

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

House Bill 2380

By Delegates Ellington and Toney

[Originating in the Committee on Education; January 11, 2023]

1 A BILL to repeal §18-9D-5 of the Code of West Virginia, 1931, as amended; to amend and reenact
2 §18-9A-10 of said code; and to amend and reenact §18-9D-2, §18-9D-3, §18-9D-4, §18-
3 9D-6, §18-9D-7, §18-9D-8, §18-9D-9, §18-9D-13, §18-9D-15, and §18-9D-19 of said
4 code, all relating to removing or revising obsolete, outdated, antiquated, inoperative,
5 surplus or superseded provisions relating to defining terms; allowing funding directly to
6 school construction fund instead of through school aid formula; removing references to
7 regional education service agencies; removing authority to issue general obligation bonds;
8 closing capital improvements fund and transferring funding to school construction fund;
9 requiring authority to request appropriation; repealing authority to offer higher education
10 savings plans; providing purposes and revenue sources for other funds and use of use of
11 proceeds of bonds; and removing findings related to comprehensive high schools.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-10. Foundation allowance to improve instructional programs, instructional technology, and teacher and leader induction and professional growth.

1 (a) The total allowance to improve instructional programs and instructional technology is
2 the sum of the following:

3 (1) For instructional improvement, in accordance with county and school electronic
4 strategic improvement plans required by §18-2E-5 of this code, an amount equal to 10 percent of
5 the increase in the local share amount for the next school year shall be added to the amount of the
6 appropriation for this purpose for the immediately preceding school year. The sum of these
7 amounts shall be allocated to the counties as follows:

8 (A) One hundred fifty thousand dollars shall be allocated to each county; and

9 (B) Allocation to the counties of the remainder of these funds shall be made proportional to
10 the average of each county's average daily attendance for the preceding year and the county's
11 second month net enrollment.

12 Moneys allocated by this subdivision shall be used to improve instructional programs
13 according to the county and school strategic improvement plans required by §18-2E-5 of this code
14 and approved by the state board.

15 Up to 50 percent of this allocation for the improvement of instructional programs may be
16 used to employ professional educators and service personnel in the county. Prior to the use of any
17 funds from this subdivision for personnel costs, the county board must receive authorization from
18 the State Superintendent. The State Superintendent shall require the county board to
19 demonstrate: (1) The need for the allocation; (2) efficiency and fiscal responsibility in staffing; (3)
20 sharing of services with adjoining counties in the use of the total local district board budget; and (4)
21 employment of technology integration specialists to meet the needs for implementation of the
22 West Virginia Strategic Technology Learning Plan. County boards shall make application for the
23 use of funds for personnel for the next fiscal year by May 1 of each year. On or before June 1, the
24 State Superintendent shall review all applications and notify applying county boards of the
25 approval or disapproval of the use of funds for personnel during the fiscal year appropriate. The
26 State Superintendent shall require the county board to demonstrate the need for an allocation for
27 personnel based upon the county's inability to meet the requirements of state law or state board
28 policy.

29 The funds available for personnel under this subdivision may not be used to increase the
30 total number of professional noninstructional personnel in the central office beyond four.

31 The plan shall be made available for distribution to the public at the office of each affected
32 county board; plus

33 (2) For the purposes of improving instructional technology, an amount equal to 20 percent
34 of the increase in the local share amount for the next school year shall be added to the amount of
35 the appropriation for this purpose for the immediately preceding school year. The sum of these
36 amounts shall be allocated to the counties as follows:

37 (A) Thirty thousand dollars shall be allocated to each county; and

38 (B) Allocation to the counties of the remainder of these funds shall be made proportional to
39 the average of each county's average daily attendance for the preceding year and the county's
40 second month net enrollment.

41 Moneys allocated by this subdivision shall be used to improve instructional technology
42 programs according to the county board's strategic technology learning plan.

43 This allocation for the improvement of instructional technology programs may also be used
44 for the employment of technology system specialists essential for the technology systems of the
45 schools of the county to be fully functional and readily available when needed by classroom
46 teachers. The amount of this allocation used for the employment of technology system specialists
47 shall be included and justified in the county board's strategic technology learning plan; plus

48 (3) One percent of the state average per pupil state aid multiplied by the number of
49 students enrolled in dual credit, advanced placement, and international baccalaureate courses, as
50 defined by the state board, distributed to the counties proportionate to enrollment in these courses
51 in each county; plus

52 (4) For the purpose of supporting county-level implementation of the comprehensive
53 systems for teacher and leader induction and professional growth pursuant to §18A-3C-3 of this
54 code, an amount equal to 20 percent of the increase in the local share amount for the next school
55 year shall be added to the amount of the appropriation for this purpose for the immediately
56 preceding school year. The sum of these amounts shall be allocated to the counties in a manner
57 established by the state board which ~~takes into account~~ considers the following factors:

58 (A) The number of full-time-equivalent teachers employed by the county with zero years of
59 experience;

60 (B) The total number of full-time-equivalent teachers employed by the county with one year
61 of experience, with two years of experience, and with three years of experience;

62 (C) The number of full-time-equivalent principals, assistant principals, and vocational
63 administrators employed by the county who are in their first or second year of employment as a
64 principal, assistant principal, or vocational administrator;

65 (D) The number of full-time-equivalent principals, assistant principals, and vocational
66 administrators employed by the county who are in their first year in an assignment at a school with
67 a programmatic level in which they have not previously served as a principal, assistant principal, or
68 vocational administrator; and

69 (E) Needs identified in the strategic plans for continuous improvement of schools and
70 school systems including those identified through the performance evaluations of professional
71 personnel.

