WEST virginia legislature

2022 regular session

Introduced

**FISCAL NOTE**

House Bill 4378

By Delegates Hanna and Clark

[Introduced January 25, 2022; Referred to the Committee on Education then Finance]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18-2L-1, §18-2L-2, §18-2L-3, §18-2L-4, §18-2L-4a, §18-2L-4b, §18-2L-4c, §18-2L-4d, §18-2L-5, §18-2L-6, §18-2L-7, §18-2L-8, §18-2L-9, §18-2L-10, §18-2L-11, §18-2L-12, §18-2L-13, §18-2L-14, §18-2L-15, §18-2L-16, and §18-2L-17; and to repeal §18-9D-1, §18-9D-2, §18-9D-3, §18-9D-4, §18-9D-4a, §18-9D-4b, §18-9D-4c, §18-9D-4d, §18-9D-5, §18-9D-6, §18-9D-7, §18-9D-8, §18-9D-9, §18-9D-10, §18-9D-11, §18-9D-12, §18-9D-13, §18-9D-14, §18-9D-15, §18-9D-16, §18-9D-17, §18-9D-18, §18-9D-19, §18-9D-19a, §18-9D-20, and §18-9D-21 of this code, all relating to moving the duties of the School Building Authority (“SBA”) to the State Department of Education under a new office, the Office of School Rehabilitation and Construction; providing definitions; creating powers and authority; allowing the Office of School Rehabilitation and Construction to sell bonds and act in the same manner as the School Building Authority does; and repealing the article creating the School Building Authority.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2L. The Office of School Rehabilitation and Construction.

§18-2L-1. The Office of School Rehabilitation and Construction; powers

The Office of School Rehabilitation and Construction shall consist of the current members of the state Board of Education. The office shall have the same authority as was held by the School Building Authority at the time of passage of this article.

§18-2L-2. Definitions.

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

(1) “Bonds” means bonds issued by the Office of School Rehabilitation and Construction pursuant to this article;

(2) “Construction project” means a project in the furtherance of a facilities plan with a cost greater than $1 million for the new construction, expansion or major renovation of facilities, buildings and structures for school purposes, including:

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

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

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

(D) Construction project does not include such items as books, computers or equipment used for instructional purposes; fuel; supplies; routine utility services fees; routine maintenance costs; ordinary course of business improvements; other items which are customarily considered to result in a current or ordinary course of business operating charge or a major improvement project;

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

(4) “Facilities plan” means the ten-year countywide comprehensive educational facilities plan established by a county board in accordance with guidelines adopted by the Office of School Rehabilitation and Construction to meet the goals and objectives of this article that:

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

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

(C) Includes the school major improvement plan;

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

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

(F) Is approved by the state board and the Office of School Rehabilitation and Construction prior to the distribution of state funds pursuant to this article to any county board or other entity applying for funds;

(5) “Office” means the Office of School Rehabilitation and Construction.

(6) “Project” means a construction project or a major improvement project;

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

(8) “Revenue” or “revenues” means moneys:

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

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

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

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

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

(F) Received by the Office of School Rehabilitation and Construction for the purposes of this article; and

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

(9) “School major improvement plan” means a ten-year school maintenance plan that:

(A) Is prepared by a county board in accordance with the guidelines established by the office and incorporated in its Countywide Comprehensive Educational Facilities Plan, or is prepared by the state board or the administrative council of an area vocational educational center in accordance with the guidelines if the entities seek funding from the Office of School Rehabilitation and Construction for a major improvement project;

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

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

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

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

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

§18-2L-3. Powers of Office of School Rehabilitation and Construction; Office of School Rehabilitation and Construction Fund.

(a) The Office of School Rehabilitation and Construction has the power:

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

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

(3) To contract to acquire and to acquire, in the name of the Office of School Rehabilitation and Construction by purchase, lease-purchase not to exceed a term of 25 years, or otherwise, real property or rights or easements necessary or convenient for its corporate purposes and to exercise the power of eminent domain to accomplish those purposes;

(4) To acquire, hold and dispose of real and personal property for its corporate purposes;

(5) To make bylaws for the management and rule of its affairs;

(6) To appoint, contract with and employ attorneys, bond counsel, accountants, construction and financial experts, underwriters, financial advisers, trustees, managers, officers and such other employees and agents as may be necessary in the judgment of the Office of School Rehabilitation and Construction and to fix their compensation: *Provided*, That contracts entered into by the Office of School Rehabilitation and Construction in connection with the issuance of bonds under this article to provide professional and technical services, including, without limitation, accounting, actuarial, underwriting, consulting, trustee, bond counsel, legal services and contracts relating to the purchase or sale of bonds are subject to the provisions of §5a-3-1 *et seq*. of this code: *Provided*, *however*, That notwithstanding any other provisions of this code, any authority of the Attorney General of this state relating to the review of contracts and other documents to effectuate the issuance of bonds under this article shall be exclusively limited to the form of the contract and document: *Provided further*, That the Attorney General of this state shall complete all reviews of contracts and documents relating to the issuance of bonds under this article within 10 calendar days of receipt of the contract and document for review;

(7) To make contracts and to execute all instruments necessary or convenient to effectuate the intent of and to exercise the powers granted to it by this article;

(8) To renegotiate all contracts entered into by it whenever, due to a change in situation, it appears to the Office of School Rehabilitation and Construction that its interests will be best served;

(9) To acquire by purchase, eminent domain or otherwise all real property or interests in the property necessary or convenient to accomplish the purposes of this article;

(10) To require proper maintenance and insurance of any project authorized under this section, including flood insurance for any facility within the one hundred year flood plain at which Office of School Rehabilitation and Construction funds are expended;

(11) To charge rent for the use of all or any part of a project or buildings at any time financed, constructed, acquired or improved, in whole or in part, with the revenues of the Office of School Rehabilitation and Construction;

