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# WEST VIRGINIA LEGISLATURE

SECOND EXTRAORDINARY SESSION, 1993

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## ENROLLED

*COMMITTEE SUBSTITUTE FOR*  
**SENATE BILL NO. 100**

(By Senator *Sundette, Mr. President, and*  
*Boley, By Request of the Executive,*

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**PASSED October 18, 1993**

**In Effect from Passage**

# **E N R O L L E D**

## **COMMITTEE SUBSTITUTE FOR**

### **Senate Bill No. 100**

**(BY SENATORS BURDETTE, MR. PRESIDENT, AND BOLEY,  
BY REQUEST OF THE EXECUTIVE)**

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[Passed October 18, 1993; in effect from passage.]

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AN ACT to amend and reenact section thirty, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section ten, article nine-a, chapter eighteen of said code; to amend and reenact sections two, six, eight, thirteen and fifteen, article nine-d of said chapter; and to further amend said article by adding thereto a new section, designated section seventeen, all relating to dedicating consumers sales tax proceeds for the payment of bonds issued and to be issued by the school building authority; providing for certification of the amount needed to pay bond principal and interest for each fiscal year; providing for the payment of principal and interest on bonds issued prior to the first day of January, one thousand nine hundred ninety-four, or bonds issued for the refunding of bonds issued prior to that date; creating a special fund for the deposit of dedicated consumers sales tax revenues; providing for the issuance of bonds for which that dedicated revenue is pledged for repayment; limiting the permissible expenditures from the school building

capital improvements fund and the school building debt service fund; limiting the total amount of debt which may be issued by the school building authority; and establishing limitations on contracting for the sale of bonds by the authority.

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

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

## **CHAPTER 11. TAXATION.**

### **ARTICLE 15. CONSUMERS SALES TAX.**

#### **§11-15-30. Proceeds of tax; dedication of certain revenues.**

1     Beginning the first day of November, one thousand  
2     nine hundred ninety-three, and continuing on the first  
3     day of each succeeding month thereafter, there shall  
4     be dedicated monthly from the collections of this tax,  
5     prior to the payment or commitment of the proceeds  
6     or collections of this tax for any other purpose what-  
7     soever, an amount equal to one eighth of the projected  
8     annual principal and interest requirements on any and  
9     all revenue bonds and refunding bonds issued, or to be  
10    issued, on or after the first day of January, one  
11    thousand nine hundred ninety-four, for which bond  
12    moneys in the school building debt service fund have  
13    been pledged, or will be pledged, for repayment  
14    pursuant to section six, article nine-d, chapter eigh-  
15    teen of this code, such principal and interest require-  
16    ments having been certified to the tax commissioner  
17    in accordance with the provisions of said section:  
18    *Provided*, That in no event shall the total dedicated  
19    collections of this tax to be paid into the school  
20    building debt service fund, as provided in this section,  
21    in any fiscal year exceed the lesser of the principal

22 and interest requirements certified to the tax commis-  
 23 sioner as aforesaid, or twelve million dollars. The  
 24 amount dedicated shall be deposited on a monthly  
 25 basis into the school building debt service fund created  
 26 pursuant to section six, article nine-d, chapter eigh-  
 27 teen of this code.

