WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2004

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ENROLLED

House Bill No. 4601

(By Delegates Mezzatesta, Williams, Tabb, Renner, Swartzmiller, Kuhn and Hartman)

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Passed March 13, 2004

In Effect from Passage
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H. B. 4601

(By Delegates Mezzatesta, Williams, Tabb, Renner, Swartzmiller, Kuhn and Hartman)

[Passed March 13, 2004; in effect from passage.]

AN ACT to amend and reenact §18-9A-7 of the code of West Virginia, 1931, as amended; and to amend and reenact §18-9D-2, §18-9D-6, §18-9D-8, §18-9D-15 and §18-9D-16 of said code, all relating to public education; suspending basic foundation allocation for bus replacement and providing allocation for academic trips for one school year; school building authority; redefining certain terms; correcting references; allowing expenditure of certain moneys for vocational programs at comprehensive high schools and vocational schools cooperating with community and technical college programs; encouraging cooperation relating to vocational technical facilities; authorizing appropriation of up to certain amount of school construction funds for budget purposes for next school year only; providing that excess lottery revenues not be transferred to school construction fund for the next school year only, with funds made available for legislative appropriation; project submission and evaluation; requiring facilities plan as condition of receiving funds; providing for certain guidelines and procedures by authority for plans, plan modifications and evaluating projects; clarifying that certain revenues can only be expended on projects authorized in accor-
dance with the guidelines and procedures section; and providing for certified list of projects to joint committee.

Be it enacted by the Legislature of West Virginia:

That §18-9A-7 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that §18-9D-2, §18-9D-6, §18-9D-8, §18-9D-15 and §18-9D-16 of said code be amended and reenacted, all to read as follows:

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.


1 The allowance in the foundation school program for each county for transportation shall be the sum of the following computations:

4 (1) Eighty-five percent of the transportation cost within each high-density county and ninety percent of the transportation cost within each low-density county for maintenance, operation and related costs, exclusive of all salaries: Provided,

8 That for any county that uses an alternative fuel such as compressed natural gas or other acceptable alternative fuel for the operation of all or any portion of its school bus system, the allowance in the foundation school program for the county for that portion of its school bus system shall be ninety-five percent of the transportation cost for maintenance, operation and related costs, exclusive of all salaries, incurred by the use of the alternatively fueled school buses: Provided, however, That any county using an alternative fuel and qualifying for the additional allowance shall submit a plan regarding the intended future use of alternatively fueled school buses;

19 (2) The total cost, within each county, of insurance premiums on buses, buildings and equipment used in transportation:
Provided, That the premiums were procured through competitive bidding;

(3) An amount equal to eight and one-third percent of the current replacement value of the bus fleet within each county as determined by the state board. The amount shall only be used for the replacement of buses. Buses purchased after the first day of July, one thousand nine hundred ninety-nine, that are driven one hundred eighty thousand miles, regardless of year model, will be subject to the replacement value of eight and one-third percent as determined by the state board: Provided, That for the school year beginning on the first day of July, two thousand four, only, the allowance in the foundation school program for each county for transportation shall not include an amount for the replacement of buses. In addition, in any school year in which its net enrollment increases when compared to the net enrollment the year immediately preceding, a school district may apply to the state superintendent for funding for an additional bus. The state superintendent shall make a decision regarding each application based upon an analysis of the individual school district’s net enrollment history and transportation needs: Provided, however, That the superintendent shall not consider any application which fails to document that the county has applied for federal funding for additional buses. If the state superintendent finds that a need exists, a request for funding shall be included in the budget request submitted by the state board for the upcoming fiscal year;

(4) Eighty-five percent of the cost of contracted transportation services and public utility transportation within each high-density county and ninety percent of the cost of contracted transportation services and public utility transportation within each low-density county;
(5) Aid in lieu of transportation equal to the state average amount per pupil for each pupil receiving the aid within each county; and

(6) Ninety-five percent of the transportation cost for maintenance, operation and related costs, exclusive of all salaries, for transporting students to and from classes at a multicounty vocational center.

