

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2720

BY MR. SPEAKER (MR. ARMSTEAD) AND DELEGATE MILEY

(BY REQUEST OF THE EXECUTIVE)

[Passed April 8, 2017; in effect July 1, 2017]

1 AN ACT to amend and reenact §18-9D-3 and §18-9D-8 of the Code of West Virginia, 1931, as
2 amended; all relating to the funding of School Building Authority operational costs; and
3 continuing a special revenue account known as the "School Building Authority Fund".

Be it enacted by the Legislature of West Virginia:

1 That §18-9D-3 and §18-9D-8 of the Code of West Virginia, 1931, as amended, be
2 amended and reenacted to read as follows:

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§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 twenty-five years, or otherwise, real property or rights or
6 easements necessary or convenient for its corporate purposes and to exercise the power of
7 eminent domain to accomplish those purposes;

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

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

10 (6) To appoint, contract with and employ attorneys, bond counsel, accountants,
11 construction and financial experts, underwriters, financial advisers, trustees, managers, officers
12 and such other employees and agents as may be necessary in the judgment of the authority and
13 to fix their compensation: *Provided*, That contracts entered into by the School Building Authority
14 in 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
17 to the provisions of article three, chapter five-a of this code: *Provided, however*, That
18 notwithstanding any other provisions of this code, any authority of the Attorney General of this

19 state relating to the review of contracts and other documents to effectuate the issuance of bonds
20 under this article shall be exclusively limited to the form of the contract and document: *Provided*
21 *further*, That the Attorney General of this state shall complete all reviews of contracts and
22 documents relating to the issuance of bonds under this article within ten calendar days of receipt
23 of the contract and document for review;

24 (7) To make contracts and to execute all instruments necessary or convenient to
25 effectuate 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,
27 it 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
29 the 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 one hundred year flood plain at which
32 authority funds are expended;

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

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

43 (13) To accept and expend any gift, grant, contribution, bequest or endowment of money
44 and equipment to, or for the benefit of, the authority or any project under this article, from the

45 State of West Virginia or any other source for any or all of the purposes specified in this article or
46 for any one or more of such purposes as may be specified in connection with the gift, grant,
47 contribution, bequest or endowment;

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

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

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

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

68 (18) To enter into agreements with county boards and persons, firms or corporations to
69 facilitate the development of county board projects and county board facilities plans. The county
70 board participating in an agreement shall pay at least twenty-five percent of the cost of the

71 agreement. Nothing in this section shall be construed to supersede, limit or impair the authority
72 of county boards to develop and prepare their projects or plans;

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

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

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

§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 section sixteen of
11 this article and provide for the issuance of bonds in amounts sufficient, when sold as provided in
12 this 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 section fifteen of this article for projects authorized pursuant to the provisions of section
16 sixteen of this article are not required to set forth the proposed projects in the resolution. The
17 resolution shall prescribe the rights and duties of the bondholders and the School Building
18 Authority and, for that purpose, may prescribe the form of the trust agreement referred to in this
19 section. The bonds may be issued, from time to time, in such amounts; shall be of such series;
20 bear such date or dates; mature at such time or times not exceeding forty years from their
21 respective dates; bear interest at such rate or rates; be in such denominations; be in such form,
22 either coupon or registered, carrying such registration, exchangeability and interchangeability
23 privileges; be payable in such medium of payment and at such place or places within or without
24 the state; be subject to such terms of redemption at such prices not exceeding one hundred five
25 percent of the principal amount of the bonds; and be entitled to such priorities on the revenues
26 paid into the fund pledged for repayment of the bonds as may be provided in the resolution
27 authorizing the issuance of the bonds or in any trust agreement made in connection with the
28 bonds: *Provided, however*, That revenue bonds issued on or after January 1, 1994, and prior to
29 January 1, 2008, which are secured by lottery proceeds from section eighteen, article twenty-two,

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

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

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

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

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

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

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

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect July 1, 2017.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2017.

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Governor