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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989

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ENROLLED

Com. Sub. For

HOUSE BILL No. 2325

(By Mr. *Speaku, Mr. Chambliss and Del. R. Buda*
[By Request of the Executive])

— ● —

Passed *April 4,* 1989

In Effect *Ninety Days From* Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2325

(By MR. SPEAKER, MR. CHAMBERS, and DELEGATE R. BURK)

[By request of the Executive]

[Passed April 4, 1989; in effect ninety days from passage.]

AN ACT to repeal section twenty-one, article nine-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, three, four, six and eight, article nine-d of said chapter; and to further amend said article nine-d by adding thereto two new sections, designated sections fifteen and sixteen, all relating to school facilities generally; reconstituting the school building authority and providing generally therefor; defining certain terms; authorizing authority to contract for professional services; changing manner in which counties are allocated facilities moneys; deleting requirement of legislative appropriation; modifying content of bond resolution; providing for distribution of certain bond revenues on basis of net enrollment and need; allowing percentage of available funds to be used by state board; providing for forfeiture of allocations unexpended by a county after three years; requiring guidelines for certain matters; requiring approved regional facilities plans prior to distribution of moneys; providing generally for submission of facilities plans; outlining certain matters to be included in such plans; and allowing authority to require changes or additions

in approved plans.

Be it enacted by the Legislature of West Virginia:

That section twenty-one, article nine-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one, two, three, four, six and eight, article nine-d of said chapter be amended and reenacted; and that said article nine-d be further amended by adding thereto two new sections, designated sections fifteen and sixteen, all to read as follows:

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-1. School building authority; powers.

1 The school building authority shall consist of eight
2 persons, of whom one shall be the state superintendent
3 of schools, ex officio; three shall be members of the state
4 board of education, elected by the state board; and four
5 shall be citizens of the state, appointed by the governor,
6 by and with the advice and consent of the Senate, who
7 are knowledgeable in matters relevant to the issues
8 addressed by the authority.

9 The citizen appointments shall be made as soon as
10 possible after the effective date of this section, and no
11 two citizen appointees shall be residents within the same
12 region. Two of the initial appointments shall be for two-
13 year terms, and two shall be for four-year terms, with
14 all successive appointments being for four-year terms.
15 Until such appointments take effect, the state board as
16 constituted under the provisions of section one, article
17 two of this chapter may act as the authority with such
18 power as was granted them under the prior enactment
19 of this section.

20 The school building authority shall meet at least
21 quarterly, and the citizen members shall be reimbursed
22 for reasonable and necessary expenses actually incurred
23 in the performance of their official duties from funds
24 appropriated or otherwise made available for such
25 purposes upon submission of an itemized statement
26 therefor. The state superintendent of schools shall serve
27 as president of the authority.

28 The acts performed by the members of the state board
29 of education in their capacity as members of the school
30 building authority are solely the acts of the authority.

§18-9D-2. Definitions.

1 The following terms, wherever used or referred to in
2 this article, shall have the following meanings, unless a
3 different meaning clearly appears from the context:

4 (1) "Authority" means the school building authority of
5 West Virginia or, if said authority shall be abolished,
6 any board or officer succeeding to the principal
7 functions thereof, or to whom the powers given to said
8 authority shall be given by law;

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

11 (3) "Project" or "capital improvement project" means
12 the new construction, major renovation, repair and
13 safety upgrading of facilities, buildings and structures
14 for school purposes including the acquisition of land for
15 current or future use in connection therewith, equip-
16 ment, machinery, furnishings, installation of utilities
17 and other similar items convenient in connection with
18 placing the foregoing into operation, but may not
19 include such items as books, fuel, supplies and other
20 items which are customarily deemed to result in a
21 current operating charge;

22 (4) "Cost of project" means the cost of construction,
23 renovation, repair and safety upgrading of facilities,
24 buildings and structures for school purposes; the cost of
25 land, equipment, machinery, furnishings, installation of
26 utilities and other similar items convenient in connec-
27 tion with placing the foregoing into operation; and the
28 cost of financing, interest during construction, profes-
29 sional service fees and all other charges or expenses
30 necessary, appurtenant or incidental to the foregoing,
31 including the cost of administration of this article;

32 (5) "Revenue" or "revenues" mean moneys deposited
33 in the school building capital improvements fund
34 pursuant to the operation of section ten, article nine-a
35 of this chapter; any moneys received, directly or

36 indirectly, from any source for the use of all or any part
37 of any project completed pursuant to this article; and
38 any other moneys received by the authority for the
39 purposes of this article;

40 (6) "Facilities plan" means the regional plan for
41 school facilities required prior to the distribution of
42 state funds to any county board pursuant to section
43 fifteen; and

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

§18-9D-3. Powers of authority.

