

## FOREWORD

The West Virginia Department of Education is pleased to prepare Informal Guidelines for Implementing Public Education Bills Enacted in the Regular Session - 1998 as a document to assist educators and others in understanding and implementing education bills enacted by the Legislature.

This document should be placed with your most current copy of the School Laws of West Virginia as it contains new language/laws that must be reviewed in conjunction with the School Law book.

For each of the acts included in this publication, the format is as follows: effective dates, date signed by the governor, code reference, topic, introduction, major new provisions, and special notes and comments. As time constraints have not permitted an in-depth analysis of the 1998 bills from the regular session, it must be emphasized that the information provided in this document must not be considered as official interpretations of the state superintendent of schools. Formal interpretations to specific questions will be provided upon request.

The Informal Guidelines for Implementing Public Education Bills Enacted in the Regular Session - 1998 will be of considerable value during the coming school year. Suggestions for improving this document as a service to the Department's clientele are always welcome. As this is the first year for electronic mail as the primary delivery means, your comments on this delivery are particularly welcome.

Please feel free to call or write if you need additional information regarding bills enacted during the 1998 regular session of the West Virginia Legislature.

Henry Marockie

State Superintendent of Schools

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## SENATE CONCURRENT RESOLUTION NO. 22

**EFFECTIVE DATE:** May 15, 1998

**TOPIC:** REQUESTING THE JOINT COMMITTEE ON GOVERNMENT AND FINANCE UNDERTAKE A STUDY OF ASSESSMENT AND ACCOUNTABILITY MODELS TO MEASURE THE PROGRESS OF STUDENTS IN THE PUBLIC SCHOOLS IN OBTAINING A HIGH QUALITY EDUCATION

### **INTRODUCTION:**

The legislature recognizes that because of the constitutional requirement to provide a thorough and efficient education to the children of West Virginia and because of the importance of public education to the future of our state, a broad-based public policy discussion needs to occur in order to assist state leaders in determining appropriate assessment and accountability models including, but not limited to, the following: ways to communicate the goals that county school systems, schools, teachers and students are expected to achieve; aligning assessments with curriculum; assuring that the degree to which particular uses and interpretations of assessment results are valid, and the degree to which assessment results are free of measurement error.

The Joint Committee on Government and Finance is hereby requested to create a select committee consisting of representatives of the Legislature and other interested and affected parties who will undertake a study of assessment models and accountability measures for public education to determine its effectiveness and efficiency in meeting the objectives and goals of the state.

### **MAJOR NEW PROVISIONS:**

The committee shall consist of sixteen members selected as follows:

1. Four members from the Senate, one to serve as cochair on behalf of the Senate, and four members from the House of Delegates, one to serve as cochair on behalf of the House, to be appointed by the President of the Senate and the Speaker of the House respectively;
2. The Secretary of Education and the Arts or a designee;
3. The State Superintendent of Schools or a designee;
4. A member of the State Board of Education to be selected by the state board;
5. Two representatives of statewide teacher organizations, one to be appointed by the President of the Senate and one to be appointed by the Speaker of the House;
6. Two classroom teachers, one to be appointed by the President of the Senate and one by the Speaker of the House;
7. A director of a regional education service agency to be selected jointly by the directors of the regional education service agencies in the state.
8. Appointments shall be made no later than April 13, 1998.
9. The committee shall begin its work on or before May 15, 1998.
10. The committee shall report its findings to the Legislative Oversight Commission on Education Accountability on or before December 1, 1998.

## SENATE CONCURRENT RESOLUTION NO. 22

(By Senators Wooton, Jackson and Tomblin, Mr. President)

Requesting the Joint Committee on Government and Finance undertake a study of assessment and accountability models to measure the progress of students in the public schools in obtaining a high quality education.

Whereas, The Legislature directed in Senate Bill No. 104, passed at the regular session of the Legislature, one thousand nine hundred ninety-six, that the State Board of Education recommend to the Legislative Oversight Commission on Education Accountability an assessment model to measure the progress of public school students in attaining a high quality education; and

Whereas, The State Board of Education recommended that the Stanford Achievement Test be adopted for this purpose and that the state board enter into a three-year contract with Harcourt-Brace publishers to supply materials; and

Whereas, The Stanford Achievement Test has been used in large part to govern accreditation of schools, the major method of holding schools accountable; and

Whereas, The contract with Harcourt-Brace will expire at the end of school year one thousand nine hundred ninety-eight-ninety-nine. The Legislature finds it necessary to establish a process to study the broad area of education assessment models and appropriate accountability measures; and

Whereas, The Legislature recognizes that because of the constitutional requirement to provide a thorough and efficient education to the children of West Virginia and because of the importance of public education to the future of our state, a broad-based public policy discussion needs to occur in order to assist state leaders in determining appropriate assessment and accountability models including, but not limited to, the following: Ways to communicate the goals that county school systems, schools, teachers and students are expected to achieve, aligning assessments with curriculum, assuring that the degree to which particular uses and interpretations of assessment results are valid, and the degree to which assessment results are free of measurement error; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to create a select committee consisting of representatives of the Legislature and other interested and affected parties who will undertake a study of assessment models and accountability measures for public education to determine its effectiveness and efficiency in meeting the objectives and goals of the state; and, be it

*Further Resolved,* That the committee shall commence its activities on or before the fifteenth day of May, one thousand nine hundred ninety-eight; and, be it

*Further Resolved,* That the committee shall consist of sixteen members selected as follows: Four members from the Senate, one to serve as cochair on behalf of the Senate, and four members from the House of Delegates, one to serve as cochair on behalf of the House, to be appointed by the President of the Senate and the Speaker of the House respectively; the Secretary of Education and the Arts or a designee; the State Superintendent of Schools or a designee; a member of the State Board of Education to be selected by the state board; two representatives of statewide teacher organizations, one to be appointed by the President of the Senate and one to be appointed by the Speaker of the House; two classroom teachers, one to be appointed by the President of the Senate and one by the Speaker of the House; and a

director of a regional education service agency to be selected jointly by the directors of the regional education service agencies in the state. Appointments shall be made no later than the thirtieth day of April, one thousand nine hundred ninety-eight; and, be it

*Further Resolved*, That the committee shall report its findings to the Legislative Oversight Commission on Education Accountability on or before the first day of December, one thousand nine hundred ninety-eight; and, be it

*Further Resolved*, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance; and, be it

*Further Resolved*, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the State Superintendent of Schools and to the President of the State Board of Education for distribution to each member thereof.

## SENATE CONCURRENT RESOLUTION NO. 29

**EFFECTIVE DATE:** May 15, 1998

**TOPIC:** REQUESTING THE JOINT COMMITTEE ON GOVERNMENT AND FINANCE TO UNDERTAKE A STUDY OF THE ROLE, RESPONSIBILITIES, GOVERNANCE STRUCTURE AND FUNDING MODELS FOR PUBLIC COMMUNITY AND TECHNICAL COLLEGES IN WEST VIRGINIA

### **INTRODUCTION:**

The Legislature recognizes that it is of the best interest of West Virginia to have an effective and comprehensive delivery system for community and technical college education and, because of its importance to the economic and cultural well being of state residents, a broad-based public policy discussion needs to occur in order to assist in determining appropriate governance, programmatic and funding models for community and technical college education.

The Joint Committee on Government and Finance is requested to create a select committee consisting of representatives of the Legislature and other interested and affected parties who will undertake a study of public community and technical colleges in West Virginia to determine their effectiveness and efficiency in meeting the objectives and goals of



the state.

**MAJOR PROVISIONS:**

The committee shall consist of eighteen members selected as follows:

1. Three members from the Senate, one to serve as cochair on behalf of the Senate;
2. Three members of the House of Delegates, one to serve as cochair on behalf of the House;
3. The Secretary of Education and the Arts or a designee;
4. The Chancellor of the University System of West Virginia or a designee;
5. The Chancellor of the State College System or a designee;
6. The Vice Chancellor of Community Colleges or a designee;
7. One member of the State College System Board of Directors to be selected by the Directors
8. One member of the University System of West Virginia Board of Trustees to be selected by the Trustees;
9. State Superintendent of Schools or a designee;

10. One member of the West Virginia State Board of Education to be selected by the Board, and

11. Four persons appointed by the Governor, one to be a representative of business, one to be a representative of labor and industry, one to be a representative of employment and training programs and one to be a representative of vocational-technical-occupational education.

The committee is to begin its work on or before the May 15, 1998.

The committee shall report its findings to the Legislative Oversight Commission on Education Accountability on or before the first day of January, one thousand nine hundred ninety-nine.

### **SENATE CONCURRENT RESOLUTION NO. 29**

**(By Senators Tomblin, Mr. President, Jackson and Plymale)**

Requesting the Joint Committee on Government and Finance to undertake a study of the role, responsibilities, governance structure and funding models for public community and technical colleges in West Virginia.

Whereas, It is the intent of the Legislature, as stated in Senate Bill No. 547, adopted at the regular legislative session, one thousand nine hundred ninety-five, that all West Virginians have access to post-secondary education opportunities which are relevant and affordable, which allow them to gain credits toward associate or higher level degrees, which provide quality technical education and skill training, and which are responsive to business, industry, labor and community needs; and

Whereas, The Legislature created community and technical college education for the purpose of establishing programs that are integrated with the public schools and four year colleges, that make maximum use of resources, that encourage students to pursue a life-time of learning, that serve as instruments of economic development, and that have the independence and flexibility to respond quickly to changing needs; and

Whereas, The Legislature finds that the need for restructuring and refocusing the institutional missions and programs to respond to change and the necessity of achieving the goals established for community and technical college education by the citizens of West Virginia are of critical importance; and

Whereas, The Legislature recognizes that it is in the best interest of West Virginia to have an effective and comprehensive delivery system for community and technical college education and, because of its importance to the economic and cultural well- being of state residents, a broad-based public policy discussion needs to occur in order to assist in determining appropriate governance, programmatic and funding models for community and technical college education; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to create a select committee consisting of representatives of the Legislature and other interested and affected parties who will undertake a study of public community and technical colleges in West Virginia to determine their effectiveness and efficiency in meeting the objectives and goals of the state; and, be it

*Further Resolved*, That the committee shall commence its activities on or before the fifteenth day of May, one thousand nine hundred ninety-eight; and, be it

*Further Resolved*, That the committee shall consist of eighteen members selected as follows: Three members from the Senate, one to serve as cochair on behalf of the Senate, and three members from the House of Delegates, one to serve as cochair on behalf of the House, to be appointed by the President of the Senate and the Speaker of the House respectively; the Secretary of Education and the Arts or a designee; the Chancellor of the University System of West Virginia or a designee; the Chancellor of the State College System or a designee; the Vice Chancellor of Community Colleges; one member of the State College System Board of Directors to be selected by the Directors; one member of the University System of West Virginia Board of Trustees to be selected by the Trustees; the State Superintendent of Schools or a designee; one member of the West Virginia State School Board to be selected by the Board; and four persons appointed by the Governor, one to be a representative of business, one to be a representative of labor and industry, one to be a representative of employment and training programs, and one to be a representative of vocational-technical-occupational education. Of these four appointed by the Governor, one shall be from each congressional district within the state and not more than two shall belong to the same political party. Appointments shall be made no later than the thirtieth day of April, one thousand nine hundred ninety-eight; and, be it

*Further Resolved*, That the committee shall report its findings to the Legislative Oversight Commission on Education Accountability on or before the first day of January, one thousand nine hundred ninety-nine; and, be it

*Further Resolved*, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance; and, be it

*Further Resolved*, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Chair of the State College System Board of Directors and to the Chair of the University of West Virginia Board of Trustees for distribution to members of their respective boards.

## **SENATE BILL 31**

**EFFECTIVE DATE:** June 10, 1998

**SIGNED BY GOVERNOR:** Passed March 12, 1998

**CODE REFERENCE(S):** New §§21-5E; 21-5E-1, 21-5E-2, 21-5E-3, 21-5E-4, 21-5E-5, 21-5E-6

**TOPIC:** EQUAL PAY FOR EQUAL WORK FOR STATE EMPLOYEES

**INTRODUCTION:**

This Act adds a new article 5E to Chapter 21 of the West Virginia Code, titled "Equal Pay for equal work for state employees," to provide state employees equal pay for work of comparable character, regardless of gender, to create a commission to study a gender discrimination prohibition and to establish a procedure to remedy complaints of equal pay for work of comparable character.

**MAJOR NEW PROVISIONS:**

1. No employer shall discriminate between the sexes in the payment of wages for work of comparable character.
2. Any employee whose compensation is at a rate that is in violation of this article has the right to file a grievance.
3. The Act establishes a seven member equal pay commission.
4. The commission shall study both the methodology and funding for the implementation of a gender discrimination prohibition and shall prepare reports for submission to the Legislature.

**ENROLLED**

**COMMITTEE SUBSTITUTE**

**FOR**

**Senate Bill No. 31**

**(Senators White, Hunter, Walker, Jackson, Deem,**

**Plymale and Wooton, *original sponsors*)**

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**[Passed March 12, 1998; in effect ninety days from passage.]**

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AN ACT to amend chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-e, relating to requiring equal pay for equal work for state employees; setting forth legislative findings and purpose; defining terms; prohibiting the state from discriminating on the basis of gender in payment of wages for work of comparable character; creating right of action; establishing the equal pay commission; providing for the appointment of members and the expiration of commission; setting forth duties of the commission; authorizing commission to promulgate legislative rules; and establishing operative date.

*Be it enacted by the Legislature of West Virginia:*

That chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article five-e, to read as follows:

**ARTICLE 5E. EQUAL PAY FOR EQUAL WORK FOR STATE EMPLOYEES.**

**§21-5E-1. Legislative findings and purpose.**

(a) The Legislature hereby finds and declares that it is the public policy of this state to provide all citizens equal opportunity for employment without regard to gender and that gender discrimination in hiring and promotion has played a role in maintaining a segregated workforce in this state.

(b) The Legislature hereby further finds and declares that the existence of wage differentials between equivalent jobs segregated by gender depresses wages and living standards, prevents the maximum utilization of the available labor resources and constitutes an unfair method of competition.

(c) It is therefore the purpose of this article to provide state employees equal pay for work of comparable character, regardless of gender, to create a commission to study both the methodology and funding for the implementation of a gender discrimination prohibition and to establish a procedure to remedy complaints of the failure to provide equal pay for work of comparable character to state employees.

**§21-5E-2. Definitions.**

For the purposes of this article:

(1) "Employer" means the state of West Virginia;

(2) "Employee" means any person hired for permanent employment, either full or part-time, or hired for temporary employment for more than six consecutive months, by any department, agency, commission or board of the state created by an act of the Legislature, except any person employed by the university of West Virginia board of trustees, the board of directors of the state college system or by any state institution of higher education, or a member of the state police, an employee of any constitutional officer who is not classified under the provisions of article six, chapter twenty-nine of this code and any employee of the Legislature. The definition of "employee" does not include any patient or inmate employed in a state institution;

(3) "Wages" means all compensation for performance of service by an employee for an employer, whether paid by the employer or another person, including the cash value of all compensation paid in any medium other than cash;

(4) "Rate" with reference to wages means the basis of compensation for services by an employee for an employer and includes compensation based on the time spent in the performance of those services, or on the number of operations accomplished, or on the quantity produced or handled;

(5) "Unpaid wages" means the difference between the wages actually paid to an employee and the wages required to be paid to an employee pursuant to section three of this article;

(6) "Work of comparable character" means work that may be dissimilar, but whose requirements are comparable or equivalent when viewed as a composite of levels of skill, effort, responsibility and working conditions; and

(7) "Wage gap" means the difference between the median annual earnings of men and women.

### **§21-5E-3. Discrimination between sexes in payment of wages for work of comparable character prohibited.**

(a) No employer shall:

(1) In any manner discriminate between the sexes in the payment of wages for work of comparable character, the performance of which requires comparable skills; or

(2) Pay wages to any employee at a rate less than the rate other employees of the opposite sex are paid for work of comparable character, the performance of which requires comparable skills.

(b) Nothing in subsection (a) of this section prohibits the payment of different wages to employees where the payment is made pursuant to:

(1) A bona fide seniority system;

(2) A merit system; or

(3) A system that measures earnings by quantity or quality of production.

(c) No employee shall be reduced in wages in order to eliminate an existing, past or future wage discrimination or to effectuate wage equalization.

(d) No employer shall in any manner discriminate in the payment of wages to any employee because the employee has filed a complaint in a proceeding under this article, or has testified, or is about to testify, or because the employer believes that the employee may testify, in any investigation or proceeding pursuant to this article.

(e) Except as otherwise provided in subsection (d), section six of this article, the provisions of this section shall not become effective until the Legislature approves for promulgation the rules proposed by the equal pay commission under the provisions of subsection (c) of said section.

### **§21-5E-4. Employee's right of action against employer.**

(a) Any employee whose compensation is at a rate that is in violation of section three of this article has the right to file a grievance pursuant to the provisions of article six-a, chapter twenty-nine of this code.

(b) No agreement for compensation at a rate of less than the rate to which the employee is entitled under this article is a defense to any action under this article.

(c) The rights and procedures provided under this section shall be subject to the provisions of the rules promulgated by the equal pay commission in accordance with section six of this article.

(d) Except as otherwise provided in subsection (d), section six of this article, the provisions of this section shall not become effective until the Legislature approves for promulgation the rules proposed by the equal pay commission under the provisions of subsection (c) of said section.

**§21-5E-5. Establishment of the equal pay commission; appointment of members; and expiration date.**

(a) The equal pay commission is hereby established. The commission shall be composed of seven members, as follows:

(1) Two members of the House of Delegates, appointed by the speaker;

(2) Two members of the Senate, appointed by the president; and

(3) Three state employee representatives, including one labor union member representing state employees, as agreed to by the speaker and president; the director of the women's commission, or his or her designee; and the director of the office of equal employment opportunity, or his or her designee.

(b) The commission shall seek input from and invite the commissioner of labor or his or her designee and the director of the personnel division of the department of administration or his or her designee to attend meetings of the commission.

(c) One of the members of the Senate and one of the members of the House of Delegates, as designated by the speaker and the president respectively, shall serve as cochair of the commission.

(d) The members of the House of Delegates, the members of the Senate and the state employee representative members initially appointed shall serve until the thirty-first day of December, one thousand nine hundred ninety-eight. Those members shall thereafter be appointed to serve two-year terms beginning the first day of January, one thousand nine hundred ninety-nine.

(e) Any member whose term has expired shall serve until his or her successor has been duly appointed. Any person appointed to fill a vacancy shall serve only for the unexpired term. Any member shall be eligible for reappointment.

(f) Any vacancies occurring in the membership of the commission shall be filled in the same manner as the original appointment for the position being vacated. The vacancy shall not affect the power of the remaining members to execute the duties of the commission.

(g) The commission expires on the first day of July, two thousand three.

**§21-5E-6. Commission's duties; promulgation of rules.**

(a) The equal pay commission shall study both the methodology and funding for the implementation of a gender discrimination prohibition and shall prepare reports for submission to the Legislature which include:

(1) An analysis of state job descriptions which measures the inherent skill, effort, responsibility and working conditions of various jobs and classifications; and

(2) A review of similar efforts to eliminate gender-based wage differentials implemented by other governmental entities in this and other states.

(b) The commission shall submit an initial report with recommendations for implementation of a gender discrimination prohibition to the joint committee on government and finance not later than the first day of July, two thousand, and shall submit status reports annually thereafter.

(c) Based upon the findings and recommendations in its report, the commission may propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code to implement the provisions of this article.

(d) Notwithstanding any other provision of this article, if no legislative rules are approved for promulgation by the Legislature pursuant to this article prior to the first day of July, two thousand one, then the provisions of sections three and four of this article shall become effective on such date.

## SENATE BILL 194

**EFFECTIVE DATE:** July 1, 1998

**SIGNED BY GOVERNOR:** April 6, 1998

**CODE REFERENCE(S):** New §49-5E-6 Amends §18A-4-17

**TOPIC:** RELATING TO EDUCATION FOR JUVENILES IN PREDISPOSITIONAL DETENTION FACILITIES

### **INTRODUCTION:**

This bill authorizes the State Board of Education to provide education services for juveniles placed in secure predispositional detention centers operated by or under contract with the Division of Juvenile Services. This bill also provides for the accrual of seniority of the professional and service personnel employed in educational facilities of the Department of Health and Human Resources, Corrections, and the schools for the deaf and the blind operated by the State Department of Education, if the employee was employed by the educational facility which was operated by the county in which the facility is located immediately prior to its operation by the State Department. It accrues based on length of time employed by the facility. An employee may also retain seniority from employment with the county board of education at the facility and attain continuing contract status with both the county and the facility if the sum of years from both equals the number required by statute.

### **MAJOR NEW PROVISIONS:**

1. Subject to appropriations by the Legislature, the State Board of Education is authorized to provide education



programs and services for juveniles, hire classroom teachers and other necessary school personnel, and provide education services on a 12-month basis on the grounds of the predispositional juvenile detention centers.

2. Subject to appropriations by the Legislature, the Division of Juvenile Services is responsible for providing adequate space and facilities for the education program and the State Board of Education has no responsibility to construct, improve, or maintain any part of a physical facility for educational purposes.

3. Cooperation is required among the Division of Juvenile Services, the State Board of Education, and the State Superintendent of Schools in the provision of educational services.

4. This bill provides for the accrual of seniority of the professional and service personnel employed in educational facilities of the Department of Health and Human Resources, Corrections and the schools for the deaf and blind operated by the State Department of Education within certain provisions.

**ENROLLED**

**COMMITTEE SUBSTITUTE**

**FOR**

**Senate Bill No. 194**

(Senators Wooton, Walker, White, Jackson, Buckalew,  
Anderson, Ball, Hunter, Schoonover, Macnaughtan, Bowman,  
Snyder, Love, Plymale and Ross, *original sponsors*)

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[Passed March 14, 1998; in effect ninety days from passage.]

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AN ACT to amend and reenact section seventeen, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article five-e, chapter forty-nine of said code by adding thereto a new section, designated section six, all relating to the provision of education opportunities to juveniles in secure predispositional detention centers; providing that the state department of education is responsible for providing education opportunities to such juveniles; and providing seniority rights to certain education employees working at the secure predispositional detention centers.

*Be it enacted by the Legislature of West Virginia:*

That section seventeen, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article five-e, chapter forty-nine of said code be amended by adding thereto a new section, designated section six, all to read as follows:

## **CHAPTER 18A. SCHOOL PERSONNEL.**

### **ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.**

#### **§18A-4-17. Health and other facility employee salaries.**

(a) The minimum salary scale for professional personnel and service personnel employed by the state department of education to provide education and support services to residents of state department of health and human resources facilities, corrections facilities providing services to juvenile and youthful offenders and in the West Virginia schools for the deaf and the blind is the same as set forth in sections two, three and eight-a of this article. Additionally, those personnel shall receive the equivalent of salary supplements paid to professional and service personnel employed by the county board of education in the county wherein each facility is located, as set forth in sections five-a and five-b of this article. Professional personnel and service personnel in these facilities who earn advanced classification of training after the effective date of this section shall be paid the advanced salary from the date the classification of training is earned. The professional personnel shall be certified, licensed or trained, and shall meet other eligibility classifications as may be required by the provisions of this chapter and by state board regulations for comparable instructional personnel who are employed by county boards of education. The professional personnel shall be paid at the equivalent rate of pay of teachers as set forth in section two of this article, but outside the public support plan, plus the equivalent of the salary supplement paid to teachers employed by the county board of education in the county in which each facility is located, as set forth in section five-a of this article.

(b) Professional personnel employed by the department to provide educational service to residents in state department of health and human resources facilities, corrections facilities providing services to juvenile and youthful offenders or in the West Virginia schools for the deaf and the blind shall be afforded all the rights, privileges and benefits established for the professional personnel under this article: *Provided*, That the benefits shall apply only within the facility at which the professional personnel are employed: *Provided, however*, That benefits shall exclude salaries unless explicitly provided for under this or other sections of this article: *Provided further*, That seniority for the professional personnel shall be determined on the basis of the length of time that the employee has been professionally employed at the facility, regardless of which state agency was the actual employer.

(c) Nothing contained in this section shall be construed to mean that professional personnel and service personnel employed by the department of education to provide educational and support services to residents in state department of health and human resources facilities, corrections facilities providing services to juvenile and youthful offenders and the West Virginia schools for the deaf and the blind are other than state employees.

(d) (1) Notwithstanding any other provision of this section to the contrary, professional and service personnel employed in an educational facility operated by the West Virginia department of education shall accrue seniority at that facility on the basis of the length of time the employee has been employed at the facility. Any professional or service personnel whose employment at the facility was preceded immediately by employment with the county board previously providing education services at the facility or whose employment contract was with the county board previously providing education services at the facility: (A) shall retain any seniority accrued during employment by the county board; (B) shall accrue seniority as a regular employee with the county board during employment at the facility; (C) shall attain continuing contract status in accordance with section two, article two, chapter eighteen-a of this code with both the county and the facility if the sum of the years employed by the county and the facility equals the statutory number required for continuing contract status; and (D) shall retain and continue to accrue county and facility seniority in the event of reemployment by the county as a result of direct transfer from the facility or recall from the preferred list.

(2) Reductions in work force in the facility or employment by the facility or county board shall be made in accordance

with the provisions of sections seven-a and eight-b, article four, chapter eighteen-a of this code: *Provided*. That only years of employment within the facility shall be considered for purposes of reduction in force within the facility.

(3) The seniority conferred in this section applies retroactively to all affected professional and service personnel, but the rights incidental to the seniority shall commence as of the effective date of this section.

## **CHAPTER 49. CHILD WELFARE.**

### **ARTICLE 5E. DIVISION OF JUVENILE SERVICES.**

#### **§49-5E-6. Provision of educational services for juveniles placed in predispositional detention facilities.**

(a) The state board of education is authorized to provide for adequate and appropriate education opportunities for juveniles placed in secure predispositional detention centers operated by or under contract with the division of juvenile services.

(b) Subject to appropriations by the Legislature, the state board is authorized: (1) To provide education programs and services for juveniles on the grounds of secure predispositional detention centers; (2) to hire classroom teachers and other school personnel necessary to provide adequate and appropriate education opportunities to these juveniles; and (3) to provide education services for the detained juveniles on a twelve-month basis.

(c) The division of juvenile services shall cooperate with the state board and the state superintendent in the establishment and maintenance of education programs authorized under this section. Subject to appropriations by the Legislature, the division of juvenile services shall provide, or cause to be provided, adequate space and facilities for the education programs. The state board may not be required to construct, improve or maintain any building, other improvement to real estate or fixtures attached thereto at any secure predispositional detention center for the purpose of establishing and maintaining an education program.

