SENATE BILL NO. 100

PASSED October 18, 1993
In Effect from Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 100

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

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

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.


1 Beginning the first day of November, one thousand nine hundred ninety-three, and continuing on the first day of each succeeding month thereafter, there shall be dedicated monthly from the collections of this tax, prior to the payment or commitment of the proceeds or collections of this tax for any other purpose whatsoever, an amount equal to one eighth of the projected annual principal and interest requirements on any and all revenue bonds and refunding bonds issued, or to be issued, on or after the first day of January, one thousand nine hundred ninety-four, for which bond moneys in the school building debt service fund have been pledged, or will be pledged, for repayment pursuant to section six, article nine-d, chapter eighteen of this code, such principal and interest requirements having been certified to the tax commissioner in accordance with the provisions of said section: Provided, That in no event shall the total dedicated collections of this tax to be paid into the school building debt service fund, as provided in this section, in any fiscal year exceed the lesser of the principal
and interest requirements certified to the tax commis-
sioner as aforesaid, or twelve million dollars. The
amount dedicated shall be deposited on a monthly
basis into the school building debt service fund created
pursuant to section six, article nine-d, chapter eigh-
teen of this code.

CHAPTER 18. EDUCATION.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

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

(a) For the school year beginning on the first day of
July, one thousand nine hundred ninety-three only,
three-two million five hundred twenty thousand nine
hundred ninety-four dollars, unless a greater amount
is appropriated by the Legislature, in addition to funds
which accrue from allocations due to increase in total
local share above that computed for the school year
beginning on the first day of July, one thousand nine
hundred ninety-three, from balances in the general
school fund, or from appropriations for such purpose
shall be allocated to increase state support of counties
as follows: Provided, That for the school year begin-
ning on the first day of July, one thousand nine
hundred ninety-three only, no county shall gain more
than seventy-three and sixty-six one-hundredths
percent or lose more than twenty-six and thirty-four
one-hundredths percent over the previous year's
allocation: Provided, however, That for the school year
beginning on the first day of July, one thousand nine
hundred ninety-four and thereafter, the sum of the
allocations shall be in an amount at least equal to the
amount appropriated by the Legislature, in addition to
funds which accrue from allocations due to increase in
total local share above that computed for the previous
school year, from balances in the general school fund,
or from appropriations for such purposes:

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

(2) Distribution to the counties of the remainder of
these funds shall be made proportional to the average of each county's average daily attendance for the preceding year and the county's second month net enrollment. Moneys allocated by provision of this section shall be used to improve instructional programs according to a plan for instructional improvement which the affected county board shall file with the state board by the first day of August of each year, to be approved by the state board by the first day of September of that year if such plan substantially complies with standards to be adopted by the state board: Provided, That notwithstanding any other provision of this code to the contrary, moneys allocated by provision of this section may also be used in the implementation and maintenance of the uniform integrated regional computer information system; and

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

Prior to the use of any funds from this section for personnel costs, the county board must receive authorization from the state superintendent of schools. The state superintendent shall require the district board to demonstrate: (1) The need for the allocation; (2) efficiency and fiscal responsibility in staffing; and (3) sharing of services with adjoining counties and the regional educational service agency for that county in the use of the total local district board budget. District boards shall make application for available funds by the first day of May: Provided, That for the school year beginning on the first day of July, one thousand nine hundred ninety-three only, district boards shall make application for available funds by the fifteenth day of June, one thousand nine hundred ninety-three. On or before the first day of June, the state superintendent shall review all applications and notify applying district boards of the distribution of the allocation:
Provided, however, That for the school year beginning on the first day of July, one thousand nine hundred ninety-three only, the state superintendent shall review all applications and notify applying district boards of the distribution of the allocation on or before the first day of July, one thousand nine hundred ninety-three. Such funds shall be distributed during the fiscal year as appropriate. The state superintendent shall require the county board to demonstrate the need for an allocation for personnel based upon the county's inability to meet the requirements of state law or state board policy. Provided further, That the funds available for personnel under this section may not be used to increase the total number of professional noninstructional personnel in the central office beyond four. The instructional improvement plan shall be made available for distribution to the public at the office of each affected county board.

(b) Commencing with the school year beginning on the first day of July, one thousand nine hundred ninety-three, an amount not less than the amount required to meet debt service requirements on any revenue bonds issued prior to the first day of January, one thousand nine hundred ninety-four, and the debt service requirements on any revenue bonds issued for the purpose of refunding revenue bonds issued prior to the first day of January, one thousand nine hundred ninety-four, shall be paid into the school building capital improvements fund created by section six, article nine-d of this chapter, and shall be used solely for the purposes of said article. The school building capital improvements fund shall not be utilized to meet the debt services requirement on any revenue bonds or revenue refunding bonds for which moneys contained within the school building debt service fund have been pledged for repayment pursuant to said section.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.


