

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 324

By Senators Taylor, Azinger, Chapman, Maynard,
Rucker, Martin, and Stuart

[Introduced January 24, 2024; referred
to the Committee on Education]

1 A BILL to amend and reenact §18-9D-1, §18-9D-2, §18-9D-3, §18-9D-4, §18-9D-4a, §18-9D-4b,
 2 §18-9D-4c, §18-9D-4d, §18-9D-6, §18-9D-7, §18-9D-8, §18-9D-9, §18-9D-10, §18-9D-12,
 3 §18-9D-13, §18-9D-14, §18-9D-15, §18-9D-16, §18-9D-17, §18-9D-20, and §18-9D-21 of
 4 the Code of West Virginia, 1931, as amended, all relating to changing the name of the
 5 School Building Authority to the School Maintenance Authority.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9D. SCHOOL BUILDING MAINTENANCE AUTHORITY.

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

1 (a) The School Building Maintenance Authority consists of 11 members, including the
 2 Governor or designee; the State Superintendent of Schools, ex officio; three members of the state
 3 Board of Education, elected by the state board; and six citizens of the state, appointed by the
 4 Governor, by and with the advice and consent of the Senate, who are knowledgeable in matters
 5 relevant to the issues addressed by the authority, one of whom is representative of the interests of
 6 the construction trades.

7 (b) Citizen members are appointed for three-year terms, which are staggered in
 8 accordance with the initial appointments under prior enactment of this section. State Board of
 9 Education members are elected for three-year terms and may not be elected to serve additional
 10 consecutive terms or portions thereof.

11 (c) The Governor or designee serves as chair. The authority shall annually elect one of its
 12 public members as vice chair and shall appoint a secretary, who need not be a member of the
 13 authority and who shall keep records of its proceedings.

14 (d) The Governor appoints an executive director of the authority, with the advice and
 15 consent of the Senate, who serves at the Governor's will and pleasure. The director is responsible
 16 for managing and administering the daily functions of the authority and for performing all other
 17 functions necessary to the effective operation of the authority.

18 (e) The Governor may remove any appointed member for incompetency, neglect of duty,

19 moral turpitude or malfeasance in office. If the Governor removes a member, the Governor shall fill
20 the vacancy for the remainder of the unexpired term in the same manner as the original
21 appointment.

22 (f) The School Building Maintenance Authority shall meet at least quarterly and the citizen
23 members shall be reimbursed for reasonable and necessary expenses actually incurred in the
24 performance of their official duties in a manner consistent with guidelines of the travel
25 management office of the Department of Administration from funds appropriated or otherwise
26 made available for such purpose upon submission of an itemized statement.

27 (g) The acts performed by the members of the state Board of Education in their capacity as
28 members of the School Building Maintenance Authority are solely the acts of the authority.

29 (h) The intent of the amendments to this article during the 2024 regular session of the
30 Legislature is to transition the purpose of the Authority from an entity that focuses primarily on
31 financing school construction and improvements to an entity that focuses primarily on financing
32 school maintenance. Unless the context clearly indicates otherwise, any reference in this Code to
33 the "School Building Authority" after the effective date of this Act means the "School Maintenance
34 Authority".

§18-9D-2. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

34 (C) Includes the school major improvement plan;

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

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

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

41 (6) "Maintenance" means the upkeep and repair of land, buildings, and equipment to keep
42 in good condition and includes but is not limited to landscaping, gutter cleaning, drain cleaning,
43 inspecting for and repairing leaks and any water damage, servicing HVAC systems including
44 replacing filters, painting, pressure washing, replacing windows, replacing flooring, replacing
45 electrical outlets or switches, repairing or replacing rotted wood or rusted metal, repairing or
46 replacing roof, repairing or repaving parking lots, or removing rotted trees that pose a risk to
47 people, buildings, or equipment.

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

49 ~~(7)~~ (8) "Revenue" or "revenues" means moneys:

50 (A) Deposited in the School Construction Fund pursuant to §18-9D-6 of this code.

51 (B) Deposited in the School Construction Fund pursuant to §11-15-30 of this code and §29-
52 22-18 of this code;

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

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

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

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

59 (G) Deposited in the Excess Lottery School Building Debt Services Fund pursuant to §29-
60 22-18a of this code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (8) To renegotiate all contracts entered into by it whenever, due to a change in situation, it
27 appears to the authority that its interests will be best served;

28 (9) To acquire by purchase, eminent domain or otherwise all real property or interests in the

29 property necessary or convenient to accomplish the purposes of this article;

30 (10) To require proper maintenance and insurance of any project authorized under this
31 section, including flood insurance for any facility within the 100-year flood plain at which authority
32 funds are expended;

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

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

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

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

51 (15) To contract for architectural, engineering or other professional services considered
52 necessary or economical by the authority to provide consultative or other services to the authority
53 or county board requesting professional services offered by the authority, to evaluate any facilities
54 plan or any project encompassed in the plan, to inspect existing facilities or any project that has

55 received or may receive funding from the authority or to perform any other service considered by
56 the authority to be necessary or economical. Assistance to the district may include the
57 development of preapproved systems, plans, designs, models, or documents; advice or oversight
58 on any plan or project; or any other service that may be efficiently provided to county boards by the
59 authority;

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

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

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

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

81 adult education facilities should provide opportunities for students to participate in supervised
 82 work-based learning experiences, to the extent practical, which meet the requirements of this
 83 subdivision. Nothing in this subdivision may be construed to affect registered youth apprenticeship
 84 programs or the provisions governing those programs; and

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

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

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

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

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

1 Any aggregate savings resulting from the issuance of refunding bonds pursuant to §18-9D-
 2 4 of this code shall be retained by the School ~~Building~~ Maintenance Authority. Any savings shall be
 3 utilized solely for the construction and maintenance of schools and may not be used to fund
 4 administrative costs of the authority.