72 Notwithstanding any provision of this subsection to the contrary, no county may receive an
73 allocation for the purposes of this subdivision which is less than the county's total 2016-2017
74 allocation from the Teacher Mentor and Principals Mentorship appropriations to the Department of
75 Education. Moneys allocated by this subdivision shall be used for implementation of the
76 comprehensive systems for teacher and leader induction and professional growth pursuant to
77 §18A-3C-3 of this code. Notwithstanding any provision of this subsection to the contrary, for each
78 of the five school years beginning with the school year 2020 – 2021 and ending after the school
79 year 2024 – 2025, from funds to be allocated under this subdivision, \$100,000 shall be retained by
80 the Department of Education to assist county boards with the design and implementation of a
81 teacher leader framework to accomplish the teacher induction and professional growth aspects of
82 their comprehensive systems of support for teacher and leader induction and professional growth
83 pursuant to §18A-3C-3 of this code. plus

84 ~~(5) An amount not less than the amount required to meet debt service requirements on any~~
85 ~~revenue bonds issued prior to January 1, 1994, and the debt service requirements on any revenue~~
86 ~~bonds issued for the purpose of refunding revenue bonds issued prior to January 1, 1994, shall be~~
87 ~~paid by the Department of Education in accordance with the expenditure schedule approved by~~

88 ~~the state budget office into the School Building Capital Improvements Fund created by §18-9D-6~~
89 ~~of this code and shall be used solely for the purposes of that article. The School Building Capital~~
90 ~~Improvements Fund shall not be utilized to meet the debt services requirement on any revenue~~
91 ~~bonds or revenue refunding bonds for which moneys contained within the School Building Debt~~
92 ~~Service Fund have been pledged for repayment pursuant to that section.~~

93 (b) Notwithstanding the restrictions on the use of funds pursuant to subdivisions (1) and
94 (2), subsection (a) of this section, a county board may:

95 (1) Utilize up to 25 percent of the allocation for the improvement of instructional programs
96 in any school year for school facility and equipment repair, maintenance, and improvement or
97 replacement and other current expense priorities and for emergency purposes. The amount of this
98 allocation used for any of these purposes shall be included and justified in the county and school
99 strategic improvement plans or amendments thereto; and

100 (2) Utilize up to 50 percent of the allocation for improving instructional technology in any
101 school year for school facility and equipment repair, maintenance, and improvement or
102 replacement and other current expense priorities and for emergency purposes. The amount of this
103 allocation used for any of these purposes shall be included and justified in the county board's
104 strategic technology learning plan or amendments thereto.

105 ~~(c) When the school improvement bonds secured by funds from the School Building~~
106 ~~Capital Improvements Fund mature, the State Board of Education shall annually deposit an~~
107 ~~amount equal to \$24 million from the funds allocated in this section into the School Construction~~
108 ~~Fund created pursuant to the provisions of §18-9D-6 of this code to continue funding school facility~~
109 ~~construction and improvements.~~

110 ~~(d) Any project funded by the School Building Authority shall be in accordance with a~~
111 ~~comprehensive educational facility plan which must be approved by the state board and the~~
112 ~~School Building Authority~~

ARTICLE 9D. SCHOOL BUILDING 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 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 10-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 of this
36 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) "Project" means a construction project or a major improvement project;

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

44 ~~(8)~~ (7) "Revenue" or "revenues" means moneys:

45 (A) Deposited in the ~~School Building Capital Improvements Fund~~ School Construction
46 Fund pursuant to §18-9D-6 of this code.

47 (B) Deposited in the School Construction Fund pursuant to §11-15-30 of this code and §29-
48 22-18 of this code;

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

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

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

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

55 (G) Deposited in the Excess Lottery School Building Debt Services Fund pursuant to §29-
56 22-18a of this code.

57 ~~(9)~~ (8) "School major improvement plan" means a 10-year school maintenance plan that:

58 (A) Is prepared by a county board in accordance with the guidelines established by the
59 authority and incorporated in its Countywide Comprehensive Educational Facilities Plan, or is
60 prepared by the state board or the administrative council of an area vocational educational center
61 in accordance with the guidelines if the entities seek funding from the authority for a major
62 improvement project;

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

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

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

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

71 ~~(10)~~ (9) "School major improvement project" means a project with a cost greater than
72 \$50,000 and less than \$1 million for the renovation, expansion, repair, and safety upgrading of
73 existing school facilities, buildings, and structures, including the substantial repair or upgrading of
74 equipment, machinery, building systems, utilities and other similar items related to the renovation,
75 repair or upgrading in the furtherance of a school major improvement plan. A major improvement
76 project does not include such items as books, computers or equipment used for instructional
77 purposes; fuel; supplies; routine utility services fees; routine maintenance costs; ordinary course

78 of business improvements; or other items which are customarily considered to result in a current or
79 ordinary course of business operating charge.

