

WEST VIRGINIA LEGISLATURE
2019 FIRST EXTRAORDINARY SESSION

Introduced

House Bill 161

BY DELEGATES HARSHBARGER, SUMMERS, COOPER,
JENNINGS, PHILLIPS, KUMP, GRAVES, WESTFALL,
HAMRICK, SHOTT, AND PORTERFIELD

[Introduced June 17, 2019; Referred
to the Select Committee on Education Reform A]

1 A BILL to repeal §18-9D-5 of the Code of West Virginia, 1931, as amended; and to amend and
2 reenact §18-9D-2, §18-9D-3, §18-9D-4, §18-9D-6, §18-9D-7, §18-9D-8, §18-9D-9, §18-
3 9D-13, §18-9D-15 and §18-9D-19, all relating to removing or revising obsolete, outdated,
4 antiquated, inoperative, surplus or superseded provisions relating to defining terms;
5 providing duties and powers of school building authority; providing authority to issue
6 revenue bonds; providing authority to offer higher education savings plans; closing certain
7 fund; providing purposes and revenue sources for other funds; providing authority to
8 collect rents; providing for the use of proceeds of bonds; providing for the issuance of
9 revenue refunding bonds, use of proceeds, entry into escrow agreements and redemption
10 of bonds; paying bonds; expending authority funds for projects; requirements for projects;
11 and authorizing construction of comprehensive high schools.

Be it enacted by the Legislature of West Virginia:

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) "Facilities plan" means the 10-year countywide comprehensive educational facilities
25 plan established by a county board in accordance with guidelines adopted by the authority to meet
26 the goals and objectives of this article that:

27 (A) Addresses the existing school facilities and facility needs of the county to provide a
28 thorough and efficient education in accordance with the provisions of this code and policies of the
29 state board;

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

35 (C) Includes the school major improvement plan;

36 (D) Includes the county board's school access safety plan required by §18-9F-3 of this
37 code;

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

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

42 (6) "Project" means a construction project or a major improvement project;

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

45 ~~(8)~~ (7) "Revenue" or "revenues" means moneys:

46 ~~(A) Deposited in the School Building Capital Improvements Fund pursuant to section ten,~~
47 ~~article nine a of this chapter~~

48 ~~(B)~~ (A) Deposited in the School Construction Fund pursuant to §11-15-30 of this code and
49 §29-22-18 of this code;

50 ~~(C)~~ (B) Deposited in the School Building Debt Service Fund pursuant to §29-22-18 of this
51 code;

52 ~~(D)~~ (C) Deposited in the School Major Improvement Fund pursuant to §11-15-30 of this
53 code;

54 ~~(E)~~ (D) Received, directly or indirectly, from any source for use in any project completed
55 pursuant to this article;

56 ~~(F)~~ (E) Received by the authority for the purposes of this article; and

57 ~~(G)~~ (F) Deposited in the Excess Lottery School Building Debt Services Fund pursuant to
58 §29-22-18a of this code.

59 ~~(9)~~ (8) "School major improvement plan" means a 10-year school maintenance plan that:

60 (A) Is prepared by a county board in accordance with the guidelines established by the
61 authority and incorporated in its Countywide Comprehensive Educational Facilities Plan, or is
62 prepared by the state board or the administrative council of an area vocational educational center

63 in accordance with the guidelines if the entities seek funding from the authority for a major
64 improvement project;

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

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

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

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

73 ~~(40)~~ (9) "School major improvement project" means a project with a cost greater than
74 \$50,000 and less than \$1 million for the renovation, expansion, repair and safety upgrading of
75 existing school facilities, buildings and structures, including the substantial repair or upgrading of
76 equipment, machinery, building systems, utilities and other similar items related to the renovation,
77 repair or upgrading in the furtherance of a school major improvement plan. A major improvement
78 project does not include such items as books, computers or equipment used for instructional
79 purposes; fuel; supplies; routine utility services fees; routine maintenance costs; ordinary course
80 of business improvements; or other items which are customarily considered to result in a current
81 or ordinary course of business operating charge.

§18-9D-3. Powers of authority; School Building Authority Fund.

1 (a) The School Building Authority has the power:

2 (1) To sue and be sued, plead and be impleaded;

3 (2) To have a seal and alter the same at pleasure;

4 (3) To contract to acquire and to acquire, in the name of the authority, by purchase, lease-
5 purchase not to exceed a term of 25 years, or otherwise, real property or rights or easements

6 necessary or convenient for its corporate purposes and to exercise the power of eminent domain
7 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 §5A-3-1, *et seq.* of this code: *Provided, however*, That notwithstanding any
18 other provisions of this code, any authority of the Attorney General of this state relating to the
19 review of contracts and other documents to effectuate the issuance of bonds under this article
20 shall be exclusively limited to the form of the contract and document: *Provided further*, That the
21 Attorney General of this state shall complete all reviews of contracts and documents relating to
22 the issuance of bonds under this article within 10 calendar days of receipt of the contract and
23 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 100 year flood plain at which authority
32 funds are expended;

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

35 (12) To assist any county board of education that chooses to acquire land, buildings and
36 capital improvements to existing school buildings and property for use as public school facilities,
37 by lease from a private or public lessor for a term not to exceed 25 years with an option to
38 purchase pursuant to an investment contract with the lessor on such terms and conditions as may
39 be determined to be in the best interests of the authority, the State Board of Education and the
40 county board of education, consistent with the purposes of this article, by transferring funds to the
41 State Board of Education as provided in §18-9D-15(f) of this code for the use of the county board
42 of education;

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

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

50 (15) To contract for architectural, engineering or other professional services considered
51 necessary or economical by the authority to provide consultative or other services to the authority
52 ~~or to any regional educational service agency~~ or county board requesting professional services
53 offered by the authority, to evaluate any facilities plan or any project encompassed in the plan, to
54 inspect existing facilities or any project that has received or may receive funding from the authority
55 or to perform any other service considered by the authority to be necessary or economical.