The following terms, wherever used or referred to
in this article, 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 acquisi-
tion of land for current or future use in connection
therewith, equipment, machinery, furnishings, instal-
lation 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, installa-
tion 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" means moneys depos-
ited in the school building capital improvements fund
pursuant to the operation of section ten, article nine-
a of this chapter; moneys deposited in the school
building debt service fund pursuant to the operation of
section thirty, article fifteen, chapter eleven of this
code; 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 of this article; 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.

§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.

(a) There is continued in the state treasury a school building capital improvements fund to be expended by the authority as provided in this article.

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 prior to the first day of January, one thousand nine hundred ninety-four, or revenue bonds issued to refund revenue bonds issued prior to that date, 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 has provided by resolution authorizing the issue of such bonds or 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 connection 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 improvements 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.

(b) There is hereby created in the state treasury a special fund named the school building debt service fund into which shall be deposited on and after the first day of November, one thousand nine hundred ninety-three, the amounts specified in section thirty, article fifteen, chapter eleven of this code. All amounts deposited in the fund shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds authorized by this article: Provided, That moneys so deposited shall not be pledged to the repayment of any revenue bonds issued prior to the
first day of January, one thousand nine hundred ninety-three, or with respect to revenue bonds issued for the purpose of refunding revenue bonds issued prior to the first day of January, one thousand nine hundred ninety-four. The authority may further provide in the resolution and in the trust agreement for priorities on the revenues paid into the school building debt service 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. On or prior to the first day of January of each year, commencing the first day of January, one thousand nine hundred ninety-four, the authority shall certify to the state tax commissioner the principal and interest requirements for the following fiscal year on any revenue bonds issued on or after the first day of January, one thousand nine hundred ninety-four, and for which moneys deposited in the school building debt service fund have been pledged, or will be pledged, for repayment pursuant to this section: Provided, however, That before the first day of November, one thousand nine hundred ninety-three, the authority shall also certify to the tax commissioner of the state the principal and interest requirements for the fiscal year ending on the thirtieth day of June, one thousand nine hundred ninety-four, on any revenue bonds issued, or to be issued, on or after the first day of January, one thousand nine hundred ninety-four.

After the authority has issued bonds authorized by this article, and after the requirements of all funds have been satisfied, including reserve funds established in connection with the bonds issued pursuant to this article, any balance remaining in the school building debt service fund may be used for the redemption of any of the outstanding bonds issued hereunder which, by their terms, are then redeemable or for the purchase of the outstanding bonds at the market price, but not to exceed the price, if any, at which redeemable, and all bonds redeemed or purchased shall be forthwith canceled and shall not again be issued.
(c) The Legislature hereby finds and declares that the supreme court of appeals of West Virginia has held that the revenue bonds authorized under the school building authority act, as enacted in this article prior to the twentieth day of July, one thousand nine hundred ninety-three, constituted an indebtedness of the state in violation of section four, article ten of the constitution of West Virginia. The Legislature further finds and declares that the financial capacity of a county to construct facilities depends on the county's bonding capacity (local property wealth) and on voter willingness to pass bond issues instead of criteria related to educational needs, or upon the ability of the school building authority created in this article to issue bonds that comply with said holding of the West Virginia supreme court of appeals. The Legislature hereby further finds and declares that this section, as well as section thirty, article fifteen, chapter eleven of this code, have been reenacted during the second extraordinary session of the West Virginia Legislature in the year one thousand nine hundred ninety-three, in an attempt to comply with said holding of the supreme court of appeals of West Virginia. The Legislature hereby further finds and declares that the continued construction and improvement of school building facilities and the dedication of the consumers sales tax pursuant to said section to finance such construction and improvement are for the use and benefit of the state, its counties, its municipalities and its other political subdivisions, and such construction and improvement serves the vital public purpose of providing for a thorough and efficient system of free schools in this state. The Legislature hereby further finds and declares that it intends, through the reenactment of this section and section thirty, article fifteen, chapter eleven of this code, to dedicate a source of state revenue to a special fund for the purpose of paying the debt service on bonds and refunding bonds issued subsequent to the first day of January, one thousand nine hundred ninety-four, the proceeds of which will be utilized for the construction and improvement of school building facilities. The Legisla-
ture further finds and declares that the vast majority
of free schools in West Virginia are owned by the
counties, and that the reenactment of this section and
section thirty, article fifteen, chapter eleven of this
code meets the requirements of section six-a, article
ten of the constitution of West Virginia. The Legisla-
ture hereby further finds and declares that it intends,
through the reenactment of this section and section
thirty, article fifteen, chapter eleven of this code, to
comply with the provisions of section four, article ten;
section six, article ten; section six-a, article ten; and
section one, article twelve of the constitution of West
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
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 fund pledged for repayment of the bonds as may be provided in the resolution authorizing the issuance of the bonds or in any trust agreement made in connection 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 disbursed in such manner and with such restrictions, if any, as the authority may
provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter referred to securing the same. 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 considered 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 conditions as shall be contained in the resolution, trust agreement or other proceedings under which such revenue bonds were issued.