The total state share for this purpose shall be the sum of the county shares: Provided, That no county shall receive an allowance which is greater than one-third above the computed state average allowance per transportation mile multiplied by the total transportation mileage in the county: Provided, however, That one half of one percent of the transportation allowance distributed to each county shall be for the purpose of trips related to academic classroom curriculum and not related to any extracurricular activity: Provided further, That for the school year beginning on the first day of July, two thousand four, only the transportation allowance of each county shall include an allocation for the purpose of trips related to academic classroom curriculum and not related to any extracurricular activity. The allocation shall equal the amount distributed to the county for this purpose in the school year beginning on the first day of July, two thousand three: And provided further, That any remaining funds credited to a county for the purpose of trips related to academic classroom curriculum during the fiscal year shall be carried over for use in the same manner the next fiscal year and shall be separate and apart from, and in addition to, the appropriation for the next fiscal year: And provided further, That the state board may request a county to document the use of funds for trips related to academic classroom curriculum if the board determines that it is necessary.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

The following terms, wherever used or referred to in this article, have the following meanings unless a different meaning clearly appears from the context:

(1) “Authority” means the school building authority of West Virginia or, if the authority is abolished, any board or officer succeeding to the principal functions of the school building authority or to whom the powers given to the authority are given by law;

(2) “Bonds” means bonds issued by the authority pursuant to this article;

(3) “Construction project” means a project in the furtherance of a facilities plan with a cost of the project greater than five hundred thousand dollars for the new construction, expansion or major renovation of facilities, buildings and structures for school purposes, including the acquisition of land for current or future use in connection with the construction project, as well as new or substantial upgrading of existing equipment, machinery, furnishings, installation of utilities and other similar items convenient in connection with placing the construction project into operation: Provided, That a construction project may not include such items as books, computers or equipment used for instructional purposes, fuel, supplies, routine utility services fees, routine maintenance costs, ordinary course of business improvements and other items which are customarily considered to result in a current or ordinary course of business operating charge: Provided, however, That a construction project may not include a major improvement project;

(4) “Cost of project” means the cost of construction, expansion, renovation, repair and safety upgrading of facilities, buildings and structures for school purposes; the cost of land, equipment, machinery, furnishings, installation of utilities and
other similar items convenient in connection with placing the project into operation; and the cost of financing, interest during construction, professional service fees and all other charges or expenses necessary, appurtenant or incidental to the foregoing, including the cost of administration of this article;

(5) “Facilities plan” means a ten-year countywide comprehensive educational facilities plan established by the county board in accordance with guidelines adopted by the authority to meet the goals and objectives of this article that: (i) Addresses the existing school facilities and facility needs of the county to provide a thorough and efficient education in accordance with the provisions of this code and policies of the state board; (ii) best serves the needs of the individual student, the general school population and the communities served by the facilities; (iii) includes a school major improvement plan as defined in this section; (iv) is updated annually to reflect projects completed, current enrollment projections and new or continuing needs; and (v) is approved by the state board and the authority prior to the distribution of state funds pursuant to this article to any county board or other entity applying for funds;

(6) “Project” means a construction project or a major improvement project;

(7) “Region” means the area encompassed within and serviced by a regional educational service agency established pursuant to section twenty-six, article two of this chapter;

(8) “Revenue” or “revenues” means moneys deposited in the school building capital improvements fund pursuant to the operation of section ten, article nine-a of this chapter; moneys deposited in the school construction fund pursuant to the operation of section thirty, article fifteen, chapter eleven of this code and pursuant to the operation of section eighteen, article twenty-two, chapter twenty-nine of this code; moneys deposited
in the school building debt service fund pursuant to section eighteen, article twenty-two, chapter twenty-nine of this code; moneys deposited in the school major improvement fund pursuant to the operation of section thirty, article fifteen, chapter eleven of this code; any moneys received, directly or indirectly, from any source for use in any project completed pursuant to this article; and any other moneys received by the authority for the purposes of this article;

(9) “School major improvement plan” means a ten-year school maintenance plan that: (i) Is prepared by a county board of education in accordance with the guidelines established by the authority and incorporated in its countywide comprehensive educational facilities plan or is prepared by the state board of education or the administrative council of an area vocational educational center in accordance with the guidelines if the entities seek funding from the authority for a major improvement project; (ii) addresses the regularly scheduled maintenance for all school facilities of the county or under the jurisdiction of the entity seeking funding; (iii) includes a projected repair and replacement schedule for all school facilities of the county or of entity seeking funding; (iv) addresses the major improvement needs of each school within the county or under the jurisdiction of the entity seeking funding; and (v) is required prior to the distribution of state funds for a major improvement project pursuant to this article to the county board, state board or administrative council; and