(12) To assist any county board of education that chooses to acquire land, buildings and capital improvements to existing school buildings and property for use as public school facilities, by lease from a private or public lessor for a term not to exceed 25 years with an option to purchase pursuant to an investment contract with the lessor on such terms and conditions as may be determined to be in the best interests of the Office of School Rehabilitation and Construction, the State Board of Education and the county board of education, consistent with the purposes of this article, by transferring funds to the State Board of Education as provided in subsection (d), section fifteen of this article for the use of the county board of education;

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

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

(15) To contract for architectural, engineering or other professional services considered necessary or economical by the Office of School Rehabilitation and Construction to provide consultative or other services to the Office of School Rehabilitation and Construction or to any regional educational service agency or county board requesting professional services offered by the Office of School Rehabilitation and Construction, to evaluate any facilities plan or any project encompassed in the plan, to inspect existing facilities or any project that has received or may receive funding from the Office of School Rehabilitation and Construction or to perform any other service considered by the Office of School Rehabilitation and Construction to be necessary or economical. Assistance to the region or district may include the development of preapproved systems, plans, designs, models or documents; advice or oversight on any plan or project; or any other service that may be efficiently provided to Regional Educational Service Agencies or county boards by the Office of School Rehabilitation and Construction;

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

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

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

(19) To encourage any project or part thereof to provide opportunities for students to participate in supervised, unpaid work-based learning experiences related to the student’s program of study approved by the county board. The work-based learning experience must be conducted in accordance with a formal training plan approved by the instructor, the employer and the student and which sets forth at a minimum the specific skills to be learned, the required documentation of work-based learning experiences, the conditions of the placement, including duration and safety provisions, and provisions for supervision and liability insurance coverage as applicable. Projects involving the new construction and renovation of vocational-technical and adult education facilities should provide opportunities for students to participate in supervised work-based learning experiences, to the extent practical, which meet the requirements of this subdivision. Nothing in this subdivision may be construed to affect registered youth apprenticeship programs or the provisions governing those programs; and

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

(b) A special revenue account in the State Treasury shall be established and be known as the “Office of School Rehabilitation and Construction Fund.”  The fund is to be administered by the Office of School Rehabilitation and Construction.  Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1 *et seq*. of this code and upon fulfillment of the provisions of §12-3-1 *et seq*. of this code and upon fulfillment of the provisions of §11b-2-1 *et seq*. of this code.

§18-2L-4. Office of School Rehabilitation and Construction authorized to issue refunding revenue bonds and/or general obligation bonds for school building capital improvement projects.

(a) The Office of School Rehabilitation and Construction, in collaboration with the Office of School Operations and Finance may by resolution, in accordance with the provisions of this article, issue revenue bonds of the Office of School Rehabilitation and Construction from time to time, either to finance the cost of construction projects for public schools in this state, or to refund, at the discretion of the Office of School Rehabilitation and Construction, bonds issued to finance the cost of the construction projects for public schools in this state and outstanding under and pursuant to the provisions of this article. The principal of, interest and redemption premium, if any, on such bonds shall be payable solely from the special fund herein provided for such payment.

(b) The Office of School Rehabilitation and Construction, in collaboration with the Office of School Operations and Finance may, in accordance with the provisions of the Constitution of West Virginia, issue general obligation bonds from time to time as authorized by referendum pursuant to resolution duly adopted by the Legislature, to finance the cost of construction projects for public schools in this state.

§18-2L-4a. Savings from issuance of refunding bonds.

Any aggregate savings resulting from the issuance of refunding bonds pursuant to section four of this article shall be retained by the Office of School Rehabilitation and Construction. Any savings shall be utilized solely for the construction and maintenance of schools and may not be used to fund administrative costs of the Office of School Rehabilitation and Construction.

§18-2L-4b. Office of School Rehabilitation and Construction authorized to issue bonds and pay debt service on bonds with funds distributed from State Excess Lottery Fund.

The Office of School Rehabilitation and Construction is expressly authorized to issue bonds and pay debt service on bonds pursuant to the provisions of this article with funds distributed from the State Excess Lottery Fund under §29-22-18a of this code and deposited into the Excess Lottery School Building Debt Service Fund and any federal subsidies received by the Office of School Rehabilitation and Construction and deposited into the Excess Lottery School Building Debt Service Fund with respect to bonds authorized by this section.

§18-2L-4c. Office of School Rehabilitation and Construction authorized to temporarily finance projects through the issuance of loans, notes or other evidences of indebtedness.

The Office of School Rehabilitation and Construction may by resolution, in accordance with the provisions of this article, temporarily finance the cost of projects and other expenditures permitted under this article for public schools, including, but not limited to, comprehensive high schools and comprehensive middle schools as defined in this article, in this state through the issuance of loans, notes or other evidences of indebtedness: *Provided*, That the principal amount of loans, notes or other evidences of indebtedness outstanding at any one time shall not exceed $16 million: *Provided, however*, That the principal of, interest and premium, if any, on and fees associated with any such temporary financing shall be payable solely from the sources from which the principal of, interest and premium, if any, on bonds is payable under this article or from the proceeds of bonds.

§18-2L-4d. Emergency facility and equipment repair or replacement fund for financially distressed counties.

From the funds available to it the Office of School Rehabilitation and Construction shall maintain a reserve fund in the amount of not less than $600,000 for the purpose of making emergency grants to financially distressed county boards to assist them in making repairs or performing urgent maintenance to facilities or facility related equipment or facility related equipment replacement necessary to maintain the serviceability or structural integrity of school facilities currently in use or necessary for educating the students of the county.  The grants shall be made in accordance with guideline established by the Office of School Rehabilitation and Construction.  For the purposes of this section, “financially distressed county” means a county either in deficit or on the most recently established watch list established by the Department of Education of those counties at-risk of becoming in deficit.

§18-2L-5. Office of School Rehabilitation and Construction authorized to offer individual higher education savings plans.