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

1 (a) The School Building 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 25 years, or otherwise, real property or rights or easements
6 necessary or convenient for its corporate purposes and to exercise the power of eminent domain
7 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 Authority in
14 connection with the issuance of bonds under this article to provide professional and technical
15 services, including, without limitation, accounting, actuarial, underwriting, consulting, trustee,
16 bond counsel, legal services, and contracts relating to the purchase or sale of bonds are subject to
17 the provisions of §5A-3-1 *et seq.* of this code: *Provided, however*, That notwithstanding any other
18 provisions of this code, any authority of the Attorney General of this state relating to the review of
19 contracts and other documents to effectuate the issuance of bonds under this article shall be
20 exclusively limited to the form of the contract and document: *Provided further*, That the Attorney
21 General of this state shall complete all reviews of contracts and documents relating to the
22 issuance of bonds under this article within 10 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
35 authority;

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

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

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

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

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

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

69 (18) To enter into agreements with county boards and persons, firms or corporations to
70 facilitate the development of county board projects and county board facilities plans. The county
71 board participating in an agreement shall pay at least 25 percent of the cost of the agreement.
72 Nothing in this section ~~shall~~ may be construed to supersede, limit, or impair the authority of county
73 boards to develop and prepare their projects or plans;

74 (19) To encourage any project or part thereof to provide opportunities for students to
75 participate in supervised, unpaid work-based learning experiences related to the student's
76 program of study approved by the county board. The work-based learning experience must be
77 conducted in accordance with a formal training plan approved by the instructor, the employer, and
78 the student and which sets forth at a minimum the specific skills to be learned, the required
79 documentation of work-based learning experiences, the conditions of the placement, including
80 duration and safety provisions, and provisions for supervision and liability insurance coverage as
81 applicable. Projects involving the new construction and renovation of vocational-technical and
82 adult education facilities should provide opportunities for students to participate in supervised
83 work-based learning experiences, to the extent practical, which meet the requirements of this
84 subdivision. Nothing in this subdivision may be construed to affect registered youth apprenticeship
85 programs or the provisions governing those programs; and

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

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

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

1 (a) The School Building Authority may by resolution, in accordance with the provisions of
2 this article, issue revenue bonds of the authority from time to time, either to finance the cost of
3 construction projects for public schools in this state, or to refund, at the discretion of the authority,
4 bonds issued to finance the cost of the construction projects for public schools in this state and

5 outstanding under and pursuant to the provisions of this article as in effect prior to July 20, 1993.

6 The principal of, interest and redemption premium, if any, on such the bonds shall be payable
7 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-5. School building authority authorized to offer individual higher education savings plans.

1 [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. All amounts deposited in the fund shall be pledged to the repayment of the principal,
40 interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds
41 authorized by this article for which moneys deposited in the School Building Debt Service Fund
42 have been pledged by the authority. ~~Provided, That deposited moneys may not be pledged to the~~
43 ~~repayment of any revenue bonds issued prior to January 1, 1994, or with respect to revenue bonds~~
44 ~~issued for the purpose of refunding revenue bonds issued prior to January 1, 1994~~ Additionally, the
45 authority may provide in the resolution and in the trust agreement for priorities on the revenues
46 paid into the School Building Debt Service Fund that are necessary for the protection of the prior
47 rights of the holders of bonds issued at different times under the provisions of this article. On or
48 prior to May 1 of each year, the authority shall certify to the state Lottery Director the principal and
49 interest and coverage ratio requirements for the following fiscal year on any revenue bonds issued
50 on or after January 1, 1994, and for which moneys deposited in the School Building Debt Service
51 Fund have been pledged, or will be pledged, for repayment pursuant to this section.

52 After the authority has issued bonds authorized by this article for which moneys deposited
53 in the School Building Debt Service Fund have been pledged and after the requirements of all
54 funds have been satisfied, including coverage and reserve funds established in connection with
55 the bonds issued pursuant to this article, any balance remaining in the School Building Debt
56 Service Fund may be used for the redemption of any of the outstanding bonds issued under this
57 article, for which moneys deposited in the School Building Debt Service Fund have been pledged,
58 which, by their terms, are then redeemable or for the purchase of the outstanding bonds at the
59 market price, but not to exceed the price, if any, at which the bonds are redeemable and all bonds
60 redeemed or purchased shall be immediately canceled and ~~shall~~ may not again be issued:
61 *Provided, That* after the authority has issued bonds authorized by this article and after the
62 requirements of debt service and all associated funds have been satisfied for the fiscal year for

63 which moneys deposited in the School Building Debt Service Fund have been pledged, including
64 coverage and reserve funds established in connection with the bonds issued pursuant to this
65 article, any remaining balance in the School Building Debt Service Fund may be transferred to the
66 School Construction Fund created in subsection (c) of this section and used by the School Building
67 Authority in its discretion to finance the cost of school construction or improvement projects
68 authorized in accordance with the provisions of §18-9D-16 of this code on a cash basis.