(10) “School major improvement project” means a project with a cost greater than fifty thousand dollars and less than five hundred thousand dollars for the renovation, expansion, repair and safety upgrading of existing school facilities, buildings and structures, including the substantial repair or upgrading of equipment, machinery, building systems, utilities and other similar items convenient in connection with such renovation, repair or upgrading in the furtherance of a school major
improvement plan: Provided, That a major improvement project may not include such items as books, computers or equipment used for instructional purposes, fuel, supplies, routine utility services fees, routine maintenance costs, ordinary course of business improvements and other items which are customarily considered to result in a current or ordinary course of business operating charge.

§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 the collections as security for refunding revenue bonds; authority to finance projects on a cash basis.

(a) There is continued in the state treasury a school building capital improvements fund to be expended by the authority as provided in this article. The school building capital improvements fund shall be an interest-bearing account with interest credited to and deposited in the school building capital improvements fund and expended in accordance with the provisions of this article.

The school building authority may pledge all or any part of the revenues paid into the school building capital improvements fund that are needed to meet the requirements of any revenue bond issue or issues authorized by this article prior to the twentieth day of July, one thousand nine hundred ninety-three, or revenue bonds issued to refund revenue bonds issued prior to that date, including the payment of principal of, interest and redemption premium, if any, on the revenue bonds and the establishing and maintaining of a reserve fund or funds for the payment of the principal of, interest and redemption premium, if any, on the revenue bond issue or issues when other moneys pledged may be insufficient for the payment of the principal,
interest and redemption premium, including any additional
protective pledge of revenues that the authority in its discretion
has provided by resolution authorizing the issuance of the
bonds or in any trust agreement made in connection with the
bond issue. Additionally, the authority may provide in the
resolution and in the trust agreement for priorities on the
revenues paid into the school building capital improvements
fund that are necessary for the protection of the prior rights of
the holders of bonds issued at different times under the provi-
sions of this article.

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

The school building authority, in its discretion, may use the
moneys in the school building capital improvements fund to
finance the cost of projects authorized in accordance with the
provisions of section sixteen of this article on a cash basis. Any
pledge of moneys in the fund for revenue bonds issued prior to
the twentieth day of July, one thousand nine hundred
ninety-three, is a prior and superior charge on the fund over the
use of any of the moneys in the fund to pay for the cost of any
project on a cash basis: Provided, That any expenditures from
the fund, other than for the retirement of revenue bonds, may
only be made by the authority in accordance with the provisions of this article.

(b) There is continued in the state treasury a special revenue fund named the school building debt service fund into which shall be deposited the amounts specified in section eighteen, article twenty-two, chapter twenty-nine of this code. All amounts deposited in the fund shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds authorized by this article: Provided, That deposited moneys may not be pledged to the repayment of any revenue bonds issued prior to the first day of January, one thousand nine hundred ninety-four, or with respect to revenue bonds issued for the purpose of refunding revenue bonds issued prior to the first day of January, one thousand nine hundred ninety-four. Additionally, the authority may provide in the resolution and in the trust agreement for priorities on the revenues paid into the school building debt service fund that are necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this article. On or prior to the first day of May of each year, the authority shall certify to the state lottery director the principal and interest and coverage ratio requirements for the following fiscal year on any revenue bonds issued on or after the first day of January, one thousand nine hundred ninety-four, and for which moneys deposited in the school building debt service fund have been pledged, or will be pledged, for repayment pursuant to this section.

After the authority has issued bonds authorized by this article and after the requirements of all funds have been satisfied, including coverage and reserve funds established in connection with the bonds issued pursuant to this article, any balance remaining in the school building debt service fund may be used for the redemption of any of the outstanding bonds issued under this article which, by their terms, are then redeem-
able or for the purchase of the outstanding bonds at the market
price, but not to exceed the price, if any, at which the bonds are
redeemable and all bonds redeemed or purchased shall be
immediately canceled and shall not again be issued: Provided,
That after the authority has issued bonds authorized by this
article and after the requirements of debt service and all
associated funds have been satisfied for the fiscal year, includ-
ing coverage and reserve funds established in connection with
the bonds issued pursuant to this article, any remaining balance
in the school building debt service fund may be transferred to
the school construction fund created in subsection (c) of this
section and used by the school building authority in its discre-
tion to finance the cost of school construction or improvement
projects authorized in accordance with the provisions of section
sixteen of this article on a cash basis.