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

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

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

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

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

1 From the funds available to it the School Building Maintenance Authority shall maintain a
2 reserve fund in the amount of not less than \$600,000 for the purpose of making emergency grants
3 to financially distressed county boards to assist them in making repairs or performing urgent
4 maintenance to facilities or facility related equipment or facility related equipment replacement
5 necessary to maintain the serviceability or structural integrity of school facilities currently in use or

6 necessary for educating the students of the county. The grants shall be made in accordance with
7 guideline established by the school building authority. For the purposes of this section, "financially
8 distressed county" means a county either in deficit or on the most recently established watch list
9 established by the Department of Education of those counties at-risk of becoming in deficit.

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

1 (a) The School Building Capital Improvements Fund is closed and terminated upon the
2 effective date of the ~~2023~~ 2024 enactment of this section. Any moneys remaining in the fund shall
3 be transferred to the School Construction Fund.

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

17 After the authority has issued bonds authorized by this article for which moneys deposited
18 in the School Building Debt Service Fund have been pledged and after the requirements of all
19 funds have been satisfied, including coverage and reserve funds established in connection with
20 the bonds issued pursuant to this article, any balance remaining in the School Building Debt
21 Service Fund may be used for the redemption of any of the outstanding bonds issued under this
22 article, for which moneys deposited in the School Building Debt Service Fund have been pledged,
23 which, by their terms, are then redeemable or for the purchase of the outstanding bonds at the
24 market price, but not to exceed the price, if any, at which the bonds are redeemable and all bonds
25 redeemed or purchased ~~shall~~ may be immediately canceled and may not again be issued:
26 *Provided*, That after the authority has issued bonds authorized by this article and after the
27 requirements of debt service and all associated funds have been satisfied for the fiscal year for
28 which moneys deposited in the School ~~Building~~ Maintenance Debt Service Fund have been
29 pledged, including coverage and reserve funds established in connection with the bonds issued
30 pursuant to this article, any remaining balance in the School ~~Building~~ Maintenance Debt Service
31 Fund may be transferred to the School Construction Fund created in subsection (c) of this section
32 and used by the School Building Authority in its discretion to finance the cost of school
33 construction or improvement projects authorized in accordance with the provisions of §18-9D-16
34 of this code or on maintenance of school buildings, land, or equipment on a cash basis.

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

38 Expenditures from the School Construction Fund shall be for the purposes set forth in this
39 article, including lease-purchase payments under agreements made pursuant to §18-9D-15 (e) of
40 this code and §18-5-9 of this code and including maintenance of school, building, land, and
41 equipment and are authorized from collections in accordance with the provisions of §12-3-1 *et*
42 *seq.* of this code and from other revenues annually appropriated by the Legislature from lottery

43 revenues as authorized by §29-22-18 of this code pursuant to the provisions set forth in §5A-2-1 *et*
44 *seq.* of this code. Amounts collected which are found, from time to time, to exceed the funds
45 needed for purposes set forth in this article may be transferred to other accounts or funds and
46 redesignated for other purposes by appropriation of the Legislature. The School Construction
47 Fund shall be an interest-bearing account, with the interest credited to and deposited in the School
48 Construction Fund and expended in accordance with the provisions of this article. Deposits to and
49 expenditures from the School Construction Fund are subject to the provisions of §18-9D-15(k) of
50 this code.

51 (d) There is continued in the State Treasury a special revenue fund named the School
52 Major Improvement Fund into which shall be deposited the amounts specified in §11-15-30 of this
53 code, together with any moneys appropriated to the fund by the Legislature. Expenditures from the
54 School Major Improvement Fund shall be for the purposes set forth in this article, including
55 maintenance of school buildings, land, and equipment, and are authorized from collections in
56 accordance with the provisions of §12-3-1 *et seq.* of this code and from other revenues annually
57 appropriated by the Legislature from lottery revenues as authorized by §29-22-18 of this code
58 pursuant to the provisions set forth in §5A-2-1 *et seq.* of this code. Amounts collected which are
59 found, from time to time, to exceed the funds needed for purposes set forth in this article may be
60 transferred to other accounts or funds and redesignated for other purposes by appropriation of the
61 Legislature. The School Major Improvement Fund shall be an interest-bearing account, with
62 interest being credited to and deposited in the School Major Improvement Fund and expended in
63 accordance with the provisions of this article, including maintenance of school buildings, land, and
64 equipment.

65 (e) There is created in the State Treasury a special revenue fund named the Excess
66 Lottery School Building Debt Service Fund into which shall be deposited the amounts specified in
67 §29-22-18a of this code. All amounts deposited in the fund shall be pledged, as designated by the
68 authority, to the repayment of the principal, interest, and redemption premium, if any, on revenue

69 bonds or refunding revenue bonds authorized by §18-9D-4b of this code. On or prior to May 1 of
70 each year, the authority shall certify to the state Lottery Director the principal and interest and
71 coverage ratio requirements for the following fiscal year on any revenue bonds issued for which
72 moneys deposited in the Excess Lottery School Building Debt Service Fund have been pledged,
73 or will be pledged, for repayment pursuant to this section.

