

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2123

BY DELEGATES ROWAN, MR. SPEAKER (MR. ARMSTEAD),
COWLES, HAMILTON, ESPINOSA, O'NEAL, ANDERSON AND
E. NELSON

[Introduced February 8, 2017; Referred
to the Committee on Education then Finance.]

1 A BILL to amend and reenact §18-9D-2, §18-9D-3, §18-9D-4c and §18-9D-16 of the Code of
2 West Virginia, 1931, as amended; and to amend said code by adding thereto a new
3 section, designated §18-9D-22, all relating to making the West Virginia Schools for the
4 Deaf and Blind eligible to participate in any and all funding administered or distributed by
5 the West Virginia School Building Authority.

Be it enacted by the Legislature of West Virginia:

1 That §18-9D-2, §18-9D-3, §18-9D-4c and §18-9D-16 of the Code of West Virginia, 1931,
2 as amended, be amended and reenacted; and that said code be amended by adding thereto a
3 new section, designated §18-9D-22, all to read as follows:

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-2. Definitions.

1 For the purposes of this article, unless a different meaning clearly appears from the
2 context:

3 (1) "Authority" means the School Building Authority of West Virginia;

4 (2) "Bonds" means bonds issued by the authority pursuant to this article;

5 (3) "Construction project" means a project in the furtherance of a facilities plan with a cost
6 greater than \$1 million for the new construction, expansion or major renovation of facilities,
7 buildings and structures for school purposes, including:

8 (A) The acquisition of land for current or future use in connection with the construction
9 project;

10 (B) New or substantial upgrading of existing equipment, machinery and furnishings;

11 (C) Installation of utilities and other similar items related to making the construction project
12 operational.

13 (D) Construction project does not include such items as books, computers or equipment
14 used for instructional purposes; fuel; supplies; routine utility services fees; routine maintenance
15 costs; ordinary course of business improvements; other items which are customarily considered

16 to result in a current or ordinary course of business operating charge or a major improvement
17 project;

18 (4) "Cost of project" means the cost of construction, expansion, renovation, repair and
19 safety upgrading of facilities, buildings and structures for school purposes; the cost of land,
20 equipment, machinery, furnishings, installation of utilities and other similar items related to making
21 the project operational; and the cost of financing, interest during construction, professional service
22 fees and all other charges or expenses necessary, appurtenant or incidental to the foregoing,
23 including the cost of administration of this article;

24 (5) "County board" or "county" means a county board of education as provided in article
25 five of this chapter and includes the West Virginia Schools for the Deaf and the Blind as provided
26 in article seventeen of this chapter when acting with the approval of the West Virginia Board of
27 Education to submit, request and receive an award of funds or services for projects under the
28 provisions of this article.

29 ~~(5)~~ (6) "Facilities plan" means the ten-year countywide comprehensive educational
30 facilities plan established by a county board in accordance with guidelines adopted by the
31 authority to meet the goals and objectives of this article, or a facilities plan established by the
32 administration of the West Virginia Schools for the Deaf and Blind that:

33 (A) Addresses the existing school facilities and facility needs of the county, or the Schools
34 for the Deaf and Blind, to provide a thorough and efficient education in accordance with the
35 provisions of this code and policies of the state board;

36 (B) Best serves the needs of individual students, the general school population and the
37 communities served by the facilities, including, but not limited to, providing for a facility
38 infrastructure that avoids excessive school bus transportation times for students consistent with
39 sound educational policy and within the budgetary constraints for staffing and operating the
40 schools of the county;

41 (C) Includes the school major improvement plan;

42 (D) Includes the county board's school access safety plan required by section three, article
43 nine-f of this chapter;

44 (E) Is updated annually to reflect projects completed, current enrollment projections and
45 new or continuing needs; and

46 (F) Is approved by the state board and the authority prior to the distribution of state funds
47 pursuant to this article to any county board or other entity applying for funds;

48 ~~(6)~~ (7) "Project" means a construction project or a major improvement project;

49 ~~(7)~~ (8) "Region" means the area encompassed within and serviced by a regional
50 educational service agency established pursuant to section twenty-six, article two of this chapter;

51 ~~(8)~~ (9) "Revenue" or "revenues" means moneys:

