such terms and conditions as may  
39 be determined to be in the best interests of the authority, the state Board of Education and the  
40 county board of education, consistent with the purposes of this article, by transferring funds to the  
41 state Board of Education as provided in §18-9D-15(d) of this code, for the use of the county board  
42 of education;

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

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

50 (15) To contract for architectural, engineering, or other professional services considered  
51 necessary or economical by the authority to provide consultative or other services to the authority



52 or to any ~~regional educational service agency~~ or county board requesting professional services  
53 offered by the authority, to evaluate any facilities plan or any project encompassed in the plan, to  
54 inspect existing facilities or any project that has received or may receive funding from the authority  
55 or to perform any other service considered by the authority to be necessary or economical.  
56 Assistance to the ~~region or~~ district may include the development of preapproved systems, plans,  
57 designs, models or documents; advice or oversight on any plan or project; or any other service that  
58 may be efficiently provided to ~~Regional Educational Service Agencies or~~ county boards by the  
59 authority;

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

63 (17) To transfer moneys to custodial accounts maintained by the School Building  
64 Maintenance Authority with a state financial institution from the school construction fund and the  
65 school improvement fund created in the State Treasury pursuant to ~~the provisions of §18-9D-6 of~~  
66 ~~this article code~~, as necessary to the performance of any contracts executed by the School  
67 Building Maintenance Authority in accordance with the provisions of this article;

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

73 (19) To encourage any project or part thereof to provide opportunities for students to  
74 participate in supervised, unpaid work-based learning experiences related to the student's  
75 program of study approved by the county board. The work-based learning experience must be  
76 conducted in accordance with a formal training plan approved by the instructor, the employer and  
77 the student and which sets forth at a minimum the specific skills to be learned, the required

78 documentation of work-based learning experiences, the conditions of the placement, including  
 79 duration and safety provisions, and provisions for supervision and liability insurance coverage as  
 80 applicable. Projects involving the new construction and renovation of vocational-technical and  
 81 adult education facilities should provide opportunities for students to participate in supervised  
 82 work-based learning experiences, to the extent practical, which meet the requirements of this  
 83 subdivision. Nothing in this subdivision may be construed to affect registered youth apprenticeship  
 84 programs or the provisions governing those programs; and

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

86 (b) The special revenue account in the State Treasury known as the "School ~~Building~~  
 87 Maintenance Authority Fund" is hereby continued. The fund is to be administered by the School  
 88 Building Maintenance Authority. Expenditures from the fund shall be for the purposes set forth in  
 89 this article and are not authorized from collections but are to be made only in accordance with  
 90 appropriation by the Legislature and in accordance with the provisions of §12-3-1 *et seq.*, of this  
 91 code ~~and upon fulfillment of the provisions of article three, chapter twelve of this code and upon~~  
 92 fulfillment of the provisions of §11B-2-1 *et seq.* of this code.

**§18-9D-4. School building maintenance authority authorized to issue refunding revenue  
 bonds ~~and/or general obligation bonds~~ for school building capital improvement  
 projects.**

1 ~~(a)~~ The School ~~Building~~ Maintenance Authority may by resolution, in accordance with the  
 2 provisions of this article, issue revenue bonds of the authority from time to time, either to finance  
 3 the cost of construction projects or maintenance for public schools in this state, or to refund, at the  
 4 discretion of the authority, bonds issued to finance the cost of the construction projects for public  
 5 schools in this state and outstanding under and pursuant to the provisions of this article as in effect  
 6 prior to July 20, 1993. The principal of, interest and redemption premium, if any, on such bonds  
 7 shall be payable solely from the special fund herein provided for such payment.

8 ~~(b) The School Building Authority may, in accordance with the provisions of the~~

9 ~~Constitution of West Virginia, issue general obligation bonds from time to time as authorized by~~  
 10 ~~referendum pursuant to resolution duly adopted by the Legislature, to finance the cost of~~  
 11 ~~construction projects for public schools in this state~~

**§18-9D-4a. Savings from issuance of refunding bonds.**

1 Any aggregate savings resulting from the issuance of refunding bonds pursuant to §18-9D-  
 2 4 of this code shall be retained by the School Building Maintenance Authority. Any savings shall be  
 3 utilized solely for the construction and maintenance of schools and may not be used to fund  
 4 administrative costs of the authority.

**§18-9D-4b. School Building Maintenance Authority authorized to issue bonds and pay debt service on bonds with funds distributed from State Excess Lottery Fund.**

1 The School Building Maintenance Authority is expressly authorized to issue bonds and pay  
 2 debt service on bonds pursuant to the provisions of this article with funds distributed from the State  
 3 Excess Lottery Fund under §29-22-18a of this code and deposited into the Excess Lottery School  
 4 Building Debt Service Fund and any federal subsidies received by the School Building  
 5 Maintenance Authority and deposited into the Excess Lottery School Building Debt Service Fund  
 6 with respect to bonds authorized by this section.

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

1 The School Building Maintenance Authority may by resolution, in accordance with the  
 2 provisions of this article, temporarily finance the cost of projects and other expenditures permitted  
 3 under this article for public schools, including, but not limited to, comprehensive high schools and  
 4 comprehensive middle schools as defined in this article, in this state through the issuance of loans,  
 5 notes or other evidences of indebtedness: *Provided*, That the principal amount of loans, notes or  
 6 other evidences of indebtedness outstanding at any one time shall not exceed \$16 million:  
 7 *Provided, however*, That the principal of, interest and premium, if any, on and fees associated with  
 8 any such temporary financing shall be payable solely from the sources from which the principal of,

9 interest and premium, if any, on bonds is payable under this article or from the proceeds of bonds.

**§18-9D-4d. Emergency facility and equipment repair or replacement fund for financially distressed counties.**

1 From the funds available to it the School Building Maintenance Authority shall maintain a  
2 reserve fund in the amount of not less than \$600,000 for the purpose of making emergency grants  
3 to financially distressed county boards to assist them in making repairs or performing urgent  
4 maintenance to facilities or facility related equipment or facility related equipment replacement  
5 necessary to maintain the serviceability or structural integrity of school facilities currently in use or  
6 necessary for educating the students of the county. The grants shall be made in accordance with  
7 guideline established by the school building authority. For the purposes of this section, "financially  
8 distressed county" means a county either in deficit or on the most recently established watch list  
9 established by the Department of Education of those counties at-risk of becoming in deficit.

**§18-9D-5. School building authority authorized to offer individual higher education savings plans.**

[Repealed.]

