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WEST VIRGINIA LEGISLATURE

Regular Session, 2003

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Committee Substitute for

SENATE BILL NO. 180

(By Senator Tomblin, Mr. President)

PASSED March 8, 2003

In Effect from Passage

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 180

(SENATOR TOMBLIN, MR. PRESIDENT, *original sponsor*)

[Passed March 8, 2003; in effect from passage.]

AN ACT to amend and reenact sections three, six, fifteen, sixteen and nineteen, article nine-d, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section six, article ten-h of said chapter, all relating to public education; authorizing school building authority to require flood insurance for certain facilities; authorizing authority to accept gift, grant, contribution, bequest or endowment for authority or projects, including equipment; authorizing authority to encourage work-based learning opportunities for students on funded projects and outlining conditions; authorizing use of certain authority funds to finance construction and improvements on a cash basis when certain conditions are met; allowing authority to reserve certain funds for priority use

for certain multiuse vocational-technical educational facilities; authorizing use of reserved funds for equipment and updates; specifying bodies that may propose projects; authorizing reserve of certain project funds for certain period to complete budget; requiring approved comprehensive educational facility plan as prior condition for distribution of funds; prohibiting distribution of funds to county not prepared to commence expenditure during fiscal year; requiring up-to-date enrollment projections in facility plans and updates; authorizing inclusion of facilities for community and technical college education in plans to construct comprehensive vocational facilities at existing high schools; providing that counties served by a multicounty vocational-technical facility are not required to include the construction of a comprehensive vocational facility in the plan for construction of a new high school; requiring board to include multicounty vocational-technical facility director and board in planning programs; prohibiting programs at the vocational facility from replacing the programs at the multicounty vocational-technical facility without the consent of the center board; authorizes a county served by a comprehensive vocational center to eliminate any vocational offering from a new comprehensive high school under certain circumstances; and including introductory vocational-technical courses in middle school grades as part of effective schools for vocational-technical education.

Be it enacted by the Legislature of West Virginia:

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

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 of
5 the authority, by purchase, lease-purchase not to exceed a
6 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 domain
9 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 its
13 affairs;

14 (6) To appoint, contract with and employ attorneys, bond
15 counsel, accountants, construction and financial experts,
16 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
21 issuance of bonds under this article to provide professional
22 and technical services, including, without limitation,
23 accounting, actuarial, underwriting, consulting, trustee,
24 bond counsel, legal services and contracts relating to the
25 purchase or sale of bonds are subject to the provisions of
26 article three, chapter five-a of this code: *Provided, how-*
27 *ever*, That notwithstanding any other provisions of this
28 code, any authority of the attorney general of this state
29 relating to the review of contracts and other documents to
30 effectuate the issuance of bonds under this article shall be
31 exclusively limited to the form of the contract and docu-
32 ment: *Provided further*, That the attorney general of this
33 state shall complete all reviews of contracts and docu-
34 ments relating to the issuance of bonds under this article
35 within ten calendar days of receipt of the contract and
36 document 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 when-
41 ever, due to a change in situation, it appears to the author-
42 ity that its interests will be best served;

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

46 (10) To require proper maintenance and insurance of any
47 project authorized under this section, including flood
48 insurance for any facility within the one hundred year
49 flood plain at which authority funds are expended;

50 (11) To charge rent for the use of all or any part of a
51 project or buildings at any time financed, constructed,
52 acquired or improved, in whole or in part, with the
53 revenues of the authority;

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

67 (13) To accept and expend any gift, grant, contribution,
68 bequest or endowment of money and equipment to, or for
69 the benefit of, the authority or any project under this
70 article, from the state of West Virginia or any other source
71 for any or all of the purposes specified in this article or for

72 any one or more of such purposes as may be specified in
73 connection with the gift, grant, contribution, bequest or
74 endowment;

75 (14) To enter on any lands and premises for the purpose
76 of making surveys, soundings and examinations;

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

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

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

106 (18) To enter into agreements with county boards and
107 persons, firms or corporations to facilitate the develop-

108 ment of county board projects and county board facilities
109 plans. The county board participating in an agreement
110 shall pay at least twenty-five percent of the cost of the
111 agreement. Nothing in this section shall be construed to
112 supersede, limit or impair the authority of county boards
113 to develop and prepare their projects or plans;

