

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4466

BY DELEGATES BARNHART, MARTIN, FERRELL, G. WARD,

WAMSLEY, STATLER, J. KELLY, ANDERSON, ELLINGTON,

SMITH, AND CLARK

[Passed March 11, 2022; in effect ninety days from passage.]

1 AN ACT to amend and reenact §18-9D-15 of the Code of West Virginia, 1931, as amended,
2 relating to seeking contribution of School Building Authority funds to support a local capital
3 improvement bond finance plan; providing for application to the School Building Authority;
4 requiring initial approval prior to conducting bond levy election; requiring conditional
5 language in materials referencing School Building Authority; limiting use of financial
6 assistance provided; establishing time limit for project completion; allowing extension to
7 the time limit in extenuating circumstances; exempting new provisions from applying to
8 any proposed capital improvement bond levy scheduled to be submitted to the voters on
9 or before December 31, 2022; and deleting obsolete provisions.

Be it enacted by the Legislature of West Virginia:

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; local bond levies.

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

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

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

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

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

32 (A) Any project funded by the authority shall be in accordance with a comprehensive
33 educational facility plan which must be approved by the state board and the authority. The
34 authority may not expend any moneys for a school major improvement project proposed by the

35 state board or the administrative council of an area vocational educational center unless the state
36 board or an administrative council has submitted a 10-year facilities plan; and

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

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

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

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

45 (3) Any other moneys received by the authority, except moneys deposited into the School
46 Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to
47 §18-9F-5 of this code, shall be set aside by the authority as an emergency fund to be distributed
48 in accordance with the guidelines adopted by the authority.

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

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

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

54 (3) Any other moneys received by the authority, except moneys deposited into the School
55 Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to
56 §18-9F-5 of this code, may be reserved by the authority for multiuse vocational-technical
57 education facilities projects that may include post-secondary programs as a first priority use. The
58 authority may allocate and expend under this subsection moneys for any purposes authorized in
59 this article on multiuse vocational-technical education facilities projects, including equipment and
60 equipment updates at the facilities, authorized in accordance with §18-9D-16 of this code. If the

61 projects approved under this subsection do not require the full amount of moneys reserved,
62 moneys above the amount required may be allocated and expended in accordance with other
63 provisions of this article. A county board, the state board, an administrative council, or the joint
64 administrative board of a vocational-technical education facility which includes post-secondary
65 programs may propose projects for facilities or equipment, or both, which are under the direct
66 supervision of the respective body: *Provided*, That the authority shall, before allocating any
67 moneys for a project under this subsection, consider all other funding sources available for the
68 project.

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

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

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

74 (3) Any other moneys received by the authority, except moneys deposited into the School
75 Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to
76 §18-9F-5 of this code, shall be allocated and expended on the basis of need and efficient use of
77 resources for projects funded in accordance with §18-9D-16 of this code.

78 (f) If a county board proposes to finance a project that is authorized in accordance with
79 §18-9D-16 of this code through a lease with an option to purchase leased premises upon the
80 expiration of the total lease period pursuant to an investment contract, the authority may not
81 allocate moneys to the county board in connection with the project: *Provided*, That the authority
82 may transfer moneys to the state board which, with the authority, shall lend the amount transferred
83 to the county board to be used only for a one-time payment due at the beginning of the lease
84 term, made for the purpose of reducing annual lease payments under the investment contract,
85 subject to the following conditions:

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

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

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

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

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

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

109 (E) If the loan becomes due and payable immediately, the authority, in consultation with
110 the state board, shall use all means available under the loan agreement and law to collect the

111 outstanding principal balance of the loan, together with all unpaid interest accrued to the date of
112 payment of the outstanding principal balance; and

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

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

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

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

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

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

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

150 (j)(1) Any county board may use moneys provided by the authority under this article in
151 conjunction with local funds derived from bonding, special levy, or other sources.

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

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

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

167 Upon passage of bond levy, the county board shall have four years to finalize the project:
168 *Provided*, That the authority may grant an extension to the four years in extenuating
169 circumstances.

170 The provisions of this subsection do not apply to any proposed capital improvement bond
171 levy that is scheduled to be submitted to the voters on or before December 31, 2022.

172 (3) Distribution to a county board, or to the state board or the administrative council of an
173 area vocational educational center pursuant to subsection (b) of this section, may be in a lump
174 sum or in accordance with a schedule of payments adopted by the authority pursuant to guidelines
175 adopted by the authority.

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

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

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

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

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

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

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

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

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

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

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 ninety days from passage.

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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, 2022.

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Governor