(d) The state board may develop and approve rules in accordance with article three-a, chapter twenty-nine-a of this code for the education of juveniles in secure predispositional detention centers.

## **SENATE BILL 409**

**EFFECTIVE DATE:** June 11, 1998

**SIGNED BY GOVERNOR:** April 7, 1998

**CODE REFERENCE(S)**: New §18-10J-1 thru 6

**TOPIC**: BRAILLE AND USE OF BRAILLE IN: INDIVIDUALIZED EDUCATION PROGRAMS OF BLIND OR VISUALLY IMPAIRED CHILDREN, STANDARDS OF PROFICIENCY AND INSTRUCTION, MATERIALS IN COMPUTER-ACCESSIBLE FORMAT, AND LITERACY STANDARDS FOR CERTIFICATION OF TEACHERS

**INTRODUCTION**:

This Act adds a new article §18-10J requiring that the individualized education program of each blind or visually impaired child include provisions for instruction in braille and the use of braille appropriate to the child's current and future literacy needs; establishing standards of proficiency and instruction; providing materials in a computer-accessible format capable of braille reproduction; and requiring the certification of teachers in accordance with braille literacy standards.

**MAJOR NEW PROVISIONS**:

1. Defines blind and visually impaired child, braille, individualized education program, IEP team, and textbooks and other instructional materials.
2. Requires the IEP team to provide for a child who is blind or visually impaired to receive instruction in braille and the use of braille unless the team determines, after appropriate evaluation of the student's reading and writing needs, that braille instruction or use is not appropriate.
3. Provides that the child's IEP shall specify: a) results obtained from the evaluation; b) how braille will be implemented and integrated with other classroom activities; c) date on which braille instruction will begin; d) length, frequency, and duration of instructional sessions; e) level of competency to be achieved in braille reading and writing as well as objective assessment measure; and f) if braille instruction is determined not appropriate: 1) documentation that decision was reached after review of literature describing benefits of braille instruction and 2) specification of evidence used to determine that child's ability to read and write without braille instruction is not impaired.
4. Requires all publishers of textbooks or other instructional materials sold to the state or local education agencies (including postsecondary institutions) to furnish computer diskettes for literary (and nonliterary when software is

available) subjects in the American standard code for information (ASCII) from which braille versions can be produced.

5. Requires teachers seeking to become certified in the education of blind and visually impaired children to demonstrate competence in reading and writing braille per standards adopted by the national library service for the blind and physically handicapped, library of congress, Washington, DC beginning July 1, 2000. Teachers already certified in the education of blind children are not required to demonstrate that proficiency to retain their certification.

6. Provides that the WV Department of Education will make available to all teachers of blind and visually impaired children a continuing education class in reading or writing braille or a college credit course, or both, at least once every three years.

**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**

**Senate Bill No. 409**

(Senators Hunter, Helmick and Ross, *original sponsors*)

\_\_\_\_\_  
[Passed March 13, 1998; in effect ninety days from passage.]  
\_\_\_\_\_

AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten-j, relating to requiring that the individualized education program of each blind or visually impaired child include provisions for instruction in braille and the use of braille appropriate to the child's current and future literacy needs; establishing standards of proficiency and instruction; providing materials in a computer-accessible format capable of braille reproduction; and requiring the certification of teachers in accordance with braille literacy standards.

*Be it enacted by the Legislature of West Virginia:*

That chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article ten-j, to read as follows:

**ARTICLE 10J. BLIND PERSONS' LITERACY RIGHTS AND EDUCATION ACT.**

**§18-10J-1. Short title.**

This article may be cited as the "Blind Persons' Literacy Rights and Education Act".

### **§18-10J-2. Definitions.**

The following words used in this article shall be construed as follows:

(a) "Blind or visually impaired child" means an individual who is eligible for special education services and who:

(1) Has a visual acuity of 20/200 or less in the better eye with correcting lenses or has a limited field of vision such that the widest diameter subtends an angular distance of no greater than twenty degrees; or

(2) Has a medically indicated expectation of visual deterioration.

(b) "Braille" means the system of reading and writing through touch commonly known as standard English braille.

(c) "Individualized education program" and "IEP team" have the meanings provided in Section 614(d) of the Individuals with Disabilities Education Act (20 U.S.C. Section 1414(d)).

(d) "Textbooks and other instructional materials" means any literary or nonliterary works obtained for use in a course of study.

### **§8-10J-3. Individualized education program.**

In developing the individualized education program for a child who is blind or visually impaired, the individualized education program team shall provide for the child to receive instruction in braille and the use of braille unless the individualized education program team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in braille or the use of braille), that the instruction or use is not appropriate for the child. Nothing in this section requires the exclusive use of braille if other special education services are appropriate to the child's educational needs. The provision of other appropriate services shall not preclude braille use or instruction.

### **§18-10J-4. Standards of competency and instruction.**

Instruction in braille reading and writing shall be provided with the goal of enabling each blind or visually impaired child to communicate effectively and efficiently with the same level of proficiency expected of the child's peers of comparable ability and grade level. The child's individualized education program shall specify:

(a) The results obtained from the evaluations required under section three of this article;

(b) How braille will be implemented as the primary mode for learning through integration with other classroom activities;

(c) The date on which braille instruction will commence;

(d) The length of the period of instruction and the frequency and duration of each instructional session;

(e) The level of competency in braille reading and writing to be achieved by the end of the period and the objective assessment measures to be used; and

(f) If a decision has been made under section two of this article, that braille instruction or use is not required for the child:

(1) Documentation that the decision was reached after a review of pertinent literature describing the educational benefits of braille instruction and use; and

(2) A specification of the evidence used to determine that the child's ability to read and write effectively without braille

instruction is not impaired.

**§18-10J-5. Instructional materials.**

All publishers of textbooks or other instructional materials sold to the state or any local education agency (including post-secondary institutions) shall furnish computer diskettes for literary subjects in the American standard code for information interchange from which braille versions can be produced. Further, the publishers shall furnish computer diskettes in American standard code for information interchange for nonliterary subjects, including natural sciences, computer science, mathematics and music, when braille specialty code translation software is available.

**§18-10J-6. Teacher certification and training.**

As part of the professional certification process, teachers seeking to become certified in the education of blind and visually impaired children shall demonstrate competence in reading and writing braille. Before issuing a professional certificate to teach the blind and visually impaired, the West Virginia department of education shall require that the applicant demonstrate, based upon standards adopted by the national library service for the blind and physically handicapped, library of congress, Washington, D.C., that he or she is proficient in reading and writing braille. This requirement becomes effective the first day of July, two thousand. Teachers already certified in the education of blind and visually impaired children are not required to demonstrate that proficiency in order to retain their certification. Further, the West Virginia department of education shall, on a schedule of at least once every three years, make available to all teachers of blind and visually impaired children a continuing education class in reading or writing braille or a college credit course in reading and writing braille, or both. In order to achieve successful completion of a course, a teacher shall demonstrate proficiency in reading and writing braille at a level commensurate with the standards adopted by the national library service for the blind and physically handicapped, library of congress.

**SENATE BILL 533**

**EFFECTIVE DATE:** July 1, 1998

**SIGNED BY GOVERNOR:** Passed March 4, 1998

**CODE REFERENCE(S)**: Amends and Reenacts §§11-15-30, 18-9A-10, 18-9D-15, and 29-22-18

**TOPIC**: FUNDING PLAN FOR CONTINUING PUBLIC SCHOOL CONSTRUCTION

**INTRODUCTION**:

This act provides for the continued payment of consumer sales tax collections into the school major improvement and school construction funds; provides for the continued payment into the school construction fund the funds currently required for debt service; requires any project funded by the school building authority be in accordance with a CEFP approved by the state board and the school building authority; and requires submission of all construction plans to the school building authority for approval.

**MAJOR NEW PROVISIONS**:

1. Eliminates the June 30, 2005 termination date for consumer sales tax payments into the school major improvement and school construction funds, which will allow the current funding level of \$22,000,000 to continue into the future (§11-15-30).
2. Provides for the continued payment into the school construction fund the difference between the amount required for debt service for FY 97 and the current year for the bonds issued subsequent to January 1, 1994 and secured by proceeds from the consumer sales tax (§11-15-30).
3. Provides for the continued payment into the school construction fund after the bonds issued prior to January 1, 1994 are retired the amount of \$24 million from the funds allocated for the debt service of such bonds (§18-9A-10).
4. Requires that any project funded by the school building authority be in accordance with a comprehensive educational facility plan which must be approved by the state board and the school building authority (§18-9A-10).



5. Requires county boards of education to 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 (§18-9D-15).

6. Provides for the continued payment into the school construction fund after the bonds issued subsequent to January 1, 1994 and secured by profits from the lottery are retired the amount of \$18 million from the proceeds allocated for the debt service of such bonds (§29-22-18).

**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**  
**Senate Bill No. 533**

(By Senators Tomblin, Mr. President, and Buckalew,  
By Request of the Executive)

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[Passed March 14, 1998; to take effect July 1, 1998.]

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AN ACT to amend and reenact section thirty, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section ten, article nine-a, chapter eighteen of said code; to amend and reenact section fifteen, article nine-d of said chapter; and to amend and reenact section eighteen, article twenty-two, chapter twenty-nine of said code, all relating to a funding plan for continuing public school construction; deleting outdated language; continuing monthly state sales tax payments into the school major improvement fund by eliminating the termination date for such payments; continuing monthly state sales tax payments into the school construction fund by eliminating the termination date for such payments; providing for the payment of the annual difference between the allocation made in the one thousand nine hundred ninety-seven fiscal year and the amount of funds required for debt service on school improvement bonds under the better school building amendment for any succeeding current year to be deposited into the school construction fund; authorizing use of certain moneys for study and implementation of a charter school pilot program; providing that, upon retirement of school construction bonds secured through allocations from the school building capital improvements fund, certain moneys allocated for that purpose are to be deposited into the school construction fund; school building authority generally; distribution of funds; submission of construction designs for school building authority approval; and providing that, upon the retirement of the school improvement bonds secured by profits from the lottery and deposited in the school debt service fund, an annual amount of eighteen million dollars of such funds shall be deposited into the school construction fund.

*Be it enacted by the Legislature of West Virginia:*

That section thirty, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section ten, article nine-a, chapter eighteen of said code be amended and reenacted; that section fifteen, article nine-d of said chapter be amended and reenacted; and that section eighteen, article

twenty-two, chapter twenty-nine of said code be amended and reenacted, all to read as follows:

## CHAPTER 11. TAXATION.

### ARTICLE 15. CONSUMERS SALES TAX.

#### §11-15-30. Proceeds of tax; appropriation of certain revenues.

(a) The proceeds of the tax imposed by this article shall be deposited in the general revenue fund of the state ~~beginning the first day of July, one thousand nine hundred ninety-four, except as otherwise expressly provided in this article. Prior to the said first day of July, the proceeds of this tax shall, except as otherwise expressly provided in this article, be deposited as provided in chapter three, acts of the Legislature, second extraordinary session, one thousand nine hundred ninety-three, and, for such purpose, such prior law is fully preserved. On the said first day of July, the balance in "WVFIMS" account number fund 6676, fiscal year one thousand nine hundred ninety-four, organization 0615, shall be transferred to the general revenue fund. On the said first day of July, the balance in "WVFIMS" account number fund 3962, fiscal year one thousand nine hundred ninety-four, organization 0402, shall be transferred to the school construction fund created pursuant to section six, article nine-d, chapter eighteen of this code.~~

(b) *School major improvement fund.* --

After the payment or commitment of the proceeds or collections of this tax for the purposes set forth in sections sixteen and eighteen of this article,

~~(1) On the first day of July, one thousand nine hundred ninety-four, there shall be dedicated from the collections of this tax, an amount appropriated by the Legislature to this fund in the general revenue budget for the fiscal year beginning on the first day of July, one thousand nine hundred ninety-four, and the amount dedicated shall be deposited into the school major improvement fund created pursuant to section six, article nine-d, chapter eighteen of this code, as soon as such amount has been accumulated from the collections of this tax.~~

~~(2) Beginning on the first day of July, one thousand nine hundred ninety-five, and continuing on the first day of each succeeding month thereafter through the thirtieth day of June, two thousand five, there shall be dedicated monthly from the collections of this tax, the amount of four hundred sixteen thousand six hundred sixty-seven dollars and the amount dedicated shall be deposited on a monthly basis into the school major improvement fund created pursuant to section six, article nine-d, chapter eighteen of this code.~~

(c) *School construction fund.* --

After the payment or commitment of the proceeds or collections of this tax for the purposes set forth in sections sixteen and eighteen of this article:

~~(1) Beginning the first day of July, one thousand nine hundred ninety-five, and continuing on the first day of each succeeding month thereafter through the last day of June, one thousand nine hundred ninety-six, there shall be dedicated monthly from the collections of this tax, the amount of five hundred eighty-three thousand three hundred thirty-three dollars and the amount dedicated shall be deposited into the school construction fund created pursuant to section six, article nine-d, chapter eighteen of this code.~~

~~(2) Beginning the first day of July, one thousand nine hundred ninety-six, and continuing on the first day of each succeeding month thereafter, through the thirtieth day of June, two thousand five, there shall be dedicated monthly from the collections of this tax, the amount of one million four hundred sixteen thousand six hundred sixty-seven dollars and the amount dedicated shall be deposited into the school construction fund created pursuant to section six, article nine-d, chapter eighteen of this code.~~

(2) Effective the first day of July, one thousand nine hundred ninety-eight, there shall be dedicated from the collections of this tax, an amount equal to any annual difference that may occur between the debt service payment for the one thousand nine hundred ninety-seven fiscal year for school improvement bonds issued under the better school building

amendment under the provisions of article nine-c, chapter eighteen of this code and the amount of funds required for debt service on these school improvement bonds in any current fiscal year thereafter. This annual difference shall be prorated monthly, added to the monthly deposit in subdivision (1) of this subsection and deposited into the school construction fund created pursuant to section six, article nine-d, chapter eighteen of this code.

## CHAPTER 18. EDUCATION.

### ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

#### §18-9A-10. Foundation allowance to improve instructional programs.

(a) For ~~the~~ each school year beginning on the first day of July, one thousand nine hundred ~~ninety-four~~ ninety-eight, and thereafter, the sum of the allocations shall be ~~in the an amount at least equal to the amount appropriated by the Legislature, in addition to funds which accrue from balances in the general school fund, or from appropriations for such those purposes:~~

(1) One hundred fifty thousand dollars shall be allocated to each county;

(2) Distribution to the counties of the remainder of these funds shall be made proportional to the average of each county's average daily attendance for the preceding year and the county's second month net enrollment. Moneys allocated by provision of this section shall be used to improve instructional programs according to a plan for instructional improvement which the affected county board shall file with the state board by the first day of August of each year, to be approved by the state board by the first day of September of that year if ~~such~~ the plan substantially complies with standards to be adopted by the state board: *Provided*, That notwithstanding any other provision of this code to the contrary, moneys allocated by provision of this section may also be used in the implementation and maintenance of the uniform integrated regional computer information system; ~~and~~.

(3) Up to twenty-five percent of this allocation may be used to employ professional educators ~~and/or~~ and service personnel in counties after all applicable provisions of sections four and five of this article have been fully utilized. ~~*Provided*, That for the school year beginning on the first day of July, one thousand nine hundred ninety-six, only, up to an additional twenty-five percent of this allocation may be used to employ classroom teachers, as defined in section one, article one, chapter eighteen-a of this code, and/or service personnel in counties after all applicable provisions of sections four and five of this article have been fully utilized: *Provided, however*, That service personnel employed with the additional twenty-five percent for the school year beginning on the first day of July, one thousand nine hundred ninety-six, only, may not include directors, coordinators or supervisors.~~

Prior to the use of any funds from this section for personnel costs, the county board must receive authorization from the state superintendent of schools. The state superintendent shall require the district board to demonstrate: (1) The need for the allocation; (2) efficiency and fiscal responsibility in staffing; and (3) the sharing of services with adjoining counties and the regional educational service agency for that county in the use of the total local district board budget. District boards shall make application for available funds for the next fiscal year by the first day of May of each year. On or before the first day of June, the state superintendent shall review all applications and notify applying district boards of the distribution of the allocation. ~~*Provided*, That for the school year beginning on the first day of July, one thousand nine hundred ninety-three, only, the state superintendent shall review all applications and notify applying district boards of the distribution of the allocation on or before the first day of July, one thousand nine hundred ninety-three. Such The funds shall be distributed during the fiscal year as appropriate. The state superintendent shall require the county board to demonstrate the need for an allocation for personnel based upon the county's inability to meet the requirements of state law or state board policy: *Provided, however*, That the funds available for personnel under this section may not be used to increase the total number of professional noninstructional personnel in the central office beyond four. Such The instructional improvement plan shall be made available for distribution to the public at the office of each affected county board.~~

(b) ~~Commencing with the school year beginning on the first day of July, one thousand nine hundred ninety-three, an An amount not less than the amount required to meet debt service requirements on any revenue bonds issued prior to the first day of January, one thousand nine hundred ninety-four, and the debt service requirements on any revenue bonds~~

issued for the purpose of refunding revenue bonds issued prior to the first day of January, one thousand nine hundred ninety-four, shall be paid into the school building capital improvements fund created by section six, article nine-d of this chapter, and shall be used solely for the purposes of ~~said that~~ that article. The school building capital improvements fund shall not be utilized to meet the debt services requirement on any revenue bonds or revenue refunding bonds for which moneys contained within the school building debt service fund have been pledged for repayment pursuant to ~~said that~~ that section.

When the school improvement bonds secured by funds from the school building capital improvements fund mature, the state board of education shall annually deposit an amount equal to twenty-four million dollars from the funds allocated in this section into the school construction fund created pursuant to the provisions of section six, article nine-d, chapter eighteen of this code to continue funding school facility construction and improvements.

(c) Any project funded by the school building authority shall be in accordance with a comprehensive educational facility plan which must be approved by the state board and the school building authority.

## **ARTICLE 9D. SCHOOL BUILDING AUTHORITY.**

### **§18-9D-15. Legislative intent; distribution of money.**

(a) It is the intent of the Legislature to empower the school building authority to facilitate and provide state funds and to administer all federal funds provided for the construction and major improvement of school facilities so as to meet the educational needs of the people of this state in an efficient and economical manner. The authority shall make funding determinations in accordance with the provisions of this article and shall assess existing school facilities and each facility's school major improvement plan in relation to the needs of the individual student, the general school population, the communities served by the facilities and facility needs statewide.

(b) An amount that is no more than three percent of the sum of moneys that are determined by the authority to be available for distribution during the then current fiscal year from: (1) Moneys paid into the school building capital improvements fund pursuant to section ten, article nine-a of this chapter; (2) the issuance of revenue bonds for which moneys in the school building debt service fund are pledged as security; (3) moneys paid into the school construction fund pursuant to section six of this article; and (4) any other moneys received by the authority, except moneys paid into the school major improvement fund pursuant to section six of this article, may be allocated and may be expended by the authority for projects 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 section moneys for school major improvement projects 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: *Provided*, That the authority may not expend any moneys for a school major improvement project proposed by the state board or the administrative council of an area vocational educational center unless the state board or an administrative council has submitted a ten-year school major improvement plan, to be updated annually, pursuant to section sixteen of this article: *Provided, however*, That the authority shall, before allocating any moneys to the state board or the administrative council of an area vocational educational center for a school improvement project, consider all other funding sources available for the project.

(c) An amount that is no more than two percent of the moneys that are determined by the authority to be available for distribution during the current fiscal year from: (1) Moneys paid into the school building capital improvements fund pursuant to section ten, article nine-a of this chapter; (2) the issuance of revenue bonds for which moneys in the school building debt service fund are pledged as security; (3) moneys paid into the school construction fund pursuant to section six of this article; and (4) any other moneys received by the authority, except moneys deposited into the school major improvement fund, shall be set aside by the authority as an emergency fund to be distributed in accordance with the guidelines adopted by the authority.

(d) The remaining moneys determined by the authority to be available for distribution during the then current fiscal year from: (1) Moneys paid into the school building capital improvements fund pursuant to section ten, article nine-a of this chapter; (2) the issuance of revenue bonds for which moneys in the school building debt service fund are pledged as

security; (3) moneys paid into the school construction fund pursuant to section six of this article; and (4) any other moneys received by the authority, except moneys deposited into the school major improvement fund, shall be allocated and expended on the basis of need and efficient use of resources, the basis to be determined by the authority in accordance with the provisions of section sixteen of this article.

(e) If a county board of education proposes to finance a project that is approved pursuant to section sixteen of this article through a lease with an option to purchase leased premises upon the expiration of the total lease period pursuant to an investment contract, the authority may allocate no moneys to the county board in connection with the project: *Provided*, That the authority may transfer moneys to the state board of education, which, with the authority, shall lend the amount transferred to the county board to be used only for a one-time payment due at the beginning of the lease term, made for the purpose of reducing annual lease payments under the investment contract, subject to the following conditions:

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

(2) The loan agreement shall provide for the state board and the authority to defer the payment of principal and interest upon any loan made to the county board during the term of the investment contract, and annual renewals of the investment contract, among the state board, the authority, the county board and a lessor: *Provided*, That in the event a county board, which has received a loan from the authority for a one-time payment at the beginning of the lease term, does not renew the subject lease annually until performance of the investment contract in its entirety is completed, the county board is in default and the principal of the loan, together with all unpaid interest accrued to the date of the default, shall at the option of the authority, in consultation with the state board, become due and payable immediately or subject to renegotiation among the state board, the authority and the county board: *Provided, however*, That if a county board renews the lease annually through the performance of the investment contract in its entirety, the county board shall exercise its option to purchase the leased premises: *Provided further*, That the failure of the county board to make a scheduled payment pursuant to the investment contract constitutes an event of default under the loan agreement: *And provided further*, That upon a default by a county board, the principal of the loan, together with all unpaid interest accrued to the date of the default, shall at the option of the authority, in consultation with the state board, become due and payable immediately or subject to renegotiation among the state board, the authority and the county board: *And provided further*, That if the loan becomes due and payable immediately, the authority, in consultation with the state board, shall use all means available under the loan agreement and law to collect the outstanding principal balance of the loan, together with all unpaid interest accrued to the date of payment of the outstanding principal balance; and

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

(f) 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 subsection, any county board failing to expend money within three years of the allocation to the county board shall forfeit the allocation and thereafter is ineligible for further allocations pursuant to this subsection until the county board 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.

(g) 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, the basis to be determined by the authority in accordance with the provisions of section sixteen of this article: *Provided*, That the moneys may not be distributed to any county board that does not have an approved school major improvement plan or to any county board that is not prepared to commence expenditures of the funds during the fiscal year in which the moneys are distributed: *Provided, however*, That any moneys allocated to a county board and not distributed to that county board shall be deposited in an

account to the credit of that county board, the principal amount to remain to the credit of and available to the county board for a period of two years. Any moneys which are unexpended after a two-year period shall be redistributed on the basis of need from the school major improvement fund in that fiscal year.

(h) No local matching funds may be required under the provisions of this section. However, the responsibilities of the county boards of education to maintain school facilities are not negated by the provisions of this article. To be eligible to receive an allocation of school major improvement funds from the authority, a county board must have expended in the previous fiscal year an amount of county moneys equal to or exceeding the lowest average amount of money included in the county board's maintenance budget over any three of the previous five years and must have budgeted an amount equal to or greater than the average in the current fiscal year: *Provided*, That the state board of education shall promulgate rules relating to county boards' maintenance budgets, including items which shall be included in the budgets.

(i) Any county board may use moneys provided by the authority under this article in conjunction with local funds derived from bonding, special levy or other sources. Distribution to a county board, or to the state board or the administrative council of an area vocational educational center pursuant to subsection (b) of this section, may be in a lump sum or in accordance with a schedule of payments adopted by the authority pursuant to guidelines adopted by the authority.

(j) Funds in the school construction fund shall first be transferred and expended as follows:

Any funds deposited in the school construction fund shall be expended first in accordance with an appropriation by the Legislature. To the extent that funds are available in the school construction fund in excess of that amount appropriated in any fiscal year, the excess funds may be expended in accordance with the provisions of this article. Any projects which the authority identified and announced for funding on or before the first day of August, one thousand nine hundred ninety-five, or identified and announced for funding on or before the thirty-first day of December, one thousand nine hundred ninety-five, shall be funded by the authority in an amount which is not less than the amount specified when the project was identified and announced.

(k) It is the intent of the Legislature to encourage county boards to explore and consider arrangements with other counties that may facilitate the highest and best use of all available funds, which may result in improved transportation arrangements for students, or which otherwise may create efficiencies for county boards and the students. In order to address the intent of the Legislature contained in this subsection, the authority shall grant preference to those projects which involve multi-county arrangements as the authority shall determine reasonable and proper.

(l) 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.

## **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

### **ARTICLE 22. STATE LOTTERY ACT.**

**§29-22-18.** State lottery fund; appropriations and deposits; not part of general revenue; no transfer of state funds after initial appropriation; use and repayment of initial appropriation; allocation of fund for prizes, net profit and expenses; surplus; state lottery education fund; state lottery senior citizens fund; allocation and appropriation of net profits.

(a) There is hereby continued a special revenue fund in the state treasury which shall be designated and known as the "state lottery fund". The fund shall consist of all appropriations to the fund and all interest earned from investment of the fund and any gifts, grants or contributions received by the fund. All revenues received from the sale of lottery tickets, materials and games shall be deposited with the state treasurer and placed into the "state lottery fund". The revenue shall be disbursed in the manner provided in this section for the purposes stated in this section and shall not be treated by the auditor and treasurer as part of the general revenue of the state.

(b) No appropriation, loan or other transfer of state funds may be made to the commission or lottery fund after the initial appropriation.

(c) A minimum annual average of forty-five percent of the gross amount received from each lottery shall be allocated and disbursed as prizes.

(d) Not more than fifteen percent of the gross amount received from each lottery shall be allocated to and may be disbursed as necessary for fund operation and administration expenses.

(e) The excess of the aggregate of the gross amount received from all lotteries over the sum of the amounts allocated by subsections (c) and (d) of this section shall be allocated as net profit. In the event that the percentage allotted for operations and administration generates a surplus, the surplus shall be allowed to accumulate to an amount not to exceed two hundred fifty thousand dollars. On a monthly basis, the director shall report to the joint committee on government and finance of the Legislature any surplus in excess of two hundred fifty thousand dollars and remit to the state treasurer the entire amount of those surplus funds in excess of two hundred fifty thousand dollars which shall be allocated as net profit.