1 The school building authority has the power:

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

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

4 (3) To contract to acquire and to acquire, in the name
5 of the authority by purchase, lease-purchase, or other-
6 wise, real property or rights or easements necessary or
7 convenient for its corporate purposes and to exercise the
8 power of eminent domain to accomplish such purposes;

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

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

13 (6) With the consent of the attorney general of the
14 state of West Virginia, to use the facilities, office,
15 assistants and employees of the attorney general in all
16 legal matters relating to or pertaining to the authority;

17 (7) To appoint officers, agents and employees, and fix
18 their compensation;

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

22 (9) To renegotiate all contracts entered into by it
23 whenever, due to a change in situation, it appears to the

24 authority that its interests will be best served;

25 (10) To acquire by purchase, eminent domain or
26 otherwise all real property or interests therein necessary
27 or convenient to accomplish the purposes of this article;

28 (11) To require proper maintenance and insurance of
29 any project authorized hereunder;

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

34 (13) To acquire land, buildings and capital improve-
35 ments to existing school buildings and property, by lease
36 from a private or public lessor for a term not to exceed
37 twenty-five years, with or without an option to purchase
38 pursuant to an investment contract with said lessor, for
39 use as public school facilities on such terms and
40 conditions as may be determined to be in the best
41 interests of the authority and consistent with the
42 purposes of this article;

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

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

53 (16) To contract for architectural, engineering or
54 other professional services deemed necessary or econom-
55 ical by the authority to provide consultative or other
56 services to any regional educational service agency or
57 county board requesting professional services offered by
58 the authority, to evaluate any facilities plan or any
59 project encompassed therein, to inspect existing facili-
60 ties or any project that has received or may receive
61 funding from the authority, or to perform any other
62 service deemed by the authority to be necessary or

63 economical. Assistance to the region or district may
64 include the development of pre-approved systems, plans,
65 designs, models or documents; advice or oversight on
66 any plan or project; or any other service that may be
67 efficiently provided to regional educational service
68 agencies or county boards by the authority; and

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

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

1 The school building authority may by resolution, in
2 accordance with the provisions of this article, issue
3 revenue bonds of the authority from time to time, either
4 to finance the cost of school building capital improve-
5 ment projects for public schools in this state, or to
6 refund, at the discretion of the authority, bonds issued
7 and outstanding under and pursuant to the provisions
8 of this article. The principal of, interest and redemption
9 premium, if any, on such bonds shall be payable solely
10 from the special fund herein provided for such payment.

§18-9D-6. School building capital improvements fund in state treasury; collections to be paid into special fund; authority to pledge such collections as security for revenue bonds; authority to finance projects on a cash basis.

1 There is created in the state treasury, a school
2 building capital improvements fund to be expended by
3 the authority for the purposes of this article.

4 The school building authority shall have authority to
5 pledge all or such part of the revenues paid into the
6 school building capital improvements fund as may be
7 needed to meet the requirements of any revenue bond
8 issue or issues authorized by this article, including the
9 payment of principal of, interest and redemption
10 premium, if any, on such revenue bonds and the
11 establishing and maintaining of a reserve fund or funds
12 for the payment of the principal of, interest and

13 redemption premium, if any, on such revenue bond issue
14 or issues when other moneys pledged may be insufficient
15 therefor, including such additional protective pledge of
16 revenues as the authority in its discretion may provide
17 by resolution authorizing the issue of such bonds and in
18 any trust agreement made in connection therewith. The
19 authority may further provide in such resolution and in
20 such trust agreement for such priorities on the revenues
21 paid into such school building capital improvements
22 fund as may be necessary for the protection of the prior
23 rights of the holders of bonds issued at different times
24 under the provisions of this article.

