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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

*Regular Session, 2001*

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**ENROLLED**

*Committee Substitute for*

**SENATE BILL NO.** *676*

**(By Senators** *Unger and Snyder* **)**

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**PASSED** *April 14, 2001*

**In Effect** *July 1, 2001* **Passage**

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OFFICE WEST VIRGINIA  
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**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 676**

(SENATORS UNGER AND SNYDER, *original sponsors*)

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[Passed April 14, 2001; to take effect July 1, 2001.]

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AN ACT to amend and reenact section fifteen, article nine-d, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the school building authority; and authorizing distribution of money for building or improvement projects over a period of time or years as the work progresses.

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

That section fifteen, article nine-d, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

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

**§18-9D-15. Legislative intent; distribution of money.**

FILED

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

13 (b) An amount that is no more than three percent of the  
14 sum of moneys that are determined by the authority to be  
15 available for distribution during the then current fiscal  
16 year from: (1) Moneys paid into the school building capital  
17 improvements fund pursuant to section ten, article nine-a  
18 of this chapter; (2) the issuance of revenue bonds for which  
19 moneys in the school building debt service fund are  
20 pledged as security; (3) moneys paid into the school  
21 construction fund pursuant to section six of this article;  
22 and (4) any other moneys received by the authority, except  
23 moneys paid into the school major improvement fund  
24 pursuant to section six of this article, may be allocated and  
25 may be expended by the authority for projects that service  
26 the educational community statewide or, upon application  
27 by the state board, for educational programs that are  
28 under the jurisdiction of the state board. In addition, upon  
29 application by the state board or the administrative  
30 council of an area vocational educational center estab-  
31 lished pursuant to article two-b of this chapter, the  
32 authority may allocate and expend under this section  
33 moneys for school major improvement projects proposed  
34 by the state board or an administrative council for school  
35 facilities under the direct supervision of the state board or  
36 an administrative council, respectively: *Provided*, That  
37 the authority may not expend any moneys for a school  
38 major improvement project proposed by the state board or

39 the administrative council of an area vocational educa-  
40 tional center unless the state board or an administrative  
41 council has submitted a ten-year school major improve-  
42 ment plan, to be updated annually, pursuant to section  
43 sixteen of this article: *Provided, however,* That the  
44 authority shall, before allocating any moneys to the state  
45 board or the administrative council of an area vocational  
46 educational center for a school improvement project,  
47 consider all other funding sources available for the project.

48 (c) An amount that is no more than two percent of the  
49 moneys that are determined by the authority to be avail-  
50 able for distribution during the current fiscal year from:  
51 (1) Moneys paid into the school building capital improve-  
52 ments fund pursuant to section ten, article nine-a of this  
53 chapter; (2) the issuance of revenue bonds for which  
54 moneys in the school building debt service fund are  
55 pledged as security; (3) moneys paid into the school  
56 construction fund pursuant to section six of this article;  
57 and (4) any other moneys received by the authority, except  
58 moneys deposited into the school major improvement fund,  
59 shall be set aside by the authority as an emergency fund to  
60 be distributed in accordance with the guidelines adopted  
61 by the authority.

62 (d) The remaining moneys determined by the authority  
63 to be available for distribution during the then current  
64 fiscal year from: (1) Moneys paid into the school building  
65 capital improvements fund pursuant to section ten, article  
66 nine-a of this chapter; (2) the issuance of revenue bonds  
67 for which moneys in the school building debt service fund  
68 are pledged as security; (3) moneys paid into the school  
69 construction fund pursuant to section six of this article;  
70 and (4) any other moneys received by the authority, except  
71 moneys deposited into the school major improvement fund,  
72 shall be allocated and expended on the basis of need and  
73 efficient use of resources, the basis to be determined by the  
74 authority in accordance with the provisions of section  
75 sixteen of this article.