56 Assistance to the ~~region or~~ district may include the development of preapproved systems, plans,
57 designs, models or documents; advice or oversight on any plan or project; or any other service
58 that may be efficiently provided to ~~Regional Educational Service Agencies or~~ county boards by
59 the authority;

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

63 (17) To transfer moneys to custodial accounts maintained by the School Building Authority
64 with a state financial institution from the school construction fund and the school improvement
65 fund created in the State Treasury pursuant to the provisions of §18-9D-6 of this code, as
66 necessary to the performance of any contracts executed by the School Building Authority in
67 accordance with the provisions of this article;

68 (18) To enter into agreements with county boards and persons, firms or corporations to
69 facilitate the development of county board projects and county board facilities plans. The county
70 board participating in an agreement shall pay at least 25 percent of the cost of the agreement.
71 Nothing in this section shall be construed to supersede, limit or impair the authority of county
72 boards to develop and prepare their projects or plans;

73 (19) To encourage any project or part thereof to provide opportunities for students to
74 participate in supervised, unpaid work-based learning experiences related to the student's
75 program of study approved by the county board. The work-based learning experience must be
76 conducted in accordance with a formal training plan approved by the instructor, the employer and
77 the student and which sets forth at a minimum the specific skills to be learned, the required
78 documentation of work-based learning experiences, the conditions of the placement, including
79 duration and safety provisions, and provisions for supervision and liability insurance coverage as
80 applicable. Projects involving the new construction and renovation of vocational-technical and
81 adult education facilities should provide opportunities for students to participate in supervised

82 work-based learning experiences, to the extent practical, which meet the requirements of this
83 subdivision. Nothing in this subdivision may be construed to affect registered youth apprenticeship
84 programs or the provisions governing those programs; and

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

86 (b) The special revenue account in the State Treasury known as the "School Building
87 Authority Fund" is hereby continued. The fund is to be administered by the School Building
88 Authority. Expenditures from the fund shall be for the purposes set forth in this article and are not
89 authorized from collections but are to be made only in accordance with appropriation by the
90 Legislature and in accordance with the provisions of §12-3-1, *et seq.* of this code ~~and upon~~
91 ~~fulfillment of the provisions of article three, chapter twelve of this code and upon fulfillment of the~~
92 provisions of §11B-2-1, *et seq.* of this code.

**§18-9D-4. School building authority authorized to issue refunding revenue bonds and/or
general obligation bonds for school building capital improvement projects.**

1 ~~(a)~~ The School Building Authority may by resolution, in accordance with the provisions of
2 this article, issue revenue bonds of the authority from time to time, either to finance the cost of
3 construction projects for public schools in this state, or to refund, at the discretion of the authority,
4 bonds issued to finance the cost of the construction projects for public schools in this state and
5 outstanding under and pursuant to the provisions of this article ~~as in effect prior to July 20, 1993.~~
6 The principal of, interest and redemption premium, if any, on such bonds shall be payable solely
7 from the special fund herein provided for such payment.

8 ~~(b) The School Building Authority may, in accordance with the provisions of the~~
9 ~~Constitution of West Virginia, issue general obligation bonds from time to time as authorized by~~
10 ~~referendum pursuant to resolution duly adopted by the Legislature, to finance the cost of~~
11 ~~construction projects for public schools in this state~~

**§18-9D-5. School building authority authorized to offer individual higher education savings
plans.**

1 [Repealed.]

§18-9D-6. ~~School Building Capital Improvements Fund in State Treasury~~ School Construction Fund in State Treasury; School Building Debt Service Fund in State Treasury; School Improvement Fund in State Treasury; collections to be paid into special funds; Excess Lottery School Building Debt Service Fund in State Treasury; authority to pledge the collections as security for refunding revenue bonds; authority to finance projects on a cash basis.