69 (c) There is continued in the State Treasury a special revenue fund named the School
70 Construction Fund into which shall be deposited the amounts specified in §11-15-30 of this code,
71 together with any moneys appropriated to the fund by the Legislature. ~~Provided, That for the~~
72 ~~school year beginning July 1, 2004, only, funds from the excess lottery allocated in section~~
73 ~~eighteen-a, article twenty-two, chapter twenty-nine of this code shall not be transferred to the~~
74 ~~School Construction Fund and, in lieu thereof, made available for legislative appropriation:~~
75 ~~Provided, however, That for the school year beginning July 1, 2004, only, up to \$5 million of the~~
76 ~~amounts in the fund may be appropriated by the Legislature for budget shortfalls~~ Beginning for
77 fiscal year 2023 and each fiscal year thereafter, the School Building Authority shall annually
78 request the Governor to include in the budget bill an amount equal to \$24 million for appropriation
79 to the School Construction Fund.

80 Expenditures from the School Construction Fund shall be for the purposes set forth in this
81 article, including lease-purchase payments under agreements made pursuant to §18-9D-15 (e) of
82 this code and §18-5-9 of this code and are authorized from collections in accordance with the
83 provisions of §12-3-1 *et seq.* of this code and from other revenues annually appropriated by the
84 Legislature from lottery revenues as authorized by §29-22-18 of this code pursuant to the
85 provisions set forth in §5A-2-1 *et seq.* of this code. Amounts collected which are found, from time
86 to time, to exceed the funds needed for purposes set forth in this article may be transferred to other
87 accounts or funds and redesignated for other purposes by appropriation of the Legislature. The
88 School Construction Fund shall be an interest-bearing account, with the interest credited to and

89 deposited in the School Construction Fund and expended in accordance with the provisions of this
90 article. Deposits to and expenditures from the School Construction Fund are subject to the
91 provisions of §18-9D-15(k) of this code.

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

104 (e) There is created in the State Treasury a special revenue fund named the Excess
105 Lottery School Building Debt Service Fund into which shall be deposited the amounts specified in
106 §29-22-18a of this code. All amounts deposited in the fund shall be pledged, as designated by the
107 authority, to the repayment of the principal, interest, and redemption premium, if any, on revenue
108 bonds or refunding revenue bonds authorized by §18-9D-4b of this code. On or prior to May 1 of
109 each year, the authority shall certify to the state Lottery Director the principal and interest and
110 coverage ratio requirements for the following fiscal year on any revenue bonds issued for which
111 moneys deposited in the Excess Lottery School Building Debt Service Fund have been pledged,
112 or will be pledged, for repayment pursuant to this section.

113 After the authority has issued bonds authorized by this article for which moneys deposited
114 in the Excess Lottery School Building Debt Service Fund have been pledged and after the

115 requirements of all funds have been satisfied, including coverage and reserve funds established in
116 connection with the bonds issued pursuant to this article, any balance remaining in the Excess
117 Lottery School Building Debt Service Fund may be used for the redemption of any of the
118 outstanding bonds issued under this article, for which moneys deposited in the Excess Lottery
119 School Building Debt Service Fund have been pledged, which, by their terms, are then
120 redeemable or for the purchase of the outstanding bonds at the market price, but not to exceed the
121 price, if any, at which the bonds are redeemable and all bonds redeemed or purchased shall be
122 immediately canceled and shall may not again be issued: *Provided*, That after the authority has
123 issued bonds authorized by this article and after the requirements of debt service and all
124 associated funds have been satisfied for the fiscal year, including coverage and reserve funds
125 established in connection with the bonds issued pursuant to this article for which moneys
126 deposited in the Excess Lottery School Building Debt Service Fund have been pledged, any
127 remaining balance in the Excess Lottery School Building Debt Service Fund may be transferred to
128 the School Construction Fund created in subsection (c) of this section and used by the School
129 Building Authority in its discretion to finance the cost of school construction or improvement
130 projects authorized in accordance with the provisions of §18-9D-16 of this code on a cash basis.

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

136 The Legislature further finds and declares that the financial capacity of a county to
137 construct, lease and improve school facilities depends upon the county's bonding capacity (local
138 property wealth), voter willingness to pass bond issues and the county's ability to reallocate other
139 available county funds instead of criteria related to educational needs or upon the ability of the
140 School Building Authority created in this article to issue bonds that comply with the holding of the

141 West Virginia Supreme Court of Appeals or otherwise assist counties with the financing of facilities
142 construction and improvement. The Legislature further finds and declares that this section, as well
143 as §29-22-18 of this code, had been reenacted during the first extraordinary session of the West
144 Virginia Legislature in the year 1994 in an attempt to comply with the holding of the Supreme Court
145 of Appeals of West Virginia.

