WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1993

ENROLLED

Con. Sub. For

HOUSE BILL No. 2002

(By Delegate Kiss)

Passed April 19, 1993

In Effect from Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2002
(By Delegate Kiss)

[Passed April 10, 1993; in effect from passage.]

AN ACT to repeal section seventeen, article nine-d, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section eight, article six, chapter five of said code; and to amend and reenact sections three, five, eight, nine, thirteen, fifteen and sixteen, article nine-d, chapter eighteen of said code, all relating to bonding; authorizing state building commission to issue stated amount of financing and refinancing bonds for specified purposes; addressing powers and duties of school building authority; requiring attorney general be used for litigation matters; authorizing use of other professionals; authorizing emergency funds in accordance with authority guidelines; providing for individual higher education savings plans, tax treatment thereof and issuance of revenue bonds therefor; providing for disbursement of bond proceeds in accordance with resolution or trust agreement; deleting requirement that such proceeds and payments to sinking fund be deposited in state treasury; authorizing transfer of interest on debt service reserve funds to state treasury for authority's operational costs; authorizing deposit of county's net enrollment moneys to county's credit for three years rather than redistribution; acknowledging districts' comprehensive facilities...
plans; and providing that priority list of region-wide plan is one criteria rather than the basis for determining expenditure of funds.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article nine-d, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section eight, article six, chapter five of said code be amended and reenacted; and that sections three, five, eight, nine, thirteen, fifteen and sixteen, article nine-d, chapter eighteen of said code be amended and reenacted, all to read as follows:

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 6. STATE BUILDING COMMISSION.

§5-6-8. Commission empowered to issue state building revenue bonds after legislative authorization; form and requirements for bonds; procedure for issuance; temporary bonds; funds, grants and gifts.

(a) The commission is hereby empowered to raise the cost of a project, as defined in this article, by the issuance of state building revenue bonds of the state, the principal of and interest on which bonds shall be payable solely from the special fund herein provided for such payment. Subject to the proceedings pursuant to which any bonds outstanding were authorized and issued pursuant to this article, the commission shall pledge the moneys in such special fund, except such part of the proceeds of sale of any bonds to be used to pay the cost of a project, for the payment of the principal of and interest on bonds issued pursuant to this article, such pledge to apply equally and ratably to separate series of bonds or upon such priorities as the commission shall determine. Such bonds shall be authorized by
resolution of the commission which shall recite an estimate by the commission of such cost, and shall provide for the issuance of bonds in an amount sufficient, when sold as hereinafter provided, to produce such cost, less the amount of any funds, grant or grants, gift or gifts, contribution or contributions received, or in the opinion of the commission expected to be received, from the United States of America or from any other source. The acceptance by the commission of any and all such funds, grants, gifts and contributions, whether in money or in land, labor or materials, is hereby expressly authorized. All such bonds shall have and are hereby declared to have all the qualities of negotiable instruments. Such bonds shall bear interest at not more than twelve percent per annum, payable semiannually, and shall mature in not more than forty years from their date or dates, and may be made redeemable at the option of the state, to be exercised by the commission, at such price and under such terms and conditions, all as the commission may fix prior to the issuance of such bonds. The commission shall determine the form of such bonds, including coupons, if any, to be attached thereto to evidence the right of interest payments, which bonds shall be signed by the chairman and secretary of the commission, under the great seal of the state, attested by the secretary of state, and the coupons, if any, attached thereto shall bear the facsimile signature of the chairman of the commission. In case any of the officers whose signatures appear on the bonds or coupons issued as hereinbefore authorized shall 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 they had remained in office until such delivery. The commission shall fix the denominations of such bonds, the principal and interest of which shall be payable at the office of the treasurer of the state of West Virginia, at the capitol of the state, or, at the option of the holder, at some bank or trust company within or without the state of West Virginia to be named in the bonds, in such medium as may be determined by the commission. The bonds and interest thereon shall be exempt from taxation by the state of West Virginia, or
any county or municipality therein. The commission may provide for the registration of such bonds in the name of the owners as to principal alone, and as to both principal and interest under such terms and conditions as the commission may determine, and shall sell such bonds in such manner as it may determine to be for the best interest of the state, taking into consideration the financial responsibility of the purchaser, and the terms and conditions of the purchase, and especially the availability of the proceeds of the bonds when required for payment of the cost of the project, such sale to be made at a price not lower than a price which, computed upon standard tables of bond values, will show a net return of not more than thirteen percent per annum to the purchaser upon the amount paid therefor. The proceeds of such bonds shall be used solely for the payment of the cost of the project for which bonds were issued, and shall be deposited and checked out as provided by section five of this article, and under such further restrictions, if any, as the commission may provide. If the proceeds of bonds issued for a project or a specific group of projects shall exceed the cost thereof, the surplus shall be paid into the fund hereinafter provided for payment of the principal and interest of such bonds. Such fund may be used for the purchase of any of the outstanding bonds payable from such fund at the market price, but at 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 cancelled, and shall not again be issued. Prior to the preparation of definitive bonds, the commission may, under like restrictions, issue temporary bonds with or without coupons, exchangeable for definitive bonds upon the issuance of the latter. Notwithstanding the provisions of sections nine and ten, article six, chapter twelve of this code, revenue bonds issued under the authority herein granted shall be eligible as investments for the workers' compensation fund, teachers retirement fund, division of public safety death, disability and retirement fund, West Virginia public employees retirement system and as security for the deposit of all public funds. Such revenue bonds may
be issued without any other proceedings or the happen-
ing of any other conditions or things than those
proceedings, conditions and things which are specified
and required by this article, or by the constitution of the
state. For all projects authorized under the provisions
of this article other than projects to be leased by the
commission to the regional jail and correctional facilities
authority, the aggregate amount of all issues of bonds
outstanding at one time shall not exceed sixty-two
million five hundred thousand dollars including the
renegotiation, reissuance or refinancing of any such
bonds, and no such project in connection with which
bonds are to be issued shall be initiated by the commis-
son unless and until the Legislature, through enactment
of general law, approves the purpose, the amount of
bonds to be issued, and the total cost for such project,
construction or acquisition.