**§18-9D-6. ~~School Building Capital Improvements Fund in State Treasury~~ School Construction Fund in State Treasury; School Building Debt Service Fund in State Treasury; School Improvement Fund in State Treasury; collections to be paid into special funds; Excess Lottery School Building Debt Service Fund in State Treasury; authority to pledge the collections as security for refunding revenue bonds; authority to finance projects on a cash basis.**

1 (a) ~~There is continued in the state Treasury a The School Building Capital Improvements~~  
2 ~~Fund is closed and terminated upon the effective date of the 2023 enactment of this section. Any~~  
3 ~~moneys remaining in the fund shall be transferred to the School Construction Fund. to be~~  
4 ~~expended by the authority as provided in this article. The School Building Capital Improvements~~  
5 ~~Fund shall be an interest-bearing account with interest credited to and deposited in the School~~

6 ~~Building Capital Improvements Fund and expended in accordance with the provisions of this~~  
7 ~~article.~~

8 ~~The School Building Authority may pledge all or any part of the revenues paid into the~~  
9 ~~School Building Capital Improvements Fund that are needed to meet the requirements of any~~  
10 ~~revenue bond issue or issues authorized by this article prior to July 20, 1993, or revenue bonds~~  
11 ~~issued to refund revenue bonds issued prior to that date, including the payment of principal of,~~  
12 ~~interest and redemption premium, if any, on the revenue bonds and the establishing and~~  
13 ~~maintaining of a reserve fund or funds for the payment of the principal of, interest and redemption~~  
14 ~~premium, if any, on the revenue bond issue or issues when other moneys pledged may be~~  
15 ~~insufficient for the payment of the principal, interest and redemption premium, including any~~  
16 ~~additional protective pledge of revenues that the authority in its discretion has provided by~~  
17 ~~resolution authorizing the issuance of the bonds or in any trust agreement made in connection with~~  
18 ~~the bond issue. Additionally, the authority may provide in the resolution and in the trust agreement~~  
19 ~~for priorities on the revenues paid into the School Building Capital Improvements Fund that are~~  
20 ~~necessary for the protection of the prior rights of the holders of bonds issued at different times~~  
21 ~~under the provisions of this article.~~

22 ~~Any balance remaining in the School Building Capital Improvements Fund after the~~  
23 ~~authority has issued bonds authorized by this article and after the requirements of all funds,~~  
24 ~~including reserve funds established in connection with the bonds issued prior to July 20, 1993,~~  
25 ~~pursuant to this article have been satisfied may be used for the redemption of any of the~~  
26 ~~outstanding bonds issued under this article which by their terms are then redeemable, or for the~~  
27 ~~purchase of the bonds at the market price, but not exceeding the price, if any, at which the bonds~~  
28 ~~are in the same year redeemable and all bonds redeemed or purchased shall immediately be~~  
29 ~~canceled and shall not again be issued.~~

30 ~~The School Building Authority, in its discretion, may use the moneys in the School Building~~  
31 ~~Capital Improvements Fund to finance the cost of projects authorized in accordance with the~~

32 ~~provisions of section sixteen of this article on a cash basis. Any pledge of moneys in the fund for~~  
33 ~~revenue bonds issued prior to July 20, 1993, is a prior and superior charge on the fund over the~~  
34 ~~use of any of the moneys in the fund to pay for the cost of any project on a cash basis: *Provided,*~~  
35 ~~That any expenditures from the fund, other than for the retirement of revenue bonds, may only be~~  
36 ~~made by the authority in accordance with the provisions of this article.~~

37 (b) There is continued in the state Treasury a special revenue fund named the School  
38 Building Debt Service Fund into which shall be deposited the amounts specified in §29-22-18 of  
39 this code ~~together with any federal subsidies received by the authority with respect to bonds~~  
40 ~~authorized by this article for which moneys deposited in the School Building Debt Service Fund~~  
41 ~~have been pledged. If the amounts deposited in the School Building Debt Service Fund exceed the~~  
42 ~~amount which the authority is authorized to expend, the excess shall be set aside in a special~~  
43 ~~surplus fund for the authority. Expenditures from this special surplus fund shall be made only in~~  
44 ~~accordance with the procedures established in section eighteen [§ 11B-2-18], article two, chapter~~  
45 ~~eleven-b. All amounts deposited in the fund shall be pledged to the repayment of the principal,~~  
46 ~~interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds~~  
47 ~~authorized by this article for which moneys deposited in the School Building Debt Service Fund~~  
48 ~~have been pledged by the authority. *Provided,* That deposited moneys may not be pledged to the~~  
49 ~~repayment of any revenue bonds issued prior to January 1, 1994, or with respect to revenue bonds~~  
50 ~~issued for the purpose of refunding revenue bonds issued prior to January 1, 1994. Additionally,~~  
51 ~~the authority may provide in the resolution and in the trust agreement for priorities on the revenues~~  
52 ~~paid into the School Building Debt Service Fund that are necessary for the protection of the prior~~  
53 ~~rights of the holders of bonds issued at different times under the provisions of this article. On or~~  
54 ~~prior to May 1 of each year, the authority shall certify to the state Lottery Director the principal and~~  
55 ~~interest and coverage ratio requirements for the following fiscal year on any revenue bonds issued~~  
56 ~~on or after January 1, 1994, and for which moneys deposited in the School Building Debt Service~~  
57 ~~Fund have been pledged, or will be pledged, for repayment pursuant to this section.~~

58           After the authority has issued bonds authorized by this article for which moneys deposited  
59 in the School Building Debt Service Fund have been pledged and after the requirements of all  
60 funds have been satisfied, including coverage and reserve funds established in connection with  
61 the bonds issued pursuant to this article, any balance remaining in the School Building Debt  
62 Service Fund may be used for the redemption of any of the outstanding bonds issued under this  
63 article, for which moneys deposited in the School Building Debt Service Fund have been pledged,  
64 which, by their terms, are then redeemable or for the purchase of the outstanding bonds at the  
65 market price, but not to exceed the price, if any, at which the bonds are redeemable and all bonds  
66 redeemed or purchased shall be immediately canceled and shall may not again be issued:  
67 *Provided*, That after the authority has issued bonds authorized by this article and after the  
68 requirements of debt service and all associated funds have been satisfied for the fiscal year for  
69 which moneys deposited in the School Building Debt Service Fund have been pledged, including  
70 coverage and reserve funds established in connection with the bonds issued pursuant to this  
71 article, any remaining balance in the School Building Debt Service Fund may be transferred to the  
72 School Construction Fund created in §18-9D-6(c) of this code and used by the School Building  
73 Maintenance Authority in its discretion to finance the cost of school construction or improvement  
74 projects authorized in accordance with the provisions of §18-9D-16 of this code or on maintenance  
75 of school buildings, land, or equipment on a cash basis.

76           (c) There is continued in the state Treasury a special revenue fund named the School  
77 Construction Fund into which shall be deposited the amounts specified in §11-15-30 of this code,  
78 together with any moneys appropriated to the fund by the Legislature.

79           Expenditures from the School Construction Fund shall be for the purposes set forth in this  
80 article, including lease-purchase payments under agreements made pursuant to §18-9D-15 and  
81 §18-5-9 of this code and including maintenance of school buildings, land, and equipment and are  
82 authorized from collections in accordance with the provisions of §12-3-1 *et seq.*, of this code and  
83 from other revenues annually appropriated by the Legislature from lottery revenues as authorized

84 by §29-22-18 of this code pursuant to the provisions set forth in §5A-2-1 *et seq.*, of this code.  
85 Amounts collected which are found, from time to time, to exceed the funds needed for purposes  
86 set forth in this article may be transferred to other accounts or funds and redesignated for other  
87 purposes by appropriation of the Legislature. The School Construction Fund shall be an interest-  
88 bearing account, with the interest credited to and deposited in the School Construction Fund and  
89 expended in accordance with the provisions of this article. Deposits to and expenditures from the  
90 School Construction Fund are subject to the provisions of §18-9D-15(k) of this code.