(a) Legislative findings. -- The Legislature hereby finds and declares that:

(1) It is an essential function of state government to encourage postsecondary education in order to increase the education level of the residents of the State of West Virginia.

(2) Tuition, fees and other costs at institutions of higher education are difficult for many to afford and are difficult to predict in order to enable individuals and families to plan for the payment of such costs.

(3) Students in elementary and secondary schools tend to achieve a higher standard of performance when the payment of tuition, fees and other costs for their higher education is secured.

(4) It is in the best interest of the people of the State of West Virginia and is necessary for the public health, safety and welfare to encourage state residents desiring a higher education to enroll in institutions of higher education in order to provide well-educated and informed citizens.

(b) Purpose. -- In light of the findings described in subsection (a) of this section and in light of the purposes of this article, the Legislature declares that the purpose of this section is to encourage higher education and the means of paying costs relating thereto by (1) authorizing establishment of higher education savings plan programs; and (2) providing funding for such programs through the sale and purchase of Office of School Rehabilitation and Construction revenue bonds to be used to make capital improvements for primary and secondary educational facilities in this state, or through the sale and purchase of refunding revenue bonds, as provided in this article.

(c) Authorization. -- The Office of School Rehabilitation and Construction is authorized to offer to the general public one or more higher education savings plan programs. In order to establish, operate and maintain an efficient and effective program or programs, the Office of School Rehabilitation and Construction shall have such additional powers as are necessary or reasonably desirable to implement such a program or programs. These additional powers shall include, but are not limited to, the power to:

(1) Issue revenue bonds in accordance with the provisions of this section and as authorized by this article;

(2) Permit employees of the State of West Virginia and its subdivisions to purchase through payroll deductions by their employer bonds of not less than $1,000 maturity increments when issued pursuant to this section;

(3) As deemed appropriate and practical, offer bond issues which take into consideration the various needs of different individuals participating in a higher education savings plan program;

(4) Offer a rate or rates of interest on bonds purchased pursuant to such a program which encourages maximum participation;

(5) Execute a separate trust agreement or agreements under section twelve of this article for bonds sold pursuant to an individual higher education savings plan program established under this section;

(6) Transfer available moneys of the Office of School Rehabilitation and Construction, including revenues, investment earnings on funds or accounts established in connection with the issuance of bonds and moneys available from any other source, to funds or accounts as may be necessary or desirable in establishing a higher education savings plan program, including, but not limited to, escrow funds, investment agreements or similar instruments;

(7) Establish program guidelines for the administration of a higher education savings plan program.

(d) Construction. -- Other sections of this article which apply generally to bonds issued under this article shall apply to the revenue bonds or refunding revenue bonds issued under this section. If any language in this section conflicts with language in another section of this article, the language of this section shall control unless such a construction would be unlawful, or would not be in the public interest, or would be contrary to the statements of finding and purpose of this section.

(e) Tax treatment. --

(1) The amount which an individual expends during a taxable year in the purchase of revenue bonds or refunding revenue bonds issued pursuant to this section shall be allowed as a deduction from federal adjusted gross income for such year, or, if not fully deducted during such year, for the remaining four years, until fully deducted, for purposes of the tax imposed by article twenty-one, chapter eleven §11-21-1 *et seq*. of this code, except as provided in subdivision (3) of this subsection.

(2) The interest which an individual earns on revenue bonds or refunding revenue bonds issued under this section shall not be subject to the tax imposed by §11-21-1 *et seq*. of this code, except as provided in subdivision (3) of this subsection.

(3) If the owner of a revenue bond or refunding revenue bonds purchased under this section sells it or receives the proceeds of such bond at maturity or otherwise during a taxable year and does not, within four years of the date of such sale or other disposition, expend an amount equal to such proceeds for tuition, fees, books, reasonable room and board, and child care costs necessary to enable a person to attend an institution of higher education, such proceeds of sale or other disposition not so spent shall be taxed under §11-21-1 *et seq*. of this code, by application of the applicable rate to the taxpayer to the amount not so spent. The amount of tax imposed shall be due and payable on April 15 of the taxable year immediately succeeding the fourth taxable year in which the bond was sold or otherwise disposed of.

(f) Confidentiality. -- The identity of any individual purchasing revenue bonds under this section, the amount of the bonds so purchased by any individual and the amount allowed as an income tax deduction shall be and remain confidential information: *Provided,* That nothing herein shall prohibit the disclosure of the number of individuals purchasing the bonds, the aggregate amount of bond purchased, or other general information which does not breach any individual's confidentiality.

(g) Reports. -- The Office of School Rehabilitation and Construction and the indenture trustee of an individual higher education savings plan program shall make such reports regarding such bonds to the Tax Commissioner and to the individuals of record who own the bonds with respect to bond principal and interest (and the years to which they relate) and such other matters as the Tax Commissioner may reasonably require. The reports required by this section shall be filed with the Tax Commissioner at least annually, at such time and in such manner as the Tax Commissioner may by regulation require.

§18-2L-6. Office of School Rehabilitation and Construction 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.

(a) There is continued in the state Treasury a School Building Capital Improvements Fund to be expended by the Office of School Rehabilitation and Construction as provided in this article. The School Building Capital Improvements Fund shall be an interest-bearing account with interest credited to and deposited in the School Building Capital Improvements Fund and expended in accordance with the provisions of this article.

The office may provide in the resolution and in the trust agreement for priorities on the revenues paid into the School Building Capital Improvements Fund that are necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this article.

The Office of School Rehabilitation and Construction, in its discretion, may use the moneys in the School Building Capital Improvements Fund to finance the cost of projects authorized in accordance with the provisions of section sixteen of this article on a cash basis. Any expenditures from the fund, other than for the retirement of revenue bonds, may only be made by the Office of School Rehabilitation and Construction in accordance with the provisions of this article.