(c) There is continued in the state treasury a special revenue
fund named the school construction fund into which shall be
deposited the amounts specified in section thirty, article fifteen,
chapter eleven of this code and section eighteen-a, article
twenty-two, chapter twenty-nine of this code, together with any
moneys appropriated to the fund by the Legislature: Provided,
That for the school year beginning the first day of July, two
thousand and four, only, funds from the excess lottery allocated
in section eighteen-a, article twenty-two, chapter twenty-nine
of this code shall not be transferred to the school construction
fund and, in lieu thereof, made available for legislative appro-
priation: Provided however, That for the school year beginning
the first day of July, two thousand and four, only, up to five
million dollars of the amounts in the fund may be appropriated
by the Legislature for budget shortfalls. Expenditures from the
school construction fund shall be for the purposes set forth in
this article, including lease-purchase payments under agree-
ments made pursuant to subsection (e), section fifteen of this
article and section nine, article five of this chapter and are
authorized from collections in accordance with the provisions
of article three, chapter twelve of this code and from other revenues annually appropriated by the Legislature from lottery revenues as authorized by section eighteen, article twenty-two, chapter twenty-nine of this code pursuant to the provisions set forth in article two, chapter five-a of this code. Amounts collected which are found, from time to time, to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature. The school construction fund shall be an interest-bearing account, with the interest credited to and deposited in the school construction fund and expended in accordance with the provisions of this article. Deposits to and expenditures from the school construction fund are subject to the provisions of subsection (k), section fifteen of this article.

(d) There is continued in the state treasury a special revenue fund named the school major improvement fund into which shall be deposited the amounts specified in section thirty, article fifteen, chapter eleven of this code, together with any moneys appropriated to the fund by the Legislature. Expenditures from the school major improvement fund shall be for the purposes set forth in this article and are authorized from collections in accordance with the provisions of article three, chapter twelve of this code and from other revenues annually appropriated by the Legislature from lottery revenues as authorized by section eighteen, article twenty-two, chapter twenty-nine of this code pursuant to the provisions set forth in article two, chapter five-a of this code. Amounts collected which are found, from time to time, to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature. The school major improvement fund shall be an interest-bearing account, with interest being credited to and deposited in the school major improvement fund and expended in accordance with the provisions of this article.
(e) The Legislature finds and declares that the supreme court of appeals of West Virginia has held that the issuance of additional revenue bonds authorized under the school building authority act, as enacted in this article prior to the twentieth day of July, one thousand nine hundred ninety-three, constituted an indebtedness of the state in violation of section four, article X of the constitution of West Virginia, but that revenue bonds issued under this article prior to the twentieth day of July, one thousand nine hundred ninety-three, are not invalid. The Legislature further finds and declares that the financial capacity of a county to construct, lease and improve school facilities depends upon the county’s bonding capacity (local property wealth), voter willingness to pass bond issues and the county’s ability to reallocate other available county funds instead of criteria related to educational needs or upon the ability of the school building authority created in this article to issue bonds that comply with the holding of the West Virginia supreme court of appeals or otherwise assist counties with the financing of facilities construction and improvement. The Legislature further finds and declares that this section, as well as section eighteen, article twenty-two, chapter twenty-nine of this code, have been reenacted during the first extraordinary session of the West Virginia Legislature in the year one thousand nine hundred ninety-four in an attempt to comply with the holding of the supreme court of appeals of West Virginia.