146 The Legislature further finds and declares that it intends, through the reenactment of this
147 section and §29-22-18 of this code, to dedicate a source of state revenues to special revenue
148 funds for the purposes of paying the debt service on bonds and refunding bonds issued
149 subsequent to January 1, 1994, the proceeds of which will be used for the construction and
150 improvement of school building facilities. The Legislature further finds and declares that it intends,
151 through the reenactment of this section and §11-15-30 of this code and §29-22-18 of this code, to
152 appropriate revenues to two special revenue funds for the purposes of construction and
153 improvement of school building facilities. Furthermore, the Legislature intends to encourage
154 county boards to maintain existing levels of county funding for construction, improvement, and
155 maintenance of school building facilities and to generate additional county funds for those
156 purposes through bonds and special levies whenever possible. The Legislature further
157 encourages the School Building Authority, the state board and county boards of education to
158 propose uniform project specifications for comparable projects whenever possible to meet county
159 needs at the lowest possible cost.

160 The Legislature further finds and declares that it intends, through the reenactment of this
161 section and §29-22-18 of this code, to comply with the provisions of sections four and six, article X
162 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 Authority may ~~in its discretion~~ require by the resolution authorizing any issue of bonds pursuant to
9 this article and any trust agreement made in connection therewith; and to make any other
10 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 Authority, copies of which shall be provided to the Governor, the President of the
9 Senate and the Speaker of the House of Delegates within five days of their approval, which shall
10 set forth the proposed projects authorized in accordance with ~~the provisions~~ of §18-9D-16 of this
11 code and provide for the issuance of bonds in amounts sufficient, when sold as provided in this
12 section, to provide moneys considered sufficient by the authority to pay the costs, less the
13 amounts of any other funds available for the costs or from any appropriation, grant or gift for the
14 costs: *Provided*, That bond issues from which bond revenues are to be distributed in accordance
15 with §18-9D-15 of this code for projects authorized pursuant to ~~the provisions~~ of §18-9D-16 of this
16 code are not required to set forth the proposed projects in the resolution. The resolution shall
17 prescribe the rights and duties of the bondholders and the School Building Authority and, for that

18 purpose, may prescribe the form of the trust agreement referred to in this section. The bonds may
19 be issued, from time to time, in such amounts; shall be of such series; bear such date or dates;
20 mature at such time or times not exceeding 40 years from their respective dates; bear interest at
21 such rate or rates; be in such denominations; be in such form, either coupon or registered, carrying
22 such registration, exchangeability and interchangeability privileges; be payable in such medium of
23 payment and at such place or places within or without the state; be subject to such terms of
24 redemption at such prices not exceeding 105 percent of the principal amount of the bonds; and be
25 entitled to such the priorities on the revenues paid into the fund pledged for repayment of the
26 bonds as may be provided in the resolution authorizing the issuance of the bonds or in any trust
27 agreement made in connection with the bonds: *Provided, however,* That ~~revenue bonds issued on~~
28 ~~or after January 1, 1994, and prior to January 1, 2008, which are secured by lottery proceeds from~~
29 ~~section eighteen, article twenty-two, chapter twenty-nine of this code shall mature at such time or~~
30 ~~times not exceeding ten years from their respective dates: *Provided further* That revenue bonds~~
31 issued on or after January 1, 2008, which are secured by lottery proceeds from §29-22-18 or §29-
32 22-18a of this code, shall mature at such time or times not exceeding 20 years from their
33 respective dates.

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

42 ~~(c) Any pledge of revenues made by the School Building Authority for revenue bonds~~
43 ~~issued prior to July 20, 1993, pursuant to this article is valid and binding between the parties from~~

44 ~~the time the pledge is made; and the revenues pledged shall immediately be subject to the lien of~~
45 ~~the pledge without any further physical delivery of the revenues pledged or further act. The lien of~~
46 ~~the pledge is valid and binding against all parties having claims of any kind in tort, contract or~~
47 ~~otherwise, irrespective of whether the parties have notice of the lien of the pledge and the pledge~~
48 ~~shall be a prior and superior charge over any other use of the revenues pledged~~

49 ~~(d)~~ (c) The proceeds of any bonds shall be used solely for the purpose or purposes as may
50 be generally or specifically set forth in the resolution authorizing those bonds and shall be
51 disbursed in the manner and with the restrictions, if any, that the authority provides in the
52 resolution authorizing the issuance of the bonds or in the trust agreement referred to in this section
53 securing the bonds. If the proceeds of the bonds, by error in calculations or otherwise, are less
54 than the cost of any projects specifically set forth in the resolution, additional bonds may in like
55 manner be issued to provide the amount of the deficiency; and unless otherwise provided for in the
56 resolution or trust agreement hereinafter mentioned, the additional bonds shall be considered to
57 be of the same issue and are entitled to payment from the same fund, without preference or
58 priority, as the bonds before issued for the projects. If the proceeds of bonds issued for the projects
59 specifically set forth in the resolution authorizing the bonds issued by the authority exceed the cost
60 of the bonds, the surplus may be used for any other projects authorized in accordance with the
61 ~~provisions of §18-9D-16 of this code or in any other manner that the resolution authorizing the~~
62 bonds provides. Prior to the preparation of definitive bonds, the authority may, under like
63 restrictions, issue temporary bonds with or without coupons, exchangeable for definitive bonds
64 upon the issuance of the definitive bonds.