(b) There is continued in the state Treasury a special revenue fund named the School Building Debt Service Fund into which shall be deposited the amounts specified in §29-22-18 of this code. All amounts deposited in the fund shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds authorized by this article for which moneys deposited in the School Building Debt Service Fund have been pledged by the Office of School Rehabilitation and Construction. Additionally, the Office of School Rehabilitation and Construction may provide in the resolution and in the trust agreement for priorities on the revenues paid into the School Building Debt Service Fund that are necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this article. On or prior to May 1 of each year, the Office of School Rehabilitation and Construction shall certify to the state Lottery Director the principal and interest and coverage ratio requirements for the following fiscal year on any revenue bonds issued on or after January 1, 1994, and for which moneys deposited in the School Building Debt Service Fund have been pledged, or will be pledged, for repayment pursuant to this section.

After the Office of School Rehabilitation and Construction has issued bonds authorized by this article for which moneys deposited in the School Building Debt Service Fund have been pledged and after the requirements of all funds have been satisfied, including coverage and reserve funds established in connection with the bonds issued pursuant to this article, any balance remaining in the School Building Debt Service Fund may be used for the redemption of any of the outstanding bonds issued under this article, for which moneys deposited in the School Building Debt Service Fund have been pledged, which, by their terms, are then redeemable or for the purchase of the outstanding bonds at the market price, but not to exceed the price, if any, at which the bonds are redeemable and all bonds redeemed or purchased shall be immediately canceled and shall not again be issued: *Provided*, That after the Office of School Rehabilitation and Construction has issued bonds authorized by this article and after the requirements of debt service and all associated funds have been satisfied for the fiscal year for which moneys deposited in the School Building Debt Service Fund have been pledged, including coverage and reserve funds established in connection with the bonds issued pursuant to this article, any remaining balance in the School Building Debt Service Fund may be transferred to the School Construction Fund created in subsection (c) of this section and used by the Office of School Rehabilitation and Construction in its discretion to finance the cost of school construction or improvement projects authorized in accordance with the provisions of section sixteen of this article on a cash basis.

(c) There is continued in the state Treasury a special revenue fund named the School Construction Fund into which shall be deposited the amounts specified in §11-15-30 of this code, together with any moneys appropriated to the fund by the Legislature.

Expenditures from the School Construction Fund shall be for the purposes set forth in this article, including lease-purchase payments under agreements made pursuant to subsection (e), section fifteen of this article and section nine, article five of this chapter and are authorized from collections in accordance with the provisions of §12-3-1 *et seq*. of this code and from other revenues annually appropriated by the Legislature from lottery revenues as authorized by §29-22-18 of this code pursuant to the provisions set forth in article two, chapter five-a §5a-2-1 *et seq*. of this code. Amounts collected which are found, from time to time, to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature. The School Construction Fund shall be an interest-bearing account, with the interest credited to and deposited in the School Construction Fund and expended in accordance with the provisions of this article. Deposits to and expenditures from the School Construction Fund are subject to the provisions of subsection (k), section fifteen of this article.

(d) There is continued in the state Treasury a special revenue fund named the School Major Improvement Fund into which shall be deposited the amounts specified in §11-15-30 of this code, together with any moneys appropriated to the fund by the Legislature. Expenditures from the School Major Improvement Fund shall be for the purposes set forth in this article and are authorized from collections in accordance with the provisions of article three, chapter twelve of this code and from other revenues annually appropriated by the Legislature from lottery revenues as authorized by §29-22-18 of this code pursuant to the provisions set forth in article two, chapter five-a §5a-2-1 *et seq*. of this code. Amounts collected which are found, from time to time, to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature. The School Major Improvement Fund shall be an interest-bearing account, with interest being credited to and deposited in the School Major Improvement Fund and expended in accordance with the provisions of this article.

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

After the Office of School Rehabilitation and Construction has issued bonds authorized by this article for which moneys deposited in the Excess Lottery School Building Debt Service Fund have been pledged and after the requirements of all funds have been satisfied, including coverage and reserve funds established in connection with the bonds issued pursuant to this article, any balance remaining in the Excess Lottery School Building Debt Service Fund may be used for the redemption of any of the outstanding bonds issued under this article, for which moneys deposited in the Excess Lottery School Building Debt Service Fund have been pledged, which, by their terms, are then redeemable or for the purchase of the outstanding bonds at the market price, but not to exceed the price, if any, at which the bonds are redeemable and all bonds redeemed or purchased shall be immediately canceled and shall not again be issued: *Provided*, That after the Office of School Rehabilitation and Construction has issued bonds authorized by this article and after the requirements of debt service and all associated funds have been satisfied for the fiscal year, including coverage and reserve funds established in connection with the bonds issued pursuant to this article for which moneys deposited in the Excess Lottery School Building Debt Service Fund have been pledged, any remaining balance in the Excess Lottery School Building Debt Service Fund may be transferred to the School Construction Fund created in subsection (c) of this section and used by the Office of School Rehabilitation and Construction in its discretion to finance the cost of school construction or improvement projects authorized in accordance with the provisions of section sixteen of this article on a cash basis.

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

The Legislature further finds and declares that the financial capacity of a county to construct, lease and improve school facilities depends upon the county’s bonding capacity (local property wealth), voter willingness to pass bond issues and the county’s ability to reallocate other available county funds instead of criteria related to educational needs or upon the ability of the Office of School Rehabilitation and Construction created in this article to issue bonds that comply with the holding of the West Virginia Supreme Court of Appeals or otherwise assist counties with the financing of facilities construction and improvement.

The Legislature further finds and declares that it intends, through the reenactment of this section to dedicate a source of state revenues to special revenue funds for the purposes of paying the debt service on bonds and refunding bonds, the proceeds of which will be used for the construction and improvement of school building facilities. The Legislature further finds and declares that it intends, through the reenactment of this section to appropriate revenues to two special revenue funds for the purposes of construction and improvement of school building facilities. Furthermore, the Legislature intends to encourage county boards to maintain existing levels of county funding for construction, improvement and maintenance of school building facilities and to generate additional county funds for those purposes through bonds and special levies whenever possible. The Legislature further encourages the Office of School Rehabilitation and Construction, the state board and county boards of education to propose uniform project specifications for comparable projects whenever possible to meet county needs at the lowest possible cost.