76 (e) If a county board of education proposes to finance a  
77 project that is approved pursuant to section sixteen of this  
78 article through a lease with an option to purchase leased  
79 premises upon the expiration of the total lease period  
80 pursuant to an investment contract, the authority may  
81 allocate no moneys to the county board in connection with  
82 the project: *Provided*, That the authority may transfer  
83 moneys to the state board of education which, with the  
84 authority, shall lend the amount transferred to the county  
85 board to be used only for a one-time payment due at the  
86 beginning of the lease term, made for the purpose of  
87 reducing annual lease payments under the investment  
88 contract, subject to the following conditions:

89 (1) The loan shall be secured in the manner required by  
90 the authority, in consultation with the state board, and  
91 shall be repaid in a period and bear interest at a rate as  
92 determined by the state board and the authority and shall  
93 have such terms and conditions as are required by the  
94 authority, all of which shall be set forth in a loan agree-  
95 ment among the authority, the state board and the county  
96 board;

97 (2) The loan agreement shall provide for the state board  
98 and the authority to defer the payment of principal and  
99 interest upon any loan made to the county board during  
100 the term of the investment contract, and annual renewals  
101 of the investment contract, among the state board, the  
102 authority, the county board and a lessor: *Provided*, That  
103 in the event a county board which has received a loan from  
104 the authority for a one-time payment at the beginning of  
105 the lease term does not renew the subject lease annually  
106 until performance of the investment contract in its entirety  
107 is completed, the county board is in default and the  
108 principal of the loan, together with all unpaid interest  
109 accrued to the date of the default, shall, at the option of  
110 the authority, in consultation with the state board, become  
111 due and payable immediately or subject to renegotiation  
112 among the state board, the authority and the county board:

113 *Provided, however,* That if a county board renews the  
114 lease annually through the performance of the investment  
115 contract in its entirety, the county board shall exercise its  
116 option to purchase the leased premises: *Provided further,*  
117 That the failure of the county board to make a scheduled  
118 payment pursuant to the investment contract constitutes  
119 an event of default under the loan agreement: *And*  
120 *provided further,* That upon a default by a county board,  
121 the principal of the loan, together with all unpaid interest  
122 accrued to the date of the default, shall, at the option of  
123 the authority, in consultation with the state board, become  
124 due and payable immediately or subject to renegotiation  
125 among the state board, the authority and the county board:  
126 *And provided further,* That if the loan becomes due and  
127 payable immediately, the authority, in consultation with  
128 the state board, shall use all means available under the  
129 loan agreement and law to collect the outstanding princi-  
130 pal balance of the loan, together with all unpaid interest  
131 accrued to the date of payment of the outstanding princi-  
132 pal balance; and

133 (3) The loan agreement shall provide for the state board  
134 and the authority to forgive all principal and interest of  
135 the loan upon the county board purchasing the leased  
136 premises pursuant to the investment contract and perfor-  
137 mance of the investment contract in its entirety.

138 (f) To encourage county boards to proceed promptly  
139 with facilities planning and to prepare for the expenditure  
140 of any state moneys derived from the sources described in  
141 this subsection, any county board failing to expend money  
142 within three years of the allocation to the county board  
143 shall forfeit the allocation and thereafter is ineligible for  
144 further allocations pursuant to this subsection until the  
145 county board is ready to expend funds in accordance with  
146 an approved facilities plan: *Provided,* That the authority  
147 may authorize an extension beyond the three-year forfei-  
148 ture period not to exceed an additional two years. Any  
149 amount forfeited shall be added to the total funds avail-

150 able in the school construction fund of the authority for  
151 future allocation and distribution.