(f) After first satisfying the requirements for funds dedicated to the school building debt service fund in subsection (h) of this section to retire the ten-year bonds authorized to be issued pursuant to section eight, article nine-d, chapter eighteen of this code, and then satisfying the requirements for funds dedicated to the education, arts, sciences and tourism debt service fund in subsection (i) of this section to retire the bonds authorized to be issued pursuant to section eleven-a, article six, chapter five of this code, the Legislature shall annually appropriate all of the remaining amounts allocated as net profits in subsection (e) of this section, in such proportions as it considers beneficial to the citizens of this state, to: (1) The lottery education fund created in subsection (g) of this section; (2) the school construction fund created in section six, article nine-d, chapter eighteen of this code; (3) the lottery senior citizens fund created in subsection (j) of this section; and (4) the division of natural resources created in section four, article five, chapter twenty of this code and the West Virginia development office as created in section one, article two, chapter five-b of this code, in accordance with subsection (k) of this section. No transfer to any account other than the school building debt service account and the education, arts, sciences and tourism debt service fund may be made in any period of time in which a default exists in respect to debt service on bonds issued by the school building authority and the state building commission which are secured by lottery proceeds. No additional transfer shall be made to any account other than the school building debt service account and the education, arts, sciences and tourism debt service fund when net profits for the preceding twelve months are not at least equal to one hundred fifty percent of debt service on bonds issued by the school building authority and the state building commission which are secured by net profits.

(g) There is hereby continued a special revenue fund in the state treasury which shall be designated and known as the "lottery education fund". The fund shall consist of the amounts allocated pursuant to subsection (f) of this section, which shall be deposited into the lottery education fund by the state treasurer. The lottery education fund shall also consist of all interest earned from investment of the lottery education fund and any other appropriations, gifts, grants, contributions or moneys received by the lottery education fund from any source. The revenues received or earned by the lottery education fund shall be disbursed in the manner provided below and shall not be treated by the auditor and treasurer as part of the general revenue of the state. Annually, the Legislature shall appropriate the revenues received or earned by the lottery education fund to the state system of public and higher education for these educational programs it considers beneficial to the citizens of this state.

(h) On or before the twenty-eighth day of each month through the twentieth day of June, two thousand five, the lottery director shall allocate to the school building debt service fund created pursuant to the provisions of section six, article nine-d, chapter eighteen of this code, as a first priority from the net profits of the lottery for the preceding month, an amount equal to one tenth of the projected annual principal, interest and coverage ratio requirements on any and all revenue bonds and refunding bonds issued, or to be issued, on or after the first day of April, one thousand nine hundred ninety-four, as certified to the lottery director in accordance with the provisions of section six, article nine-d, chapter eighteen of this code. In no event shall the monthly amount allocated exceed one million eight hundred thousand dollars, nor shall the total allocation of the net profits to be paid into the school building debt service fund, as provided in this section, in any fiscal year exceed the lesser of the principal and interest requirements certified to the lottery director or eighteen million dollars. In the event there are insufficient funds available in any month to transfer the amount required to be transferred pursuant to this subsection to the school debt service fund, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency.

A lien on the proceeds of the state lottery fund up to a maximum amount equal to the projected annual principal, interest and coverage ratio requirements, not to exceed twenty-seven million dollars annually, may be granted by the school building authority in favor of the bonds it issues which are secured by the net lottery profits.

When the school improvement bonds, secured by profits from the lottery and deposited in the school debt service fund, mature, the lottery director shall allocate monthly, from the net profits of the lottery for the preceding month, an amount equal to one million five hundred thousand dollars into the school construction fund created pursuant to the provisions of section six, article nine-d, chapter eighteen of this code.

~~(i) Beginning on or before the twenty-eighth day of July, one thousand nine hundred ninety-six, and continuing on~~ On or before the twenty-eighth day of each succeeding month thereafter through the twenty-eighth day of June, two thousand twenty-one, the lottery director shall allocate to the education, arts, sciences and tourism debt service fund created pursuant to the provisions of section eleven-a, article six, chapter five of this code, as a second priority from the net profits of the lottery for the preceding month, an amount equal to one tenth of the projected annual principal, interest and coverage ratio requirements on any and all revenue bonds and refunding bonds issued, or to be issued, on or after the first day of April, one thousand nine hundred ninety-six, as certified to the lottery director in accordance with the provisions of that section. In no event shall the monthly amount allocated exceed one million dollars nor shall the total allocation paid into the education, arts, sciences and tourism debt service fund, as provided in this section, in any fiscal year exceed the lesser of the principal and interest requirements certified to the lottery director or ten million dollars. In the event there are insufficient funds available in any month to transfer the amount required pursuant to this subsection to the education, arts, sciences and tourism debt service fund, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency. A second-in-priority lien on the proceeds of the state lottery fund up to a maximum amount equal to the projected annual principal, interest and coverage ratio requirements, not to exceed fifteen million dollars annually, may be granted by the state building commission in favor of the bonds it issues which are secured by the net lottery profits.

(j) There is hereby continued a special revenue fund in the state treasury which shall be designated and known as the "lottery senior citizens fund". The fund shall consist of the amounts allocated pursuant to subsection (f) of this section, which shall be deposited into the lottery senior citizens fund by the state treasurer. The lottery senior citizens fund shall also consist of all interest earned from investment of the lottery senior citizens fund and any other appropriations, gifts, grants, contributions or moneys received by the lottery senior citizens fund from any source. The revenues received or earned by the lottery senior citizens fund ~~shall be disbursed in the manner provided below and~~ shall not be treated by the auditor or treasurer as part of the general revenue of the state. Annually, the Legislature shall appropriate the revenues received or earned by the lottery senior citizens fund to such senior citizens medical care and other programs as it considers beneficial to the citizens of this state.

(k) The division of natural resources and the West Virginia development office, as appropriated by the Legislature, may use the amounts allocated to ~~it~~ them pursuant to subsection (f) of this section for one or more of the following purposes: (1) The payment of any or all of the costs incurred in the development, construction, reconstruction, maintenance or repair of any project or recreational facility, as these terms are defined in section four, article five, chapter twenty of this code, pursuant to the authority granted to it under article five, chapter twenty of this code; (2) the payment, funding or refunding of the principal of, interest on or redemption premiums on any bonds, security interests or notes issued by the parks and recreation section of the division of natural resources under article five, chapter twenty of this code; or (3) the payment of any advertising and marketing expenses for the promotion and development of tourism or any tourist facility or attraction in this state.

## SENATE BILL 744



**EFFECTIVE DATE:** June 11, 1998

**SIGNED BY GOVERNOR:** April 8, 1998

**CODE REFERENCE(S):** New §55-7-19 Amends and Reenacts §55-7

**TOPIC:** LIABILITY OF PHYSICIANS WHO RENDER SERVICES AT SCHOOL ATHLETIC EVENTS;  
LIMITING LIABILITY; EXCEPTIONS

**INTRODUCTION:**

Limits liability for physicians who volunteer to render services to participants at athletic contests, including practice sessions.

**MAJOR NEW PROVISIONS:**

1. Physicians who act as team physicians and serve in good faith and volunteer their services to participants at athletic events shall not be held liable for any civil damages as a result of such care or treatment, or as a result of any act or failure to act in providing or arranging further medical treatment, to an extent greater than the applicable limits of his or her professional liability insurance policy or policies.

**ENROLLED**

**Senate Bill No. 744**

(By Senators Wooton, Ball, Bowman, Dittmar, Fanning,

Hunter, Kessler, Oliverio, Ross, Schoonover, Snyder,  
White, Buckalew, Deem, Kimble and Scott)

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[Passed March 13, 1998; in effect ninety days from passage.]

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AN ACT to amend article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nineteen, relating to limiting the liability of physicians who render voluntary services for certain athletic events.

*Be it enacted by the Legislature of West Virginia:*

That article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section nineteen, to read as follows:

**ARTICLE 7. ACTIONS FOR INJURIES.**

**§55-7-19. Liability of physicians who render services at school athletic events; limiting liability; exceptions.**

(a) Any person licensed to practice medicine and surgery pursuant to the provisions of article three, chapter thirty of this code or any person licensed to practice medicine and surgery as an osteopathic physician and surgeon pursuant to the provisions of article fourteen, chapter thirty of this code: (1) Who is acting in the capacity of a volunteer team physician in attendance at an athletic event sponsored by a public or private elementary or secondary school; and (2) who gratuitously and in good faith prior to the athletic event agrees to render emergency care or treatment to any participant during such event in connection with an emergency arising during or as the result of such event, without objection of such participant, shall not be held liable for any civil damages as a result of such care or treatment, or as a result of any act or failure to act in providing or arranging further medical treatment, to an extent greater than the applicable limits of his or her professional liability insurance policy or policies when such care or treatment was rendered in accordance with the acceptable standard of care established in section three, article seven-b of this chapter.

(b) The limitation of liability established by the provisions of this section shall not apply to acts or omissions constituting gross negligence. For purposes of this section, the term "athletic event" includes scheduled practices for any athletic event.

**HOUSE BILL 2388**

**EFFECTIVE DATE:** June 12, 1998

**SIGNED BY GOVERNOR:** Passed March 4, 1998

**CODE REFERENCE(S):** New §§16-22A-1, 16-22A-2, 16-22A-3, 16-22A-4; and 16-22B-1, 16-22B-2, 16-22B-3

**TOPIC:** ADMINISTRATION OF HEARING LOSS TESTING FOR NEWBORN INFANTS; ESTABLISHMENT OF TESTING PROTOCOLS AND REASONABLE FEE SCHEDULES; AUTHORIZING AN ADVISORY COMMITTEE; ESTABLISHING THE WV BIRTH SCORE PROGRAM; AUTHORIZING THE DIVISION OF HEALTH TO PROPOSE LEGISLATIVE RULES, INCLUDING PENALTIES, TO ENSURE IMPLEMENTATION AND COMPLIANCE WITH BIRTH SCORE PROGRAM

**INTRODUCTION:**

This Act adds two new articles relating to the administration of hearing loss testing for newborn infants; requires certain payments for testing; authorizes the director of health to promulgate legislative rules to establish testing protocols and reasonable fee schedules; authorizes an advisory committee; establishes the WV birth score program; establishes legislative findings and intent; authorizes the division of health to establish and implement a birth score program which identifies newborn children at high risk for postneonatal mortality, debilitating conditions, and developmental delays and refers those children to primary care physicians for subsequent follow-up care; requires hospitals, birthing facilities, attending physicians, and other persons attending a birth to require and ensure that a birth score is determined; provides an exemption to a program participating when it conflicts with religious beliefs; authorizes the division of health to provide necessary medical and other needed referrals; and authorizes the division of health to propose legislative rules, including penalties, to ensure implementation of and compliance with the birth score program.

**MAJOR NEW PROVISIONS:**

1. Provides that after a live birth, a testing for hearing loss in the infant must be performed, unless the infant's parents refuse. The director of the division of health shall prescribe the test or tests to be administered.
2. Directs the director of the division of health to propose legislative rules for establishing: a) a reasonable fee schedule for tests; b) a cost-effective testing protocol based upon available technology and national standards; c) reporting and

referral requirements; and d) a date for implementation of the testing protocol not later than July 1, 1999.

3. Provides for coverage of fees by health insurers, medical assistance, and other options of payment.

4. Establishes an advisory committee to advise the director of the division of health regarding the protocol, validity, monitoring, and cost of testing procedures; to meet four times per year for the first two years; consist of the director as chair and twelve appointed members, one from each of the following: a) health insurance industry; b) otolaryngologist or otologist; c) audiologist; d) neonatologist; e) pediatrician; f) hospital administrator; g) speech/language pathologist; h) teacher or administrator from the WV school for the deaf; i) parent of a hearing impaired child; j) representative from early intervention within the department of health and human resources; k) representative from the state department of education; and l) representative from the WV commission for the deaf and hard-of-hearing. Committee members serve without compensation for two year terms.

5. Authorizes the department of health and human resources to establish and implement a birth score program designed to combat postneonatal mortality and to detect debilitating conditions and possible developmental delays in newborn infants.

6. Orders the division of health to propose rules for legislative approval to establish the program, ensure compliance, and assess penalties.

**ENROLLED**

**COMMITTEE SUBSTITUTE**

**FOR**

**H. B. 2388**

(By Delegates Jenkins, Mezzatesta and Spencer)

[Passed March 14, 1998; in effect ninety days from passage.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new articles, designated article twenty-two-a and article twenty-two-b, relating to the administration of hearing loss testing for newborn infants; requiring certain payment for testing; authorizing the director of health to promulgate legislative rules to establish testing protocols and reasonable fee schedules; and authorizing an advisory committee; establishing the West Virginia birth score program; establishing legislative findings and intent; authorizing the division of health to establish and implement a birth score program which identifies newborn children at high risk for postneonatal mortality, debilitating conditions and developmental delays and refers those children to primary care physicians for subsequent follow-up care; requiring hospitals, birthing facilities, attending physicians and other persons attending a birth to require and ensure that a birth score is determined; providing an exemption to program participation when it conflicts with religious beliefs; authorizing the division of health to provide necessary medical and other needed referrals; and authorizing the division of health to propose legislative rules, including penalties, to ensure implementation of and compliance with the birth score program.

***Be it enacted by the Legislature of West Virginia:***

That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new articles, designated article twenty-two-a and article twenty-two-b, both to read as follows:

**ARTICLE 22A. TESTING OF NEWBORN INFANTS FOR HEARING IMPAIRMENTS.**

**§16-22A-1. Testing required.**

The physician or midwife in attendance at, or present immediately after a live birth shall perform, or cause to be performed, a test for hearing loss in the infant unless the infant's parents refuse under subsection (c), section three of this article to have the testing performed. For any infant delivered at a nonlicensed facility, including home births, the physician or other health care provider shall inform the parents of the need to the obtain testing within the first month of life. The director of the division of health shall prescribe the test or tests to be administered in accordance with this article.

**§16-22A-2. Rulemaking authorized.**

The director of the division of health shall propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to: (1) Establish a reasonable fee schedule for tests administered pursuant to this article, which shall be used to cover program costs not otherwise covered by federal grant funds specifically secured for this purpose; (2) establish a cost-effective testing protocol based upon available technology and national standards; (3) establish reporting and referral requirements; and (4) establish a date for implementation of the testing protocol, which shall not be later than the first day of July, one thousand nine hundred ninety-nine.

**§16-22A-3. Fees for testing; payment of same.**

(a) Testing required under this article shall be a covered benefit reimbursable by all health insurers except for health insurers that offer only supplemental coverage policies or policies which cover only specified diseases. All policies issued pursuant to articles fifteen, sixteen, twenty-four and twenty-five-a of chapter thirty-three of this code shall provide coverage for the testing required under this article.

(b) The department of health and human resources shall pay for testing required under this article when the newborn infant is eligible for medical assistance under the provisions of section twelve, article five, chapter nine of this code.

(c) In the absence of a third-party payor, the parents of a newborn infant shall be informed of the testing availability and its costs and they may refuse to have the testing performed. Charges for the testing required under this article shall be paid by the hospital or other health care facility where the infant's birth occurred: *Provided*, That nothing contained in this section may be construed to preclude the hospital or other health care facility from billing the infant's parents directly.

#### **§16-22A-4. Hearing impairment testing advisory committee established.**

(a) There is hereby established a West Virginia hearing impairment testing advisory committee which shall advise the director of the division of health regarding the protocol, validity, monitoring and cost of testing procedures required under this article. This committee is to meet four times per year for the initial two years and on the call of the director thereafter. The director shall serve as the chair and shall appoint twelve members, one representing each of the following groups:

(1) A representative of the health insurance industry;

(2) An otolaryngologist or otologist;

(3) An audiologist with experience in evaluating infants;

(4) A neonatologist;

(5) A pediatrician;

(6) A hospital administrator;

(7) A speech or language pathologist;

(8) A teacher or administrative representative from the West Virginia school of the deaf;

(9) A parent of a hearing-impaired child;

(10) A representative from the office of early intervention services within the department of health and human resources;

(11) A representative from the state department of education; and

(12) A representative from the West Virginia commission for the deaf and hard-of-hearing.

(b) Members of this advisory committee shall serve without compensation. A majority of members constitutes a quorum for the transaction of all business. Members shall serve for two-year terms and may not serve for more than two consecutive terms.

#### **ARTICLE 22B. BIRTH SCORE PROGRAM.**

##### **§16-22B-1. Legislative findings; intent; purpose.**

(a) The Legislature hereby finds that until 1984, West Virginia had one of the highest rates of postneonatal mortality in the United States, which is defined as infants dying between one month and one year of age. In the early 1980s, studies in West Virginia showed that infants at greatest risk of dying during the first year after birth had poor attendance at regular physician visits and often received minimal health care. The system for assessing infants at risk for postneonatal mortality, debilitating conditions and developmental delays was erratic and many West Virginia physicians were poorly trained about risk assessment. Uniform guidelines for at-risk infants to enter care did not exist.

(b) In 1985, the birth scoring system, a cooperative effort between the division of health and the West Virginia University department of pediatrics was initiated. The goals of the scoring system were: (1) To identify newborns at greatest risk for death between one month and one year of age; and (2) to link high risk infants with physicians for close follow-up during the first year of life.

(c) Since its inception, the birth scoring system has been expanded to identify and link infants at risk for debilitating conditions and developmental delays with necessary and available services. The program has been greatly successful in

identifying at-risk newborns and in obtaining appropriate medical care for those infants.

(d) With the success of the birth scoring system at reducing postneonatal mortality rates in the state, it is the intention of the Legislature to establish the birth score system as a universal, preventive program to be enacted at the delivery of each newborn in the state. The purpose of this article is to ensure that all of the state's birthing hospitals and facilities adopt and implement this prevention program.

#### **§16-22B-2. Birth score program established.**

(a) The division of health within the department of health and human resources is hereby authorized to establish and implement a birth score program designed to combat postneonatal mortality and to detect debilitating conditions and possible developmental delays in newborn infants in the state.

(b) The purpose and goals of the birth score program are to reduce the incidence of postneonatal mortality and disease by:

(1) Identifying newborns at greatest risk for death between one month and one year of age; and

(2) Linking these infants with physicians for close follow-up during the first year of life.

(c) The birth score of a newborn infant shall be determined pursuant to the program established by the division of health by trained hospital or birthing facility personnel immediately after the infant is delivered.

#### **§16-22B-3. Determination of birth score; referral to physician.**

(a) Any hospital or birthing facility in which an infant is born, any physician attending the infant, or any other person attending the infant if not under the care of a physician, shall require and ensure that a birth score is determined for the newborn infant in order to assess the level of risk for postneonatal mortality, debilitating conditions and developmental delays: *Provided*, That no birth score shall be determined or birth score program implemented if the parent or guardian objects to the birth score program on the grounds that it conflicts with their religious tenets and practices. Any infant delivered at a nonlicensed facility, including, but not limited to, home births, shall have a birth score determined by the child's primary physician within ten days of birth, subject to the exception set forth in this subsection.

(b) When any infant receives a high risk birth score, as determined by the program established by this article, the parents shall be informed of the birth score and its implications, and then linked with a local primary care physician for a recommended six visits in the first six months of the infant's life.

(c) The division of health, in cooperation with other state departments and agencies, may provide necessary medical and other referrals for services related to infants determined to be at high risk for postneonatal mortality and other debilitating conditions and developmental delays.

#### **§16-22B-4. Rules.**

On or before the thirtieth day of June, one thousand nine hundred ninety-eight, the division of health shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code as may be needed to establish the program, ensure compliance and assess penalties as needed to implement the provisions of this article.

## HOUSE BILL 2817

**EFFECTIVE DATE:** NINETY DAYS from PASSAGE ON MARCH 4, 1998

**CODE REFERENCE (S):** NEW §§ 48-2C-19 AND 48-2C-20

**TOPIC:** REQUIRED CURRICULA FOR PUBLIC EDUCATION SYSTEM; CONTINUING EDUCATION FOR SCHOOL PERSONNEL WHO ARE REQUIRED TO REPORT CHILD ABUSE AND NEGLECT

### **INTRODUCTION**

The two sections of this Act require the State Board of Education to develop in consultation with public and private agencies curricula and continuing education programs concerning violence prevention including domestic or family violence. The continuing education courses are for anyone required to report child abuse and neglect.

### **MAJOR NEW PROVISIONS:**

1. Develop age appropriate curriculum concerning the dynamics of violence, prevention of violence including domestic or family violence;
2. Develop curricula for counselors, health-care personnel, administrators, and teachers concerning domestic or family violence;
3. Provide or require continuing education concerning domestic or family violence for all employees who are required by law to report child abuse or neglect;
4. Funds must come from existing appropriations.

**ENROLLED**

**COMMITTEE SUBSTITUTE**

**FOR**

**H. B. 2817**



(By Delegates Fleischauer, Amores, Laird,  
Caputo, Capito, Osborne and Mahan)

[Passed March 4, 1998; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, two, three, four, five, six, nine, ten, ten-a, twelve and fourteen, article two-a, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section seven; to amend and reenact sections two, three, four and ten, article two-c of said chapter; to further amend said article by adding thereto eleven new sections, designated sections four-a, four-b, ten-a, thirteen-a, thirteen-b, thirteen-c, sixteen, seventeen, eighteen, nineteen and twenty, all relating generally to domestic or family violence and its treatment and prevention; setting forth legislative findings and purposes; defining certain terms; establishing the venue of proceedings; clarifying provisions relating to full faith and credit; requiring verified petition; authorizing petition to be filed by person who reported or was a witness to domestic or family violence; issuance of protective order; describing terms that may be included in a protective order; prescribing the length of time a protective order may remain in effect; amendment of a protective order; prohibition against mutual protective orders; safety of the child as a factor in determining visitation; prescribing the conditions for visitation in cases involving domestic or family violence; law enforcement response to domestic or family violence; filing of orders with law enforcement agency; civil contempt alleging violation of an order; registration of protective order; conditions under which arrest is made; defining certain terms used in domestic violence act; establishing the family protection services board; prescribing the duties of the family protection services board; establishing local councils on domestic or family violence; providing for a state public health plan for reducing domestic or family violence; referral of victims by law enforcement officers to available shelters; notice of victims' rights and remedies and services available; publishing of model standards, procedure and curricula concerning domestic or family violence; regulating intervention programs for perpetrators of domestic or family violence; licensing providers of intervention programs for perpetrators of domestic or family violence; providing for training and continuing education in matters involving domestic or family violence for certain state employees, law-enforcement officers, judicial officers and court personnel, and school personnel who are required to report child abuse and neglect; development of curricula for public education.

*Be it enacted by the Legislature of West Virginia:*

That sections one, two, three, four, five, six, nine, ten, ten-a, twelve and fourteen, article two-a, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto a new section, designated section seven; that sections two, three, four and ten, article two-c of said chapter be amended and reenacted; and that said article be further amended by adding thereto eleven new sections, designated sections four-a, four-b, ten-a, thirteen-a, thirteen-b, thirteen-c, sixteen, seventeen, eighteen, nineteen and twenty, all to read as follows:

## **ARTICLE 2A. PREVENTION AND TREATMENT OF DOMESTIC AND FAMILY VIOLENCE.**

### **§48-2A-1. Findings and purposes.**

(a) The Legislature of this state finds that:

- (1) No one should be a victim of domestic or family violence. All people have a right to be safe in their homes and in their families;
- (2) Children are often physically assaulted or witness violence against one of their parents or other family or household members, violence which too often ultimately results in death. These children may suffer deep and lasting emotional

harm from victimization and from exposure to domestic or family violence;

(3) Domestic or family violence is a major health and law-enforcement problem in this state with enormous costs to the state in both dollars and human lives. It affects people of all racial and ethnic backgrounds and all socioeconomic classes; and

(4) Domestic or family violence can be deterred, prevented or reduced by legal intervention that treats this problem with the seriousness that it deserves.

(b) This article shall be liberally construed and applied to promote the following purposes:

(1) To assure victims of domestic or family violence the maximum protection from abuse that the law can provide;

(2) To create a speedy remedy to discourage violence against family or household members with whom the perpetrator of domestic or family violence has continuing contact;

(3) To expand the ability of law-enforcement officers to assist victims, to enforce the domestic or family violence law more effectively, and to prevent further abuse;

(4) To facilitate equal enforcement of criminal law by deterring and punishing violence against family and household members as diligently as violence committed against strangers;

(5) To recognize that domestic or family violence constitutes serious criminal behavior with potentially tragic results and that it will no longer be excused or tolerated; and

(6) To recognize that the existence of a former or on-going familial or other relationship should not serve to excuse, explain or mitigate acts of domestic or family violence which are otherwise punishable as crimes under the laws of this state.

#### **§48-2A-2. Definitions.**

As used in this article, unless the context clearly requires otherwise:

(a) "Family violence" "domestic violence", "domestic or family violence", or "abuse" means the occurrence of one or more of the following acts between family or household members, as that term is defined in subsection (b) of this section:

(1) Attempting to cause or intentionally, knowingly or recklessly causing physical harm to another with or without dangerous or deadly weapons;

(2) Placing another in reasonable apprehension of physical harm;

(3) Creating fear of physical harm by harassment, psychological abuse or threatening acts;

(4) Committing either sexual assault or sexual abuse as those terms are defined in articles eight-b and eight-d, chapter sixty-one of this code; and

(5) Holding, confining, detaining or abducting another person against that person's will.

(b) "Family or household member" means current or former spouses, persons living as spouses, persons who formerly resided as spouses, parents, children and stepchildren, current or former sexual or intimate partners, persons who are dating or who have dated, persons who are presently residing or cohabiting together or in the past have resided or cohabited together or a person with whom the victim has a child in common.

(c) "Program for victims of domestic or family violence" means a licensed program for victims of domestic or family violence and their children, which program provides advocacy, shelter, crisis intervention, social services, treatment,

counseling, education or training.

(d) "Program of intervention for perpetrators" means a licensed program, where available, or if no licensed program is available, a program that:

(1) Accepts perpetrators of domestic or family violence into educational intervention groups or counseling pursuant to a court order; or

(2) Offers educational intervention groups to perpetrators of domestic or family violence.

**§48-2A-3. Jurisdiction; venue; effect of petitioner's leaving residence; priority of petitions filed under this article; who may file; full faith and credit; process.**

(a) *Jurisdiction.* -- Circuit courts and magistrate courts, as constituted under chapter fifty of this code, have concurrent jurisdiction over proceedings under this article.

(b) *Venue.* -- The action may be heard in the county in which the domestic or family violence occurred, in the county in which the respondent is living or in the county in which the petitioner is living, either temporarily or permanently. If the parties are married to each other, the action may also be brought in the county in which an action for divorce between the parties may be brought as provided by section eight, article two of this chapter.

(c) *Petitioner's rights.* -- The petitioner's right to relief under this article shall not be affected by his or her leaving a residence or household to avoid further abuse.