## CHAPTER 18. EDUCATION.

### ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

#### §18-9A-10. Foundation allowance to improve instructional programs.

1 (a) For the school year beginning on the first day of  
 2 July, one thousand nine hundred ninety-three only,  
 3 thirty-two million five hundred twenty thousand nine  
 4 hundred ninety-four dollars, unless a greater amount  
 5 is appropriated by the Legislature, in addition to funds  
 6 which accrue from allocations due to increase in total  
 7 local share above that computed for the school year  
 8 beginning on the first day of July, one thousand nine  
 9 hundred ninety-three, from balances in the general  
 10 school fund, or from appropriations for such purpose  
 11 shall be allocated to increase state support of counties  
 12 as follows: *Provided*, That for the school year begin-  
 13 ning on the first day of July, one thousand nine  
 14 hundred ninety-three only, no county shall gain more  
 15 than seventy-three and sixty-six one-hundredths  
 16 percent or lose more than twenty-six and thirty-four  
 17 one-hundredths percent over the previous year's  
 18 allocation: *Provided, however*, That for the school year  
 19 beginning on the first day of July, one thousand nine  
 20 hundred ninety-four and thereafter, the sum of the  
 21 allocations shall be in an amount at least equal to the  
 22 amount appropriated by the Legislature, in addition to  
 23 funds which accrue from allocations due to increase in  
 24 total local share above that computed for the previous  
 25 school year, from balances in the general school fund,  
 26 or from appropriations for such purposes:

27 (1) One hundred fifty thousand dollars shall be  
 28 allocated to each county;

29 (2) Distribution to the counties of the remainder of

30 these funds shall be made proportional to the average  
31 of each county's average daily attendance for the  
32 preceding year and the county's second month net  
33 enrollment. Moneys allocated by provision of this  
34 section shall be used to improve instructional pro-  
35 grams according to a plan for instructional improve-  
36 ment which the affected county board shall file with  
37 the state board by the first day of August of each year,  
38 to be approved by the state board by the first day of  
39 September of that year if such plan substantially  
40 complies with standards to be adopted by the state  
41 board: *Provided*, That notwithstanding any other  
42 provision of this code to the contrary, moneys allo-  
43 cated by provision of this section may also be used in  
44 the implementation and maintenance of the uniform  
45 integrated regional computer information system; and

46 (3) For the school year beginning on the first day of  
47 July, one thousand nine hundred ninety-three, up to  
48 twenty-five percent of this allocation may be used to  
49 employ professional educators and/or service person-  
50 nel in counties after all applicable provisions of  
51 sections four and five of this article have been fully  
52 utilized.

53 Prior to the use of any funds from this section for  
54 personnel costs, the county board must receive autho-  
55 rization from the state superintendent of schools. The  
56 state superintendent shall require the district board to  
57 demonstrate: (1) The need for the allocation; (2)  
58 efficiency and fiscal responsibility in staffing; and (3)  
59 sharing of services with adjoining counties and the  
60 regional educational service agency for that county in  
61 the use of the total local district board budget. District  
62 boards shall make application for available funds by  
63 the first day of May: *Provided*, That for the school  
64 year beginning on the first day of July, one thousand  
65 nine hundred ninety-three only, district boards shall  
66 make application for available funds by the fifteenth  
67 day of June, one thousand nine hundred ninety-three.  
68 On or before the first day of June, the state superin-  
69 tendent shall review all applications and notify apply-  
70 ing district boards of the distribution of the allocation:

71 *Provided, however,* That for the school year beginning  
 72 on the first day of July, one thousand nine hundred  
 73 ninety-three only, the state superintendent shall  
 74 review all applications and notify applying district  
 75 boards of the distribution of the allocation on or before  
 76 the first day of July, one thousand nine hundred  
 77 ninety-three. Such funds shall be distributed during  
 78 the fiscal year as appropriate. The state superinten-  
 79 dent shall require the county board to demonstrate the  
 80 need for an allocation for personnel based upon the  
 81 county's inability to meet the requirements of state  
 82 law or state board policy: *Provided further,* That the  
 83 funds available for personnel under this section may  
 84 not be used to increase the total number of profession-  
 85 al noninstructional personnel in the central office  
 86 beyond four. The instructional improvement plan shall  
 87 be made available for distribution to the public at the  
 88 office of each affected county board.