152 (g) The remaining moneys that are determined by the  
153 authority to be available for distribution during the then  
154 current fiscal year from moneys paid into the school major  
155 improvement fund pursuant to section six of this article  
156 shall be allocated and distributed on the basis of need and  
157 efficient use of resources, the basis to be determined by the  
158 authority in accordance with the provisions of section  
159 sixteen of this article: *Provided*, That the moneys may not  
160 be distributed to any county board that does not have an  
161 approved school major improvement plan or to any county  
162 board that is not prepared to commence expenditures of  
163 the funds during the fiscal year in which the moneys are  
164 distributed: *Provided, however*, That any moneys allo-  
165 cated to a county board and not distributed to that county  
166 board shall be deposited in an account to the credit of that  
167 county board, the principal amount to remain to the credit  
168 of and available to the county board for a period of two  
169 years. Any moneys which are unexpended after a  
170 two-year period shall be redistributed on the basis of need  
171 from the school major improvement fund in that fiscal  
172 year.

173 (h) No local matching funds may be required under the  
174 provisions of this section. However, the responsibilities of  
175 the county boards of education to maintain school facili-  
176 ties are not negated by the provisions of this article. To be  
177 eligible to receive an allocation of school major improve-  
178 ment funds from the authority, a county board must have  
179 expended in the previous fiscal year an amount of county  
180 moneys equal to or exceeding the lowest average amount  
181 of money included in the county board's maintenance  
182 budget over any three of the previous five years and must  
183 have budgeted an amount equal to or greater than the  
184 average in the current fiscal year: *Provided*, That the state  
185 board of education shall promulgate rules relating to

186 county boards' maintenance budgets, including items  
187 which shall be included in the budgets.

188 (i) Any county board may use moneys provided by the  
189 authority under this article in conjunction with local funds  
190 derived from bonding, special levy or other sources.  
191 Distribution to a county board, or to the state board or the  
192 administrative council of an area vocational educational  
193 center pursuant to subsection (b) of this section, may be in  
194 a lump sum or in accordance with a schedule of payments  
195 adopted by the authority pursuant to guidelines adopted  
196 by the authority.

197 (j) Funds in the school construction fund shall first be  
198 transferred and expended as follows:

199 Any funds deposited in the school construction fund  
200 shall be expended first in accordance with an appropria-  
201 tion by the Legislature. To the extent that funds are  
202 available in the school construction fund in excess of that  
203 amount appropriated in any fiscal year, the excess funds  
204 may be expended in accordance with the provisions of this  
205 article. Any projects which the authority identified and  
206 announced for funding on or before the first day of  
207 August, one thousand nine hundred ninety-five, or identi-  
208 fied and announced for funding on or before the  
209 thirty-first day of December, one thousand nine hundred  
210 ninety-five, shall be funded by the authority in an amount  
211 which is not less than the amount specified when the  
212 project was identified and announced.

213 (k) It is the intent of the Legislature to encourage county  
214 boards to explore and consider arrangements with other  
215 counties that may facilitate the highest and best use of all  
216 available funds, which may result in improved transporta-  
217 tion arrangements for students, or which otherwise may  
218 create efficiencies for county boards and the students. In  
219 order to address the intent of the Legislature contained in  
220 this subsection, the authority shall grant preference to



221 those projects which involve multicounty arrangements as  
222 the authority shall determine reasonable and proper.

223 (l) County boards shall submit all designs for construc-  
224 tion of new school buildings to the school building author-  
225 ity for review and approval prior to preparation of final  
226 bid documents: *Provided*, That a vendor who has been  
227 debarred pursuant to the provisions of sections thirty-  
228 three-a through thirty-three-f, inclusive, article three,  
229 chapter five-a of this code, may not bid on or be awarded  
230 a contract under this section.

231 (m) The authority may elect to disperse funds for  
232 approved construction projects over a period of more than  
233 one year subject to the following:

234 (1) The authority may not approve the funding of a  
235 project for more than three years; and

236 (2) The authority may not approve the use of more than  
237 fifty percent of the revenue for projects to be funded over  
238 more than one year.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*[Signature]*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

To take effect July 1, 2001.

*[Signature]*  
.....  
Clerk of the Senate

*[Signature]*  
.....  
Clerk of the House of Delegates

*[Signature]*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *is approved* this the *30<sup>th</sup>*  
Day of *April*, 2001.

*[Signature]*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 4/25/01

Time 5:25 pm