91 (d) There is continued in the state Treasury a special revenue fund named the School  
92 Major Improvement Fund into which shall be deposited the amounts specified in §11-15-30 of this  
93 code, together with any moneys appropriated to the fund by the Legislature. Expenditures from the  
94 School Major Improvement Fund shall be for the purposes set forth in this article, including  
95 maintenance of school buildings, land, and equipment, and are authorized from collections in  
96 accordance with the provisions of §12-3 *et seq.*, of this code and from other revenues annually  
97 appropriated by the Legislature from lottery revenues as authorized by §29-22-18 of this code  
98 pursuant to the provisions set forth in §5A-2-1 of this code. Amounts collected which are found,  
99 from time to time, to exceed the funds needed for purposes set forth in this article may be  
100 transferred to other accounts or funds and redesignated for other purposes by appropriation of the  
101 Legislature. The School Major Improvement Fund shall be an interest-bearing account, with  
102 interest being credited to and deposited in the School Major Improvement Fund and expended in  
103 accordance with the provisions of this article, including maintenance of school buildings, land, and  
104 equipment.

105 (e) There is created in the state Treasury a special revenue fund named the Excess Lottery  
106 School Building Debt Service Fund into which shall be deposited the amounts specified in §29-22-  
107 18a of this code, ~~together with any federal subsidies received by the authority with respect to~~  
108 ~~bonds authorized by section four b [§ 18-9D-4b], article nine d, chapter eighteen of this code. If the~~  
109 ~~amounts deposited in the Excess Lottery School Building Debt Service Fund exceed the amount~~



110 ~~which the authority is authorized to expend, the excess shall be set aside in a special surplus fund~~  
111 ~~for the authority. Expenditures from this special surplus fund shall be made only in accordance~~  
112 ~~with the procedures established in section eighteen, article two, chapter eleven-b.~~ All amounts  
113 deposited in the fund shall be pledged, as designated by the authority, to the repayment of the  
114 principal, interest and redemption premium, if any, on revenue bonds or refunding revenue bonds  
115 authorized by §18-9D-4b of this code. On or prior to May 1 of each year, the authority shall certify  
116 to the state Lottery Director the principal and interest and coverage ratio requirements for the  
117 following fiscal year on any revenue bonds issued for which moneys deposited in the Excess  
118 Lottery School Building Debt Service Fund have been pledged, or will be pledged, for repayment  
119 pursuant to this section.

120       After the authority has issued bonds authorized by this article for which moneys deposited  
121 in the Excess Lottery School Building Debt Service Fund have been pledged and after the  
122 requirements of all funds have been satisfied, including coverage and reserve funds established in  
123 connection with the bonds issued pursuant to this article, any balance remaining in the Excess  
124 Lottery School Building Debt Service Fund may be used for the redemption of any of the  
125 outstanding bonds issued under this article, for which moneys deposited in the Excess Lottery  
126 School Building Debt Service Fund have been pledged, which, by their terms, are then  
127 redeemable or for the purchase of the outstanding bonds at the market price, but not to exceed the  
128 price, if any, at which the bonds are redeemable and all bonds redeemed or purchased shall be  
129 immediately canceled and shall may not again be issued: *Provided*, That after the authority has  
130 issued bonds authorized by this article and after the requirements of debt service and all  
131 associated funds have been satisfied for the fiscal year, including coverage and reserve funds  
132 established in connection with the bonds issued pursuant to this article for which moneys  
133 deposited in the Excess Lottery School Building Debt Service Fund have been pledged, any  
134 remaining balance in the Excess Lottery School Building Debt Service Fund may be transferred to  
135 the School Construction Fund created in §18-9D-6(c) of this code and used by the School Building

136 Building Authority in its discretion to finance the cost of school construction or improvement  
137 projects authorized in accordance with the provisions of §18-9D-16 of this code or maintenance of  
138 school buildings, land, or equipment on a cash basis.

139 (f) The Legislature finds and declares that the Supreme Court of Appeals of West Virginia  
140 has held that the issuance of additional revenue bonds authorized under the School Building  
141 Authority Act, as enacted in this article prior to July 20, 1993, constituted an indebtedness of the  
142 state in violation of section four, article X of the Constitution of West Virginia, but that revenue  
143 bonds issued under this article prior to July 20, 1993, are not invalid.

144 The Legislature further finds and declares that the financial capacity of a county to  
145 construct, lease, ~~and~~ improve, and maintain school facilities depends upon the county's bonding  
146 capacity (local property wealth), voter willingness to pass bond issues and the county's ability to  
147 reallocate other available county funds instead of criteria related to educational needs or upon the  
148 ability of the School Building Maintenance Authority created in this article to issue bonds that  
149 comply with the holding of the West Virginia Supreme Court of Appeals or otherwise assist  
150 counties with the financing of facilities construction and improvement. The Legislature further finds  
151 and declares that this section, as well as §25-22-18 of this code, had been reenacted during the  
152 first extraordinary session of the West Virginia Legislature in the year 1994 in an attempt to comply  
153 with the holding of the Supreme Court of Appeals of West Virginia.

154 The Legislature further finds and declares that it intends, through the reenactment of §29-  
155 22-18 of this code, to dedicate a source of state revenues to special revenue funds for the  
156 purposes of paying the debt service on bonds and refunding bonds issued subsequent to January  
157 1, 1994, the proceeds of which will be used for the construction and improvement of school  
158 building facilities and maintenance or school buildings, land, and equipment. The Legislature  
159 further finds and declares that it intends, through the reenactment of this section and §11-15-30 of  
160 this code and §29-22-18 of this code, to appropriate revenues to two special revenue funds for the  
161 purposes of construction and improvement of school building facilities and maintenance of school

162 buildings, land, and equipment. Furthermore, the Legislature intends to encourage county boards  
 163 to maintain existing levels of county funding for construction, improvement, and maintenance of  
 164 school building facilities and to generate additional county funds for those purposes through bonds  
 165 and special levies whenever possible. The Legislature further encourages the School Building  
 166 Maintenance Authority, the state board, and county boards of education to propose uniform project  
 167 specifications for comparable projects whenever possible to meet county needs at the lowest  
 168 possible cost.

169 The Legislature further finds and declares that it intends, through the reenactment of this  
 170 section and §29-22-18 of this code, to comply with the provisions of sections four and six, article X  
 171 of the Constitution of West Virginia; and section one, article XII of said Constitution.

**§18-9D-7. Authority to fix and collect rents.**

1 The authority may fix and collect a rental fee for the use of all or any part of a capital  
 2 improvement project completed under this article to provide revenues for deposit in the school  
 3 ~~building capital improvements fund~~ School Construction Fund to pay, in whole or in part, the  
 4 principal of, interest and redemption premium, if any, on the bonds authorized to be issued  
 5 pursuant to this article as the same mature and become due and to make all reserve and other  
 6 payments to be required by the proceedings which authorize ~~such~~ these bonds; to provide any  
 7 additional protective pledge of revenues and reserve or other payments as the School Building  
 8 Maintenance Authority may in its discretion require by the resolution authorizing any issue of  
 9 bonds pursuant to this article and any trust agreement made in connection therewith; and to make  
 10 any other payments required or authorized by this article or any proceedings, resolutions or trust  
 11 agreements authorized hereunder.