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.

To meet the operational costs of the school building authority, the school building authority may transfer to a special revenue account in the state treasury interest on any debt service reserve funds created within any resolution authorizing the issue of bonds or any trust agreement made in connection therewith,
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109 for expenditure in accordance with legislative appro-
110 priation or allocation of appropriation.


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
current fiscal year from: (1) Moneys 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 moneys in the
school building capital improvements fund or the
school building debt service fund are 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 region-wide
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 deposited in an account to the
credit of that county board, such principal amount to
remain to the credit of and available to the county
board for a period of three years. Any moneys which
are unexpended after a three-year period 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.

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 conjunc-
tion 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 agen-
cies and county boards to proceed promptly with
facilities planning and to prepare for the expenditure
of any state moneys derived from the sources de-
scribed 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 enroll-
ment or other allocations pursuant to said subsection
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 pay-
ments adopted by the authority pursuant to such
guidelines as it shall adopt.

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

(a) When issuing its bonds or other securities pursu-
ant to the provisions of this article, the school building
authority shall not employ or contract with any person
or business entity acting as an investment adviser,
underwriter, broker, dealer, government securities
broker, government securities dealer, transfer agent,
attorney, bond counsel, trustee or accountant, if the
authority finds, on the record after notice and oppor-
tunity for hearing, that employing or contracting with such person or business entity would be contrary to the public interest, and that such person or business entity, or any person associated with such person or entity, whether prior to or subsequent to becoming so associated, has been convicted, within the five years preceding the date when such bonds or other securities are proposed to be issued, of a felony or misdemeanor under the laws of this state, a sister state or the United States of America, involving the sale or purchase of any government security, and if the authority further finds that the offense committed involves:

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

(2) Perjury;

(3) Larceny;

(4) Any substantially equivalent activity, however denominated by the laws of the relevant jurisdiction; or

(5) The conspiracy to commit any such offense.

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

(1) Directly or indirectly given, offered or promised money, services, or any other thing of value having a
value of greater than one hundred dollars to a public
officer or employee or a member of the immediate
family of a public officer or employee when the
money, service or other thing of value constituted a
material part of the factual basis upon which the
public officer or employee or a member of the imme-
diate family of the public officer or employee was
convicted of a felony or misdemeanor under the laws
of this state, a sister state or the United States of
America, involving the sale or purchase of any govern-
ment security; or

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

(c) When issuing its bonds or other securities pursu-
ant to the provisions of this article, the school building
authority shall not employ or contract with any person
or business entity acting as an investment adviser,
underwriter, broker, dealer, government securities
broker, government securities dealer, transfer agent,
attorney, bond counsel, trustee or accountant, if the
authority finds, on the record after notice and oppor-
tunity for hearing, that employing or contracting with
such person or business entity would be contrary to
the public interest, and that such person or business
entity, or any person associated with such person or
entity, whether prior to or subsequent to becoming so
associated, has conducted or is conducting any business
or transaction in which a financial interest is held by
a public officer or employee, agent or attorney of the
government of this state, or a member of the imme-
diate family of such persons, if the public officer or
employee, agent or attorney is in a position whereby
he or she may personally and substantially influence
the discretionary actions of the authority in connection
with the issuance of bonds or other securities, through
decision, approval, disapproval, recommendation, the
rendering of advice, investigation, or otherwise:

Provided, That the ethics commission shall, on or
before the fifteenth day of December, one thousand
nine hundred ninety-three, promulgate an emergency
rule to establish guidelines and standards for the
implementation of this subsection by the authority.

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

(e) The school building authority may declare void
and rescind any contract with any person or business
entity acting as an investment adviser, underwriter,
broker, dealer, government securities broker, govern-
ment securities dealer, transfer agent, attorney, bond
counsel, trustee or accountant, if the authority finds,
on the record after notice and opportunity for hearing,
that continuing to employ or contract with such
person or business entity would be contrary to the
public interest, and that such person or business
entity, or any person associated with such person or
entity, whether prior to or subsequent to becoming so
associated, has engaged in conduct which would
prohibit the authority, under the provision of this
section, from entering into a contract with such person
or business entity if the contract was yet to be
executed.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

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 bill approved this the 20th day of October, 1993.

Governor
PRESENTED TO THE
GOVERNOR

Date 10/30/43
Time 1:43 pm