89 (b) Commencing with the school year beginning on  
 90 the first day of July, one thousand nine hundred  
 91 ninety-three, an amount not less than the amount  
 92 required to meet debt service requirements on any  
 93 revenue bonds issued prior to the first day of January,  
 94 one thousand nine hundred ninety-four, and the debt  
 95 service requirements on any revenue bonds issued for  
 96 the purpose of refunding revenue bonds issued prior  
 97 to the first day of January, one thousand nine hun-  
 98 dred ninety-four, shall be paid into the school building  
 99 capital improvements fund created by section six,  
 100 article nine-d of this chapter, and shall be used solely  
 101 for the purposes of said article. The school building  
 102 capital improvements fund shall not be utilized to  
 103 meet the debt services requirement on any revenue  
 104 bonds or revenue refunding bonds for which moneys  
 105 contained within the school building debt service fund  
 106 have been pledged for repayment pursuant to said  
 107 section.

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

##### **§18-9D-2. Definitions.**

1 The following terms, wherever used or referred to

2 in this article, have the following meanings, unless a  
3 different meaning clearly appears from the context:

4 (1) "Authority" means the school building authority  
5 of 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"  
12 means the new construction, major renovation, repair  
13 and safety upgrading of facilities, buildings and  
14 structures for school purposes including the acquisi-  
15 tion of land for current or future use in connection  
16 therewith, equipment, machinery, furnishings, instal-  
17 lation of utilities and other similar items convenient in  
18 connection with placing the foregoing into operation,  
19 but may not include such items as books, fuel, supplies  
20 and other items which are customarily deemed to  
21 result in a 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  
25 of land, equipment, machinery, furnishings, installa-  
26 tion of utilities and other similar items convenient in  
27 connection with placing the foregoing into operation;  
28 and the cost of financing, interest during construction,  
29 professional service fees and all other charges or  
30 expenses necessary, appurtenant or incidental to the  
31 foregoing, including the cost of administration of this  
32 article;

33 (5) "Revenue" or "revenues" means moneys depos-  
34 ited in the school building capital improvements fund  
35 pursuant to the operation of section ten, article nine-  
36 a of this chapter; moneys deposited in the school  
37 building debt service fund pursuant to the operation of  
38 section thirty, article fifteen, chapter eleven of this  
39 code; any moneys received, directly or indirectly, from  
40 any source for the use of all or any part of any project  
41 completed pursuant to this article; and any other

42 moneys received by the authority for the purposes of  
43 this article;

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

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

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

1 (a) There is continued in the state treasury a school  
2 building capital improvements fund to be expended by  
3 the authority as provided in 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 prior to the  
9 first day of January, one thousand nine hundred  
10 ninety-four, or revenue bonds issued to refund reve-  
11 nue bonds issued prior to that date, including the  
12 payment of principal of, interest and redemption  
13 premium, if any, on such revenue bonds and the  
14 establishing and maintaining of a reserve fund or  
15 funds for the payment of the principal of, interest and  
16 redemption premium, if any, on such revenue bond  
17 issue or issues when other moneys pledged may be  
18 insufficient therefor, including such additional protec-  
19 tive pledge of revenues as the authority in its discre-  
20 tion has provided by resolution authorizing the issue  
21 of such bonds or in any trust agreement made in  
22 connection therewith. The authority may further  
23 provide in such resolution and in such trust agreement



24 for such priorities on the revenues paid into such  
25 school building capital improvements fund as may be  
26 necessary for the protection of the prior rights of the  
27 holders of bonds issued at different times under the  
28 provisions of this article.

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

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

53 (b) There is hereby created in the state treasury a  
54 special fund named the school building debt service  
55 fund into which shall be deposited on and after the  
56 first day of November, one thousand nine hundred  
57 ninety-three, the amounts specified in section thirty,  
58 article fifteen, chapter eleven of this code. All amounts  
59 deposited in the fund shall be pledged to the repay-  
60 ment of the principal, interest and redemption premi-  
61 um, if any, on any revenue bonds or refunding  
62 revenue bonds authorized by this article: *Provided*,  
63 That moneys so deposited shall not be pledged to the  
64 repayment of any revenue bonds issued prior to the

