

H. B. 4333

(By Delegates Gearheart, Ellington and Householder)
[Introduced January 27, 2012; referred to the
Committee on Education then Finance.]

**FISCAL
NOTE**

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

1 request.

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

3 That §18-9D-15 and §18-9D-16 of the Code of West Virginia,
4 1931, as amended, be amended and reenacted, all to read as follows:

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

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

14 (a) It is the intent of the Legislature to empower the School
15 Building Authority to facilitate and provide state funds and to
16 administer all federal funds provided for the construction and
17 major improvement of school facilities so as to meet the
18 educational needs of the people of this state in an efficient and
19 economical manner. The authority shall make funding determinations
20 in accordance with the provisions of this article and shall assess
21 existing school facilities and each facility's school major
22 improvement plan in relation to the needs of the individual
23 student, the general school population, the communities served by

1 the facilities and facility needs statewide.

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

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

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

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

12 (4) Any other moneys received by the authority, except moneys
13 paid into the School Major Improvement Fund pursuant to section six
14 of this article and moneys deposited into the School Access Safety
15 Fund pursuant to section five, article nine-f of this chapter, may
16 be allocated and may be expended by the authority for projects
17 authorized in accordance with the provisions of section sixteen of
18 this article that service the educational community statewide or,
19 upon application by the state board, for educational programs that
20 are under the jurisdiction of the state board. In addition, upon
21 application by the state board or the administrative council of an
22 area vocational educational center established pursuant to article
23 two-b of this chapter, the authority may allocate and expend under
24 this subsection moneys for school major improvement projects

1 authorized in accordance with the provisions of section sixteen of
2 this article proposed by the state board or an administrative
3 council for school facilities under the direct supervision of the
4 state board or an administrative council, respectively.
5 Furthermore, upon application by a county board, the authority may
6 allocate and expend under this subsection moneys for school major
7 improvement projects for vocational programs at comprehensive high
8 schools, vocational programs at comprehensive middle schools,
9 vocational schools cooperating with community and technical college
10 programs, or any combination of the three. Each county board is
11 encouraged to cooperate with community and technical colleges in
12 the use of existing or development of new vocational technical
13 facilities. All projects eligible for funds from this subsection
14 shall be submitted directly to the authority which shall be solely
15 responsible for the project's evaluation, subject to the following:

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

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

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

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

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

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

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

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

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

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

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

3 (4) Any other moneys received by the authority, except moneys
4 deposited into the School Major Improvement Fund and moneys
5 deposited into the School Access Safety Fund pursuant to section
6 five, article nine-f of this chapter, may be reserved by the
7 authority for multiuse vocational-technical education facilities
8 projects that may include post-secondary programs as a first
9 priority use. The authority may allocate and expend under this
10 subsection moneys for any purposes authorized in this article on
11 multiuse vocational-technical education facilities projects,
12 including equipment and equipment updates at the facilities,
13 authorized in accordance with the provisions of section sixteen of
14 this article. If the projects approved under this subsection do
15 not require the full amount of moneys reserved, moneys above the
16 amount required may be allocated and expended in accordance with
17 other provisions of this article. A county board, the state board,
18 an administrative council or the joint administrative board of a
19 vocational-technical education facility which includes post-
20 secondary programs may propose projects for facilities or
21 equipment, or both, which are under the direct supervision of the
22 respective body: *Provided*, That the authority shall, before
23 allocating any moneys for a project under this subsection, consider
24 all other funding sources available for the project.

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

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

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

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

11 (4) Any other moneys received by the authority, except moneys
12 deposited into the School Major Improvement Fund and moneys
13 deposited into the School Access Safety Fund pursuant to section
14 five, article nine-f of this chapter, shall be allocated and
15 expended on the basis of need and efficient use of resources for
16 projects funded in accordance with the provisions of section
17 sixteen of this article.

18 (f) If a county board proposes to finance a project that is
19 authorized in accordance with section sixteen of this article
20 through a lease with an option to purchase leased premises upon the
21 expiration of the total lease period pursuant to an investment
22 contract, the authority may not allocate moneys to the county board
23 in connection with the project: *Provided*, That the authority may
24 transfer moneys to the state board which, with the authority, shall

1 lend the amount transferred to the county board to be used only for
2 a one-time payment due at the beginning of the lease term, made for
3 the purpose of reducing annual lease payments under the investment
4 contract, subject to the following conditions:

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

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

18 (A) In the event a county board which has received a loan from
19 the authority for a one-time payment at the beginning of the lease
20 term does not renew the lease annually until performance of the
21 investment contract in its entirety is completed, the county board
22 is in default and the principal of the loan, together with all
23 unpaid interest accrued to the date of the default, shall, at the
24 option of the authority, in consultation with the state board,

1 become due and payable immediately or subject to renegotiation
2 among the state board, the authority and the county board;

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

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

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

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

21 (3) The loan agreement shall provide for the state board and
22 the authority to forgive all principal and interest of the loan
23 upon the county board purchasing the leased premises pursuant to
24 the investment contract and performance of the investment contract

1 in its entirety.

