WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1989

ENROLLED
Com. Sub. For
HOUSE BILL No. 2325...

(By Mr. Speaker, Mr. Chambus and Del. B. Rush)
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article nine-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one, two, three, four, six and eight, article nine-d of said chapter be amended and reenacted; and that said article nine-d be further amended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.

The school building authority shall consist of eight persons, of whom one shall be the state superintendent of schools, ex officio; three shall be members of the state board of education, elected by the state board; and four shall be 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.

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

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 from funds appropriated or otherwise made available for such purposes upon submission of an itemized statement therefor. The state superintendent of schools shall serve as president of the authority.
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.


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

1. “Authority” means the school building authority of West Virginia or, if said authority shall be abolished, any board or officer succeeding to the principal functions thereof, or to whom the powers given to said authority shall be given by law;

2. “Bonds” means bonds issued by the authority pursuant to this article;

3. “Project” or “capital improvement project” means the new construction, major renovation, repair and safety upgrading of facilities, buildings and structures for school purposes including the acquisition of land for current or future use in connection therewith, equipment, machinery, furnishings, installation of utilities and other similar items convenient in connection with placing the foregoing into operation, but may not include such items as books, fuel, supplies and other items which are customarily deemed to result in a current operating charge;

4. “Cost of project” means the cost of construction, 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 convenient in connection with placing the foregoing into operation; 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. “Revenue” or “revenues” mean moneys deposited in the school building capital improvements fund pursuant to the operation of section ten, article nine-a of this chapter; any moneys received, directly or
indirectly, from any source for the use of all or any part
of any project completed pursuant to this article; and
any other moneys received by the authority for the
purposes of this article;

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

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


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, or other-
wise, real property or rights or easements necessary or
convenient for its corporate purposes and to exercise the
power of eminent domain to accomplish such 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) With the consent of the attorney general of the
state of West Virginia, to use the facilities, office,
assistants and employees of the attorney general in all
legal matters relating to or pertaining to the authority;
(7) To appoint officers, agents and employees, and fix
their compensation;
(8) 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;
(9) 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;

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

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

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

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

(14) To accept and expend any gift, grant, contribution, bequest or endowment of money to, or for the benefit of, the authority, 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 such gift, grant, contribution, bequest or endowment;

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

(16) To contract for architectural, engineering or other professional services deemed necessary or economical by the authority to provide consultative or other services to any regional educational service agency or county board requesting professional services offered by the authority, to evaluate any facilities plan or any project encompassed therein, to inspect existing facilities or any project that has received or may receive funding from the authority, or to perform any other service deemed by the authority to be necessary or
63 economical. Assistance to the region or district may include the development of pre-approved systems, plans, designs, models or documents; advice or oversight on any plan or project; or any other service that may be efficiently provided to regional educational service agencies or county boards by the authority; and

69 (17) To do all things necessary or convenient to carry 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 accordance with the provisions of this article, issue revenue bonds of the authority from time to time, either to finance the cost of school building capital improvement projects for public schools in this state, or to refund, at the discretion of the authority, bonds issued and outstanding under and pursuant to the provisions of this article. The principal of, interest and redemption premium, if any, on such bonds shall be payable solely from the special fund herein provided for such payment.

§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 building capital improvements fund to be expended by the authority for the purposes of this article.

4 The school building authority shall have authority to pledge all or such part of the revenues paid into the school building capital improvements fund as may be needed to meet the requirements of any revenue bond issue or issues authorized by this article, including the payment of principal of, interest and redemption premium, if any, on such revenue bonds and the establishing and maintaining of a reserve fund or funds for the payment of the principal of, interest and
redemption premium, if any, on such revenue bond issue
or issues when other moneys pledged may be insufficient
therefor, including such additional protective pledge of
revenues as the authority in its discretion may provide
by resolution authorizing the issue of such bonds and in
any trust agreement made in connection therewith. The
authority may further provide in such resolution and in
such trust agreement for such priorities on the revenues
paid into such school building capital improvements
fund as may be necessary for the protection of the prior
rights of the holders of bonds issued at different times
under the provisions of this article.