52 (A) Deposited in the School Building Capital Improvements Fund pursuant to section ten,
53 article nine-a of this chapter;

54 (B) Deposited in the School Construction Fund pursuant to section thirty, article fifteen,
55 chapter eleven of this code and section eighteen, article twenty-two, chapter twenty-nine of this
56 code;

57 (C) Deposited in the School Building Debt Service Fund pursuant to section eighteen,
58 article twenty-two, chapter twenty-nine of this code;

59 (D) Deposited in the School Major Improvement Fund pursuant to section thirty, article
60 fifteen, chapter eleven of this code;

61 (E) Received, directly or indirectly, from any source for use in any project completed
62 pursuant to this article;

63 (F) Received by the authority for the purposes of this article; and

64 (G) Deposited in the Excess Lottery School Building Debt Services Fund pursuant to
65 section eighteen-a, article twenty-two, chapter twenty-nine of this code;

66 ~~(9)~~ (10) "School major improvement plan" means a ten-year school maintenance plan that:

67 (A) Is prepared by a county board in accordance with the guidelines established by the
68 authority and incorporated in its Countywide Comprehensive Educational Facilities Plan, or is
69 prepared by the state board or the administrative council of an area vocational educational center
70 in accordance with the guidelines if the entities seek funding from the authority for a major
71 improvement project, or is prepared by the administration of the West Virginia Schools for the
72 Deaf and Blind;

73 (B) Addresses the regularly scheduled maintenance for all school facilities of the county
74 or under the jurisdiction of the entity seeking funding;

75 (C) Includes a projected repair and replacement schedule for all school facilities of the
76 county or of the entity seeking funding;

77 (D) Addresses the major improvement needs of each school within the county or under
78 the jurisdiction of the entity seeking funding; and

79 (E) Is required prior to the distribution of state funds for a major improvement project
80 pursuant to this article to the county board, state board or administrative council; and

81 ~~(40)~~ (11) "School major improvement project" means a project with a cost greater than
82 \$50 thousand and less than \$1 million for the renovation, expansion, repair and safety upgrading
83 of existing school facilities, buildings and structures, including the substantial repair or upgrading
84 of equipment, machinery, building systems, utilities and other similar items related to the
85 renovation, repair or upgrading in the furtherance of a school major improvement plan. A major
86 improvement project does not include such items as books, computers or equipment used for
87 instructional purposes; fuel; supplies; routine utility services fees; routine maintenance costs;
88 ordinary course of business improvements; or other items which are customarily considered to
89 result in a current or ordinary course of business operating charge-;

90 (12) "Schools for the Deaf and Blind" or "West Virginia Schools for the Deaf and Blind"
91 means the Schools for the Deaf and Blind established or continued under article seventeen of
92 this chapter.

§18-9D-3. Powers of authority.

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

44 (13) To accept and expend any gift, grant, contribution, bequest or endowment of money
45 and equipment to, or for the benefit of, the authority or any project under this article, from the
46 State of West Virginia or any other source for any or all of the purposes specified in this article or
47 for any one or more of such purposes as may be specified in connection with the gift, grant,
48 contribution, bequest or endowment;

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

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

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

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

70 (18) To enter into agreements with county boards and persons, firms or corporations to
71 facilitate the development of ~~county board~~ projects and ~~county board~~ facilities plans. The county
72 board participating in an agreement shall pay at least twenty-five percent of the cost of the
73 agreement. Nothing in this section ~~shall be construed to supersede, limit or impair~~ supersedes,
74 limits or impairs the authority of county boards to develop and prepare their projects or plans;

75 (19) To encourage any project or part thereof to provide opportunities for students to
76 participate in supervised, unpaid work-based learning experiences related to the student's

77 program of study approved by the county board or the administration of the West Virginia Schools
78 for the Deaf and Blind. The work-based learning experience ~~must~~ shall be conducted in
79 accordance with a formal training plan approved by the instructor, the employer and the student,
80 ~~and which sets~~ The experience shall set forth at a minimum the specific skills to be learned, the
81 required documentation of work-based learning experiences, the conditions of the placement,
82 including duration and safety provisions, and provisions for supervision and liability insurance
83 coverage as applicable. Projects involving the new construction and renovation of vocational-
84 technical and adult education facilities should provide opportunities for students to participate in
85 supervised work-based learning experiences, to the extent practical, which meet the requirements
86 of this subdivision. Nothing in this subdivision may be construed to affect registered youth
87 apprenticeship programs or the provisions governing those programs; and

