WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2008

ENROLLED

House Bill No. 4406

(By Delegates DeLong, Shaver, Williams, Rodighiero, Rowan, Eldridge, Sobonya, Sumner, Fragale and C. Miller)

Passed March 8, 2008

In Effect July 1, 2008
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated section §18-2E-5d; and to amend and reenact §18-9D-2 and §18-9D-16 of said code, all relating generally to the School Building Authority and to state board standards for the recommended duration of school bus transportation times for students to and from school; modifying definitions and qualifications for construction projects and major improvement projects; limiting county board authority to establish new routes for certain students to certain schools unless certain requirements met; providing for state board to permit new routes in excess of limit up to certain limit; requiring state board to provide certain technical assistance; requiring countywide comprehensive facilities plans required by School Building Authority to address providing facility infrastructure that avoids excessive transportation times; requiring guidelines for update of transportation times in approved facilities plans; prohibiting project approval by authority when transportation route times for certain students exceed limits unless state board permission is granted.
Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated section §18-2E-5d; and that §18-9D-2 and §18-9D-16 of said code be amended and reenacted, all to read as follows:

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-5d. Standards for the duration of school bus transportation times for students to and from school.

(a) The high quality standards for transportation adopted by the state board pursuant to section five of this article shall include standards for the recommended duration of the one-way school bus transportation time for students to and from school under normal weather and operating conditions as follows:

(1) For elementary school students, thirty minutes;

(2) For middle school, intermediate school and junior high school students, forty-five minutes; and

(3) For high school students, sixty minutes.

(b) A county board may not create a new bus route for the transportation of students in any of the grade levels prekindergarten through grade five to and from any school included in a school closure, consolidation or new construction project approved after the first day of July, two thousand eight, which exceeds by more than fifteen minutes the recommended duration of the one-way school bus transportation time for elementary students adopted by the
state board in accordance with subsection (a) of this section unless:

(1) The county board adopts a separate motion to approve creation of the route and request written permission of the state board to create the route; and

(2) Receives the written permission of the state board to create the route.

(c) A county board may not create, nor may the state board permit, the creation of a new bus route for the transportation of students in any of the grade levels prekindergarten through grade five to and from any school included in a school closure, consolidation or new construction project approved after the first day of July, two thousand eight, which exceeds by more than thirty minutes the recommended duration of the one-way school bus transportation time for elementary students adopted by the state board in accordance with subsection (a) of this section.

(d) The state board shall provide technical assistance to county boards with the objective of achieving school bus transportation routes for students which are within the recommended time durations established by the state board.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.


For the purposes of this article, unless a different meaning clearly appears from the context:

(1) "Authority" means the School Building Authority of West Virginia;
(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 greater than one million dollars for the new construction, expansion or major renovation of facilities, buildings and structures for school purposes, including:

(A) The acquisition of land for current or future use in connection with the construction project;

(B) New or substantial upgrading of existing equipment, machinery and furnishings;

(C) Installation of utilities and other similar items related to making the construction project operational.

(D) Construction project does 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; other items which are customarily considered to result in a current or ordinary course of business operating charge or 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 related to making the project operational; 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;
"Facilities plan" means the ten-year countywide comprehensive educational facilities plan established by a county board in accordance with guidelines adopted by the authority to meet the goals and objectives of this article that:

(A) 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;

(B) Best serves the needs of individual students, the general school population and the communities served by the facilities, including, but not limited to, providing for a facility infrastructure that avoids excessive school bus transportation times for students consistent with sound educational policy and within the budgetary constraints for staffing and operating the schools of the county;

(C) Includes the school major improvement plan;

(D) Includes the county board's school access safety plan required by section three, article nine-f of this chapter;

(E) Is updated annually to reflect projects completed, current enrollment projections and new or continuing needs; and

(F) 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;

"Project" means a construction project or a major improvement project;

"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:

(A) Deposited in the School Building Capital Improvements Fund pursuant to section ten, article nine-a of this chapter;

(B) Deposited in the School Construction Fund pursuant to section thirty, article fifteen, chapter eleven of this code and section eighteen, article twenty-two, chapter twenty-nine of this code;

(C) Deposited in the School Building Debt Service Fund pursuant to section eighteen, article twenty-two, chapter twenty-nine of this code;

(D) Deposited in the School Major Improvement Fund pursuant to section thirty, article fifteen, chapter eleven of this code;

(E) Received, directly or indirectly, from any source for use in any project completed pursuant to this article;

(F) Received by the authority for the purposes of this article; and

(G) Deposited in the Excess Lottery School Building Debt Services Fund pursuant to section eighteen-a, article twenty-two, chapter twenty-nine of this code.

(9) "School major improvement plan" means a ten-year school maintenance plan that:

(A) Is prepared by a county board 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 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;

(B) Addresses the regularly scheduled maintenance for all school facilities of the county or under the jurisdiction of the entity seeking funding;

(C) Includes a projected repair and replacement schedule for all school facilities of the county or of entity seeking funding;

(D) Addresses the major improvement needs of each school within the county or under the jurisdiction of the entity seeking funding; and

(E) 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 one million 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 related to the renovation, repair or upgrading in the furtherance of a school major improvement plan. A major improvement project does 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; or other items which are customarily considered to result in a current or ordinary course of business operating charge.
§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 furtherance of the facilities plan and school major improvement plan, as applicable, as well as the
57 importance of the project to the overall success of the
58 facilities plan or school major improvement plan and the
59 overall goals of the authority; and

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

64 (2) Guidelines and procedures which may be adopted by
65 the authority for requiring that a county board modify,
66 update, supplement or otherwise submit changes or additions
67 to an approved facilities plan or for requiring that a county
68 board, the state board or the administrative council of an area
69 vocational educational center modify, update, supplement or
70 otherwise submit changes or additions to an approved school
71 major improvement plan. The authority shall provide
72 reasonable notification and sufficient time for the change or
73 addition as delineated in guidelines developed by the
74 authority. The guidelines shall require an update of the
75 estimated duration of school bus transportation times for
76 students associated with any construction project under
77 consideration by the authority that includes the closure,
78 consolidation or construction of a school or schools.

79 (3) Guidelines and procedures for evaluating project
80 proposals that are submitted to the authority that address, but
81 are not limited to, the following:

82 (A) Any project funded by the authority must be in
83 furtherance of the facilities plan or school major
84 improvement plan and in compliance with the guidelines
85 established by the authority;

86 (B) If a project is to benefit more than one county in the
87 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. The authority may not approve a project after the first day of July, two thousand eight, that includes a school closure, consolidation or new construction for which a new bus route will be created for the transportation of students in any of the grade levels prekindergarten through grade five to and from any school included in the project, which new bus route exceeds by more than fifteen minutes the recommended duration of the one-way school bus transportation time for elementary students adopted by the state board as provided in section
five-d. article two-e of this chapter, unless the county has received the written permission of the state board to create the route in accordance with said section five-d;

(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

Chairman House Committee

Originating in the House.

In effect July 1, 2008.

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 28th day of March, 2008.

Governor