65 first day of January, one thousand nine hundred  
66 ninety-three, or with respect to revenue bonds issued  
67 for the purpose of refunding revenue bonds issued  
68 prior to the first day of January, one thousand nine  
69 hundred ninety-four. The authority may further  
70 provide in the resolution and in the trust agreement  
71 for priorities on the revenues paid into the school  
72 building debt service fund as may be necessary for the  
73 protection of the prior rights of the holders of bonds  
74 issued at different times under the provisions of this  
75 article. On or prior to the first day of January of each  
76 year, commencing the first day of January, one  
77 thousand nine hundred ninety-four, the authority  
78 shall certify to the state tax commissioner the principal and interest requirements for the following fiscal  
79 year on any revenue bonds issued on or after the first  
80 day of January, one thousand nine hundred ninety-  
81 four, and for which moneys deposited in the school  
82 building debt service fund have been pledged, or will  
83 be pledged, for repayment pursuant to this section:  
84 *Provided, however,* That before the first day of  
85 November, one thousand nine hundred ninety-three,  
86 the authority shall also certify to the tax commissioner  
87 of the state the principal and interest requirements for  
88 the fiscal year ending on the thirtieth day of June, one  
89 thousand nine hundred ninety-four, on any revenue  
90 bonds issued, or to be issued, on or after the first day  
91 of January, one thousand nine hundred ninety-four.  
92

93 After the authority has issued bonds authorized by  
94 this article, and after the requirements of all funds  
95 have been satisfied, including reserve funds established in connection with the bonds issued pursuant to  
96 this article, any balance remaining in the school  
97 building debt service fund may be used for the  
98 redemption of any of the outstanding bonds issued  
99 hereunder which, by their terms, are then redeemable  
100 or for the purchase of the outstanding bonds at the  
101 market price, but not to exceed the price, if any, at  
102 which redeemable, and all bonds redeemed or purchased shall be forthwith canceled and shall not again  
103 be issued.  
104  
105

106 (c) The Legislature hereby finds and declares that  
107 the supreme court of appeals of West Virginia has held  
108 that the revenue bonds authorized under the school  
109 building authority act, as enacted in this article prior  
110 to the twentieth day of July, one thousand nine  
111 hundred ninety-three, constituted an indebtedness of  
112 the state in violation of section four, article ten of the  
113 constitution of West Virginia. The Legislature further  
114 finds and declares that the financial capacity of a  
115 county to construct facilities depends on the county's  
116 bonding capacity (local property wealth) and on voter  
117 willingness to pass bond issues instead of criteria  
118 related to educational needs, or upon the ability of the  
119 school building authority created in this article to issue  
120 bonds that comply with said holding of the West  
121 Virginia supreme court of appeals. The Legislature  
122 hereby further finds and declares that this section, as  
123 well as section thirty, article fifteen, chapter eleven of  
124 this code, have been reenacted during the second  
125 extraordinary session of the West Virginia Legislature  
126 in the year one thousand nine hundred ninety-three,  
127 in an attempt to comply with said holding of the  
128 supreme court of appeals of West Virginia. The  
129 Legislature hereby further finds and declares that the  
130 continued construction and improvement of school  
131 building facilities and the dedication of the consumers  
132 sales tax pursuant to said section to finance such  
133 construction and improvement are for the use and  
134 benefit of the state, its counties, its municipalities and  
135 its other political subdivisions, and such construction  
136 and improvement serves the vital public purpose of  
137 providing for a thorough and efficient system of free  
138 schools in this state. The Legislature hereby further  
139 finds and declares that it intends, through the reenact-  
140 ment of this section and section thirty, article fifteen,  
141 chapter eleven of this code, to dedicate a source of  
142 state revenue to a special fund for the purpose of  
143 paying the debt service on bonds and refunding bonds  
144 issued subsequent to the first day of January, one  
145 thousand nine hundred ninety-four, the proceeds of  
146 which will be utilized for the construction and  
147 improvement of school building facilities. The Legisla-

148 ture further finds and declares that the vast majority  
 149 of free schools in West Virginia are owned by the  
 150 counties, and that the reenactment of this section and  
 151 section thirty, article fifteen, chapter eleven of this  
 152 code meets the requirements of section six-a, article  
 153 ten of the constitution of West Virginia. The Legisla-  
 154 ture hereby further finds and declares that it intends,  
 155 through the reenactment of this section and section  
 156 thirty, article fifteen, chapter eleven of this code, to  
 157 comply with the provisions of section four, article ten;  
 158 section six, article ten; section six-a, article ten; and  
 159 section one, article twelve of the constitution of West  
 160 Virginia.