(d) *Priority of petitions.* -- Any petition filed under the provisions of this article shall be given priority over any other civil action before the court, except actions in which trial is in progress, and shall be docketed immediately upon filing. Any appeal to the circuit court of a magistrate's judgment on a petition for relief under this article shall be heard within ten working days of the filing of the appeal.

(e) *Full faith and credit.* -- Any temporary or final protective order issued pursuant to this article shall be effective throughout the state in every county. Any protective order issued by any other state, territory or possession of the United States, Puerto Rico, the District of Columbia or Indian tribe shall be accorded full faith and credit and enforced as if it were an order of this state whether or not such relief is available in this state. A protective order from another jurisdiction is presumed to be valid if the order appears authentic on its face and shall be enforced in this state. If the validity of the order is contested, the court or law enforcement to which the order is presented shall, prior to the final hearing, determine the existence, validity and terms of such order in the issuing jurisdiction. A protective order from another jurisdiction may be enforced even if the order is not entered into the state law enforcement information system described by section twelve of this article.

(f) *Service by publication.* -- A protective order may be served on the respondent by means of a Class I legal advertisement published notice, with the publication area being the county in which the respondent resides, published in accordance with the provisions of section two, article three, chapter fifty-nine of this code if: (i) The petitioner files an affidavit with the court stating that an attempt at personal service pursuant to rule four of the West Virginia rules of civil procedure has been unsuccessful or evidence is adduced at the hearing for the protective order that the respondent has left the state of West Virginia; and (ii) a copy of the order is mailed by certified or registered mail to the respondent at the respondent's last known residence and returned undelivered.

**§48-2A-4. Commencement of proceeding; forms; counterclaim; accompanying persons.**

(a) No person shall be refused the right to file a petition under the provisions of this article. No person shall be denied relief under the provisions of this article if she or he presents facts sufficient under the provisions of this article for the relief sought. The petition shall be verified.

A petition for a protective order may be filed by:

- (1) A person seeking relief under this article for herself or himself;
  - (2) An adult family or household member for the protection of the victim or for any family or household member who is a minor child or physically or mentally incapacitated to the extent that he or she cannot file on his or her own behalf, or
  - (3) A person who reported or was a witness to domestic or family violence and who, as a result, has been abused, threatened, harassed or who has been the subject of other actions intended to intimidate the person.
- (b) The West Virginia supreme court of appeals shall prescribe forms which are necessary and convenient for proceedings pursuant to this article, and the court shall distribute such forms to the clerk of the circuit court and magistrate court of each county within the state.
- (c) The respondent named in any petition alleging domestic or family violence may file a counterclaim or raise any affirmative defenses.
- (d) No person accompanying a person who is seeking to file a petition under the provisions of this article is precluded from being present if his or her presence is desired by the person seeking a petition unless the person's behavior is disruptive to the proceeding.
- (e) No fees shall be charged for the filing of petitions or other papers, service of petitions or orders, copies of orders, or other costs for services provided by, or associated with, any proceedings under this article until the matter is brought before the court for final resolution.

#### **§48-2A-5. Temporary orders of court; hearings; persons present.**

- (a) Upon filing of a verified petition under this article, the court may enter such temporary orders as it may deem necessary to protect the petitioner or minor children from domestic or family violence and, upon good cause shown, may do so ex parte without the necessity of bond being given by the petitioner. Clear and convincing evidence of immediate and present danger of abuse to the petitioner or minor children shall constitute good cause for the issuance of an ex parte order pursuant to this section. If the respondent is not present at the proceeding, the petitioner or the petitioner's legal representative shall certify to the court, in writing, the efforts which have been made to give notice to the respondent or just cause why notice should not be required. Copies of medical reports or records may be admitted into evidence to the same extent as though the original thereof. The custodian of such records shall not be required to be present to authenticate such records for any proceeding held pursuant to this subsection. Following such proceeding, the court shall order a copy of the petition to be served immediately upon the respondent, together with a copy of any temporary order issued pursuant to the proceedings, notice setting forth the time and place of the full hearing and a statement of the right of the respondent to be present and to be represented by counsel. Copies of any order made under the provisions of this section shall also be issued to the petitioner and any law-enforcement agency having jurisdiction to enforce the order, including the city police, the county sheriff's office and local office of the state police within twenty-four hours of the entry of the order. A temporary protective order shall remain effective until such time as a hearing is held and shall be in full force and effect in every county in this state.
- (b) Within five days following the issuance of the court's temporary order, a full hearing shall be held at which the petitioner must prove the allegation of domestic or family violence, or that he or she reported or witnessed domestic violence against another and has, as a result, been abused, threatened, harassed or has been the subject of other actions to attempt to intimidate him or her, by a preponderance of the evidence, or such petition shall be dismissed. If the respondent has not been served with notice of the temporary order, the hearing may be continued in order to permit service to be effected. The failure to obtain service upon the respondent does not constitute a basis for dismissing the petition. Copies of medical reports may be admitted into evidence to the same extent as though the original thereof, upon proper authentication, by the custodian of such records.
- (c) No person requested by a party to be present during a hearing held under the provisions of this article shall be precluded from being present unless such person is to be a witness in the proceeding and a motion for sequestration has been made and such motion has been granted. A person found by the court to be disruptive may be precluded from being present.

(d) If a hearing is continued, the court may make or extend such temporary orders as it deems necessary.

**§48-2A-6. Protective orders.**

(a) At the conclusion of the hearing, if the petitioner has proven the allegations of domestic or family violence, or that he or she reported or witnessed domestic or family violence against another and has, as a result, been abused, threatened, harassed or has been the subject of other actions to attempt to intimidate him or her, by a preponderance of the evidence, the court shall issue a protective order directing the respondent to refrain from abusing, harassing, stalking, threatening or otherwise intimidating the petitioner, the person who reported or witnessed family or domestic violence or the minor children, or engaging in other conduct that would place the petitioner, the person who reported or witnessed family or domestic violence or the minor children in reasonable fear of bodily injury. Where the respondent is present at the hearing and elects not to contest the allegations of domestic or family violence or does not contest the relief sought, the petitioner is not required to adduce evidence and prove the allegations of domestic or family violence and the court may directly address the issues of the relief requested.

(b) Where the petitioner is the victim of domestic or family violence, the terms of a protective order may include:

- (1) Granting possession to the petitioner of the residence or household jointly resided in at the time the abuse occurred;
- (2) Awarding temporary custody of or establishing temporary visitation rights with regard to minor children named in the order;
- (3) Establishing terms of temporary visitation with regard to the minor children named in the order including, but not limited to, requiring third party supervision of visitations if necessary to protect the petitioner and/or the minor children;
- (4) Ordering the noncustodial parent to pay to the custodial parent a sum for temporary support and maintenance of the petitioner and children, if any;
- (5) Ordering the respondent to pay to the petitioner a sum for temporary support and maintenance of the petitioner, where appropriate;
- (6) Ordering the respondent to refrain from entering the school, business or place of employment of the petitioner or household or family members for the purpose of violating the protective order;
- (7) Ordering the respondent to participate in an intervention program for perpetrators;
- (8) Ordering the respondent to refrain from contacting, telephoning, communicating, harassing or verbally abusing the petitioner
- (9) Providing for either party to obtain personal property or other items from a location, including granting temporary possession of motor vehicles owned by either or both of the parties, and providing for the safety of the parties while this occurs, including ordering a law enforcement officer to accompany one or both of the parties.
- (10) Prohibiting the respondent from using or possessing a firearm or other weapon, notwithstanding the fact that the respondent has a valid license to possess such firearm or other weapon;
- (11) Informing the respondent that possession of a firearm while subject to a protective order is a violation of federal law.
- (12) Ordering the respondent to reimburse the petitioner or other person for any expenses incurred as a result of the domestic or family violence, including, but not limited to, medical expenses, transportation and shelter; and
- (13) Ordering the petitioner and respondent to refrain from transferring, conveying, alienating, encumbering, or otherwise dealing with property which could otherwise be subject to the jurisdiction of the court or another court in an action for divorce or support, partition or in any other action affecting their interests in property.

(c) Where the petitioner or other person to be protected reported or was a witness to the family or domestic violence, the terms of a protective order may include:

(1) Ordering the respondent to refrain from abusing, contacting, telephoning, communicating, harassing, verbally abusing or otherwise intimidating the petitioner or other person to be protected.

(2) Ordering the respondent to refrain from entering the school, business or place of employment of the petitioner or other person to be protected, for the purpose of violating the protective order.

(d) Except as otherwise provided by subsection (d), section three-a of this article, a final protective order issued by a magistrate, family law master or circuit judge pursuant to this article or subdivision thirteen, subsection (a), article two of this chapter, is effective for either ninety days or one hundred eighty days, in the discretion of the court. If the court enters an order for a period of ninety days, upon receipt of a written request from the petitioner prior to the expiration of the ninety day period, the court shall extend its order for an additional ninety-day period..

(e) To be effective, a written request to extend an order from ninety days to one hundred eighty days must be submitted to the court prior to the expiration of the original ninety-day period. A notice of the extension shall be sent by the clerk of the court to the respondent by first class mail, addressed to the last known address of the respondent as indicated by the court's case filings. The extension of time is effective upon mailing of the notice.

(f) The court may amend the terms of a protective order at any time upon subsequent petition filed by either party. The protective order shall be in full force and effect in every county of this state and shall so state.

(g) No order under this article shall in any manner affect title to any real property.

(h) Certified copies of any order or extension notice made under the provisions of this section shall be issued to the petitioner, the respondent and any law-enforcement agency having jurisdiction to enforce the order, including the city police, the county sheriff's office or local office of the West Virginia state police within twenty-four hours of the entry of the order.

(i) Mutual protective orders are prohibited unless both parties have filed a petition under section four of this article and have proven the allegations of domestic or family violence by a preponderance of the evidence. This shall not prevent other persons, including the respondent, from filing a separate petition. The court may consolidate two or more petitions if he or she determines that consolidation will further the interests of justice and judicial economy. The court shall enter a separate order for each petition filed.

(j) Any protective order issued pursuant to this article shall contain on its face the following statement, printed in bold faced type or in capital letters:

**"VIOLATION OF THIS ORDER MAY BE PUNISHED BY CONFINEMENT IN A REGIONAL OR COUNTY JAIL FOR AS LONG AS ONE YEAR AND BY A FINE OF AS MUCH AS TWO THOUSAND DOLLARS"**

#### **§48-2A-7. Conditions of visitation in cases involving domestic or family violence.**

(a) A court may award visitation of a child by a parent who has committed domestic or family violence only if the court finds that adequate provision for the safety of the child and the petitioner can be made.

(b) In a visitation order, a court may:

(1) Order an exchange of a child to occur in a protected setting;

(2) Order that supervision be provided by another person or agency;

(3) Order the perpetrator of domestic or family violence to attend and complete, to the satisfaction of the court, a program of intervention for perpetrators as a condition of the visitation;

- (4) Order the perpetrator of domestic or family violence to abstain from possession or consumption of alcohol or controlled substances during the visitation and for the twelve hours that precede the visitation;
  - (5) Order the perpetrator of domestic or family violence to pay the costs of supervised visitation, if any;
  - (6) Prohibit overnight visitation;
  - (7) Impose any other condition that the court considers necessary to provide for the safety of the child, the petitioner or any other family or household member.
- (c) Regardless of whether visitation is allowed, the court may order that the address of the child and the petitioner be kept confidential.
- (d) If a court allows a family or household member to supervise visitation, the court shall establish conditions to be followed during visitation.

**§48-2A-9. Law enforcement response to domestic or family violence.**

- (a) Notwithstanding any other provision of this code to the contrary, all law-enforcement officers are hereby authorized to serve all pleadings and orders filed or entered pursuant to this article on Sundays and legal holidays. No law-enforcement officer shall refuse to serve any pleadings or orders entered pursuant to this article.
- (b) Any law-enforcement officer responding to an alleged incident of domestic or family violence shall inform the parties thereto of the availability of the possible remedies provided by this article and the possible applicability of the criminal laws of this state. Any law-enforcement officer investigating an alleged incident of domestic or family violence shall advise the victim of such violence of the availability of the family protection shelter to which such person may be admitted.
- (c) Any law-enforcement officer responding to an alleged incident of domestic or family violence shall, in addition to providing the information required in subsection (a) of this section, provide transportation for or facilitate transportation of the victim or victims, upon the request of such victim or victims, to a shelter or the appropriate court where there is reasonable cause to believe that such victim or victims have suffered or are likely to suffer physical injury.
- (d) Each law-enforcement agency shall maintain records on all incidents of domestic or family violence reported to it and shall monthly make and deliver to the West Virginia state police a report on a form prescribed by the state police, listing all such incidents of domestic or family violence. Such reports shall include:
- (1) The age and sex of the victim and the perpetrator of domestic or family violence;
  - (2) The relationship between the parties;
  - (3) The type and extent of abuse;
  - (4) The number and type of weapons involved;
  - (5) Whether the law-enforcement agency responded to the complaint and if so, the time involved, the action taken and the time lapse between the agency's action and the victim's request for assistance;
  - (6) Whether any prior reports have been made, received or filed regarding domestic or family violence on any prior occasion and if so, the number of such prior reports; and
  - (7) The effective dates and terms of any protective order issued prior to or following the incident to protect the victim: *Provided*, That no information which will permit the identification of the parties involved in any incident of domestic or family violence shall be included in such report.

(e) The West Virginia state police shall tabulate and analyze any statistical data derived from the reports made by law-enforcement agencies pursuant to this section and publish a statistical compilation in its annual uniform crime report, as provided for in section twenty-four, article two, chapter fifteen of this code. The statistical compilation shall include, but is not limited to, the following:

- (1) The number of domestic or family violence complaints received;
- (2) The number of complaints investigated;
- (3) The number of complaints received from alleged victims of each sex;
- (4) The average time lapse in responding to such complaints;
- (5) The number of complaints received from alleged victims who have filed such complaints on prior occasions;
- (6) The number of aggravated assaults and homicides resulting from such repeat incidents;
- (7) The type of police action taken in disposition of the cases; and
- (8) The number of alleged violations of protective orders.

(f) As used in this section, the terms "abuse", "family violence" and "family or household members" shall have the meanings given them in section two of this article; and the term "law-enforcement agency" shall include the West Virginia department of health and human resources in those instances of child abuse reported to the department which are not otherwise reported to any other law-enforcement agency.

(g) The governor's committee on crime, delinquency and correction shall develop and promulgate rules for state, county and municipal law-enforcement officers and law-enforcement agencies with regard to domestic violence. The notice of the public hearing on the rules shall be published before the first day of July, one thousand nine hundred ninety-one. Prior to the publication of the proposed rules, the governor's committee on crime, delinquency and correction shall convene a meeting or meetings of an advisory committee to assist in the development of the rules. The advisory committee shall be composed of persons invited by the committee to represent state, county and local law-enforcement agencies and officers, to represent magistrates and court officials, to represent victims of domestic or family violence, to represent shelters receiving funding pursuant to article two-c of this chapter and to represent other persons or organizations who, in the discretion of the committee, have an interest in the rules. The rules and the revisions thereof as provided in this section shall be promulgated as legislative rules in accordance with chapter twenty-nine-a of this code. Following the promulgation of said rules, the committee shall meet at least annually to review the rules and to propose revisions as a result of changes in law or policy.

(h) Nothing in this section shall be construed to authorize the inclusion of information contained in a report of an incident of abuse in any local, state, interstate, national or international systems of criminal identification pursuant to section twenty-four, article two, chapter fifteen of this code: *Provided*, That nothing in this section shall prohibit the West Virginia state police from processing information through its criminal identification bureau with respect to any actual charge or conviction of a crime.

(i) All law-enforcement officers shall receive training relating to response to calls involving domestic or family violence by the first day of October, one thousand nine hundred ninety-three.

(j) Two years after the entry of a final protective order, the circuit court, may, upon motion, order that the protective order and references to the order be purged from the file maintained by any law-enforcement agency and may further order that the file maintained by the court be sealed and not opened except upon order of the court when such is in the interest of justice.

**§48-2A-10. Filing of orders with law-enforcement agency.**



Upon entry of an order pursuant to section five or six of this article, or an order entered pursuant to section thirteen, article two of this chapter granting relief provided for by this article, a copy of the order shall, no later than the close of the next business day, be transmitted by the court or the clerk of the court to a local office of the city police, the county sheriff and the West Virginia state police, where it shall be placed in a confidential file, with access provided only to the law-enforcement agency and the respondent named on the order. A sworn affidavit may be executed by a party who has been awarded exclusive possession of the residence or household, pursuant to an order entered under subsection (b), section six of this article, and shall be delivered to such law-enforcement agencies simultaneously with any order, giving his or her consent for a law-enforcement officer to enter the residence or household, without a warrant, to enforce the protective order or temporary order. Orders shall be promptly served upon the respondent. Failure to serve a protective order does not stay the effect of a valid order if the respondent has actual notice of the existence and contents of the order.

**§48-2A-10a. Civil contempt; violation of protective orders; order to show cause.**

(a) Any party to a protective order or a legal guardian or guardian ad litem may file a petition for civil contempt alleging a violation of an order issued pursuant to the provisions of this article. Such petition shall be filed in a court in the county in which the violation occurred or the county in which the order was issued.

(b) When a petition for an order to show cause is filed, a hearing on the petition shall be held within five days from the filing of the petition. Any order to show cause which is issued shall be served upon the alleged violator.

(c) Upon a finding of contempt, the court may order the violator to comply with specific provisions of the protective order and post a bond as surety for faithful compliance with such order.

**§48-2A-12. Registration of order.**

(a) The West Virginia state police shall maintain a registry in which it shall enter certified copies of orders entered by courts from every county in this state pursuant to the provisions of this article, or from other jurisdictions pursuant to their laws: *Provided*, That the provisions of this subsection are not effective until a central automated record system is developed.

(b) A petitioner who obtains a protective order pursuant to this article, or from another jurisdiction pursuant to its law, may register that order in any county within this state where the petitioner believes enforcement may be necessary.

(c) A protective order may be registered by the petitioner in a county other than the issuing county by obtaining a copy of the order of the issuing court, certified by the clerk of that court, and presenting that certified order to the local office of the West Virginia state police where the order is to be registered.

(d) Upon receipt of a certified order for registration, the local office of the state police shall provide certified copies to any law-enforcement agency within its jurisdiction, including the city police and the county sheriff's office.

(e) Nothing in this section precludes the enforcement of an order in a county other than the county or jurisdiction in which the order was issued, if the petitioner has not registered the order in the county in which an alleged violation of the order occurs.

**§48-2A-14. Arrest in domestic violence matters; conditions.**

(a) Notwithstanding any provision of this code to the contrary, if a person is alleged to have committed a violation of the provisions of subsection (a) or (b), section twenty-eight, article two, chapter sixty-one of this code against a family or household member, in addition to any other authority to arrest granted by this code, a law-enforcement officer has authority to arrest that person without first obtaining a warrant if:

(1) The law-enforcement officer has observed credible corroborative evidence that an offense has occurred; and either:

(2) The law-enforcement officer has received, from the victim or a witness, an oral or written allegation of facts

constituting a violation of section twenty-eight, article two, chapter sixty-one of this code; or

(3) The law-enforcement officer has observed credible evidence that the accused committed the offense.

(b) For purposes of this section, credible corroborative evidence means evidence that is worthy of belief and corresponds to the allegations of one or more elements of the offense and may include, but is not limited to, the following:

(1) *Condition of the alleged victim.* -- One or more contusions, scratches, cuts, abrasions, or swellings; missing hair; torn clothing or clothing in disarray consistent with a struggle; observable difficulty in breathing or breathlessness consistent with the effects of choking or a body blow; observable difficulty in movement consistent with the effects of a body blow or other unlawful physical contact.

(2) *Condition of the accused.* -- Physical injury or other conditions similar to those set out for the condition of the victim which are consistent with the alleged offense or alleged acts of self-defense by the victim.

(3) *Condition of the scene.* -- Damaged premises or furnishings; disarray or misplaced objects consistent with the effects of a struggle.

(4) *Other conditions.* -- Statements by the accused admitting one or more elements of the offense; threats made by the accused in the presence of an officer; audible evidence of a disturbance heard by the dispatcher or other agent receiving the request for police assistance; written statements by witnesses.

(c) Whenever any person is arrested pursuant to subsection (a) of this section, the arrested person shall be taken before a magistrate within the county in which the offense charged is alleged to have been committed in a manner consistent with the provisions of Rule 1 of the Administrative Rules for the Magistrate Courts of West Virginia.

(d) If an arrest for a violation of subsection (c), section twenty-eight, article two, chapter sixty-one of this code is authorized pursuant to this section, that fact constitutes prima facie evidence that the accused constitutes a threat or danger to the victim or other family or household members for the purpose of setting conditions of bail pursuant to section seventeen-c, article one-c, chapter sixty-two of this code.

(e) Whenever any person is arrested pursuant to the provisions of this article or for a violation of an order issued pursuant to subdivision (12), subsection (a), section thirteen, article two of this chapter, the arresting officer:

(1) Shall seize all weapons that are alleged to have been involved or threatened to be used in the commission of domestic or family violence; and

(2) May seize a weapon that is in plain view of the officer or was discovered pursuant to a consensual search, as necessary for the protection of the officer or other persons.

## **ARTICLE 2C. DOMESTIC VIOLENCE ACT.**

### **§48-2C-2. Definitions.**

As used in this article, unless the context clearly requires otherwise:

(a) "Board" means the family protection services board created pursuant to section three of this article;

(b) "Department" means the department of health and human resources or any successor agency however so named;

(c) "Shelter" or "Family Protection Shelter" means a licensed domestic or family violence shelter created for the purpose of receiving, on a temporary basis, persons who are victims of domestic violence, abuse or rape as well as the children of such victims;

(d) "Secretary" means the secretary of the department of health and human resources; and

(e) "Family protection program" or "program" means a licensed domestic or family violence program offered by a locally controlled organization primarily for the purpose of providing services to victims of domestic or family violence or abuse and their children.

**§48-2C-3. Family protection services board; members; purposes.**

(a) There is hereby created a family protection services board to consist of five persons. The governor, with the advice and consent of the Senate, shall appoint three members of the board. One such member shall be a director of a shelter. One member shall be a member of a major trade association which represents shelters across the state. The final gubernatorial appointee shall be a member of the public. The other two members shall be the secretary of the department of health and human resources, or his or her designee, and the chair of the governor's committee on crime, delinquency and correction, or his or her designee.

(b) The terms of the three members appointed by the governor shall be staggered terms of three years. In the case of the initial appointments, the director of the shelter shall serve a one-year term, the representative of the trade association shall serve a two-year term and the appointed member of the public shall serve a three-year term.

(c) In the event that a member of the board ceases to be qualified for appointment, then his or her appointment shall terminate.

**§48-2C-4. Duties of board.**

It is the duty of the board to:

(a) Regulate its procedural practice;

(b) Receive and consider applications for the development of shelters;

(c) Facilitate the formation and operation of shelters;

(d) Promulgate rules and regulations to implement the provisions of this article and any applicable federal guidelines;

(e) Advise the secretary on matters of concern relative to his or her responsibilities under this article;

(f) Study issues pertinent to family protection shelters, programs for domestic violence victims, and report the results to the governor and the Legislature;

(g) Conduct hearings as necessary under this article;

(h) Delegate to the secretary such powers and duties of the board as the board may deem appropriate to delegate, including, but not limited to, the authority to approve, disapprove, revoke or suspend licenses;

(i) Deliver funds to shelters within forty-five days of the approval of a proposal for such shelters;

(j) Establish a system of peer review which will ensure the safety, well being and health of the clients of all shelters operating in the state;

(k) Evaluate annually each funded shelter to determine its compliance with the goals and objectives set out in its original application for funding or subsequent revisions;

(l) To award to shelters, for each fiscal year, ninety-five percent of the total funds collected and paid over during the fiscal year to the special revenue account established pursuant to section twenty-four, article one of this chapter and to expend, during said period a sum not in excess of five percent of said funds for cost of administering provisions of this article;

- (m) Establish and enforce system of standards for annual licensure for all shelters and programs in the state;
- (n) Enforce standards; and
- (o) Review its rules and regulations biannually.

**§48-2C-4a. Establishment of local councils authorized.**

- (a) A local government, a county or a combination thereof may establish an advisory council on domestic or family violence.
- (b) The purpose of a local advisory council is to increase the awareness and understanding of domestic or family violence and its consequences and to reduce the incidence of domestic or family violence within the locality by:
  - (1) Promoting effective strategies for identification of the existence of domestic or family violence and intervention by public and private agencies serving persons who are victims of domestic or family violence;
  - (2) Providing for public education;
  - (3) Facilitating communication among public and private agencies that provide programs to assist victims and programs of intervention for perpetrators;
  - (4) Providing assistance to public and private agencies and providers of services to develop statewide procedures and community and staff education, including procedures to review fatalities; and
  - (5) Developing a comprehensive plan of data collection concerning domestic or family violence in cooperation with courts, prosecutors, law-enforcement officers, health care practitioners and other local agencies, in a manner that protects the identity of victims of domestic or family violence. Nothing contained in this subdivision shall be construed to modify or diminish any existing law relating to the confidentiality of records.

**§48-2C-4b. State public health plan for reducing domestic or family violence.**

- (a) The bureau for public health of the department of health and human resources, in consultation with the family protection services board, shall:
  - (1) Assess the impact of domestic or family violence on public health; and
  - (2) Write a state public health plan for reducing the incidence of domestic or family violence in this state.
- (b) The state public health plan shall:
  - (1) Include, but not be limited to, public education, including the use of the various communication media to set forth the public health perspective on domestic or family violence;
  - (2) Be developed in consultation with public and private agencies that provide programs for victims of domestic or family violence, advocates for victims, organizations representing the interests of shelters, and persons who have demonstrated expertise and experience in providing health care to victims of domestic or family violence and their children; and
  - (3) Be completed on or before the first day of January, two thousand.
- (c) The bureau for public health of the department of health and human resources shall:
  - (1) Transmit a copy of the state public health plan to the governor and the Legislature; and
  - (2) Review and update the state public health plan annually.

**§48-2C-10. Referral to shelters by officers.**

Where shelters are available, the law-enforcement officer or other public authority investigating an alleged incident of domestic or family violence shall advise the victim of the availability of the family protection shelter to which that person may be admitted.

**§48-2C-10a. Notice of victims' rights, remedies and available services; required information.**

(a) The bureau for public health of the department of health and human resources shall make available to health-care facilities and practitioners a written form notice of the rights of victims and the remedies and services available to victims of domestic or family violence.

(b) A health care practitioner whose patient has injuries or conditions consistent with domestic violence shall provide to the patient, and every health care facility shall make available to all patients, a written form notice of the rights of victims and the remedies and services available to victims of domestic or family violence.