1 (a) ~~There is continued in the state Treasury a The School Building Capital Improvements~~
2 ~~Fund is closed and terminated upon the effective date of the 2019 enactment of this section. Any~~
3 ~~moneys remaining in the fund shall be transferred to the School Construction Fund. to be~~
4 ~~expended by the authority as provided in this article. The School Building Capital Improvements~~
5 ~~Fund shall be an interest-bearing account with interest credited to and deposited in the School~~
6 ~~Building Capital Improvements Fund and expended in accordance with the provisions of this~~
7 ~~article.~~

8 ~~The School Building Authority may pledge all or any part of the revenues paid into the~~
9 ~~School Building Capital Improvements Fund that are needed to meet the requirements of any~~
10 ~~revenue bond issue or issues authorized by this article prior to July 20, 1993, or revenue bonds~~
11 ~~issued to refund revenue bonds issued prior to that date, including the payment of principal of,~~
12 ~~interest and redemption premium, if any, on the revenue bonds and the establishing and~~
13 ~~maintaining of a reserve fund or funds for the payment of the principal of, interest and redemption~~
14 ~~premium, if any, on the revenue bond issue or issues when other moneys pledged may be~~
15 ~~insufficient for the payment of the principal, interest and redemption premium, including any~~
16 ~~additional protective pledge of revenues that the authority in its discretion has provided by~~
17 ~~resolution authorizing the issuance of the bonds or in any trust agreement made in connection~~
18 ~~with the bond issue. Additionally, the authority may provide in the resolution and in the trust~~
19 ~~agreement for priorities on the revenues paid into the School Building Capital Improvements Fund~~

20 that are necessary for the protection of the prior rights of the holders of bonds issued at different
21 times under the provisions of this article.

22 Any balance remaining in the School Building Capital Improvements Fund after the
23 authority has issued bonds authorized by this article and after the requirements of all funds,
24 including reserve funds established in connection with the bonds issued prior to July 20, 1993,
25 pursuant to this article have been satisfied may be used for the redemption of any of the
26 outstanding bonds issued under this article which by their terms are then redeemable, or for the
27 purchase of the bonds at the market price, but not exceeding the price, if any, at which the bonds
28 are in the same year redeemable and all bonds redeemed or purchased shall immediately be
29 canceled and shall not again be issued.

30 The School Building Authority, in its discretion, may use the moneys in the School Building
31 Capital Improvements Fund to finance the cost of projects authorized in accordance with the
32 provisions of section sixteen of this article on a cash basis. Any pledge of moneys in the fund for
33 revenue bonds issued prior to July 20, 1993, is a prior and superior charge on the fund over the
34 use of any of the moneys in the fund to pay for the cost of any project on a cash basis: *Provided,*
35 That any expenditures from the fund, other than for the retirement of revenue bonds, may only be
36 made by the authority in accordance with the provisions of this article

37 (b) There is continued in the State Treasury a special revenue fund named the School
38 Building Debt Service Fund into which shall be deposited the amounts specified in §29-22-18 of
39 this code. All amounts deposited in the fund shall be pledged to the repayment of the principal,
40 interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds
41 authorized by this article for which moneys deposited in the School Building Debt Service Fund
42 have been pledged by the authority: *Provided,* That deposited moneys may not be pledged to the
43 repayment of any revenue bonds issued prior to January 1, 1994, or with respect to revenue
44 bonds issued for the purpose of refunding revenue bonds issued prior to January 1, 1994
45 Additionally, the authority may provide in the resolution and in the trust agreement for priorities

46 on the revenues paid into the School Building Debt Service Fund that are necessary for the
47 protection of the prior rights of the holders of bonds issued at different times under the provisions
48 of this article. On or prior to May 1 of each year, the authority shall certify to the State Lottery
49 Director the principal and interest and coverage ratio requirements for the following fiscal year on
50 any revenue bonds issued on or after January 1, 1994, and for which moneys deposited in the
51 School Building Debt Service Fund have been pledged, or will be pledged, for repayment pursuant
52 to this section.

53 After the authority has issued bonds authorized by this article for which moneys deposited
54 in the School Building Debt Service Fund have been pledged and after the requirements of all
55 funds have been satisfied, including coverage and reserve funds established in connection with
56 the bonds issued pursuant to this article, any balance remaining in the School Building Debt
57 Service Fund may be used for the redemption of any of the outstanding bonds issued under this
58 article, for which moneys deposited in the School Building Debt Service Fund have been pledged,
59 which, by their terms, are then redeemable or for the purchase of the outstanding bonds at the
60 market price, but not to exceed the price, if any, at which the bonds are redeemable and all bonds
61 redeemed or purchased shall be immediately canceled and shall not again be issued: *Provided,*
62 That after the authority has issued bonds authorized by this article and after the requirements of
63 debt service and all associated funds have been satisfied for the fiscal year for which moneys
64 deposited in the School Building Debt Service Fund have been pledged, including coverage and
65 reserve funds established in connection with the bonds issued pursuant to this article, any
66 remaining balance in the School Building Debt Service Fund may be transferred to the School
67 Construction Fund created in subsection (c) of this section and used by the School Building
68 Authority in its discretion to finance the cost of school construction or improvement projects
69 authorized in accordance with the provisions of §18-9D-16 of this code on a cash basis.

70 (c) There is continued in the State Treasury a special revenue fund named the School
71 Construction Fund into which shall be deposited the amounts specified in §11-15-30 of this code,

72 together with any moneys appropriated to the fund by the Legislature. ~~Provided, That for the~~
73 ~~school year beginning July 1, 2004, only, funds from the excess lottery allocated in section~~
74 ~~eighteen a, article twenty two, chapter twenty nine of this code shall not be transferred to the~~
75 ~~School Construction Fund and, in lieu thereof, made available for legislative appropriation:~~
76 ~~Provided, however, That for the school year beginning July 1, 2004, only, up to \$5 million of the~~
77 ~~amounts in the fund may be appropriated by the Legislature for budget shortfalls~~ Beginning in
78 fiscal year ending June 30, 2020, and each fiscal year thereafter, the State Board of Education
79 shall annually request that the Governor include an amount equal to \$24,000,000 in each budget
80 bill as an appropriation for this purpose.

