

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996

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ENROLLED

HOUSE BILL No. 4663

(By Delegates Liss, Browning, Compton,
Doyle, Mazzatosta, Borden and Miller)

Passed March 9, 1996

In Effect From Passage

ENROLLED

H. B. 4663

(BY DELEGATES KISS, BROWNING, COMPTON,
DOYLE, MEZZATESTA, BORDER AND MILLER)

[Passed March 9, 1996; in effect from passage.]

AN ACT to amend and reenact section thirteen, article five, chapter eighteen of the code West Virginia, one thousand nine hundred thirty-one, as amended; to amend article nine-a of said chapter by adding thereto a new section, designated section fourteen; to amend and reenact sections three, six and fifteen, article nine-d of said chapter; to further amend said article by adding thereto a new section, designated section four-a, all relating to the authority of county boards of education generally; allowance for county transfers; powers of the school building authority; savings from issuance of refunding bonds; school building capital improvements fund in the state treasury; school construction fund in state treasury; school building debt service fund in the state treasury; school improvement fund in the state treasury; collections to be paid into special funds; authority to pledge such collections as security for refunding revenue bonds; authority to finance projects on a cash basis; and distribution of money by the school building authority.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that article nine-a of said chapter be amended by adding thereto a new section, designated section fourteen; that sections three, six and fifteen, article nine-d

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of said chapter be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section four-a, all to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-13. Authority of boards generally.

1 The boards, subject to the provisions of this chapter
2 and the rules of the state board, has authority:

3 (1) To control and manage all of the schools and
4 school interests for all school activities and upon all school
5 property, whether owned or leased by the county, includ-
6 ing the authority to require that records be kept of all
7 receipts and disbursements of all funds collected or re-
8 ceived by any principal, teacher, student or other person in
9 connection with the schools and school interests, any pro-
10 grams, activities or other endeavors of any nature operated
11 or carried on by or in the name of the school, or any or-
12 ganization or body directly connected with the school, to
13 audit the records and to conserve the funds, which shall be
14 considered quasi-public moneys, including securing sure-
15 ty bonds by expenditure of board moneys;

16 (2) To establish schools, from preschool through high
17 school, inclusive of vocational schools; and to establish
18 schools and programs, or both, for post high school in-
19 struction, subject to approval of the state board of educa-
20 tion;

21 (3) To close any school which is unnecessary and to
22 assign the pupils of the school to other schools: *Provided*,
23 That the closing shall be officially acted upon and teach-
24 ers and service personnel involved notified on or before
25 the first Monday in April, in the same manner as provided
26 in section four of this article, except in an emergency,
27 subject to the approval of the state superintendent, or un-
28 der subdivision (5) of this section;

29 (4) To consolidate schools;

30 (5) To close any elementary school whose average
31 daily attendance falls below twenty pupils for two months
32 in succession and send the pupils to other schools in the

33 district or to schools in adjoining districts. If the teachers
34 in the closed school are not transferred or reassigned to
35 other schools, they shall receive one month's salary;

36 (6) (a) To provide at public expense adequate means
37 of transportation, including transportation across county
38 lines, for all children of school age who live more than two
39 miles distance from school by the nearest available road;
40 to provide at public expense and according to such rules
41 as the board may establish, adequate means of transporta-
42 tion for school children participating in board-approved
43 curricular and extracurricular activities; and to provide in
44 addition thereto at public expense, by rules and within the
45 available revenues, transportation for those within two
46 miles distance; to provide in addition thereto, at no cost to
47 the board and according to rules established by the board,
48 transportation for participants in projects operated, fi-
49 nanced, sponsored or approved by the commission on
50 aging: *Provided*, That all costs and expenses incident in
51 any way to transportation for projects connected with the
52 commission on aging shall be borne by the commission,
53 or the local or county chapter of the commission: *Pro-*
54 *vided, however*, That in all cases the school buses owned
55 by the board of education shall be driven or operated only
56 by drivers regularly employed by the board of education:
57 *Provided further*, That the county board may provide,
58 under rules established by the state board, for the certifica-
59 tion of professional employees as drivers of board-owned
60 vehicles with a seating capacity of less than ten passengers
61 used for the transportation of pupils for school-sponsored
62 activities other than transporting students between school
63 and home: *And provided further*, That the use of the
64 vehicles shall be limited to one for each school-sponsored
65 activity: *And provided further*, That buses shall be used for
66 extracurricular activities as provided in this section only
67 when the insurance provided for by this section is in ef-
68 fect;