The Legislature further finds and declares that it intends, through the reenactment of this section to comply with the provisions of sections four and six, article X of the Constitution of West Virginia; and section one, article XII of said Constitution.

§18-2L-7. Authority to fix and collect rents.

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

§18-2L-8. Use of proceeds of bonds; bonds exempt from taxation.

(a) The maximum aggregate amount of bonds outstanding at any time, for which the moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are to be pledged, is $500 million; however, any amount of bonds for which moneys have been deposited in a sinking fund, reserve fund or other fund established to provide payment of principal or interest on the bonds shall be excluded from the calculation of the maximum aggregate amount of bonds outstanding at any time. The issuance of revenue bonds under the provisions of this article shall be authorized, from time to time, by resolution or resolutions of the Office of School Rehabilitation and Construction, copies of which shall be provided to the Governor, the President of the Senate and the Speaker of the House of Delegates within five days of their approval, which shall set forth the proposed projects authorized in accordance with the provisions of section sixteen of this article and provide for the issuance of bonds in amounts sufficient, when sold as provided in this section, to provide moneys considered sufficient by the Office of School Rehabilitation and Construction to pay the costs, less the amounts of any other funds available for the costs or from any appropriation, grant or gift for the costs: *Provided,* That bond issues from which bond revenues are to be distributed in accordance with section fifteen of this article for projects authorized pursuant to the provisions of section sixteen of this article are not required to set forth the proposed projects in the resolution. The resolution shall prescribe the rights and duties of the bondholders and the Office of School Rehabilitation and Construction and, for that purpose, may prescribe the form of the trust agreement referred to in this section. The bonds may be issued, from time to time, in such amounts; shall be of such series; bear such date or dates; mature at such time or times not exceeding forty years from their respective dates; bear interest at such rate or rates; be in such denominations; be in such form, either coupon or registered, carrying such registration, exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places within or without the state; be subject to such terms of redemption at such prices not exceeding one hundred five percent of the principal amount of the bonds; and be entitled to such priorities on the revenues paid into the fund pledged for repayment of the bonds as may be provided in the resolution authorizing the issuance of the bonds or in any trust agreement made in connection with the bonds.

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

(c) The proceeds of any bonds shall be used solely for the purpose or purposes as may be generally or specifically set forth in the resolution authorizing those bonds and shall be disbursed in the manner and with the restrictions, if any, that the Office of School Rehabilitation and Construction provides in the resolution authorizing the issuance of the bonds or in the trust agreement referred to in this section securing the bonds. If the proceeds of the bonds, by error in calculations or otherwise, are less than the cost of any projects specifically set forth in the resolution, additional bonds may in like manner be issued to provide the amount of the deficiency; and unless otherwise provided for in the resolution or trust agreement hereinafter mentioned, the additional bonds shall be considered to be of the same issue and are entitled to payment from the same fund, without preference or priority, as the bonds before issued for the projects. If the proceeds of bonds issued for the projects specifically set forth in the resolution authorizing the bonds issued by the Office of School Rehabilitation and Construction exceed the cost of the bonds, the surplus may be used for any other projects authorized in accordance with the provisions of section sixteen of this article or in any other manner that the resolution authorizing the bonds provides. Prior to the preparation of definitive bonds, the Office of School Rehabilitation and Construction may, under like restrictions, issue temporary bonds with or without coupons, exchangeable for definitive bonds upon the issuance of the definitive bonds.

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

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

(f) Any school construction bonds issued under this section shall be issued on parity with any existing Office of School Rehabilitation and Construction bonds previously issued under this article.

§18-2L-9. Issuance of revenue refunding bonds; use of moneys; power to enter into escrow agreements; call for redemption.

The issuance of revenue refunding bonds under the provisions of this article shall be authorized by resolution of the Office of School Rehabilitation and Construction and shall otherwise be subject to the limitations, conditions and provisions of other revenue bonds under this article. Such revenue refunding bonds may be issued in an amount at the option of the Office of School Rehabilitation and Construction sufficient to pay either in part or in full, together with interest earned on the investment of the proceeds thereof, whether or not at the time of the issuance of the revenue refunding bonds the hereafter mentioned bonds are payable or callable for optional redemption: (1) The principal of such outstanding bonds; (2) the redemption premium, if any, on such outstanding bonds if they are to be redeemed prior to maturity; (3) the interest due and payable on such outstanding bonds to and including the maturity date thereof or the first date upon which said outstanding bonds are to be redeemed, including any interest theretofore accrued and unpaid; and (4) all expenses of the issuance and sale of said revenue refunding bonds, including all necessary financial and legal expenses, and also including the creation of initial debt service reserve funds. Any existing moneys pledged with respect to the outstanding bonds may be used for any or all of the purposes stated in (1), (2), (3) and (4) above or may be deposited in a sinking fund or reserve fund or other funds for the issue of bonds which have been issued wholly or in part for the purpose of such refunding. Such amount of the proceeds of the revenue refunding bonds as shall be sufficient for the payment of the principal, interest and redemption premium, if any, on such outstanding bonds which will not be immediately due and payable shall be deposited in trust, for the sole purpose of making such payments, in a banking institution chosen by the Office of School Rehabilitation and Construction and in accordance with any provisions which may be included in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same. Any of the moneys so deposited in trust may, prior to the date on which such moneys will be needed for the payment of principal of, interest and redemption premium, if any, on such outstanding bonds, be invested and reinvested as determined by the Office of School Rehabilitation and Construction, in whole or in part: (a) In direct obligations issued by the United States of America or one of its agencies or in direct obligations of the State of West Virginia; (b) in obligations unconditionally guaranteed by the United States of America as to principal and interest; or (c) in certificates of deposit of a banking corporation or association which is a member of the federal deposit insurance corporation, or successor; but any such certificates of deposit must be fully secured as to both principal and interest by pledged collateral consisting of direct obligations of or obligations guaranteed by the United States of America, or direct obligations of the State of West Virginia, having a market value, excluding accrued interest, at all times at least equal to the amount of the principal of and accrued interest on such certificates of deposit. Any such investments must mature, or be payable in advance of maturity at the option of the holder, and must bear interest in such manner as to provide funds which, together with uninvested money, will be sufficient to pay when due or called for redemption the bonds refunded, together with interest accrued and to accrue thereon and redemption premiums, if any, and such refunding bonds proceeds or obligations so purchased therewith shall be deposited in escrow and held in trust for the payment and redemption of the bonds refunded: *Provided*, That if interest earned by any investment in such escrow is shown to be in excess of the amounts required from time to time for the payment of interest on and principal of the refunded bonds, including applicable redemption premium, then such excess may be withdrawn from escrow and disbursed in such manner as the Office of School Rehabilitation and Construction shall by resolution determine, subject to the provisions of section five of this article. Any moneys in the sinking or reserve funds or other funds maintained for the outstanding bonds to be refunded may be applied in the same manner and for the same purpose as are the net proceeds of refunding bonds or may be deposited in the special fund or any reserve funds established for account of the refunding bonds.