81 Expenditures from the School Construction Fund shall be for the purposes set forth in this
82 article, including lease-purchase payments under agreements made pursuant to §18-9D-15(e) of
83 this code and §18-5-9 of this code and are authorized from collections in accordance with the
84 provisions of §12-3-1, *et seq.* of this code and from other revenues annually appropriated by the
85 Legislature from lottery revenues as authorized by §29-22-18 of this code pursuant to the
86 provisions set forth in §5A-2-1, *et seq.* of this code. Amounts collected which are found, from time
87 to time, to exceed the funds needed for purposes set forth in this article may be transferred to
88 other accounts or funds and redesignated for other purposes by appropriation of the Legislature.
89 The School Construction Fund shall be an interest-bearing account, with the interest credited to
90 and deposited in the School Construction Fund and expended in accordance with the provisions
91 of this article. Deposits to and expenditures from the School Construction Fund are subject to the
92 provisions of §18-9D-15(k) of this code.

93 (d) There is continued in the State Treasury a special revenue fund named the School
94 Major Improvement Fund into which shall be deposited the amounts specified in §11-15-30 of this
95 code, together with any moneys appropriated to the fund by the Legislature. Expenditures from
96 the School Major Improvement Fund shall be for the purposes set forth in this article and are
97 authorized from collections in accordance with the provisions of §12-3-1, *et seq.* of this code and

98 from other revenues annually appropriated by the Legislature from lottery revenues as authorized
99 by §29-22-18 of this code pursuant to the provisions set forth in §5A-2-1, *et seq.* of this code.
100 Amounts collected which are found, from time to time, to exceed the funds needed for purposes
101 set forth in this article may be transferred to other accounts or funds and redesignated for other
102 purposes by appropriation of the Legislature. The School Major Improvement Fund shall be an
103 interest-bearing account, with interest being credited to and deposited in the School Major
104 Improvement Fund and expended in accordance with the provisions of this article.

105 (e) There is created in the State Treasury a special revenue fund named the Excess
106 Lottery School Building Debt Service Fund into which shall be deposited the amounts specified in
107 §29-22-18a of this code. All amounts deposited in the fund shall be pledged, as designated by
108 the authority, to the repayment of the principal, interest and redemption premium, if any, on
109 revenue bonds or refunding revenue bonds authorized by §18-9D-4b of this code. On or prior to
110 May 1 of each year, the authority shall certify to the state Lottery Director the principal and interest
111 and coverage ratio requirements for the following fiscal year on any revenue bonds issued for
112 which moneys deposited in the Excess Lottery School Building Debt Service Fund have been
113 pledged, or will be pledged, for repayment pursuant to this section.

114 After the authority has issued bonds authorized by this article for which moneys deposited
115 in the Excess Lottery School Building Debt Service Fund have been pledged and after the
116 requirements of all funds have been satisfied, including coverage and reserve funds established
117 in connection with the bonds issued pursuant to this article, any balance remaining in the Excess
118 Lottery School Building Debt Service Fund may be used for the redemption of any of the
119 outstanding bonds issued under this article, for which moneys deposited in the Excess Lottery
120 School Building Debt Service Fund have been pledged, which, by their terms, are then
121 redeemable or for the purchase of the outstanding bonds at the market price, but not to exceed
122 the price, if any, at which the bonds are redeemable and all bonds redeemed or purchased shall
123 be immediately canceled and shall not again be issued: *Provided*, That after the authority has

124 issued bonds authorized by this article and after the requirements of debt service and all
125 associated funds have been satisfied for the fiscal year, including coverage and reserve funds
126 established in connection with the bonds issued pursuant to this article for which moneys
127 deposited in the Excess Lottery School Building Debt Service Fund have been pledged, any
128 remaining balance in the Excess Lottery School Building Debt Service Fund may be transferred
129 to the School Construction Fund created in subsection (c) of this section and used by the School
130 Building Authority in its discretion to finance the cost of school construction or improvement
131 projects authorized in accordance with the provisions of §18-9D-16 of this code on a cash basis.

132 (f) The Legislature finds and declares that the Supreme Court of Appeals of West Virginia
133 has held that the issuance of additional revenue bonds authorized under the School Building
134 Authority Act, as enacted in this article prior to July 20, 1993, constituted an indebtedness of the
135 state in violation of section four, article X of the Constitution of West Virginia, but that revenue
136 bonds issued under this article prior to July 20, 1993, are not invalid.

137 The Legislature further finds and declares that the financial capacity of a county to
138 construct, lease and improve school facilities depends upon the county's bonding capacity (local
139 property wealth), voter willingness to pass bond issues and the county's ability to reallocate other
140 available county funds instead of criteria related to educational needs or upon the ability of the
141 School Building Authority created in this article to issue bonds that comply with the holding of the
142 West Virginia Supreme Court of Appeals or otherwise assist counties with the financing of facilities
143 construction and improvement. The Legislature further finds and declares that this section, as well
144 as ~~section section eighteen, article twenty two, chapter twenty nine~~ §29-22-18 of this code, had
145 been reenacted during the first extraordinary session of the West Virginia Legislature in the year
146 1994 in an attempt to comply with the holding of the Supreme Court of Appeals of West Virginia.