114 (19) To encourage any project or part thereof to provide
115 opportunities for students to participate in supervised,
116 unpaid work-based learning experiences related to the
117 student's program of study approved by the county board.
118 The work-based learning experience must be conducted in
119 accordance with a formal training plan approved by the
120 instructor, the employer and the student and which sets
121 forth at a minimum the specific skills to be learned, the
122 required documentation of work-based learning experi-
123 ences, the conditions of the placement, including duration
124 and safety provisions, and provisions for supervision and
125 liability insurance coverage as applicable. Projects
126 involving the new construction and renovation of
127 vocational-technical and adult education facilities should
128 provide opportunities for students to participate in
129 supervised work-based learning experiences, to the extent
130 practical, which meet the requirements of this subdivision.
131 Nothing in this subdivision may be construed to affect
132 registered youth apprenticeship programs or the provi-
133 sions governing those programs; and

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

§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 the
3 authority as provided in this article. The school building
4 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 may pledge all or any part
9 of the revenues paid into the school building capital
10 improvements fund that are needed to meet the require-
11 ments of any revenue bond issue or issues authorized by
12 this article prior to the twentieth day of July, one thousand
13 nine hundred ninety-three, or revenue bonds issued to
14 refund revenue bonds issued prior to that date, including
15 the payment of principal of, interest and redemption
16 premium, if any, on the revenue bonds and the establishing
17 and maintaining of a reserve fund or funds for the pay-
18 ment of the principal of, interest and redemption premium,
19 if any, on the revenue bond issue or issues when other
20 moneys pledged may be insufficient for the payment of the
21 principal, interest and redemption premium, including any
22 additional protective pledge of revenues that the authority
23 in its discretion has provided by resolution authorizing the
24 issuance of the bonds or in any trust agreement made in
25 connection with the bond issue. Additionally, the author-
26 ity may provide in the resolution and in the trust agree-
27 ment for priorities on the revenues paid into the school
28 building capital improvements fund that are necessary for
29 the protection of the prior rights of the holders of bonds
30 issued at different times under the provisions of this
31 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
41 purchase of the bonds at the market price, but not exceed-
42 ing the price, if any, at which the bonds are in the same
43 year redeemable and all bonds redeemed or purchased
44 shall immediately be canceled and shall not again be
45 issued.

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

57 (b) There is continued in the state treasury a special
58 revenue fund named the school building debt service fund
59 into which shall be deposited the amounts specified in
60 section eighteen, article twenty-two, chapter twenty-nine
61 of this code. All amounts deposited in the fund shall be
62 pledged to the repayment of the principal, interest and
63 redemption premium, if any, on any revenue bonds or
64 refunding revenue bonds authorized by this article:
65 *Provided*, That deposited moneys may not be pledged to
66 the repayment of any revenue bonds issued prior to the
67 first day of January, one thousand nine hundred ninety-
68 four, or with respect to revenue bonds issued for the
69 purpose of refunding revenue bonds issued prior to the
70 first day of January, one thousand nine hundred ninety-
71 four. Additionally, the authority may provide in the
72 resolution and in the trust agreement for priorities on the
73 revenues paid into the school building debt service fund
74 that are necessary for the protection of the prior rights of

75 the holders of bonds issued at different times under the
76 provisions of this article. On or prior to the first day of
77 May of each year, the authority shall certify to the state
78 lottery director the principal and interest and coverage
79 ratio requirements for the following fiscal year on any
80 revenue bonds issued on or after the first day of January,
81 one thousand nine hundred ninety-four, and for which
82 moneys deposited in the school building debt service fund
83 have been pledged, or will be pledged, for repayment
84 pursuant to this section.

85 After the authority has issued bonds authorized by this
86 article and after the requirements of all funds have been
87 satisfied, including coverage and reserve funds established
88 in connection with the bonds issued pursuant to this
89 article, any balance remaining in the school building debt
90 service fund may be used for the redemption of any of the
91 outstanding bonds issued under this article which, by their
92 terms, are then redeemable or for the purchase of the
93 outstanding bonds at the market price, but not to exceed
94 the price, if any, at which the bonds are redeemable and
95 all bonds redeemed or purchased shall be immediately
96 canceled and shall not again be issued: *Provided*, That
97 after the authority has issued bonds authorized by this
98 article and after the requirements of debt service and all
99 associated funds have been satisfied for the fiscal year,
100 including coverage and reserve funds established in
101 connection with the bonds issued pursuant to this article,
102 any remaining balance in the school building debt service
103 fund may be transferred to the school construction fund
104 created in subsection (c) of this section and used by the
105 school building authority in its discretion to finance the
106 cost of school construction or improvement projects on a
107 cash basis.

