WEST VIRGINIA LEGISLATURE
Regular Session, 2001

ENROLLED
Committee Substitute for
SENATE BILL NO. 1674

(By Senators Unger and Snyder)

PASSED April 14, 2001
In Effect July 1, 2001  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 authorizing distribution of money for building or improvement projects over a period of time or years as the work progresses.

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

(b) An amount that is no more than three percent of the sum of moneys that are determined by the authority to be available for distribution during the then current fiscal year from: (1) Moneys paid into the school building capital improvements fund pursuant to section ten, article nine-a of this chapter; (2) the issuance of revenue bonds for which moneys in the school building debt service fund are pledged as security; (3) moneys paid into the school construction fund pursuant to section six of this article; and (4) any other moneys received by the authority, except moneys paid into the school major improvement fund pursuant to section six of this article, 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. In addition, upon application by the state board or the administrative council of an area vocational educational center established pursuant to article two-b of this chapter, the authority may allocate and expend under this section moneys for school major improvement projects proposed by the state board or an administrative council for school facilities under the direct supervision of the state board or an administrative council, respectively: Provided, That the authority may not expend any moneys for a school major improvement project proposed by the state board or
the administrative council of an area vocational edu-
cational center unless the state board or an administrative
council has submitted a ten-year school major improve-
ment plan, to be updated annually, pursuant to section
sixteen of this article: Provided, however, That the
authority shall, before allocating any moneys to the state
board or the administrative council of an area vocational
educational center for a school improvement project,
consider all other funding sources available for the project.

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

(d) The remaining moneys determined by the authority
to be available for distribution during the then current
fiscal year from: (1) Moneys paid into the school building
capital improvements fund pursuant to section ten, article
nine-a of this chapter; (2) the issuance of revenue bonds
for which moneys in the school building debt service fund
are pledged as security; (3) moneys paid into the school
construction fund pursuant to section six of this article;
and (4) any other moneys received by the authority, except
moneys deposited into the school major improvement fund,
shall be allocated and expended on the basis of need and
efficient use of resources, the basis to be determined by the
authority in accordance with the provisions of section
sixteen of this article.
(e) If a county board of education proposes to finance a project that is approved pursuant to section sixteen of this article through a lease with an option to purchase leased premises upon the expiration of the total lease period pursuant to an investment contract, the authority may allocate no moneys to the county board in connection with the project: Provided, That the authority may transfer moneys to the state board of education which, with the authority, shall lend the amount transferred to the county board to be used only for a one-time payment due at the beginning of the lease term, made for the purpose of reducing annual lease payments under the investment contract, subject to the following conditions:

1. The loan shall be secured in the manner required by the authority, in consultation with the state board, and shall be repaid in a period and bear interest at a rate as determined by the state board and the authority and shall have such terms and conditions as are required by the authority, all of which shall be set forth in a loan agreement among the authority, the state board and the county board;

2. The loan agreement shall provide for the state board and the authority to defer the payment of principal and interest upon any loan made to the county board during the term of the investment contract, and annual renewals of the investment contract, among the state board, the authority, the county board and a lessor: Provided, That in the event a county board which has received a loan from the authority for a one-time payment at the beginning of the lease term does not renew the subject lease annually until performance of the investment contract in its entirety is completed, the county board is in default and the principal of the loan, together with all unpaid interest accrued to the date of the default, shall, at the option of the authority, in consultation with the state board, become due and payable immediately or subject to renegotiation among the state board, the authority and the county board:


Provided, however, That if a county board renews the lease annually through the performance of the investment contract in its entirety, the county board shall exercise its option to purchase the leased premises: Provided further, That the failure of the county board to make a scheduled payment pursuant to the investment contract constitutes an event of default under the loan agreement: And provided further, That upon a default by a county board, the principal of the loan, together with all unpaid interest accrued to the date of the default, shall, at the option of the authority, in consultation with the state board, become due and payable immediately or subject to renegotiation among the state board, the authority and the county board: And provided further, That if the loan becomes due and payable immediately, the authority, in consultation with the state board, shall use all means available under the loan agreement and law to collect the outstanding principal balance of the loan, together with all unpaid interest accrued to the date of payment of the outstanding principal balance; and

(3) The loan agreement shall provide for the state board and the authority to forgive all principal and interest of the loan upon the county board purchasing the leased premises pursuant to the investment contract and performance of the investment contract in its entirety.

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

(g) The remaining moneys that are determined by the authority to be available for distribution during the then current fiscal year from moneys paid into the school major improvement fund pursuant to section six of this article shall be allocated and distributed on the basis of need and efficient use of resources, the basis to be determined by the authority in accordance with the provisions of section sixteen of this article: Provided, That the moneys may not be distributed to any county board that does not have an approved school major improvement plan or to any county board that is not prepared to commence expenditures of the funds during the fiscal year in which the moneys are distributed: Provided, however, That any moneys allocated to a county board and not distributed to that county board shall be deposited in an account to the credit of that county board, the principal amount to remain to the credit of and available to the county board for a period of two years. Any moneys which are unexpended after a two-year period shall be redistributed on the basis of need from the school major improvement fund in that fiscal year.

(h) No local matching funds may be required under the provisions of this section. However, the responsibilities of the county boards of education to maintain school facilities are not negated by the provisions of this article. To be eligible to receive an allocation of school major improvement funds from the authority, a county board must have expended in the previous fiscal year an amount of county moneys equal to or exceeding the lowest average amount of money included in the county board's maintenance budget over any three of the previous five years and must have budgeted an amount equal to or greater than the average in the current fiscal year: Provided, That the state board of education shall promulgate rules relating to
county boards' maintenance budgets, including items which shall be included in the budgets.

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

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

Any funds deposited in the school construction fund shall be expended first in accordance with an appropriation by the Legislature. To the extent that funds are available in the school construction fund in excess of that amount appropriated in any fiscal year, the excess funds may be expended in accordance with the provisions of this article. Any projects which the authority identified and announced for funding on or before the first day of August, one thousand nine hundred ninety-five, or identified and announced for funding on or before the thirty-first day of December, one thousand nine hundred ninety-five, shall be funded by the authority in an amount which is not less than the amount specified when the project was identified and announced.

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

     (l) County boards shall submit all designs for construc-
    tion of new school buildings to the school building author-
    ity for review and approval prior to preparation of final
    bid documents: Provided, That a vendor who has been
    debarred pursuant to the provisions of sections thirty-
    three-a through thirty-three-f, inclusive, article three,
    chapter five-a of this code, may not bid on or be awarded
    a contract under this section.

    (m) The authority may elect to disperse funds for
    approved construction projects over a period of more than
    one year subject to the following:

    (1) The authority may not approve the funding of a
    project for more than three years; and

    (2) The authority may not approve the use of more than
    fifty percent of the revenue for projects to be funded over
    more than one year.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect July 1, 2001.

Clerk of the Senate

Clerk of the House of Delegates

Earl Ray Tomblin
President of the Senate

Speaker House of Delegates

The within is approved this the 30th Day of April, 2001.

Governor
PRESENTED TO THE
GOVERNOR
Date 4/25/01
Time 5:26 pm