147 The Legislature further finds and declares that it intends, through the reenactment of this
148 section and §29-22-18 of this code, to dedicate a source of state revenues to special revenue
149 funds for the purposes of paying the debt service on bonds and refunding bonds issued

150 subsequent to January 1, 1994, the proceeds of which will be used for the construction and
151 improvement of school building facilities. The Legislature further finds and declares that it intends,
152 through the reenactment of this section and §11-15-30 of this code and §29-22-18 of this code,
153 to appropriate revenues to two special revenue funds for the purposes of construction and
154 improvement of school building facilities. Furthermore, the Legislature intends to encourage
155 county boards to maintain existing levels of county funding for construction, improvement and
156 maintenance of school building facilities and to generate additional county funds for those
157 purposes through bonds and special levies whenever possible. The Legislature further
158 encourages the School Building Authority, the state board and county boards of education to
159 propose uniform project specifications for comparable projects whenever possible to meet county
160 needs at the lowest possible cost.

161 The Legislature further finds and declares that it intends, through the reenactment of this
162 section and §29-22-18 of this code, to comply with the provisions of sections four and six, article
163 X of the Constitution of West Virginia; and section one, article XII of said Constitution.

§18-9D-7. Authority to fix and collect rents.

1 The authority may fix and collect a rental fee for the use of all or any part of a capital
2 improvement project completed under this article to provide revenues for deposit in the ~~school~~
3 ~~building capital improvements fund~~ School Construction Fund to pay, in whole or in part, the
4 principal of, interest and redemption premium, if any, on the bonds authorized to be issued
5 pursuant to this article as the same mature and become due and to make all reserve and other
6 payments to be required by the proceedings which authorize such bonds; to provide any
7 additional protective pledge of revenues and reserve or other payments as the School Building
8 Authority may in its discretion require by the resolution authorizing any issue of bonds pursuant
9 to this article and any trust agreement made in connection therewith; and to make any other
10 payments required or authorized by this article or any proceedings, resolutions or trust
11 agreements authorized hereunder.

§18-9D-8. Use of proceeds of bonds; bonds exempt from taxation.

1 (a) The maximum aggregate amount of bonds outstanding at any time, for which the
2 moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt
3 Service Fund are to be pledged, is \$500 million; however, any amount of bonds for which moneys
4 have been deposited in a sinking fund, reserve fund or other fund established to provide payment
5 of principal or interest on the bonds shall be excluded from the calculation of the maximum
6 aggregate amount of bonds outstanding at any time. The issuance of revenue bonds under the
7 provisions of this article shall be authorized, from time to time, by resolution or resolutions of the
8 School Building Authority, copies of which shall be provided to the Governor, the President of the
9 Senate and the Speaker of the House of Delegates within five days of their approval, which shall
10 set forth the proposed projects authorized in accordance with the provisions of §18-9D-16 of this
11 code and provide for the issuance of bonds in amounts sufficient, when sold as provided in this
12 section, to provide moneys considered sufficient by the authority to pay the costs, less the
13 amounts of any other funds available for the costs or from any appropriation, grant or gift for the
14 costs: *Provided*, That bond issues from which bond revenues are to be distributed in accordance
15 with §18-9D-15 of this code for projects authorized pursuant to the provisions of §18-9D-16 of this
16 code are not required to set forth the proposed projects in the resolution. The resolution shall
17 prescribe the rights and duties of the bondholders and the School Building Authority and, for that
18 purpose, may prescribe the form of the trust agreement referred to in this section. The bonds may
19 be issued, from time to time, in such amounts; shall be of such series; bear such date or dates;
20 mature at such time or times not exceeding 40 years from their respective dates; bear interest at
21 such rate or rates; be in such denominations; be in such form, either coupon or registered,
22 carrying such registration, exchangeability and interchangeability privileges; be payable in such
23 medium of payment and at such place or places within or without the state; be subject to such
24 terms of redemption at such prices not exceeding 105 percent of the principal amount of the
25 bonds; and be entitled to such priorities on the revenues paid into the fund pledged for repayment

26 of the bonds as may be provided in the resolution authorizing the issuance of the bonds or in any
27 trust agreement made in connection with the bonds: *Provided, however, That revenue bonds*
28 ~~issued on or after January 1, 1994, and prior to January 1, 2008, which are secured by lottery~~
29 ~~proceeds from section eighteen, article twenty-two, chapter twenty-nine of this code shall mature~~
30 ~~at such time or times not exceeding ten years from their respective dates: *Provided further* That~~
31 revenue bonds issued on or after January 1, 2008, which are secured by lottery proceeds from
32 §29-22-18 or §29-22-18a of this code, shall mature at such time or times not exceeding 20 years
33 from their respective dates.