69 (b) To enter into agreements with one another to pro-
70 vide, on a cooperative basis, adequate means of transporta-
71 tion across county lines for children of school age subject
72 to the conditions and restrictions of subdivisions (6) and
73 (8) of this section;

74 (7) (a) To lease school buses operated only by drivers
75 regularly employed by the board to public and private
76 nonprofit organizations or private corporations to trans-
77 port school-age children to and from camps or education-
78 al activities in accordance with rules established by the
79 board. All costs and expenses incurred by or incidental to
80 the transportation of the children shall be borne by the
81 lessee;

82 (b) To contract with any college or university or offi-
83 cially recognized campus organizations to provide trans-
84 portation for college or university students, faculty or staff
85 to and from the college or university: *Provided*, That only
86 college and/or university students, faculty and staff are
87 being transported. The contract shall include consider-
88 ation and compensation for bus operators, repairs and
89 other costs of service, insurance and any rules concerning
90 student behavior;

91 (8) To provide at public expense for insurance against
92 the negligence of the drivers of school buses, trucks or
93 other vehicles operated by the board; and if the transpor-
94 tation of pupils is contracted, then the contract for the
95 transportation shall provide that the contractor shall carry
96 insurance against negligence in an amount specified by
97 the board;

98 (9) To provide solely from county funds for all regu-
99 lar full-time employees of the board all or any part of the
100 cost of a group plan or plans of insurance coverage not
101 provided or available under the West Virginia public em-
102 ployees insurance act;

103 (10) To employ teacher aides, to provide in-service
104 training for teacher aides, the training to be in accordance
105 with rules of the state board and, in the case of service
106 personnel assuming duties as teacher aides in exceptional
107 children programs, to provide a four-clock-hour program
108 of training prior to the assignment which shall, in accor-
109 dance with rules of the state board, consist of training in
110 areas specifically related to the education of exceptional
111 children;

112 (11) To establish and conduct a self-supporting dor-
113 mitory for the accommodation of the pupils attending a
114 high school or participating in a post high school program
115 and of persons employed to teach in the high school or
116 post high school program;

117 (12) To employ legal counsel;

118 (13) To provide appropriate uniforms for school ser-
119 vice personnel;

120 (14) To provide at public expense and under rules as
121 established by any county board of education for the
122 payment of traveling expenses incurred by any person
123 invited to appear to be interviewed concerning possible
124 employment by the county board of education;

125 (15) To allow or disallow their designated employees
126 to use publicly provided carriage to travel from their resi-
127 dences to their workplace and return: *Provided*, That the
128 usage is subject to the supervision of the board and is
129 directly connected with and required by the nature and in
130 the performance of the employee's duties and responsibili-
131 ties;

132 (16) To provide, at public expense, adequate public
133 liability insurance, including professional liability insur-
134 ance for board employees;

135 (17) To enter into agreements with one another to
136 provide, on a cooperative basis, improvements to the in-
137 structional needs of each county. The cooperative agree-
138 ments may be used to employ specialists in a field of aca-
139 demic study or support functions or services, for the aca-
140 demic study. The agreements are subject to approval by
141 the state board of education; and

142 (18) To provide information about vocational or high-
143 er education opportunities to students with handicapping
144 conditions. The board shall provide in writing to the stu-
145 dents and their parents or guardians information relating
146 to programs of vocational education and to programs
147 available at state funded institutions of higher education.
148 The information may include sources of available fund-
149 ing, including grants, mentorships and loans for students

150 who wish to attend classes at institutions of higher educa-
151 tion.

152 "Quasi-public funds" as used in this section means any
153 money received by any principal, teacher, student or other
154 person for the benefit of the school system as a result of
155 curricular or noncurricular activities.

156 The board of each county shall expend under rules it
157 establishes for each child an amount not to exceed the
158 proportion of all school funds of the district that each
159 child would be entitled to receive if all the funds were
160 distributed equally among all the children of school age in
161 the district upon a per capita basis.

162 (19) To enter into agreements with one another, with
163 the approval of the state board, for the transfer and receipt
164 of any and all funds determined to be fair when students
165 are permitted or required to attend school in a county
166 other than the county of their residence.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-14. Allowance for county transfers.