For projects which are to be leased by the commission
to the regional jail and correctional facilities authority,
legislative approval pursuant to the provisions of this
section shall not be required if such projects have
otherwise been approved by the Legislature in accor-
dance with the provisions of subsection (m), section five,
article twenty, chapter thirty-one of this code, and the
limitations on the amount of revenue bonds which may
be issued by the commission and the project costs shall
be governed by the terms of any concurrent resolution
adopted pursuant to said subsection.

(b) Notwithstanding anything in this article to the
contrary, the commission is authorized to issue bonds or
otherwise finance or refinance the following projects,
including the costs of issuance and sale of the bonds or
financing, all necessary financial and legal expenses and
creation of debt service reserve funds, in an amount not
to exceed twenty-one million dollars:

(1) Any or all of the state office buildings and
adjoining real property being lease-purchased in
Beckley, Clarksburg, Fairmont, Huntington and Par-
kersburg: Provided, That no such building and adjoin-
ing real property shall be financed or refinanced unless
such financing or refinancing is at an interest rate at
one and one-half percent below the interest rate being
paid by the current owner under the lease-purchase
agreement;
(2) A facility to be obtained or constructed by the
commission and leased to the division of motor vehicles;
and
(3) Property and buildings needed for state spending
units in an amount not to exceed three million dollars.

CHAPTER 18. EDUCATION

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.


1 The school building authority has the power:
2 (1) To sue and be sued, plead and be impleaded;
3 (2) To have a seal and alter the same at pleasure;
4 (3) To contract to acquire and to acquire, in the name
5 of the authority by purchase, lease-purchase, or other-
6 wise, real property or rights or easements necessary or
7 convenient for its corporate purposes and to exercise the
8 power of eminent domain to accomplish such purposes;
9 (4) To acquire, hold and dispose of real and personal
10 property for its corporate purposes;
11 (5) To make bylaws for the management and rule of
12 its affairs;
13 (6) To use the facilities, office, assistants and em-
14 ployees of the attorney general in all legal matters
15 relating to litigation involving the authority;
16 (7) Except as limited in subdivision (6), to appoint,
17 contract with and employ attorneys, bond counsel,
18 accountants, construction and financial experts, un-
19 derwriters, financial advisers, trustees, managers,
20 officers and such other employees and agents as may be
21 necessary in the judgment of the authority and to fix
22 their compensation;
23 (8) To make contracts and to execute all instruments
24 necessary or convenient to effectuate the intent of, and
25 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 considered necessary or economical by the authority to provide consultative or other services to the authority or 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 considered by the
authority to be necessary or economical. Assistance to
the region or district may include the development of
preapproved systems, plans, designs, models or docu-
ments; 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;