108 (c) There is continued in the state treasury a special
109 revenue fund named the school construction fund into
110 which shall be deposited the amounts specified in section
111 thirty, article fifteen, chapter eleven of this code, together

112 with any moneys appropriated to the fund by the Legisla-
113 ture. Expenditures from the school construction fund
114 shall be for the purposes set forth in this article, including
115 lease-purchase payments under agreements made pursuant
116 to subsection (e), section fifteen of this article and section
117 nine, article five of this chapter and are authorized from
118 collections in accordance with the provisions of article
119 three, chapter twelve of this code and from other revenues
120 annually appropriated by the Legislature from lottery
121 revenues as authorized by section eighteen, article
122 twenty-two, chapter twenty-nine of this code pursuant to
123 the provisions set forth in article two, chapter five-a of
124 this code. Amounts collected which are found, from time
125 to time, to exceed the funds needed for purposes set forth
126 in this article may be transferred to other accounts or
127 funds and redesignated for other purposes by appropria-
128 tion of the Legislature. The school construction fund shall
129 be an interest-bearing account, with the interest credited
130 to and deposited in the school construction fund and
131 expended in accordance with the provisions of this article.
132 Deposits to and expenditures from the school construction
133 fund are subject to the provisions of subsection (i), section
134 fifteen of this article.

135 (d) There is continued in the state treasury a special
136 revenue fund named the school major improvement fund
137 into which shall be deposited the amounts specified in
138 section thirty, article fifteen, chapter eleven of this code,
139 together with any moneys appropriated to the fund by the
140 Legislature. Expenditures from the school major improve-
141 ment fund shall be for the purposes set forth in this article
142 and are authorized from collections in accordance with the
143 provisions of article three, chapter twelve of this code and
144 from other revenues annually appropriated by the Legisla-
145 ture from lottery revenues as authorized by section
146 eighteen, article twenty-two, chapter twenty-nine of this
147 code pursuant to the provisions set forth in article two,
148 chapter five-a of this code. Amounts collected which are
149 found, from time to time, to exceed the funds needed for

150 purposes set forth in this article may be transferred to
151 other accounts or funds and redesignated for other pur-
152 poses by appropriation of the Legislature. The school
153 major improvement fund shall be an interest-bearing
154 account, with interest being credited to and deposited in
155 the school major improvement fund and expended in
156 accordance with the provisions of this article.

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

184 The Legislature further finds and declares that it
185 intends, through the reenactment of this section and
186 section eighteen, article twenty-two, chapter twenty-nine

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

210 The Legislature further finds and declares that it
211 intends, through the reenactment of this section and
212 section eighteen, article twenty-two, chapter twenty-nine
213 of this code, to comply with the provisions of sections four
214 and six, article X of the constitution of West Virginia; and
215 section one, article XII of said constitution.

§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 capital
17 improvements fund pursuant to section ten, article nine-a
18 of this chapter; (2) the issuance of revenue bonds for which
19 moneys in the school building debt service fund are
20 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 and
25 may be expended by the authority for projects that service
26 the educational community statewide or, upon application
27 by the state board, for educational programs that are
28 under the jurisdiction of the state board. In addition, upon
29 application by the state board or the administrative
30 council of an area vocational educational center estab-
31 lished pursuant to article two-b of this chapter, the
32 authority may allocate and expend under this subsection
33 moneys for school major improvement projects proposed
34 by the state board or an administrative council for school
35 facilities under the direct supervision of the state board or
36 an administrative council, respectively: *Provided*, That the
37 authority may not expend any moneys for a school major
38 improvement project proposed by the state board or the
39 administrative council of an area vocational educational
40 center unless the state board or an administrative council
41 has submitted a ten-year school major improvement plan,
42 to be updated annually, pursuant to section sixteen of this
43 article: *Provided, however*, That the authority shall, before
44 allocating any moneys to the state board or the adminis-
45 trative council of an area vocational educational center for

46 a school improvement project, consider all other funding
47 sources available for the project.

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

62 (d) An amount that is no more than five percent of the
63 moneys that are determined by the authority to be avail-
64 able for distribution during the current fiscal year from:
65 (1) Moneys paid into the school building capital improve-
66 ments fund pursuant to section ten, article nine-a of this
67 chapter; (2) the issuance of revenue bonds for which
68 moneys in the school building debt service fund are
69 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 fund,
73 may be reserved by the authority for multiuse vocational-
74 technical education facilities that may include post-
75 secondary programs as a first priority use. The authority
76 may allocate and expend under this subsection moneys for
77 any purposes authorized in this article on multiuse
78 vocational-technical education facilities and for equip-
79 ment and equipment updates at the facilities. If the
80 projects approved under this subsection do not require the
81 full amount of moneys reserved, moneys above the amount
82 required may be allocated and expended in accordance

83 with other provisions of this article. A county board, the
84 state board, an administrative council or the joint admin-
85 istrative board of a vocational-technical education facility
86 which includes post-secondary programs may propose
87 projects for facilities or equipment, or both, which are
88 under the direct supervision of the respective body:
89 *Provided*, That the authority shall, before allocating any
90 moneys for a project under this subsection, consider all
91 other funding sources available for the project.