74 After the authority has issued bonds authorized by this article for which moneys deposited
75 in the Excess Lottery School Building Debt Service Fund have been pledged and after the
76 requirements of all funds have been satisfied, including coverage and reserve funds established in
77 connection with the bonds issued pursuant to this article, any balance remaining in the Excess
78 Lottery School Building Debt Service Fund may be used for the redemption of any of the
79 outstanding bonds issued under this article, for which moneys deposited in the Excess Lottery
80 School Building Debt Service Fund have been pledged, which, by their terms, are then
81 redeemable or for the purchase of the outstanding bonds at the market price, but not to exceed the
82 price, if any, at which the bonds are redeemable and all bonds redeemed or purchased shall may
83 be immediately canceled and may not again be issued: *Provided*, That after the authority has
84 issued bonds authorized by this article and after the requirements of debt service and all
85 associated funds have been satisfied for the fiscal year, including coverage and reserve funds
86 established in connection with the bonds issued pursuant to this article for which moneys
87 deposited in the Excess Lottery School Building Debt Service Fund have been pledged, any
88 remaining balance in the Excess Lottery School Building Debt Service Fund may be transferred to
89 the School Construction Fund created in subsection (c) of this section and used by the School
90 Building Maintenance Authority in its discretion to finance the cost of school construction or
91 improvement projects authorized in accordance with the provisions of §18-9D-16 of this code or
92 maintenance of school buildings, land, or equipment on a cash basis.

93 (f) Beginning for fiscal year 2024 and each fiscal year thereafter, the School Building
94 Authority shall annually request the Governor to include in the budget bill an amount equal to \$24

95 million for appropriation to the agency's General Revenue Fund. These funds shall be transferred
96 to the School Construction Fund and used for purposes set out within subsection (e) of this
97 section.

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

103 The Legislature further finds and declares that the financial capacity of a county to
104 construct, lease, ~~and~~ improve, and maintain school facilities depends upon the county's bonding
105 capacity (local property wealth), voter willingness to pass bond issues and the county's ability to
106 reallocate other available county funds instead of criteria related to educational needs or upon the
107 ability of the School Building Maintenance Authority created in this article to issue bonds that
108 comply with the holding of the West Virginia Supreme Court of Appeals or otherwise assist
109 counties with the financing of facilities construction and improvement. The Legislature further finds
110 and declares that this section, as well as §29-22-18 of this code, had been reenacted during the
111 first extraordinary session of the West Virginia Legislature in the year 1994 in an attempt to comply
112 with the holding of the Supreme Court of Appeals of West Virginia.

113 The Legislature further finds and declares that it intends, through the reenactment of this
114 section and §29-22-18 of this code, to dedicate a source of state revenues to special revenue
115 funds for the purposes of paying the debt service on bonds and refunding bonds issued
116 subsequent to January 1, 1994, the proceeds of which will be used for the construction and
117 improvement of school building facilities and maintenance of school buildings, land, and
118 equipment. The Legislature further finds and declares that it intends, through the reenactment of
119 this section and §11-15-30 of this code and §29-22-18 of this code, to appropriate revenues to two
120 special revenue funds for the purposes of construction and improvement of school building

121 facilities. Furthermore, the Legislature intends to encourage county boards to maintain existing
122 levels of county funding for construction, improvement, and maintenance of school building
123 facilities and to generate additional county funds for those purposes through bonds and special
124 levies whenever possible. The Legislature further encourages the School Building Maintenance
125 Authority, the state board and county boards of education to propose uniform project specifications
126 for comparable projects whenever possible to meet county needs at the lowest possible cost.

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

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

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

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

1 (a) The maximum aggregate amount of bonds outstanding at any time, for which the
2 moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt
3 Service Fund are to be pledged, is \$500 million; however, any amount of bonds for which moneys
4 have been deposited in a sinking fund, reserve fund or other fund established to provide payment
5 of principal or interest on the bonds shall be excluded from the calculation of the maximum

6 aggregate amount of bonds outstanding at any time. The issuance of revenue bonds under this
7 article shall be authorized, from time to time, by resolution or resolutions of the School ~~Building~~
8 Maintenance Authority, copies of which shall be provided to the Governor, the President of the
9 Senate and the Speaker of the House of Delegates within five days of their approval, which shall
10 set forth the proposed projects authorized in accordance with §18-9D-16 of this code as well as
11 the financing of school building, land, and equipment maintenance costs and provide for the
12 issuance of bonds in amounts sufficient, when sold as provided in this section, to provide moneys
13 considered sufficient by the authority to pay the costs, less the amounts of any other funds
14 available for the costs or from any appropriation, grant or gift for the costs: *Provided*, That bond
15 issues from which bond revenues are to be distributed in accordance with §18-9D-15 of this code
16 for projects authorized pursuant to §18-9D-16 of this code and distributed for maintenance of
17 school buildings, land, and equipment are not required to set forth the proposed projects in the
18 resolution. The resolution shall prescribe the rights and duties of the bondholders and the School
19 ~~Building~~ Maintenance Authority and, for that purpose, may prescribe the form of the trust
20 agreement referred to in this section. The bonds may be issued, from time to time, in such
21 amounts; shall be of such series; bear such date or dates; mature at such time or times not
22 exceeding 40 years from their respective dates; bear interest at such rate or rates; be in such
23 denominations; be in such form, either coupon or registered, carrying such registration,
24 exchangeability and interchangeability privileges; be payable in such medium of payment and at
25 such place or places within or without the state; be subject to such terms of redemption at such
26 prices not exceeding 105 percent of the principal amount of the bonds; and be entitled to the
27 priorities on the revenues paid into the fund pledged for repayment of the bonds as may be
28 provided in the resolution authorizing the issuance of the bonds or in any trust agreement made in
29 connection with the bonds: *Provided, however*, That revenue bonds issued on or after January 1,
30 2008, which are secured by lottery proceeds from §29-22-18 or §29-22-18a of this code, shall
31 mature at such time or times not exceeding 20 years from their respective dates.