(17) To provide funds on an emergency basis to repair
or replace property damaged by fire, flood, wind, storm,
earthquake or other natural occurrence, such funds to
be made available in accordance with guidelines of the
school building authority; and

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

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

(a) Legislative findings. — The Legislature hereby
finds and declares that:

(1) It is an essential function of state government to
encourage postsecondary education in order to increase
the education level of the residents of the state of West
Virginia.

(2) Tuition, fee and other costs at institutions of
higher education are difficult for many to afford and are
difficult to predict in order to enable individuals and
families to plan for the payment of such costs.

(3) Students in elementary and secondary schools tend
to achieve a higher standard of performance when the
payment of tuition, fees and other costs for their higher
education is secured.

(4) It is in the best interest of the people of the state
of West Virginia and is necessary for the public health,
safety and welfare to encourage state residents desiring
a higher education to enroll in institutions of higher
education in order to provide well-educated and in-
formed citizens.
(b) **Purpose.** — In light of the findings described in subsection (a) of this section and in light of the purposes of this article, the Legislature declares that the purpose of this section is to encourage higher education and the means of paying costs relating thereto by (1) authorizing establishment of higher education savings plan programs; and (2) providing funding for such programs through the sale and purchase of school building authority revenue bonds to be used to make capital improvements for primary and secondary educational facilities in this state, or through the sale and purchase of refunding revenue bonds, as provided in this article.

(c) **Authorization.** — The school building authority is authorized to offer to the general public one or more higher education savings plan programs. In order to establish, operate and maintain an efficient and effective program or programs, the school building authority shall have such additional powers as are necessary or reasonably desirable to implement such a program or programs. These additional powers shall include, but are not limited to, the power to:

1. Issue revenue bonds in accordance with the provisions of this section and as authorized by this article;
2. Permit employees of the state of West Virginia and its subdivisions to purchase through payroll deductions by their employer bonds of not less than one thousand dollar maturity increments when issued pursuant to this section.
3. As deemed appropriate and practical, offer bond issues which take into consideration the various needs of different individuals participating in a higher education savings plan program.
4. Offer a rate or rates of interest on bonds purchased pursuant to such a program which encourages maximum participation.
5. Execute a separate trust agreement or agreements under section twelve of this article for bonds sold pursuant to an individual higher education savings plan program established under this section.
(6) Transfer available moneys of the school building authority, including revenues, investment earnings on funds or accounts established in connection with the issuance of bonds and moneys available from any other source, to funds or accounts as may be necessary or desirable in establishing a higher education savings plan program, including, but not limited to, escrow funds, investment agreements or similar instruments.

(7) Establish program guidelines for the administration of a higher education savings plan program.

(d) Construction. — Other sections of this article which apply generally to bonds issued under this article shall apply to the revenue bonds or refunding revenue bonds issued under this section. If any language in this section conflicts with language in another section of this article, the language of this section shall control unless such a construction would be unlawful, or would not be in the public interest, or would be contrary to the statements of finding and purpose of this section.

(e) Tax treatment. —

(1) The amount which an individual expends during a taxable year in the purchase of revenue bonds or refunding revenue bonds issued pursuant to this section shall be allowed as a deduction from federal adjusted gross income for such year, or, if not fully deducted during such year, for the remaining four years, until fully deducted, for purposes of the tax imposed by article twenty-one, chapter eleven of this code, except as provided in subdivision (3) of this subsection.

(2) The interest which an individual earns on revenue bonds or refunding revenue bonds issued under this section shall not be subject to the tax imposed by article twenty-one, chapter eleven of this code, except as provided in subdivision (3) of this subsection.