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

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

73 (g) ~~(f)~~ Any school construction bonds issued under this section shall be issued on parity
74 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.**

1 The issuance of revenue refunding bonds under the provisions of this article shall be
2 authorized by resolution of the School Building Authority and shall otherwise be subject to the
3 limitations, conditions, and provisions of other revenue bonds under this article. ~~Such~~ The revenue
4 refunding bonds may be issued in an amount at the option of the authority sufficient to pay either in
5 part or in full, together with interest earned on the investment of the proceeds thereof, whether or
6 not at the time of the issuance of the revenue refunding bonds the hereafter mentioned bonds are
7 payable or callable for optional redemption: (1) The principal of ~~such~~ the outstanding bonds; (2)
8 the redemption premium, if any, on ~~such~~ the outstanding bonds if they are to be redeemed prior to
9 maturity; (3) the interest due and payable on ~~such~~ the outstanding bonds to and including the
10 maturity date thereof or the first date upon which ~~said~~ the outstanding bonds are to be redeemed,
11 including any interest theretofore accrued and unpaid; and (4) all expenses of the issuance and
12 sale of said revenue refunding bonds, including all necessary financial and legal expenses, and
13 also including the creation of initial debt service reserve funds. Any existing moneys pledged with
14 respect to the outstanding bonds may be used for any or all of the purposes stated in (1), (2), (3)
15 and (4) above or may be deposited in a sinking fund or reserve fund or other funds for the issue of
16 bonds which have been issued wholly or in part for the purpose of such refunding. Such amount of
17 the proceeds of the revenue refunding bonds as shall be sufficient for the payment of the principal,
18 interest and redemption premium, if any, on ~~such~~ the outstanding bonds which will not be

19 immediately due and payable shall be deposited in trust, for the sole purpose of making such
20 payments, in a banking institution chosen by the authority and in accordance with any provisions
21 which may be included in the resolution authorizing the issuance of such bonds or in the trust
22 agreement securing the same. Any of the moneys so deposited in trust may, prior to the date on
23 which such moneys will be needed for the payment of principal of, interest and redemption
24 premium, if any, on ~~such~~ the outstanding bonds, be invested and reinvested as determined by the
25 authority, in whole or in part: (a) In direct obligations issued by the United States of America or one
26 of its agencies or in direct obligations of the State of West Virginia; (b) in obligations
27 unconditionally guaranteed by the United States of America as to principal and interest; or (c) in
28 certificates of deposit of a banking corporation or association which is a member of the federal
29 deposit insurance corporation, or successor; but any such certificates of deposit must be fully
30 secured as to both principal and interest by pledged collateral consisting of direct obligations of or
31 obligations guaranteed by the United States of America, or direct obligations of the State of West
32 Virginia, having a market value, excluding accrued interest, at all times at least equal to the
33 amount of the principal of and accrued interest on ~~such~~ the certificates of deposit. Any such
34 investments must mature, or be payable in advance of maturity at the option of the holder, and
35 ~~must~~ shall bear interest in such manner as to provide funds which, together with uninvested
36 money, will be sufficient to pay when due or called for redemption the bonds refunded, together
37 with interest accrued and to accrue thereon and redemption premiums, if any, and ~~such~~ the
38 refunding bonds' proceeds or obligations so purchased therewith shall be deposited in escrow and
39 held in trust for the payment and redemption of the bonds refunded: *Provided*, That if interest
40 earned by any investment in ~~such~~ the escrow is shown to be in excess of the amounts required
41 from time to time for the payment of interest on and principal of the refunded bonds, including
42 applicable redemption premium, then ~~such~~ the excess may be withdrawn from escrow and
43 disbursed in such manner as the authority shall by resolution determine. ~~subject to the provisions~~
44 ~~of section five of this article~~ Any moneys in the sinking or reserve funds or other funds maintained

45 for the outstanding bonds to be refunded may be applied in the same manner and for the same
46 purpose as are the net proceeds of refunding bonds or may be deposited in the special fund or any
47 reserve funds established for account of the refunding bonds.

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

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

55 Where any revenue bonds to be refunded are not to be surrendered for exchange or
56 payment and are not to be paid at maturity with escrowed obligations, but are to be paid from such
57 source prior to maturity pursuant to call for redemption exercised under a right of redemption
58 reserved in such revenue bonds, the authority shall, prior to the issuance of the refunding bonds,
59 determine which redemption date or dates shall be used, call ~~such~~ the revenue bonds for
60 redemption and provide for the giving of the notice of redemption required by the proceedings
61 authorizing ~~such~~ the revenue bonds. Where ~~such~~ notice is to be given at a time subsequent to the
62 issuance of the refunding bonds, the necessary notices may be deposited with the State Treasurer
63 or the bank acting as escrow agent of the refunding bond proceeds and the escrow agent
64 appropriately instructed and authorized to give the required notices at the prescribed time or times.
65 If any officer of the public body signing any such notice shall no longer be in office at the time of the
66 utilization of the notice, the notice shall nevertheless be valid and effective for its intended
67 purpose.