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

40 (c) The proceeds of any bonds shall be used solely for the purpose or purposes as may be
41 generally or specifically set forth in the resolution authorizing those bonds and shall be disbursed
42 in the manner and with the restrictions, if any, that the authority provides in the resolution
43 authorizing the issuance of the bonds or in the trust agreement referred to in this section securing
44 the bonds. If the proceeds of the bonds, by error in calculations or otherwise, are less than the cost
45 of any projects or maintenance specifically set forth in the resolution, additional bonds may in like
46 manner be issued to provide the amount of the deficiency; and unless otherwise provided for in the
47 resolution or trust agreement hereinafter mentioned, the additional bonds shall be considered to
48 be of the same issue and are entitled to payment from the same fund, without preference or
49 priority, as the bonds before issued for the projects. If the proceeds of bonds issued for the projects
50 specifically set forth in the resolution authorizing the bonds issued by the authority exceed the cost
51 of the bonds, the surplus may be used for any other projects authorized in accordance with §18-
52 9D-16 of this code or in any other manner that the resolution authorizing the bonds provides. Prior
53 to the preparation of definitive bonds, the authority may, under like restrictions, issue temporary
54 bonds with or without coupons, exchangeable for definitive bonds upon the issuance of the
55 definitive bonds.

56 (d) After the issuance of any revenue bonds, the revenues pledged for the revenue bonds
57 may not be reduced as long as any of the revenue bonds are outstanding and unpaid except under

58 the terms, provisions and conditions that are contained in the resolution, trust agreement or other
59 proceedings under which the revenue bonds were issued.

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

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

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

1 The issuance of revenue refunding bonds under the provisions of this article shall be
2 authorized by resolution of the School ~~Building~~ Maintenance Authority and shall otherwise be
3 subject to the limitations, conditions, and provisions of other revenue bonds under this article. The
4 revenue refunding bonds may be issued in an amount at the option of the authority sufficient to pay
5 either in part or in full, together with interest earned on the investment of the proceeds thereof,
6 whether or not at the time of the issuance of the revenue refunding bonds the hereafter mentioned
7 bonds are payable or callable for optional redemption: (1) The principal of the outstanding bonds;
8 (2) the redemption premium, if any, on the outstanding bonds if they are to be redeemed prior to
9 maturity; (3) the interest due and payable on the outstanding bonds to and including the maturity
10 date thereof or the first date upon which the outstanding bonds are to be redeemed, including any
11 interest theretofore accrued and unpaid; and (4) all expenses of the issuance and sale of said
12 revenue refunding bonds, including all necessary financial and legal expenses, and also including
13 the creation of initial debt service reserve funds. Any existing moneys pledged with respect to the
14 outstanding bonds may be used for any or all of the purposes stated in (1), (2), (3) and (4) above or
15 may be deposited in a sinking fund or reserve fund or other funds for the issue of bonds which
16 have been issued wholly or in part for the purpose of such refunding. Such amount of the proceeds
17 of the revenue refunding bonds as shall be sufficient for the payment of the principal, interest and

18 redemption premium, if any, on the outstanding bonds which will not be immediately due and
19 payable shall be deposited in trust, for the sole purpose of making such payments, in a banking
20 institution chosen by the authority and in accordance with any provisions which may be included in
21 the resolution authorizing the issuance of such bonds or in the trust agreement securing the same.
22 Any of the moneys so deposited in trust may, prior to the date on which such moneys will be
23 needed for the payment of principal of, interest and redemption premium, if any, on the
24 outstanding bonds, be invested and reinvested as determined by the authority, in whole or in part:
25 (a) In direct obligations issued by the United States of America or one of its agencies or in direct
26 obligations of the state of West Virginia; (b) in obligations unconditionally guaranteed by the United
27 States of America as to principal and interest; or (c) in certificates of deposit of a banking
28 corporation or association which is a member of the federal deposit insurance corporation, or
29 successor; but any such certificates of deposit must be fully secured as to both principal and
30 interest by pledged collateral consisting of direct obligations of or obligations guaranteed by the
31 United States of America, or direct obligations of the state of West Virginia, having a market value,
32 excluding accrued interest, at all times at least equal to the amount of the principal of and accrued
33 interest on the certificates of deposit. Any such investments must mature, or be payable in
34 advance of maturity at the option of the holder, and shall bear interest in such manner as to provide
35 funds which, together with uninvested money, will be sufficient to pay when due or called for
36 redemption the bonds refunded, together with interest accrued and to accrue thereon and
37 redemption premiums, if any, and the refunding bonds' proceeds or obligations so purchased
38 therewith shall be deposited in escrow and held in trust for the payment and redemption of the
39 bonds refunded: *Provided*, That if interest earned by any investment in the escrow is shown to be
40 in excess of the amounts required from time to time for the payment of interest on and principal of
41 the refunded bonds, including applicable redemption premium, then the excess may be withdrawn
42 from escrow and disbursed in such manner as the authority shall by resolution determine. Any
43 moneys in the sinking or reserve funds or other funds maintained for the outstanding bonds to be

