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REGULAR SESSION, 1997



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COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 532

(By Senator CRAIG, ET AL)



PASSED APRIL 11, 1997

In Effect NINETY Days From Passage

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SENATE OF WEST VIRGINIA

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COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 532

(SENATORS CRAIGO, JACKSON AND WOOTON, *original sponsors*)

[Passed April 11, 1997; in effect ninety days from passage.]

AN ACT to amend and reenact section fifteen, article nine-d, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the school building authority; and empowering the authority to administer all federal funds provided for the construction and major improvement of school facilities.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article nine-d, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§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 and to administer all federal funds provided for the
4 construction and major improvement of school facilities so
5 as to meet the educational needs of the people of this state
6 in an efficient and economical manner. The authority
7 shall make funding determinations in accordance with the
8 provisions of this article and shall assess existing school
9 facilities and each facility's school major improvement
10 plan in relation to the needs of the individual student, the
11 general school population, the communities served by the
12 facilities and facility needs statewide.

13 (b) An amount that is no more than three percent of the
14 sum of moneys that are determined by the authority to be
15 available for distribution during the then current fiscal
16 year from: (1) Moneys paid into the school building
17 capital improvements fund pursuant to section ten, article
18 nine-a of this chapter; (2) the issuance of revenue bonds
19 for which moneys in the school building debt service fund
20 are pledged as security; (3) moneys paid into the school
21 construction fund pursuant to section six of this article;
22 and (4) any other moneys received by the authority, except
23 moneys paid into the school major improvement fund
24 pursuant to section six of this article, may be allocated
25 and may be expended by the authority for projects that
26 service the educational community statewide or, upon
27 application by the state board, for educational programs
28 that are under the jurisdiction of the state board. In
29 addition, upon application by the state board or the
30 administrative council of an area vocational educational
31 center established pursuant to article two-b of this
32 chapter, the authority may allocate and expend under this
33 section moneys for school major improvement projects
34 proposed by the state board or an administrative council
35 for school facilities under the direct supervision of the
36 state board or an administrative council, respectively:
37 *Provided*, That the authority may not expend any moneys
38 for a school major improvement project proposed by the

39 state board or the administrative council of an area
40 vocational educational center unless the state board or an
41 administrative council has submitted a ten-year school
42 major improvement plan, to be updated annually, pursu-
43 ant to section sixteen of this article: *Provided, however,*
44 That the authority shall, before allocating any moneys to
45 the state board or the administrative council of an area
46 vocational educational center for a school improvement
47 project, consider all other funding sources available for
48 the project.

49 (c) An amount that is no more than two percent of the
50 moneys that are determined by the authority to be avail-
51 able for distribution during the current fiscal year from:
52 (1) Moneys paid into the school building capital improve-
53 ments fund pursuant to section ten, article nine-a of this
54 chapter; (2) the issuance of revenue bonds for which
55 moneys in the school building debt service fund are
56 pledged as security; (3) moneys paid into the school
57 construction fund pursuant to section six of this article;
58 and (4) any other moneys received by the authority, except
59 moneys deposited into the school major improvement
60 fund, shall be set aside by the authority as an emergency
61 fund to be distributed in accordance with the guidelines
62 adopted by the authority.

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

77 (e) If a county board of education proposes to finance a
78 project that is approved pursuant to section sixteen of this

79 article through a lease with an option to purchase leased
80 premises upon the expiration of the total lease period
81 pursuant to an investment contract, the authority may
82 allocate no moneys to the county board in connection with
83 the project: *Provided*, That the authority may transfer
84 moneys to the state board of education, which, with the
85 authority, shall lend the amount transferred to the county
86 board to be used only for a one-time payment due at the
87 beginning of the lease term, made for the purpose of
88 reducing annual lease payments under the investment
89 contract, subject to the following conditions:

90 (1) The loan shall be secured in the manner required by
91 the authority, in consultation with the state board, and
92 shall be repaid in a period and bear interest at a rate as
93 determined by the state board and the authority and shall
94 have such terms and conditions as are required by the
95 authority, all of which shall be set forth in a loan agree-
96 ment among the authority, the state board and the county
97 board;

