

H. B. 2160

(By Delegates Rowan, Cowles, Perry, Williams, Hamilton, Anderson
Pasdon, Duke, Espinosa, Miley and E. Nelson)

[Introduced January 20, 2015; referred to the
Committee on Education then Finance.]

A BILL to amend and reenact §18-9D-2, §18-9D-3, §18-9D-4c and §18-9D-16 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §18-9D-22, all relating to making the West Virginia Schools for the Deaf and Blind eligible to participate in any and all funding administered or distributed by the West Virginia School Building Authority.

Be it enacted by the Legislature of West Virginia:

That §18-9D-2, §18-9D-3, §18-9D-4c and §18-9D-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18-9D-22, all to read as follows:

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-2. Definitions.

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

- 1 (1) "Authority" means the School Building Authority of West Virginia;
- 2 (2) "Bonds" means bonds issued by the authority pursuant to this article;
- 3 (3) "Construction project" means a project in the furtherance of a facilities plan with a cost
4 greater than \$1 million for the new construction, expansion or major renovation of facilities,
5 buildings and structures for school purposes, including:
- 6 (A) The acquisition of land for current or future use in connection with the construction
7 project;
- 8 (B) New or substantial upgrading of existing equipment, machinery and furnishings;
- 9 (C) Installation of utilities and other similar items related to making the construction project
10 operational.
- 11 (D) Construction project does not include such items as books, computers or equipment used
12 for instructional purposes; fuel; supplies; routine utility services fees; routine maintenance costs;
13 ordinary course of business improvements; other items which are customarily considered to result
14 in a current or ordinary course of business operating charge or a major improvement project;
- 15 (4) "Cost of project" means the cost of construction, expansion, renovation, repair and safety
16 upgrading of facilities, buildings and structures for school purposes; the cost of land, equipment,
17 machinery, furnishings, installation of utilities and other similar items related to making the project
18 operational; and the cost of financing, interest during construction, professional service fees and all
19 other charges or expenses necessary, appurtenant or incidental to the foregoing, including the cost
20 of administration of this article;
- 21 (5) "County board" or "county" means a county board of education as provided in article five
22 of this chapter and includes the West Virginia Schools for the Deaf and the Blind as provided in

1 article seventeen of this chapter when acting with the approval of the West Virginia Board of
2 Education to submit, request and receive an award of funds or services for projects under the
3 provisions of this article: *Provided*, That the authority may not require the contribution of local funds
4 for a project of the West Virginia Schools for the Deaf and the Blind, nor penalize the consideration
5 or priority ranking of a project of the West Virginia Schools for the Deaf and the Blind for the lack
6 of local project funds: *Provided, however*, That nothing prohibits the state board from also applying
7 for funds for education programs under the jurisdiction of the state board for projects at the West
8 Virginia Schools for the Deaf and the Blind.

9 ~~(5)~~(6) "Facilities plan" means the ten-year countywide comprehensive educational facilities
10 plan established by a county board in accordance with guidelines adopted by the authority to meet
11 the goals and objectives of this article, or a facilities plan established by the administration of the
12 West Virginia Schools for the Deaf and Blind that:

13 (A) Addresses the existing school facilities and facility needs of the county, or the Schools
14 for the Deaf and Blind, to provide a thorough and efficient education in accordance with the
15 provisions of this code and policies of the state board;

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

21 (C) Includes the school major improvement plan;

22 (D) Includes the county board's school access safety plan required by section three, article

1 nine-f of this chapter;

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

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

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

7 ~~(7)~~ (8) "Region" means the area encompassed within and serviced by a regional educational
8 service agency established pursuant to section twenty-six, article two of this chapter;

9 ~~(8)~~ (9) "Revenue" or "revenues" means moneys:

10 (A) Deposited in the School Building Capital Improvements Fund pursuant to section ten,
11 article nine-a of this chapter;

12 (B) Deposited in the School Construction Fund pursuant to section thirty, article fifteen,
13 chapter eleven of this code and section eighteen, article twenty-two, chapter twenty-nine of this code;

14 (C) Deposited in the School Building Debt Service Fund pursuant to section eighteen, article
15 twenty-two, chapter twenty-nine of this code;

16 (D) Deposited in the School Major Improvement Fund pursuant to section thirty, article
17 fifteen, chapter eleven of this code;

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

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

21 (G) Deposited in the Excess Lottery School Building Debt Services Fund pursuant to section
22 eighteen-a, article twenty-two, chapter twenty-nine of this code.