92 (e) The remaining moneys determined by the authority to
93 be available for distribution during the then current fiscal
94 year from: (1) Moneys paid into the school building capital
95 improvements fund pursuant to section ten, article nine-a
96 of this chapter; (2) the issuance of revenue bonds for which
97 moneys in the school building debt service fund are
98 pledged as security; (3) moneys paid into the school
99 construction fund pursuant to section six of this article;
100 and (4) any other moneys received by the authority, except
101 moneys deposited into the school major improvement fund,
102 shall be allocated and expended on the basis of need and
103 efficient use of resources, the basis to be determined by the
104 authority in accordance with the provisions of section
105 sixteen of this article.

106 (f) If a county board of education proposes to finance a
107 project that is approved pursuant to section sixteen of this
108 article through a lease with an option to purchase leased
109 premises upon the expiration of the total lease period
110 pursuant to an investment contract, the authority may
111 allocate no moneys to the county board in connection with
112 the project: *Provided*, That the authority may transfer
113 moneys to the state board of education which, with the
114 authority, shall lend the amount transferred to the county
115 board to be used only for a one-time payment due at the
116 beginning of the lease term, made for the purpose of
117 reducing annual lease payments under the investment
118 contract, subject to the following conditions:

119 (1) The loan shall be secured in the manner required by
120 the authority, in consultation with the state board, and
121 shall be repaid in a period and bear interest at a rate as
122 determined by the state board and the authority and shall
123 have such terms and conditions as are required by the
124 authority, all of which shall be set forth in a loan agree-
125 ment among the authority, the state board and the county
126 board;

127 (2) The loan agreement shall provide for the state board
128 and the authority to defer the payment of principal and
129 interest upon any loan made to the county board during
130 the term of the investment contract, and annual renewals
131 of the investment contract, among the state board, the
132 authority, the county board and a lessor: *Provided*, That in
133 the event a county board which has received a loan from
134 the authority for a one-time payment at the beginning of
135 the lease term does not renew the subject lease annually
136 until performance of the investment contract in its entirety
137 is completed, the county board is in default and the
138 principal of the loan, together with all unpaid interest
139 accrued to the date of the default, shall, at the option of
140 the authority, in consultation with the state board, become
141 due and payable immediately or subject to renegotiation
142 among the state board, the authority and the county board:
143 *Provided, however*, That if a county board renews the
144 lease annually through the performance of the investment
145 contract in its entirety, the county board shall exercise its
146 option to purchase the leased premises: *Provided further*,
147 That the failure of the county board to make a scheduled
148 payment pursuant to the investment contract constitutes
149 an event of default under the loan agreement: *And pro-*
150 *vided further*, That upon a default by a county board, the
151 principal of the loan, together with all unpaid interest
152 accrued to the date of the default, shall, at the option of
153 the authority, in consultation with the state board, become
154 due and payable immediately or subject to renegotiation
155 among the state board, the authority and the county board:
156 *And provided further*, That if the loan becomes due and

157 payable immediately, the authority, in consultation with
158 the state board, shall use all means available under the
159 loan agreement and law to collect the outstanding princi-
160 pal balance of the loan, together with all unpaid interest
161 accrued to the date of payment of the outstanding princi-
162 pal balance; and

163 (3) The loan agreement shall provide for the state board
164 and the authority to forgive all principal and interest of
165 the loan upon the county board purchasing the leased
166 premises pursuant to the investment contract and perfor-
167 mance of the investment contract in its entirety.

168 (g) To encourage county boards to proceed promptly
169 with facilities planning and to prepare for the expenditure
170 of any state moneys derived from the sources described in
171 this subsection, any county board failing to expend money
172 within three years of the allocation to the county board
173 shall forfeit the allocation and thereafter is ineligible for
174 further allocations pursuant to this subsection until the
175 county board is ready to expend funds in accordance with
176 an approved facilities plan: *Provided*, That the authority
177 may authorize an extension beyond the three-year forfei-
178 ture period not to exceed an additional two years. Any
179 amount forfeited shall be added to the total funds avail-
180 able in the school construction fund of the authority for
181 future allocation and distribution. Funds may not be
182 distributed to any county board that does not have a
183 comprehensive educational facility plan approved by the
184 state board and the school building authority or to any
185 county board that is not prepared to commence expendi-
186 ture of the funds during the fiscal year in which the
187 moneys are distributed.

