WEST VIRGINIA LEGISLATURE
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ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 373
(BY SENATORS KESSLER (ACTING PRESIDENT) AND HALL,
BY REQUEST OF THE EXECUTIVE)

[passed March 12, 2011; to take effect July 1, 2011.]
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-9D-4c; to amend and reenact §18-9D-15 of said Code; and to amend said code by adding thereto a new section, designated §18-9D-19a, all relating to funding and financing comprehensive middle schools and other School Building Authority projects and expenditures; providing the School Building Authority the ability to temporarily finance project costs and expenditures for public schools through loans, notes or other financing; limiting the amount of outstanding loans, notes or other financing; providing that principal, interest and premium on loans, notes or other financing must be paid from certain sources; allowing, upon application by a county board of education, the School Building Authority to allocate and expend certain moneys for school major improvement projects for vocational programs at comprehensive middle schools; providing legislative findings; providing for definition of “comprehensive middle high school” by state board rule; providing minimum contents of rule; requiring the authority, when planning the construction of a middle or junior high school, to provide funding for a comprehensive middle school
that includes comprehensive career technical education facilities to be located, when feasible, on the same site as the middle or junior high school under certain conditions; requiring the authority, upon application of a county board to construct comprehensive career technical education facilities that would allow an existing middle or junior high school to become a comprehensive middle school, to provide technical assistance to the county in developing a plan for construction of the comprehensive career technical education facility; and requiring, upon development of the plan, the authority to consider funding based on certain criteria.

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 §18-9D-4c; that §18-9D-15 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18-9D-19a, all to read as follows:

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-4c. School Building Authority authorized to temporarily finance projects through the issuance of loans, notes or other evidences of indebtedness.

1 The School Building Authority may by resolution, in accordance with the provisions of this article, temporarily finance the cost of projects and other expenditures permitted under this article for public schools, including, but not limited to, comprehensive high schools and comprehensive middle schools as defined in this article, in this state through the issuance of loans, notes or other evidences of indebtedness: Provided, That the principal amount of loans, notes or other evidences of indebtedness outstanding at any one time shall not exceed $16 million: Provided, however, That the principal of, interest and premium, if any, on and fees associated with any such temporary financing shall be payable solely from the sources from which the principal of, interest and premium, if any, on bonds is payable under this article or from the proceeds of bonds.
§18-9D-15. Legislative intent; allocation of money among categories of projects; lease-purchase options; limitation on time period for expenditure of project allocation; county maintenance budget requirements; project disbursements over period of years; preference for multicounty arrangements; submission of project designs; set-aside to encourage local participation.

(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 not 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 or the Excess Lottery 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 and moneys deposited
into the School Access Safety Fund pursuant to section five, article nine-f of this chapter, 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 administrative 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 programs at comprehensive middle schools, vocational schools cooperating with community and technical college programs, or any combination of the three. 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, subject to the following:

(A) 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; and

(B) 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 not 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 or the Excess Lottery 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 and moneys deposited into the School Access Safety Fund pursuant to section five, article nine-f of this chapter, 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 not 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 or the Excess Lottery 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 and moneys deposited into the School Access Safety Fund pursuant to section five, article nine-f of this chapter, 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 or the Excess Lottery 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 and moneys deposited into the School Access Safety Fund pursuant to section five, article nine-f of this chapter, 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 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 not allocate moneys to the county board in connection with the project: Provided, That the authority may transfer moneys to the state board 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, subject to the following:

(A) 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 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;
(B) 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;

(C) 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;

(D) 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

(E) 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 Improvement 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, subject to the following:

(1) 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 commence expenditures of the funds during the fiscal year in which the moneys are distributed;

(2) 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; and

(3) 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) Local matching funds may not be required under the provisions of this section. However, this article does not negate the responsibilities of the county boards to maintain school facilities. 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. Distribu-
tion to a county board, or to the state board or the admin-
istrative 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:

(1) Any funds deposited in the School Construction Fund
shall be expended first in accordance with an appropriation
by the Legislature.

(2) 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.

(l) 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 transporta-
tion arrangements for students or which otherwise may
create efficiencies for county boards and the students. In
order to address the intent of the Legislature contained in
this subsection, the authority shall grant preference to those
projects which involve multicounty arrangements as the
authority shall determine reasonable and proper.

(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 documents. A vendor who has been debarred pursuant to the provisions of sections thirty-three-a through thirty-three-f, inclusive, article three, chapter five-a of this code may not bid on or be awarded a contract under this section.

(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 $500,000, 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.


(a) The Legislature finds the following:

(1) Students learn more through hands on, applied learning activities;

(2) Career technical education students have a much higher graduation rate than other students;
Although thirty-seven percent of West Virginia middle and junior high school students are enrolled in a form of career technical education, the number has been dropping by approximately three thousand students per year; and

As the benefits of career technical education have increased as academics have become more embedded in career technical education, it is important that career technical education opportunities be increased at the middle and junior high school level.

"Comprehensive middle school" means a middle or junior high school that meets the definition of a comprehensive middle school established by the state board. The definition of a comprehensive middle school shall be established by the state board in a legislative rule promulgated in accordance with article three-b, chapter twenty-nine-a of this code. The definition shall include at least the following:

A comprehensive curriculum that:

(A) Includes the core subjects in English/language arts, mathematics, science, social studies;

(B) Provides students with engaging learning opportunities where students are provided connections between what they are learning and what they will learn in high school and beyond;

(C) Establishes the foundation for college and career readiness;

(D) Embeds career exploration and project based career activities where possible to provide all student with comprehensive career development and counseling;

(E) Provides career technical options for students that are integrated with academic course requirements where possible; and

(F) Provides authentic opportunities in the visual and performing arts, health and wellness, physical education, world languages and career technical activities;
(2) Harnessing the power of technology to provide personalized learning twenty-four hours per day and seven days per week and produce a digital individualized student portfolio of student mastery and progression; and

(3) A seamless integration with the secondary school curriculum that enables students to further explore their options and further pursue their career interests at the secondary and post-secondary levels.

(c) When planning the construction of a middle or junior high school which has been approved by the authority and which meets the required authority efficiencies, the authority shall provide funding for a comprehensive middle school that includes comprehensive career technical education facilities to be located, when feasible, on the same site as the middle or junior high school.

(d) Upon application of a county board to construct comprehensive career technical education facilities that would allow an existing middle or junior high school to become a comprehensive middle school, the authority will provide technical assistance to the county in developing a plan for construction of the comprehensive career technical education facility. Upon development of the plan, the authority shall consider funding based on the following criteria:

(1) The ability of the county board to provide local funds for the construction of the comprehensive career technical education facilities;

(2) The size of the existing middle and junior high schools;

(3) The age and physical condition of the existing career technical education facilities;

(4) The potential for improving in the graduation rate; and

(5) Such other criteria as the authority shall consider appropriate.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect July 1, 2011.

Clerk of the Senate

Clerk of the House of Delegates

Acting President of the Senate

Speaker of the House of Delegates

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Governor
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