

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 373**

4 (By Senators Kessler (Acting President) and Hall, By Request of
5 the Executive)

6 _____
7 [Originating in the Committee on Education;
8 reported February 9, 2011.]
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10
11 A BILL to amend and reenact §18-9D-15 of the Code of West Virginia,
12 1931, as amended; and to amend said code by adding thereto a
13 new section, designated §18-9D-19a, all relating to
14 comprehensive middle schools; allowing, upon application by a
15 county board of education, the School Building Authority to
16 allocate and expend certain moneys for school major
17 improvement projects for vocational programs at comprehensive
18 middle schools; providing legislative findings; defining
19 "comprehensive middle school"; defining "middle or junior high
20 school"; requiring the authority, when planning the
21 construction of a middle or junior high school, to provide
22 funding for a comprehensive middle school that includes
23 comprehensive career technical education facilities to be
24 located, when feasible, on the same site as the middle or

1 junior high school under certain conditions; requiring the
2 authority, upon application of a county board to construct
3 comprehensive career technical education facilities that would
4 allow an existing middle or junior high school to become a
5 comprehensive middle school, to provide technical assistance
6 to the county in developing a plan for construction of the
7 comprehensive career technical education facility; and
8 requiring, upon development of the plan, the authority to
9 consider funding based on certain criteria.

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

11 That §18-9D-15 of the Code of West Virginia, 1931, as amended,
12 be amended and reenacted; and that said code be amended by adding
13 thereto a new section, designated §18-9D-19a, all to read as
14 follows:

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

16 **§18-9D-15. Legislative intent; allocation of money among**
17 **categories of projects; lease-purchase options;**
18 **limitation on time period for expenditure of**
19 **project allocation; county maintenance budget**
20 **requirements; project disbursements over period of**
21 **years; preference for multicounty arrangements;**
22 **submission of project designs; set-aside to**
23 **encourage local participation.**

24 (a) It is the intent of the Legislature to empower the School

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

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

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

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

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

21 (4) Any other moneys received by the authority, except moneys
22 paid into the School Major Improvement Fund pursuant to section six
23 of this article and moneys deposited into the School Access Safety
24 Fund pursuant to section five, article nine-f of this chapter, may

1 be allocated and may be expended by the authority for projects
2 authorized in accordance with the provisions of section sixteen of
3 this article that service the educational community statewide or,
4 upon application by the state board, for educational programs that
5 are under the jurisdiction of the state board. In addition, upon
6 application by the state board or the administrative council of an
7 area vocational educational center established pursuant to article
8 two-b of this chapter, the authority may allocate and expend under
9 this subsection moneys for school major improvement projects
10 authorized in accordance with the provisions of section sixteen of
11 this article proposed by the state board or an administrative
12 council for school facilities under the direct supervision of the
13 state board or an administrative council, respectively.
14 Furthermore, upon application by a county board, the authority may
15 allocate and expend under this subsection moneys for school major
16 improvement projects for vocational programs at comprehensive high
17 schools, vocational programs at comprehensive middle schools,
18 vocational schools cooperating with community and technical college
19 programs, or ~~both~~ any combination of the three. Each county board
20 is encouraged to cooperate with community and technical colleges in
21 the use of existing or development of new vocational technical
22 facilities. All projects eligible for funds from this subsection
23 shall be submitted directly to the authority which shall be solely
24 responsible for the project's evaluation, subject to the following:

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

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

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

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

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

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

20 (4) Any other moneys received by the authority, except moneys
21 deposited into the School Major Improvement Fund and moneys
22 deposited into the School Access Safety Fund pursuant to section
23 five, article nine-f of this chapter, shall be set aside by the
24 authority as an emergency fund to be distributed in accordance with

1 the guidelines adopted by the authority.