188 (h) The remaining moneys that are determined by the
189 authority to be available for distribution during the then
190 current fiscal year from moneys paid into the school major
191 improvement fund pursuant to section six of this article
192 shall be allocated and distributed on the basis of need and
193 efficient use of resources, the basis to be determined by the

194 authority in accordance with the provisions of section
195 sixteen of this article: *Provided*, That the moneys may not
196 be distributed to any county board that does not have an
197 approved school major improvement plan or to any county
198 board that is not prepared to commence expenditures of
199 the funds during the fiscal year in which the moneys are
200 distributed: *Provided, however*, That any moneys allocated
201 to a county board and not distributed to that county board
202 shall be deposited in an account to the credit of that
203 county board, the principal amount to remain to the credit
204 of and available to the county board for a period of two
205 years. Any moneys which are unexpended after a
206 two-year period shall be redistributed on the basis of need
207 from the school major improvement fund in that fiscal
208 year.

209 (i) No local matching funds may be required under the
210 provisions of this section. However, the responsibilities of
211 the county boards of education to maintain school facili-
212 ties are not negated by the provisions of this article. To be
213 eligible to receive an allocation of school major improve-
214 ment funds from the authority, a county board must have
215 expended in the previous fiscal year an amount of county
216 moneys equal to or exceeding the lowest average amount
217 of money included in the county board's maintenance
218 budget over any three of the previous five years and must
219 have budgeted an amount equal to or greater than the
220 average in the current fiscal year: *Provided*, That the state
221 board of education shall promulgate rules relating to
222 county boards' maintenance budgets, including items
223 which shall be included in the budgets.

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

231 adopted by the authority pursuant to guidelines adopted
232 by the authority.

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

235 Any funds deposited in the school construction fund
236 shall be expended first in accordance with an appropria-
237 tion by the Legislature. To the extent that funds are
238 available in the school construction fund in excess of that
239 amount appropriated in any fiscal year, the excess funds
240 may be expended in accordance with the provisions of this
241 article. Any projects which the authority identified and
242 announced for funding on or before the first day of
243 August, one thousand nine hundred ninety-five, or identi-
244 fied and announced for funding on or before the
245 thirty-first day of December, one thousand nine hundred
246 ninety-five, shall be funded by the authority in an amount
247 which is not less than the amount specified when the
248 project was identified and announced.

249 (l) It is the intent of the Legislature to encourage county
250 boards to explore and consider arrangements with other
251 counties that may facilitate the highest and best use of all
252 available funds, which may result in improved transporta-
253 tion arrangements for students or which otherwise may
254 create efficiencies for county boards and the students. In
255 order to address the intent of the Legislature contained in
256 this subsection, the authority shall grant preference to
257 those projects which involve multicounty arrangements as
258 the authority shall determine reasonable and proper.

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

267 (n) The authority may elect to disburse funds for ap-
268 proved construction projects over a period of more than
269 one year subject to the following:

270 (1) The authority may not approve the funding of a
271 school construction project for more than three years;

272 (2) The authority may not approve the use of more than
273 fifty percent of the revenue available for distribution in
274 any given fiscal year for projects that are to be funded over
275 more than one year; and

276 (3) In order to encourage local participation in funding
277 school construction projects, the authority may set aside
278 limited funding, not to exceed five hundred thousand
279 dollars, in reserve for one additional year to provide a
280 county the opportunity to complete financial planning for
281 a project prior to the allocation of construction funds. Any
282 such funding shall be on a reserve basis and converted to
283 a part of the construction grant only after all project
284 budget funds have been secured and all county commit-
285 ments have been fulfilled. Failure of the county to solidify
286 the project budget and meet its obligations to the state
287 within eighteen months of the date the funding is set aside
288 by the authority will result in expiration of the reserve and
289 the funds shall be reallocated by the authority in the
290 succeeding funding cycle.

**§18-9D-16. Facilities and major improvement plans generally;
need-based eligibility.**

1 (a) To facilitate the goals as stated in section fifteen of
2 this article and to assure the prudent and resourceful
3 expenditure of state funds for construction projects as
4 described in subsection (d) of said section, each county
5 board of education shall submit a countywide comprehen-
6 sive educational facilities plan that addresses the facilities
7 and major improvement needs of the county and includes
8 up-to-date projections of student enrollments pursuant to
9 such guidelines as shall be adopted by the authority in

10 accordance with this section and in accordance with each
11 county's facilities plan approved by the state board of
12 education. Any project receiving funding must be in
13 furtherance of the approved countywide facilities plan.