1 In order to encourage county boards to utilize fully
2 their facilities and to provide county boards with fiscal
3 flexibility, county boards that agree to transfer students to
4 another county pursuant to an agreement approved by the
5 state board after the effective date of this article, pursuant
6 to subsection nineteen, section thirteen, article five, chapter
7 eight of this code, shall forward in the year in which the
8 transfers occur to the receiving county the amount agreed
9 upon in the agreement, not to exceed the per pupil alloca-
10 tion in the state aid formula. Subject to appropriations by
11 the Legislature, funds equal to the agreed upon amount
12 will be provided to the county which transfers students as
13 an allowance for facility efficiency in the year in which
14 the transfers occur. Subject to appropriations by the Leg-
15 islature, for the first year after the transfers occur, the
16 county board shall receive one-half the amount provided
17 for in the agreement. Subject to appropriations by the
18 Legislature, for the second year after the transfers occur,
19 the county board shall receive one-fourth the amount
20 provided for in the agreement. If professional or service

21 personnel obtain full-time employment pursuant to the
22 terms of section eight-i, article four, chapter eighteen-a of
23 this code, then the state board shall deduct an appropriate
24 amount from the funds to be received pursuant to this
25 section.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-3. Powers of authority.

1 The school building authority has the power:

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

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

4 (3) To contract to acquire and to acquire, in the name
5 of the authority by purchase, lease-purchase not to exceed
6 a term of twenty-five years, or otherwise, real property or
7 rights or easements necessary or convenient for its corpo-
8 rate purposes and to exercise the power of eminent do-
9 main to accomplish those purposes;

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

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

14 (6) To appoint, contract with and employ attorneys,
15 bond counsel, accountants, construction and financial
16 experts, underwriters, financial advisers, trustees, managers,
17 officers and such other employees and agents as may be
18 necessary in the judgment of the authority and to fix their
19 compensation: *Provided*, That contracts entered into by
20 the school building authority in connection with the issu-
21 ance of bonds under this article to provide professional
22 and technical services, including, without limitation, ac-
23 counting, actuarial, underwriting, consulting, trustee, bond
24 counsel, legal services and contracts relating to the pur-
25 chase or sale of bonds are subject to the provisions of
26 article three, chapter five-a of this code: *Provided, howev-*
27 *er*, That notwithstanding any other provisions of this code,
28 any authority of the attorney general of this state relating
29 to the review of contracts and other documents to effectu-
30 ate the issuance of bonds under this article shall be exclu-

31 sively limited to the form of the contract and document:
32 *Provided further*, That the attorney general of this state
33 shall complete all reviews of contracts and documents
34 relating to the issuance of bonds under this article within
35 ten calendar days of receipt of the contract and document
36 for review;

37 (7) To make contracts and to execute all instruments
38 necessary or convenient to effectuate the intent of and to
39 exercise the powers granted to it by this article;

40 (8) To renegotiate all contracts entered into by it
41 whenever, due to a change in situation, it appears to the
42 authority that its interests will be best served;

43 (9) To acquire by purchase, eminent domain or other-
44 wise all real property or interests in the property necessary
45 or convenient to accomplish the purposes of this article;

46 (10) To require proper maintenance and insurance of
47 any project authorized under this section;

48 (11) To charge rent for the use of all or any part of a
49 project or buildings at any time financed, constructed,
50 acquired or improved, in whole or in part, with the reve-
51 nues of the authority;

52 (12) To assist any county board of education that
53 chooses to acquire land, buildings and capital improve-
54 ments to existing school buildings and property for use as
55 public school facilities, by lease from a private or public
56 lessor for a term not to exceed twenty-five years with an
57 option to purchase pursuant to an investment contract with
58 the lessor on such terms and conditions as may be deter-
59 mined to be in the best interests of the authority, the state
60 board of education and the county board of education,
61 consistent with the purposes of this article, by transferring
62 funds to the state board of education as provided in sub-
63 section (d), section fifteen of this article for the use of the
64 county board of education;

65 (13) To accept and expend any gift, grant, contribu-
66 tion, bequest or endowment of money to, or for the bene-
67 fit of, the authority, from the state of West Virginia or any
68 other source for any or all of the purposes specified in this

69 article or for any one or more of such purposes as may be
70 specified in connection with the gift, grant, contribution,
71 bequest or endowment;

72 (14) To enter on any lands and premises for the pur-
73 pose of making surveys, soundings and examinations;