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

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

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

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

12 (4) Any other moneys received by the authority, except moneys
13 deposited into the School Major Improvement Fund and moneys
14 deposited into the School Access Safety Fund pursuant to section
15 five, article nine-f of this chapter, may be reserved by the
16 authority for multiuse vocational-technical education facilities
17 projects that may include post-secondary programs as a first
18 priority use. The authority may allocate and expend under this
19 subsection moneys for any purposes authorized in this article on
20 multiuse vocational-technical education facilities projects,
21 including equipment and equipment updates at the facilities,
22 authorized in accordance with the provisions of section sixteen of
23 this article. If the projects approved under this subsection do
24 not require the full amount of moneys reserved, moneys above the

1 amount required may be allocated and expended in accordance with
2 other provisions of this article. A county board, the state board,
3 an administrative council or the joint administrative board of a
4 vocational-technical education facility which includes post-
5 secondary programs may propose projects for facilities or
6 equipment, or both, which are under the direct supervision of the
7 respective body: *Provided*, That the authority shall, before
8 allocating any moneys for a project under this subsection, consider
9 all other funding sources available for the project.

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

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

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

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

20 (4) Any other moneys received by the authority, except moneys
21 deposited into the School Major Improvement Fund and moneys
22 deposited into the School Access Safety Fund pursuant to section
23 five, article nine-f of this chapter, shall be allocated and
24 expended on the basis of need and efficient use of resources for

1 projects funded in accordance with the provisions of section
2 sixteen of this article.

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

14 (1) The loan shall be secured in the manner required by the
15 authority, in consultation with the state board, and shall be
16 repaid in a period and bear interest at a rate as determined by the
17 state board and the authority and shall have any terms and
18 conditions that are required by the authority, all of which shall
19 be set forth in a loan agreement among the authority, the state
20 board and the county board;

21 (2) The loan agreement shall provide for the state board and
22 the authority to defer the payment of principal and interest upon
23 any loan made to the county board during the term of the investment
24 contract, and annual renewals of the investment contract, among the

1 state board, the authority, the county board and a lessor, subject
2 to the following:

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

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

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

18 (D) Upon a default by a county board, the principal of the
19 loan, together with all unpaid interest accrued to the date of the
20 default, shall, at the option of the authority, in consultation
21 with the state board, become due and payable immediately or subject
22 to renegotiation among the state board, the authority and the
23 county board; and

24 (E) If the loan becomes due and payable immediately, the

1 authority, in consultation with the state board, shall use all
2 means available under the loan agreement and law to collect the
3 outstanding principal balance of the loan, together with all unpaid
4 interest accrued to the date of payment of the outstanding
5 principal balance; and

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

11 (g) To encourage county boards to proceed promptly with
12 facilities planning and to prepare for the expenditure of any state
13 moneys derived from the sources described in this section, any
14 county board or other entity to whom moneys are allocated by the
15 authority that fails to expend the money within three years of the
16 allocation shall forfeit the allocation and thereafter is
17 ineligible for further allocations pursuant to this section until
18 it is ready to expend funds in accordance with an approved
19 facilities plan: *Provided*, That the authority may authorize an
20 extension beyond the three-year forfeiture period not to exceed an
21 additional two years. Any amount forfeited shall be added to the
22 total funds available in the School Construction Fund of the
23 authority for future allocation and distribution. Funds may not be
24 distributed for any project under this article unless the

1 responsible entity has a facilities plan approved by the state
2 board and the School Building Authority and is prepared to commence
3 expenditure of the funds during the fiscal year in which the moneys
4 are distributed.

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

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

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

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

24 (i) Local matching funds may not be required under the

1 provisions of this section. However, this article does not negate
2 the responsibilities of the county boards to maintain school
3 facilities. To be eligible to receive an allocation of school
4 major improvement funds from the authority, a county board must
5 have expended in the previous fiscal year an amount of county
6 moneys equal to or exceeding the lowest average amount of money
7 included in the county board's maintenance budget over any three of
8 the previous five years and must have budgeted an amount equal to
9 or greater than the average in the current fiscal year: *Provided,*
10 That the state board shall promulgate rules relating to county
11 boards' maintenance budgets, including items which shall be
12 included in the budgets.