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

1 The maximum aggregate face value of bonds that  
 2 may be issued by the authority, for which the moneys  
 3 in the school building debt service fund are to be  
 4 pledged, is one hundred eighty-five million dollars.  
 5 The issuance of revenue bonds under the provisions of  
 6 this article shall be authorized from time to time by  
 7 resolution or resolutions of the school building author-  
 8 ity, which shall set forth the proposed projects and  
 9 provide for the issuance of bonds in amounts suffi-  
 10 cient, when sold as hereinafter provided, to provide  
 11 moneys considered sufficient by the authority to pay  
 12 such costs, less the amounts of any other funds  
 13 available for said costs or from any appropriation,  
 14 grant or gift therefor: *Provided*, That bond issues from  
 15 which bond revenues are to be distributed in accor-  
 16 dance with section fifteen of this article shall not be  
 17 required to set forth the proposed projects in the  
 18 resolution. Such resolution shall prescribe the rights  
 19 and duties of the bondholders and the school building  
 20 authority, and for such purpose may prescribe the  
 21 form of the trust agreement hereinafter referred to.  
 22 The bonds may be issued from time to time, in such  
 23 amounts; shall be of such series; bear such date or  
 24 dates; mature at such time or times not exceeding  
 25 forty years from their respective dates; bear interest at  
 26 such rate or rates; be in such denominations; be in

27 such form, either coupon or registered, carrying such  
28 registration, exchangeability and interchangeability  
29 privileges; be payable in such medium of payment and  
30 at such place or places within or without the state; be  
31 subject to such terms of redemption at such prices not  
32 exceeding one hundred five percent of the principal  
33 amount thereof; and be entitled to such priorities on  
34 the revenues paid into the fund pledged for repayment  
35 of the bonds as may be provided in the resolution  
36 authorizing the issuance of the bonds or in any trust  
37 agreement made in connection therewith. The bonds  
38 shall be signed by the governor, and by the president  
39 or vice president of the authority, under the great seal  
40 of the state, attested by the secretary of state, and the  
41 coupons attached thereto shall bear the facsimile  
42 signature of the president or vice president of the  
43 authority. In case any of the officers whose signatures  
44 appear on the bonds or coupons cease to be such  
45 officers before the delivery of such bonds, such  
46 signatures shall nevertheless be valid and sufficient  
47 for all purposes the same as if such officers had  
48 remained in office until such delivery. Such revenue  
49 bonds shall be sold in such manner as the authority  
50 may determine to be for the best interests of the state.

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

63 The proceeds of such bonds shall be used solely for  
64 the purpose or purposes as may be generally or  
65 specifically set forth in the resolution authorizing  
66 those bonds and shall be disbursed in such manner  
67 and with such restrictions, if any, as the authority may

68 provide in the resolution authorizing the issuance of  
69 such bonds or in the trust agreement hereinafter  
70 referred to securing the same. If the proceeds of such  
71 bonds, by error in calculations or otherwise, shall be  
72 less than the cost of any projects specifically set forth  
73 in the resolution, additional bonds may in like manner  
74 be issued to provide the amount of the deficiency; and  
75 unless otherwise provided for in the resolution or trust  
76 agreement hereinafter mentioned, such additional  
77 bonds shall be considered to be of the same issue, and  
78 shall be entitled to payment from the same fund,  
79 without preference or priority, as the bonds before  
80 issued for such projects. If the proceeds of bonds  
81 issued for such projects exceed the cost thereof, the  
82 surplus may be used for such other projects as the  
83 school building authority may determine or in such  
84 other manner as the resolution authorizing such bonds  
85 may provide. Prior to the preparation of definitive  
86 bonds, the authority may, under like restrictions, issue  
87 temporary bonds with or without coupons, exchange-  
88 able for definitive bonds upon the issuance of such  
89 definitive bonds.

