

# **WEST VIRGINIA LEGISLATURE**

## **2022 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 4466**

BY DELEGATES BARNHART, MARTIN, FERRELL, G. WARD,  
WAMSLEY, STATLER, J. KELLY, ANDERSON, ELLINGTON,  
SMITH, AND CLARK

[Originating in the Committee on Finance; February  
24, 2022]



1 A BILL to amend and reenact §18-9D-15 of the Code of West Virginia, 1931, as amended, relating  
2 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 participation; establishing time  
6 limit for project completion; requiring project funded by the authority be in accordance with  
7 a comprehensive educational facility plan which must be approved by the state board and  
8 the authority; 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) Moneys paid into the School Building Capital Improvements Fund pursuant to section~~  
11 ~~ten, article nine-a of this chapter~~

12           ~~(2)~~ (1) The issuance of revenue bonds for which moneys in the School Building Debt  
13 Service Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;

14           ~~(3)~~ (2) Moneys paid into the School Construction Fund pursuant to §18-9D-6 of this code;  
15 and

16           ~~(4)~~ (3) Any other moneys received by the authority, except moneys paid into the School  
17 Major Improvement Fund pursuant to §18-9D-6 of this code and moneys deposited into the  
18 School Access Safety Fund pursuant to §18-9F-5 of this code, may be allocated and may be  
19 expended by the authority for projects authorized in accordance with §18-9D-16 of this code that  
20 service the educational community statewide or, upon application by the state board, for  
21 educational programs that are under the jurisdiction of the state board. In addition, upon  
22 application by the state board or the administrative council of an area vocational educational  
23 center established pursuant to §18-2B-1 *et seq.* of this code, the authority may allocate and  
24 expend under this subsection moneys for school major improvement projects authorized in  
25 accordance with ~~the provisions of~~ §18-9D-16 of this code proposed by the state board or an  
26 administrative council for school facilities under the direct supervision of the state board or an  
27 administrative council, respectively. Furthermore, upon application by a county board, the  
28 authority may allocate and expend under this subsection moneys for school major improvement  
29 projects for vocational programs at comprehensive high schools, vocational programs at  
30 comprehensive middle schools, vocational schools cooperating with community and technical  
31 college programs, or any combination of the three. Each county board is encouraged to cooperate  
32 with community and technical colleges in the use of existing or development of new vocational  
33 technical facilities. All projects eligible for funds from this subsection shall be submitted directly to  
34 the authority which shall be solely responsible for the project's evaluation, subject to the following:

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

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

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

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

45 ~~(1) Moneys paid into the School Building Capital Improvements Fund pursuant to §18-9A-~~  
46 ~~10 of this code~~

47 ~~(2)~~ (1) The issuance of revenue bonds for which moneys in the School Building Debt  
48 Service Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;

49 ~~(3)~~ (2) Moneys paid into the School Construction Fund pursuant to §18-9D-6 of this code;  
50 and

51 ~~(4)~~ (3) Any other moneys received by the authority, except moneys deposited into the  
52 School Major Improvement Fund and moneys deposited into the School Access Safety Fund  
53 pursuant to §18-9F-5 of this code, shall be set aside by the authority as an emergency fund to be  
54 distributed in accordance with the guidelines adopted by the authority.

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

57 ~~(1) Moneys paid into the School Building Capital Improvements Fund pursuant to §18-9A-~~  
58 ~~10 of this code;~~

59 ~~(2)~~ (1) The issuance of revenue bonds for which moneys in the School Building Debt  
60 Service Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;

61 ~~(3)~~ (2) Moneys paid into the School Construction Fund pursuant to §18-9D-6 of this code;  
62 and

