ENROLLED

COMMITTEE SUBSTITUTE

FOR

House Bill No. 2160

(By Delegate(s) Rowan, Cowles, Perry, Williams, Hamilton, Anderson, Pasdon, Duke, Espinosa, Miley and E. Nelson)

Passed March 14, 2015

In effect from passage.
AN ACT to amend and reenact §18-9D-2, §18-9D-3, §18-9D-4c and §18-9D-16 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §18-9D-22, all relating to making the West Virginia Schools for the Deaf and Blind eligible to participate in any and all funding administered or distributed by the West Virginia School Building Authority.

Be it enacted by the Legislature of West Virginia:

That §18-9D-2, §18-9D-3, §18-9D-4c and §18-9D-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18-9D-22, all to read as follows:
ARTICLE 9D. SCHOOL BUILDING AUTHORITY.


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

3 (1) “Authority” means the School Building Authority of West Virginia;

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

7 (3) “Construction project” means a project in the furtherance of a facilities plan with a cost greater than $1 million for the new construction, expansion or major renovation of facilities, buildings and structures for school purposes, including:

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

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

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

17 (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;

24 (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;

(5) "County board" or "county" means a county board of education as provided in article five of this chapter and includes the West Virginia Schools for the Deaf and the Blind as provided in article seventeen of this chapter when acting with the approval of the West Virginia Board of Education to submit, request and receive an award of funds or services for projects under the provisions of this article.

(6) "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, or a facilities plan established by the administration of the West Virginia Schools for the Deaf and Blind that:

(A) Addresses the existing school facilities and facility needs of the county, or the Schools for the Deaf and Blind, 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;

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

(8) “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;

(9) “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;

(10) "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, or is prepared by the administration of the West Virginia Schools for the Deaf and Blind;

(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 the 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

(11) "School major improvement project" means a project with a cost greater than $50 thousand and less than $1 million

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;

(12) “Schools for the Deaf and Blind” or “West Virginia Schools for the Deaf and Blind” means the Schools for the Deaf and Blind established or continued under article seventeen of this chapter.


1 The School Building Authority has the power:

2 (1) To sue and be sued, plead and be impleaded;

3 (2) To have a seal and alter the same at pleasure;

4 (3) To contract to acquire and to acquire, in the name of the authority, by purchase, lease-purchase not to exceed a term of twenty-five years, or otherwise, real property or rights or easements necessary or convenient for its corporate purposes and to exercise the power of eminent domain to accomplish those purposes;

5 (4) To acquire, hold and dispose of real and personal property for its corporate purposes;

6 (5) To make bylaws for the management and rule of its affairs;
(6) To appoint, contract with and employ attorneys, bond counsel, accountants, construction and financial experts, underwriters, financial advisers, trustees, managers, officers and such other employees and agents as may be necessary in the judgment of the authority and to fix their compensation: Provided, That contracts entered into by the School Building Authority in connection with the issuance of bonds under this article to provide professional and technical services, including, without limitation, accounting, actuarial, underwriting, consulting, trustee, bond counsel, legal services and contracts relating to the purchase or sale of bonds are subject to the provisions of article three, chapter five-a of this code: Provided, however, That notwithstanding any other provisions of this code, any authority of the Attorney General of this state relating to the review of contracts and other documents to effectuate the issuance of bonds under this article shall be exclusively limited to the form of the contract and document: Provided further, That the Attorney General of this state shall complete all reviews of contracts and documents relating to the issuance of bonds under this article within ten calendar days of receipt of the contract and document for review;

(7) To make contracts and to execute all instruments necessary or convenient to effectuate the intent of and to exercise the powers granted to it by this article;

(8) To renegotiate all contracts entered into by it whenever, due to a change in situation, it appears to the authority that its interests will be best served;

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

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

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

(12) To assist the West Virginia Schools for the Deaf and
Blind or any county board of education that chooses to acquire
land, buildings and capital improvements to existing school
buildings and property for use as public school facilities, by
lease from a private or public lessor for a term not to exceed
twenty-five years with an option to purchase pursuant to an
investment contract with the lessor on such terms and conditions
as may be determined to be in the best interests of the authority,
the State Board of Education and, if applicable, the county board
of education, consistent with the purposes of this article, by
transferring funds to the State Board of Education as provided in
subsection (d), section fifteen of this article for the use of the
county board of education;

(13) To accept and expend any gift, grant, contribution,
bequest or endowment of money and equipment to, or for the
benefit of, the authority or any project under this article, from
the State of West Virginia or any other source for any or all of
the purposes specified in this article or for any one or more of
such purposes as may be specified in connection with the gift,
grant, contribution, bequest or endowment;

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

(15) To contract for architectural, engineering or other
professional services considered necessary or economical by the
authority to provide consultative or other services to the
authority or to any regional educational service agency, the West
Virginia Schools for the Deaf and Blind or any county board
requesting professional services offered by the authority, to
evaluate any facilities plan or any project encompassed in the
plan, to inspect existing facilities or any project that has received
or may receive funding from the authority or to perform any
other service considered by the authority to be necessary or
economical. Assistance to the region, school or district may
include the development of preapproved systems, plans, designs,
models or documents; advice or oversight on any plan or project;
or any other service that may be efficiently provided by the
authority to regional educational service agencies, the state
board, county boards or the West Virginia Schools for the Deaf
or Blind;

(16) To provide funds on an emergency basis to repair or
replace property damaged by fire, flood, wind, storm, earthquake
or other natural occurrence, the funds to be made available in
accordance with guidelines of the School Building Authority;