74 (15) To contract for architectural, engineering or
75 other professional services considered necessary or eco-
76 nomical by the authority to provide consultative or other
77 services to the authority or to any regional educational
78 service agency or county board requesting professional
79 services offered by the authority, to evaluate any facilities
80 plan or any project encompassed in the plan, to inspect
81 existing facilities or any project that has received or may
82 receive funding from the authority, or to perform any
83 other service considered by the authority to be necessary
84 or economical. Assistance to the region or district may
85 include the development of preapproved systems, plans,
86 designs, models or documents; advice or oversight on any
87 plan or project; or any other service that may be efficient-
88 ly provided to regional educational service agencies or
89 county boards by the authority;

90 (16) To provide funds on an emergency basis to re-
91 pair or replace property damaged by fire, flood, wind,
92 storm, earthquake or other natural occurrence, the funds
93 to be made available in accordance with guidelines of the
94 school building authority;

95 (17) To transfer moneys to custodial accounts main-
96 tained by the school building authority with a state finan-
97 cial institution from the school construction fund and the
98 school improvement fund created in the state treasury
99 pursuant to the provisions of section six of this article, as
100 necessary to the performance of any contracts executed
101 by the school building authority in accordance with the
102 provisions of this article;

103 (18) To enter into agreements with county boards and
104 persons, firms or corporations to facilitate the develop-
105 ment of county board projects and county board facilities
106 plans. The county board participating in an agreement
107 shall pay at least twenty-five percent of the cost of the

108 agreement. Nothing in this section shall be construed to
109 supersede, limit or impair the authority of county boards
110 to develop and prepare their projects or plans; and

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

§18-9D-4a. Savings from issuance of refunding bonds.

1 Any aggregate savings resulting from the issuance of
2 refunding bonds pursuant to section four of this article
3 shall be retained by the school building authority. Any
4 savings shall be utilized solely for the construction and
5 maintenance of schools and may not be used to fund
6 administrative costs of the authority.

§18-9D-6. School building capital improvements fund in state treasury; school construction fund in state treasury; school building debt service fund in state treasury; school improvement fund in state treasury; collections to be paid into special funds; authority to pledge such collections as security for refunding 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. The school build-
4 ing capital improvements fund shall be an interest bearing
5 account with interest credited to and deposited in the
6 school building capital improvements fund and expended
7 in accordance with the provisions of this article.

8 The school building authority has authority to pledge
9 all or such part of the revenues paid into the school build-
10 ing capital improvements fund as may be needed to meet
11 the requirements of any revenue bond issue or issues au-
12 thorized by this article prior to the twentieth day of July,
13 one thousand nine hundred ninety-three, or revenue
14 bonds issued to refund revenue bonds issued prior to that
15 date, including the payment of principal of, interest and
16 redemption premium, if any, on, the revenue bonds and
17 the establishing and maintaining of a reserve fund or
18 funds for the payment of the principal of, interest and
19 redemption premium, if any, on the revenue bond issue or

20 issues when other moneys pledged may be insufficient for
21 the payment of the principal, interest and redemption
22 premium, including such additional protective pledge of
23 revenues as the authority in its discretion has provided by
24 resolution authorizing the issuance of the bonds or in any
25 trust agreement made in connection with the bond issue.
26 The authority may further provide in the resolution and
27 in the trust agreement for such priorities on the revenues
28 paid into the school building capital improvements fund
29 as may be necessary for the protection of the prior rights
30 of the holders of bonds issued at different times under the
31 provisions of this article.

32 Any balance remaining in the school building capital
33 improvements fund after the authority has issued bonds
34 authorized by this article, and after the requirements of all
35 funds including reserve funds established in connection
36 with the bonds issued prior to the twentieth day of July,
37 one thousand nine hundred ninety-three, pursuant to this
38 article have been satisfied, may be used for the redemption
39 of any of the outstanding bonds issued under this article
40 which by their terms are then redeemable, or for the pur-
41 chase of the bonds at the market price, but not exceeding
42 the price, if any, at which the bonds are in the same year
43 redeemable, and all bonds redeemed or purchased shall
44 immediately be canceled and shall not again be issued.

45 The school building authority, in its discretion, may
46 use the moneys in the school building capital improve-
47 ments fund to finance the cost of projects on a cash basis.
48 Any pledge of moneys in the fund for revenue bonds
49 issued prior to the twentieth day of July, one thousand
50 nine hundred ninety-three, is a prior and superior charge
51 on the fund over the use of any of the moneys in the
52 fund to pay for the cost of any project on a cash basis:
53 *Provided*, That any expenditures from the fund, other
54 than for the retirement of revenue bonds, may only be
55 made by the authority in accordance with the provisions
56 of this article.