**§18-9D-8. Use of proceeds of bonds; bonds exempt from taxation.**

1 (a) The maximum aggregate amount of bonds outstanding at any time, for which the  
 2 moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt  
 3 Service Fund are to be pledged, is \$500 million; however, any amount of bonds for which moneys

4 have been deposited in a sinking fund, reserve fund or other fund established to provide payment  
5 of principal or interest on the bonds shall be excluded from the calculation of the maximum  
6 aggregate amount of bonds outstanding at any time. The issuance of revenue bonds under ~~the~~  
7 ~~provisions of~~ this article shall be authorized, from time to time, by resolution or resolutions of the  
8 School ~~Building~~ Maintenance Authority, copies of which shall be provided to the Governor, the  
9 President of the Senate and the Speaker of the House of Delegates within five days of their  
10 approval, which shall set forth the proposed projects authorized in accordance with ~~the provisions~~  
11 ~~of §18-9D-16 of this code~~ as well as the financing of school building, land, and equipment  
12 maintenance costs and provide for the issuance of bonds in amounts sufficient, when sold as  
13 provided in this section, to provide moneys considered sufficient by the authority to pay the costs,  
14 less the amounts of any other funds available for the costs or from any appropriation, grant or gift  
15 for the costs: *Provided*, That bond issues from which bond revenues are to be distributed in  
16 accordance with §18-9D-15 of this code for projects authorized pursuant to ~~the provisions of §18-~~  
17 ~~9D-16 of this code~~ and distributed for maintenance of school buildings, land, and equipment are  
18 not required to set forth the proposed projects in the resolution. The resolution shall prescribe the  
19 rights and duties of the bondholders and the School ~~Building~~ Maintenance Authority and, for that  
20 purpose, may prescribe the form of the trust agreement referred to in this section. The bonds may  
21 be issued, from time to time, in such amounts; shall be of such series; bear such date or dates;  
22 mature at such time or times not exceeding 40 years from their respective dates; bear interest at  
23 such rate or rates; be in such denominations; be in such form, either coupon or registered, carrying  
24 such registration, exchangeability and interchangeability privileges; be payable in such medium of  
25 payment and at such place or places within or without the state; be subject to such terms of  
26 redemption at such prices not exceeding one hundred five percent of the principal amount of the  
27 bonds; and be entitled to such priorities on the revenues paid into the fund pledged for repayment  
28 of the bonds as may be provided in the resolution authorizing the issuance of the bonds or in any  
29 trust agreement made in connection with the bonds: *Provided, however*, That ~~revenue bonds~~

30 ~~issued on or after January 1, 1994, and prior to January 1, 2008, which are secured by lottery~~  
31 ~~proceeds from section eighteen, article twenty two, chapter twenty nine of this code shall mature~~  
32 ~~at such time or times not exceeding ten years from their respective dates: *Provided further*, That~~  
33 revenue bonds issued on or after January 1, 2008, which are secured by lottery proceeds from  
34 §29-22-18a of this code, shall mature at such time or times not exceeding twenty years from their  
35 respective dates.

36 (b) The bonds shall be signed by the Governor, his or her designee or the vice chair of the  
37 authority, under the great seal of the state, attested by the Secretary of State, and the coupons  
38 attached to the bonds shall bear the facsimile signature of the Governor, his or her designee or the  
39 vice chair of the authority. In case any of the officers whose signatures appear on the bonds or  
40 coupons cease to be officers before the delivery of the bonds, the signatures shall nevertheless be  
41 valid and sufficient for all purposes the same as if the officers had remained in office until the  
42 delivery. The revenue bonds shall be sold in the manner determined by the authority to be for the  
43 best interests of the state.

44 ~~(c) Any pledge of revenues made by the School Building Authority for revenue bonds~~  
45 ~~issued prior to July 20, 1993, pursuant to this article is valid and binding between the parties from~~  
46 ~~the time the pledge is made; and the revenues pledged shall immediately be subject to the lien of~~  
47 ~~the pledge without any further physical delivery of the revenues pledged or further act. The lien of~~  
48 ~~the pledge is valid and binding against all parties having claims of any kind in tort, contract or~~  
49 ~~otherwise, irrespective of whether the parties have notice of the lien of the pledge and the pledge~~  
50 ~~shall be a prior and superior charge over any other use of the revenues pledged.~~

51 ~~(d)~~ (c) The proceeds of any bonds shall be used solely for the purpose or purposes as may  
52 be generally or specifically set forth in the resolution authorizing those bonds and shall be  
53 disbursed in the manner and with the restrictions, if any, that the authority provides in the  
54 resolution authorizing the issuance of the bonds or in the trust agreement referred to in this section  
55 securing the bonds. If the proceeds of the bonds, by error in calculations or otherwise, are less

56 than the cost of any projects or maintenance specifically set forth in the resolution, additional  
57 bonds may in like manner be issued to provide the amount of the deficiency; and unless otherwise  
58 provided for in the resolution or trust agreement hereinafter mentioned, the additional bonds shall  
59 be considered to be of the same issue and are entitled to payment from the same fund, without  
60 preference or priority, as the bonds before issued for the projects. If the proceeds of bonds issued  
61 for the projects and maintenance specifically set forth in the resolution authorizing the bonds  
62 issued by the authority exceed the cost of the bonds, the surplus may be used for any other  
63 projects authorized in accordance with ~~the provisions of §18-9D-16~~ of this code or in any other  
64 manner that the resolution authorizing the bonds provides. Prior to the preparation of definitive  
65 bonds, the authority may, under like restrictions, issue temporary bonds with or without coupons,  
66 exchangeable for definitive bonds upon the issuance of the definitive bonds.

67 (e) (d) After the issuance of any revenue bonds, the revenues pledged for the revenue  
68 bonds shall not be reduced as long as any of the revenue bonds are outstanding and unpaid  
69 except under the terms, provisions and conditions that are contained in the resolution, trust  
70 agreement or other proceedings under which the revenue bonds were issued.

71 (f) (e) The revenue bonds and the revenue refunding bonds and bonds issued for  
72 combined purposes, together with the interest on the bonds, are exempt from all taxation by the  
73 State of West Virginia, or by any county, school district, municipality, or political subdivision  
74 thereof.

75 (g) (f) Any school construction bonds issued under this section shall be issued on parity  
76 with any existing School Building Authority bonds previously issued under this article.

**§18-9D-9. Issuance of revenue refunding bonds; use of moneys; power to enter into escrow  
agreements; call for redemption.**

77 The issuance of revenue refunding bonds under the provisions of this article shall be  
78 authorized by resolution of the School Building Maintenance Authority and shall otherwise be  
79 subject to the limitations, conditions and provisions of other revenue bonds under this article. Such

80 The revenue refunding bonds may be issued in an amount at the option of the authority sufficient  
81 to pay either in part or in full, together with interest earned on the investment of the proceeds  
82 thereof, whether or not at the time of the issuance of the revenue refunding bonds the hereafter  
83 mentioned bonds are payable or callable for optional redemption: (1) The principal of ~~such~~ the  
84 outstanding bonds; (2) the redemption premium, if any, on ~~such~~ the outstanding bonds if they are  
85 to be redeemed prior to maturity; (3) the interest due and payable on ~~such~~ the outstanding bonds  
86 to and including the maturity date thereof or the first date upon which said the outstanding bonds  
87 are to be redeemed, including any interest theretofore accrued and unpaid; and (4) all expenses of  
88 the issuance and sale of said revenue refunding bonds, including all necessary financial and legal  
89 expenses, and also including the creation of initial debt service reserve funds. Any existing  
90 moneys pledged with respect to the outstanding bonds may be used for any or all of the purposes  
91 stated in (1), (2), (3) and (4) above or may be deposited in a sinking fund or reserve fund or other  
92 funds for the issue of bonds which have been issued wholly or in part for the purpose of such  
93 refunding. Such amount of the proceeds of the revenue refunding bonds as shall be sufficient for  
94 the payment of the principal, interest and redemption premium, if any, on ~~such~~ the outstanding  
95 bonds which will not be immediately due and payable shall be deposited in trust, for the sole  
96 purpose of making such payments, in a banking institution chosen by the authority and in  
97 accordance with any provisions which may be included in the resolution authorizing the issuance  
98 of such bonds or in the trust agreement securing the same. Any of the moneys so deposited in  
99 trust may, prior to the date on which such moneys will be needed for the payment of principal of,  
100 interest and redemption premium, if any, on ~~such~~ the outstanding bonds, be invested and  
101 reinvested as determined by the authority, in whole or in part: (a) In direct obligations issued by the  
102 United States of America or one of its agencies or in direct obligations of the State of West Virginia;  
103 (b) in obligations unconditionally guaranteed by the United States of America as to principal and  
104 interest; or (c) in certificates of deposit of a banking corporation or association which is a member  
105 of the federal deposit insurance corporation, or successor; but any such certificates of deposit