1 ~~(9)~~ (10) "School major improvement plan" means a ten-year school maintenance plan that:

2 (A) Is prepared by a county board in accordance with the guidelines established by the
3 authority and incorporated in its Countywide Comprehensive Educational Facilities Plan, or is
4 prepared by the state board or the administrative council of an area vocational educational center in
5 accordance with the guidelines if the entities seek funding from the authority for a major
6 improvement project, or is prepared by the administration of the West Virginia Schools for the Deaf
7 and Blind;

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

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

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

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

16 ~~(10)~~ (11) "School major improvement project" means a project with a cost greater than \$50
17 and less than \$1 million for the renovation, expansion, repair and safety upgrading of existing school
18 facilities, buildings and structures, including the substantial repair or upgrading of equipment,
19 machinery, building systems, utilities and other similar items related to the renovation, repair or
20 upgrading in the furtherance of a school major improvement plan. A major improvement project
21 does not include such items as books, computers or equipment used for instructional purposes; fuel;
22 supplies; routine utility services fees; routine maintenance costs; ordinary course of business

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

3 (12) "Schools for the Deaf and Blind" or "West Virginia Schools for the Deaf and Blind"
4 means the Schools for the Deaf and Blind established or continued under article seventeen of this
5 chapter.

6 **§18-9D-3. Powers of authority.**

7 The School Building Authority has the power:

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

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

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

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

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

16 (6) To appoint, contract with and employ attorneys, bond counsel, accountants, construction
17 and financial experts, underwriters, financial advisers, trustees, managers, officers and such other
18 employees and agents as may be necessary in the judgment of the authority and to fix their
19 compensation: *Provided*, That contracts entered into by the School Building Authority in connection
20 with the issuance of bonds under this article to provide professional and technical services,
21 including, without limitation, accounting, actuarial, underwriting, consulting, trustee, bond counsel,
22 legal services and contracts relating to the purchase or sale of bonds are subject to the provisions of

1 article three, chapter five-a of this code: *Provided, however,* That notwithstanding any other
2 provisions of this code, any authority of the Attorney General of this state relating to the review of
3 contracts and other documents to effectuate the issuance of bonds under this article shall be
4 exclusively limited to the form of the contract and document: *Provided further,* That the Attorney
5 General of this state shall complete all reviews of contracts and documents relating to the issuance
6 of bonds under this article within ten calendar days of receipt of the contract and document for
7 review;

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

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

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

14 (10) To require proper maintenance and insurance of any project authorized under this
15 section, including flood insurance for any facility within the one hundred year flood plain at which
16 authority funds are expended;

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

19 (12) To assist the West Virginia Schools for the Deaf and Blind or any county board of
20 education that chooses to acquire land, buildings and capital improvements to existing school
21 buildings and property for use as public school facilities, by lease from a private or public lessor for
22 a term not to exceed twenty-five years with an option to purchase pursuant to an investment contract

1 with the lessor on such terms and conditions as may be determined to be in the best interests of the
2 authority, the State Board of Education and, if applicable, the county board of education, consistent
3 with the purposes of this article, by transferring funds to the State Board of Education as provided
4 in subsection (d), section fifteen of this article for the use of the county board of education;

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

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

12 (15) To contract for architectural, engineering or other professional services considered
13 necessary or economical by the authority to provide consultative or other services to the authority
14 or to any regional educational service agency, the West Virginia Schools for the Deaf and Blind or
15 county board requesting professional services offered by the authority, to evaluate any facilities plan
16 or any project encompassed in the plan, to inspect existing facilities or any project that has received
17 or may receive funding from the authority or to perform any other service considered by the authority
18 to be necessary or economical. Assistance to the region or district may include the development of
19 preapproved systems, plans, designs, models or documents; advice or oversight on any plan or
20 project; or any other service that may be efficiently provided to regional educational service
21 agencies, the state board or county boards by the authority;