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

The Office of School Rehabilitation and Construction shall have power to enter into such escrow agreements with such bank or banks and to insert therein such protective and other covenants and provisions as it may consider necessary to permit the carrying out of the provisions of this article and to insure the prompt payment of the principal of and interest and redemption premiums on the revenue bonds refunded.

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

§18-2L-10. Bonds may be issued for combined purposes.

The Office of School Rehabilitation and Construction may authorize by one or more resolutions a single issue of bonds for the combined purposes of refunding the outstanding bonds as herein authorized and financing one or more of the projects authorized hereunder.

§18-2L-11. Bonds shall be negotiable instruments.

The revenue bonds, revenue refunding bonds and bonds issued for combined purposes under the provisions of this article shall, independently of the requirements of any other provision of law and solely by virtue of the provisions of this section, be and have all the qualities and incidents of negotiable instruments.

§18-2L-12. Trust agreements for holders of bonds.

The Office of School Rehabilitation and Construction may enter into an agreement or agreements with any trust company, or with any bank having the powers of a trust company, either within or outside the state, to act as trustee for the holders of bonds issued hereunder, setting forth therein such duties and containing such legally binding covenants of the Office of School Rehabilitation and Construction with the holders of the bonds in respect to the payment of the bond; the fixing and collecting of rents hereinbefore referred to; the completion of authorized projects; the custody, safeguarding and disposition of the proceeds of the bonds, and the moneys in such special funds, sinking funds, reserve funds, or any other moneys or funds, notwithstanding provisions of this article to the contrary; the security for moneys on hand or on deposit, and the rights and remedies of the trustee and the holders of the bonds, as may be agreed upon with the purchasers of such bonds; provisions restricting the individual right of action of bondholders as is customary in trust agreements respecting bonds and debentures of municipal corporations, protecting and enforcing the rights and remedies of the trustee and the bondholders; and provisions as to any other matters which are deemed necessary and advisable by the Office of School Rehabilitation and Construction in the best interests of the state and to enhance the marketability of the bonds. Any such agreement entered into by the Office of School Rehabilitation and Construction shall be binding in all respects on such authority and its successors from time to time in accordance with the terms thereof; and all the provisions thereof shall be enforceable by appropriate proceedings at law or in equity, or otherwise.

§18-2L-13. Sinking fund for payment of bonds.

(a) From the School Building Capital Improvements Fund the Office of School Rehabilitation and Construction shall make periodic payments in an amount sufficient to meet the requirements of any issue of bonds sold under the provisions of this article, or for refunding bonds issued prior to that date as may be specified in the resolution of the Office of School Rehabilitation and Construction authorizing the issue thereof and in any trust agreement entered into in connection therewith. The payments so made shall be placed as specified in such resolution or trust agreement in a special sinking fund which is hereby pledged to and charged with the payment of the principal of the bonds of such issue and the interest thereon, and to the redemption or repurchase of such bonds, such sinking fund to be a fund for all bonds of such issue without distinction or priority of one over another, except as may be provided in the resolution authorizing such issue of bonds. The moneys in the special sinking fund, less such reserve for payment of principal and interest and redemption premium, if any, as may be required by the resolution of the Office of School Rehabilitation and Construction, authorizing the issue or any trust agreement made in connection therewith, may be used for the redemption of any of the outstanding bonds payable from such fund which by their terms are then redeemable, or for the purchase of bonds at the market price, but not exceeding the price, if any, at which such bonds shall in the same year be redeemable; and all bonds redeemed or purchased shall forthwith be canceled and shall not again be issued.

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

§18-2L-14. Credit of state not pledged.

No provisions of this article shall be construed to authorize the Office of School Rehabilitation and Construction at any time or in any manner to pledge the credit or taxing power of the state, nor shall any of the obligations or debts created by the Office of School Rehabilitation and Construction under the authority herein granted be deemed to be obligations of the state.

§18-2L-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.