The Legislature further finds and declares that it intends, through the reenactment of this section and section eighteen, article twenty-two, chapter twenty-nine of this code, to dedicate a source of state revenues to special revenue funds for the purposes of paying the debt service on bonds and refunding bonds issued subsequent to the first day of January, one thousand nine hundred ninety-four, the proceeds of which will be used for the construction and improvement of school building facilities. The Legislature further finds and declares that it intends, through the reenactment of this section and
section thirty, article fifteen, chapter eleven of this code and
section eighteen, article twenty-two, chapter twenty-nine of this
code, to appropriate revenues to two special revenue funds for
the purposes of construction and improvement of school
building facilities. Furthermore, the Legislature intends to
encourage county boards to maintain existing levels of county
funding for construction, improvement and maintenance of
school building facilities and to generate additional county
funds for those purposes through bonds and special levies
whenever possible. The Legislature further encourages the
school building authority, the state board and county boards of
education to propose uniform project specifications for compara-
able projects whenever possible to meet county needs at the
lowest possible cost.

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

§ 18-9D-8. Use of proceeds of bonds; bonds exempt from taxation.

(a) The maximum aggregate face value of bonds that may
be issued by the authority, for which the moneys in the school
building debt service fund are to be pledged, is four hundred
million dollars. The issuance of revenue bonds under the
provisions of this article shall be authorized, from time to time,
by resolution or resolutions of the school building authority
which shall set forth the proposed projects authorized in
accordance with the provisions of section sixteen of this article
and provide for the issuance of bonds in amounts sufficient,
when sold as provided in this section, to provide moneys
considered sufficient by the authority to pay the costs, less the
amounts of any other funds available for the costs or from any
appropriation, grant or gift for the costs: *Provided*, That bond issues from which bond revenues are to be distributed in accordance with section fifteen of this article for projects authorized pursuant to the provisions of section sixteen of this article are not required to set forth the proposed projects in the resolution. The resolution shall prescribe the rights and duties of the bondholders and the school building authority and, for that purpose, may prescribe the form of the trust agreement referred to in this section. The bonds may be issued, from time to time, in such amounts; shall be of such series; bear such date or dates; mature at such time or times not exceeding forty years from their respective dates; bear interest at such rate or rates; be in such denominations; be in such form, either coupon or registered, carrying such registration, exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places within or without the state; be subject to such terms of redemption at such prices not exceeding one hundred five percent of the principal amount of the bonds; and be entitled to such priorities on the revenues paid into the fund pledged for repayment of the bonds as may be provided in the resolution authorizing the issuance of the bonds or in any trust agreement made in connection with the bonds: *Provided, however*, That revenue bonds issued on or after the first day of January, one thousand nine hundred ninety-four, which are secured by lottery proceeds shall mature at such time or times not exceeding ten years from their respective dates.

(b) The bonds shall be signed by the governor, and by the president or vice president of the authority, under the great seal of the state, attested by the secretary of state, and the coupons attached to the bonds shall bear the facsimile signature of the president or vice president of the authority. In case any of the officers whose signatures appear on the bonds or coupons cease to be officers before the delivery of the bonds, the signatures shall nevertheless be valid and sufficient for all purposes the
same as if the officers had remained in office until the delivery.
The revenue bonds shall be sold in the manner determined by the authority to be for the best interests of the state.

(c) Any pledge of revenues made by the school building authority for revenue bonds issued prior to the twentieth day of July, one thousand nine hundred ninety-three, pursuant to this article is valid and binding between the parties from the time the pledge is made; and the revenues pledged shall immediately be subject to the lien of the pledge without any further physical delivery of the revenues pledged or further act. The lien of the pledge is valid and binding against all parties having claims of any kind in tort, contract or otherwise, irrespective of whether the parties have notice of the lien of the pledge, and the pledge shall be a prior and superior charge over any other use of the revenues pledged.

(d) The proceeds of any bonds shall be used solely for the purpose or purposes as may be generally or specifically set forth in the resolution authorizing those bonds and shall be disbursed in the manner and with the restrictions, if any, that the authority provides in the resolution authorizing the issuance of the bonds or in the trust agreement referred to in this section securing the bonds. If the proceeds of the bonds, by error in calculations or otherwise, are less than the cost of any projects specifically set forth in the resolution, additional bonds may in like manner be issued to provide the amount of the deficiency; and unless otherwise provided for in the resolution or trust agreement hereinafter mentioned, the additional bonds shall be considered to be of the same issue and are entitled to payment from the same fund, without preference or priority, as the bonds before issued for the projects. If the proceeds of bonds issued for the projects specifically set forth in the resolution authorizing the bonds issued by the authority exceed the cost of the bonds, the surplus may be used for any other projects authorized in accordance with the provisions of section sixteen of this
article or in any other manner that the resolution authorizing the
bonds provides. Prior to the preparation of definitive bonds, the
authority may, under like restrictions, issue temporary bonds
with or without coupons, exchangeable for definitive bonds
upon the issuance of the definitive bonds.