~~§18-9D-13. Sinking fund for payment~~ 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 Authority authorizing the issue or any trust agreement
31 made in connection therewith, may be used for redemption of any of the outstanding bonds
32 payable from the fund which by their terms are then redeemable, or for the purchase of bonds at
33 the market price, but not exceeding the price, if any, at which ~~such~~ the bonds shall in the same year
34 be redeemable; and all bonds redeemed or purchased shall forthwith be canceled and ~~shall~~ may
35 not again be issued.

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

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

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

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

12 ~~(2)~~ (1) The issuance of revenue bonds for which moneys in the School Building Debt
13 Service Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;

14 ~~(3)~~ (2) Moneys paid into the School Construction Fund pursuant to §18-9D-6 of this code;

15 and

16 ~~(4)~~ (3) Any other moneys received by the authority, except moneys paid into the School
17 Major Improvement Fund pursuant to §18-9D-6 of this code and moneys deposited into the School
18 Access Safety Fund pursuant to §18-9F-5 of this code, may be allocated and may be expended by
19 the authority for projects authorized in accordance with §18-9D-16 of this code that service the
20 educational community statewide or, upon application by the state board, for educational
21 programs that are under the jurisdiction of the state board. In addition, upon application by the
22 state board or the administrative council of an area vocational educational center established
23 pursuant to §18-2B-1 *et seq.* of this code, the authority may allocate and expend under this
24 subsection moneys for school major improvement projects authorized in accordance with ~~the~~
25 ~~provisions of~~ §18-9D-16 of this code proposed by the state board or an administrative council for
26 school facilities under the direct supervision of the state board or an administrative council,
27 respectively. Furthermore, upon application by a county board, the authority may allocate and
28 expend under this subsection moneys for school major improvement projects for vocational
29 programs at comprehensive high schools, vocational programs at comprehensive middle schools,
30 vocational schools cooperating with community and technical college programs, or any
31 combination of the three. Each county board is encouraged to cooperate with community and
32 technical colleges in the use of existing or development of new vocational technical facilities. All
33 projects eligible for funds from this subsection shall be submitted directly to the authority which
34 shall be solely responsible for the project's evaluation, subject to the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

77 (3) Any other moneys received by the authority, except moneys deposited into the School
78 Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to
79 §18-9F-5 of this code, shall be allocated and expended on the basis of need and efficient use of
80 resources for projects funded in accordance with §18-9D-16 of this code.

81 (f) If a county board proposes to finance a project that is authorized in accordance with
82 §18-9D-16 of this code through a lease with an option to purchase leased premises upon the
83 expiration of the total lease period pursuant to an investment contract, the authority may not
84 allocate moneys to the county board in connection with the project: *Provided*, That the authority
85 may transfer moneys to the state board which, with the authority, shall lend the amount transferred
86 to the county board to be used only for a one-time payment due at the beginning of the lease term,
87 made for the purpose of reducing annual lease payments under the investment contract, subject to
88 the following conditions:

89 (1) The loan shall be secured in the manner required by the authority, in consultation with
90 the state board, and shall be repaid in a period and bear interest at a rate as determined by the
91 state board and the authority and shall have any terms and conditions that are required by the

92 authority, all of which shall be set forth in a loan agreement among the authority, the state board
93 and the county board;

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

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

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

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

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

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

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

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

131 (h) The remaining moneys that are determined by the authority to be available for
132 distribution during the then current fiscal year from moneys paid into the School Major
133 Improvement Fund pursuant to §18-9D-6 of this code shall be allocated and distributed on the
134 basis of need and efficient use of resources for projects authorized in accordance with §18-9D-16
135 of this code, subject to the following:

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

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

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

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

153 (j)(4) Any county board may use moneys provided by the authority under this article in
154 conjunction with local funds derived from bonding, special levy, or other sources. Distribution to a
155 county board, or to the state board or the administrative council of an area vocational educational
156 center pursuant to subsection (b) of this section, may be in a lump sum or in accordance with a
157 schedule of payments adopted by the authority pursuant to guidelines adopted by the authority.

158 (2) A county board may apply to the authority for funding under this article as part of the
159 county's bond finance plan for a proposed capital improvement bond levy to be submitted to the
160 voters of that county. The county board shall first submit a request for the funding to the executive
161 director of the authority prior to the county board's proposed bond levy election. After initial
162 consultation with the executive director, the county board shall prepare a written outline of the
163 bond finance plan, the capital improvements to be made with levy funds, and the amount and
164 timing of funding requested from the authority. The county board shall then present its request at a
165 meeting of the members of the authority.

166 Grants of financial assistance that have received initial approval under this section are
167 contingent upon passage of the bond levy and final approval by the School Building Authority of

168 the county's bond finance plan. Any materials produced by the county or its county board that refer
169 to the authority shall include a statement of this contingency and terms. Notwithstanding any other
170 provision of this subsection, financial assistance to be provided by the authority may only be used
171 to pay costs of capital improvements and may not be pledged as security for or repayment of any
172 bonds issued by the county board.