106 must be fully secured as to both principal and interest by pledged collateral consisting of direct  
107 obligations of or obligations guaranteed by the United States of America, or direct obligations of  
108 the State of West Virginia, having a market value, excluding accrued interest, at all times at least  
109 equal to the amount of the principal of and accrued interest on ~~such~~ the certificates of deposit. Any  
110 such investments must mature, or be payable in advance of maturity at the option of the holder,  
111 and ~~must~~ shall bear interest in such manner as to provide funds which, together with uninvested  
112 money, will be sufficient to pay when due or called for redemption the bonds refunded, together  
113 with interest accrued and to accrue thereon and redemption premiums, if any, and ~~such~~ the  
114 refunding bonds' proceeds or obligations so purchased therewith shall be deposited in escrow and  
115 held in trust for the payment and redemption of the bonds refunded: *Provided*, That if interest  
116 earned by any investment in ~~such~~ the escrow is shown to be in excess of the amounts required  
117 from time to time for the payment of interest on and principal of the refunded bonds, including  
118 applicable redemption premium, then ~~such~~ the excess may be withdrawn from escrow and  
119 disbursed in such manner as the authority shall by resolution determine. ~~subject to the provisions~~  
120 ~~of section five of this article~~ Any moneys in the sinking or reserve funds or other funds maintained  
121 for the outstanding bonds to be refunded may be applied in the same manner and for the same  
122 purpose as are the net proceeds of refunding bonds or may be deposited in the special fund or any  
123 reserve funds established for account of the refunding bonds.

124 The authority to issue revenue refunding bonds shall be in addition to any other authority to  
125 refund bonds conferred by law.

126 The School ~~Building~~ Maintenance Authority ~~shall have power~~ may to enter into such  
127 escrow agreements with such bank or banks and to insert therein such protective and other  
128 covenants and provisions as it may consider necessary to permit the carrying out of the provisions  
129 of this article and to insure the prompt payment of the principal of and interest and redemption  
130 premiums on the revenue bonds refunded.

131 Where any revenue bonds to be refunded are not to be surrendered for exchange or



132 payment and are not to be paid at maturity with escrowed obligations, but are to be paid from such  
133 source prior to maturity pursuant to call for redemption exercised under a right of redemption  
134 reserved in such revenue bonds, the authority shall, prior to the issuance of the refunding bonds,  
135 determine which redemption date or dates shall be used, call such the revenue bonds for  
136 redemption and provide for the giving of the notice of redemption required by the proceedings  
137 authorizing such the revenue bonds. Where such the notice is to be given at a time subsequent to  
138 the issuance of the refunding bonds, the necessary notices may be deposited with the State  
139 Treasurer or the bank acting as escrow agent of the refunding bond proceeds and the escrow  
140 agent appropriately instructed and authorized to give the required notices at the prescribed time or  
141 times. If any officer of the public body signing any such notice shall no longer be in office at the time  
142 of the utilization of the notice, the notice shall nevertheless be valid and effective for its intended  
143 purpose.

**§18-9D-10. Bonds may be issued for combined purposes.**

1 The School Building Maintenance Authority may authorize by one or more resolutions a  
2 single issue of bonds for the combined purposes of refunding the outstanding bonds as herein  
3 authorized and financing one or more of the projects authorized hereunder.

**§18-9D-12. Trust agreements for holders of bonds.**

1 The School Building Maintenance Authority may enter into an agreement or agreements  
2 with any trust company, or with any bank having the powers of a trust company, either within or  
3 outside the state, to act as trustee for the holders of bonds issued hereunder, setting forth therein  
4 such duties and containing such legally binding covenants of the School Building Maintenance  
5 Authority with the holders of the bonds in respect to the payment of the bond; the fixing and  
6 collecting of rents hereinbefore referred to; the completion of authorized projects; the custody,  
7 safeguarding and disposition of the proceeds of the bonds, and the moneys in such special funds,  
8 sinking funds, reserve funds, or any other moneys or funds, notwithstanding provisions of this  
9 article to the contrary; the security for moneys on hand or on deposit, and the rights and remedies

10 of the trustee and the holders of the bonds, as may be agreed upon with the purchasers of such  
11 bonds; provisions restricting the individual right of action of bondholders as is customary in trust  
12 agreements respecting bonds and debentures of municipal corporations, protecting and enforcing  
13 the rights and remedies of the trustee and the bondholders; and provisions as to any other matters  
14 which are deemed necessary and advisable by the School Building Maintenance Authority in the  
15 best interests of the state and to enhance the marketability of the bonds. Any such agreement  
16 entered into by the School Building Maintenance Authority shall be binding in all respects on such  
17 authority and its successors from time to time in accordance with the terms thereof; and all the  
18 provisions thereof shall be enforceable by appropriate proceedings at law or in equity, or  
19 otherwise.

**§18-9D-13. Sinking fund for payment of bonds.**

1           ~~(a) From the School Building Capital Improvements Fund the School Building Authority~~  
2 ~~shall make periodic payments in an amount sufficient to meet the requirements of any issue of~~  
3 ~~bonds sold under the provisions of this article prior to January 1, 1994, or for refunding bonds~~  
4 ~~issued prior to that date as may be specified in the resolution of the authority authorizing the issue~~  
5 ~~thereof and in any trust agreement entered into in connection therewith. The payments so made~~  
6 ~~shall be placed as specified in such resolution or trust agreement in a special sinking fund which is~~  
7 ~~hereby pledged to and charged with the payment of the principal of the bonds of such issue and~~  
8 ~~the interest thereon, and to the redemption or repurchase of such bonds, such sinking fund to be a~~  
9 ~~fund for all bonds of such issue without distinction or priority of one over another, except as may be~~  
10 ~~provided in the resolution authorizing such issue of bonds. The moneys in the special sinking fund,~~  
11 ~~less such reserve for payment of principal and interest and redemption premium, if any, as may be~~  
12 ~~required by the resolution of the School Building Authority, authorizing the issue or any trust~~  
13 ~~agreement made in connection therewith, may be used for the redemption of any of the~~  
14 ~~outstanding bonds payable from such fund which by their terms are then redeemable, or for the~~  
15 ~~purchase of bonds at the market price, but not exceeding the price, if any, at which such bonds~~

16 ~~shall in the same year be redeemable; and all bonds redeemed or purchased shall forthwith be~~  
 17 ~~canceled and shall not again be issued~~