90 After the issuance of any of such revenue bonds, the  
91 revenues pledged therefor shall not be reduced as long  
92 as any of such revenue bonds are outstanding and  
93 unpaid except under such terms, provisions and  
94 conditions as shall be contained in the resolution, trust  
95 agreement or other proceedings under which such  
96 revenue bonds were issued.

97 Such revenue bonds and the revenue refunding  
98 bonds and bonds issued for combined purposes shall,  
99 together with the interest thereon, be exempt from all  
100 taxation by the state of West Virginia, or by any  
101 county, school district, municipality or political subdi-  
102 vision thereof.

103 To meet the operational costs of the school building  
104 authority, the school building authority may transfer  
105 to a special revenue account in the state treasury  
106 interest on any debt service reserve funds created  
107 within any resolution authorizing the issue of bonds or  
108 any trust agreement made in connection therewith,

109 for expenditure in accordance with legislative appro-  
110 priation or allocation of appropriation.

**§18-9D-13. Sinking fund for payment of bonds.**

1 (a) From the school building capital improvements  
2 fund the school building authority shall make periodic  
3 payments in an amount sufficient to meet the require-  
4 ments of any issue of bonds sold under the provisions  
5 of this article prior to the first day of January, one  
6 thousand nine hundred ninety-four, or for refunding  
7 bonds issued prior to that date as may be specified in  
8 the resolution of the authority authorizing the issue  
9 thereof and in any trust agreement entered into in  
10 connection therewith. The payments so made shall be  
11 placed as specified in such resolution or trust agree-  
12 ment in a special sinking fund which is hereby  
13 pledged to and charged with the payment of the  
14 principal of the bonds of such issue and the interest  
15 thereon, and to the redemption or repurchase of such  
16 bonds, such sinking fund to be a fund for all bonds of  
17 such issue without distinction or priority of one over  
18 another, except as may be provided in the resolution  
19 authorizing such issue of bonds. The moneys in the  
20 special sinking fund, less such reserve for payment of  
21 principal and interest and redemption premium, if  
22 any, as may be required by the resolution of the school  
23 building authority, authorizing the issue or any trust  
24 agreement made in connection therewith, may be  
25 used for the redemption of any of the outstanding  
26 bonds payable from such fund which by their terms  
27 are then redeemable, or for the purchase of bonds at  
28 the market price, but at not exceeding the price, if  
29 any, at which such bonds shall in the same year be  
30 redeemable; and all bonds redeemed or purchased  
31 shall forthwith be canceled and shall not again be  
32 issued.

33 (b) From the school building debt service fund, the  
34 authority shall make periodic payments in an amount  
35 sufficient to meet the requirements of any issue of  
36 bonds sold under the provisions of this article on or  
37 after the first day of January, one thousand nine  
38 hundred ninety-four, and for which the authority has

pledged revenues in such fund for the payment of such 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 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.

**§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



15 current fiscal year from: (1) Moneys paid into the  
16 school building capital improvements fund pursuant to  
17 section ten, article nine-a of this chapter; (2) the  
18 issuance of revenue bonds for which moneys in the  
19 school building capital improvements fund or the  
20 school building debt service fund are pledged as  
21 security; and (3) any other moneys received by the  
22 authority may be allocated and may be expended by  
23 the authority for projects that service the educational  
24 community statewide or, upon application by the state  
25 board, for educational programs that are under the  
26 jurisdiction of the state board.