63           ~~(4)~~ (3) Any other moneys received by the authority, except moneys deposited into the  
64 School Major Improvement Fund and moneys deposited into the School Access Safety Fund  
65 pursuant to §18-9F-5 of this code, may be reserved by the authority for multiuse vocational-  
66 technical education facilities projects that may include post-secondary programs as a first priority  
67 use. The authority may allocate and expend under this subsection moneys for any purposes  
68 authorized in this article on multiuse vocational-technical education facilities projects, including  
69 equipment and equipment updates at the facilities, authorized in accordance with ~~the provisions~~  
70 ~~of §18-9D-16 of this code.~~ If the projects approved under this subsection do not require the full  
71 amount of moneys reserved, moneys above the amount required may be allocated and expended  
72 in accordance with other provisions of this article. A county board, the state board, an  
73 administrative council, or the joint administrative board of a vocational-technical education facility  
74 which includes post-secondary programs may propose projects for facilities or equipment, or both,  
75 which are under the direct supervision of the respective body: *Provided*, That the authority shall,  
76 before allocating any moneys for a project under this subsection, consider all other funding  
77 sources available for the project.

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

80           ~~(1) Moneys paid into the School Building Capital Improvements Fund pursuant to §18-9A-~~  
81 ~~10 of this code~~

82           ~~(2)~~ (1) The issuance of revenue bonds for which moneys in the School Building Debt  
83 Service Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;

84           ~~(3)~~ (2) Moneys paid into the School Construction Fund pursuant to §18-9D-6 of this code;  
85 and

86           ~~(4)~~ (3) Any other moneys received by the authority, except moneys deposited into the  
87 School Major Improvement Fund and moneys deposited into the School Access Safety Fund  
88 pursuant to §18-9F-5 of this code, shall be allocated and expended on the basis of need and

89 efficient use of resources for projects funded in accordance with the provisions of §18-9D-16 of  
90 this code.

91 (f) If a county board proposes to finance a project that is authorized in accordance with  
92 §18-9D-16 of this code through a lease with an option to purchase leased premises upon the  
93 expiration of the total lease period pursuant to an investment contract, the authority may not  
94 allocate moneys to the county board in connection with the project: *Provided*, That the authority  
95 may transfer moneys to the state board which, with the authority, shall lend the amount transferred  
96 to the county board to be used only for a one-time payment due at the beginning of the lease  
97 term, made for the purpose of reducing annual lease payments under the investment contract,  
98 subject to the following conditions:

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

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

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

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

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

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

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

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

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



139 Authority and is prepared to commence expenditure of the funds during the fiscal year in which  
140 the moneys are distributed.

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

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

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

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

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

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

165           (2) A county board may apply to the authority for funding under this article as a part of the  
166 county's bond finance plan for a proposed capital improvement bond levy to be submitted to the  
167 voters of that county. The county board shall first submit a request for the funding to the executive  
168 director of the authority at least nine months prior to the county board's proposed bond levy  
169 election. After initial consultation with the executive director, the county board shall prepare a  
170 written outline of the bond finance plan, the capital improvements to be made with levy funds, and  
171 the amount and timing of funding requested from the authority. The county board shall then  
172 present its request at a meeting of the members of the authority.

173           Grants of financial assistance that have received initial approval under this section are  
174 contingent upon passage of the bond levy and final approval by the School Building Authority of  
175 the county's bond finance plan. Any materials produced by the county or its county board that  
176 refer to the authority shall include a statement of this contingency and terms. Notwithstanding any  
177 other provision of this subsection, financial assistance to be provided by the authority may only  
178 be used to pay costs of capital improvements and may not be pledged as security for or repayment  
179 of any bonds issued by the county board.

180           Upon passage of bond levy, the county board shall have four years to finalize the project.

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

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

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

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

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

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

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

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

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

209           (3) In order to encourage local participation in funding school construction projects, the  
210 authority may set aside limited funding, not to exceed \$500,000, in reserve for one additional year  
211 to provide a county the opportunity to complete financial planning for a project prior to the  
212 allocation of construction funds. Any funding shall be on a reserve basis and converted to a part  
213 of the construction grant only after all project budget funds have been secured and all county  
214 commitments have been fulfilled. Failure of the county to solidify the project budget and meet its

215 obligations to the state within 18 months of the date the funding is set aside by the authority will  
216 result in expiration of the reserve and the funds shall be reallocated by the authority in the  
217 succeeding funding cycle.