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

**§18-9D-4c. School Building Authority authorized to temporarily finance projects through
the issuance of loans, notes or other evidences of indebtedness.**

1 The School Building Authority may by resolution, in accordance with the provisions of this
2 article, temporarily finance the cost of projects and other expenditures permitted under this article
3 for public schools in this state, including, but not limited to, comprehensive high schools, ~~and~~
4 comprehensive middle schools ~~as defined in this article, in this state through the issuance of~~ and
5 the West Virginia Schools for the Deaf and Blind. The financing may be issued through loans,
6 notes or other evidences of indebtedness, ~~Provided, That~~ the outstanding principal amount of
7 ~~loans, notes or other evidences of indebtedness outstanding at any one time shall~~ which may not
8 exceed \$16 million at any one time. ~~Provided, however, That~~ The principal of, interest and
9 premium ~~if any~~ on, and fees associated with any such temporary financing shall be payable solely
10 from the proceeds of bonds or the sources from which ~~the principal of, interest and premium, if~~
11 ~~any, on bonds is~~ any bonds are payable under this article. ~~or from the proceeds of bonds~~

§18-9D-16. Authority to establish guidelines and procedures for facilities and major improvement plans; guidelines for modifications and updates, etc.; guidelines for project evaluation; submission of certified list of projects to be funded; department on-site inspection of facilities; enforcement of required changes or additions to project plans.

1 (a) The authority shall establish guidelines and procedures to promote the intent and
2 purposes of this article and assure the prudent and resourceful expenditure of state funds for
3 projects under this article including, but not limited to, the following:

4 (1) Guidelines and procedures for the facilities plans, school major improvement plans
5 and projects submitted in the furtherance of the plans that address, but are not limited to, the
6 following:

7 (A) All of the elements of the respective plans as defined in section two of this article;

8 (B) The procedures for a county or the administration of the West Virginia Schools for the
9 Deaf and Blind to submit a preliminary plan, a plan outline or a proposal for a plan to the authority
10 prior to the submission of the facilities plan. The preliminary plan, plan outline or proposal for a
11 plan shall be the basis for a consultation meeting between representatives of the county or the
12 administration of the West Virginia Schools for the Deaf and Blind and members of the authority,
13 including at least one citizen member. ~~which~~ The meeting shall be held promptly following
14 submission of the preliminary plan, plan outline or proposal for a plan to assure understanding of
15 the general goals of this article and the objective criteria by which projects will be evaluated, to
16 discuss ways the plan may be structured to meet those goals, and to assure efficiency and
17 productivity in the project approval process;

18 (C) The manner, time line and process for the submission of each plan and annual plan
19 updates to the authority;

20 (D) The requirements for public hearings, comments or other means of providing broad-
21 based input on plans and projects under this article within a reasonable time period as the

22 authority may consider appropriate. The submission of each plan must be accompanied by a
23 synopsis of all comments received and a formal comment by the county board, the state board or
24 the administrative council of an area vocational educational center submitting the plan;

25 (E) Any project specifications and maintenance specifications considered appropriate by
26 the authority including, but not limited to, such matters as energy efficiency, preferred siting,
27 construction materials, maintenance plan and any other matter related to how the project is to
28 proceed;

29 (F) A prioritization by the county board, the state board or the administrative council
30 submitting the plan of each project contained in the plan. ~~In prioritizing the projects, the county~~
31 ~~board, the state board or the administrative council submitting the plan shall make determinations~~
32 The prioritization shall be determined in accordance with the objective criteria formulated by the
33 School Building Authority in accordance with this section. The priority list is one of the criteria
34 that shall be considered by the authority in deciding how the available funds should be expended;

35 (G) The objective means to be set forth in the plan and used in evaluating implementation
36 of the overall plan and each project included in the plan. The evaluation ~~must~~ shall measure how
37 the plan addresses the goals of this article and any guidelines adopted under this article, ~~and~~ how
38 each project is in furtherance of the facilities plan and school major improvement plan, as
39 applicable, ~~as well as~~ the importance of the project to the overall success of the facilities plan or
40 school major improvement plan, and the overall goals of the authority; and

41 (H) Any other matters considered by the authority to be important reflections of how a
42 construction project or a major improvement project ~~or projects~~ will further the overall goals of this
43 article.