44 refunded may be applied in the same manner and for the same purpose as are the net proceeds of
45 refunding bonds or may be deposited in the special fund or any reserve funds established for
46 account of the refunding bonds.

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

49 The School Building Maintenance Authority may enter into such escrow agreements with
50 such bank or banks and to insert therein such protective and other covenants and provisions as it
51 may consider necessary to permit the carrying out of the provisions of this article and to ensure the
52 prompt payment of the principal of and interest and redemption premiums on the revenue bonds
53 refunded.

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

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

1 The School Building Maintenance Authority may authorize by one or more resolutions a
2 single issue of bonds for the combined purposes of refunding the outstanding bonds as herein

5 the resolution of the authority authorizing the issue thereof or in any trust agreement entered into
 6 in connection therewith. The payments so made shall be placed as specified in the resolution or
 7 trust agreement in a special sinking fund which is hereby pledged to and charged with the payment
 8 of the principal of the bonds of the issue and the interest thereon, and to the redemption or
 9 repurchase of the bonds, the sinking fund to be a fund for all bonds of the particular issue without
 10 distinction or priority of one over another, except as may be provided in the resolution authorizing
 11 the issuance of the bonds. The moneys in the special sinking fund, less the reserve for payment of
 12 principal and interest and redemption premium, if any, as may be required by the resolution of the
 13 School Building Maintenance Authority authorizing the issue or any trust agreement made in
 14 connection therewith, may be used for redemption of any of the outstanding bonds payable from
 15 the fund which by their terms are then redeemable, or for the purchase of bonds at the market
 16 price, but not exceeding the price, if any, at which the bonds shall in the same year be redeemable;
 17 and all bonds redeemed or purchased shall forthwith be canceled and may not again be issued.

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

1 No provisions of this article shall be construed to authorize the School Building
 2 Maintenance Authority at any time or in any manner to pledge the credit or taxing power of the
 3 state, nor shall any of the obligations or debts created by the School Building Maintenance
 4 Authority under the authority herein granted be deemed to be obligations of the state.

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

1 (a) It is the intent of the Legislature to empower the School Building Maintenance Authority
 2 to facilitate and provide state funds and to administer all federal funds provided for the construction
 3 and major improvement of school facilities as well as for school building, land, and equipment

4 maintenance needs so as to meet the educational needs of the people of this state in an efficient
5 and economical manner. The authority shall make funding determinations in accordance with the
6 provisions of this article and shall assess existing school facilities and each facility's school major
7 improvement plan in relation to the needs of the individual student, the general school population,
8 the communities served by the facilities and facility needs statewide.

9 (b) An amount that is not more than 10 percent of the sum of moneys that are determined
10 by the authority to be available for distribution during the then current fiscal year from:

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

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

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

30 development of new vocational technical facilities. All projects eligible for funds from this
31 subsection shall be submitted directly to the authority which shall be solely responsible for the
32 project's evaluation, subject to the following:

33 (A) Any project funded by the authority shall be in accordance with a comprehensive
34 educational facility plan which must be approved by the state board and the authority. The
35 authority may not expend any moneys for a school major improvement project proposed by the
36 state board or the administrative council of an area vocational educational center unless the state
37 board or an administrative council has submitted a 10-year facilities plan; and

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

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

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

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

46 (3) Any other moneys received by the authority, except moneys deposited into the School
47 Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to
48 §18-9F-5 of this code, shall be set aside by the authority as an emergency fund to be distributed in
49 accordance with the guidelines adopted by the authority.

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

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

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

55 (3) Any other moneys received by the authority, except moneys deposited into the School

56 Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to
57 §18-9F-5 of this code, may be reserved by the authority for multiuse vocational-technical
58 education facilities projects that may include post-secondary programs as a first priority use. The
59 authority may allocate and expend under this subsection moneys for any purposes authorized in
60 this article on multiuse vocational-technical education facilities projects, including equipment and
61 equipment updates at the facilities, authorized in accordance with §18-9D-16 of this code. If the
62 projects approved under this subsection do not require the full amount of moneys reserved,
63 moneys above the amount required may be allocated and expended in accordance with other
64 provisions of this article. A county board, the state board, an administrative council, or the joint
65 administrative board of a vocational-technical education facility which includes post-secondary
66 programs may propose projects for facilities or equipment, or both, which are under the direct
67 supervision of the respective body: *Provided*, That the authority shall, before allocating any
68 moneys for a project under this subsection, consider all other funding sources available for the
69 project.