25 Any balance remaining in the school building capital
26 improvements fund after the authority has issued bonds
27 authorized by this article, and after the requirements of
28 all funds including reserve funds established in connec-
29 tion with the bonds issued pursuant to this article have
30 been satisfied, may be used for the redemption of any
31 of the outstanding bonds issued hereunder which by
32 their terms are then redeemable, or for the purchase of
33 such bonds at the market price, but not exceeding the
34 price, if any, at which such bonds shall in the same year
35 be redeemable, and all bonds redeemed or purchased
36 shall forthwith be canceled and shall not again be
37 issued.

38 The school building authority, in its discretion, may
39 use the moneys in the school building capital improve-
40 ments fund to finance the cost of projects on a cash basis.
41 Any pledge of moneys in such fund for revenue bonds
42 shall be a prior and superior charge on such fund over
43 the use of any of the moneys in such fund to pay for the
44 cost of any project on a cash basis: *Provided*, That any
45 expenditures from such fund, other than for the
46 retirement of revenue bonds, may only be made by the
47 authority in accordance with the provisions of this
48 article.

**§18-9D-8. Issuance of revenue bonds; use of proceeds;
bonds exempt from taxation.**

1 The issuance of revenue bonds under the provisions of
2 this article shall be authorized from time to time by

3 resolution or resolutions of the school building authority,
4 which shall set forth the proposed projects and provide
5 for the issuance of bonds in amounts sufficient, when
6 sold as hereinafter provided, to provide moneys deemed
7 by the authority sufficient to pay such costs, less the
8 amounts of any other funds available for said costs or
9 from any appropriation, grant or gift therefor: *Provided,*
10 That bond revenues which are to be distributed in
11 accordance with section fifteen of this article shall not
12 be required to set forth the proposed projects in the
13 resolution. Such resolution shall prescribe the rights and
14 duties of the bondholders and the school building
15 authority, and for such purpose may prescribe the form
16 of the trust agreement hereinafter referred to. The
17 bonds may be issued from time to time, in such amounts,
18 shall be of such series, bear such date or dates, mature
19 at such time or times not exceeding forty years from
20 their respective dates, bear interest at such rate or rates;
21 be in such denominations; be in such form, either coupon
22 or registered, carrying such registration, exchangeabil-
23 ity and interchangeability privileges; be payable in such
24 medium of payment and at such place or places within
25 or without the state; be subject to such terms of
26 redemption at such prices not exceeding one hundred
27 five percent of the principal amount thereof; and be
28 entitled to such priorities on the revenues paid into the
29 school building authority capital improvements fund as
30 may be provided in the resolution authorizing the
31 issuance of the bonds or in any trust agreement made
32 in connection therewith. The bonds shall be signed by
33 the governor, and by the president or vice president of
34 the authority, under the great seal of the state, attested
35 by the secretary of state, and the coupons attached
36 thereto shall bear the facsimile signature of the
37 president or vice president of the authority. In case any
38 of the officers whose signatures appear on the bonds or
39 coupons cease to be such officers before the delivery of
40 such bonds, such signatures shall nevertheless be valid
41 and sufficient for all purposes the same as if such
42 officers had remained in office until such delivery. Such
43 revenue bonds shall be sold in such manner as the
44 authority may determine to be for the best interests of

45 the state.

46 Any pledge of revenues for such revenue bonds made
47 by the school building authority shall be valid and
48 binding between the parties from the time the pledge
49 is made; and the revenues so pledged shall immediately
50 be subject to the lien of such pledge without any further
51 physical delivery thereof or further act. The lien of such
52 pledge shall be valid and binding against all parties
53 having claims of any kind in tort, contract or otherwise,
54 irrespective of whether such parties have notice of the
55 lien of such pledge, and such pledge shall be a prior and
56 superior charge over any other use of such revenues so
57 pledged.

58 The proceeds of such bonds shall be used solely for the
59 purpose or purposes as may be generally or specifically
60 set forth in the resolution authorizing those bonds and
61 shall be deposited in the state treasury in a special fund
62 to be disbursed as provided by law for the disbursement
63 of any other state funds. If the proceeds of such bonds,
64 by error in calculations or otherwise, shall be less than
65 the cost of any projects specifically set forth in the
66 resolution, additional bonds may in like manner be
67 issued to provide the amount of the deficiency; and
68 unless otherwise provided for in the resolution or trust
69 agreement hereinafter mentioned, such additional bonds
70 shall be deemed to be of the same issue, and shall be
71 entitled to payment from the same fund, without
72 preference or priority, as the bonds before issued for
73 such projects. If the proceeds of bonds issued for such
74 projects exceed the cost thereof, the surplus may be used
75 for such other projects as the school building authority
76 may determine or in such other manner as the resolution
77 authorizing such bonds may provide. Prior to the
78 preparation of definitive bonds, the authority may,
79 under like restrictions, issue temporary bonds with or
80 without coupons, exchangeable for definitive bonds upon
81 the issuance of such definitive bonds.

