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REGULAR SESSION, 2011

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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.]

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(BY SENATORS KESSLER (ACTING PRESIDENT) AND HALL,

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[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
2 accordance with the provisions of this article, temporarily
3 finance the cost of projects and other expenditures permitted
4 under this article for public schools, including, but not
5 limited to, comprehensive high schools and comprehensive
6 middle schools as defined in this article, in this state through
7 the issuance of loans, notes or other evidences of indebted-
8 ness: *Provided*, That the principal amount of loans, notes or
9 other evidences of indebtedness outstanding at any one time
10 shall not exceed \$16 million: *Provided, however*, That the
11 principal of, interest and premium, if any, on and fees
12 associated with any such temporary financing shall be
13 payable solely from the sources from which the principal of,
14 interest and premium, if any, on bonds is payable under this
15 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.

1 (a) It is the intent of the Legislature to empower the School
2 Building Authority to facilitate and provide state funds and
3 to administer all federal funds provided for the construction
4 and major improvement of school facilities so as to meet the
5 educational needs of the people of this state in an efficient
6 and economical manner. The authority shall make funding
7 determinations in accordance with the provisions of this
8 article and shall assess existing school facilities and each
9 facility's school major improvement plan in relation to the
10 needs of the individual student, the general school popula-
11 tion, the communities served by the facilities and facility
12 needs statewide.

13 (b) An amount that is not more than three percent of the
14 sum of moneys that are determined by the authority to be
15 available for distribution during the then current fiscal year
16 from:

17 (1) Moneys paid into the School Building Capital Improve-
18 ments Fund pursuant to section ten, article nine-a of this
19 chapter;

20 (2) The issuance of revenue bonds for which moneys in the
21 School Building Debt Service Fund or the Excess Lottery
22 School Building Debt Service Fund are pledged as security;

23 (3) Moneys paid into the School Construction Fund
24 pursuant to section six of this article; and

25 (4) Any other moneys received by the authority, except
26 moneys paid into the School Major Improvement Fund
27 pursuant to section six of this article and moneys deposited

28 into the School Access Safety Fund pursuant to section five,
29 article nine-f of this chapter, may be allocated and may be
30 expended by the authority for projects authorized in accor-
31 dance with the provisions of section sixteen of this article
32 that service the educational community statewide or, upon
33 application by the state board, for educational programs that
34 are under the jurisdiction of the state board. In addition,
35 upon application by the state board or the administrative
36 council of an area vocational educational center established
37 pursuant to article two-b of this chapter, the authority may
38 allocate and expend under this subsection moneys for school
39 major improvement projects authorized in accordance with
40 the provisions of section sixteen of this article proposed by
41 the state board or an administrative council for school
42 facilities under the direct supervision of the state board or an
43 administrative council, respectively. Furthermore, upon
44 application by a county board, the authority may allocate
45 and expend under this subsection moneys for school major
46 improvement projects for vocational programs at compre-
47 hensive high schools, vocational programs at comprehensive
48 middle schools, vocational schools cooperating with commu-
49 nity and technical college programs, or any combination of
50 the three. Each county board is encouraged to cooperate with
51 community and technical colleges in the use of existing or
52 development of new vocational technical facilities. All
53 projects eligible for funds from this subsection shall be
54 submitted directly to the authority which shall be solely
55 responsible for the project's evaluation, subject to the
56 following:

57 (A) The authority may not expend any moneys for a school
58 major improvement project proposed by the state board or
59 the administrative council of an area vocational educational
60 center unless the state board or an administrative council
61 has submitted a ten-year facilities plan; and

62 (B) The authority shall, before allocating any moneys to the
63 state board or the administrative council of an area voca-
64 tional educational center for a school improvement project,
65 consider all other funding sources available for the project.

66 (c) An amount that is not more than two percent of the
67 moneys that are determined by the authority to be available
68 for distribution during the current fiscal year from:

69 (1) Moneys paid into the School Building Capital Improve-
70 ments Fund pursuant to section ten, article nine-a of this
71 chapter;

72 (2) The issuance of revenue bonds for which moneys in the
73 School Building Debt Service Fund or the Excess Lottery
74 School Building Debt Service Fund are pledged as security;

75 (3) Moneys paid into the School Construction Fund
76 pursuant to section six of this article; and

77 (4) Any other moneys received by the authority, except
78 moneys deposited into the School Major Improvement Fund
79 and moneys deposited into the School Access Safety Fund
80 pursuant to section five, article nine-f of this chapter, shall
81 be set aside by the authority as an emergency fund to be
82 distributed in accordance with the guidelines adopted by the
83 authority.