70 (e) An amount that is not less than 75 percent of the moneys that are determined by the
71 authority to be available for distribution during the current fiscal year from:

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

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

75 (3) Any other moneys received by the authority, except moneys deposited into the School

76 Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to

77 §18-9F-5 of this code, shall be set aside by the authority for distribution to the West Virginia Board

78 of Education or any entities under its general supervision including county boards of education for

79 school building, land, and equipment maintenance in accordance with guidelines adopted by the

80 authority. The authority's guidelines shall ensure that the maintenance funding is distributed

81 equitably regardless of school size.

82 ~~(e)~~ (f) The remaining moneys determined by the authority to be available for distribution
83 during the then current fiscal year from:

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

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

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

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

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

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

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

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

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

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

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

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

129 ~~(g)~~ (h) To encourage county boards to proceed promptly with facilities planning and to
130 prepare for the expenditure of any state moneys derived from the sources described in this
131 section, any county board or other entity to whom moneys are allocated by the authority that fails
132 to expend the money within three years of the allocation shall forfeit the allocation and thereafter is
133 ineligible for further allocations pursuant to this section until it is ready to expend funds in

134 accordance with an approved facilities plan: *Provided*, That the authority may authorize an
135 extension beyond the three-year forfeiture period not to exceed an additional two years. Any
136 amount forfeited shall be added to the total funds available in the School Construction Fund of the
137 authority for future allocation and distribution. Funds may not be distributed for any project or
138 maintenance under this article unless the responsible entity has a facilities plan approved by the
139 state board and the School ~~Building~~ Maintenance Authority and is prepared to commence
140 expenditure of the funds during the fiscal year in which the moneys are distributed.

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

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

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

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

157 (4) At least 75 percent of the money provided for in this section shall be used for
158 maintenance of school buildings, land, and equipment in accordance with guidelines adopted by
159 the authority.

160 (†) (j) Local matching funds may not be required under the provisions of this section.
161 However, this article does not negate the responsibilities of the county boards to maintain school
162 facilities even when the authority is unable to distribute any or sufficient funds to fully cover the
163 expense of maintaining those facilities. Therefore, as a prerequisite for eligibility to receive an
164 allocation of school major improvement funds from the authority, a county board shall provide
165 annual school facility maintenance expenditure data to the authority which shall be jointly
166 reviewed by the authority and the state Department of Education Office of School Facilities and
167 Transportation to assist the authority in its determination of the most meritorious projects to be
168 funded through the School Major Improvement Fund. The state board shall promulgate rules
169 relating to county boards' school facility maintenance budgets, including items which shall be
170 included in these budgets.

171 (†) (k)(1) Any county board may use moneys provided by the authority under this article in
172 conjunction with local funds derived from bonding, special levy, or other sources. Distribution to a
173 county board, or to the state board or the administrative council of an area vocational educational
174 center pursuant to §18-9D15(b) of this code, may be in a lump sum or in accordance with a
175 schedule of payments adopted by the authority pursuant to guidelines adopted by the authority.

176 (2) A county board may apply to the authority for funding under this article as a part of the
177 county's bond finance plan for a proposed capital improvement bond levy to be submitted to the
178 voters of that county. The county board shall first submit a request for the funding to the executive
179 director of the authority prior to the county board's proposed bond levy election. After initial
180 consultation with the executive director, the county board shall prepare a written outline of the
181 bond finance plan, the capital improvements to be made with levy funds, and the amount and
182 timing of funding requested from the authority. The county board shall then present its request at a
183 meeting of the members of the authority.

184 Grants of financial assistance that have received initial approval under this section are
185 contingent upon passage of the bond levy and final approval by the School ~~Building~~ Maintenance

186 Authority of the county's bond finance plan. Any materials produced by the county or its county
187 board that refer to the authority shall include a statement of this contingency and terms.
188 Notwithstanding any other provision of this subsection, financial assistance to be provided by the
189 authority may only be used to pay costs of capital improvements and may not be pledged as
190 security for or repayment of any bonds issued by the county board.

191 Upon passage of bond levy, the county board shall have four years to finalize the project:
192 *Provided*, That the authority may grant an extension to the four years in extenuating
193 circumstances.

194 The provisions of this subsection do not apply to any proposed capital improvement bond
195 levy that is scheduled to be submitted to the voters on or before December 31, 2022.

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

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

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

204 (2) To the extent that funds are available in the School Construction Fund in excess of that
205 amount appropriated in any fiscal year, the excess funds may be expended for projects authorized
206 in accordance with §18-9D-16 of this code and for maintenance of school buildings, land, and
207 equipment.

208 ~~(j)~~ (m) It is the intent of the Legislature to encourage county boards to explore and consider
209 arrangements with other counties that may facilitate the highest and best use of all available funds,
210 which may result in improved transportation arrangements for students, or which otherwise may
211 create efficiencies for county boards and the students. In order to address the intent of the

212 Legislature contained in this subsection, the authority shall grant preference to those projects
213 which involve multicounty arrangements as the authority shall determine reasonable and proper:
214 Provided, That at least 75 percent of the authority's annual distributions shall be for the
215 maintenance of school buildings, land, and equipment.

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

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

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

224 (2) The authority may not approve the use of more than ~~50~~ 12.5 percent of the revenue
225 available for distribution in any given fiscal year for projects that are to be funded over a period of
226 more than one year; and

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

**§18-9D-16. Authority to establish guidelines and procedures for facilities and major
improvement plans; guidelines for modifications and updates, etc.; guidelines for**

project evaluation; submission of certified list of projects to be funded; department on-site inspection of facilities; enforcement of required changes or additions to project plans.