(e) After the issuance of any of revenue bonds, the revenues
pledged for the revenue bonds shall not be reduced as long as
any of the revenue bonds are outstanding and unpaid except
under the terms, provisions and conditions that are contained in
the resolution, trust agreement or other proceedings under
which the revenue bonds were issued.

(f) The revenue bonds and the revenue refunding bonds and
bonds issued for combined purposes, together with the interest
on the bonds, are exempt from all taxation by the state of West
Virginia, or by any county, school district, municipality or
political subdivision thereof.

(g) To meet the operational costs of the school building
authority, the school building authority may transfer to a special
revenue account in the state treasury interest on any debt
service reserve funds created within any resolution authorizing
the issue of bonds or any trust agreement made in connection
with the bonds for expenditure in accordance with legislative
appropriation or allocation of appropriation.

(h) Any school construction bonds issued under this section
shall be issued on parity with any existing school building
authority bonds previously issued under this article.

§18-9D-15. Legislative intent; allocation of money among catego-
ries of projects; lease purchase options; limitation
on time period for expenditure of project alloca-
tion; county maintenance budget requirements;
project disbursements over period of years;
preference for multicounty arrangements; sub-
mission of project designs; set-aside to encourage local participation; etc.

(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 authorized in accordance with the provisions of section sixteen of this article 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 subsection moneys for school major improvement projects authorized in accordance with the provisions of section
sixteen of this article proposed by the state board or an adminis-
trative council for school facilities under the direct supervision
of the state board or an administrative council, respectively.
Furthermore, upon application by a county board, the authority
may allocate and expend under this subsection moneys for
school major improvement projects for vocational programs at
comprehensive high schools, vocational schools cooperating
with community and technical college programs, or both. Each
county board is encouraged to cooperate with community and
technical colleges in the use of existing or development of new
vocational technical facilities. All projects eligible for funds
from this subsection shall be submitted directly to the authority
which shall be solely responsible for the project’s evaluation:
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 educational
center unless the state board or an administrative council has
submitted a ten-year facilities plan: 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 available for
distribution during the 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 set aside by the authority as an emergency fund
to be distributed in accordance with the guidelines adopted by
the authority.
(d) An amount that is no more than five percent of the moneys that are determined by the authority to be available for distribution during the 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, may be reserved by the authority for multiuse vocational-technical education facilities projects that may include post-secondary programs as a first priority use. The authority may allocate and expend under this subsection moneys for any purposes authorized in this article on multiuse vocational-technical education facilities projects, including equipment and equipment updates at the facilities, authorized in accordance with the provisions of section sixteen of this article. If the projects approved under this subsection do not require the full amount of moneys reserved, moneys above the amount required may be allocated and expended in accordance with other provisions of this article. A county board, the state board, an administrative council or the joint administrative board of a vocational-technical education facility which includes post-secondary programs may propose projects for facilities or equipment, or both, which are under the direct supervision of the respective body: Provided, That the authority shall, before allocating any moneys for a project under this subsection, consider all other funding sources available for the project.

(e) 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 for projects funded in accordance with the provisions of section sixteen of this article.

(f) If a county board of education proposes to finance a project that is authorized in accordance with 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 any terms and conditions that 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.

(g) 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 section, any county board or other entity to whom moneys are allocated
by the authority that fails to expend the money within three
years of the allocation shall forfeit the allocation and thereafter
is ineligible for further allocations pursuant to this section until
it 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 available in the school construction fund of the
authority for future allocation and distribution. Funds may not
be distributed for any project under this article unless the
responsible entity has a facilities plan approved by the state
board and the school building authority and is prepared to
commence expenditure of the funds during the fiscal year in
which the moneys are distributed.