82 After the issuance of any of such revenue bonds, the
83 revenues pledged therefor shall not be reduced as long
84 as any of such revenue bonds are outstanding and
85 unpaid except under such terms, provisions and condi-

86 tions as shall be contained in the resolution, trust
87 agreement or other proceedings under which such
88 revenue bonds were issued.

89 Such revenue bonds and the revenue refunding bonds,
90 and bonds issued for combined purposes shall, together
91 with the interest thereon, be exempt from all taxation
92 by the state of West Virginia, or by any county, school
93 district, municipality or political subdivision thereof.

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

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

12 (b) An amount that is no more than three percent of
13 the sum of moneys that are determined by the authority
14 to be available for distribution during the then current
15 fiscal year from (1) the increase in local share paid into
16 the school building capital improvements fund pursuant
17 to section ten, article nine-a of this chapter, (2) the
18 issuance of revenue bonds for which such increase in
19 local share is pledged as security, and (3) any other
20 moneys received by the authority may be allocated and
21 may be expended by the authority for projects that
22 service the educational community statewide or, upon
23 application by the state board, for educational programs
24 that are under the jurisdiction of the state board.

25 Fifty percent of the remaining available funds shall
26 be allocated and distributed to each county board on the
27 basis of its net enrollment as defined in section two,
28 article nine-a of this chapter: *Provided*, That such
29 moneys shall not be distributed to any county board
30 whose region does not have an approved facilities plan
31 or to any county board that is not prepared to commence

32 expenditures of such funds during the fiscal year in
33 which the moneys are distributed: *Provided, however,*
34 That any moneys allocated to a county board and not
35 distributed to that county board shall be redistributed
36 on the basis of net enrollment to those county boards
37 then eligible for the receipt of net enrollment distribu-
38 tions in that fiscal year. Prior to any allocation and
39 distribution of the fifty percent based on net enrollment
40 in a subsequent fiscal year, the authority shall deduct
41 from the fifty percent determination any moneys
42 allocated and not distributed to a county board during
43 the preceding three fiscal years upon written notice
44 from any county board that such county board is
45 prepared to expend such amount in the then current
46 fiscal year and shall distribute such moneys accordingly.
47 The balance shall then be allocated and distributed
48 among all the eligible counties.

49 The remaining fifty percent of moneys available for
50 distribution shall be allocated and expended on the basis
51 of need and efficient use of resources, such basis to be
52 determined by the authority in accordance with the
53 provisions of section sixteen of this article.

54 No local matching funds shall be required under the
55 provisions of this subsection, and any county board may
56 use the state moneys provided herein in conjunction with
57 local funds derived from bonding or other source. Any
58 county board may dedicate any allocations of state
59 moneys pursuant to this subsection to the payment of
60 local bonds used for purposes encompassed in an
61 approved facilities plan or for the payment of bonds that
62 are issued by the authority for the benefit of that county
63 that are in addition to the bond moneys distributed in
64 accordance with this subsection.

65 Moneys made available pursuant to this subsection
66 that shall be expended on projects that benefit more
67 than one district shall be apportioned among the
68 districts in accordance with the formula encompassed in
69 that portion of the facilities plan that addresses the
70 project designed to benefit more than one district.

71 (c) To encourage regional educational service agencies

72 and county boards to proceed promptly with facilities
73 planning and to prepare for the expenditure of any state
74 moneys derived from the sources described in subsection
75 (b) of this section, any county board failing to expend
76 money within three years of the allocation thereto shall
77 forfeit such allocation and thereafter shall be ineligible
78 for further net enrollment or other allocations pursuant
79 to subsection (b) until the county board is ready to
80 expend funds in accordance with an approved facilities
81 plan. Any amount so forfeited shall be added to the total
82 funds available for allocation and distribution in the
83 next ensuing fiscal year.