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

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

49 ~~(d)~~ (c) The proceeds of any bonds shall be used solely for the purpose or purposes as
50 may be generally or specifically set forth in the resolution authorizing those bonds and shall be
51 disbursed in the manner and with the restrictions, if any, that the authority provides in the

52 resolution authorizing the issuance of the bonds or in the trust agreement referred to in this section
53 securing the bonds. If the proceeds of the bonds, by error in calculations or otherwise, are less
54 than the cost of any projects specifically set forth in the resolution, additional bonds may in like
55 manner be issued to provide the amount of the deficiency; and unless otherwise provided for in
56 the resolution or trust agreement hereinafter mentioned, the additional bonds shall be considered
57 to be of the same issue and are entitled to payment from the same fund, without preference or
58 priority, as the bonds before issued for the projects. If the proceeds of bonds issued for the
59 projects specifically set forth in the resolution authorizing the bonds issued by the authority exceed
60 the cost of the bonds, the surplus may be used for any other projects authorized in accordance
61 with the provisions of §18-9D-16 of this code or in any other manner that the resolution authorizing
62 the bonds provides. Prior to the preparation of definitive bonds, the authority may, under like
63 restrictions, issue temporary bonds with or without coupons, exchangeable for definitive bonds
64 upon the issuance of the definitive bonds.

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

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

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

**§18-9D-9. Issuance of revenue refunding bonds; use of moneys; power to enter into
escrow agreements; call for redemption.**

1 The issuance of revenue refunding bonds under the provisions of this article shall be
2 authorized by resolution of the School Building Authority and shall otherwise be subject to the
3 limitations, conditions and provisions of other revenue bonds under this article. Such revenue
4 refunding bonds may be issued in an amount at the option of the authority sufficient to pay either
5 in part or in full, together with interest earned on the investment of the proceeds thereof, whether
6 or not at the time of the issuance of the revenue refunding bonds the hereafter mentioned bonds
7 are payable or callable for optional redemption: (1) The principal of such outstanding bonds; (2)
8 the redemption premium, if any, on such outstanding bonds if they are to be redeemed prior to
9 maturity; (3) the interest due and payable on such outstanding bonds to and including the maturity
10 date thereof or the first date upon which said outstanding bonds are to be redeemed, including
11 any interest theretofore accrued and unpaid; and (4) all expenses of the issuance and sale of said
12 revenue refunding bonds, including all necessary financial and legal expenses, and also including
13 the creation of initial debt service reserve funds. Any existing moneys pledged with respect to the
14 outstanding bonds may be used for any or all of the purposes stated in (1), (2), (3) and (4) above
15 or may be deposited in a sinking fund or reserve fund or other funds for the issue of bonds which
16 have been issued wholly or in part for the purpose of such refunding. Such amount of the proceeds
17 of the revenue refunding bonds as shall be sufficient for the payment of the principal, interest and
18 redemption premium, if any, on such outstanding bonds which will not be immediately due and
19 payable shall be deposited in trust, for the sole purpose of making such payments, in a banking
20 institution chosen by the authority and in accordance with any provisions which may be included
21 in the resolution authorizing the issuance of such bonds or in the trust agreement securing the
22 same. Any of the moneys so deposited in trust may, prior to the date on which such moneys will
23 be needed for the payment of principal of, interest and redemption premium, if any, on such
24 outstanding bonds, be invested and reinvested as determined by the authority, in whole or in part:
25 (a) In direct obligations issued by the United States of America or one of its agencies or in direct
26 obligations of the State of West Virginia; (b) in obligations unconditionally guaranteed by the

27 United States of America as to principal and interest; or (c) in certificates of deposit of a banking
28 corporation or association which is a member of the federal deposit insurance corporation, or
29 successor; but any such certificates of deposit must be fully secured as to both principal and
30 interest by pledged collateral consisting of direct obligations of or obligations guaranteed by the
31 United States of America, or direct obligations of the State of West Virginia, having a market
32 value, excluding accrued interest, at all times at least equal to the amount of the principal of and
33 accrued interest on such certificates of deposit. Any such investments must mature, or be payable
34 in advance of maturity at the option of the holder, and must bear interest in such manner as to
35 provide funds which, together with uninvested money, will be sufficient to pay when due or called
36 for redemption the bonds refunded, together with interest accrued and to accrue thereon and
37 redemption premiums, if any, and such refunding bonds' proceeds or obligations so purchased
38 therewith shall be deposited in escrow and held in trust for the payment and redemption of the
39 bonds refunded: *Provided*, That if interest earned by any investment in such escrow is shown to
40 be in excess of the amounts required from time to time for the payment of interest on and principal
41 of the refunded bonds, including applicable redemption premium, then such excess may be
42 withdrawn from escrow and disbursed in such manner as the authority shall by resolution
43 determine, ~~subject to the provisions of section five of this article~~. Any moneys in the sinking or
44 reserve funds or other funds maintained for the outstanding bonds to be refunded may be applied
45 in the same manner and for the same purpose as are the net proceeds of refunding bonds or may
46 be deposited in the special fund or any reserve funds established for account of the refunding
47 bonds.

48 The authority to issue revenue refunding bonds shall be in addition to any other authority
49 to refund bonds conferred by law.

50 The School Building Authority shall have power to enter into such escrow agreements with
51 such bank or banks and to insert therein such protective and other covenants and provisions as
52 it may consider necessary to permit the carrying out of the provisions of this article and to insure

53 the prompt payment of the principal of and interest and redemption premiums on the revenue
54 bonds refunded.