57 (b) There is hereby continued in the state treasury a
58 special revenue fund named the school building debt
59 service fund into which shall be deposited on and after the

60 first day of April, one thousand nine hundred ninety-four,
61 the amounts specified in section eighteen, article
62 twenty-two, chapter twenty-nine of this code. All amounts
63 deposited in the fund shall be pledged to the repayment of
64 the principal, interest and redemption premium, if any, on
65 any revenue bonds or refunding revenue bonds autho-
66 rized by this article: *Provided*, That deposited moneys
67 may not be pledged to the repayment of any revenue
68 bonds issued prior to the first day of January, one thou-
69 sand nine hundred ninety-four, or with respect to revenue
70 bonds issued for the purpose of refunding revenue bonds
71 issued prior to the first day of January, one thousand nine
72 hundred ninety-four. The authority may further provide
73 in the resolution and in the trust agreement for priorities
74 on the revenues paid into the school building debt service
75 fund as may be necessary for the protection of the prior
76 rights of the holders of bonds issued at different times
77 under the provisions of this article. On or prior to the first
78 day of May of each year, commencing the first day of
79 May, one thousand nine hundred ninety-four, the authori-
80 ty shall certify to the state lottery director the principal
81 and interest and coverage ratio requirements for the fol-
82 lowing fiscal year on any revenue bonds issued on or after
83 the first day of January, one thousand nine hundred
84 ninety-four, and for which moneys deposited in the school
85 building debt service fund have been pledged, or will be
86 pledged, for repayment pursuant to this section.

87 After the authority has issued bonds authorized by this
88 article, and after the requirements of all funds have been
89 satisfied, including coverage and reserve funds established
90 in connection with the bonds issued pursuant to this arti-
91 cle, any balance remaining in the school building debt
92 service fund may be used for the redemption of any of the
93 outstanding bonds issued under this article which, by their
94 terms, are then redeemable or for the purchase of the
95 outstanding bonds at the market price, but not to exceed
96 the price, if any, at which the bonds are redeemable, and
97 all bonds redeemed or purchased shall be immediately
98 canceled and shall not again be issued.

99 (c) There is hereby continued in the state treasury a
100 special revenue fund named the school construction fund

101 into which shall be deposited on and after the first day of
102 July, one thousand nine hundred ninety-four, the amounts
103 specified in section thirty, article fifteen, chapter eleven of
104 this code, together with any moneys appropriated thereto
105 by the Legislature. Expenditures from the school con-
106 struction fund shall be for the purposes set forth in this
107 article, including lease-purchase payments under agree-
108 ments made pursuant to subsection (e), section fifteen of
109 this article and section nine, article five of this chapter and
110 are authorized from collections in accordance with the
111 provisions of article three, chapter twelve of this code and
112 from other revenues annually appropriated by the Legisla-
113 ture from lottery revenues as authorized by section eigh-
114 teen, article twenty-two, chapter twenty-nine of this code,
115 pursuant to the provisions set forth in article two, chapter
116 five-a of this code. Amounts collected which are found
117 from time to time to exceed the funds needed for purpos-
118 es set forth in this article may be transferred to other ac-
119 counts or funds and redesignated for other purposes by
120 appropriation of the Legislature. The school construction
121 fund shall be an interest bearing account, with the interest
122 credited to and deposited in the school construction fund
123 and expended in accordance with the provisions of this
124 article. Deposits to and expenditures from the school con-
125 struction fund are subject to the provisions of subsection
126 (i), section fifteen of this article.

127 (d) There is hereby continued in the state treasury a
128 special revenue fund named the school major improve-
129 ment fund into which shall be deposited on and after the
130 first day of July, one thousand nine hundred ninety-four,
131 the amounts specified in section thirty, article fifteen,
132 chapter eleven of this code, together with any moneys
133 appropriated to the fund by the Legislature. Expenditures
134 from the school major improvement fund shall be for the
135 purposes set forth in this article and are authorized from
136 collections in accordance with the provisions of article
137 three, chapter twelve of this code and from other revenues
138 annually appropriated by the Legislature from lottery
139 revenues as authorized by section eighteen, article
140 twenty-two, chapter twenty-nine of this code, pursuant to
141 the provisions set forth in article two, chapter five-a of this

142 code. Amounts collected which are found from time to
143 time to exceed the funds needed for purposes set forth in
144 this article may be transferred to other accounts or funds
145 and redesignated for other purposes by appropriation of
146 the Legislature. The school major improvement fund shall
147 be an interest bearing account, with interest being credited
148 to and deposited in the school major improvement fund
149 and expended in accordance with the provisions of this
150 article.