173 Upon passage of the bond levy, the county board shall have four years to finalize the
174 project: *Provided*, That the authority may grant an extension to the four years in extenuating
175 circumstances. The provisions of this subsection do not apply to any proposed capital
176 improvement bond levy that is scheduled to be submitted to the voters on or before December 31,
177 2023.

178 ~~(3) Distribution to a county board, or to the state board or the administrative council of an~~
179 ~~area vocational education center pursuant to subsection (b) of this section, may be in a lump sum~~
180 ~~or in accordance with a schedule of payments adopted by the authority pursuant to guidelines~~
181 ~~adopted by the authority.~~

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

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

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

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

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

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

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

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

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

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

§18-9D-19. Comprehensive high schools.

1 ~~(a) The Legislature finds the following:~~

2 ~~(1) The decline in student enrollment over the last twenty years has necessitated~~
3 ~~consolidation of schools in many counties;~~

4 ~~(2) It is projected that the decline in student enrollment during the period 2002 through~~
5 ~~2012 may be as great as eighteen percent and will continue the necessity to consolidate schools;~~

6 ~~(3) The new consolidated school buildings now being built across the state provide an~~
7 ~~opportunity for communities to have comprehensive high schools that include space for~~
8 ~~vocational-technical courses, community college courses and other workforce-related courses for~~
9 ~~the students and the public at large;~~

10 ~~(4) Requiring students to be bused to remote vocational centers has sometimes deterred~~
11 ~~student participation in vocational courses and has sometimes been considered a stigma upon~~
12 ~~those students attending vocational courses;~~

13 ~~(5) Offering vocational, community college and workforce programs in close proximity to~~
14 ~~each other compliment the high school and the programs; and~~

15 ~~(6) The change in the season for girls' basketball to coincide with boys' basketball has~~
16 ~~placed significant pressures on the availability of gymnasium space and often has caused~~
17 ~~practices to be scheduled late in the evenings and on weekends, interfering with time needed for~~
18 ~~studying and rest~~

19 (b) (a) When planning the construction of a high school which has been approved by the
20 authority and which meets the required authority efficiencies, the authority shall provide funding for
21 comprehensive vocational facilities to be located, when feasible, on the same site as the high
22 school and may, in cooperation with the Higher Education Policy Commission, established in
23 §18B-1B-1 of this code, provide funding for facilities for community and technical college
24 education. When building in conjunction with the Higher Education Policy Commission, an
25 educational specification must be developed for the proposed new facility by the appropriate
26 institutional governing board as defined in §18B-1-2 of this code. The county board is the fiscal
27 agent for construction. All planning, design, bidding, and construction must be completed with
28 authority guidelines and under the supervision of the authority.

29 ~~(e)~~ (b) When planning the construction of a high school which has been approved by the
30 authority and meets the required authority efficiencies, the authority shall provide funding sufficient
31 for the construction of at least one auxiliary gymnasium. The authority may establish standards for
32 the auxiliary gymnasium.

33 ~~(d)~~ (c) Upon application of a county board to construct comprehensive vocational facilities
34 at an existing high school, the authority will provide technical assistance to the county in
35 developing a plan for construction of the comprehensive vocational facility. The facility may, in
36 cooperation with the Higher Education Policy Commission in accordance with the provisions of
37 subsection ~~(b)~~ (a) of this section, include facilities for community and technical college education.
38 Upon development of the plan, the authority shall consider funding based on the following criteria:

- 39 (1) The distance of any existing vocational facilities from the high schools it serves;
40 (2) The time required to travel to and from the vocational facility to the high schools it
41 serves;
42 (3) The ability of the county board to provide local funds for the construction of new
43 comprehensive vocational facilities;
44 (4) The size of the existing high schools and the demand for vocational technical courses;
45 (5) The age and physical condition of the existing vocational facilities; and
46 (6) Such other criteria as the authority shall consider appropriate.

47 ~~(e)~~ (d) When planning the construction of a high school in a county which is served by a
48 multicounty vocational technical facility, the county may not be required to include the construction
49 of a comprehensive vocational facility in the plan. If the county board elects to construct a
50 comprehensive vocational facility pursuant to this section, the board shall include the multicounty
51 center director and board in planning programs to be offered at the vocational facility which
52 complement the programs offered at the multicounty center and may as part of the plan include
53 facilities for community and technical college education at the multicounty center. The programs

54 offered at the vocational facility may not replace the programs offered at the multicounty vocational
55 technical center without the consent of the center board.

56 (f) ~~(e)~~ Notwithstanding any other provisions of this section to the contrary, the county board
57 in which there is an existing comprehensive vocational center, may eliminate any vocational
58 offering from a new comprehensive high school if the county board:

59 (1) Completes a comprehensive vocational curriculum study, as required by the authority,
60 including an evaluation of both the programmatic and physical facilities of the existing center and
61 coordinates the county's vocational curriculum; and

62 (2) Submits the plan to the authority for review and obtains the authority's approval.

NOTE: The purpose of this bill is to remove or revise obsolete, outdated, antiquated, inoperative, surplus, or superseded provisions of code related to the School Building 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.