55 Where any revenue bonds to be refunded are not to be surrendered for exchange or
56 payment and are not to be paid at maturity with escrowed obligations, but are to be paid from
57 such source prior to maturity pursuant to call for redemption exercised under a right of redemption
58 reserved in such revenue bonds, the authority shall, prior to the issuance of the refunding bonds,
59 determine which redemption date or dates shall be used, call such revenue bonds for redemption
60 and provide for the giving of the notice of redemption required by the proceedings authorizing
61 such revenue bonds. Where such notice is to be given at a time subsequent to the issuance of
62 the refunding bonds, the necessary notices may be deposited with the State Treasurer or the
63 bank acting as escrow agent of the refunding bond proceeds and the escrow agent appropriately
64 instructed and authorized to give the required notices at the prescribed time or times. If any officer
65 of the public body signing any such notice shall no longer be in office at the time of the utilization
66 of the notice, the notice shall nevertheless be valid and effective for its intended purpose.

§18-9D-13. ~~Sinking fund for payment~~ Payment of bonds.

1 ~~(a) From the School Building Capital Improvements Fund the School Building Authority~~
2 ~~shall make periodic payments in an amount sufficient to meet the requirements of any issue of~~
3 ~~bonds sold under the provisions of this article prior to January 1, 1994, or for refunding bonds~~
4 ~~issued prior to that date as may be specified in the resolution of the authority authorizing the issue~~
5 ~~thereof and in any trust agreement entered into in connection therewith. The payments so made~~
6 ~~shall be placed as specified in such resolution or trust agreement in a special sinking fund which~~
7 ~~is hereby pledged to and charged with the payment of the principal of the bonds of such issue~~
8 ~~and the interest thereon, and to the redemption or repurchase of such bonds, such sinking fund~~
9 ~~to be a fund for all bonds of such issue without distinction or priority of one over another, except~~
10 ~~as may be provided in the resolution authorizing such issue of bonds. The moneys in the special~~
11 ~~sinking fund, less such reserve for payment of principal and interest and redemption premium, if~~

12 ~~any, as may be required by the resolution of the School Building Authority, authorizing the issue~~
13 ~~or any trust agreement made in connection therewith, may be used for the redemption of any of~~
14 ~~the outstanding bonds payable from such fund which by their terms are then redeemable, or for~~
15 ~~the purchase of bonds at the market price, but not exceeding the price, if any, at which such bonds~~
16 ~~shall in the same year be redeemable; and all bonds redeemed or purchased shall forthwith be~~
17 ~~canceled and shall not again be issued~~

18 (b) From the School Building Debt Service Fund or the Excess Lottery School Building
19 Debt Service Fund, the authority shall make periodic payments in an amount sufficient to meet
20 the requirements of any issue of bonds sold under the provisions of this article ~~on or after January~~
21 ~~1, 1994~~, and for which the authority has pledged revenues in such fund for the payment of such
22 bonds, as may be specified in the resolution of the authority authorizing the issue thereof or in
23 any trust agreement entered into in connection therewith. The payments so made shall be placed
24 as specified in the resolution or trust agreement in a special sinking fund which is hereby pledged
25 to and charged with the payment of the principal of the bonds of the issue and the interest thereon,
26 and to the redemption or repurchase of the bonds, the sinking fund to be a fund for all bonds of
27 the particular issue without distinction or priority of one over another, except as may be provided
28 in the resolution authorizing the issuance of the bonds. The moneys in the special sinking fund,
29 less the reserve for payment of principal and interest and redemption premium, if any, as may be
30 required by the resolution of the School Building Authority authorizing the issue or any trust
31 agreement made in connection therewith, may be used for redemption of any of the outstanding
32 bonds payable from the fund which by their terms are then redeemable, or for the purchase of
33 bonds at the market price, but not exceeding the price, if any, at which such bonds shall in the
34 same year be redeemable; and all bonds redeemed or purchased shall forthwith be canceled and
35 shall not again be issued.

**§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.

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 three percent of the sum of moneys that are
9 determined 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 the provisions of §18-9D-16
20 of this code that service the educational community statewide or, upon application by the state
21 board, for 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 article §18-2B-1, *et seq.* of this code, the authority may allocate

24 and 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 section~~
46 ~~ten, article nine-a of this chapter;~~

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 section~~
58 ~~ten, article nine a of this chapter~~

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

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

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

75 any moneys for a project under this subsection, consider all other funding sources available for
76 the project.

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

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

81 ~~(2) (1)~~ The issuance of revenue bonds for which moneys in the School Building Debt
82 Service Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;

83 ~~(3) (2)~~ Moneys paid into the School Construction Fund pursuant to §18-9D-6 of this code;
84 and

85 ~~(4) (3)~~ Any other moneys received by the authority, except moneys deposited into the
86 School Major Improvement Fund and moneys deposited into the School Access Safety Fund
87 pursuant to §18-9F-5 of this code, shall be allocated and expended on the basis of need and
88 efficient use of resources for projects funded in accordance with the provisions of §18-9D-16 of
89 this code.