151 (e) The Legislature hereby finds and declares that the
152 supreme court of appeals of West Virginia has held that
153 the issuance of additional revenue bonds authorized under
154 the school building authority act, as enacted in this article
155 prior to the twentieth day of July, one thousand nine hun-
156 dred ninety-three, constituted an indebtedness of the state
157 in violation of section 4, article X of the constitution of
158 West Virginia, but that revenue bonds issued under this
159 article prior to the twentieth day of July, one thousand
160 nine hundred ninety-three, are not invalid. The Legislature
161 further finds and declares that the financial capacity of a
162 county to construct, lease and improve school facilities
163 depends upon the county's bonding capacity (local prop-
164 erty wealth), voter willingness to pass bond issues and the
165 county's ability to reallocate other available county funds
166 instead of criteria related to educational needs or upon the
167 ability of the school building authority created in this
168 article to issue bonds that comply with the holding of the
169 West Virginia supreme court of appeals or otherwise assist
170 counties with the financing of facilities construction and
171 improvement. The Legislature hereby further finds and
172 declares that this section, as well as section eighteen, article
173 twenty-two, chapter twenty-nine of this code, have been
174 reenacted during the first extraordinary session of the
175 West Virginia Legislature in the year one thousand nine
176 hundred ninety-four, in an attempt to comply with the
177 holding of the supreme court of appeals of West Virginia.

178 The Legislature hereby further finds and declares that
179 it intends, through the reenactment of this section and
180 section eighteen, article twenty-two, chapter twenty-nine of
181 this code, to dedicate a source of state revenues to special
182 revenue funds for the purposes of paying the debt service

183 on bonds and refunding bonds issued subsequent to the
184 first day of January, one thousand nine hundred
185 ninety-four, the proceeds of which will be utilized for the
186 construction and improvement of school building facilities.
187 The Legislature hereby further finds and declares that
188 it intends, through the reenactment of this section and
189 section thirty, article fifteen, chapter eleven of this code
190 and section eighteen, article twenty-two, chapter
191 twenty-nine of this code, to appropriate revenues to two
192 special revenue funds for the purposes of construction and
193 improvement of school building facilities. Furthermore,
194 the Legislature intends to encourage county boards of
195 education to maintain existing levels of county funding
196 for construction, improvement and maintenance of school
197 building facilities and to generate additional county funds
198 for such purposes through bonds and special levies whenever
199 possible. The Legislature further encourages the
200 school building authority, the state board of education and
201 county boards of education to propose uniform project
202 specifications for comparable projects whenever possible
203 to meet county needs at the lowest possible cost.

204 The Legislature hereby further finds and declares that
205 it intends, through the reenactment of this section and
206 section eighteen, article twenty-two, chapter twenty-nine of
207 this code, to comply with the provisions of sections 4 and
208 6, article X; and section 1, article XII of the constitution of
209 West Virginia.

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

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

12 (b) An amount that is no more than three percent of
13 the sum of moneys that are determined by the authority to
14 be available for distribution during the then current fiscal
15 year from: (1) Moneys paid into the school building capi-
16 tal improvements fund pursuant to section ten, article
17 nine-a of this chapter; (2) the issuance of revenue bonds
18 for which moneys in the school building debt service fund
19 are pledged as security; (3) moneys paid into the school
20 construction fund pursuant to section six of this article;
21 and (4) any other moneys received by the authority, ex-
22 cept moneys paid into the school major improvement
23 fund pursuant to section six of this article, may be allocat-
24 ed and may be expended by the authority for projects that
25 service the educational community statewide or, upon
26 application by the state board, for educational programs
27 that are under the jurisdiction of the state board. In addi-
28 tion, upon application by the state board or the adminis-
29 trative council of an area vocational educational center
30 established pursuant to article two-b of this chapter, the
31 authority may allocate and expend under this section
32 moneys for school major improvement projects proposed
33 by the state board or an administrative council for school
34 facilities under the direct supervision of the state board or
35 an administrative council, respectively: *Provided*, That the
36 authority may not expend any moneys for a school major
37 improvement project proposed by the state board or the
38 administrative council of an area vocational educational
39 center unless the state board or an administrative council
40 has submitted a ten-year school major improvement plan,
41 to be updated annually, pursuant to section sixteen of this
42 article: *Provided, however*, That the authority shall, before
43 allocating any moneys to the state board or the adminis-
44 trative council of an area vocational educational center for
45 a school improvement project, consider all other funding
46 sources available for the project.