14 (1) To assure efficiency and productivity in the project
15 approval process, the countywide facilities plan may be
16 submitted only after a preliminary plan, a plan outline or
17 a proposal for a plan has been submitted to the authority.
18 Selected members of the authority, which selection shall
19 include citizen members, shall then meet promptly with
20 those persons designated by the county board to attend the
21 facilities plan consultation. The purpose of the consulta-
22 tion is to assure understanding of the general goals of the
23 school building authority and the specific goals encom-
24 passed in the following criteria and to discuss ways the
25 plan may be structured to meet those goals.

26 (2) The guidelines for the development of a facilities plan
27 must state the manner, timeline and process for submis-
28 sion of any plan to the authority; project specifications
29 considered appropriate by the authority; and those matters
30 which are considered by the authority to be important
31 reflections of how the project will further the overall goals
32 of the authority.

33 (b) To facilitate the goals as stated in section fifteen of
34 this article and to assure the prudent and resourceful
35 expenditure of state funds derived from the school major
36 improvement fund, each county board of education shall
37 submit to the authority a ten-year countywide school
38 major improvement plan that addresses the major im-
39 provement needs of each school within the county. If the
40 state board of education or the administrative council of
41 an area vocational educational center chooses to seek
42 funding for a major improvement project from the author-
43 ity pursuant to subsection (f) of said section, the state
44 board or the administrative council shall submit a ten-year
45 school major improvement plan that addresses the major
46 improvement needs of the school or area vocational

47 educational center for which funding is sought. Each
48 ten-year school major improvement plan must be prepared
49 pursuant to guidelines adopted by the authority in accor-
50 dance with this section and must be updated annually to
51 reflect projects completed, current enrollment projections
52 and new or continuing needs. Any school major improve-
53 ment project funded by the authority must be in further-
54 ance of the approved school major improvement plan.

55 The guidelines for the development and annual updates
56 of a ten-year school major improvement plan must state
57 the manner, timeline and process for submission of any
58 plan, including a repair and replacement schedule for
59 school facilities, to the authority; the maintenance specifi-
60 cations considered appropriate by the authority; and those
61 matters which are considered by the authority to be
62 important reflections of how the major improvement
63 project or projects will further the overall goals of the
64 authority.

65 (c) The guidelines regarding submission of the facilities
66 plans and school major improvement plans must include
67 requirements for public hearings, comments or other
68 means of providing broad-based input within a reasonable
69 time period as the authority may consider appropriate.
70 The submission of each plan must be accompanied by a
71 synopsis of all comments received and a formal comment
72 by the county board, the state board or the administrative
73 council of an area vocational educational center submit-
74 ting the plan.

75 The guidelines regarding project specifications may
76 include such matters as energy efficiency, preferred siting,
77 construction materials, maintenance plan or any other
78 matter related to how the project is to proceed. If a county
79 board of education proposes to finance a construction
80 project through a lease with an option to purchase pursu-
81 ant to an investment contract as described in subsection
82 (e), section fifteen of this article, the specifications for the
83 project must include the term of the lease, the amount of

84 each lease payment, including the payment due upon
85 exercise of the option to purchase, and the terms and
86 conditions of the proposed investment contract.

87 (d) The guidelines pertaining to quality educational
88 facilities must require that a facilities plan address how
89 the current facilities do not meet and how the proposed
90 plan and any project thereunder does meet the following
91 goals:

92 (1) Student health and safety;

93 (2) Economies of scale, including compatibility with
94 similar schools that have achieved the most economical
95 organization, facility utilization and pupil-teacher ratios;

96 (3) Reasonable travel time and practical means of
97 addressing other demographic considerations;

98 (4) Multicounty and regional planning to achieve the
99 most effective and efficient instructional delivery system;

100 (5) Curriculum improvement and diversification, includ-
101 ing computerization and technology and advanced senior
102 courses in science, mathematics, language arts and social
103 studies;

104 (6) Innovations in education;

105 (7) Adequate space for projected student enrollments;
106 and

107 (8) To the extent constitutionally permissible, each
108 facilities plan must address the history of efforts taken by
109 the county board to propose or adopt local school bond
110 issues or special levies.

111 If the project is to benefit more than one county in the
112 region, the facilities plan must state the manner in which
113 the cost and funding of the project will be apportioned
114 among the counties.

115 (e) The guidelines pertaining to quality educational
116 facilities must require that a school major improvement
117 plan address how the proposed plan and any project
118 thereunder meet the following goals:

119 (1) Student health and safety, including, but not limited
120 to, critical health and safety needs; and

121 (2) Economies of scale, including regularly scheduled
122 preventive maintenance: *Provided*, That each county
123 board's school maintenance plan must address regularly
124 scheduled maintenance for all facilities within the county.