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

98 (1) The loan shall be secured in the manner required by the authority, in consultation with
99 the state board, and shall be repaid in a period and bear interest at a rate as determined by the
100 state board and the authority and shall have any terms and conditions that are required by the

101 authority, all of which shall be set forth in a loan agreement among the authority, the state board
102 and the county board;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

174 (l) It is the intent of the Legislature to encourage county boards to explore and consider
175 arrangements with other counties that may facilitate the highest and best use of all available
176 funds, which may result in improved transportation arrangements for students or which otherwise

177 may create efficiencies for county boards and the students. In order to address the intent of the
178 Legislature contained in this subsection, the authority shall grant preference to those projects
179 which involve multicounty arrangements as the authority shall determine reasonable and proper.

180 (m) County boards shall submit all designs for construction of new school buildings to the
181 School Building Authority for review and approval prior to preparation of final bid documents. A
182 vendor who has been debarred pursuant to the provisions of sections §5A-3-33b through §5A-3-
183 33f of this code may not bid on or be awarded a contract under this section.

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

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

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

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

§18-9D-19. Comprehensive high schools.

1 ~~(a) The Legislature finds the following:~~

2 ~~(1) The decline in student enrollment over the last twenty years has necessitated~~
3 ~~consolidation of schools in many counties;~~

4 ~~(2) It is projected that the decline in student enrollment during the period 2002 through~~
5 ~~2012 may be as great as eighteen percent and will continue the necessity to consolidate schools;~~

6 ~~(3) The new consolidated school buildings now being built across the state provide an~~
7 ~~opportunity for communities to have comprehensive high schools that include space for~~
8 ~~vocational technical courses, community college courses and other workforce related courses for~~
9 ~~the students and the public at large;~~

10 ~~(4) Requiring students to be bused to remote vocational centers has sometimes deterred~~
11 ~~student participation in vocational courses and has sometimes been considered a stigma upon~~
12 ~~those students attending vocational courses;~~

13 ~~(5) Offering vocational, community college and workforce programs in close proximity to~~
14 ~~each other compliment the high school and the programs; and~~

15 ~~(6) The change in the season for girls' basketball to coincide with boys' basketball has~~
16 ~~placed significant pressures on the availability of gymnasium space and often has caused~~
17 ~~practices to be scheduled late in the evenings and on weekends, interfering with time needed for~~
18 ~~studying and rest~~

19 (b) (a) When planning the construction of a high school which has been approved by the
20 authority and which meets the required authority efficiencies, the authority shall provide funding
21 for comprehensive vocational facilities to be located, when feasible, on the same site as the high
22 school and may, in cooperation with the Higher Education Policy Commission, established in
23 §18B-1B-1 of this code, provide funding for facilities for community and technical college
24 education. When building in conjunction with the Higher Education Policy Commission, an
25 educational specification must be developed for the proposed new facility by the appropriate
26 institutional governing board as defined in §18B-1-2 of this code. The county board is the fiscal

27 agent for construction. All planning, design, bidding and construction must be completed with
28 authority guidelines and under the supervision of the authority.

29 ~~(e)~~ (b) When planning the construction of a high school which has been approved by the
30 authority and meets the required authority efficiencies, the authority shall provide funding
31 sufficient for the construction of at least one auxiliary gymnasium. The authority may establish
32 standards for the auxiliary gymnasium.

33 ~~(d)~~ (c) Upon application of a county board to construct comprehensive vocational facilities
34 at an existing high school, the authority will provide technical assistance to the county in
35 developing a plan for construction of the comprehensive vocational facility. The facility may, in
36 cooperation with the Higher Education Policy Commission in accordance with the provisions of
37 subsection ~~(b)~~ (a) of this section, include facilities for community and technical college education.
38 Upon development of the plan, the authority shall consider funding based on the following criteria:

39 (1) The distance of any existing vocational facilities from the high schools it serves;

40 (2) The time required to travel to and from the vocational facility to the high schools it
41 serves;

42 (3) The ability of the county board to provide local funds for the construction of new
43 comprehensive vocational facilities;

44 (4) The size of the existing high schools and the demand for vocational technical courses;

45 (5) The age and physical condition of the existing vocational facilities; and

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

47 ~~(e)~~ (d) When planning the construction of a high school in a county which is served by a
48 multicounty vocational technical facility, the county may not be required to include the construction
49 of a comprehensive vocational facility in the plan. If the county board elects to construct a
50 comprehensive vocational facility pursuant to this section, the board shall include the multicounty
51 center director and board in planning programs to be offered at the vocational facility which
52 complement the programs offered at the multicounty center and may as part of the plan include

53 facilities for community and technical college education at the multicounty center. The programs
54 offered at the vocational facility may not replace the programs offered at the multicounty
55 vocational technical center without the consent of the center board.

56 ~~(f)~~ (e) Notwithstanding any other provisions of this section to the contrary, the county board
57 in which there is an existing comprehensive vocational center, may eliminate any vocational
58 offering from a new comprehensive high school if the county board:

59 (1) Completes a comprehensive vocational curriculum study, as required by the authority,
60 including an evaluation of both the programmatic and physical facilities of the existing center and
61 coordinates the county's vocational curriculum; and

62 (2) Submits the plan to the authority for review and obtains the authority's approval.

NOTE: The purpose of this bill is to remove or revise obsolete, outdated, antiquated, inoperative, surplus or superseded provisions of code related to the 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.