98 (2) The loan agreement shall provide for the state board
99 and the authority to defer the payment of principal and
100 interest upon any loan made to the county board during
101 the term of the investment contract, and annual renewals
102 of the investment contract, among the state board, the
103 authority, the county board and a lessor: *Provided*, That
104 in the event a county board, which has received a loan
105 from the authority for a one-time payment at the begin-
106 ning of the lease term, does not renew the subject lease
107 annually until performance of the investment contract in
108 its entirety is completed, the county board is in default
109 and the principal of the loan, together with all unpaid
110 interest accrued to the date of the default, shall at the
111 option of the authority, in consultation with the state
112 board, become due and payable immediately or subject to
113 renegotiation among the state board, the authority and the
114 county board: *Provided, however*, That if a county board
115 renews the lease annually through the performance of the
116 investment contract in its entirety, the county board shall
117 exercise its option to purchase the leased premises:
118 *Provided further*, That the failure of the county board to

119 make a scheduled payment pursuant to the investment
120 contract constitutes an event of default under the loan
121 agreement: *And provided further*, That upon a default by
122 a county board, the principal of the loan, together with all
123 unpaid interest accrued to the date of the default, shall at
124 the option of the authority, in consultation with the state
125 board, become due and payable immediately or subject to
126 renegotiation among the state board, the authority and the
127 county board: *And provided further*, That if the loan
128 becomes due and payable immediately, the authority, in
129 consultation with the state board, shall use all means
130 available under the loan agreement and law to collect the
131 outstanding principal balance of the loan, together with
132 all unpaid interest accrued to the date of payment of the
133 outstanding principal balance; and

134 (3) The loan agreement shall provide for the state board
135 and the authority to forgive all principal and interest of
136 the loan upon the county board purchasing the leased
137 premises pursuant to the investment contract and perfor-
138 mance of the investment contract in its entirety.

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

153 (g) The remaining moneys that are determined by the
154 authority to be available for distribution during the then
155 current fiscal year from moneys paid into the school major
156 improvement fund pursuant to section six of this article
157 shall be allocated and distributed on the basis of need and
158 efficient use of resources, the basis to be determined by

159 the authority in accordance with the provisions of section
160 sixteen of this article: *Provided*, That the moneys may not
161 be distributed to any county board that does not have an
162 approved school major improvement plan or to any county
163 board that is not prepared to commence expenditures of
164 the funds during the fiscal year in which the moneys are
165 distributed: *Provided, however*, That any moneys allo-
166 cated to a county board and not distributed to that county
167 board shall be deposited in an account to the credit of that
168 county board, the principal amount to remain to the credit
169 of and available to the county board for a period of two
170 years. Any moneys which are unexpended after a two-
171 year period shall be redistributed on the basis of need
172 from the school major improvement fund in that fiscal
173 year.

174 (h) No local matching funds may be required under the
175 provisions of this section. However, the responsibilities of
176 the county boards of education to maintain school facili-
177 ties are negated by the provisions of this article. To be
178 eligible to receive an allocation of school major improve-
179 ment funds from the authority, a county board must have
180 expended in the previous fiscal year an amount of county
181 moneys equal to or exceeding the lowest average amount
182 of money included in the county board's maintenance
183 budget over any three of the previous five years and must
184 have budgeted an amount equal to or greater than the
185 average in the current fiscal year: *Provided*, That the
186 state board of education shall promulgate rules relating to
187 county boards' maintenance budgets, including items
188 which shall be included in the budgets.

189 (i) Any county board may use moneys provided by the
190 authority under this article in conjunction with local
191 funds derived from bonding, special levy or other sources.
192 Distribution to a county board, or to the state board or the
193 administrative council of an area vocational educational
194 center pursuant to subsection (b) of this section, may be in
195 a lump sum or in accordance with a schedule of payments
196 adopted by the authority pursuant to guidelines adopted
197 by the authority.

198 (j) Funds in the school construction fund shall first be

199 transferred and expended as follows:

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

214 (k) It is the intent of the Legislature to encourage county
215 boards to explore and consider arrangements with other
216 counties that may facilitate the highest and best use of all
217 available funds, which may result in improved transporta-
218 tion arrangements for students, or which otherwise may
219 create efficiencies for county boards and the students. In
220 order to address the intent of the Legislature contained in
221 this subsection, the authority shall grant preference to
222 those projects which involve multicounty arrangements as
223 the authority shall determine reasonable and proper.

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

Ralph Schoover
.....
Chairman Senate Committee

Nick Fantusi
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Carolyn A. Blum
.....
Clerk of the Senate

Bryan M. Sig
.....
Clerk of the House of Delegates

Earl Ray Tomblin
.....
President of the Senate

D. Ki
.....
Speaker House of Delegates

The within *is approved* this the *28th*
day of *April*, 1997.

[Signature]
.....
Governor

PRESENTED TO

GOVERNMENT

Date

4/21/97

Time

11:00 am