125 (f) Each county board's facilities plan and school major
126 improvement plan must prioritize all the construction
127 projects or major improvement projects, respectively,
128 within the county. A school major improvement plan
129 submitted by the state board or the administrative council
130 of an area vocational educational center must prioritize all
131 the school improvement projects contained in the plan.
132 The priority list is one of the criteria to be considered by
133 the authority in determining how available funds must be
134 expended. In prioritizing the projects, the county board,
135 the state board or the administrative council submitting a
136 plan shall make determinations in accordance with the
137 objective criteria formulated by the school building
138 authority.

139 (g) Each facilities plan and school major improvement
140 plan must include the objective means to be used in
141 evaluating implementation of the overall plan and each
142 project included therein. The evaluation must measure
143 each project's furtherance of each applicable goal stated in
144 this section and any guidelines adopted hereunder, as well
145 as the overall success of any project as it relates to the
146 facilities plan or school major improvement plan and the
147 overall goals of the authority.

148 (h) The state department of education shall conduct on-
149 site inspections, at least annually, of all facilities which

150 have been funded wholly or in part by moneys from the
151 authority or state board to ensure compliance with the
152 county board's facilities plan and school major improve-
153 ment plan as related to the facilities; to preserve the
154 physical integrity of the facilities to the extent possible;
155 and to otherwise extend the useful life of the facilities:
156 *Provided*, That the state board shall submit reports
157 regarding its on-site inspections of facilities to the author-
158 ity within thirty days of completion of the on-site inspec-
159 tions: *Provided, however*, That the state board shall
160 promulgate rules regarding the on-site inspections and
161 matters relating thereto, in consultation with the author-
162 ity, as soon as practical and shall submit proposed rules
163 for legislative review no later than the first day of Decem-
164 ber, one thousand nine hundred ninety-four.

165 (i) The authority may adopt guidelines for requiring that
166 a county board modify, update, supplement or otherwise
167 submit changes or additions to an approved facilities plan
168 or for requiring that a county board, the state board or the
169 administrative council of an area vocational educational
170 center modify, update, supplement or otherwise submit
171 changes or additions to an approved county board facili-
172 ties plan or school major improvement plan. The authority
173 shall provide reasonable notification and sufficient time
174 for the change or addition as delineated in guidelines
175 developed by the authority.

176 (j) Based on its on-site inspection or notification by the
177 authority to the state board that the changes or additions
178 to a county's board facilities plan or school major im-
179 provement plan required by the authority have not been
180 implemented within the time period prescribed by the
181 authority, the state board shall restrict the use of the
182 necessary funds or otherwise allocate funds from moneys
183 appropriated by the Legislature for those purposes set
184 forth in section nine, article nine-a of this chapter.

§18-9D-19. Comprehensive high schools.

1 (a) The Legislature finds the following:

2 (1) The decline in student enrollment over the last twenty
3 years has necessitated consolidation of schools in many
4 counties;

5 (2) It is projected that the decline in student enrollment
6 during the period two thousand two through two thousand
7 twelve may be as great as eighteen percent and will
8 continue the necessity to consolidate schools;

9 (3) The new consolidated school buildings now being
10 built across the state provide an opportunity for communi-
11 ties to have comprehensive high schools that include space
12 for vocational-technical courses, community college
13 courses and other workforce-related courses for the
14 students and the public at large;

15 (4) Requiring students to be bused to remote vocational
16 centers has sometimes deterred student participation in
17 vocational courses and has sometimes been considered a
18 stigma upon those students attending vocational courses;

19 (5) Offering vocational, community college and
20 workforce programs in close proximity to each other
21 compliment the high school and the programs; and

22 (6) The change in the season for girls' basketball to
23 coincide with boys' basketball has placed significant
24 pressures on the availability of gymnasium space and often
25 has caused practices to be scheduled late in the evenings
26 and on weekends, interfering with time needed for study-
27 ing and rest.

28 (b) When planning the construction of a high school
29 which has been approved by the authority and which
30 meets the required authority efficiencies, the authority
31 shall provide funding for comprehensive vocational
32 facilities to be located, when feasible, on the same site as
33 the high school and may, in cooperation with the higher
34 education policy commission established in section one,

35 article one-b, chapter eighteen-b of this code, provide
36 funding for facilities for community and technical college
37 education. When building in conjunction with the higher
38 education policy commission, an educational specification
39 must be developed for the proposed new facility by the
40 appropriate institutional governing board as defined in
41 section two, article one of said chapter. The county board
42 is the fiscal agent for construction. All planning, design,
43 bidding and construction must be completed with author-
44 ity guidelines and under the supervision of the authority.