(3) If the owner of a revenue bond or refunding revenue bonds purchased under this section sells it or receives the proceeds of such bond at maturity or otherwise during a taxable year and does not, within four years of the date of such sale or other disposition,
expend an amount equal to such proceeds for tuition, fees, books, reasonable room and board, and child care costs necessary to enable a person to attend an institution of higher education, such proceeds of sale or other disposition not so spent shall be taxed under article twenty-one, chapter eleven of this code, by application of the applicable rate to the taxpayer to the amount not so spent. The amount of tax imposed shall be due and payable on the fifteenth day of April of the taxable year immediately succeeding the fourth taxable year in which the bond was sold or otherwise disposed of.

(f) Confidentiality — The identity of any individual purchasing revenue bonds under this section, the amount of the bonds so purchased by any individual and the amount allowed as an income tax deduction shall be and remain confidential information: Provided, That nothing herein shall prohibit the disclosure of the number of individuals purchasing the bonds, the aggregate amount of bond purchased, or other general information which does not breach any individual’s confidentiality.

(g) Reports. — The school building authority and the indenture trustee of an individual higher education savings plan program shall make such reports regarding such bonds to the tax commissioner and to the individuals of record who own the bonds with respect to bond principal and interest (and the years to which they relate) and such other matters as the tax commissioner may reasonably require. The reports required by this section shall be filed with the tax commissioner at least annually, at such time and in such manner as the tax commissioner may by regulation require.

§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 consi-
dered sufficient by the authority 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 issues from which bond revenues
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 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 condi-
tions 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, for expenditure in accordance with legislative appropriation or allocation of appropriation.

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

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

Provided, That if interest earned by any investment in such escrow is shown to be in excess of the amounts required from time to time for the payment of interest on and principal of the refunded bonds, including applicable redemption premium, then such excess may be withdrawn from escrow and disbursed in such manner as the authority shall by resolution determine, subject to the provisions of section five of this article.

Any moneys in the sinking or reserve funds or other funds maintained for the outstanding bonds to be refunded may be applied in the same manner and for the same purpose as are the net proceeds of refunding bonds or may be deposited in the special fund or any reserve funds established for account of the refunding bonds.

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

The school building authority shall have power to enter into such escrow agreements with such bank or banks and to insert therein such protective and other covenants and provisions as it may consider necessary to permit the carrying out of the provisions of this article and to insure the prompt payment of the principal of and interest and redemption premiums on the revenue bonds refunded.

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


From the school building capital improvement fund the school building authority shall make periodic payments in an amount sufficient to meet the requirements of any issue of bonds sold under the provisions of this article, as may be specified in the resolution of the authority authorizing the issue thereof and in any trust agreement entered into in connection therewith. The payments so made shall be placed as specified in such resolution of trust agreement in a special sinking fund which is hereby pledged to and charged with the payment of the principal of the bonds of such issue and the interest thereon, and to the redemption or repurchase of such bonds, such sinking fund to be a fund for all bonds of such issue without distinction or priority of one over another, except as may be provided in the resolution authorizing such issue of bonds. The moneys in the special sinking fund, less such 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 and any trust agreement made in connection therewith, may be used for the redemption of any of the outstanding bonds payable from such fund which by their terms are then redeemable, or for the purchase of bonds at the market price, but at 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 determina-
tions 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 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 distrib-
uted: 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 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
is 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 and in accordance with each district's comprehensive school facilities plan approved by the state board of education. Any project receiving funding shall be in furtherance of such approved region-wide facilities plan.

(b) To assure efficiency and productivity in the project approval process, the region-wide 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. Curriculum 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 one of the criteria to be considered by the authority in determining how available funds shall be expended. In prioritizing the projects, each regional educational service agency shall make determinations in accordance with the objective criteria formulated by the school building authority.

(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.

Chairman Senate Committee

Ernest C. Moore
Chairman House Committee

Originating in the House.

Takes effect from passage.

Clerk of the Senate

Dwight D. Hopkins
Clerk of the House of Delegates

Marilyn Quirk
President of the Senate

Peter O. Officers
Speaker of the House of Delegates

The within is approved this the 3rd day of January, 1993.

Governor

Jed Johnson Caperton
PRESENTED TO THE
GOVERNOR
Date 4/23/93
Time 11:45 AM