22 (16) To provide funds on an emergency basis to repair or replace property damaged by fire,

1 flood, wind, storm, earthquake or other natural occurrence, the funds to be made available in
2 accordance with guidelines of the School Building Authority;

3 (17) To transfer moneys to custodial accounts maintained by the School Building Authority
4 with a state financial institution from the school construction fund and the school improvement fund
5 created in the State Treasury pursuant to the provisions of section six of this article, as necessary to
6 the performance of any contracts executed by the School Building Authority in accordance with the
7 provisions of this article;

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

13 (19) To encourage any project or part thereof to provide opportunities for students to
14 participate in supervised, unpaid work-based learning experiences related to the student's program
15 of study approved by the county board or the administration of the West Virginia Schools for the
16 Deaf and Blind. The work-based learning experience must be conducted in accordance with a formal
17 training plan approved by the instructor, the employer and the student and which sets forth at a
18 minimum the specific skills to be learned, the required documentation of work-based learning
19 experiences, the conditions of the placement, including duration and safety provisions, and
20 provisions for supervision and liability insurance coverage as applicable. Projects involving the new
21 construction and renovation of vocational-technical and adult education facilities should provide
22 opportunities for students to participate in supervised work-based learning experiences, to the extent

1 practical, which meet the requirements of this subdivision. Nothing in this subdivision may be
 2 construed to affect registered youth apprenticeship programs or the provisions governing those
 3 programs; and

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

5 **§18-9D-4c. School Building Authority authorized to temporarily finance projects through the**
 6 **issuance of loans, notes or other evidences of indebtedness.**

7 The School Building Authority may by resolution, in accordance with the provisions of this
 8 article, temporarily finance the cost of projects and other expenditures permitted under this article
 9 for public schools, including, but not limited to, comprehensive high schools and comprehensive
 10 middle schools as defined in this article, in this state, as well as the cost of projects for the West
 11 Virginia Schools for the Deaf and Blind, through the issuance of loans, notes or other evidences of
 12 indebtedness: *Provided*, That the principal amount of loans, notes or other evidences of indebtedness
 13 outstanding at any one time shall not exceed \$16 million: *Provided, however*, That the principal of,
 14 interest and premium, if any, on and fees associated with any such temporary financing shall be
 15 payable solely from the sources from which the principal of, interest and premium, if any, on bonds
 16 is payable under this article or from the proceeds of bonds.

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

22 (a) The authority shall establish guidelines and procedures to promote the intent and purposes

1 of this article and assure the prudent and resourceful expenditure of state funds for projects under
2 this article including, but not limited to, the following:

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

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

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

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

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

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

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

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

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

20 (2) Guidelines and procedures which may be adopted by the authority for requiring that a
21 county board modify, update, supplement or otherwise submit changes or additions to an approved
22 facilities plan or for requiring that a county board, the state board or the administrative council of

1 an area vocational educational center modify, update, supplement or otherwise submit changes or
2 additions to an approved school major improvement plan. The authority shall provide reasonable
3 notification and sufficient time for the change or addition as delineated in guidelines developed by
4 the authority. The guidelines shall require an update of the estimated duration of school bus
5 transportation times for students associated with any construction project under consideration by the
6 authority that includes the closure, consolidation or construction of a school or schools.