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

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

23 (1) Any funds deposited in the School Construction Fund shall
24 be expended first in accordance with an appropriation by the

1 Legislature.

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

7 (1) It is the intent of the Legislature to encourage county
8 boards to explore and consider arrangements with other counties
9 that may facilitate the highest and best use of all available
10 funds, which may result in improved transportation arrangements for
11 students or which otherwise may create efficiencies for county
12 boards and the students. In order to address the intent of the
13 Legislature contained in this subsection, the authority shall grant
14 preference to those projects which involve multicounty arrangements
15 as the authority shall determine reasonable and proper.

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

23 (n) The authority may elect to disburse funds for approved
24 construction projects over a period of more than one year subject

1 to the following:

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

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

8 (3) In order to encourage local participation in funding
9 school construction projects, the authority may set aside limited
10 funding, not to exceed \$500,000, in reserve for one additional year
11 to provide a county the opportunity to complete financial planning
12 for a project prior to the allocation of construction funds. Any
13 funding shall be on a reserve basis and converted to a part of the
14 construction grant only after all project budget funds have been
15 secured and all county commitments have been fulfilled. Failure of
16 the county to solidify the project budget and meet its obligations
17 to the state within eighteen months of the date the funding is set
18 aside by the authority will result in expiration of the reserve and
19 the funds shall be reallocated by the authority in the succeeding
20 funding cycle.

21 **§18-9D-19a. Comprehensive middle schools.**

22 (a) The Legislature finds the following:

23 (1) Students learn more through hands on, applied learning
24 activities;

1 (2) Career technical education students have a much higher
2 graduation rate than other students;

3 (3) Although thirty-seven percent of West Virginia middle and
4 junior high school students are enrolled in a form of career
5 technical education, the number has been dropping by approximately
6 three thousand students per year; and

7 (4) As the benefits of career technical education have
8 increased as academics have become more embedded in career
9 technical education, it is important that career technical
10 education opportunities be increased at the middle and junior high
11 school level.

12 (b) "Comprehensive middle school" means middle level education
13 in grades six through eight that provides students with engaging
14 learning opportunities where students are provided connections
15 between what they are learning and what they will learn in high
16 school and beyond. Middle level education establishes the
17 foundation for college and career readiness by providing a
18 comprehensive core curriculum that includes English/language arts,
19 mathematics, science, social studies. This core curriculum embeds
20 career exploration and project based career activities where
21 possible. In addition to the core curriculum rich in development
22 of strong literacy skills, a comprehensive middle school provides
23 rich authentic opportunities in the visual and performing arts,
24 health and wellness, physical education, world languages and career

1 technical activities. By harnessing the power of technology, the
2 comprehensive middle school provides personalized learning twenty-
3 four hours per day and seven days per week that produces evidence
4 of student mastery and progression through an individualized
5 digital student profile system.

6 (c) "Middle or junior high school" means a school with any of
7 grades six through eight.

8 (d) When planning the construction of a middle or junior high
9 school which has been approved by the authority and which meets the
10 required authority efficiencies, the authority shall provide
11 funding for a comprehensive middle school that includes
12 comprehensive career technical education facilities to be located,
13 when feasible, on the same site as the middle or junior high
14 school.

15 (e) Upon application of a county board to construct
16 comprehensive career technical education facilities that would
17 allow an existing middle or junior high school to become a
18 comprehensive middle school, the authority will provide technical
19 assistance to the county in developing a plan for construction of
20 the comprehensive career technical education facility. Upon
21 development of the plan, the authority shall consider funding based
22 on the following criteria:

23 (1) The ability of the county board to provide local funds for
24 the construction of new comprehensive career technical education

1 facilities;

2 (2) The size of the existing middle and junior high schools;

3 (3) The age and physical condition of the existing career
4 technical education facilities; and

5 (4) Such other criteria as the authority shall consider
6 appropriate.