47 (c) An amount that is no more than two percent of the
48 moneys that are determined by the authority to be avail-
49 able for distribution during the current fiscal year from:
50 (1) Moneys paid into the school building capital improve-
51 ments fund pursuant to section ten, article nine-a of this
52 chapter; (2) the issuance of revenue bonds for which mon-

53 eys in the school building debt service fund are pledged as
54 security; (3) moneys paid into the school construction
55 fund pursuant to section six of this article; and (4) any
56 other moneys received by the authority, except moneys
57 deposited into the school major improvement fund, shall
58 be set aside by the authority as an emergency fund to be
59 distributed in accordance with the guidelines adopted by
60 the school building authority.

61 (d) The remaining moneys determined by the authori-
62 ty to be available for distribution during the then current
63 fiscal year from: (1) Moneys paid into the school building
64 capital improvements fund pursuant to section ten, article
65 nine-a of this chapter; (2) the issuance of revenue bonds
66 for which moneys in the school building debt service fund
67 are pledged as security; (3) moneys paid into the school
68 construction fund pursuant to section six of this article;
69 and (4) any other moneys received by the authority, ex-
70 cept moneys deposited into the school major improvement
71 fund, shall be allocated and expended on the basis of need
72 and efficient use of resources, the basis to be determined
73 by the authority in accordance with the provisions of sec-
74 tion sixteen of this article.

75 (e) If a county board of education proposes to finance
76 a project that is approved pursuant to section sixteen of
77 this article through a lease with an option to purchase
78 leased premises upon the expiration of the total lease peri-
79 od pursuant to an investment contract, the authority may
80 allocate no moneys to the county board in connection
81 with the project: *Provided*, That the authority may trans-
82 fer moneys to the state board of education, which, with the
83 authority, shall lend the amount transferred to the county
84 board to be used only for a one-time payment due at the
85 beginning of the lease term, made for the purpose of re-
86 ducing annual lease payments under the investment con-
87 tract, subject to the following conditions:

88 (1) The loan shall be secured in the manner required
89 by the authority, in consultation with the state board, and
90 shall be repaid in a period and bear interest at a rate as
91 determined by the state board and the authority and shall
92 have such terms and conditions as are required by the

93 authority, all of which shall be set forth in a loan agree-
94 ment among the authority, the state board of education
95 and the county board;

96 (2) The loan agreement shall provide for the state
97 board and the authority to defer the payment of principal
98 and interest upon any loan made to the county board
99 during the term of the investment contract, and annual
100 renewals of the investment contract, among the state board,
101 the authority, such county board and a lessor: *Provided*,
102 That in the event a county board of education, which has
103 received a loan from the state building authority for a
104 one-time payment at the beginning of the lease term, does
105 not renew the subject lease annually until performance of
106 the investment contract in its entirety is completed: *Pro-*
107 *vided, however*, That if a county board renews the lease
108 annually through the performance of the investment con-
109 tract in its entirety, the county board shall exercise its
110 option to purchase the leased premises: *Provided further*,
111 That the failure of the county board to make a scheduled
112 payment pursuant to the investment contract shall consti-
113 tute an event of default under the loan agreement: *And*
114 *provided further*, That upon a default by a county board,
115 the principal of the loan, together with all unpaid interest
116 accrued to the date of the default, shall at the option of the
117 authority, in consultation with the state board, become due
118 and payable immediately or subject to renegotiation
119 among the state board, the authority and the county
120 board: *And provided further*, That if the loan becomes due
121 and payable immediately, the authority, in consultation
122 with the state board, shall use all means available under the
123 loan agreement and law to collect the outstanding princi-
124 pal balance of the loan, together with all unpaid interest
125 accrued to the date of payment of the outstanding princi-
126 pal balance; and

127 (3) The loan agreement shall provide for the state
128 board and the authority to forgive all principal and inter-
129 est of the loan upon the county board purchasing the
130 leased premises pursuant to the investment contract and
131 performance of the investment contract in its entirety.