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

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

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

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

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

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

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

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

3 (III) Reasonable travel time and practical means of addressing other demographic
4 considerations. The authority may not approve a project after July 1, 2008, that includes a school
5 closure, consolidation or new construction for which a new bus route will be created for the
6 transportation of students in any of the grade levels prekindergarten through grade five to and from
7 any school included in the project, which new bus route exceeds by more than fifteen minutes the
8 recommended duration of the one-way school bus transportation time for elementary students
9 adopted by the state board as provided in section five-d, article two-e of this chapter, unless the
10 county has received the written permission of the state board to create the route in accordance with
11 said section five-d;

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

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

17 (VI) Innovations in education;

18 (VII) Adequate space for projected student enrollments;

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

21 (IX) Regularly scheduled preventive maintenance; and

22 (ii) How the project will assure the prudent and resourceful expenditure of state funds and

1 achieve the purposes of this article for constructing, expanding, renovating or otherwise improving
2 and maintaining school facilities for a thorough and efficient education.

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

5 (A) Requiring each county board's facilities plan and school major improvement plan to
6 prioritize all the construction projects or major improvement projects, respectively, within the
7 county. A school major improvement plan submitted by the state board or the administrative council
8 of an area vocational educational center shall prioritize all the school improvement projects
9 contained in the plan. The priority list shall be one of the criteria to be considered by the authority
10 in determining how available funds shall be expended. In prioritizing the projects, the county board,
11 the state board or the administrative council submitting a plan shall make determinations in
12 accordance with the objective criteria formulated by the School Building Authority;

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

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

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

19 (c) The State Department of Education shall conduct on-site inspections, at least annually,
20 of all facilities which have been funded wholly or in part by moneys from the authority or state board
21 to ensure compliance with the county board's facilities plan and school major improvement plan as
22 related to the facilities; to preserve the physical integrity of the facilities to the extent possible; and

1 to otherwise extend the useful life of the facilities: *Provided*, That the state board shall submit
 2 reports regarding its on-site inspections of facilities to the authority within thirty days of completion
 3 of the on-site inspections: *Provided, however*, That the state board shall promulgate rules regarding
 4 the on-site inspections and matters relating thereto, in consultation with the authority, as soon as
 5 practical and shall submit proposed rules for legislative review no later than December 1, 1994.

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

12 **§18-9D-22. Eligibility of the West Virginia Schools for the Deaf and Blind to participate in all**
 13 **types of funding administered or distributed by the School Building Authority.**

14 (a) The Legislature finds:

15 (1) The Legislature's constitutional obligation to provide a thorough and efficient public
 16 education for the children of West Virginia includes the obligation of the Legislature to provide a
 17 thorough and efficient education for the children of West Virginia who are deaf and blind.

18 (2) The Legislature has endeavored to fulfill this obligation with the creation, maintenance
 19 and operation of the West Virginia Schools for the Deaf and Blind, established and continued under
 20 article seventeen of this chapter.

21 (3) The West Virginia Schools for the Deaf and Blind have for generations provided
 22 educational services to children from every one of West Virginia's fifty-five counties.

1 (4) The facilities of the West Virginia Schools for the Deaf and Blind are in need of
2 substantial improvements.

3 (5) The West Virginia Schools for the Deaf and Blind have no local levy which supports their
4 operations, and depend completely upon the appropriations from the state.

5 (6) The West Virginia Schools for the Deaf and Blind have no borrowing authority or
6 revenue stream that can serve as a source of servicing debt.

7 (7) Questions have arisen as to whether or not it is permissible for the School Building
8 Authority to distribute to the West Virginia Schools for the Deaf and Blind financial assistance for
9 the construction and improvement of its facilities.

10 (8) The West Virginia Schools for the Deaf and Blind should have access to and be eligible
11 to receive all types of funding provided to county boards of education by the School Building
12 Authority.

13 (b) Notwithstanding any provision of this code to the contrary, the West Virginia Schools
14 for the Deaf and Blind are eligible to participate in all funding distributed by the School Building
15 Authority. Notwithstanding anything in this code to the contrary, the School Building Authority may
16 distribute to the West Virginia Schools for the Deaf and Blind funds the School Building Authority
17 determines to be appropriate.

NOTE: The purpose of this bill is to make the West Virginia Schools for the Deaf and Blind eligible to participate in any and all funding administered or distributed by the West Virginia School Building Authority.

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

§18-9D-22 is new; therefore, it has been completely underscored.