

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 4461**

(BY DELEGATES ARVON, DUKE, ESPINOSA, HOWELL, HILL,  
BLACKWELL AND BORDER)

[Introduced February 9, 2016;  
referred to the Committee on Education  
then Finance.]



1 A BILL to amend and reenact §18-9D-15 of the Code of West Virginia, 1931, as amended, relating  
2 to School Building Authority School Major Improvement Fund eligibility; removing  
3 requirement for certain annual amounts to be expended by county board for facility  
4 maintenance; and requiring county board to provide facility maintenance expenditure data  
5 for review to assist authority in project determinations.

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

1 That §18-9D-15 of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

62 (4) Any other moneys received by the authority, except moneys deposited into the School  
63 Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to  
64 section five, article nine-f of this chapter, may be reserved by the authority for multiuse vocational-

65 technical education facilities projects that may include post-secondary programs as a first priority  
66 use. The authority may allocate and expend under this subsection moneys for any purposes  
67 authorized in this article on multiuse vocational-technical education facilities projects, including  
68 equipment and equipment updates at the facilities, authorized in accordance with the provisions  
69 of section sixteen of this article. If the projects approved under this subsection do not require the  
70 full amount of moneys reserved, moneys above the amount required may be allocated and  
71 expended in accordance with other provisions of this article. A county board, the state board, an  
72 administrative council or the joint administrative board of a vocational-technical education facility  
73 which includes post-secondary programs may propose projects for facilities or equipment, or both,  
74 which are under the direct supervision of the respective body: *Provided*, That the authority shall,  
75 before allocating any moneys for a project under this subsection, consider all other funding  
76 sources available for the project.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



140 (h) The remaining moneys that are determined by the authority to be available for  
141 distribution during the then current fiscal year from moneys paid into the School Major  
142 Improvement Fund pursuant to section six of this article shall be allocated and distributed on the  
143 basis of need and efficient use of resources for projects authorized in accordance with the  
144 provisions of section sixteen of this article, subject to the following:

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

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

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

153 (i) Local matching funds may not be required under the provisions of this section. However,  
154 this article does not negate the responsibilities of the county boards to maintain school facilities.  
155 ~~To be eligible~~ Therefore, as a prerequisite for eligibility to receive an allocation of school major  
156 improvement funds from the authority, a county board must ~~have expended in the previous fiscal~~  
157 ~~year an amount of county moneys equal to or exceeding the lowest average amount of money~~  
158 ~~included in the county board's maintenance budget over any three of the previous five years and~~  
159 ~~must have budgeted an amount equal to or greater than the average in the current fiscal year:~~  
160 Provided, That provide annual school facility maintenance expenditure data to the authority which  
161 shall be jointly reviewed by the authority and the state Department of Education Office of School  
162 Facilities and Transportation to assist the authority in its determination of the most meritorious  
163 projects to be funded through the School Major Improvement Fund. The state board shall  
164 promulgate rules relating to county boards' school facility maintenance budgets, including items  
165 which shall be included in ~~the~~ these budgets.

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

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

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

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

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

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

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

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

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

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

NOTE: The purpose of this bill is to change an eligibility requirement for School Major Improvement Fund projects through the School Building Authority that may penalize county boards that reduce maintenance costs through improved preventative and predictive maintenance practices. The current eligibility threshold is a dollar amount annual expenditure at least equal to the lowest annual maintenance expenditure in 3 of the last 5 years. It is replaced with a submission of annual facility maintenance expenditure data for joint review by the authority and the Department's Office of School Facilities and Transportation to assist in determination of the most meritorious projects for funding.

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