(h) 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 improve-
ment fund pursuant to section six of this article shall be
allocated and distributed on the basis of need and efficient use
of resources for projects authorized in accordance with the
provisions of section sixteen of this article: Provided, That the
moneys may not be distributed for any project under this
section unless the responsible entity has a facilities plan
approved by the state board and the authority and is to com-
mence expenditures of the funds during the fiscal year in which
the moneys are distributed: Provided, however, That any
moneys allocated to a project and not distributed for that project
shall be deposited in an account to the credit of the project, the
principal amount to remain to the credit of and available to the
project 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.
(i) 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 shall promulgate rules relating to county boards' maintenance budgets, including items which shall be included in the budgets.

(j) 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.

(k) 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 for projects authorized in accordance with the provisions of section sixteen 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.

(1) 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 subsec-
tion, the authority shall grant preference to those projects which
involve multicounty arrangements as the authority shall
determine reasonable and proper.

(m) County boards shall submit all designs for construction
of new school buildings to the school building authority for
review and approval prior to preparation of final bid docu-
ments: Provided, That a vendor who has been debarred pursu-
ant 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.

(n) The authority may elect to disburse 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 school
construction project over a period of more than three years;

(2) The authority may not approve the use of more than
fifty percent of the revenue available for distribution in any
given fiscal year for projects that are to be funded over a period
of more than one year; and
(3) In order to encourage local participation in funding school construction projects, the authority may set aside limited funding, not to exceed five hundred thousand dollars, in reserve for one additional year to provide a county the opportunity to complete financial planning for a project prior to the allocation of construction funds. Any funding shall be on a reserve basis and converted to a part of the construction grant only after all project budget funds have been secured and all county commitments have been fulfilled. Failure of the county to solidify the project budget and meet its obligations to the state within eighteen months of the date the funding is set aside by the authority will result in expiration of the reserve and the funds shall be reallocated by the authority in the succeeding funding cycle.

§18-9D-16. Authority to establish guidelines and procedures for facilities and major improvement plans; guidelines for modifications and updates, etc.; guidelines for project evaluation; submission of certified list of projects to be funded; department on-site inspection of facilities; enforcement of required changes or additions to project plans.

(a) The authority shall establish guidelines and procedures to promote the intent and purposes of this article and assure the prudent and resourceful expenditure of state funds for projects under this article including, but not limited to, the following:

(1) Guidelines and procedures for the facilities plans, school major improvement plans and projects submitted in the furtherance of the plans that address, but are not limited to, the following:

(A) All of the elements of the respective plans as defined in section two of this article;
(B) The procedures for a county to submit a preliminary plan, a plan outline or a proposal for a plan to the authority prior to the submission of the facilities plan. The preliminary plan, plan outline or proposal for a plan shall be the basis for a consultation meeting between representatives of the county and members of the authority, including at least one citizen member, which shall be held promptly following submission of the preliminary plan, plan outline or proposal for a plan to assure understanding of the general goals of this article and the objective criteria by which projects will be evaluated, to discuss ways the plan may be structured to meet those goals, and to assure efficiency and productivity in the project approval process;

(C) The manner, time line and process for the submission of each plan and annual plan updates to the authority;

(D) The requirements for public hearings, comments or other means of providing broad-based input on plans and projects under this article within a reasonable time period as the authority may consider appropriate. The submission of each plan must be accompanied by a synopsis of all comments received and a formal comment by the county board, the state board or the administrative council of an area vocational educational center submitting the plan;

(E) Any project specifications and maintenance specifications considered appropriate by the authority including, but not limited to, such matters as energy efficiency, preferred siting, construction materials, maintenance plan and any other matter related to how the project is to proceed;

(F) A prioritization by the county board, the state board or the administrative council submitting the plan of each project contained in the plan. In prioritizing the projects, the county board, the state board or the administrative council submitting
the plan shall make determinations in accordance with the
objective criteria formulated by the school building authority in
accordance with this section. The priority list is one of the
criteria that shall be considered by the authority deciding how
the available funds should be expended;

(G) The objective means to be set forth in the plan and used
in evaluating implementation of the overall plan and each
project included in the plan. The evaluation must measure how
the plan addresses the goals of this article and any guidelines
adopted under this article, and how each project is in further-
ance of the facilities plan and school major improvement plan,
as applicable, as well as the importance of the project to the
overall success of the facilities plan or school major improve-
ment plan and the overall goals of the authority; and

(H) Any other matters considered by the authority to be
important reflections of how a construction project or a major
improvement project or projects will further the overall goals
of this article.