132 To encourage county boards to proceed promptly
133 with facilities planning and to prepare for the expenditure
134 of any state moneys derived from the sources described in
135 this subsection, any county board failing to expend mon-
136 ey within three years of the allocation to the county board
137 shall forfeit the allocation and thereafter shall be ineligible
138 for further allocations pursuant to this subsection until the
139 county board is ready to expend funds in accordance with
140 an approved facilities plan: *Provided*, That the authority
141 may authorize an extension beyond the three-year forfei-
142 ture period not to exceed an additional two years. Any
143 amount forfeited shall be added to the total funds avail-
144 able in the school construction fund of the authority for
145 future allocation and distribution.

146 (f) The remaining moneys that are determined by the
147 authority to be available for distribution during the then
148 current fiscal year from moneys paid into the school ma-
149 jor improvement fund pursuant to section six of this arti-
150 cle shall be allocated and distributed on the basis of need
151 and efficient use of resources, the basis to be determined
152 by the authority in accordance with the provisions of sec-
153 tion sixteen of this article: *Provided*, That the moneys may
154 not be distributed to any county board that does not have
155 an approved school major improvement plan or to any
156 county board that is not prepared to commence expendi-
157 tures of the funds during the fiscal year in which the mon-
158 eys are distributed: *Provided, however*, That any moneys
159 allocated to a county board and not distributed to that
160 county board shall be deposited in an account to the credit
161 of that county board, the principal amount to remain to
162 the credit of and available to the county board for a peri-
163 od of two years. Any moneys which are unexpended after
164 a two-year period shall be redistributed on the basis of
165 need from the school major improvement fund in that
166 fiscal year.

167 (g) No local matching funds may be required under
168 the provisions of this section. However, the responsibilities
169 of the county boards of education to maintain school
170 facilities shall not be negated by the provisions of this
171 article, and therefore, to be eligible to receive an allocation
172 of school major improvement funds from the authority, a

173 county board must have expended in the previous fiscal
174 year an amount of county moneys equal to or exceeding
175 the lowest average amount of money included in the
176 county board's maintenance budget over any three of the
177 previous five years and must have budgeted an amount
178 equal to or greater than the average in the current fiscal
179 year: *Provided*, That the state board of education shall
180 promulgate rules relating to county boards' maintenance
181 budgets, including items which shall be included in the
182 budgets.

183 (h) Any county board may use moneys provided by
184 the authority under this article in conjunction with local
185 funds derived from bonding, special levy or other sources.
186 Distribution to a county board, or to the state board or the
187 administrative council of an area vocational educational
188 center pursuant to subsection (b) of this section, may be in
189 a lump sum or in accordance with a schedule of payments
190 adopted by the authority pursuant to such guidelines as it
191 shall adopt.

192 (i) Funds in the school construction fund shall first be
193 transferred and expended as follows:

194 Any funds deposited in the school construction fund
195 shall be expended first in accordance with an appropria-
196 tion by the Legislature. To the extent that funds are avail-
197 able in the school construction fund in excess of that
198 amount appropriated in any fiscal year, the excess funds
199 may be expended in accordance with the provisions of this
200 article. Any projects which the authority identified and
201 announced for funding on or before the first day of Au-
202 gust, one thousand nine hundred ninety-five, or identified
203 and announced for funding on or before the thirty-first
204 day of December, one thousand nine hundred ninety-five,
205 shall be funded by the authority in an amount which is not
206 less than the amount specified when the project was identi-
207 fied and announced.

208 (j) It is the intent of the Legislature to encourage
209 county boards to explore and consider arrangements with
210 other counties that may facilitate the highest and best use
211 of all available funds, which may result in improved trans-
212 portation arrangements for students, or which otherwise

213 may create efficiencies for county boards and the stu-
214 dents. In order to address the intent of the Legislature
215 contained in this subsection, the authority shall grant such
216 preference to those projects which involve multi-county
217 arrangements as the authority shall determine reasonable
218 and proper.

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

Randy Schooner
Chairman Senate Committee

Rudy Leavitt
Chairman House Committee

Originating in the House.

Takes effect from passage.

Harrell Robinson
Clerk of the Senate

Gregory M. King
Clerk of the House of Delegates

Carl R. Smith
President of the Senate

Robert A. Levine
Speaker of the House of Delegates

The within is approved this the 15th
day of April, 1996.

Gaston Caperton
Governor

PRESENTED TO THE

GOVERNOR

Date 3/28/96

Time 10:07 ^{am}