45 (c) When planning the construction of a high school
46 which has been approved by the authority and meets the
47 required authority efficiencies, the authority shall provide
48 funding sufficient for the construction of at least one
49 auxiliary gymnasium. The authority may establish
50 standards for the auxiliary gymnasium.

51 (d) Upon application of a county board to construct
52 comprehensive vocational facilities at an existing high
53 school, the authority will provide technical assistance to
54 the county in developing a plan for construction of the
55 comprehensive vocational facility. The facility may, in
56 cooperation with the higher education policy commission
57 in accordance with the provisions of subsection (b) of this
58 section, include facilities for community and technical
59 college education. Upon development of the plan, the
60 authority shall consider funding based on the following
61 criteria:

62 (1) The distance of any existing vocational facilities from
63 the high schools it serves;

64 (2) The time required to travel to and from the voca-
65 tional facility to the high schools it serves;

66 (3) The ability of the county board to provide local funds
67 for the construction of new comprehensive vocational
68 facilities;

69 (4) The size of the existing high schools and the demand
70 for vocational technical courses;

71 (5) The age and physical condition of the existing
72 vocational facilities; and

73 (6) Such other criteria as the authority shall consider
74 appropriate.

75 (e) When planning the construction of a high school in a
76 county which is served by a multicounty vocational
77 technical facility, the county may not be required to
78 include the construction of a comprehensive vocational
79 facility in the plan. If the county board elects to construct
80 a comprehensive vocational facility pursuant to this
81 section, the board shall include the multicounty center
82 director and board in planning programs to be offered at
83 the vocational facility which complement the programs
84 offered at the multicounty center and may as part of the
85 plan include facilities for community and technical college
86 education at the multicounty center. The programs offered
87 at the vocational facility may not replace the programs
88 offered at the multicounty vocational technical center
89 without the consent of the center board.

90 (f) Notwithstanding any other provisions of this section
91 to the contrary, the county board in which there is an
92 existing comprehensive vocational center may eliminate
93 any vocational offering from a new comprehensive high
94 school if the county board:

95 (1) Completes a comprehensive vocational curriculum
96 study, as required by the authority, including an evalua-
97 tion of both the programmatic and physical facilities of
98 the existing center and coordinates the county's vocational
99 curriculum; and

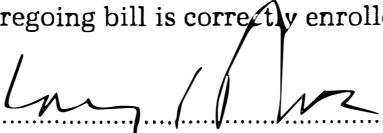
100 (2) Submits the plan to the authority for review and
101 obtains the authority's approval.

**ARTICLE 10H. ALBERT YANNI PROGRAMS OF EXCELLENCE IN
VOCATIONAL-TECHNICAL EDUCATION.**

**§18-10H-6. Effective schools program in vocational-technical
education.**

1 The state board of education shall establish and operate
2 an effective schools program for vocational-technical
3 education, including introductory vocational-technical
4 courses in middle school grades as appropriate. The
5 purpose of the program is to provide vocational-technical
6 education personnel with resources and staff development
7 for school program improvement based on application of
8 the effective schools research, including components such
9 as instructional leadership, school climate, high student
10 expectations, emphasis on academic and occupational
11 achievement and community and parental involvement.
12 The program shall be coordinated by the bureau of voca-
13 tional, technical and adult education with the advisement
14 from a committee composed of two vocational administra-
15 tors, two vocational teachers, one vocational guidance
16 counselor, one educator of vocational teachers, one county
17 school superintendent, one comprehensive high school
18 principal, one academic teacher, two business/industry
19 representatives, one labor representative and one voca-
20 tional education program completer.

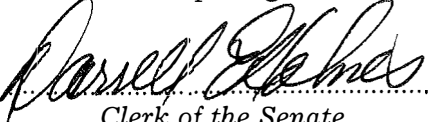
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

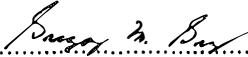

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Chairman Senate Committee

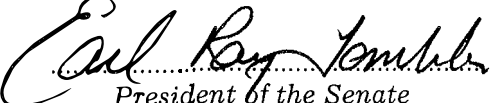

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Chairman House Committee


Originated in the Senate.

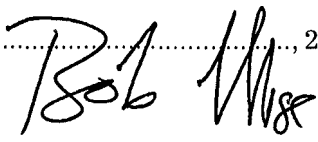
In effect from passage.


.....
Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


.....
Speaker House of Delegates

The within is approved this the 2nd
Day of April  2003.
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3/27/03

Time 10:10 am