84 (d) An amount that is not more than five percent of the
85 moneys that are determined by the authority to be available
86 for distribution during the current fiscal year from:

87 (1) Moneys paid into the School Building Capital Improve-
88 ments Fund pursuant to section ten, article nine-a of this
89 chapter;

90 (2) The issuance of revenue bonds for which moneys in the
91 School Building Debt Service Fund or the Excess Lottery
92 School Building Debt Service Fund are pledged as security;

93 (3) Moneys paid into the School Construction Fund
94 pursuant to section six of this article; and

95 (4) Any other moneys received by the authority, except
96 moneys deposited into the School Major Improvement Fund
97 and moneys deposited into the School Access Safety Fund
98 pursuant to section five, article nine-f of this chapter, may be

99 reserved by the authority for multiuse vocational-technical
100 education facilities projects that may include post-secondary
101 programs as a first priority use. The authority may allocate
102 and expend under this subsection moneys for any purposes
103 authorized in this article on multiuse vocational-technical
104 education facilities projects, including equipment and
105 equipment updates at the facilities, authorized in accordance
106 with the provisions of section sixteen of this article. If the
107 projects approved under this subsection do not require the
108 full amount of moneys reserved, moneys above the amount
109 required may be allocated and expended in accordance with
110 other provisions of this article. A county board, the state
111 board, an administrative council or the joint administrative
112 board of a vocational-technical education facility which
113 includes post-secondary programs may propose projects for
114 facilities or equipment, or both, which are under the direct
115 supervision of the respective body: *Provided*, That the
116 authority shall, before allocating any moneys for a project
117 under this subsection, consider all other funding sources
118 available for the project.

119 (e) The remaining moneys determined by the authority to
120 be available for distribution during the then current fiscal
121 year from:

122 (1) Moneys paid into the School Building Capital Improve-
123 ments Fund pursuant to section ten, article nine-a of this
124 chapter;

125 (2) The issuance of revenue bonds for which moneys in the
126 School Building Debt Service Fund or the Excess Lottery
127 School Building Debt Service Fund are pledged as security;

128 (3) Moneys paid into the School Construction Fund
129 pursuant to section six of this article; and

130 (4) Any other moneys received by the authority, except
131 moneys deposited into the School Major Improvement Fund
132 and moneys deposited into the School Access Safety Fund
133 pursuant to section five, article nine-f of this chapter, shall
134 be allocated and expended on the basis of need and efficient

135 use of resources for projects funded in accordance with the
136 provisions of section sixteen of this article.

137 (f) If a county board proposes to finance a project that is
138 authorized in accordance with section sixteen of this article
139 through a lease with an option to purchase leased premises
140 upon the expiration of the total lease period pursuant to an
141 investment contract, the authority may not allocate moneys
142 to the county board in connection with the project: *Provided*,
143 That the authority may transfer moneys to the state board
144 which, with the authority, shall lend the amount transferred
145 to the county board to be used only for a one-time payment
146 due at the beginning of the lease term, made for the purpose
147 of reducing annual lease payments under the investment
148 contract, subject to the following conditions:

149 (1) The loan shall be secured in the manner required by the
150 authority, in consultation with the state board, and shall be
151 repaid in a period and bear interest at a rate as determined
152 by the state board and the authority and shall have any
153 terms and conditions that are required by the authority, all
154 of which shall be set forth in a loan agreement among the
155 authority, the state board and the county board;

156 (2) The loan agreement shall provide for the state board
157 and the authority to defer the payment of principal and
158 interest upon any loan made to the county board during the
159 term of the investment contract, and annual renewals of the
160 investment contract, among the state board, the authority,
161 the county board and a lessor, subject to the following:

162 (A) In the event a county board which has received a loan
163 from the authority for a one-time payment at the beginning
164 of the lease term does not renew the lease annually until
165 performance of the investment contract in its entirety is
166 completed, the county board is in default and the principal
167 of the loan, together with all unpaid interest accrued to the
168 date of the default, shall, at the option of the authority, in
169 consultation with the state board, become due and payable
170 immediately or subject to renegotiation among the state
171 board, the authority and the county board;