18 (b) From the School Building Debt Service Fund or the Excess Lottery School Building  
 19 Debt Service Fund, the authority shall make periodic payments in an amount sufficient to meet the  
 20 requirements of any issue of bonds sold under the provisions of this article ~~on or after January 1,~~  
 21 ~~1994,~~ and for which the authority has pledged revenues in ~~such~~ the fund for the payment of ~~such~~  
 22 the bonds, as may be specified in the resolution of the authority authorizing the issue thereof or in  
 23 any trust agreement entered into in connection therewith. The payments so made shall be placed  
 24 as specified in the resolution or trust agreement in a special sinking fund which is hereby pledged  
 25 to and charged with the payment of the principal of the bonds of the issue and the interest thereon,  
 26 and to the redemption or repurchase of the bonds, the sinking fund to be a fund for all bonds of the  
 27 particular issue without distinction or priority of one over another, except as may be provided in the  
 28 resolution authorizing the issuance of the bonds. The moneys in the special sinking fund, less the  
 29 reserve for payment of principal and interest and redemption premium, if any, as may be required  
 30 by the resolution of the School ~~Building~~ Maintenance Authority authorizing the issue or any trust  
 31 agreement made in connection therewith, may be used for redemption of any of the outstanding  
 32 bonds payable from the fund which by their terms are then redeemable, or for the purchase of  
 33 bonds at the market price, but not exceeding the price, if any, at which ~~such~~ the bonds shall in the  
 34 same year be redeemable; and all bonds redeemed or purchased shall forthwith be canceled and  
 35 shall may not again be issued.

**§18-9D-14. Credit of state not pledged.**

1 No provisions of this article shall be construed to authorize the School ~~Building~~  
 2 Maintenance Authority at any time or in any manner to pledge the credit or taxing power of the  
 3 state, nor shall any of the obligations or debts created by the School ~~Building~~ Maintenance  
 4 Authority under the authority herein granted be deemed to be obligations of the state.

**§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; local bond levies.**

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

9 (b) An amount that is not more than 10 percent of the sum of moneys that are determined  
10 by the authority to be available for distribution during the then current fiscal year from:

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

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

14 (3) Any other moneys received by the authority, except moneys paid into the School Major  
15 Improvement Fund pursuant to §18-9D-6 of this code and moneys deposited into the School  
16 Access Safety Fund pursuant to §18-9F-5 of this code, may be allocated and may be expended by  
17 the authority for projects authorized in accordance with §18-9D-16 of this code that service the  
18 educational community statewide or, upon application by the state board, for educational  
19 programs that are under the jurisdiction of the state board. In addition, upon application by the  
20 state board or the administrative council of an area vocational educational center established  
21 pursuant to §18-2B-1 *et seq.* of this code, the authority may allocate and expend under this  
22 subsection moneys for school major improvement projects authorized in accordance with §18-9D-

23 16 of this code proposed by the state board or an administrative council for school facilities under  
24 the direct supervision of the state board or an administrative council, respectively. Furthermore,  
25 upon application by a county board, the authority may allocate and expend under this subsection  
26 moneys for school major improvement projects for vocational programs at comprehensive high  
27 schools, vocational programs at comprehensive middle schools, vocational schools cooperating  
28 with community and technical college programs, or any combination of the three. Each county  
29 board is encouraged to cooperate with community and technical colleges in the use of existing or  
30 development of new vocational technical facilities. All projects eligible for funds from this  
31 subsection shall be submitted directly to the authority which shall be solely responsible for the  
32 project's evaluation, subject to the following:

33 (A) Any project funded by the authority shall be in accordance with a comprehensive  
34 educational facility plan which must be approved by the state board and the authority. The  
35 authority may not expend any moneys for a school major improvement project proposed by the  
36 state board or the administrative council of an area vocational educational center unless the state  
37 board or an administrative council has submitted a 10-year facilities plan; and

38 (B) The authority shall, before allocating any moneys to the state board or the  
39 administrative council of an area vocational educational center for a school improvement project,  
40 consider all other funding sources available for the project.

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

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

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

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

49 accordance with the guidelines adopted by the authority.

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

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

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

55 (3) Any other moneys received by the authority, except moneys deposited into the School  
56 Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to  
57 §18-9F-5 of this code, may be reserved by the authority for multiuse vocational-technical  
58 education facilities projects that may include post-secondary programs as a first priority use. The  
59 authority may allocate and expend under this subsection moneys for any purposes authorized in  
60 this article on multiuse vocational-technical education facilities projects, including equipment and  
61 equipment updates at the facilities, authorized in accordance with §18-9D-16 of this code. If the  
62 projects approved under this subsection do not require the full amount of moneys reserved,  
63 moneys above the amount required may be allocated and expended in accordance with other  
64 provisions of this article. A county board, the state board, an administrative council, or the joint  
65 administrative board of a vocational-technical education facility which includes post-secondary  
66 programs may propose projects for facilities or equipment, or both, which are under the direct  
67 supervision of the respective body: *Provided*, That the authority shall, before allocating any  
68 moneys for a project under this subsection, consider all other funding sources available for the  
69 project.

70 (e) An amount that is not less than 75 percent of the moneys that are determined by the  
71 authority to be available for distribution during the current fiscal year from:

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

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

75           (3) Any other moneys received by the authority, except moneys deposited into the School  
76 Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to  
77 §18-9F-5 of this code, shall be set aside by the authority for distribution to the West Virginia Board  
78 of Education or any entities under its general supervision including county boards of education for  
79 school building, land, and equipment maintenance in accordance with guidelines adopted by the  
80 authority. The authority's guidelines shall ensure that the maintenance funding is distributed  
81 equitably regardless of school size.

82           ~~(e)~~ (f) The remaining moneys determined by the authority to be available for distribution  
83 during the then current fiscal year from:

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

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

87           (3) Any other moneys received by the authority, except moneys deposited into the School  
88 Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to  
89 §18-9F-5 of this code, shall be allocated and expended on the basis of need and efficient use of  
90 resources for projects funded in accordance with §18-9D-16 of this code.

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

99           (1) The loan shall be secured in the manner required by the authority, in consultation with  
100 the state board, and shall be repaid in a period and bear interest at a rate as determined by the

101 state board and the authority and shall have any terms and conditions that are required by the  
102 authority, all of which shall be set forth in a loan agreement among the authority, the state board  
103 and the county board;

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

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

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

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

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

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

126 (3) The loan agreement shall provide for the state board and the authority to forgive all



127 principal and interest of the loan upon the county board purchasing the leased premises pursuant  
128 to the investment contract and performance of the investment contract in its entirety.

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

141 ~~(h)~~ (i) The remaining moneys that are determined by the authority to be available for  
142 distribution during the then current fiscal year from moneys paid into the School Major  
143 Improvement Fund pursuant to §18-9D-6 of this code shall be allocated and distributed on the  
144 basis of need and efficient use of resources for projects authorized in accordance with §18-9D-16  
145 of this code and for school building, land, and equipment maintenance in accordance with  
146 guidelines adopted by the authority, subject to the following:

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

151 (2) Any moneys allocated to a project or for maintenance and not distributed for that project  
152 or maintenance shall be deposited in an account to the credit of the project or maintenance, the

153 principal amount to remain to the credit of and available to the project or maintenance for a period  
154 of two years; ~~and~~

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

157 (4) At least 75 percent of the money provided for in this section shall be used for  
158 maintenance of school buildings, land, and equipment in accordance with guidelines adopted by  
159 the authority.