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

(b) An amount that is not more than ten percent of the sum of moneys that are determined by the Office of School Rehabilitation and Construction to be available for distribution during the then current fiscal year from:

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

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

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

(4) Any other moneys received by the Office of School Rehabilitation and Construction, except moneys paid into the School Major Improvement Fund pursuant to section six of this article and moneys deposited into the School Access Safety Fund pursuant to section five, article nine-f of this chapter, may be allocated and may be expended by the Office of School Rehabilitation and Construction for projects authorized in accordance with the provisions of section sixteen of this article that service the educational community statewide or, upon application by the state board, for educational programs that are under the jurisdiction of the state board. In addition, upon application by the state board or the administrative council of an area vocational educational center established pursuant to article two-b of this chapter, the Office of School Rehabilitation and Construction may allocate and expend under this subsection moneys for school major improvement projects authorized in accordance with the provisions of section sixteen of this article proposed by the state board or an administrative council for school facilities under the direct supervision of the state board or an administrative council, respectively. Furthermore, upon application by a county board, the Office of School Rehabilitation and Construction may allocate and expend under this subsection moneys for school major improvement projects for vocational programs at comprehensive high schools, vocational programs at comprehensive middle schools, vocational schools cooperating with community and technical college programs, or any combination of the three. Each county board is encouraged to cooperate with community and technical colleges in the use of existing or development of new vocational technical facilities. All projects eligible for funds from this subsection shall be submitted directly to the Office of School Rehabilitation and Construction which shall be solely responsible for the project’s evaluation, subject to the following:

(A) The Office of School Rehabilitation and Construction may not expend any moneys for a school major improvement project proposed by the state board or the administrative council of an area vocational educational center unless the state board or an administrative council has submitted a ten-year facilities plan; and

(B) The Office of School Rehabilitation and Construction shall, before allocating any moneys to the state board or the administrative council of an area vocational educational center for a school improvement project, consider all other funding sources available for the project.

(c) An amount that is not more than two percent of the moneys that are determined by the Office of School Rehabilitation and Construction to be available for distribution during the current fiscal year from:

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

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

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

(4) Any other moneys received by the Office of School Rehabilitation and Construction, except moneys deposited into the School Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to section five, article nine-f of this chapter, shall be set aside by the Office of School Rehabilitation and Construction as an emergency fund to be distributed in accordance with the guidelines adopted by the Office of School Rehabilitation and Construction.

(d) An amount that is not more than five percent of the moneys that are determined by the Office of School Rehabilitation and Construction to be available for distribution during the current fiscal year from:

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

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

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

(4) Any other moneys received by the Office of School Rehabilitation and Construction, except moneys deposited into the School Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to section five, article nine-f of this chapter, may be reserved by the Office of School Rehabilitation and Construction for multiuse vocational-technical education facilities projects that may include post-secondary programs as a first priority use. The Office of School Rehabilitation and Construction may allocate and expend under this subsection moneys for any purposes authorized in this article on multiuse vocational-technical education facilities projects, including equipment and equipment updates at the facilities, authorized in accordance with the provisions of section sixteen of this article. If the projects approved under this subsection do not require the full amount of moneys reserved, moneys above the amount required may be allocated and expended in accordance with other provisions of this article. A county board, the state board, an administrative council or the joint administrative board of a vocational-technical education facility which includes post-secondary programs may propose projects for facilities or equipment, or both, which are under the direct supervision of the respective body: *Provided*, That the Office of School Rehabilitation and Construction shall, before allocating any moneys for a project under this subsection, consider all other funding sources available for the project.

(e) The remaining moneys determined by the Office of School Rehabilitation and Construction to be available for distribution during the then current fiscal year from:

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

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

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

(4) Any other moneys received by the Office of School Rehabilitation and Construction, except moneys deposited into the School Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to section five, article nine-f of this chapter, shall be allocated and expended on the basis of need and efficient use of resources for projects funded in accordance with the provisions of section sixteen of this article.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) The Office of School Rehabilitation and Construction may elect to disburse funds for approved construction projects over a period of more than one year subject to the following:

(1) The Office of School Rehabilitation and Construction may not approve the funding of a school construction project over a period of more than three years;

(2) The Office of School Rehabilitation and Construction may not approve the use of more than fifty percent of the revenue available for distribution in any given fiscal year for projects that are to be funded over a period of more than one year; and

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

§18-2L-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.

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

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

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

(B) The procedures for a county to submit a preliminary plan, a plan outline or a proposal for a plan to the Office of School Rehabilitation and Construction prior to the submission of the facilities plan. The preliminary plan, plan outline or proposal for a plan shall be the basis for a consultation meeting between representatives of the county and members of the Office of School Rehabilitation and Construction, including at least one citizen member, which shall be held promptly following submission of the preliminary plan, plan outline or proposal for a plan to assure understanding of the general goals of this article and the objective criteria by which projects will be evaluated, to discuss ways the plan may be structured to meet those goals, and to assure efficiency and productivity in the project approval process;

(C) The manner, time line and process for the submission of each plan and annual plan updates to the Office of School Rehabilitation and Construction;

(D) The requirements for public hearings, comments or other means of providing broad-based input on plans and projects under this article within a reasonable time period as the Office of School Rehabilitation and Construction may consider appropriate. The submission of each plan must be accompanied by a synopsis of all comments received and a formal comment by the county board, the state board or the administrative council of an area vocational educational center submitting the plan;

(E) Any project specifications and maintenance specifications considered appropriate by the Office of School Rehabilitation and Construction including, but not limited to, such matters as energy efficiency, preferred siting, construction materials, maintenance plan and any other matter related to how the project is to proceed;

(F) A prioritization by the county board, the state board or the administrative council submitting the plan of each project contained in the plan. In prioritizing the projects, the county board, the state board or the administrative council submitting the plan shall make determinations in accordance with the objective criteria formulated by the Office of School Rehabilitation and Construction in accordance with this section. The priority list is one of the criteria that shall be considered by the Office of School Rehabilitation and Construction deciding how the available funds should be expended;

(G) The objective means to be set forth in the plan and used in evaluating implementation of the overall plan and each project included in the plan. The evaluation must measure how the plan addresses the goals of this article and any guidelines adopted under this article, and how each project is in furtherance of the facilities plan and school major improvement plan, as applicable, as well as the importance of the project to the overall success of the facilities plan or school major improvement plan and the overall goals of the Office of School Rehabilitation and Construction; and

(H) Any other matters considered by the Office of School Rehabilitation and Construction to be important reflections of how a construction project or a major improvement project or projects will further the overall goals of this article.