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

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

6 (A) All of the elements of the respective plans as defined in §18-9D-2 of this code;

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

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

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

22 (E) Any project specifications and maintenance specifications considered appropriate by
23 the authority including, but not limited to, such matters as energy efficiency, preferred siting,

24 construction materials, maintenance plan and any other matter related to how the project is to
25 proceed;

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

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

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

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

50 or schools.

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

53 (A) Any project funded by the authority must be in furtherance of the facilities plan or school
54 major improvement plan and in compliance with the guidelines established by the authority;

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

57 (C) If a county board proposes to finance a construction project through a lease with an
58 option to purchase pursuant to an investment contract as described in §18-9D-15(f) of this code,
59 the specifications for the project must include the term of the lease, the amount of each lease
60 payment, including the payment due upon exercise of the option to purchase, and the terms and
61 conditions of the proposed investment contract; and

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

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

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

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

69 (III) Reasonable travel time and practical means of addressing other demographic
70 considerations. The authority may not approve a project after July 1, 2008, that includes a school
71 closure, consolidation or new construction for which a new bus route will be created for the
72 transportation of students in any of the grade levels prekindergarten through grade five to and from
73 any school included in the project, which new bus route exceeds by more than fifteen minutes the
74 recommended duration of the one-way school bus transportation time for elementary students
75 adopted by the state board as provided in §18-2E-5d of this code, unless the county has received

76 the written permission of the state board to create the route in accordance with §18-2E-5d of this
77 code;

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

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

83 (VI) Innovations in education;

84 (VII) Adequate space for projected student enrollments;

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

87 (IX) Regularly scheduled preventive maintenance; and

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

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

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

101 (B) The return to each county submitting a project proposal an explanation of the

102 evaluative factors underlying the decision of the authority to fund or not to fund the project; and

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

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

107 (c) The State Department of Education shall conduct on-site inspections, at least annually,
108 of all facilities which have been funded wholly or in part by moneys from the authority or state
109 board to ensure compliance with the county board's facilities plan and school major improvement
110 plan as related to the facilities; to preserve the physical integrity of the facilities to the extent
111 possible; and to otherwise extend the useful life of the facilities: *Provided*, That the state board
112 shall submit reports regarding its on-site inspections of facilities to the authority within 30 days of
113 completion of the on-site inspections: *Provided, however*, That the state board shall promulgate
114 rules regarding the on-site inspections and matters relating thereto, in consultation with the
115 authority, as soon as practical and shall submit proposed rules for legislative review no later than
116 December 1, 1994.

117 (d) Based on its on-site inspection or notification by the authority to the state board that the
118 changes or additions to a county's board facilities plan or school major improvement plan required
119 by the authority have not been implemented within the time period prescribed by the authority, the
120 state board shall restrict the use of the necessary funds or otherwise allocate funds from moneys
121 appropriated by the Legislature for those purposes set forth in §18-9A-9 of this code.

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

1 (a) When issuing its bonds or other securities pursuant to the provisions of this article, the
2 School Building Maintenance Authority shall not employ or contract with any person or business
3 entity acting as an investment adviser, underwriter, broker, dealer, government securities broker,
4 government securities dealer, transfer agent, attorney, bond counsel, trustee or accountant, if the
5 authority finds, on the record after notice and opportunity for hearing, that employing or contracting

6 with such person or business entity would be contrary to the public interest, and that such person
7 or business entity, or any person associated with such person or entity, whether prior to or
8 subsequent to becoming so associated, has been convicted, within the five years preceding the
9 date when such bonds or other securities are proposed to be issued, of a felony or misdemeanor
10 under the laws of this State, a sister state or the United States of America, involving the sale or
11 purchase of any government security, and if the authority further finds that the offense committed
12 involves:

13 (1) The bribery of a public officer or employee or a member of the immediate family of a
14 public officer or employee;

15 (2) Perjury;

16 (3) Larceny;

17 (4) Any substantially equivalent activity, however denominated by the laws of the relevant
18 jurisdiction; or

19 (5) The conspiracy to commit any such offense.

20 (b) When issuing its bonds or other securities, the School ~~Building~~ Maintenance Authority
21 shall not employ or contract with any person or business entity acting as an investment adviser,
22 underwriter, broker, dealer, government securities broker, government securities dealer, transfer
23 agent, attorney, bond counsel, trustee or accountant, if the authority finds, on the record after
24 notice and opportunity for hearing, that employing or contracting with such person or business
25 entity would be contrary to the public interest, and that such person or business entity, or any
26 person associated with such person or entity, whether prior to or subsequent to becoming so
27 associated, has, within the five years preceding the date when such bonds or other securities are
28 proposed to be issued:

29 (1) Directly or indirectly given, offered or promised money, services, or any other thing of
30 value having a value of greater than one hundred dollars to a public officer or employee or a
31 member of the immediate family of a public officer or employee when the money, service or other

32 thing of value constituted a material part of the factual basis upon which the public officer or
33 employee or a member of the immediate family of the public officer or employee was convicted of a
34 felony or misdemeanor under the laws of this State, a sister state or the United States of America,
35 involving the sale or purchase of any government security; or

36 (2) Willfully aided, abetted, counseled, commanded, induced, or procured a violation which
37 constitutes the basis for a misdemeanor or felony conviction as described in §18-9D-17(a) or §18-
38 9D-17(a)(1) of this code.