(2) Guidelines and procedures which may be adopted by the
authority for requiring that a county board modify, update,
supplement or otherwise submit changes or additions to an
approved facilities plan or for requiring that a county board, the
state board or the administrative council of an area vocational
educational center modify, update, supplement or otherwise
submit changes or additions to an approved school major
improvement plan. The authority shall provide reasonable
notification and sufficient time for the change or addition as
delineated in guidelines developed by the authority.

(3) Guidelines and procedures for evaluating project
proposals that are submitted to the authority that address, but
are not limited to, the following:
(A) Any project funded by the authority must be in furtherance of the facilities plan or school major improvement plan and in compliance with the guidelines established by the authority;

(B) If a project is to benefit more than one county in the region, the facilities plan must state the manner in which the cost and funding of the project will be apportioned among the counties;

(C) If a county board proposes to finance a construction project through a lease with an option to purchase pursuant to an investment contract as described in subsection (f), section fifteen of this article, the specifications for the project must include the term of the lease, the amount of each lease payment, including the payment due upon exercise of the option to purchase, and the terms and conditions of the proposed investment contract; and

(D) The objective criteria for the evaluation of projects which shall include, but are not limited to, the following:

(i) How the current facilities do not meet and how the plan and any project under the plan meets the following:

(I) Student health and safety including, but not limited to, critical health and safety needs;

(II) Economies of scale, including compatibility with similar schools that have achieved the most economical organization, facility use and pupil-teacher ratios;

(III) Reasonable travel time and practical means of addressing other demographic considerations;

(IV) Multicounty and regional planning to achieve the most effective and efficient instructional delivery system;
(V) Curriculum improvement and diversification, including the use of instructional technology, distance learning and access to advanced courses in science, mathematics, language arts and social studies;

(VI) Innovations in education;

(VII) Adequate space for projected student enrollments;

(VIII) The history of efforts taken by the county board to propose or adopt local school bond issues or special levies to the extent constitutionally permissible; and

(IX) Regularly scheduled preventive maintenance; and

(ii) How the project will assure the prudent and resourceful expenditure of state funds and achieve the purposes of this article for constructing, expanding, renovating or otherwise improving and maintaining school facilities for a thorough and efficient education.

(4) Guidelines and procedures for evaluating projects for funding that address, but are not limited to, the following:

(A) Requiring each county board’s facilities plan and school major improvement plan to prioritize all the construction projects or major improvement projects, respectively, within the county. A school major improvement plan submitted by the state board or the administrative council of an area vocational educational center shall prioritize all the school improvement projects contained in the plan. The priority list shall be one of the criteria to be considered by the authority in determining how available funds shall be expended. In prioritizing the projects, the county board, the state board or the administrative council submitting a plan shall make determinations in accordance with the objective criteria formulated by the school building authority;
(B) The return to each county submitting a project proposal an explanation of the evaluative factors underlying the decision of the authority to fund or not to fund the project; and

(C) The allocation and expenditure of funds in accordance with this article, subject to the availability of funds.

(b) Prior to final action on approving projects for funding under this article, the authority shall submit a certified list of the projects to the joint committee on government and finance.

(c) The state department of education shall conduct on-site inspections, at least annually, of all facilities which have been funded wholly or in part by moneys from the authority or state board to ensure compliance with the county board’s facilities plan and school major improvement plan as related to the facilities; to preserve the physical integrity of the facilities to the extent possible; and to otherwise extend the useful life of the facilities: Provided, That the state board shall submit reports regarding its on-site inspections of facilities to the authority within thirty days of completion of the on-site inspections: Provided, however, That the state board shall promulgate rules regarding the on-site inspections and matters relating thereto, in consultation with the authority, as soon as practical and shall submit proposed rules for legislative review no later than the first day of December, one thousand nine hundred ninety-four.

(d) Based on its on-site inspection or notification by the authority to the state board that the changes or additions to a county’s board facilities plan or school major improvement plan required by the authority have not been implemented within the time period prescribed by the authority, the state board shall restrict the use of the necessary funds or otherwise allocate funds from moneys appropriated by the Legislature for those purposes set forth in section nine, article nine-a of this chapter.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Greg Butcher
Chairman House Committee

Originating in the House.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the ___ day of April, 2004.

Bob Wise
Governor
3/26/04
4:00 pm