27 Fifty percent of the remaining available funds shall  
28 be allocated and distributed to each county board on  
29 the basis of its net enrollment as defined in section  
30 two, article nine-a of this chapter: *Provided*, That such  
31 moneys shall not be distributed to any county board  
32 whose region does not have an approved region-wide  
33 facilities plan or to any county board that is not  
34 prepared to commence expenditures of such funds  
35 during the fiscal year in which the moneys are  
36 distributed: *Provided, however*, That any moneys  
37 allocated to a county board and not distributed to that  
38 county board shall be deposited in an account to the  
39 credit of that county board, such principal amount to  
40 remain to the credit of and available to the county  
41 board for a period of three years. Any moneys which  
42 are unexpended after a three-year period shall be  
43 redistributed on the basis of net enrollment to those  
44 county boards then eligible for the receipt of net  
45 enrollment distributions in that fiscal year.

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

51 No local matching funds shall be required under the  
52 provisions of this subsection, and any county board  
53 may use the state moneys provided herein in conjunc-  
54 tion with local funds derived from bonding or other  
55 source. Any county board may dedicate any allocations

56 of state moneys pursuant to this subsection to the  
57 payment of local bonds used for purposes encompassed  
58 in an approved facilities plan or for the payment of  
59 bonds that are issued by the authority for the benefit  
60 of that county that are in addition to the bond moneys  
61 distributed in accordance with this subsection.

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

68 (c) To encourage regional educational service agen-  
69 cies and county boards to proceed promptly with  
70 facilities planning and to prepare for the expenditure  
71 of any state moneys derived from the sources de-  
72 scribed in subsection (b) of this section, any county  
73 board failing to expend money within three years of  
74 the allocation thereto shall forfeit such allocation and  
75 thereafter shall be ineligible for further net enroll-  
76 ment or other allocations pursuant to said subsection  
77 until the county board is ready to expend funds in  
78 accordance with an approved facilities plan. Any  
79 amount so forfeited shall be added to the total funds  
80 available for allocation and distribution in the next  
81 ensuing fiscal year.

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

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

1 (a) When issuing its bonds or other securities pursu-  
2 ant to the provisions of this article, the school building  
3 authority shall not employ or contract with any person  
4 or business entity acting as an investment adviser,  
5 underwriter, broker, dealer, government securities  
6 broker, government securities dealer, transfer agent,  
7 attorney, bond counsel, trustee or accountant, if the  
8 authority finds, on the record after notice and oppor-

9 tunity for hearing, that employing or contracting with  
10 such person or business entity would be contrary to  
11 the public interest, and that such person or business  
12 entity, or any person associated with such person or  
13 entity, whether prior to or subsequent to becoming so  
14 associated, has been convicted, within the five years  
15 preceding the date when such bonds or other securi-  
16 ties are proposed to be issued, of a felony or misde-  
17 meanor under the laws of this state, a sister state or  
18 the United States of America, involving the sale or  
19 purchase of any government security, and if the  
20 authority further finds that the offense committed  
21 involves:

22 (1) The bribery of a public officer or employee or a  
23 member of the immediate family of a public officer or  
24 employee;

25 (2) Perjury;

26 (3) Larceny;

27 (4) Any substantially equivalent activity, however  
28 dominated by the laws of the relevant jurisdiction;  
29 or

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

31 (b) When issuing its bonds or other securities, the  
32 school building authority shall not employ or contract  
33 with any person or business entity acting as an  
34 investment adviser, underwriter, broker, dealer,  
35 government securities broker, government securities  
36 dealer, transfer agent, attorney, bond counsel, trustee  
37 or accountant, if the authority finds, on the record  
38 after notice and opportunity for hearing, that employ-  
39 ing or contracting with such person or business entity  
40 would be contrary to the public interest, and that such  
41 person or business entity, or any person associated  
42 with such person or entity, whether prior to or  
43 subsequent to becoming so associated, has, within the  
44 five years preceding the date when such bonds or  
45 other securities are proposed to be issued:

46 (1) Directly or indirectly given, offered or promised  
47 money, services, or any other thing of value having a