160 ~~(j)~~ (j) Local matching funds may not be required under the provisions of this section.  
161 However, this article does not negate the responsibilities of the county boards to maintain school  
162 facilities even when the authority is unable to distribute any or sufficient funds to fully cover the  
163 expense of maintaining those facilities. Therefore, as a prerequisite for eligibility to receive an  
164 allocation of school major improvement funds from the authority, a county board shall provide  
165 annual school facility maintenance expenditure data to the authority which shall be jointly  
166 reviewed by the authority and the state Department of Education Office of School Facilities and  
167 Transportation to assist the authority in its determination of the most meritorious projects to be  
168 funded through the School Major Improvement Fund. The state board shall promulgate rules  
169 relating to county boards' school facility maintenance budgets, including items which shall be  
170 included in these budgets.

171 ~~(j)~~ (k)(1) Any county board may use moneys provided by the authority under this article in  
172 conjunction with local funds derived from bonding, special levy, or other sources. Distribution to a  
173 county board, or to the state board or the administrative council of an area vocational educational  
174 center pursuant to §18-9D15(b) of this code, may be in a lump sum or in accordance with a  
175 schedule of payments adopted by the authority pursuant to guidelines adopted by the authority.

176 (2) A county board may apply to the authority for funding under this article as a part of the  
177 county's bond finance plan for a proposed capital improvement bond levy to be submitted to the  
178 voters of that county. The county board shall first submit a request for the funding to the executive

179 director of the authority prior to the county board's proposed bond levy election. After initial  
180 consultation with the executive director, the county board shall prepare a written outline of the  
181 bond finance plan, the capital improvements to be made with levy funds, and the amount and  
182 timing of funding requested from the authority. The county board shall then present its request at a  
183 meeting of the members of the authority.

184 Grants of financial assistance that have received initial approval under this section are  
185 contingent upon passage of the bond levy and final approval by the School Building Maintenance  
186 Authority of the county's bond finance plan. Any materials produced by the county or its county  
187 board that refer to the authority shall include a statement of this contingency and terms.  
188 Notwithstanding any other provision of this subsection, financial assistance to be provided by the  
189 authority may only be used to pay costs of capital improvements and may not be pledged as  
190 security for or repayment of any bonds issued by the county board.

191 Upon passage of bond levy, the county board shall have four years to finalize the project:  
192 *Provided*, That the authority may grant an extension to the four years in extenuating  
193 circumstances.

194 The provisions of this subsection do not apply to any proposed capital improvement bond  
195 levy that is scheduled to be submitted to the voters on or before December 31, 2022.

196 ~~(3) Distribution to a county board, or to the state board or the administrative council of an~~  
197 ~~area vocational educational center pursuant to subsection (b) of this section, may be in a lump~~  
198 ~~sum or in accordance with a schedule of payments adopted by the authority pursuant to guidelines~~  
199 ~~adopted by the authority.~~

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

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

204 (2) To the extent that funds are available in the School Construction Fund in excess of that

205 amount appropriated in any fiscal year, the excess funds may be expended for projects authorized  
206 in accordance with §18-9D-16 of this code and for maintenance of school buildings, land, and  
207 equipment.

208 (f) (m) It is the intent of the Legislature to encourage county boards to explore and consider  
209 arrangements with other counties that may facilitate the highest and best use of all available funds,  
210 which may result in improved transportation arrangements for students, or which otherwise may  
211 create efficiencies for county boards and the students. In order to address the intent of the  
212 Legislature contained in this subsection, the authority shall grant preference to those projects  
213 which involve multicounty arrangements as the authority shall determine reasonable and proper:  
214 Provided, That at least 75 percent of the authority's annual distributions shall be for the  
215 maintenance of school buildings, land, and equipment.

216 (m) (n) County boards shall submit all designs for construction of new school buildings to  
217 the School Building Maintenance Authority for review and approval prior to preparation of final bid  
218 documents. A vendor who has been debarred pursuant to §5A-3-33b through §5A-3-33f of this  
219 code may not bid on or be awarded a contract under this section.

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

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

224 (2) The authority may not approve the use of more than 50 12.5 percent of the revenue  
225 available for distribution in any given fiscal year for projects that are to be funded over a period of  
226 more than one year; and

227 (3) In order to encourage local participation in funding school construction projects, the  
228 authority may set aside limited funding, not to exceed \$500,000, in reserve for one additional year  
229 to provide a county the opportunity to complete financial planning for a project prior to the  
230 allocation of construction funds. Any funding shall be on a reserve basis and converted to a part of

231 the construction grant only after all project budget funds have been secured and all county  
232 commitments have been fulfilled. Failure of the county to solidify the project budget and meet its  
233 obligations to the state within 18 months of the date the funding is set aside by the authority will  
234 result in expiration of the reserve and the funds shall be reallocated by the authority in the  
235 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 assure the prudent and resourceful expenditure of state funds for  
3 projects under this article including, but not limited to, the following:

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

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

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

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

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

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

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

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

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

41 (2) Guidelines and procedures which may be adopted by the authority for requiring that a  
42 county board modify, update, supplement or otherwise submit changes or additions to an

43 approved facilities plan or for requiring that a county board, the state board or the administrative  
44 council of an area vocational educational center modify, update, supplement or otherwise submit  
45 changes or additions to an approved school major improvement plan. The authority shall provide  
46 reasonable notification and sufficient time for the change or addition as delineated in guidelines  
47 developed by the authority. The guidelines shall require an update of the estimated duration of  
48 school bus transportation times for students associated with any construction project under  
49 consideration by the authority that includes the closure, consolidation or construction of a school  
50 or schools.

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

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

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

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

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

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

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

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

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

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

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

83 (VI) Innovations in education;

84 (VII) Adequate space for projected student enrollments;

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

87 (IX) Regularly scheduled preventive maintenance; and

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

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

93 (A) Requiring each county board's facilities plan and school major improvement plan to  
94 prioritize all the construction projects or major improvement projects, respectively, within the



95 county. A school major improvement plan submitted by the state board or the administrative  
96 council of an area vocational educational center shall prioritize all the school improvement projects  
97 contained in the plan. The priority list shall be one of the criteria to be considered by the authority in  
98 determining how available funds shall be expended. In prioritizing the projects, the county board,  
99 the state board or the administrative council submitting a plan shall make determinations in  
100 accordance with the objective criteria formulated by the School ~~Building~~ Maintenance Authority;

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

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

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

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

117 (d) Based on its on-site inspection or notification by the authority to the state board that the  
118 changes or additions to a county's board facilities plan or school major improvement plan required  
119 by the authority have not been implemented within the time period prescribed by the authority, the  
120 state board shall restrict the use of the necessary funds or otherwise allocate funds from moneys

121 appropriated by the Legislature for those purposes set forth in §18-9A-9 of this code.

**§18-9D-17. Limitations on contracts for sale of bonds or other securities.**

1 (a) When issuing its bonds or other securities pursuant to the provisions of this article, the  
2 School Building Maintenance Authority shall not employ or contract with any person or business  
3 entity acting as an investment adviser, underwriter, broker, dealer, government securities broker,  
4 government securities dealer, transfer agent, attorney, bond counsel, trustee or accountant, if the  
5 authority finds, on the record after notice and opportunity for hearing, that employing or contracting  
6 with such person or business entity would be contrary to the public interest, and that such person  
7 or business entity, or any person associated with such person or entity, whether prior to or  
8 subsequent to becoming so associated, has been convicted, within the five years preceding the  
9 date when such bonds or other securities are proposed to be issued, of a felony or misdemeanor  
10 under the laws of this State, a sister state or the United States of America, involving the sale or  
11 purchase of any government security, and if the authority further finds that the offense committed  
12 involves:

13 (1) The bribery of a public officer or employee or a member of the immediate family of a  
14 public officer or employee;

15 (2) Perjury;

16 (3) Larceny;

17 (4) Any substantially equivalent activity, however denominated by the laws of the relevant  
18 jurisdiction; or

19 (5) The conspiracy to commit any such offense.