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

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

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

The issuance of revenue bonds under the provisions of
this article shall be authorized from time to time by
resolution or resolutions of the school building authority, which shall set forth the proposed projects and provide for the issuance of bonds in amounts sufficient, when sold as hereinafter provided, to provide moneys deemed by the authority sufficient to pay such costs, less the amounts of any other funds available for said costs or from any appropriation, grant or gift therefor: Provided, that bond revenues which are to be distributed in accordance with section fifteen of this article shall not be required to set forth the proposed projects in the resolution. Such resolution shall prescribe the rights and duties of the bondholders and the school building authority, and for such purpose may prescribe the form of the trust agreement hereinafter referred to. The bonds may be issued from time to time, in such amounts, shall be of such series, bear such date or dates, mature at such time or times not exceeding forty years from their respective dates, bear interest at such rate or rates: be in such denominations; be in such form, either coupon or registered, carrying such registration, exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places within or without the state; be subject to such terms of redemption at such prices not exceeding one hundred five percent of the principal amount thereof; and be entitled to such priorities on the revenues paid into the school building authority capital improvements fund as may be provided in the resolution authorizing the issuance of the bonds or in any trust agreement made in connection therewith. The bonds shall be signed by the governor, and by the president or vice president of the authority, under the great seal of the state, attested by the secretary of state, and the coupons attached thereto shall bear the facsimile signature of the president or vice president of the authority. In case any of the officers whose signatures appear on the bonds or coupons cease to be such officers before the delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes the same as if such officers had remained in office until such delivery. Such revenue bonds shall be sold in such manner as the authority may determine to be for the best interests of
the state.

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

The proceeds of such 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 deposited in the state treasury in a special fund to be disbursed as provided by law for the disbursement of any other state funds. If the proceeds of such bonds, by error in calculations or otherwise, shall be 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, such additional bonds shall be deemed to be of the same issue, and shall be entitled to payment from the same fund, without preference or priority, as the bonds before issued for such projects. If the proceeds of bonds issued for such projects exceed the cost thereof, the surplus may be used for such other projects as the school building authority may determine or in such other manner as the resolution authorizing such bonds may provide. 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 such definitive bonds.

After the issuance of any of such revenue bonds, the revenues pledged therefor shall not be reduced as long as any of such revenue bonds are outstanding and unpaid except under such terms, provisions and condi-
Such revenue bonds and the revenue refunding bonds, and bonds issued for combined purposes shall, together with the interest thereon, be exempt from all taxation by the state of West Virginia, or by any county, school district, municipality or political subdivision thereof.

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

(a) It is the intent of the Legislature to empower the school building authority to facilitate and provide state funds for the construction and maintenance 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 facilities 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 no more than three 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 increase in local share paid into the school building capital improvements fund pursuant to section ten, article nine-a of this chapter, (2) the issuance of revenue bonds for which such increase in local share is pledged as security, and (3) any other moneys received by the authority may be allocated and may be expended by the authority for projects 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.

Fifty percent of the remaining available funds shall be allocated and distributed to each county board on the basis of its net enrollment as defined in section two, article nine-a of this chapter: Provided, That such moneys shall not be distributed to any county board whose region does not have an approved facilities plan or to any county board that is not prepared to commence
expenditures of such funds during the fiscal year in which the moneys are distributed: Provided, however, that any moneys allocated to a county board and not distributed to that county board shall be redistributed on the basis of net enrollment to those county boards then eligible for the receipt of net enrollment distributions in that fiscal year. Prior to any allocation and distribution of the fifty percent based on net enrollment in a subsequent fiscal year, the authority shall deduct from the fifty percent determination any moneys allocated and not distributed to a county board during the preceding three fiscal years upon written notice from any county board that such county board is prepared to expend such amount in the then current fiscal year and shall distribute such moneys accordingly. The balance shall then be allocated and distributed among all the eligible counties.

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

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

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

(c) To encourage regional educational service agencies
and county boards to proceed promptly with facilities planning and to prepare for the expenditure of any state moneys derived from the sources described in subsection (b) of this section, any county board failing to expend money within three years of the allocation thereto shall forfeit such allocation and thereafter shall be ineligible for further net enrollment or other allocations pursuant to subsection (b) until the county board is ready to expend funds in accordance with an approved facilities plan. Any amount so forfeited shall be added to the total funds available for allocation and distribution in the next ensuing fiscal year.

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

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

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

(b) To assure efficiency and productivity in the project approval process, the facilities plan shall be submitted only after a preliminary plan, a plan outline or a proposal for a plan has been submitted to the authority. Selected members of the authority, which selection shall include citizen members, shall then meet promptly with those persons designated by the regional educational service agency, including one person from each county within the region, to attend the facilities plan consultation. The purpose of the consultation is to assure understanding of the general goals of the school building authority and the specific goals encompassed
in the following criteria and to discuss ways the plan may be structured to meet those goals.

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

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

(1) student health and safety;

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

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

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

(5) curricular improvement and diversification, including computerization and technology and advanced senior courses in science, mathematics, language arts and social studies;
(6) innovations in education such as year-round schools and community-based programs; and

(7) adequate space for projected student enrollments.

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

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

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

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

J. W. Miller
Clerk of the Senate

Donald J. Kepp
Clerk of the House of Delegates

L. C. Tucker
President of the Senate

Robert L. C. Falwell
Speaker of the House of Delegates

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

George Caperton
Governor