# WEST VIRGINIA CODE CHAPTER 18 ARTICLE 9D

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

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

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

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

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

(e) The Governor may remove any appointed member for incompetency, neglect of duty, moral turpitude or malfeasance in office. If the Governor removes a member, the Governor shall fill the vacancy for the remainder of the unexpired term in the same manner as the original appointment.

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

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

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**§18-9D-2. Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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(C) Includes the school major improvement plan;

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

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

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

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

(7) "Revenue" or "revenues" means moneys:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The School Building Authority has the power:

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

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

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

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

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

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

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

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

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

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

(11) To charge rent for the use of all or any part of a project or buildings at any time



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financed, constructed, acquired, or improved, in whole or in part, with the revenues of the authority;

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

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

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

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

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

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

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



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authority of county boards to develop and prepare their projects or plans;

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

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

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

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## §18-9D-4. School building authority authorized to issue refunding revenue bonds for school building capital improvement projects.

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

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

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

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

The School Building Authority is expressly authorized to issue bonds and pay debt service on bonds pursuant to the provisions of this article with funds distributed from the State Excess Lottery Fund under section eighteen-a, article twenty-two, chapter twenty-nine of this code and deposited into the Excess Lottery School Building Debt Service Fund and any federal subsidies received by the School Building Authority and deposited into the Excess Lottery School Building Debt Service Fund with respect to bonds authorized by this section.

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

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

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

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

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

[Repealed.]

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

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

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

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

(c) There is continued in the State Treasury a special revenue fund named the School



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Construction Fund into which shall be deposited the amounts specified in §11-15-30 of this code, together with any moneys appropriated to the fund by the Legislature.

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

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

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

After the authority has issued bonds authorized by this article for which moneys deposited in the Excess Lottery School Building Debt Service Fund have been pledged and after the requirements of all funds have been satisfied, including coverage and reserve funds established in connection with the bonds issued pursuant to this article, any balance



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

(f) Beginning for fiscal year 2023 and each fiscal year thereafter, the School Building Authority shall annually request the Governor to include in the budget bill an amount equal to $24 million for appropriation to the agency's General Revenue Fund. These funds shall be transferred to the School Construction Fund and used for purposes set out within subsection (e) of this section.

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

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

The Legislature further finds and declares that it intends, through the reenactment of this section and §29-22-18 of this code, to dedicate a source of state revenues to special revenue funds for the purposes of paying the debt service on bonds and refunding bonds issued subsequent to January 1, 1994, the proceeds of which will be used for the construction and improvement of school building facilities. The Legislature further finds and declares that it



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intends, through the reenactment of this section and §11-15-30 of this code and §29-22-18 of this code, to appropriate revenues to two special revenue funds for the purposes of construction and improvement of school building facilities. Furthermore, the Legislature intends to encourage county boards to maintain existing levels of county funding for construction, improvement, and maintenance of school building facilities and to generate additional county funds for those purposes through bonds and special levies whenever possible. The Legislature further encourages the School Building Authority, the state board and county boards of education to propose uniform project specifications for comparable projects whenever possible to meet county needs at the lowest possible cost.

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

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

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

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

(a) The maximum aggregate amount of bonds outstanding at any time, for which the moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are to be pledged, is $500 million; however, any amount of bonds for which moneys have been deposited in a sinking fund, reserve fund or other fund established to provide payment of principal or interest on the bonds shall be excluded from the calculation of the maximum aggregate amount of bonds outstanding at any time. The issuance of revenue bonds under this article shall be authorized, from time to time, by resolution or resolutions of the School Building Authority, copies of which shall be provided to the Governor, the President of the Senate and the Speaker of the House of Delegates within five days of their approval, which shall set forth the proposed projects authorized in accordance with §18-9D-16 of this code and provide for the issuance of bonds in amounts sufficient, when sold as provided in this section, to provide moneys considered sufficient by the authority to pay the costs, less the amounts of any other funds available for the costs or from any appropriation, grant or gift for the costs: *Provided*, That bond issues from which bond revenues are to be distributed in accordance with §18-9D-15 of this code for projects authorized pursuant to §18-9D-16 of this code are not required to set forth the proposed projects in the resolution. The resolution shall prescribe the rights and duties of the bondholders and the School Building Authority and, for that purpose, may prescribe the form of the trust agreement referred to in this section. The bonds may be issued, from time to time, in such amounts; shall be of such series; bear such date or dates; mature at such time or times not exceeding 40 years from their respective dates; bear interest at such rate or rates; be in such denominations; be in such form, either coupon or registered, carrying such registration, exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places within or without the state; be subject to such terms of redemption at such prices not exceeding 105 percent of the principal amount of the bonds; and be entitled to the priorities on the revenues paid into the fund pledged for repayment of the bonds as may be provided in the resolution authorizing the issuance of the bonds or in any trust agreement made in connection with the bonds: *Provided, however*, That revenue bonds issued on or after January 1, 2008, which are secured by lottery proceeds from §29-22-18 or §29-22-18a of this code, shall mature at such time or times not exceeding 20 years from their respective dates.