**§48-2C-13a. Standards, procedures and curricula.**

(a) The bureau for public health of the department of health and human resources shall publish model standards, including specialized procedures and curricula, concerning domestic or family violence for health care facilities, practitioners and personnel. (b) The procedures and curricula shall be developed in consultation with public and private agencies that provide programs for victims of domestic or family violence, advocates for victims, organizations representing the interests of shelters, and personnel who have demonstrated expertise and experience in providing health care to victims of domestic or family violence and their children.

**§48-2C-13b. Regulation of intervention programs for perpetrators; required provisions; duties of providers.**

(a) The family protection services board shall propose legislative rules governing the minimum level of responsibility, service and accountability expected from providers of programs of intervention for perpetrators of domestic and family violence. These rules shall be proposed for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code. These rules shall be developed in consultation with public and private agencies that provide programs for victims of domestic or family violence and programs of intervention for perpetrators, with advocates for victims, with organizations that represent the interests of shelters, and with persons who have demonstrated expertise and experience in providing services to victims and perpetrators of domestic and family violence and their children. If a program of intervention for perpetrators receives funds from the state or is licensed by the state, the board shall review the program's compliance with the rules promulgated pursuant to this subsection.

(b) The rules for programs for intervention for perpetrators of domestic or family violence shall include:

- (1) Criteria concerning a perpetrator's appropriateness for the program;
- (2) Systems for communication and evaluation among the referring court, the public and private agencies that provide programs for victims of domestic or family violence and the programs of intervention for perpetrators; and
- (3) Required qualifications concerning education, training and experience for providers of intervention programs.

(c) The standards shall be based upon and incorporate the following principles:

- (1) The focus of a program is to end the acts of violence and ensure the safety of the victim and any children or other family or household members;
- (2) Domestic or family violence constitutes behavior for which the perpetrator is accountable; and
- (3) Although alcohol and substance abuse often exacerbate domestic or family violence, it is a separate problem which requires specialized intervention or treatment.

(d) Providers of perpetrator intervention programs:

(1) Shall require participants to sign the following releases:

(A) Allowing the provider to inform the victim and the victim's advocates that the perpetrator is participating in a batterers' intervention prevention program with the provider and to provide information to the victim and the victim's advocates, if necessary, for the victim's safety;

(B) Allowing prior and current treating agencies to provide information about the perpetrator to the provider; and

(C) Allowing the provider, for good cause, to provide information about the perpetrator to relevant legal entities, including courts, parole officers, probation officers and child protective services.

(2) Shall report to the court, if the participation was court ordered, and to the victim, if the victim requests and provides a method of notification, any assault, failure to comply with program requirements, failure to attend the program and threat of harm by the perpetrator.

(3) Shall report to the victim, without the participant's authorization, all threats of harm.

(4) May report to the victim, without the participant's authorization, the participant's failure to attend.

**§48-2C-13c. Licensing providers of intervention programs for perpetrators.**

(a) The board shall establish an application for licensure for all providers of programs of intervention for perpetrators in accordance with section thirteen-b of this article.

(b) Licenses may be renewed on an annual basis with all such licenses having a term of one year commencing on the first day of July and terminating on the thirtieth day of June on the next year.

(c) The board shall grant or deny any license within forty-five days of the receipt of the application.

(d) The license granted by the board shall be conspicuously displayed by the licensees.

(e) The board may grant a provisional license or grant a waiver of licensure if the board deems such waiver or provisional license necessary for the operation of a program. All such waivers or provisional licenses shall be reviewed semi-annually.

**§48-2C-16. Continuing education for certain state employees.**

(a)(1) Subject to the provisions of subdivision (2) of this subsection, the department of health and human resources shall provide or require continuing education concerning domestic or family violence for child protective services workers, adult protective services workers, social services workers, family support workers and workers in the child support enforcement division.

(2) Funding for the continuing education provided or required under subdivision (1) of this section may not exceed the amounts allocated for that purpose by the spending unit from existing appropriations. No provision of this section may be construed to require the Legislature to make any appropriation.

(b) The courses or requirements shall be prepared and presented in consultation with public and private agencies that provide programs for victims of domestic or family violence or programs of intervention for perpetrators, advocates for victims, organizations representing the interests of shelters, and the family protection services board.

**§48-2C-17. Continuing education for law-enforcement officers concerning domestic or family violence.**

(a)(1) Subject to the provisions of subdivision (2) of this subsection, as a part of the initial law enforcement officer

training required before a person may be employed as a law enforcement officer pursuant to article twenty-nine, chapter thirty of this code, all law enforcement officers shall receive training concerning domestic or family violence.

(2) Funding for the training required under subdivision (1) of this section may not exceed the amounts allocated by the spending unit for that purpose from existing appropriations. No provision of this section may be construed to require the Legislature to make any appropriation.

(b) The course of instruction and the objectives in learning and performance for the education of law-enforcement officers required pursuant to this section shall be developed and presented in consultation with public and private providers of programs for victims of domestic or family violence and programs of intervention for perpetrators, persons who have demonstrated expertise in training and education concerning domestic or family violence and organizations representing the interests of shelters.

#### **§48-2C-18. Judicial education on domestic or family violence.**

(a)(1) Subject to the provisions of subdivision (2) of this subsection, as a part of existing training for court personnel, the supreme court of appeals shall develop and present courses of continuing education concerning domestic or family violence for magistrates assistants, and juvenile and adult probation officers.

(2) Funding for the continuing education required under subdivision (1) of this section may not exceed the amounts allocated for that purpose by the supreme court of appeals from existing appropriations. No provision of this section may be construed to require the Legislature to make any appropriation.

(b) The course of instruction shall be prepared and may be presented in consultation with public and private agencies that provide programs for victims of domestic or family violence and programs of intervention for perpetrators, advocates for victims, persons who have demonstrated expertise in training and education concerning domestic or family violence, organizations representing the interests of shelters, and the family protection services board.

#### **§48-2C-19. Required curricula for public education system.**

(a)(1) Subject to the provisions of subdivision (2) of this subsection, the state board of education shall select or develop:

(A) Curricula that are appropriate for various ages for pupils concerning the dynamics of violence, prevention of violence, including domestic or family violence; and

(B) Curricula for school counselors, health-care personnel, administrators and teachers concerning domestic or family violence.

(2) Funding for selecting or developing the curricula required under subdivision (1) of this section may not exceed the amounts allocated for that purpose by the spending unit from existing appropriations. No provision of this section may be construed to require the Legislature to make any appropriation.

(b) The curricula shall be selected or developed by the state board of education in consultation with public and private agencies that provide programs for conflict resolution, violence prevention, victims of domestic or family violence and programs of intervention for perpetrators of domestic or family violence, advocates for victims, organizations representing the interests of shelters, persons who have demonstrated expertise and experience in education and domestic or family violence and the family protection services board.

#### **§48-2C-20. Continuing education for school personnel who are required to report child abuse and neglect.**

(a)(1) Subject to the provisions of subdivision (2) of this subsection, the state department of education shall provide or require courses of continuing education concerning domestic or family violence for employees who are required by law to report child abuse or neglect.

(2) Funding for the continuing education provided or required under subdivision (1) of this section may not exceed the

amounts allocated for that purpose by the spending unit from existing appropriations. No provision of this section may be construed to require the Legislature to make any appropriation.

(b) The courses or requirements shall be prepared and presented in consultation with public and private agencies that provide programs for victims of domestic or family violence, persons who have demonstrated expertise in education and domestic or family violence, advocates for victims, organizations representing the interests of shelters, and the family protection services board.

## HOUSE BILL 4034

**EFFECTIVE DATE:** June 14, 1998

**SIGNED BY GOVERNOR:** March 14, 1998

**CODE REFERENCE(S):** New: §§16-35-1, 16-35-2, 16-35-3, 16-35-4, 16-35-5, 16-35-6, 6-35-7, 16-35-8, 16-35-9, 16-35-10, 16-35-11,16-35-12

Amends and Reenacts : Chapter 16

**TOPIC:** WEST VIRGINIA LEAD ABATEMENT ACT



**INTRODUCTION:**

This bill requires the Director of the Division of Health to promulgate rules to provide training and licensing of personnel who are employed as lead abatement workers and establishes civil penalties and fees for violations of certain provisions of this article.

**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**  
**H. B. 4034**

(By Delegates Linch, Hunt, Mahan, Staton,  
Tomblin, Riggs and Thomas)

[Passed March 14, 1998; in effect ninety days from passage.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-five, relating to the regulation of lead abatement, assessment, and inspection activities and establishing licensing requirements for lead inspectors, risk assessors, supervisors, designers, contractors and workers; establishing legislative findings, providing definitions; establishing the powers and duties of the director of the division of health; authorizing the establishment of fees to; creating lead abatement, inspector and assessor license requirements; providing license application issuance, denial and revocation procedures; providing lead contractor's duties and responsibilities; providing exemptions from the notification and licensure requirements; providing for notification of elevated blood-lead levels; requiring reporting of lead abatement projects; establishing accreditation requirements for lead abatement instructors and training programs; providing for suspension or revocations of licenses and procedures therefore; establishing a special revenue account to administer the program; providing civil penalties and fees for violation of the certain provisions of this article; and creating a misdemeanor offense for violations of this article.

*Be it enacted by the Legislature of West Virginia:*

That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article thirty-five, to read as follows: **ARTICLE 35. LEAD ABATEMENT**

**§16-35-1. Short title.**

This article may be cited as the West Virginia "Lead Abatement Act."

**§16-35-2. Legislative findings.**

(a) The Legislature hereby finds and declares that:

(1) Lead is a toxic substance and harmful to the citizens of this state;

(2) Lead poisoning is a devastating health hazard, particularly to young children, and results in serious long term health effects;

(3) Children exposed to even low levels of lead exhibit learning disabilities, decreased growth, hyperactivity, impaired hearing, and neurological damage;

(4) Workers and others who come into contact with lead when removing or remediating lead based materials are also at risk of lead poisoning;

(5) Exposure occurs from contact with materials containing lead, including but not limited to lead-based paint chips, lead dust, and lead-contaminated soil;

(6) The most significant source of exposure is lead-based paint, particularly in houses built prior to one thousand nine hundred seventy-eight;

(7) The danger posed by lead-based paint hazards can be controlled by abatement or interim controls that limit exposure to lead-based paint hazards; and

(8) The public health and safety of this state will be better protected when all persons who handle lead contaminated substances are thoroughly trained and knowledgeable regarding safe methods of handling and disposing of such materials.

(b) Therefore, it is the purpose of this article to protect the health of the children of the state and those who undertake remediation of the lead health hazard by establishing guidelines for the assessment and removal of lead hazards from homes and other buildings where children are frequently present and exposed to the danger of lead poisoning.

### **§16-35-3. Definitions.**

(a) "Abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards. Abatement includes, but is not limited to:

(1) The removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil;

(2) All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures;

(3) Projects for which there is a written contract to permanently eliminate lead-based paint hazards from a dwelling unit or child-occupied building;

(4) Projects involving the permanent elimination of lead-based paint or lead-contaminated soil; and

(5) Projects involving the permanent elimination of lead-based paint hazards that are conducted in response to federal, state or local abatement orders.

(b) "Child lead poisoning" means that the amount of lead circulating in the blood stream of children is at or exceeds the level defined by the United States center for disease control.

(c) "Child-occupied building" means any of the following structures built before one thousand nine hundred seventy-eight: public or private buildings, or portions thereof, or a room in a residential dwelling or unit, any of which structures are currently visited, or intended to be visited, three hours a day twice a week or more often by a child age six or under, including, but not limited to, day care centers, kindergarten classrooms, schools, camps and recreational facilities.

(d) "Contained work area" means a designated room or rooms, spaces, or other areas, including a decontamination structure, where lead abatement activities are performed, separated from the uncontaminated environment in accordance with OSHA standards.

(e) "Discipline" means any one of the following: lead abatement contractor, lead abatement supervisor, lead inspector, lead risk assessor, lead abatement worker, or lead abatement project designer.

(f) "Director" means the director of the West Virginia division of health or his or her representative.

(g) "Elevated blood-lead level" means a concentration of lead in the blood stream as defined by the United States center for disease control.

(h) "Industrial facility" means any factory, mill, plant, refinery, warehouse, building or complex of buildings or other industrial structures including the land on which it is located.

(i) "Inspection" means a surface by surface investigation to determine the presence of lead-based paint or lead hazards and the provision of a report explaining the results of the investigation.

(j) "Interim controls" means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

(k) "Lead" means elemental lead and all inorganic and organic lead compounds.

(l) "Lead abatement contractor" means any person who contracts to conduct any lead abatement activity.

(m) "Lead abatement designer" means an individual who designs lead abatement projects.

(n) "Lead abatement project" means an activity in target housing or child-occupied buildings intended to permanently remove or encapsulate lead-based paint, lead-containing dust, lead-containing soil or other lead-containing materials and decontamination of an area, but does not include interim controls which do not permanently eliminate lead hazards.

(o) "Lead abatement worker" means an individual who is employed by a lead abatement contractor for a lead abatement project.

(p) "Lead-based paint" means paint or other surface coatings that contains lead at a level defined by the director by legislative rule as provided in section four of this article.

(q) "Lead hazard" means any condition that may result in exposure to lead including, but not limited to, lead-contaminated dust, lead-contaminated soil, or lead-based paint present on accessible surfaces, friction surfaces, impact surfaces or other lead sources that could result in adverse effects on human health.

(r) "Lead inspector" means an individual who conducts inspections to determine and report the existence, nature, severity and location of lead-based paint or lead hazards.

(s) "Lead risk assessment" means an investigation of the potential risk to human health or the environment posed by lead abatement projects or lead hazards, including but not limited to considerations of toxicity, concentration, form, mobility and potential of exposure.

(t) "Lead risk assessor" means an individual who is responsible for or conducts lead risk assessments and establishes priorities for a lead abatement project.

(u) "Lead Supervisor" means a person employed by a lead abatement contractor to supervise workers on a lead abatement project.

(v) "OSHA" means the United States Occupational Safety and Health Administration.

(w) "Owner-occupied housing" means a detached single unit residence owned by the individual living within the unit.

(x) "Person" means any individual, partnership, firm, society, association, trust, corporation, other business entity or any agency, unit, or instrumentality of federal, state or local government.

(y) "Target housing" means residential structures built prior to one thousand nine hundred seventy-eight that could contain lead-based paint or residential structures that are confirmed by inspection to contain lead-based paint.

#### **§16-35-4. Powers and duties of the director.**

##### **The director shall administer and enforce this article, and has the following powers and duties:**

(1) To propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, necessary to carry out the requirements of this article, including but not limited to abatement personnel training guidelines, procedures for the issuance and renewal of lead discipline licenses, establishment of all fees necessary to pay for the implementation and enforcement of this program, and the regulation of lead abatement projects;

(2) To issue, suspend and revoke lead discipline licenses, regulate lead abatement projects, and assess fees and civil penalties pursuant to this article and the rules promulgated hereunder;

(3) To promulgate any emergency rules necessary to gain federal approval of the state lead abatement program in accordance with section three, article fifteen, chapter twenty-nine-a of this code;

(4) To accredit training providers, training courses, examiners, examinations, and grading systems developed for licensing disciplines pursuant to this article;

(5) To order reduction or abatement of identified lead hazards when they may result in child lead poisoning; and

(6) To develop a public awareness campaign on the dangers of lead poisoning and to promote public education of the requirements of this article.

#### **§16-35-5. Lead discipline license required.**

(a) It is unlawful for any individual to carry out any lead risk assessment, inspection or abatement activity for which he or she does not hold an appropriate lead discipline license.

(b) To qualify for a lead discipline license an applicant shall:

(1) Satisfactorily complete a state-accredited training course for a lead discipline and receive a passing grade on an examination administered by a state-accredited examiner; and

(2) Meet the requirements set forth by the director in legislative rule.

(c) Applicants for a lead discipline license shall submit to the division an application and certificate that show satisfactory completion of a training course for a lead discipline and pay the applicable fee to the division.

(d) The director may deny a license if the applicant fails to comply with the application procedures or to satisfy the licensure criteria or to pay the fee. The director shall provide written notice of such denial and an opportunity for reapplication.

(e) The director may grant lead discipline licenses to individuals licensed or certified in another jurisdiction if its requirements are at least as stringent as West Virginia's requirements.

#### **§16-35-6. Lead abatement contractor's duties.**

A lead abatement contractor shall:

(1) Ensure that each of his or her employees or agents who will come in contact with lead or who will be responsible for a lead abatement project is licensed as required by this article;

(2) Ensure that each lead abatement project is supervised by a licensed lead abatement supervisor;

(3) Maintain sampling records for each contained work area of a lead abatement project until it meets the minimum clearance standards established by the director before allowing reoccupancy; and

(4) Keep a record of each lead abatement project and make the record available to the division and the divisions of commerce, labor, and environmental protection upon request. Records required by this subsection shall be kept for at least three years and shall include at a minimum:

(A) The name, address and license number of the individual who supervised the lead abatement project and each employee or agent who worked on the project;

(B) The location and design of the project, if applicable, and the amount of lead-containing material that was removed;

(C) The starting and completion date of each project and a summary of the procedures that were used to comply with all federal and state standards; and

(D) The name and address of each disposal site where lead-contaminated waste was deposited and the disposal site receipts.

#### **§16-35-7. Exemptions from notification and licensure.**

(a) Homeowners performing lead abatement or interim abatement controls on their single unit owner-occupied housing are exempt from the requirements of this article.

(b) Abatement does not include renovation, remodeling, landscaping or other activities, when the purpose of such activities are not intended to permanently eliminate lead based paint hazards, but, instead, are designed to repair, restore or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Abatement also does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently reduce lead-based paint hazards.

(c) The provisions of this article do not apply to lead hazard reduction activities or to persons performing such activities when such activities are performed wholly within or on an industrial facility and are performed by persons who are subject to the training requirements of OSHA: *Provided*, That the provisions of this article do apply to any child occupied building or area such as a child day care center located at a industrial facility.

#### **§16-35-8. Notification of elevated blood-lead levels required.**

The director may, by legislative rule, establish requirements for laboratories and lead abatement contractors for mandatory reporting of any persons medically confirmed elevated blood-lead level.

#### **§16-35-9. Notification of lead abatement projects required.**

Each owner or other person responsible for the operation of a building, facility, residence or structure where a lead abatement project is to occur shall notify the division in the time specified by the director prior to commencement of each lead abatement project, and comply with all applicable state and federal regulatory requirements for a lead abatement project.

#### **§16-35-10. Accreditation of lead abatement training courses.**

(a) The director shall propose legislative rules establishing criteria and procedures for certification of training course curricula and examinations that shall ensure the qualifications of applications for licensure or certification as required in this article. To qualify for certification, a training course shall contain a combination of class instruction, practical application, and public health procedures of a length and content that, to the satisfaction of the director, ensure adequate training for the level and type of responsibility for each named certification category.

(b) All courses certified under this section shall be conducted by instructors whose training and experience is determined by the director to be appropriate for the subject matter being taught and the level of licensure category for which the course is designed. An approved initial course for any category of person engaged in lead hazard reduction activities shall include all of the following, but not be limited to:

(1) Worker health and safety instruction no less stringent that required under applicable federal law and regulations;

(2) Instruction in the importance of safe work practices in promoting public health, and the importance of proper decontamination procedures in eliminating the risk of contaminating individual workers' home environment; and

(3) Instruction in the workers' rights and obligations under federal and state law.

(c) In addition to developing criteria for classroom instruction pursuant to this section, the director shall develop minimum criteria for hands-on training or on-site instruction. The criteria for certification of training courses shall include minimum trainee competency and proficiency requirements, evidenced through both written examinations and minimum skills demonstration examinations. Upon successful completion of an approved retraining course, the trainee shall be issued a certificate by the director or the accredited training provider under the authority of the director.

(d) All training courses must be recertified annually by the director. The director may establish by legislative rule, reasonable application fees for the accreditation of training courses and discipline examiners, and establish criteria for renewals of training course certification.

#### **§16-35-11. Suspension or revocation of license; violations; hearings.**

(a) The director may suspend or revoke a lead abatement discipline license if the licensee:

(1) Fraudulently or deceptively obtains or attempts to obtain a license or knowingly aids another in such fraud or deception;

(2) Fails at any time to meet the qualifications for the license or to comply with the requirements of this article or any applicable legislative rules;

(3) Fails to comply with applicable federal or state standards for lead abatement projects;

(4) Employs or permits an individual not licensed as required by this article to work on a lead abatement project; or

(5) Falsifies or attempts to falsify any document related to a lead abatement project.

(b) The director may investigate all suspected violations of this article or any rule promulgated hereunder. Upon the finding of a violation in connection with any lead abatement project, the director shall issue a cease and desist order directing that all work on the project is halted forthwith or a notice of violation directing compliance with this article or any rule promulgated hereunder. Posting of cease and desist orders or notice of violations on project sites shall constitute notice of its contents to the property owner and all persons working on the lead abatement project. The director may also deliver a copy of such order or notice by certified mail, return receipt requested, to the property owner and to the contractor.

(c) Hearings regarding violations of this article and any rules promulgated hereunder shall be conducted in accordance with the division's rules of procedure for contested case hearings and declaratory rulings and the administrative procedures act of chapter twenty-nine-a of this code.

**§16-35-12. Special revenue account.**

The director shall deposit all monies collected as fees and civil penalties under the provisions of this article a special account in the state treasury to be known as the "lead abatement account". Expenditures from said fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code: *Provided*, that for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, expenditures are authorized from collections rather than pursuant to an appropriation of the Legislature.

**§16-35-13. Penalties and fines.**

(a) The director may impose a civil penalty of not less than two hundred fifty dollars and not more than five thousand dollars for each separate violation of this article or any rules promulgated hereunder. In any case where a person fails to halt work following the issuance of a cease and desist order by the director, the violation shall be presumed to be willful and the person shall be assessed a civil penalty by the director of not less than ten thousand dollars nor more than twenty-five thousand dollars for an initial violation and not less than twenty-five thousand dollars nor more than fifty thousand dollars for each subsequent violation. Failure to pay a civil penalty imposed by the director within thirty days of receipt of notification constitutes a separate violation.

(b) Notwithstanding any other provision of this code, any person who violates any provision of this article or any rule promulgated hereunder is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two hundred fifty dollars, nor more than fifty thousand dollars, or confined in the county or regional jail not more than one year, or both fined and confined.

**HOUSE BILL 4055**

**EFFECTIVE DATE:** February 17, 1998

**SIGNED BY GOVERNOR:** February 27, 1998

**CODE REFERENCE(S):** New §12-3-20

**TOPIC:** ELECTRONIC FUND TRANSFERS

**INTRODUCTION:**

Authorizes county boards of education, county commissions, and municipalities to make electronic or wire transfers.

**MAJOR NEW PROVISIONS:**

1. Authorizes the treasurer of a county board of education, county commission or municipal corporation to disburse or transfer funds by means of electronic or wire transfers.
2. Permits county boards of education, county commissions, and municipalities to enter into written agreements with the banking institutions in which the funds are deposited, prescribing the manner in which the transfers are to be accomplished.
3. Requires these agencies to adopt a system of internal controls satisfactory to the tax commissioner as ex officio, the chief inspector and supervisor of public offices for the documentation and reporting of all transfers or disbursements made by electronic means.
4. Requires these agencies to adopt procedures that: govern the method by which the treasurer is authorized to direct payments from the funds on deposit with the banking institution; govern the method of payment; and cover any other matter believed to be necessary to ensure the safety and integrity of the payment process.
5. Requires county boards of education, county commissions, and municipalities to file a copy of the procedures it adopts with each banking institution in which its funds are deposited.



6. Requires the treasurers of these agencies to agree to follow the rules and procedures for electronic wire transfers promulgated by the federal reserve bank and the national clearing house association.

7. The section applies to disbursements or transfers made after May 31, 1998.

## ENROLLED

### H. B. 4055

(By Delegates Seacrist, Michael, Laird and Campbell)

[Passed February 17, 1998; in effect from passage.]

AN ACT to amend article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty, relating to payment of funds of county boards of education, county commissions, municipal corporations by electronic or wire transfer, inclusion of appropriate electronic remittance voucher information; and specifying effective date.

#### *Be it enacted by the Legislature of West Virginia:*

That article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty, to read as follows:

#### **ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.**

##### **§12-3-20. Electronic or wire transfer.**

(a) Notwithstanding any other provision of this code to the contrary, whenever the treasurer of a county board of education, a county commission or a municipality is authorized or directed pursuant to law to disburse or transfer on behalf of the county board of education, county commission or municipality, funds in the custody of the treasurer or in the treasury of the county board of education, county commission or municipality, the treasurer is authorized to disburse or transfer the funds by means of electronic or wire transfer and that transfer shall include appropriate electronic remittance voucher information. The county board of education, county commission or governing body of a municipality may enter into a written agreement with the banking institution in which the funds are deposited, prescribing the manner in which electronic or wire transfer of the funds shall be accomplished, identifying by number and name those accounts from which electronic or wire transfers may be made, identifying which person or persons are authorized to order the electronic or wire transfer of funds from those accounts, and implementing a security procedure

as defined in section two hundred one, article four-a, chapter forty-six of this code.

(b) It is the duty of the county board of education, county commission or governing body of a municipality to adopt a system of internal controls satisfactory to the tax commissioner as ex officio, the chief inspector and supervisor of public offices for the documentation and reporting of all transfers or disbursements of funds accomplished by electronic or wire transfer to ensure the safety and integrity of the payment process.

(c) The county board of education, county commission or governing body of a municipality shall also adopt procedures:

(1) Governing the method by which the treasurer is authorized to direct payments from the funds of the county board of education, county commission or municipality on deposit with a banking institution;

(2) Governing the method of payment of obligations of the county board of education, county commission or municipality, including payment by check, draft, electronic or wire transfer, or other method of payment mutually acceptable to the county board of education, county commission or governing body of a municipality, and the banking institution; and

(3) Covering any other matters it believes necessary to ensure the safety and integrity of the payment process.

(d) A county board of education, county commission or governing body of a municipality shall file a copy of the procedures it adopts in accordance with the provisions of subsection (c) of this section with each banking institution in which its funds are deposited.

(e) The treasurer of the county board of education, county commission or municipality, and the banking institution shall agree to follow rules and procedures for electronic fund transfers promulgated by the federal reserve bank and the national clearing house association (NACHA) to ensure the safety and integrity of the payment process. These safeguards must be approved by the county board of education, county commission or governing body of a municipality. If the county board of education, county commission or governing body of a municipality finds that the safeguards are consistent with and do not contravene the procedures adopted under the provisions of subsection (c) of this section, the safeguards must be approved.