44 (2) Guidelines and procedures which may be adopted by the authority for requiring that a
45 county board modify, update, supplement or otherwise submit changes or additions to an
46 approved facilities plan or for requiring that a county board, the state board or the administrative
47 council of an area vocational educational center modify, update, supplement or otherwise submit

48 changes or additions to an approved school major improvement plan. The authority shall provide
49 reasonable notification and sufficient time for the change or addition as delineated in its
50 guidelines. ~~developed by the authority~~ The guidelines shall require an update of the estimated
51 duration of school bus transportation times for students associated with any construction project
52 under consideration by the authority that includes the closure, consolidation or construction of a
53 school or schools.

54 (3) Guidelines and procedures for evaluating project proposals that are submitted to the
55 authority that address, but are not limited to, the following:

56 (A) Any project funded by the authority ~~must~~ shall be in furtherance of the facilities plan or
57 school major improvement plan and in compliance with the guidelines established by the
58 authority;

59 (B) If a project is to benefit more than one county in the region, the facilities plan ~~must~~
60 shall state the manner in which the cost and funding of the project will be apportioned among the
61 counties;

62 (C) If a county board proposes to finance a construction project through a lease with an
63 option to purchase pursuant to an investment contract as described in subsection (f), section
64 fifteen of this article, the specifications for the project must include the term of the lease, the
65 amount of each lease payment, including the payment due upon exercise of the option to
66 purchase, and the terms and conditions of the proposed investment contract; and

67 (D) The objective criteria for the evaluation of projects which shall include, but ~~are~~ is not
68 limited to, the following:

69 (i) How the current facilities do not meet and how the plan and any project under the plan
70 ~~meets~~ meet the following:

71 (I) Student health and safety including, but not limited to, critical health and safety needs;

72 (II) Economies of scale, including compatibility with similar schools that have achieved the
73 most economical organization, facility use and pupil-teacher ratios;

74 (III) Reasonable travel time and practical means of addressing other demographic
75 considerations. The authority may not approve a project ~~after July 1, 2008~~ that includes a school
76 closure, consolidation or new construction for which a new bus route will be created for ~~the~~
77 ~~transportation of students in any of the grade levels prekindergarten through grade five~~
78 transporting any prekindergarten through fifth grade students to and from any school included in
79 the project, ~~which new bus~~ if the route exceeds by more than fifteen minutes the recommended
80 ~~duration of the one-way school bus transportation~~ duration time for elementary students adopted
81 by the state board ~~as provided in~~ pursuant to section five-d, article two-e of this chapter, unless
82 the county has received the written permission of the state board to create the route in accordance
83 with said section five-d;

84 (IV) Multicounty and regional planning to achieve the most effective and efficient
85 instructional delivery system;

86 (V) Curriculum improvement and diversification, including the use of instructional
87 technology, distance learning and access to advanced courses in science, mathematics,
88 language arts and social studies;

89 (VI) Innovations in education;

90 (VII) Adequate space for projected student enrollments;

91 (VIII) The history of efforts taken by the county board to propose or adopt local school
92 bond issues or special levies to the extent Constitutionally permissible; and

93 (IX) Regularly scheduled preventive maintenance; and

94 (ii) How the project will assure the prudent and resourceful expenditure of state funds and
95 achieve the purposes of this article for constructing, expanding, renovating or otherwise improving
96 and maintaining school facilities for a thorough and efficient education.