20 (b) When issuing its bonds or other securities, the School Building Maintenance Authority  
21 shall not employ or contract with any person or business entity acting as an investment adviser,  
22 underwriter, broker, dealer, government securities broker, government securities dealer, transfer  
23 agent, attorney, bond counsel, trustee or accountant, if the authority finds, on the record after  
24 notice and opportunity for hearing, that employing or contracting with such person or business

25 entity would be contrary to the public interest, and that such person or business entity, or any  
26 person associated with such person or entity, whether prior to or subsequent to becoming so  
27 associated, has, within the five years preceding the date when such bonds or other securities are  
28 proposed to be issued:

29 (1) Directly or indirectly given, offered or promised money, services, or any other thing of  
30 value having a value of greater than one hundred dollars to a public officer or employee or a  
31 member of the immediate family of a public officer or employee when the money, service or other  
32 thing of value constituted a material part of the factual basis upon which the public officer or  
33 employee or a member of the immediate family of the public officer or employee was convicted of a  
34 felony or misdemeanor under the laws of this State, a sister state or the United States of America,  
35 involving the sale or purchase of any government security; or

36 (2) Willfully aided, abetted, counseled, commanded, induced, or procured a violation which  
37 constitutes the basis for a misdemeanor or felony conviction as described in §18-9D-17(a) or §18-  
38 9D-17(a)(1) of this code.

39 (c) When issuing its bonds or other securities pursuant to the provisions of this article, the  
40 School Building Maintenance Authority shall not employ or contract with any person or business  
41 entity acting as an investment adviser, underwriter, broker, dealer, government securities broker,  
42 government securities dealer, transfer agent, attorney, bond counsel, trustee or accountant, if the  
43 authority finds, on the record after notice and opportunity for hearing, that employing or contracting  
44 with such person or business entity would be contrary to the public interest, and that such person  
45 or business entity, or any person associated with such person or entity, whether prior to or  
46 subsequent to becoming so associated, has conducted or is conducting any business or  
47 transaction in which a financial interest is held by a public officer or employee, agent or attorney of  
48 the government of this State, or a member of the immediate family of such persons, if the public  
49 officer or employee, agent or attorney is in a position whereby he or she may personally and  
50 substantially influence the discretionary actions of the authority in connection with the issuance of

51 bonds or other securities, through decision, approval, disapproval, recommendation, the  
 52 rendering of advice, investigation, or otherwise: *Provided*, That the Ethics Commission shall, on or  
 53 before the fifteenth day of December, one thousand nine hundred ninety-three, promulgate an  
 54 emergency rule to establish guidelines and standards for the implementation of this subsection by  
 55 the authority.

56 (d) For purposes of this section, the term "immediate family" means a spouse and any  
 57 unemancipated child of a person.

58 (e) The School ~~Building~~ Maintenance Authority may declare void and rescind any contract  
 59 with any person or business entity acting as an investment adviser, underwriter, broker, dealer,  
 60 government securities broker, government securities dealer, transfer agent, attorney, bond  
 61 counsel, trustee or accountant, if the authority finds, on the record after notice and opportunity for  
 62 hearing, that continuing to employ or contract with such person or business entity would be  
 63 contrary to the public interest, and that such person or business entity, or any person associated  
 64 with such person or entity, whether prior to or subsequent to becoming so associated, has  
 65 engaged in conduct which would prohibit the authority, under the provisions of this section, from  
 66 entering into a contract with such person or business entity if the contract was yet to be executed.

**§18-9D-20. Authority to promulgate rules; legislative authorization; effective date of rules;  
 technical deficiencies waived.**

1 (a) The authority is hereby empowered to promulgate, adopt, amend, or repeal rules in  
 2 accordance with the provisions of article three-a, chapter twenty-nine-a of this code.

3 (b) All rules adopted or promulgated by the authority and in effect on June 8, 2007, shall be  
 4 refiled pursuant to the provisions of article three-a, chapter twenty-nine-a of this code on or before  
 5 September 1, 2007.

6 (1) Any interpretive or procedural rule shall continue in effect until rescinded or  
 7 appropriately refiled by the authority.

8 (2) Any legislative rule shall continue in effect until approved or rejected by the Legislature

9 or rescinded by the authority.

10 (c) Under the provisions of article three-a, chapter twenty-nine-a of this code, the  
11 Legislature expressly authorizes the promulgation of the rules described in this article, subject  
12 only to the limitations with respect to each rule set forth by law authorizing its promulgation. The  
13 Legislature further declares that all rules now or hereafter authorized in this article are within the  
14 legislative intent of the statute which the rule is intended to implement, extend, apply or interpret.

15 (d) The effective date of a legislative rule authorized in §18-9D-21 of this code is governed  
16 by the provisions of §29A-3A-14 of this code under the following conditions:

17 (1) The ~~School Building Authority~~ authority, in promulgating the rule, establishes an  
18 effective date which is earlier than that provided by that section, in which case the effective date  
19 established by the authority controls; or

20 (2) The Legislature, in the bill authorizing the rule, establishes an effective date for the rule,  
21 in which case the effective date established by the Legislature controls.

22 (e) The Legislature further declares each legislative rule now or hereafter authorized under  
23 this article to have been validly promulgated, notwithstanding any failure to comply with any  
24 requirement of §29A-3A-1 *et seq.* of this code relating to the promulgation of rules at any stage of  
25 the promulgation process prior to authorization by the Legislature in this article.

**§18-9D-21. Authorizing rules of School Building Maintenance Authority.**

1 (a) The legislative rule filed in the State Register on September 27, 2007, relating to the  
2 School Building Authority (School Building Authority requirements for Comprehensive Educational  
3 Facility Plan rule), is repealed and enrolled as a procedural rule.

4 (b) The legislative rule filed in the State Register on June 26, 2018, relating to the School  
5 Building Authority (funding School Building Authority projects rule), is authorized.

6 (c) The legislative rule filed in the State Register on June 26, 2018, relating to the School  
7 Building Authority (School Building Authority school planning and design criteria rule), is  
8 authorized.

9 (d) The legislative rule filed in the State Register on June 26, 2018, relating to the School  
10 Building Authority (School Building Authority project administration and review rule), is authorized.

11 (e) The legislative rule filed in the State Register on June 26, 2018, relating to the School  
12 Building Authority (School Building Authority contract and agreements rule), is authorized.

13 (f) The legislative rule filed in the State Register on June 26, 2018, relating to the School  
14 Building Authority (School Building Authority reporting procedures rule), is repealed.

15 (g) The legislative rule filed in the State Register on June 26, 2018, relating to the School  
16 Building Authority (School Access Safety Act rule), is authorized.

17 (h) The legislative rule filed in the State Register on December 16, 2019, relating to the  
18 School Building Authority (School Building Authority Contracts and Agreements; Post-Project  
19 Evaluation; Suspension of Right to Bid rule), is authorized.

20 (i) The legislative rule filed in the State Register on December 15, 2021, relating to the  
21 School Building Authority (Funding School Building Authority Projects), is authorized.

NOTE: The purpose of this bill is to change the name of the School Building Authority to the School Maintenance Authority.

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