(f) This section applies to disbursements or transfers made after the thirty-first day of May, one thousand nine hundred ninety-eight.

## HOUSE BILL 4110

**EFFECTIVE DATE:** July 1, 1998

**CODE REFERENCE(S):** Amends and Reenacts §18-7A-17

**TOPIC:** STATE TEACHERS RETIREMENT SYSTEM

**INTRODUCTION:**

This act amends §18-7A-17, titled State Teachers Retirement System. One change removes the requirement that teachers who serve in the Legislature must make retirement contributions equal to what would have been contributed. The Retirement Board now may not require any additional contributions from that member in order to credit service in the retirement system. Another change extends, from six to ten years, the period of service credit granted for members of the retirement system who serve as an officer with a statewide professional teaching association.

**MAJOR NEW PROVISIONS:**

1. Removes the requirement that teachers who serve in the Legislature must make retirement contributions equal to what would have been contributed had they continued teaching. The Retirement Board now may not require any additional contributions from that member in order to credit service in the retirement system.
2. Extends the period of service credit granted (from six to ten years) for members of the retirement system who serve as an officer with a statewide professional teaching association.

**ENROLLED**

**COMMITTEE SUBSTITUTE**

**FOR**

**H. B. 4110**

(By Delegate Yeager, Mr. Speaker, Mr. Kiss, and Delegates Mezzatesta, Jenkins, Hubbard, Smith and Hall)

[Passed March 13, 1998; in effect July 1, 1998.]

AN ACT to amend and reenact section seventeen, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the service credit within the teachers retirement system for teachers who serve as an officer with a statewide professional association and providing that members elected to public office be credited for time served in discharging legislative duties.

***Be it enacted by the Legislature of West Virginia:***

That section seventeen, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.**

**§18-7A-17. Statement and computation of teachers' service.**

(a) Under ~~such rules and regulations as adopted by~~ the retirement board ~~may adopt~~, each teacher shall file a detailed statement of his or her length of service as a teacher for which he or she claims credit. The retirement board shall determine what part of a year is the equivalent of a year of service. In computing ~~such the~~ service, however, it shall credit no period of more than a month's duration during which a member was absent without pay, nor shall it credit for more than one year of service performed in any calendar year.

(b) For the purpose of this article, the retirement board shall grant prior service credit to new entrants and other members of the retirement system for service in any of the armed forces of the United States in any period of national emergency within which a federal Selective Service Act was in effect. For purposes of this section, "armed forces" ~~shall~~ include ~~s~~ women's army corps, women's appointed volunteers for emergency service, army nurse corps, spars, women's reserve and other similar units officially parts of the military service of the United States. ~~Such The~~ military service ~~shall be deemed is considered~~ equivalent to public school teaching, and the salary equivalent for each year of ~~such~~

~~that~~ service ~~shall be is~~ the actual salary of the member as a teacher for his or her first year of teaching after discharge from military service. Prior service credit for military service shall not exceed ten years for any one member, nor shall it exceed twenty-five percent of total service at the time of retirement.

(c) For service as a teacher in the employment of the federal government, or a state or territory of the United States, or a governmental subdivision of ~~such that~~ state or territory, the retirement board shall grant credit to the member: *Provided*, That the member shall pay to the system double the amount he or she contributed during the first full year of current employment, times the number of years for which credit is granted, plus interest at a rate to be determined by the retirement board. ~~Such The~~ interest shall be deposited in the reserve fund and service ~~so~~ credit granted at the time of retirement shall not exceed the lesser of ten years or fifty percent of the member's total service as a teacher in West Virginia. Any transfer of out-of-state service, as provided in this article, shall not be used to establish eligibility for a retirement allowance and the retirement board shall grant credit for ~~such the~~ transferred service as additional service only: *Provided, however*, That a transfer of out-of-state service ~~shall be is~~ prohibited if ~~such the~~ service is used to obtain a retirement benefit from another retirement system: *Provided further*, That salaries paid to members for service prior to entrance into the retirement system shall not be used to compute the average final salary of ~~such the~~ member under the retirement system.

(d) Service credit for members or retired members shall not be denied on the basis of minimum income ~~regulations~~ rules promulgated by the teachers retirement board: *Provided*, That the member or retired member shall pay to the system the amount he or she would have contributed during the year or years of public school service for which credit was denied as a result of ~~such the~~ minimum income ~~regulations~~ rules of the teachers retirement board.

(e) No members shall be ~~deemed~~ considered absent from service while serving as a member or employee of the Legislature of the state of West Virginia during any duly constituted session of that body or while serving as an elected member of a county commission during any duly constituted session of that body. ~~Provided, That the member makes contributions to the system equal to what would have been contributed during the period of absence had he performed his duties.~~

(f) No member shall be ~~deemed~~ considered absent from service as a teacher while serving as an officer with a statewide professional teaching association, or who has served in ~~such that~~ such that capacity, and no retired teacher, who served in ~~such that~~ such that capacity while a member, shall be ~~deemed-considered~~ to have been absent from service as a teacher by reason of ~~such that~~ such that service: *Provided*, That the period of service credit granted for ~~such that~~ such that service shall not exceed ~~six ten~~ six ten years: *Provided, however*, That a member or retired teacher who is serving or has served as an officer of a statewide professional teaching association shall make deposits to the teachers retirement board, for the time of any ~~such~~ such absence, in an amount double the amount which he or she would have contributed in his or her regular assignment for a like period of time.

The teachers retirement board shall grant service credit to any former or present member of the West Virginia public employees retirement system who has been a contributing member for more than three years, for service previously credited by the public employees retirement system and; (1) Shall require the transfer of the member's contributions to the teachers retirement system; or (2) shall require a repayment of the amount withdrawn any time prior to the member's retirement: *Provided*, That there shall be added by the member to the amounts transferred or repaid under this ~~paragraph~~ subsection an amount which shall be sufficient to equal the contributions he or she would have made had the member been under the teachers retirement system during the period of his or her membership in the public employees retirement system plus interest at a rate of six percent compounded annually from the date of withdrawal to the date of payment. The interest paid shall be deposited in the reserve fund.

(g) For service as a teacher in an elementary or secondary parochial school, located within this state and fully accredited by the West Virginia department of education, the retirement board shall grant credit to the member: *Provided*, That the member shall pay to the system double the amount contributed during the first full year of current employment, times the number of years for which credit is granted, plus interest at a rate to be determined by the retirement board. ~~Such~~ The interest shall be deposited in the reserve fund and service ~~so~~ granted at the time of retirement shall not exceed the lesser of ten years or fifty percent of the member's total service as a teacher in the West Virginia public school system. Any transfer of parochial school service, as provided in this section, may not be used to establish eligibility for a retirement allowance and the board shall grant credit for the transfer as additional service only: *Provided, however*, That a transfer of parochial school service is prohibited if ~~such the~~ such the service is used to obtain a retirement benefit from another retirement system.

(h) If a member is not eligible for prior service credit or pension as provided in this article, then his or her prior service shall not be ~~deemed~~ considered a part of his or her total service.

(i) A member who withdrew from membership ~~shall be permitted to~~ may regain his or her former membership rights as specified in section thirteen of this article only in case he or she has served two years since his or her last withdrawal.

(j) Subject to the ~~above~~ above provisions of subsection (a) through (i) of this section, the board shall verify as soon as practicable the statements of service submitted. The retirement board shall issue prior service certificates to all persons eligible ~~therefor~~ for the certificates under the provisions of this article. ~~Such~~ The certificates shall state the length of ~~such the~~ such the prior service credit, but in no case shall the prior service credit exceed forty years.

Notwithstanding any provision of this article to the contrary, when a member is or has been elected to serve as a member of the Legislature, and the proper discharge of his or her duties of public office require that member to be absent from his or her teaching or administrative duties, the time served in discharge of his or her duties of the legislative office are credited as time served for purposes of computing service credit: *Provided*, That the board may not require any additional contributions from that member in order for the board to credit him or her with the contributing service credit earned while discharging official legislative duties.

## HOUSE BILL 4293

**EFFECTIVE DATE:**

**SIGNED BY GOVERNOR:** April 1, 1998

**CODE REFERENCE(S):** Amends and Reenacts §2-2-10

**TOPIC:** AUTHORIZES THE USE OF ELECTRONIC SIGNATURE

**INTRODUCTION:**

This bill authorizes the use of electronic signature, where signature is required by law and not specifically required to be other than electronic.

**MAJOR NEW PROVISIONS:**

1. The bill creates a new article in Chapter 39 of the law. It specifically defines terms used for electronic signature and provides for acceptance of electronic signature where signature is required. Acceptance and liability are included in the law.

**COMMITTEE SUBSTITUTE**

**FOR**

**H. B. 4293**

(By Delegates Staton, Varner and Caputo)

(Originating in the Committee on the Judiciary)

[February 10, 1998]

A BILL to amend and reenact section ten, article two, chapter two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter thirty-nine of said code by adding thereto a new article, designated article five, all relating generally to the authorization of electronic signatures where written signatures are currently required; establishing legislative findings; providing definitions; allowing for the acceptance of certain electronic signatures where a rule of law requires a signature; authorizing the secretary of state and the state auditor to propose legislative and emergency rules authorizing governmental electronic signatures; authorizing the secretary of state to be the digital key depository and authority and authorizing the secretary of state to contract with a private entity to serve as the digital key depository and authority; allowing all governmental entities to participate in the electronic and digital signature program with certain conditions and limitations; authorizing public use of electronic signatures with certain requirements; limitation of liability for the secretary of state; and providing for admissibility of electronic signatures and other electronic records legal proceeding as evidence.

*Be it enacted by the Legislature of West Virginia:*

That section ten, article two, chapter two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that chapter thirty-nine of said code be amended by adding thereto a new article, designated article five, all to read as follows:

**CHAPTER 2. COMMON LAW, STATUTES, LEGAL HOLIDAYS, DEFINITIONS, AND LEGAL CAPACITY**

**ARTICLE 2. LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS; CONSTRUCTION OF STATUTES; DEFINITIONS.**

**§2-2-10. Rules for construction of statutes.**

The following rules shall be observed in the construction of statutes, unless a different intent on the part of the Legislature be apparent from the context:

(a) A word importing the singular number only may be applied to several persons or things, as well as to one person or thing; a word importing the plural number only may be applied to one person or thing as well as to several; and a word importing the masculine gender only may be applied to females as well as males;

- (b) Words purporting to give a joint authority to three or more persons confer such authority upon a majority of them, and not upon any less number;
- (c) The words "written" or "in writing" include any representation of words, letters or figures, whether by printing, engraving, writing or otherwise. But when the signature of any person is required, it must be in his or her own proper handwriting, or his or her mark, attested, proved or acknowledged; Provided, That unless a provision of this code specifically provides otherwise, an electronic signature satisfies this signature requirement if the electronic signature meets the requirements of subsection (a), section three, article five, chapter thirty nine of this code;
- (d) The words "preceding," "succeeding" or "following" used in reference to any section or sections of a chapter or statute, mean next preceding, next succeeding or next following that in which such reference is made, unless a different interpretation be required by the context;
- (e) An officer shall be deemed to have qualified when he or she has done all that is required by law to be done before proceeding to exercise the authority and discharge the duties of his or her office;
- (f) The words "the governor" are equivalent to "the executive of the state" or "the person having the executive power";
- (g) "Justice" or "justices" as used in article one, ~~§ 51-1 Et seq.~~ chapter fifty-one of this code and in other references to a member or members of the supreme court of appeals shall mean and apply to a judge or the judges of said court as provided for in the constitution of the state. The word "justice" in any other context is equivalent to the words "justice of the peace," ~~magistrate~~ and the word "notary" is equivalent to "notary public";
- (h) The word "state," when applied to a part of the United States and not restricted by the context, includes the District of Columbia and the several territories, and the words "United States" also include the said district and territories;
- (i) The word "person" or "whoever" shall include corporations, societies, associations and partnerships, if not restricted by the context;
- (j) The words "personal representative" include the executor of a will, the administrator of the estate of a deceased person, the administrator of such estate with the will annexed, the administrator de bonis non of such estate, whether there be a will or not, the sheriff or other officer lawfully charged with the administration of the estate of a deceased person, and every other curator or committee of a decedent's estate for or against whom suits may be brought for causes of action which accrued to or against such decedent;
- (k) The word "will" embraces a testament, a codicil, an appointment by will or writing in the nature of a will in exercise of a power, also any other testamentary disposition;
- (l) The word "judgment" includes decrees and orders for the payment of money or the conveyance or delivery of land or personal property, or some interest therein, or any undertaking, bond or recognizance which has the legal effect of a judgment;
- (m) The words "under disability" include persons under the age of eighteen years, insane persons, and convicts while confined in the penitentiary;
- (n) The words "insane person" include everyone who has mental illness as defined in section two ~~§ 27-1-2.~~, article one, chapter twenty-seven of this code;
- (o) The word "convict" means a person confined in the penitentiary of this or any other state, or of the United States;
- (p) The word "land" or "lands" and the words "real estate" or "real property" include lands, tenements and hereditaments, all rights thereto and interests therein except chattel interests;
- (q) The words "personal estate" or "personal property" include goods, chattels, real and personal, money, credits, investments and the evidences thereof;



- (r) The word "property" or "estate" embraces both real and personal estate;
- (s) The word "offense" includes every act or omission for which a fine, forfeiture or punishment is imposed by law;
- (t) The expression "laws of the state" includes the constitution of the state and the constitution of the United States, and treaties and laws made in pursuance thereof;
- (u) The word "town" includes a city, village or town, and the word "council," any body or board, whether composed of one or more branches, who are authorized to make ordinances for the government of a city, town or village;
- (v) When a council of a town, city or village, or any board, number of persons or corporations, are authorized to make ordinances, bylaws, rules, regulations or orders, it shall be understood that the same must be consistent with the laws of this state;
- (w) The words "county court" include any existing tribunal created in lieu of a county court; the words "commissioner of the county court" and "county commissioner" mean, and have reference to, the commissioners, or one of them, composing the county court, in pursuance of section twenty-two, article eight of the constitution, as amended, or any existing tribunal created in lieu of a county court;
- (x) The word "horse" embraces a stallion, a mare and a gelding;
- (y) The words "railroad" and "railway" shall be construed by the courts of this state to mean the same thing in law; and, in any proceeding wherein a railroad company or a railway company is a party, it shall not be deemed error to call a railroad company a railway company or vice versa; nor shall any demurrer, plea or any other defense be set up to a motion, pleading or indictment in consequence of such misdescription;
- (z) The sectional headings or headlines of the several sections of this code printed in black-faced type are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of such sections, or as any part of the statute, and, unless expressly so provided, they shall not be so deemed when any of such sections, including the headlines, are amended or reenacted;
- (aa) The words "infant" and "minor" mean persons under the age of eighteen years as such words are used in this code or in rules and regulations promulgated by the supreme court of appeals;
- (bb) A statute is presumed to be prospective in its operation unless expressly made retrospective;
- (cc) Unless there is a provision in a section, article or chapter of this code specifying that the provisions thereof shall not be severable, the provisions of every section, article or chapter of this code, whether enacted before or subsequent to the effective date of this subdivision ~~March 30, 1973~~, shall be severable so that if any provision of any such section, article or chapter is held to be unconstitutional or void, the remaining provisions of such section, article or chapter shall remain valid, unless the court finds the valid provisions are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that the court cannot presume the Legislature would have enacted the remaining valid provisions without the unconstitutional or void one, or unless the court finds the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent: *Provided*, That if any such section, article or chapter of this code has its own severability clause, then such severability clause shall govern and control with respect to such section, article or chapter in lieu of the provisions of this subdivision. The provisions of this subdivision shall be fully applicable to all future amendments or additions to this code, with like effect as if the provisions of this subdivision were set forth in extenso in every such amendment or addition and were reenacted as a part thereof, unless such amendment or addition contains its own severability clause;
- (dd) A reference to any section, article or chapter of this code applies to all reenactments, revisions or amendments thereof;
- (ee) If a statute refers to a series of numbers or letters, the first and the last numbers or letters in the series are deemed to be included;

(ff) The words "board of regents," wherever they appear in the code, means the board of trustees created by section one ~~§ 18-1-1~~, article one, chapter eighteen-b of this code and the board of directors created by section one, article one, chapter eighteen-b of this code unless the term is used in relation to activities conducted solely by an institution or institutions governed by article two ~~§ 18B-2-1 et seq.~~, chapter eighteen-b of this code in which case it only means the board of trustees, or where the term is used in relation to activities conducted solely by an institution or institutions governed by article three ~~§ 18-3-1 et seq.~~, chapter eighteen-b of the code in which case it only means the board of directors.

## **CHAPTER 39. RECORDS AND PAPERS.**

### **ARTICLE 5. ELECTRONIC SIGNATURES AUTHORIZATION ACT.**

#### **39-5-1. Legislative findings; statement of purpose.**

The Legislature finds that the rapid and secure conveyance of signed written transactions, messages and official documents is essential to effective and economical conduct of commercial, governmental and personal affairs; and that technology is available to allow instantaneous transmission of documents and to provide secure means of authorization through electronic signatures. Therefore, it is the purpose of this Act to facilitate and promote electronic commerce and online government by clarifying the legal status of electronic records and electronic signatures in the context of writing and signing requirements imposed by law; to permit and encourage the continued expansion of electronic commerce and online government through the operation of free market forces rather than proscriptive legislation; to promote public confidence in the validity, integrity and reliability of electronic commerce and online government; and to promote the development of the legal and business infrastructure necessary to support and encourage electronic commerce and online government.

#### **39-5-2. Definitions.**

As used in this article, the following words shall have the following meanings:

(a) "Certificate" means a computer-based record that:

- (1) Identifies the certification authority issuing it;
- (2) Names or identifies its subscriber;
- (3) Contains the subscriber's public key; and
- (4) Is digitally signed by the certification authority issuing it.

(b) "Certification authority" means a person who issues a certificate.

(c) "Electronic" means electrical, digital, magnetic, optical, electromagnetic, or any other technology that is similar to these technologies.

(d) "Electronic record" means a record generated, communicated, received, or stored by electronic means.

(e) "Electronic signature" means any identifier or authentication technique attached to or logically associated with an electronic record that is intended by the person using it to have the same force and effect as a manual signature. Electronic signatures include, but are not limited to the following:

- (1) A "digitized signature" which consists of a handwritten signature entered on a recording device utilizing electronic recording software which simultaneously converts the image created to a digital record and attaches it to the electronic document to which it relates;
- (2) A "digital mark" which consists of an electronic code indicating approval or confirmation which is entered into a

protected digital record following access protocols which identify the user and require a password, personal identification number, encrypted card or other security device which restricts access to one or more authorized individuals; and

(3) A "digital signature" which consists of a message transformed using an asymmetric cryptosystem so that a person having the initial message and the signer's public key can accurately determine:

(A) Whether the transformed message was created using the private key that corresponds to the signer's public key; and

(B) Whether the initial message has been altered since the message was transformed.

(f) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

### **39-5-3. Acceptance of electronic signatures generally.**

(a) Where a rule of law requires a signature, or provides for certain consequences in the absence of a signature, that rule may be satisfied by an electronic signature, if:

(1) The type of electronic signature provided is authorized according to the provisions of this article by the person or governmental entity receiving the message;

(2) The original digitized signature, digital mark or digital signature was affixed by the signer with the intention of signing the message, or the facsimile digitized signature was affixed by the signer's designee with the authority of the signer; and

(3) The recipient has no knowledge or notice that the signer either:

(A) Breached a duty; or (B) Does not rightfully hold the access code used to affix the digital mark or the private key used to affix the digital signature.

(b) Nothing in this article:

(1) Precludes an electronic signature from being valid as a signature under other applicable law;

(2) May be construed to obligate a recipient or any other person asked to rely on an electronic signature to accept an electronic signature or to respond to an electronic message containing an electronic signature; or

(3) Precludes the recipient of an electronic signature or an electronic message containing an electronic signature from establishing the conditions under which the recipient will accept an electronic signature.

### **39-5-4. Duties of the secretary of state and state auditor; state agencies use of electronic signatures.**

(a) The secretary of state and state auditor shall propose joint legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish standards and processes to facilitate the use of electronic signatures in all governmental transactions by state agencies subject to chapter twenty-nine-a of this code. These rules shall include minimum standards for secure transactions to assure confidence and efficiency in legally binding electronic document transactions. These rules may be amended from time to time to keep the rules current with new developments in technology and improvements in secured transaction processes. The Legislature also authorizes these rules to be initially promulgated as emergency rules pursuant to article three, chapter twenty-nine-a of this code.

(b) The secretary of state is also designated the certification authority and repository for all governmental agencies which are subject to chapter twenty-nine-a of this code, and shall regulate transactions and digital signature verifications. The secretary may enter into reciprocity agreements with all state and federal governmental entities to promote the efficient governmental use of electronic transactions. The secretary of state may also propose legislative rules for issuing certificates that bind public keys to individuals, and other electronic transaction authentication devices

as provided for in section three. The secretary of state is further authorized to contract with an private entity to serve as certification authority for the state of West Virginia. This private certification authority may contract with persons to provide certification service. Any contract entered into must assure the certification authority will meet the requirements of this Act and any rules promulgated pursuant to this subsection.

(c) Nothing contained in this Act shall be construed to mandate any specific form of technology, process or standard to be the only technology, process or standard which may be utilized by state entities, nor shall limit the secretary of state and state auditor in adopting by legislative rule, alternative technologies to authorize electronic signatures.

#### **39-5-5. Acceptance of electronic signature by governmental entities in satisfaction of signature requirement.**

(a) Any governmental entity may, by appropriate official action, authorize the acceptance of electronic signatures in lieu of original signatures on messages or filings requiring one or more original signatures, subject to the requirements and limitations of section three of this article.

(b) Any governmental entity may elect to participate and utilize the secretary of state's digital signature authority and registry. Upon acceptance of and registration with the secretary of state's digital signature authority and registry, the governmental entity's electronic transactions are bound to the regulation of the authority and registry and those rules promulgated thereunder. Any governmental entity not required to participate, but which elects to participate, may withdrawal at any time from the program, upon notification of the secretary of state and all others who utilize that entity's digital signature program.

(c) Any governmental entities may adopt, in the manner provided by law, an ordinance, rule or official policy designating the documents on which electronic signatures are authorized, and the type or types of electronic signatures which may be accepted for each type of document. Those governmental entities not subject to the provisions of chapter twenty-nine-a of this code, which proposes to authorize the acceptance of electronic signatures on documents filed with that entity shall give public notice of the proposed adoption in a manner prescribed by law, an ordinance, rule or official policy, but in no case for less than thirty days before adoption.

(d) Any governmental entity which intends to extend, modify or revoke the authority to accept electronic signatures shall do so by the same means and with the same notice as required in this section for adoption.

#### **39-5-6. Acceptance of electronic signatures by persons other than governmental entities.**

(a) Where a commercial or other transaction between persons other than governmental entities consists in part of a message which requires the signature of one or more parties to the transaction, an electronic signature shall be a valid signature if authorized and accepted by the receiving party and made in good faith by the signing party or parties.

(b) The receiving party may determine the type or types of electronic signatures which will be accepted for particular types of messages or transactions.

(1) The receiving party shall give notice to the prospective signing party of the type or types of electronic signatures which will be accepted for the particular type of message or transaction; and

(2) The receiving party may confirm to the signer the receipt and acceptance of an electronic message containing and electronic signature.

#### **39-5-7. Secretary of state; liability.**

The secretary of state, serving as authority and repository for governmental entities for signature keys shall revoke any signature key when the secretary has reason to believe that the digital signature key has been stolen, fraudulently used or otherwise compromised. This article creates no liability upon the secretary of state for any transaction compromised by any illegal act or inappropriate uses associated with electronic signatures.

#### **39-5-8. Admissibility into evidence.**

In any legal proceeding, nothing in the application or the rules of evidence shall apply so as to deny the admissibility of an electronic record or electronic signature into evidence solely on the ground that it is an electronic record or electronic signature, or, on the grounds that it is not in its original form or is not an original.

## **HOUSE BILL 4306**

**EFFECTIVE DATE:** Date signed by Governor except July 1, 1998 for the educational audits portion

**SIGNED BY GOVERNOR:** April 6, 1998

**CODE REFERENCE(S):** New §18-2-23a, 18-2-32 , 18-2E-3c, 18-2I-1, 18-2I-2, 18-2I-3, 18-2I-4, 18-2I-5, 18-2I-6

Amends and Reenacts §18-1-1, 18-2-26, 18-2E-1a, 18-2E-5, 18-9A-7, 18-9A-10, 18A-3-2c, 18A-3A-1, 18A-3A-2, 18A-3A-2a, 18-3A-2b, 18-3A-3

**TOPIC:** IMPLEMENTS CERTAIN RECOMMENDATIONS OF THE COMMISSION OF EDUCATIONAL QUALITY AND EQUITY

### **INTRODUCTION:**

This Act requires the state board to establish goals for professional development and to provide a process to coordinate

program delivery through the state department of education, regional educational service agencies, and the center for professional development; to create the strategic staff development fund with funds that accrue in the general revenue fund; to develop an assessment program and an accountability program; to establish the reading excellence accelerates deserving students program; to establish a process for improving education to establish a system of education performance audits; to designate certain schools with more than a casual deficit as having nonapproval status; to appoint a team of improvement consultants before the state board may intervene in the operation of a county school system; to provide for the targeting of resources to improve the teaching and learning process; to create the West Virginia staff development advisory council; to create regional staff development councils in each regional educational service agency; to increase the allowance for transportation costs.

### **MAJOR NEW PROVISIONS:**

1. Incorporates into law many of the provisions of the report of the Governor's Commission on Educational Quality and Equity.
  
2. Creates the Office of Education Performance Audits to handle accreditation of schools and school systems and to make recommendations to the State Board about how to improve deficiencies, target the use of existing resources to improve deficiencies, and build capacity to improve deficiencies. The Office is to operate independently of the Department and the State Superintendent.
  
3. Revises some of the provisions of W.Va. Code §18-2E-5 regarding the accreditation process.
  
4. Requires the State Board to annually determine goals for professional development in West Virginia and create a "master plan" for professional development based in part on approved professional development plans from RESAs, the Center for Professional Development, and the Department of Education.
  
5. Creates regional and statewide staff development councils to facilitate coordination of statewide professional development.
  
6. Requires the State Board to establish the "West Virginia Reads" summer program for students in grades K-4 who do not achieve well during the regular school year.
  
7. Defines "low density" and "high density" county schools systems and increases reimbursement for certain

transportation costs at different ratios for each.

8. Requires the Department of Education to cause a comprehensive study of school transportation to be completed by 1/1/99.