172 (B) If a county board renews the lease annually through the
173 performance of the investment contract in its entirety, the
174 county board shall exercise its option to purchase the leased
175 premises;

176 (C) The failure of the county board to make a scheduled
177 payment pursuant to the investment contract constitutes an
178 event of default under the loan agreement;

179 (D) Upon a default by a county board, the principal of the
180 loan, together with all unpaid interest accrued to the date of
181 the default, shall, at the option of the authority, in consulta-
182 tion with the state board, become due and payable immedi-
183 ately or subject to renegotiation among the state board, the
184 authority and the county board; and

185 (E) If the loan becomes due and payable immediately, the
186 authority, in consultation with the state board, shall use all
187 means available under the loan agreement and law to collect
188 the outstanding principal balance of the loan, together with
189 all unpaid interest accrued to the date of payment of the
190 outstanding principal balance; and

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

196 (g) To encourage county boards to proceed promptly with
197 facilities planning and to prepare for the expenditure of any
198 state moneys derived from the sources described in this
199 section, any county board or other entity to whom moneys
200 are allocated by the authority that fails to expend the money
201 within three years of the allocation shall forfeit the alloca-
202 tion and thereafter is ineligible for further allocations
203 pursuant to this section until it is ready to expend funds in
204 accordance with an approved facilities plan: *Provided*, That
205 the authority may authorize an extension beyond the three-
206 year forfeiture period not to exceed an additional two years.
207 Any amount forfeited shall be added to the total funds

208 available in the School Construction Fund of the authority
209 for future allocation and distribution. Funds may not be
210 distributed for any project under this article unless the
211 responsible entity has a facilities plan approved by the state
212 board and the School Building Authority and is prepared to
213 commence expenditure of the funds during the fiscal year in
214 which the moneys are distributed.

215 (h) The remaining moneys that are determined by the
216 authority to be available for distribution during the then
217 current fiscal year from moneys paid into the School Major
218 Improvement Fund pursuant to section six of this article
219 shall be allocated and distributed on the basis of need and
220 efficient use of resources for projects authorized in accor-
221 dance with the provisions of section sixteen of this article,
222 subject to the following:

223 (1) The moneys may not be distributed for any project
224 under this section unless the responsible entity has a facili-
225 ties plan approved by the state board and the authority and
226 is to commence expenditures of the funds during the fiscal
227 year in which the moneys are distributed;

228 (2) Any moneys allocated to a project and not distributed
229 for that project shall be deposited in an account to the credit
230 of the project, the principal amount to remain to the credit
231 of and available to the project for a period of two years; and

232 (3) Any moneys which are unexpended after a two-year
233 period shall be redistributed on the basis of need from the
234 School Major Improvement Fund in that fiscal year.

235 (i) Local matching funds may not be required under the
236 provisions of this section. However, this article does not
237 negate the responsibilities of the county boards to maintain
238 school facilities. To be eligible to receive an allocation of
239 school major improvement funds from the authority, a
240 county board must have expended in the previous fiscal year
241 an amount of county moneys equal to or exceeding the lowest
242 average amount of money included in the county board's
243 maintenance budget over any three of the previous five years
244 and must have budgeted an amount equal to or greater than

245 the average in the current fiscal year: *Provided*, That the
246 state board shall promulgate rules relating to county boards'
247 maintenance budgets, including items which shall be
248 included in the budgets.

249 (j) Any county board may use moneys provided by the
250 authority under this article in conjunction with local funds
251 derived from bonding, special levy or other sources. Distri-
252 bution to a county board, or to the state board or the admin-
253 istrative council of an area vocational educational center
254 pursuant to subsection (b) of this section, may be in a lump
255 sum or in accordance with a schedule of payments adopted
256 by the authority pursuant to guidelines adopted by the
257 authority.

258 (k) Funds in the School Construction Fund shall first be
259 transferred and expended as follows:

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

263 (2) To the extent that funds are available in the School
264 Construction Fund in excess of that amount appropriated in
265 any fiscal year, the excess funds may be expended for
266 projects authorized in accordance with the provisions of
267 section sixteen of this article.

268 (l) It is the intent of the Legislature to encourage county
269 boards to explore and consider arrangements with other
270 counties that may facilitate the highest and best use of all
271 available funds, which may result in improved transporta-
272 tion arrangements for students or which otherwise may
273 create efficiencies for county boards and the students. In
274 order to address the intent of the Legislature contained in
275 this subsection, the authority shall grant preference to those
276 projects which involve multicounty arrangements as the
277 authority shall determine reasonable and proper.