48 value of greater than one hundred dollars to a public  
49 officer or employee or a member of the immediate  
50 family of a public officer or employee when the  
51 money, service or other thing of value constituted a  
52 material part of the factual basis upon which the  
53 public officer or employee or a member of the im-  
54 mediate family of the public officer or employee was  
55 convicted of a felony or misdemeanor under the laws  
56 of this state, a sister state or the United States of  
57 America, involving the sale or purchase of any govern-  
58 ment security; or

59 (2) Willfully aided, abetted, counseled, commanded,  
60 induced, or procured a violation which constitutes the  
61 basis for a misdemeanor or felony conviction as  
62 described in subsection (a) of this section or subdivi-  
63 sion (1) of this subsection.

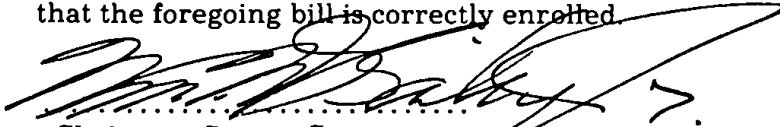
64 (c) When issuing its bonds or other securities pursu-  
65 ant to the provisions of this article, the school building  
66 authority shall not employ or contract with any person  
67 or business entity acting as an investment adviser,  
68 underwriter, broker, dealer, government securities  
69 broker, government securities dealer, transfer agent,  
70 attorney, bond counsel, trustee or accountant, if the  
71 authority finds, on the record after notice and oppor-  
72 tunity for hearing, that employing or contracting with  
73 such person or business entity would be contrary to  
74 the public interest, and that such person or business  
75 entity, or any person associated with such person or  
76 entity, whether prior to or subsequent to becoming so  
77 associated, has conducted or is conducting any business  
78 or transaction in which a financial interest is held by  
79 a public officer or employee, agent or attorney of the  
80 government of this state, or a member of the im-  
81 mediate family of such persons, if the public officer or  
82 employee, agent or attorney is in a position whereby  
83 he or she may personally and substantially influence  
84 the discretionary actions of the authority in connection  
85 with the issuance of bonds or other securities, through  
86 decision, approval, disapproval, recommendation, the  
87 rendering of advice, investigation, or otherwise:  
88 *Provided*, That the ethics commission shall, on or

89 before the fifteenth day of December, one thousand  
90 nine hundred ninety-three, promulgate an emergency  
91 rule to establish guidelines and standards for the  
92 implementation of this subsection by the authority.

93 (d) For purposes of this section, the term "immedi-  
94 ate family" means a spouse and any unemancipated  
95 child of a person.

96 (e) The school building authority may declare void  
97 and rescind any contract with any person or business  
98 entity acting as an investment adviser, underwriter,  
99 broker, dealer, government securities broker, govern-  
100 ment securities dealer, transfer agent, attorney, bond  
101 counsel, trustee or accountant, if the authority finds,  
102 on the record after notice and opportunity for hearing,  
103 that continuing to employ or contract with such  
104 person or business entity would be contrary to the  
105 public interest, and that such person or business  
106 entity, or any person associated with such person or  
107 entity, whether prior to or subsequent to becoming so  
108 associated, has engaged in conduct which would  
109 prohibit the authority, under the provision of this  
110 section, from entering into a contract with such person  
111 or business entity if the contract was yet to be  
112 executed.

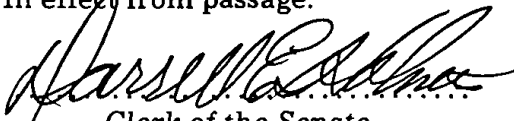
The Joint Committee on Enrolled Bills hereby certifies  
that the foregoing bill is correctly enrolled.

  
Chairman Senate Committee


  
~~new~~ Chairman House Committee

Originated in the Senate.

In effect from passage.

  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker House of Delegates

The within is approved this the 20<sup>th</sup>  
day of October, 1993.

  
Governor

PRESENTED TO THE

GOVERNOR

Date 10/20/93

Time 1:43 pm