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

(c) The proceeds of any bonds shall be used solely for the purpose or purposes as may be generally or specifically set forth in the resolution authorizing those bonds and shall be



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

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

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

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

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

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

investment in the escrow is shown to be in excess of the amounts required from time to time for the payment of interest on and principal of the refunded bonds, including applicable redemption premium, then the excess may be withdrawn from escrow and disbursed in such manner as the authority shall by resolution determine. Any moneys in the sinking or reserve funds or other funds maintained for the outstanding bonds to be refunded may be applied in the same manner and for the same purpose as are the net proceeds of refunding bonds or may be deposited in the special fund or any reserve funds established for account of the refunding bonds.

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

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

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

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

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

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

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

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

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

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## §18-9D-13. Payment of bonds.

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

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

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

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**§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.**

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

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

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

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

(3) Any other moneys received by the authority, except moneys paid into the School Major Improvement Fund pursuant to §18-9D-6 of this code and moneys deposited into the School Access Safety Fund pursuant to §18-9F-5 of this code, may be allocated and may be expended by the authority for projects authorized in accordance with §18-9D-16 of this code that service the educational community statewide or, upon application by the state board, for educational programs that are under the jurisdiction of the state board. In addition, upon application by the state board or the administrative council of an area vocational educational center established pursuant to §18-2B-1 *et seq*. of this code, the authority may allocate and expend under this subsection moneys for school major improvement projects authorized in accordance with §18-9D-16 of this code proposed by the state board or an administrative council for school facilities under the direct supervision of the state board or an administrative council, respectively. Furthermore, upon application by a county board, the authority may allocate and expend under this subsection moneys for school major improvement projects for vocational programs at comprehensive high schools, vocational programs at comprehensive middle schools, vocational schools cooperating with community and technical college programs, or any combination of the three. Each county board is encouraged to cooperate with community and technical colleges in the use of existing or development of new vocational technical facilities. All projects eligible for funds from this subsection shall be submitted directly to the authority which shall be solely responsible for the project's evaluation, subject to the following:

(A) Any project funded by the authority shall be in accordance with a comprehensive



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educational facility plan which must be approved by the state board and the authority. The authority may not expend any moneys for a school major improvement project proposed by the state board or the administrative council of an area vocational educational center unless the state board or an administrative council has submitted a 10-year facilities plan; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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available to the project for a period of two years; and

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

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

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

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

Grants of financial assistance that have received initial approval under this section are contingent upon passage of the bond levy and final approval by the School Building Authority of the county’s bond finance plan. Any materials produced by the county or its county board that refer to the authority shall include a statement of this contingency and terms. Notwithstanding any other provision of this subsection, financial assistance to be provided by the authority may only be used to pay costs of capital improvements and may not be pledged as security for or repayment of any bonds issued by the county board.

Upon passage of the bond levy, the county board shall have four years to finalize the project: *Provided*, That the authority may grant an extension to the four years in extenuating circumstances. The provisions of this subsection do not apply to any proposed capital improvement bond levy that is scheduled to be submitted to the voters on or before December 31, 2023.



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

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

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

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

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

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

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

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

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

(o) Notwithstanding the provisions of West Virginia Code §18-9D-15 or §18-9D-16, a public charter school may, in its name and sole discretion, submit application to the School Building Authority for funding for costs associated with the renovating, remodeling,

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purchase or construction of a building to be used for public charter school purposes and for the cost of the project, and the authority may, in its sole discretion, approve such amount of funding as it determines appropriate, in its sole discretion, for such project from monies appropriated to the authority for the benefit of public charter schools. In the event that a public charter school closes, and the public charter school used School Building Authority funding for its building, the building shall be returned to the authorizer, as defined in §18-5G-2 of this code, for purposes of ownership. If the building cannot be returned to the authorizer, the building shall be returned to the state. Additionally, if School Building Authority funds were used to improve an existing property, the School Building Authority is authorized to develop a formula to determine the monetary amount of improvements to be returned to either the authorizer or the state.