278 (m) County boards shall submit all designs for construction
279 of new school buildings to the School Building Authority for

280 review and approval prior to preparation of final bid
281 documents. A vendor who has been debarred pursuant to the
282 provisions of sections thirty-three-a through thirty-three-f,
283 inclusive, article three, chapter five-a of this code may not
284 bid on or be awarded a contract under this section.

285 (n) The authority may elect to disburse funds for approved
286 construction projects over a period of more than one year
287 subject to the following:

288 (1) The authority may not approve the funding of a school
289 construction project over a period of more than three years;

290 (2) The authority may not approve the use of more than
291 fifty percent of the revenue available for distribution in any
292 given fiscal year for projects that are to be funded over a
293 period of more than one year; and

294 (3) In order to encourage local participation in funding
295 school construction projects, the authority may set aside
296 limited funding, not to exceed \$500,000, in reserve for one
297 additional year to provide a county the opportunity to
298 complete financial planning for a project prior to the
299 allocation of construction funds. Any funding shall be on a
300 reserve basis and converted to a part of the construction
301 grant only after all project budget funds have been secured
302 and all county commitments have been fulfilled. Failure of
303 the county to solidify the project budget and meet its
304 obligations to the state within eighteen months of the date
305 the funding is set aside by the authority will result in
306 expiration of the reserve and the funds shall be reallocated
307 by the authority in the succeeding funding cycle.

§18-9D-19a. Comprehensive middle schools.

1 (a) The Legislature finds the following:

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

4 (2) Career technical education students have a much higher
5 graduation rate than other students;

6 (3) Although thirty-seven percent of West Virginia middle
7 and junior high school students are enrolled in a form of
8 career technical education, the number has been dropping by
9 approximately three thousand students per year; and

10 (4) As the benefits of career technical education have
11 increased as academics have become more embedded in
12 career technical education, it is important that career
13 technical education opportunities be increased at the middle
14 and junior high school level.

15 (b) “Comprehensive middle school” means a middle or
16 junior high school that meets the definition of a comprehen-
17 sive middle school established by the state board. The
18 definition of a comprehensive middle school shall be estab-
19 lished by the state board in a legislative rule promulgated in
20 accordance with article three-b, chapter twenty-nine-a of
21 this code. The definition shall include at least the following:

22 (1) A comprehensive curriculum that:

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

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

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

31 (D) Embeds career exploration and project based career
32 activities where possible to provide all student with compre-
33 hensive career development and counseling;

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

37 (F) Provides authentic opportunities in the visual and
38 performing arts, health and wellness, physical education,
39 world languages and career technical activities;

40 (2) Harnessing the power of technology to provide person-
41 alized learning twenty-four hours per day and seven days per
42 week and produce a digital individualized student portfolio
43 of student mastery and progression; and

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

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

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

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

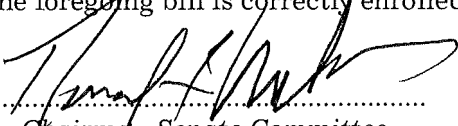
67 (2) The size of the existing middle and junior high schools;

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

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

71 (5) Such other criteria as the authority shall consider
72 appropriate.

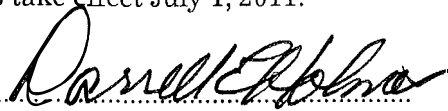
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee

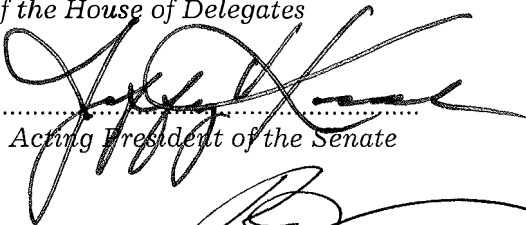

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Chairman House Committee

Originated in the Senate.

To take effect July 1, 2011.


.....
Clerk of the Senate


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Clerk of the House of Delegates


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Acting President of the Senate


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Speaker of the House of Delegates

The within is approved this the 18th

Day of April, 2011.


.....
Governor

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OFFICE OF THE CLERK
SECRETARY OF STATE

PRESENTED TO THE GOVERNOR

MAR 29 2011

Time 10:10 am