(17) To transfer moneys to custodial accounts maintained by
the School Building Authority with a state financial institution
from the school construction fund and the school improvement
fund created in the State Treasury pursuant to the provisions of
section six of this article, as necessary to the performance of any
contracts executed by the School Building Authority in
accordance with the provisions of this article;

(18) To enter into agreements with county boards and
persons, firms or corporations to facilitate the development of
projects and facilities plans. The county board participating in
an agreement shall pay at least twenty-five percent of the cost of
the agreement. Nothing in this section may be construed to
supersede, limit or impair the authority of county boards to
develop and prepare their projects or plans;
(19) To encourage any project or part thereof to provide opportunities for students to participate in supervised, unpaid work-based learning experiences related to the student’s program of study approved by the county board or the administration of the West Virginia Schools for the Deaf and Blind. The work-based learning experience shall be conducted in accordance with a formal training plan approved by the instructor, the employer and the student. The experience shall set forth at a minimum the specific skills to be learned, the required documentation of work-based learning experiences, the conditions of the placement, including duration and safety provisions, and provisions for supervision and liability insurance coverage as applicable. Projects involving the new construction and renovation of vocational-technical and adult education facilities should provide opportunities for students to participate in supervised work-based learning experiences, to the extent practical, which meet the requirements of this subdivision. Nothing in this subdivision may be construed to affect registered youth apprenticeship programs or the provisions governing those programs; and

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

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

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 in this state, including, but not limited to, comprehensive high schools, comprehensive middle schools and the West Virginia Schools for the Deaf and Blind. The financing may be issued through loans, notes or other evidences of indebtedness: the outstanding principal amount of
which may not exceed $16 million at any one time. The principal
of, interest and premium on, and fees associated with any
temporary financing shall be payable solely from the proceeds
of bonds or the sources from which any bonds are payable under
this article.

§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 or the administration of the
West Virginia Schools for the Deaf and Blind 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 or the administration of the West Virginia Schools for the
Deaf and Blind and members of the authority, including at least
one citizen member. The meeting 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. The prioritization shall be determined 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 in 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 shall measure how the plan
addresses the goals of this article and any guidelines adopted under this article, how each project is in furtherance of the facilities plan and school major improvement plan, as applicable, the importance of the project to the overall success of the facilities plan or school major improvement 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 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 its guidelines. The guidelines shall require an update of the estimated duration of school bus transportation times for students associated with any construction project under consideration by the authority that includes the closure, consolidation or construction of a school or schools.

(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 shall 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 shall 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 is not limited to, the following:

(i) How the current facilities do not meet and how the plan and any project under the plan meet 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 that includes a school closure, consolidation or new construction for which a new bus route will be created for transporting any prekindergarten through fifth grade students to and from any school included in the project, if the route exceeds by more than fifteen minutes the recommended one-way school bus transportation duration time for elementary students adopted by the state board pursuant to 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;
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(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. The state board shall submit reports regarding the
inspections to the authority within thirty days of completion. The
state board shall promulgate rules regarding the on-site
inspections and matters relating thereto, in consultation with the
authority, and shall submit proposed rules for legislative review.

(d) Based on its on-site inspection or notification by the
authority to the state board that the changes or additions to a
county board's facilities plan or school major improvement plan
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.
§18-9D-22. Eligibility of the West Virginia Schools for the Deaf and Blind to participate in all types of funding administered or distributed by the authority.

(a) The Legislature finds that:

(1) The Legislature’s constitutional obligation to provide a thorough and efficient public education for the children of West Virginia includes providing a thorough and efficient education for the children of West Virginia who are deaf and blind;

(2) The Legislature has endeavored to fulfill this obligation with the creation, maintenance and operation of the West Virginia Schools for the Deaf and Blind, established and continued under article seventeen of this chapter;

(3) The West Virginia Schools for the Deaf and Blind have for generations provided educational services to children from each of West Virginia’s fifty-five counties;

(4) The facilities of the West Virginia Schools for the Deaf and Blind are in need of substantial improvements;

(5) The West Virginia Schools for the Deaf and Blind have no local levy which supports their operations, and depend completely upon the appropriations from the state;

(6) The West Virginia Schools for the Deaf and Blind have no borrowing authority nor revenue stream that can serve as a source of servicing debt;

(7) Questions have arisen as to whether or not it is permissible for the School Building Authority to distribute to the West Virginia Schools for the Deaf and Blind financial assistance for the construction and improvement of their facilities; and
(8) The West Virginia Schools for the Deaf and Blind should have access to and be eligible to receive all types of funding provided to county boards by the authority.

(b) Notwithstanding any provision of this code to the contrary:

(1) The West Virginia Schools for the Deaf and Blind are eligible to participate in all funding distributed by the authority; and

(2) The authority may distribute to the West Virginia Schools for the Deaf and Blind funds as it determines to be appropriate.

(c) The authority may not require the contribution of local funds for a project of the West Virginia Schools for the Deaf and Blind, nor penalize the consideration or priority ranking of a project of the schools for lack of local project funds. The state board may apply for funds for education programs under its jurisdiction for projects at the West Virginia Schools for the Deaf and Blind.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within <w:envelope xmlns:w="http://schemas.openxmlformats.org/officeDocument/2006/envelope">envelope</w:envelope> was received by the Secretary of the Senate, this the 15th day of April, 2015.

Governor