84 (d) Distribution to the county boards may be in a
85 lump sum or in accordance with a schedule of payments
86 adopted by the authority pursuant to such guidelines as
87 it shall adopt.

**§18-9D-16. Facilities plans generally; need-based
eligibility.**

1 (a) To facilitate the goals as stated in section fifteen
2 of this article and to assure the prudent and resourceful
3 expenditure of state funds, each regional educational
4 service agency created pursuant to section twenty-six,
5 article two of this chapter shall submit a region-wide
6 facilities plan that addresses the facilities needs of each
7 district within the region pursuant to such guidelines as
8 shall be adopted by the authority in accordance with this
9 section. Any project receiving funding shall be in
10 furtherance of such approved facilities plan.

11 (b) To assure efficiency and productivity in the
12 project approval process, the facilities plan shall be
13 submitted only after a preliminary plan, a plan outline
14 or a proposal for a plan has been submitted to the
15 authority. Selected members of the authority, which
16 selection shall include citizen members, shall then meet
17 promptly with those persons designated by the regional
18 educational service agency, including one person from
19 each county within the region, to attend the facilities
20 plan consultation. The purpose of the consultation is to
21 assure understanding of the general goals of the school
22 building authority and the specific goals encompassed

23 in the following criteria and to discuss ways the plan
24 may be structured to meet those goals.

25 (c) The guidelines for the development of a facilities
26 plan shall state the manner, timeline and process for
27 submission of any plan to the authority; such project
28 specifications as may be deemed appropriate by the
29 authority; and those matters which are deemed by the
30 authority to be important reflections of how the project
31 will further the overall goals of the authority.

32 The guidelines regarding submission of the plans shall
33 include requirements for public hearings, comments or
34 other means of providing broad-based input within a
35 reasonable time period as the authority may deem
36 appropriate. The submission of each facilities plan shall
37 be accompanied by a synopsis of all comments received
38 and a formal comment by each county board included
39 in the region. The guidelines regarding project specifi-
40 cations may include such matters as energy efficiency,
41 preferred siting, construction materials, maintenance
42 plans or any other matter related to how the capital
43 improvement project is to proceed. The guidelines
44 pertaining to quality education shall require that a
45 facilities plan address how the current facilities do not
46 meet and the proposed plan and any project thereunder
47 does meet the following goals:

48 (1) student health and safety;

49 (2) economies of scale, including compatibility with
50 similar schools that have achieved the most economical
51 organization, facility utilization and pupil-teacher
52 ratios;

53 (3) reasonable travel time and practical means of
54 addressing other demographic considerations;

55 (4) multi-county and regional planning to achieve the
56 most effective and efficient instructional delivery
57 system;

58 (5) curricular improvement and diversification,
59 including computerization and technology and advanced
60 senior courses in science, mathematics, language arts
61 and social studies;

62 (6) innovations in education such as year-round
63 schools and community-based programs; and

64 (7) adequate space for projected student enrollments.

65 If the project is to benefit more than one county in the
66 region, the facilities plan shall state the manner in
67 which the cost and funding of the project shall be
68 apportioned among the counties.

69 (d) Each plan shall prioritize all the projects both
70 within a county and among the counties, which priority
71 list shall be the basis for determining how available
72 funds shall be expended.

73 (e) Each plan shall include the objective means to be
74 utilized in evaluating implementation of the overall plan
75 and each project included therein. Such evaluation shall
76 measure each project's furtherance of each goal stated
77 in this section and any guidelines adopted hereunder, as
78 well as the overall success of any project as it relates
79 to the facilities plan of its region and the overall goals
80 of the authority.

81 (f) The authority may adopt guidelines for requiring
82 that a regional educational service agency modify,
83 update, supplement or otherwise submit changes or
84 additions to an approved plan and shall provide
85 reasonable notification and sufficient time for such
86 change or addition.

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

Frederick L. Parker
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Paul C. Nichols
Clerk of the Senate

Donald J. Kopp
Clerk of the House of Delegates

James D. Tucker
President of the Senate

Robert C. Bell
Speaker of the House of Delegates

The within *is approved* this the *25th*
day of *April* 1989.

Yoston Caperton
Governor

PRESENTED TO THE
GOVERNOR

Date 4/11/89

Time 11:37