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**§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.**

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

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

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

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

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

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

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

(F) A prioritization by the county board, the state board or the administrative council submitting the plan of each project contained in the plan. In prioritizing the projects, the county board, the state board or the administrative council submitting the plan shall make determinations in accordance with the objective criteria formulated by the School Building

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Authority in accordance with this section. The priority list is one of the criteria that shall be considered by the authority deciding how the available funds should be expended;

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

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

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

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

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

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

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

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

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

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meets the following:

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

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

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

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

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

(VI) Innovations in education;

(VII) Adequate space for projected student enrollments;

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

(IX) Regularly scheduled preventive maintenance; and

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

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

(A) Requiring each county board's facilities plan and school major improvement plan to prioritize all the construction projects or major improvement projects, respectively, within the county. A school major improvement plan submitted by the state board or the administrative council of an area vocational educational center shall prioritize all the school improvement projects contained in the plan. The priority list shall be one of the criteria to be considered by the authority in determining how available funds shall be expended. In

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prioritizing the projects, the county board, the state board or the administrative council submitting a plan shall make determinations in accordance with the objective criteria formulated by the School Building Authority;

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

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

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

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

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

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

Parliamentarian's NOTE: In a mandamus proceeding, the Supreme Court of the state declined to issue a writ of mandamus and held that this act violated Section 4, Article X of the Constitution. (State ex rel. Marockie v. Wagoner (1993), 190 W.Va. 467, 438 S.E. 2d 811).

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**§18-9D-18.**

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

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

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

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

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

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

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

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

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

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

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

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



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may as part of the plan include facilities for community and technical college education at the multicounty center. The programs offered at the vocational facility may not replace the programs offered at the multicounty vocational technical center without the consent of the center board.

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

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

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

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

(a) The Legislature finds the following:

(1) Students learn more through hands on, applied learning activities;

(2) Career technical education students have a much higher graduation rate than other students;

(3) Although thirty-seven percent of West Virginia middle and junior high school students are enrolled in a form of career technical education, the number has been dropping by approximately three thousand students per year; and

(4) As the benefits of career technical education have increased as academics have become more embedded in career technical education, it is important that career technical education opportunities be increased at the middle and junior high school level.

(b) "Comprehensive middle school" means a middle or junior high school that meets the definition of a comprehensive middle school established by the state board. The definition of a comprehensive middle school shall be established by the state board in a legislative rule promulgated in accordance with article three-b, chapter twenty-nine-a of this code. The definition shall include at least the following:

(1) A comprehensive curriculum that:

(A) Includes the core subjects in English/language arts, mathematics, science, social studies;

(B) Provides students with engaging learning opportunities where students are provided connections between what they are learning and what they will learn in high school and beyond;

(C) Establishes the foundation for college and career readiness;

(D) Embeds career exploration and project based career activities where possible to provide all student with comprehensive career development and counseling;

(E) Provides career technical options for students that are integrated with academic course requirements where possible; and

(F) Provides authentic opportunities in the visual and performing arts, health and wellness, physical education, world languages and career technical activities;

(2) Harnessing the power of technology to provide personalized learning twenty-four hours per day and seven days per week and produce a digital individualized student portfolio of student mastery and progression; and

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(3) A seamless integration with the secondary school curriculum that enables students to further explore their options and further pursue their career interests at the secondary and post-secondary levels.

(c) When planning the construction of a middle or junior high school which has been approved by the authority and which meets the required authority efficiencies, the authority shall provide funding for a comprehensive middle school that includes comprehensive career technical education facilities to be located, when feasible, on the same site as the middle or junior high school.

(d) Upon application of a county board to construct comprehensive career technical education facilities that would allow an existing middle or junior high school to become a comprehensive middle school, the authority will provide technical assistance to the county in developing a plan for construction of the comprehensive career technical education facility. Upon development of the plan, the authority shall consider funding based on the following criteria:

(1) The ability of the county board to provide local funds for the construction of the comprehensive career technical education facilities;

(2) The size of the existing middle and junior high schools;

(3) The age and physical condition of the existing career technical education facilities;

(4) The potential for improving in the graduation rate; and

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

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

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

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

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

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

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

(d) The effective date of a legislative rule authorized in section twenty-one of this article is governed by the provisions of section fourteen, article three-a, chapter twenty-nine-a of this code under the following conditions:

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

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

(e) The Legislature further declares each legislative rule now or hereafter authorized under this article to have been validly promulgated, notwithstanding any failure to comply with any requirement of article three-a, chapter twenty-nine-a of this code relating to the promulgation of rules at any stage of the promulgation process prior to authorization by the Legislature in this article.

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

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

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

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

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

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

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

(g) The legislative rule filed in the State Register on June 26, 2018, relating to the School Building Authority (School Access Safety Act rule), is authorized.

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

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

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