**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**  
**H. B. 4306**

(By Mr. Speaker, Mr. Kiss, and Delegate Ashley)

[By Request of the Executive]

(Originating in the Committee on Education)

[Passed March 13, 1998; in effect from passage]

AN ACT to amend and reenact section one, article one, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twenty-six, article two of said chapter; to amend said article by adding thereto two new sections, designated sections twenty-three-a and thirty-two; to amend and reenact sections one-a and five, article two-e of said chapter; to amend said article by adding thereto a new section, designated section three-c; to amend said chapter by adding thereto a new article, designated article two-i; to amend and reenact sections seven and ten, article nine-a of said chapter; to amend and reenact section two-c, article three, chapter eighteen-a; and to amend and reenact sections one, two, two-a, two-b and three, article three-a of said chapter all relating to requiring the state board to establish goals for professional development and providing a process to coordinate program delivery through the state department of education, regional educational service agencies and the center for professional development; creating the strategic staff development fund with funds that accrue in the general revenue fund; requiring the state board to develop an assessment program and an accountability program; requiring the state board to establish the reading excellence accelerates deserving students program; establishing a process for improving education; establishing a system of education performance audits; creating the office of education performance audits; designating certain school systems with more than a casual deficit as having nonapproval status; requiring the appointment of a team of improvement consultants before the state board may intervene in the operation of a county school system; providing for the targeting of resources to improve the teaching and learning process; creating the West Virginia staff development advisory council; creating regional staff development councils in each regional educational service agency; and increasing the allowance for transportation costs.

*Be it enacted by the Legislature of West Virginia:*

That section one, article one, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, be amended and reenacted; that article two of said chapter be amended by adding thereto a new section, designated section twenty-three-a; that section twenty-six of said article be amended and reenacted; that article two of said chapter be amended by adding thereto a new section, designated section thirty-two; that sections one-a and five, article two-e of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section three-c; that said chapter be amended by adding thereto a new article, designated article two-i; that sections seven and ten, article nine-a of said chapter be amended and reenacted; that section two-c, article three, chapter eighteen-a be amended and reenacted; and that sections one, two, two-a, two-b and three, article three-a of said chapter, be amended and reenacted all to read as follows:

## **CHAPTER 18. EDUCATION.**

### **ARTICLE 1. DEFINITIONS; LIMITATIONS OF CHAPTER; GOALS FOR EDUCATION.**

#### **§18-1-1. Definitions.**

The following words used in this chapter and in any proceedings pursuant thereto shall, unless the context clearly indicates a different meaning, be construed as follows:

- (a) "School" means the pupils and teacher or teachers assembled in one or more buildings, organized as a unit;
- (b) "District" means county school district;
- (c) "State board" means the West Virginia board of education;
- (d) "Board" means the county board of education;
- (e) "State superintendent" means the state superintendent of free schools;
- (f) "Superintendent" means the county superintendent of schools;
- (g) "Teacher" means teacher, supervisor, principal, superintendent, public school librarian; registered professional nurse, licensed by the West Virginia board of examiners for registered professional nurses and employed by a county board of education, who has a baccalaureate degree; or any other person regularly employed for instructional purposes in a public school in this state;
- (h) "Service personnel" means all nonteaching school employees not included in the above definition of "teacher";
- (i) "Regular full-time employee" means any person employed by a county board of education who has a regular position or job throughout his employment term, without regard to hours or method of pay;
- (j) "Career clusters" means broad groupings of related occupations;
- (k) "Work-based learning" means a structured activity that correlates with and is mutually supportive of the school-based learning of the student and includes specific objectives to be learned by the student as a result of the activity;
- (l) "School-age juveniles" means any individual who is entitled to attend or who, if not placed in a residential facility, would be entitled to attend public schools, in accordance with: (1) Section five, article two of this chapter; (2) sections fifteen and eighteen, article five of this chapter; or (3) section one, article twenty of this chapter; ~~and~~
- (m) "Student with a disability" means an exceptional child, other than gifted, pursuant to section one, article twenty of this chapter;
- (n) "Low density county" means a county whose ratio of student population to square miles is less than or equal to the state average ratio as computed by the state department of education;



(o) "High density county" means a county whose ratio of student population to square miles is greater than the state average ratio as computed by the state department of education; and

(p) "Casual deficit" means a deficit of not more than three percent of the approved levy estimate or a deficit that is nonrecurring from year to year.

## **ARTICLE 2. STATE BOARD OF EDUCATION.**

### **§18-2-23a. Annual professional development goals established by state board; coordination of professional development programs; program development, approval and evaluation.**

(a) The intent of this section is to provide for the coordination of professional development programs by the state board to promote high quality instructional delivery and management practices for a thorough and efficient system of schools. The state board annually shall establish goals for professional development in the public schools of the state. The state board shall submit the goals to the state department of education, the center for professional development, the regional educational service agencies, the state college and university systems and the legislative oversight commission on education accountability on or before the first day of October, each year. The goals shall include measures by which the effectiveness of professional development programs will be evaluated. The professional development goals may include separate goals for teachers, principals, service personnel and others in the public schools. In establishing the goals, the state board shall review reports that may indicate a need for staff development. At a minimum in establishing the goals for professional development, the state board shall consider the report of the staff development advisory council set forth in section four, article two-i, chapter eighteen of this code, student test scores on the statewide student assessment program, the measures of student and school performance for accreditation purposes, school and school district report cards, and its plans for the use of funds in the strategic staff development fund pursuant to section thirty-two, section two, chapter eighteen of this code.

(b) The center for professional development and the regional educational service agencies shall each design a proposed professional development program plan to achieve the goals of the state board which are within their purview pursuant to provisions set forth in this code and rules of the state board: *Provided*, That the state board may establish as a goal for the center for professional development, the delivery of a localized professional development program to address school, county or regional problems. The center for professional development and the regional educational service agencies shall each submit their respective proposed plans to the state board on or before the fifteenth day of November, each year. The proposed plans shall include a plan for evaluating the effectiveness of the professional development delivered through the program and a cost estimate. A copy of each proposed plan shall also be submitted by the respective agencies to the legislative oversight commission on education accountability. The state board shall review the proposed plans and shall return the proposed plans to the respective agencies on or before the first day of January, each year, noting whether the proposed plan is approved or is not approved in whole or in part. If a proposed plan is not approved in whole, the state board shall note its objections to the proposed plan or to the parts of the proposed plan not approved and may suggest improvements or specific modifications, additions or deletions to more fully address the goals or eliminate duplication. An agency whose proposed plan is not wholly approved shall revise the plan to satisfy the objections of the state board or state the reasons why revisions cannot be made to satisfy any or all of the objections and resubmit the proposal to the state board as soon as possible. State board approval of the professional development plans of the center for professional development and the regional educational service agencies is required prior to implementation of the plans.

(c) The state board shall submit a proposed master plan for professional development to the legislative oversight commission on education accountability on the first day of February, each year. The proposed master plan shall include the state board approved plans of the state department of education, the center for professional development and the regional educational service agencies to meet the professional development goals of the state board. The proposed master plan also shall include a plan for evaluating the effectiveness of the professional development delivered through the programs, a cost estimate, a description of any proposals pending approval of the state board and any reasons why a goal or goals of the state board will not be met.

(d) An approved master plan for professional development shall be established by the state board not later than the

fifteenth day of March, each year. The approved master plan shall include the state board approved professional development plans of the state department of education, the center for professional development and the regional educational service agencies. The approved master plan shall serve as a guide for the delivery of coordinated professional development programs by the state department of education, the center for professional development and the regional educational service agencies beginning on the first day of June in the year in which the master plan was approved through the thirtieth day of May in the following year.

**§18-2-26. Establishment of multicounty regional educational service agencies; purposes; authority to implement regional services.**

(a) In order to consolidate and administer more effectively existing educational programs and services so individual districts will have more discretionary moneys for educational improvement and in order to equalize and extend educational opportunities, the state board of education shall establish multicounty regional educational service agencies for the purpose of providing high quality, cost effective educational programs and services to the county school systems, and shall make such rules as may be necessary for the effective administration and operation of such agencies:

*Provided*, That the legislative oversight commission on education accountability shall commission a comprehensive feasibility study of the regional educational service agencies which shall be completed and reported to the legislative oversight commission on education accountability no later than the tenth day of January, one thousand nine hundred ninety-five.

(b) In furtherance of these purposes, it is the duty of the board of directors of each regional educational service agency to continually explore possibilities for the delivery of services on a regional basis which will facilitate equality in the educational offerings among counties in its service area, permit the delivery of high quality educational programs at a lower per student cost, strengthen the cost effectiveness of education funding resources, reduce administrative and/or operational costs, including the consolidation of administrative, coordinating and other county level functions into region level functions, and promote the efficient administration and operation of the public school systems generally.

Technical, operational, programmatic or professional services would be among the types of services appropriate for delivery on a regional basis.

(c) In addition to performing the services and functions required by the provisions of this or any other section of this code, a regional educational service agency may implement regional programs and services by a majority vote of its board of directors. When said vote is not unanimous, the board of directors shall file a plan for the service or program delivery with the state board describing the program or service, the manner of delivery and the projected savings and/or the improved quality of the program or service. The state board shall promulgate rules requiring a county board that declines to participate in such programs or services to show just cause for not participating and the estimated savings accruing to the county therefrom. If a county board fails to show that savings will accrue to the county or that the quality of the program will be significantly and positively affected as a result of its decision not to participate, the state board shall withhold from the county's foundation allowance for administrative cost the lesser of the amount of the estimated savings or the allocation for the county's foundation allowance for administrative cost.

(d) The state board, in conjunction with the various regional educational service agencies, shall develop an effective model for the regional delivery of instruction in subjects where there exists low student enrollment or a shortage of certified teachers or where such delivery method substantially improves the quality of an instructional program. Such model shall incorporate an interactive electronic classroom approach to instruction. To the extent funds are appropriated or otherwise available, county boards or regional educational service agencies may adopt and utilize the model for the delivery of such instruction.

(e) Each regional educational service agency shall conduct a study setting forth how the following services and functions may be performed by the agency for public schools and school districts within the region without terminating the employment of personnel employed by school districts prior to the effective date of this subsection: Accounting, purchasing, food service, transportation, delivery of high cost services to low incidence student populations, audiovisual material distribution, facilities planning, federal program coordination, personnel recruiting and an integrated regional computer information system. On or before the tenth day of January, one thousand nine hundred ninety, each regional

educational service agency shall submit the study to the state board, to the standing committees on education and finance of the West Virginia Senate and House of Delegates and to the secretary of education and the arts: *Provided*, That in the event such study is implemented those individuals employed prior to the effective date thereof shall not have their employment terminated as a result of the study.

(f) Each regional educational service agency shall commence implementation of a uniform integrated regional computer information system as recommended by the state board of education on or before the first day of January, one thousand nine hundred ninety-one. Each county board of education shall use the computer information system for data collection and reporting to the state department of education beginning no later than the first day of July, one thousand nine hundred ninety-four. County boards of education shall bear the cost of and fully participate in the implementation of the system by: (1) Acquiring necessary, compatible equipment to participate in the regional computer information system; or (2) following receipt of a waiver from the state superintendent, operating a comparable management information system at a lower cost which provides at least all uniform integrated regional computer information system software modules and allows on-line, interactive access for schools and the county board of education office onto the statewide communications network. All data formats shall be the same as for the uniform integrated regional information system and will reside at the regional computer. Any county granted a waiver shall receive periodic notification of any incompatibility or deficiency in its system. Continued inability of any county to meet the above criteria shall, upon notification to the county no later than the first day of April, one thousand nine hundred ninety-five, require the county to use the uniform integrated regional computer information system no later than the first day of July, one thousand nine hundred ninety-five. No county shall expand any system either through the purchase of additional software or hardware that does not advance the goals and implementation of the uniform integrated regional computer information system as recommended by the state board: *Provided*, That nothing contained herein shall prevent the state superintendent from granting a one-year extension to those counties projected to have budget deficits for the school year beginning on the first day of July, one thousand nine hundred ninety-four.

(g) Each regional educational service agency shall submit a report and evaluation of the services provided and utilized by the schools within each respective region. Furthermore, each school shall submit an evaluation of the services provided by the regional educational service agency, which shall include an evaluation of the regional educational service agency program, suggestions as to how to improve utilization and the individual school's plan as to development of new programs and enhancement of existing programs. The reports shall be due by the first day of January of each year commencing with the year one thousand nine hundred ninety-one and shall be made available to the state board of education, standing committees on education of the West Virginia Senate and House of Delegates and to the secretary of education and the arts.

(h) A regional board shall be empowered to receive and disburse funds from the state and federal governments, member counties, gifts and grants.

(i) Notwithstanding any other provision of the code to the contrary, employees of regional educational service agencies shall be reimbursed for travel, meals and lodging at the same rate as state employees under the travel management office of the department of administration.

(j) Regional educational service agencies shall hold at least one half of their regular meetings during hours other than those of a regular school day.

(k) Regional educational service agencies shall serve as the lead agency for computer installation, maintenance and repair for the Basic Skills Computer Program. By the first day of October, one thousand nine hundred ninety-five, and quarterly thereafter, each regional educational service agency shall submit a status report on turn around time for computer installation, maintenance and repair to the state superintendent of schools who shall then submit a report to the legislative oversight commission on education accountability. The above-mentioned status report for turn around time for computer installation, maintenance and repair shall be based on the following suggested time schedules:

Network File Servers forty-eight hours

Local Area Networks forty-eight hours

West Virginia Education

Information System twenty-four hours

Computer workstations three to five days

Printers three to five days

Other peripherals three to five days

Regional educational service agencies shall also submit an audit report to the legislative oversight commission on education accountability each year.

(1) Pursuant to the processes and provisions of section twenty-three-a, article two, chapter eighteen of this code, each regional educational service agency shall provide coordinated professional development programs within its region to meet the professional development goals established by the state board.

### **§18-2-32. Strategic staff development fund.**

(a) There is hereby created an account within the state board titled the strategic staff development fund. The allocation of balances which accrue in the general school fund shall be transferred to the strategic staff development each year when the balances become available. Any remaining funds transferred to the strategic staff development fund during the fiscal year shall be carried over for use in the same manner the next fiscal year and shall be separate and apart from, and in addition to, the transfer of funds from the general school fund for the next fiscal year.

(b) The money in the strategic staff development fund shall be used by the state board to provide staff development in schools, counties or both that the state board determines need additional resources. Additionally, the state board shall use a reasonable amount of the money from the strategic staff development fund to contract with an independent evaluator chosen by the state board to evaluate the effectiveness with which the money was used for staff development. The state board is required to report to the legislative oversight commission on education accountability before the first day of December of each year:

(1) The amount of each expenditure;

(2) The purpose of each expenditure; and

(3) The effectiveness of the staff development resulting from each expenditure.

## **ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.**

### **§18-2E-1a. Assessment and accountability programs; duties of the state board.**

(a) In order to further the purposes of this article, on or before the first day of January, one thousand nine hundred ninety-nine, the state board shall recommend to the legislative oversight commission on education accountability develop and recommend to the legislative oversight commission on education accountability an assessment program for the measurement to measure of the educational progress of public school students in attaining a high quality education. In addition, to further the purposes of this article, on or before the first day of January, one thousand nine hundred ninety-nine, the state board shall develop and recommend to the legislative oversight commission on education accountability an accountability program to help insure a thorough and efficient system of schools. A model of such program shall be presented to the legislative oversight commission on education accountability on or before the first day of November, one thousand nine hundred ninety-six. In developing the assessment program and the accountability program, the state board shall take into consideration recommendations arising from any legislative interim study undertaken at the direction of the joint committee on government and finance and also shall take into consideration any recommendations made by the legislative oversight commission on education accountability.

~~(b) An advisory council is hereby established for the purpose of consulting with and advising the state superintendent of schools and the state board of education regarding the establishment of the assessment program mentioned in subsection (a) of this section. Members of the council shall be appointed by the state superintendent and shall include the following: Two county superintendents, two school principals, three classroom teachers, and two members of the public at large who are also members of local school improvement councils. Upon recommendation of the assessment program to the legislative oversight commission on education accountability by the state board, the advisory council shall be terminated. As part of their on-going responsibility for developing and implementing a program of assessments and a program of accountability, the state board shall perform the following functions:~~

~~(1) Review assessment tools, including tests of student performance and measures of school and school system performance, and determine when any improvements or additions are necessary;~~

~~(2) Consider multiple assessments, including, but not limited to, a state testing program developed in conjunction with the state's professional educators with assistance from such knowledgeable consultants as may be necessary, which may include criterion referenced tests;~~

~~(3) Review all accountability measures, such as the accreditation and personnel evaluation systems and consider any improvements or additions deemed necessary; and~~

~~(4) Ensure that all statewide assessments of student performance are secure.~~

~~(c) Nothing in this section shall be construed to prevent any teacher from administering the statewide testing of educational progress program (WEST VIRGINIA-STEP) during the school year of one thousand nine hundred ninety-five--ninety-six: *Provided*, That the cost of duplicating the test and all other related expenses shall be borne by the state board of education.~~

### **§18-2E-3c. Summer school READS grant program created; legislative findings and purpose of section.**

~~(a) The Legislature hereby finds and acknowledges that, if remediation is necessary, it should be provided when students are younger and before patterns of failure are established. The Legislature further acknowledges that the people of West Virginia would be better served if the state acted to ensure that all public school students were able to read at or above grade level upon exiting grade four, that county boards are in the best position to determine if remediation is necessary for students in kindergarten through grade four and that the counties should have the option of providing summer school for students and may consider student attendance as a factor in determining whether a child is eligible to be promoted to the next grade.~~

~~The Legislature further finds that not all students are financially able to pay for summer school, nor do all county schools hold summer school. It is, therefore, the purpose of this section to help the county boards to provide, either individually or cooperatively, free summer school and summer school transportation for those students in kindergarten through grade four who did not perform at grade level during the regular school year. It also is the purpose of this section to help students in kindergarten through grade four who are identified as being in danger of failing to read at grade level by the end of the school year to receive intensive reading instruction during their regularly scheduled reading time throughout the regular school year.~~

~~(b) Subject to appropriation by the Legislature therefor, the state board shall establish a competitive grant program as set forth in this section to provide reading programs for students in kindergarten through grade four who are not performing at grade level. The program shall be designated and known as the "Reading Excellence Accelerates Deserving Students" program and, along with such designation, may be referred to as "West Virginia READS".~~

~~Priorities for awarding the grants shall include, but are not limited to:~~

~~(1) Schools that have test scores below the state standards; and~~

~~(2) Schools that receive federal funds for the improvement of reading.~~

Competitive grant applications must be submitted by the county boards, or by a community collaborative with the county board as a partner with leadership responsibility, and shall describe how the program will:

(1) Employ strategies and proven methods for student learning, teaching and school management that are based on reliable research and effective practices and can be replicated in other schools to improve the reading skills of students;

(2) Contain measurable goals for the improvement of student reading skills and benchmarks for meeting those goals;

(3) Include a plan for the evaluation of student progress toward achieving the state's high standards;

(4) Identify how other federal, state, local and private resources, including volunteers, will be utilized to further the intent of this section;

(5) Link summer reading improvement programs with reading instruction and remediation throughout the school year;

(6) Determine feasibility of collaborating with colleges of education for the purpose of providing educational experiences for prospective teachers; and

(7) Accomplish other objectives as deemed necessary by the state board.

(c) Any county receiving a grant should encourage students in kindergarten through grade four who did not perform at grade level during the regular school year to attend summer school and may consider summer school attendance as a factor in determining whether a child is eligible to be promoted to the next grade. The county board shall provide intensive reading instruction during regularly scheduled reading time throughout the regular school year to students in kindergarten through grade four who are identified by the classroom teacher as being in danger of failing to read at grade level by the end of the school year. Nothing in this section shall prohibit county boards from permitting students to participate in reading programs on a student fee basis.

(d) The state board shall approve procedures for the implementation of this section. To assist the state board in developing procedures for the implementation of this section, including the grant application and the grant review and selection process, the state board shall appoint an advisory board consisting of the federal programs director and the title I reading coordinator/specialist, both from the state department of education, a representative from the department of education and the arts representing the library commission and the community schools initiative, a college or university professor of reading, two or more representatives from local school systems, the West Virginia coordinator of the read aloud program, the energy express project director, and a representative of mission West Virginia, or representatives of like successor organizations should these named organizations cease to exist. The procedures shall provide for:

(1) The appointment of a grant review and selection panel by the state board consisting of persons with expertise and practical experience in delivering programs to increase the reading skills of young students, not more than one-half of whom may be employees of the state department of education, or the state board may designate the advisory board as the grant review and selection panel;

(2) Notice to all schools of the grant competition and the availability of applications on or before the thirtieth day of September, in each fiscal year for which grant funds are available;

(3) A grant application deadline postmarked on or before the fifteenth day of December, in each fiscal year for which grant funds are available;

(4) Notice of grant awards on or before the first day of March, in each fiscal year for which grant funds are available; and

(5) Other such requirements as deemed necessary by the state board.

(e) The state board may fund, from any other funds available for such purposes, the programs required by this section for students in kindergarten through grade four and any programs required by state board rules such as, but not limited

to, the following:

(1) Tutoring;

(2) Summer school educational services;

(3) Additional certified personnel to provide intensive instruction in reading throughout the school year;

(4) Staff development for teachers; and

(5) Hot meal programs.

(f) Nothing in this section shall supersede the individualized education program (IEP) of any student.

(g) Nothing in this section may be construed to require any specific level of funding by the Legislature.

**§18-2E-5. Process for improving education; office of education performance audits; education standards; school accreditation and school system approval; intervention to correct impairments.**

(a) *Legislative Intent.* -- The purpose of this section is to establish a process for improving education that includes standards, assessment, accountability and capacity building to provide assurances that a thorough and efficient system of education schools is being provided for all West Virginia public school students on an equal education opportunity basis and that the high quality standards are, at a minimum, being met. A system for the review of school district education plans, performance-based accreditation and periodic, random, unannounced on-site effectiveness reviews of district education systems, including individual schools within the districts, shall provide assurances that the high quality standards established in this section are being met.

(b) *State Board Rules.* -- The state board shall promulgate rules in accordance with article three-b, chapter twenty-nine-a of this code establishing a unified county improvement plan for each county board and a unified school improvement plan for each public school in this state. The state board is not required to promulgate new rules if legislative rules meeting the requirements of article three-b, chapter twenty-nine-a of this code have been filed with the office of the secretary of state before the effective date of this section.

(c) *High Quality Education Standards.* -- ~~On or before the first day of November, one thousand nine hundred ninety-six,~~ The state board shall, in accordance with the provisions of article three-b, chapter twenty-nine-a of this code, establish and adopt and periodically review and update high quality education standards for student, school and school system performance and processes in the following areas:

(1) Curriculum;

(2) Workplace readiness skills;

(3) Finance;

(4) Transportation;

(5) Special Education;

(6) Facilities;

(7) Administrative practices;

(8) Training of county board members and administrators;

(9) Personnel qualifications;

- (10) Professional development and evaluation;
- (11) Student and school performance;
- (12) A code of conduct for students and employees; and
- (13) Any other such areas as determined by the state board.

~~(d) *Performance Measures.* -- The standards shall assure that all graduates are prepared for gainful employment or for continuing post-secondary education and training and that schools and school districts are making progress in achieving the education goals of the state. Each school district shall submit an annual improvement plan designed around locally identified needs showing how the education program of each school in the district will meet or exceed the high quality standards. A performance-based accreditation system shall be the only statewide system used for accrediting or classifying the public schools in West Virginia. The state board shall establish a schedule and shall review each school within a district and each county board for accreditation based on information submitted to the board under the performance-based accreditation system as set forth in subsection (e) of this section.~~

~~(e) On or before the first day of September, one thousand nine hundred ninety-six, the state board shall, in accordance with the provisions of article three-b, chapter twenty-nine-a of this code, establish by rule a system which measures the quality of education and preparation of students at each school based on measures of student and school performance, including, but not limited to, the following:~~

~~The standards shall include measures of student performance to indicate when a thorough and efficient system of schools is being provided and of school and school system performance and processes that enable student performance. The measures of student performance and school and school system performance and processes shall include, but are not limited to, the following:~~

- (1) The acquisition of student proficiencies as indicated by student performance by grade level measured, where possible, by a uniform statewide assessment program;
- (2) School attendance rates;
- (3) Student dropout rate;
- (4) Percent of students promoted to next grade;
- (5) Graduation rate;
- (6) Average class size;
- (7) Pupil-teacher ratio and number of exceptions to ratio requested by county boards and number granted;
- (8) Number of split-grade classrooms;
- (9) Percentage of graduates who enrolled in college; the percentage of graduates who enrolled in other post-secondary education; and the percentage of graduates who become fully employed within one year of high school graduation all as reported by the graduates on the assessment form attached to their individualized student transition plan, pursuant to section eight of this article and the percentage of graduates reporting;
- (10) Pupil-administrator ratio;
- (11) Parent involvement;
- (12) Parent, teacher and student satisfaction;
- (13) Operating expenditures per pupil;



(14) Percentage of graduates who attain the minimum level of performance in the basic skills recognized by the state board as laying the foundation for further learning and skill development for success in college, other post-secondary education and gainful employment and the grade level distribution in which the minimum level of performance was met; ~~and~~

(15) Percentage of graduates who received additional certification of their skills, competence and readiness for college, other post-secondary education or employment above the minimum foundation level of basic skills; and

(16) Effective school system participation with their assigned regional educational service agency.

(e) Assessment and Accountability of School and School System Performance and Processes. -- The state board shall establish by rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code, a system of education performance audits which measures the quality of education and the preparation of students based on the standards and measures of student, school and school system performance and processes, including, but not limited to, the standards and measures set forth in subsections (c) and (d) of this section. The system of education performance audits shall assist the state board in ensuring that the standards and measures established pursuant to this section are, at a minimum, being met and that a thorough and efficient system of schools is being provided. The system of education performance audits shall include: (1) The assessment of student, school and school system performance and the processes in place in schools and school systems which enable student performance; (2) the review of school and school system unified improvement plans; and (3) the periodic, random unannounced on-site review of school and school system performance and compliance with the standards.

(f) Uses of School and School System Assessment Information. -- The state board shall use information from the system of education performance audits to assist it in ensuring that a thorough and efficient system of schools is being provided and to improve student, school and school system performance, including, but not limited to, the following: (1) Determining school accreditation and school system approval status; (2) holding schools and school systems accountable for the efficient use of existing resources to meet or exceed the standards; and (3) targeting additional resources when necessary to improve performance. Primary emphasis in determining school accreditation and school system approval status will be based on student, school and school system performance on measures selected by the state board. The state board shall make accreditation information available to the Legislature; the governor; and to the general public and any individuals who request such information, subject to the provisions of any act, rule or regulation restricting the release of information. Based on the assessment of student, school and school system performance, the state board shall establish early detection and intervention programs to assist underachieving schools and school systems in improving performance before conditions become so grave as to warrant more substantive state intervention, including, but not limited to, making additional technical assistance, programmatic, monetary and staffing resources available where appropriate.