97 (4) Guidelines and procedures for evaluating projects for funding that address, but are not
98 limited to, the following:

99 (A) Requiring each county board's facilities plan and school major improvement plan to
100 prioritize all the construction projects or major improvement projects, respectively, within the
101 county. A school major improvement plan submitted by the state board or the administrative
102 council of an area vocational educational center shall prioritize all the school improvement
103 projects contained in the plan. The priority list shall be one of the criteria to be considered by the
104 authority in determining how available funds shall be expended. In prioritizing the projects, the
105 county board, the state board or the administrative council submitting a plan shall make
106 determinations in accordance with the objective criteria formulated by the School Building
107 Authority;

108 (B) The return to each county submitting a project proposal an explanation of the
109 evaluative factors underlying the decision of the authority to fund or not to fund the project; and

110 (C) The allocation and expenditure of funds in accordance with this article, subject to the
111 availability of funds.

112 (b) Prior to final action on approving projects for funding under this article, the authority
113 shall submit a certified list of the projects to the Joint Committee on Government and Finance.

114 (c) The State Department of Education shall conduct on-site inspections, at least annually,
115 of all facilities which have been funded wholly or in part by moneys from the authority or state
116 board to ensure compliance with the county board's facilities plan and school major improvement
117 plan as related to the facilities; to preserve the physical integrity of the facilities to the extent
118 possible; and to otherwise extend the useful life of the facilities. ~~Provided, That~~ The state board
119 shall submit reports regarding ~~its on-site~~ the inspections ~~of facilities~~ to the authority within thirty
120 days of completion. ~~of the on-site inspections: Provided, however, That~~ The state board shall
121 promulgate rules regarding the on-site inspections and matters relating thereto, in consultation
122 with the authority, ~~as soon as practical~~ and shall submit proposed rules for legislative review. ~~no~~
123 ~~later than December 1, 1994~~

124 (d) Based on its on-site inspection or notification by the authority to the state board that
125 the changes or additions to a ~~county's board~~ county board's facilities plan or school major
126 improvement plan ~~required by the authority~~ have not been implemented within the time period
127 prescribed by the authority, the state board shall restrict the use of the necessary funds or
128 otherwise allocate funds from moneys appropriated by the Legislature for those purposes set forth
129 in section nine, article nine-a of this chapter.

**§18-9D-22. Eligibility of the West Virginia Schools for the Deaf and Blind to participate in
all types of funding administered or distributed by the authority.**

1 (a) The Legislature finds that:

2 (1) The Legislature's Constitutional obligation to provide a thorough and efficient public
3 education for the children of West Virginia includes providing a thorough and efficient education
4 for the children of West Virginia who are deaf and blind;

5 (2) The Legislature has endeavored to fulfill this obligation with the creation, maintenance
6 and operation of the West Virginia Schools for the Deaf and Blind, established and continued
7 under article seventeen of this chapter;

8 (3) The West Virginia Schools for the Deaf and Blind have for generations provided
9 educational services to children from each of West Virginia's fifty-five counties;

10 (4) The facilities of the West Virginia Schools for the Deaf and Blind are in need of
11 substantial improvements;

12 (5) The West Virginia Schools for the Deaf and Blind have no local levy which supports
13 their operations, and depend completely upon the appropriations from the state;

14 (6) The West Virginia Schools for the Deaf and Blind have no borrowing authority nor
15 revenue stream that can serve as a source of servicing debt;

16 (7) Questions have arisen as to whether or not it is permissible for the School Building
17 Authority to distribute to the West Virginia Schools for the Deaf and Blind financial assistance for
18 the construction and improvement of their facilities; and

19 (8) The West Virginia Schools for the Deaf and Blind should have access to and be eligible
20 to receive all types of funding provided to county boards by the authority.

21 (b) Notwithstanding any provision of this code to the contrary:

22 (1) The West Virginia Schools for the Deaf and Blind are eligible to participate in all funding
23 distributed by the authority; and

24 (2) The authority may distribute to the West Virginia Schools for the Deaf and Blind funds
25 as it determines to be appropriate.

26 (c) The authority may not require the contribution of local funds for a project of the West
27 Virginia Schools for the Deaf and Blind, nor penalize the consideration or priority ranking of a
28 project of the schools for lack of local project funds. The state board may apply for funds for
29 education programs under its jurisdiction for projects at the West Virginia Schools for the Deaf
30 and Blind.

NOTE: The purpose of this bill is to make the West Virginia Schools for the Deaf and Blind eligible to participate in any and all funding administered or distributed by the West Virginia School Building Authority.

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