(2) Guidelines and procedures which may be adopted by the Office of School Rehabilitation and Construction for requiring that a county board modify, update, supplement or otherwise submit changes or additions to an approved facilities plan or for requiring that a county board, the state board or the administrative council of an area vocational educational center modify, update, supplement or otherwise submit changes or additions to an approved school major improvement plan. The Office of School Rehabilitation and Construction shall provide reasonable notification and sufficient time for the change or addition as delineated in guidelines developed by the Office of School Rehabilitation and Construction. The guidelines shall require an update of the estimated duration of school bus transportation times for students associated with any construction project under consideration by the Office of School Rehabilitation and Construction that includes the closure, consolidation or construction of a school or schools.

(3) Guidelines and procedures for evaluating project proposals that are submitted to the Office of School Rehabilitation and Construction that address, but are not limited to, the following:

(A) Any project funded by the Office of School Rehabilitation and Construction must be in furtherance of the facilities plan or school major improvement plan and in compliance with the guidelines established by the Office of School Rehabilitation and Construction;

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

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

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

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

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

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

(III) Reasonable travel time and practical means of addressing other demographic considerations. The Office of School Rehabilitation and Construction may not approve a project after July 1, 2022, that includes a school closure, consolidation or new construction for which a new bus route will be created for the transportation of students in any of the grade levels prekindergarten through grade five to and from any school included in the project, which new bus route exceeds by more than fifteen minutes the recommended duration of the one-way school bus transportation time for elementary students adopted by the state board as provided in section five-d, article two-e of this chapter, unless the county has received the written permission of the state board to create the route in accordance with said section five-d;

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

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

(VI) Innovations in education;

(VII) Adequate space for projected student enrollments;

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

(IX) Regularly scheduled preventive maintenance; and

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

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

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

(B) The return to each county submitting a project proposal an explanation of the evaluative factors underlying the decision of the Office of School Rehabilitation and Construction to fund or not to fund the project; and

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

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

(c) The State Department of Education shall conduct on-site inspections, at least annually, of all facilities which have been funded wholly or in part by moneys from the Office of School Rehabilitation and Construction or state board to ensure compliance with the county board's facilities plan and school major improvement plan as related to the facilities; to preserve the physical integrity of the facilities to the extent possible; and to otherwise extend the useful life of the facilities: *Provided*, That the state board shall submit reports regarding its on-site inspections of facilities to the Office of School Rehabilitation and Construction within thirty days of completion of the on-site inspections: *Provided, however*, That the state board shall promulgate rules regarding the on-site inspections and matters relating thereto, in consultation with the Office of School Rehabilitation and Construction, as soon as practical and shall submit proposed rules for legislative review no later than December 1, 2022.

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

§18-2L-17. Authority to promulgate rules; legislative authorization; effective date of rules; technical deficiencies waived.

(a) The Office of School Rehabilitation and Construction is hereby empowered to promulgate, adopt, amend or repeal rules in accordance with the provisions of §29A-3A-1 *et seq*. of this code.

(1) Any interpretive or procedural rule shall continue in effect until rescinded or appropriately refiled by the Office of School Rehabilitation and Construction.

(2) Any legislative rule shall continue in effect until approved or rejected by the Legislature or rescinded by the Office of School Rehabilitation and Construction.

(b) Under the provisions of §29A-3A-1 *et seq.* of this code, the Legislature expressly authorizes the promulgation of the rules described in this article, subject only to the limitations with respect to each rule set forth by law authorizing its promulgation. The Legislature further declares that all rules now or hereafter authorized in this article are within the legislative intent of the statute which the rule is intended to implement, extend, apply or interpret.

(c) The effective date of a legislative rule authorized hereto is governed by the provisions of §29A-3A-14 of this code under the following conditions:

(1) The Office of School Rehabilitation and Construction, in promulgating the rule, establishes an effective date which is earlier than that provided by that section, in which case the effective date established by the Office of School Rehabilitation and Construction controls; or

(2) The Legislature, in the bill authorizing the rule, establishes an effective date for the rule, in which case the effective date established by the Legislature controls.

(d) The Legislature further declares each legislative rule now or hereafter authorized under this article to have been validly promulgated, notwithstanding any failure to comply with any requirement of §29A-3A-1 *et seq.* of this code relating to the promulgation of rules at any stage of the promulgation process prior to authorization by the Legislature in this article.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-1. School Building Authority; powers.

[Repealed].

§18-9D-2. Definitions.

[Repealed].

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

[Repealed].

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

[Repealed].

§18-9D-4a. Savings from issuance of refunding bonds.

[Repealed].

§18-9D-4b. School Building Authority authorized to issue bonds and pay debt service on bonds with funds distributed from State Excess Lottery Fund.

[Repealed].

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

[Repealed].

§18-9D-4d. Emergency facility and equipment repair or replacement fund for financially distressed counties.

[Repealed].

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

[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.

[Repealed].

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

[Repealed].

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

[Repealed].

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

[Repealed].

§18-9D-10. Bonds may be issued for combined purposes.

[Repealed].

§18-9D-11. Bonds shall be negotiable instruments.

[Repealed].

§18-9D-12. Trust agreements for holders of bonds.

[Repealed].

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

[Repealed].

§18-9D-14. Credit of state not pledged.

[Repealed].

§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.

[Repealed].

§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.

[Repealed].

§18-9D-17. Limitations on contracts for sale of bonds or other securities.

[Repealed].

§18-9D-18.

[Repealed].

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

[Repealed].

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

[Repealed].

§18-9D-20. Authority to promulgate rules; legislative authorization; effective date of rules; technical deficiencies waived.

[Repealed].﻿

§18-9D-21. Authorizing rules of School Building Authority.

[Repealed].

NOTE: The purpose of this bill is to create the Office of School Rehabilitation and Construction, merging the powers and authority of the School Building Authority into the Office of School Rehabilitation and Construction, removing gubernatorial appointments, and dissolving 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.