39 (c) When issuing its bonds or other securities pursuant to the provisions of this article, the
40 School Building Maintenance Authority shall not employ or contract with any person or business
41 entity acting as an investment adviser, underwriter, broker, dealer, government securities broker,
42 government securities dealer, transfer agent, attorney, bond counsel, trustee or accountant, if the
43 authority finds, on the record after notice and opportunity for hearing, that employing or contracting
44 with such person or business entity would be contrary to the public interest, and that such person
45 or business entity, or any person associated with such person or entity, whether prior to or
46 subsequent to becoming so associated, has conducted or is conducting any business or
47 transaction in which a financial interest is held by a public officer or employee, agent or attorney of
48 the government of this State, or a member of the immediate family of such persons, if the public
49 officer or employee, agent or attorney is in a position whereby he or she may personally and
50 substantially influence the discretionary actions of the authority in connection with the issuance of
51 bonds or other securities, through decision, approval, disapproval, recommendation, the
52 rendering of advice, investigation, or otherwise: *Provided*, That the Ethics Commission shall, on or
53 before the fifteenth day of December, one thousand nine hundred ninety-three, promulgate an
54 emergency rule to establish guidelines and standards for the implementation of this subsection by
55 the authority.

56 (d) For purposes of this section, the term "immediate family" means a spouse and any
57 unemancipated child of a person.

58 (e) The School ~~Building~~ Maintenance Authority may declare void and rescind any contract
 59 with any person or business entity acting as an investment adviser, underwriter, broker, dealer,
 60 government securities broker, government securities dealer, transfer agent, attorney, bond
 61 counsel, trustee or accountant, if the authority finds, on the record after notice and opportunity for
 62 hearing, that continuing to employ or contract with such person or business entity would be
 63 contrary to the public interest, and that such person or business entity, or any person associated
 64 with such person or entity, whether prior to or subsequent to becoming so associated, has
 65 engaged in conduct which would prohibit the authority, under the provisions of this section, from
 66 entering into a contract with such person or business entity if the contract was yet to be executed.

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

1 (a) The authority is hereby empowered to promulgate, adopt, amend, or repeal rules in
 2 accordance with the provisions of article three-a, chapter twenty-nine-a of this code.

3 (b) All rules adopted or promulgated by the authority and in effect on June 8, 2007, shall be
 4 refiled pursuant to the provisions of article three-a, chapter twenty-nine-a of this code on or before
 5 September 1, 2007.

6 (1) Any interpretive or procedural rule shall continue in effect until rescinded or
 7 appropriately refiled by the authority.

8 (2) Any legislative rule shall continue in effect until approved or rejected by the Legislature
 9 or rescinded by the authority.

10 (c) Under the provisions of article three-a, chapter twenty-nine-a of this code, the
 11 Legislature expressly authorizes the promulgation of the rules described in this article, subject
 12 only to the limitations with respect to each rule set forth by law authorizing its promulgation. The
 13 Legislature further declares that all rules now or hereafter authorized in this article are within the
 14 legislative intent of the statute which the rule is intended to implement, extend, apply or interpret.

15 (d) The effective date of a legislative rule authorized in §18-9D-21 of this code is governed

16 by the provisions of §29A-3A-14 of this code under the following conditions:

17 (1) The ~~School Building Authority~~ authority, in promulgating the rule, establishes an
18 effective date which is earlier than that provided by that section, in which case the effective date
19 established by the authority controls; or

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

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

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

1 (a) The legislative rule filed in the State Register on September 27, 2007, relating to the
2 School Building Authority (School Building Authority requirements for Comprehensive Educational
3 Facility Plan rule), is repealed and enrolled as a procedural rule.

4 (b) The legislative rule filed in the State Register on June 26, 2018, relating to the School
5 Building Authority (funding School Building Authority projects rule), is authorized.

6 (c) The legislative rule filed in the State Register on June 26, 2018, relating to the School
7 Building Authority (School Building Authority school planning and design criteria rule), is
8 authorized.

9 (d) The legislative rule filed in the State Register on June 26, 2018, relating to the School
10 Building Authority (School Building Authority project administration and review rule), is authorized.

11 (e) The legislative rule filed in the State Register on June 26, 2018, relating to the School
12 Building Authority (School Building Authority contract and agreements rule), is authorized.

13 (f) The legislative rule filed in the State Register on June 26, 2018, relating to the School
14 Building Authority (School Building Authority reporting procedures rule), is repealed.

15 (g) The legislative rule filed in the State Register on June 26, 2018, relating to the School

16 Building Authority (School Access Safety Act rule), is authorized.

17 (h) The legislative rule filed in the State Register on December 16, 2019, relating to the
18 School Building Authority (School Building Authority Contracts and Agreements; Post-Project
19 Evaluation; Suspension of Right to Bid rule), is authorized.

20 (i) The legislative rule filed in the State Register on December 15, 2021, relating to the
21 School Building Authority (Funding School Building Authority Projects), is authorized.

NOTE: The purpose of this bill is to change the name of the School Building Authority to the School Maintenance 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.