2 (g) To encourage county boards to proceed promptly with
3 facilities planning and to prepare for the expenditure of any state
4 moneys derived from the sources described in this section, any
5 county board or other entity to whom moneys are allocated by the
6 authority that fails to expend the money within three years of the
7 allocation shall forfeit the allocation and thereafter is
8 ineligible for further allocations pursuant to this section until
9 it is ready to expend funds in accordance with an approved
10 facilities plan: *Provided*, That the authority may authorize an
11 extension beyond the three-year forfeiture period not to exceed an
12 additional two years. Any amount forfeited shall be added to the
13 total funds available in the School Construction Fund of the
14 authority for future allocation and distribution. Funds may not be
15 distributed for any project under this article unless the
16 responsible entity has a facilities plan approved by the state
17 board and the School Building Authority and is prepared to commence
18 expenditure of the funds during the fiscal year in which the moneys
19 are distributed.

20 (h) The remaining moneys that are determined by the authority
21 to be available for distribution during the then current fiscal
22 year from moneys paid into the School Major Improvement Fund
23 pursuant to section six of this article shall be allocated and
24 distributed on the basis of need and efficient use of resources for

1 projects authorized in accordance with the provisions of section
2 sixteen of this article, subject to the following:

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

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

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

15 (i) Local matching funds may not be required under the
16 provisions of this section. However, this article does not negate
17 the responsibilities of the county boards to maintain school
18 facilities. To be eligible to receive an allocation of school
19 major improvement funds from the authority, a county board must
20 have expended in the previous fiscal year an amount of county
21 moneys equal to or exceeding the lowest average amount of money
22 included in the county board's maintenance budget over any three of
23 the previous five years and must have budgeted an amount equal to
24 or greater than the average in the current fiscal year: *Provided,*

1 That the state board shall promulgate rules relating to county
2 boards' maintenance budgets, including items which shall be
3 included in the budgets.

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

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

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

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

22 (l) It is the intent of the Legislature to encourage county
23 boards to explore and consider arrangements with other counties
24 that may facilitate the highest and best use of all available

1 funds, which may result in improved transportation arrangements for
2 students or which otherwise may create efficiencies for county
3 boards and the students. In order to address the intent of the
4 Legislature contained in this subsection, the authority shall grant
5 preference to those projects which involve multicounty arrangements
6 as the authority shall determine reasonable and proper.

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

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

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

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

23 ~~(3) In order to encourage local participation in funding~~
24 ~~school construction projects, the authority may set aside limited~~

~~1 funding, not to exceed \$500,000, in reserve for one additional year
2 to provide a county the opportunity to complete financial planning
3 for a project prior to the allocation of construction funds. Any
4 funding shall be on a reserve basis and converted to a part of the
5 construction grant only after all project budget funds have been
6 secured and all county commitments have been fulfilled. Failure of
7 the county to solidify the project budget and meet its obligations
8 to the state within eighteen months of the date the funding is set
9 aside by the authority will result in expiration of the reserve and
10 the funds shall be reallocated by the authority in the succeeding
11 funding cycle.~~

12 **§18-9D-16. Authority to establish guidelines and procedures for**
13 **facilities and major improvement plans; guidelines**
14 **for modifications and updates, etc.; guidelines for**
15 **project evaluation; submission of certified list of**
16 **projects to be funded; department on-site inspection**
17 **of facilities; enforcement of required changes or**
18 **additions to project plans.**

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

23 (1) Guidelines and procedures for the facilities plans, school

1 major improvement plans and projects submitted in the furtherance
2 of the plans that address, but are not limited to, the following:

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

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

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

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

1 council of an area vocational educational center submitting the
2 plan;

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

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

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

1 overall goals of the authority; and

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

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

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

23 (A) Any project funded by the authority must be in furtherance
24 of the facilities plan or school major improvement plan and in

1 compliance with the guidelines established by the authority;

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

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

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

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

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

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

21 (III) Reasonable travel time and practical means of addressing
22 other demographic considerations. The authority may not approve a
23 project after July 1, 2008, that includes a school closure,
24 consolidation or new construction for which a new bus route will be

1 created for the transportation of students in any of the grade
2 levels prekindergarten through grade five to and from any school
3 included in the project, which new bus route exceeds by more than
4 fifteen minutes the recommended duration of the one-way school bus
5 transportation time for elementary students adopted by the state
6 board as provided in section five-d, article two-e of this chapter,
7 unless the county has received the written permission of the state
8 board to create the route in accordance with ~~said~~ that section
9 ~~five-d~~;

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

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

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

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

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

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

23 (ii) How the project will assure the prudent and resourceful
24 expenditure of state funds and achieve the purposes of this article

1 for constructing, expanding, renovating or otherwise improving and
2 maintaining school facilities for a thorough and efficient
3 education.

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

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

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

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

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

13 (c) The State Department of Education shall conduct on-site
14 inspections, at least annually, of all facilities which have been
15 funded wholly or in part by moneys from the authority or state
16 board to ensure compliance with the county board's facilities plan
17 and school major improvement plan as related to the facilities; to
18 preserve the physical integrity of the facilities to the extent
19 possible; and to otherwise extend the useful life of the
20 facilities: *Provided*, That the state board shall submit reports
21 regarding its on-site inspections of facilities to the authority
22 within thirty days of completion of the on-site inspections:
23 *Provided, however*, That the state board shall promulgate rules
24 regarding the on-site inspections and matters relating thereto, in

1 consultation with the authority, as soon as practical and shall
2 submit proposed rules for legislative review no later than December
3 1, 1994.

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

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

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