(g) Office of Education Performance Audits. -- To assist the state board in the operation of the system of education performance audits and in making determinations regarding the accreditation status of schools and the approval status of school systems, the state board shall establish an office of education performance audits which shall be operated under the direction of the state board independently of the functions and supervision of the state department of education and state superintendent. The office of education performance audits shall report directly to and be responsible to the state board in carrying out its duties under the provisions of this section. The office shall be headed by a director who shall be appointed by the state board and shall serve at the will and pleasure of the state board. The salary of the director shall not exceed the salary of the state superintendent of schools. The state board shall organize and sufficiently staff the office to fulfill the duties assigned to it by this section and the state board. Employees of the state department of education who are transferred to the office of education performance audits shall retain their benefit and seniority status with the department of education. Under the direction of the state board, the office of education performance audits shall receive from the West Virginia education information system staff research and analysis data on the performance of students, schools and school systems, and shall receive assistance from staff at the state department of education and the state school building authority to carry out the duties assigned to the office. In addition to other duties which may be assigned to it by the state board or by statute, the office of education performance audits also shall:

(1) Assure that all statewide assessments of student performance are secure as required in section one-a, article two-e of

this chapter:

(2) Administer all accountability measures as assigned by the state board, including, but not limited to processes for the accreditation of schools and the approval of school systems, and recommend to the state board appropriate action, including, but not limited to, accreditation and approval action;

(3) Determine, in conjunction with the assessment and accountability processes, what capacity may be needed by schools and school systems to meet the standards established by the Legislature and the state board, and recommend to the school, school system and state board, plans to establish those needed capacities;

(4) Determine, in conjunction with the assessment and accountability processes, whether statewide system deficiencies exist in the capacity to establish and maintain a thorough and efficient system of schools, including the identification of trends and the need for continuing improvements in education, and report those deficiencies and trends to the state board;

(5) Determine, in conjunction with the assessment and accountability processes, staff development needs of schools and school systems to meet the standards established by the Legislature and the state board, and make recommendations to the state board, the center for professional development, regional education service agencies, higher education governing boards and county boards; and

(6) Identify, in conjunction with the assessment and accountability processes, exemplary schools and school systems and best practices that improve student, school and school system performance, and make recommendations to the state board for recognizing and rewarding exemplary schools and school systems and promoting the use of best practices. The state board shall provide information on best practices to county school systems and shall use information identified through the assessment and accountability processes to select schools of excellence.

(h) *On-site Reviews.* -- At the direction of the state board or by weighted, random selection by the office of education performance audits, an unannounced on-site review shall be conducted by the office of education performance audits of any school or school system for purposes, including, but not limited to, the following: (1) Verifying data reported by the school or county board; (2) documenting compliance with policies and laws; (3) evaluating the effectiveness and implementation status of school and school system unified improvement plans; (4) investigating official complaints submitted to the state board that allege serious impairments in the quality of education in schools or school systems; and (5) investigating official complaints submitted to the state board that allege that a school or county board is in violation of policies or laws under which schools and county boards operate. The random selection of schools and school systems for an on-site review shall use a weighted random sample so that those with lower performance indicators and those that have not had a recent on-site review have a greater likelihood of being selected. Under the direction of the state board, the office of education performance audits shall appoint an education standards compliance review team to assist it in conducting on-site reviews. The teams shall be composed of an adequate number of persons who possess the necessary knowledge, skills and experience to make an accurate assessment of education programs and who are drawn from a trained cadre established by the office of education performance audits. The state board shall have discretion in determining the number of persons to serve on a standards compliance review team based on the size of the school or school system as applicable. The teams shall be led by a member of the office of education performance audits. County boards shall be reimbursed for the costs of substitutes required to replace county board employees while they are serving on an education standards compliance review team. The office of education performance audits shall report the findings of the on-site reviews to the state board for inclusion in the evaluation and determination of a school's or county board's accreditation or approval status as applicable.

(i) *School accreditation.* -- The state board annually shall review the information from the system of education performance audits submitted for each school and shall issue to every school: (i) Full accreditation status, ~~or~~ (ii) ~~probationary~~ ~~temporary~~ accreditation status, conditional accreditation status, or shall declare the education programs at the school to be seriously impaired.

(1) Full accreditation status shall be given to a school when the school's performance on the standards adopted by the state board pursuant to subsections (c) and (d) of this section ~~above indicators~~ is at a level which would be expected when all of the high quality education standards are being met.

~~Probationary~~ (2) Temporary accreditation status shall be given to a school when the measure of the school's performance is below such level the level required for full accreditation status. Whenever a school is given probationary temporary accreditation status, the county board shall implement an improvement plan which is designed ensure that the school's unified improvement plan is revised to increase the performance of the school to a full accreditation status level. within one year The revised unified school improvement plan shall include objectives, a time line, a plan for evaluation of the success of the improvements, cost estimates, and a date certain for achieving full accreditation. The revised plan shall be submitted to the state board for approval.

(3) Conditional accreditation status shall be given to a school when the school's performance on the standards adopted by the state board is below the level required for full accreditation, but the school's unified improvement plan has been revised to achieve full accreditation status by a date certain, the plan has been approved by the state board and the school is meeting the objectives and time line specified in the revised plan.

~~(4)~~ (4) The state board shall establish and adopt standards of performance to identify seriously impaired schools and the state board may declare a school seriously impaired whenever extraordinary circumstances exist as defined by the state board.

These circumstances shall include, but are not limited to, the failure of a school on temporary accreditation status to obtain approval of its revised unified school improvement plan within a reasonable time period as defined by the state board and the failure of a school on conditional accreditation status to meet the objectives and time line of its revised unified school improvement plan or to achieve full accreditation by the date specified in the revised plan. Whenever the state board determines that the quality of education in a school is seriously impaired, the state superintendent, with approval of the state board, shall appoint a team of three improvement consultants to make recommendations within sixty days of appointment for correction of the impairment. Upon approval of the recommendations by the state board, the recommendations shall be made to the county board. If progress in correcting the impairment as determined by the state board is not made within six months from the time the county board receives of receipt of the recommendations, the state superintendent shall state board shall place the county board on temporary approval status and provide consultation and assistance to the county board to: (1) (i) Improve personnel management; (2) (ii) establish more efficient financial management practices; (3) (iii) improve instructional programs and rules; or (4) (iv) make such other improvements as may be necessary to correct the impairment. If the impairment is not corrected within one year of receipt of the recommendations by a date certain set by the state board, the district county board shall be given probationary approval status or nonapproval status.

~~(j)~~ (j) Transfers from Seriously Impaired Schools. -- Whenever a school is given probationary status or is determined to be seriously impaired and fails to improve its status within one year, any student attending such school may transfer once to the nearest fully accredited school, subject to approval of the fully accredited school and at the expense of the school from which the student transferred.

~~(k)~~ (k) School System Approval. -- The state board annually shall review the information submitted for each school system from the system of education performance audits and issue one of the following accreditation approval levels to each county board: (1) Full approval, (2) conditional temporary approval, (3) probationary conditional approval, or (4) nonapproval.

(1) Full approval shall be given to a county board whose education system meets or exceeds all of the high quality standards for student, school and school system performance and processes adopted by the state board and whose schools have all been given full, temporary or conditional accreditation status. Full approval shall be for a period not to exceed four years:

Conditional approval shall be given to a county board whose education system meets at least ninety-five percent of the high quality standards adopted by the state board and in which at least ninety percent of the schools have been given full accreditation status provided no school is seriously impaired. Conditional approval shall be for a period not to exceed one year: *Provided*, That for counties that have fewer than ten schools, the state board may grant conditional approval without regard to the ninety percent based on the total quality of the county education program.

(2) Temporary approval shall be given to a county board whose education system is below the level required for full approval. Whenever a county board is given temporary approval status, the county board shall revise its unified county improvement plan to increase the performance of the school system to a full approval status level. The revised plan shall include objectives, a time line, a plan for evaluation of the success of the improvements, a cost estimate, and a date certain for achieving full approval. The revised plan shall be submitted to the state board for approval.

~~Probationary approval shall be given to a county board whose education system has met less than ninety-five percent of the high quality standards, or which has eleven percent or more schools in the district given probationary status or serious impairment. Probationary approval is a warning that the county board must make specified improvements. If the number of schools in the district given probationary status is not reduced to a number that would allow full accreditation to be granted in the following year, the county board shall be automatically given nonapproval. In addition,~~

(3) Conditional approval shall be given to a county board whose education system is below the level required for full approval, but whose unified county improvement plan meets the following criteria: (i) the plan has been revised to achieve full approval status by a date certain, (ii) the plan has been approved by the state board and (iii) the county board is meeting the objectives and time line specified in the revised plan.

(4) Nonapproval status shall be given to a county board which fails to submit an annual program plan or fails to demonstrate a reasonable effort to meet the high quality standards and gain approval for its unified county improvement plan or revised unified county improvement plan within a reasonable time period as defined by the state board or fails to meet the objectives and time line of its revised unified county improvement plan or fails to achieve full approval by the date specified in the revised plan. The state board shall establish and adopt additional standards to identify school districts systems in which the program may be nonapproved or and the state board may issue nonapproval status whenever extraordinary circumstances exist as defined by the state board. Furthermore, whenever a county board has more than a casual deficit, as defined in section one, article one of this chapter, the county board shall submit a plan to the state board specifying the county board's strategy for eliminating the deficit. The state board either shall approve or reject the plan. If the plan is rejected, the state board shall communicate to the county board the reason or reasons for the rejection of the plan. The county board may resubmit the plan any number of times. However, any county board that fails to submit a plan and gain approval for the plan from the state board before the end of the fiscal year after a deficit greater than a casual deficit occurred or any county board which, in the opinion of the state board, fails to comply with an approved plan may be designated as having nonapproval status. (g) Whenever nonapproval status is given to a county school system, the state board shall declare a state of emergency in the district and may intervene in the operation of the district to school system and shall appoint a team of improvement consultants to make recommendations within sixty days of appointment for correcting the emergency. Upon approval of the recommendations by the state board, the recommendations shall be made to the county board. If progress in correcting the emergency, as determined by the state board, is not made within six months from the time the county board receives the recommendations, the state board shall intervene in the operation of the school system to cause improvements to be made that will provide assurances that a thorough and efficient system of schools will be provided. This intervention may include, but is not limited to the following: (1) Limit (i) Limiting the authority of the county superintendent and county board as to the expenditure of funds, the employment and dismissal of personnel, the establishment and operation of the school calendar, the establishment of instructional programs and rules and such other areas as may be designated by the state board by rule; (2) take (ii) taking such direct action as may be necessary to correct the impairment emergency; and (3) declare (iii) declaring that the office of the county superintendent is vacant.

~~(h) To assist the state board in determinations of the accreditation status of schools and the approval status of school districts under this section, the state board shall from time to time appoint an education standards compliance review team to make unannounced on-site reviews of the education programs in any school or school district in the state to assess compliance of the school or district with the high quality standards adopted by the state board, including, but not limited to, facilities, administrative procedures, transportation, food services and the audit of all matters relating to school finance, budgeting and administration.~~

~~The teams shall be composed of not more than ten persons, not more than half of whom may be members of or currently employed by the state board, who possess the necessary knowledge, skills and experience to make an accurate assessment of such education programs. The education standards compliance team shall report the findings of its on-site~~

~~reviews to the state board for inclusion in the determination of a school's or district's accreditation or approval status as applicable. The state board shall encourage the sharing of information to improve school effectiveness among the districts.~~

~~The state board shall make accreditation information available to the Legislature, the governor, the general public and to any individuals who request such information.~~

~~(i) The state board shall fully implement the accreditation system under this article for all schools on the first day of July, one thousand nine hundred ninety-one, and may pilot test the system prior to that date. The state board shall adopt rules in accordance with the provisions of article three-b, chapter twenty-nine-a of this code necessary to implement the provisions of this article.~~

~~(l) *Capacity.* -- The process for improving education includes a process for targeting resources strategically to improve the teaching and learning process. Development of unified school and school system improvement plans, pursuant to subsection (b) of this section, is intended, in part, to provide mechanisms to target resources strategically to the teaching and learning process to improve student, school and school system performance. When deficiencies are detected through the assessment and accountability processes, the revision and approval of school and school system unified improvement plans shall ensure that schools and school systems are efficiently using existing resources to correct the deficiencies. When the state board determines that schools and school systems do not have the capacity to correct deficiencies, the state board shall work with the county board to develop or secure the resources necessary to increase the capacity of schools and school systems to meet the standards and, when necessary, seek additional resources in consultation with the Legislature and the governor. The state board shall recommend to the appropriate body including, but not limited to, the Legislature, county boards, schools and communities methods for targeting resources strategically to eliminate deficiencies identified in the assessment and accountability processes by:~~

~~(1) Examining reports and unified improvement plans regarding the performance of students, schools and school systems relative to the standards and identifying the areas in which improvement is needed;~~

~~(2) Determining the areas of weakness that appear to have contributed to the substandard performance of students or the deficiencies of the school or school system;~~

~~(3) Determining the areas of strength that appear to have contributed to exceptional student, school and school system performance and promoting their emulation throughout the system; (4) Requesting technical assistance from the school building authority in assessing or designing comprehensive educational facilities plans;~~

~~(5) Recommending priority funding from the school building authority based on identified needs;~~

~~(6) Requesting special staff development programs from the center for professional development, higher education, regional education service agencies and county boards based on identified needs;~~

~~(7) Submitting requests to the Legislature for appropriations to meet the identified needs for improving education;~~

~~(8) Directing county boards to target their funds strategically toward alleviating deficiencies;~~

~~(9) Ensuring that the need for facilities in counties with increased enrollment are appropriately reflected and recommended for funding;~~

~~(10) Ensuring that the appropriate person or entity is held accountable for eliminating deficiencies; and~~

~~(11) Ensuring that the needed capacity is available from the state and local level to assist the school or school system in achieving the standards and alleviating the deficiencies.~~

~~Amendments to this section adopted by the Legislature in regular session in the year one thousand nine hundred ninety-eight shall be effective on the first day of July, one thousand nine hundred ninety-eight.~~

## ARTICLE 2I. STAFF DEVELOPMENT COUNCILS.

### §18-2I-1. Legislative purpose.

The purpose of this article is to create the West Virginia staff development advisory council and eight regional staff development councils to coordinate the delivery of staff development programs for professional education in West Virginia.

### §18-2I-2. Legislative findings.

The Legislature finds that there is presently an inadequate and inefficient delivery of staff development programs for professional education in West Virginia. The Legislature further finds that the creation of a West Virginia staff development advisory council and regional staff development councils will assure the efficient delivery of high quality staff training programs and will further assure that duplication of efforts will be minimized. The Legislature further finds that the functions of the West Virginia staff development advisory council and regional staff development councils will assure that key personnel will be fully aware of identified needs and programmatic services, that all stakeholders will be appropriately involved in planning and implementing programs to meet requisite needs and that high quality staff development programs will be provided to public school educators of West Virginia in the most efficient manner.

### §18-2I-3. Creation of West Virginia staff development advisory council; members; and functions.

(a) There shall be a West Virginia staff development advisory council which shall consist of the following members:

(1) The chairpersons of each of the eight regional staff development councils established in section five of this article;

(2) The coordinators of each of the eight regional educational service agency staff development councils;

(3) The associate superintendent for the division of research, technology and professional services of the state department of education;

(4) The assistant superintendent for the division of instructional and student services of the state department of education;

(5) The assistant superintendent for the division of technical and adult education services of the state department of education;

(6) The assistant superintendent for the division of administrative services of the state department of education;

(7) The secretary of education and the arts or his or her designee;

(8) The chancellor of the university system of West Virginia or his or her designee;

(9) The chancellor of the state college system of West Virginia or his or her designee;

(10) The executive director of the West Virginia education fund or his or her designee;

(11) The executive director of the West Virginia center for professional development or his or her designee;

(12) The president of the West Virginia education association or his or her designee;

(13) The president of the West Virginia federation of teachers or his or her designee;

(14) The president of the West Virginia professional educators or his or her designee;

(15) The president of the West Virginia association of school administrators or his or her designee;

(16) The president of the West Virginia association of elementary and middle school principals or his or her designee; and

(17) The president of the West Virginia association of secondary school principals or his or her designee.

(b) Any member of the advisory council may be reimbursed by his or her employing agency for the cost of reasonable and necessary expenses actually incurred in the performance of their duties under this article as determined by the employing agency.

#### **§18-2I-4. Functions of the West Virginia staff development advisory council.**

The council shall:

(a) Identify and prioritize statewide staff development needs;

(b) Identify effective staff development programs to meet identified needs;

(c) Communicate staff development information and findings to the regional staff development councils, the state board and the legislative oversight commission on education accountability by the first day of September of each year;

(d) Convene regular meetings on a semiannual basis to effectuate the requirements in subsections (a), (b) and (c) of this section; and

(e) Elect a chairman who shall serve two years.

#### **§18-2I-5. Creation of regional staff development councils; members; and functions.**

(a) There shall be a regional staff development council in each of the eight regional educational service agencies located within the state. Each regional staff development council shall consist of the following members:

(1) The chairperson of each of the county professional staff development councils located in each county contained in the applicable region;

(2) The county staff development coordinator from each of the counties located within the region: *Provided*, That if the county does not have a staff development coordinator, then the superintendent shall designate a person to serve on the regional staff development council;

(3) The regional educational service agencies staff development coordinator who shall serve as an ex officio member;

(4) The executive director of the regional educational service agencies who shall serve as an ex officio member;

(5) The designee of the chancellor of the university system of West Virginia who shall serve as an ex officio member; and

(6) The designee of the chancellor of the state college system of West Virginia who shall serve as an ex officio member.

(b) Any member of the regional staff development council may be reimbursed by his or her employing agency for the cost of reasonable and necessary expenses actually incurred in the performance of their duties under this article as determined by the employing agency.

#### **§18-2I-6. Functions of the regional staff development councils.**

The regional councils shall:

(a) Identify and prioritize regional staff development needs;

(b) Identify effective staff development programs;

(c) Where requested by the regional educational service agency, establish the budget for multicounty staff development programs and oversee effective use of the budget;

(d) Where requested by the regional educational service agency, coordinate staff development at the regional level;

(e) Facilitate communications among and between personnel responsible for staff development at the state, local and regional levels;

(f) Convene regular meetings on a quarterly basis to effectuate the requirements in subsections (a), (b), (c), (d) and (e) of this section;

(g) Elect a chairman who shall serve two years; and

(h) Report information and findings related to staff development to the West Virginia staff development advisory council.

§18-2I-7. Limitations on funding of councils.

Nothing in this article may be construed to require any specific level of funding by the Legislature.

## **ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

### **§18-9A-7. Foundation allowance for transportation cost.**

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

(1) ~~Eighty~~ Eighty-five percent of the transportation cost within each high density county and ninety percent of the transportation cost within each low density county for maintenance, operation and related costs, exclusive of all salaries: *Provided*, That for the school year beginning the first day of July, one thousand nine hundred ~~ninety-four~~ ninety-eight, and thereafter, in the event a county uses an alternative fuel such as compressed natural gas or other acceptable alternative fuel for the operation of all or any portion of its school bus system, then the allowance in the foundation school program for each such county for that portion of its school bus system shall be ~~ninety~~ ninety-five percent of the transportation cost for maintenance, operation and related costs, exclusive of all salaries, incurred by the use of the alternatively fueled school buses: *Provided, however*, That any county using an alternative fuel and qualifying for the additional allowance shall submit a plan regarding the intended future use of alternatively fueled school buses; *Provided further*, ~~That the state board shall distribute the additional allowance to qualifying counties only until such time as the state board has distributed in the then current fiscal year one hundred thousand dollars of transportation allowance, in the statewide aggregate, above the eighty percent to qualifying counties, after which the additional ten percent shall no longer be available to any county~~

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

(3) For the school year beginning the first day of July, one thousand nine hundred eighty-nine, and thereafter, an amount equal to ten percent of the current replacement value of the bus fleet within each county as determined by the state board, such amount to be used only for the replacement of buses. In addition, in any school year in which its net enrollment increases when compared to the net enrollment the year immediately preceding, a school district may apply to the state superintendent for funding for an additional bus. ~~Furthermore, large, sparsely populated counties may also apply to the state superintendent for funding for additional mini-buses.~~ The state superintendent shall make a decision regarding each application based upon an analysis of the individual school district's net enrollment history and transportation needs: ~~or, in the case of a large, sparsely populated county, the population of the county~~ *Provided*, That the superintendent shall not consider any application which fails to document that the county has applied for federal



funding for additional buses. If the state superintendent finds that a need exists, a request for funding shall be included in the budget request submitted by the state board for the upcoming fiscal year;

(4) Eighty-five percent of the cost of contracted transportation services and public utility transportation within each high density county and ninety percent of the cost of contracted transportation services and public utility transportation within each low density county; ~~Eighty percent of the cost of contracted transportation services and public utility transportation with each county~~

(5) Aid in lieu of transportation equal to the state average amount per pupil for each pupil receiving such aid within each county; and

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

The total state share for this purpose shall be the sum of the county shares ~~and shall be distributed in accordance with rules to be promulgated by the state board.~~ *Provided*, That no county shall receive an allowance which is greater than one third above the computed state average allowance per transportation mile multiplied by the total transportation mileage in the county. *Provided, however*, That one-half of one percent of the transportation allowance distributed to each county shall be for the purpose of trips related to academic classroom curriculum and not related to any extracurricular activity. *Provided further*, That any remaining funds credited to a county for the purpose of trips related to academic classroom curriculum during the fiscal year shall be carried over for use in the same manner the next fiscal year and shall be separate and apart from, and in addition to, the appropriation for the next fiscal year. *And provided further*, That the state board may request a county to document the use of funds for trips related to academic classroom curriculum if the board deems it necessary.

The state department of education shall cause a comprehensive study to be made relating to student transportation. The study shall examine, but is not limited to, the issues of funding, timeliness of data used for formula distribution, service personnel needed, inter-county service, regionalization of services, bus routes, amount of time students spend on buses, maintenance, safety training, and alternative transportation systems. The state department of education shall submit a report of the study to the legislative oversight commission on education accountability by the fifteenth day of January, one thousand nine hundred ninety-nine.

#### **§18-9A-10. Foundation allowance to improve instructional programs.**

(a) For the school year beginning on the first day of July, one thousand nine hundred ~~ninety-four~~ ninety-eight, and thereafter, the sum of the allocations shall be ~~in an amount at least equal to~~ the amount appropriated by the Legislature ; ~~in addition to funds which accrue from balances in the general school fund, or from appropriations~~ for such purposes:

(1) One hundred fifty thousand dollars shall be allocated to each county;

(2) Distribution to the counties of the remainder of these funds shall be made proportional to the average of each county's average daily attendance for the preceding year and the county's second month net enrollment. Moneys allocated by provision of this section shall be used to improve instructional programs according to a plan for instructional improvement which the affected county board shall file with the state board by the first day of August of each year, to be approved by the state board by the first day of September of that year if such plan substantially complies with standards to be adopted by the state board: *Provided*, That notwithstanding any other provision of this code to the contrary, moneys allocated by provision of this section may also be used in the implementation and maintenance of the uniform integrated regional computer information system; and

(3) Up to twenty-five percent of this allocation may be used to employ professional educators and/or service personnel in counties after all applicable provisions of sections four and five of this article have been fully utilized: *Provided*, That for the school year beginning on the first day of July, one thousand nine hundred ninety-six, only, up to an additional twenty-five percent of this allocation may be used to employ classroom teachers, as defined in section one, article one, chapter eighteen-a of this code, and/or service personnel in counties after all applicable provisions of sections four and

five of this article have been fully utilized: *Provided, however,* That service personnel employed with the additional twenty-five percent for the school year beginning on the first day of July, one thousand nine hundred ninety-six, only, may not include directors, coordinators or supervisors.

Prior to the use of any funds from this section for personnel costs, the county board must receive authorization from the state superintendent of schools. The state superintendent shall require the district board to demonstrate: (1) The need for the allocation; (2) efficiency and fiscal responsibility in staffing; and (3) sharing of services with adjoining counties and the regional educational service agency for that county in the use of the total local district board budget. District boards shall make application for available funds for the next fiscal year by the first day of May of each year. On or before the first day of June, the state superintendent shall review all applications and notify applying district boards of the distribution of the allocation: *Provided,* That for the school year beginning on the first day of July, one thousand nine hundred ninety-three, only, the state superintendent shall review all applications and notify applying district boards of the distribution of the allocation on or before the first day of July, one thousand nine hundred ninety-three. Such funds shall be distributed during the fiscal year as appropriate. The state superintendent shall require the county board to demonstrate the need for an allocation for personnel based upon the county's inability to meet the requirements of state law or state board policy: *Provided, however,* That the funds available for personnel under this section may not be used to increase the total number of professional noninstructional personnel in the central office beyond four. Such instructional improvement plan shall be made available for distribution to the public at the office of each affected county board.

(b) Commencing with the school year beginning on the first day of July, one thousand nine hundred ninety-three, an amount not less than the amount required to meet debt service requirements on any revenue bonds issued prior to the first day of January, one thousand nine hundred ninety-four, and the debt service requirements on any revenue bonds issued for the purpose of refunding revenue bonds issued prior to the first day of January, one thousand nine hundred ninety-four, shall be paid into the school building capital improvements fund created by section six, article nine-d of this chapter, and shall be used solely for the purposes of said article. The school building capital improvements fund shall not be utilized to meet the debt services requirement on any revenue bonds or revenue refunding bonds for which moneys contained within the school building debt service fund have been pledged for repayment pursuant to said section.

## CHAPTER 18A. SCHOOL PERSONNEL

### ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

#### §18A-3-2c. Training through the principals academy.

(a) *Principal training required.* -- After the first day of January, one thousand nine hundred ninety-seven, and subject to the provisions of subsection (c) of this section, every principal shall complete a training program through the principals academy at least once every four years.

(b) *Admission to academy.* -- The academy and the persons attending such academy shall adhere to the following guidelines for admission to the academy:

(1) All persons assigned as a principal for the first time in a West Virginia school after the first day of March, one thousand nine hundred ninety-six, shall complete training through the academy: *Provided,* That if training through the academy is scheduled to begin within ninety days from the date of assignment, such person may complete the next scheduled training through the academy;

(2) All principals of schools which have received from ~~are designated by~~ the state board temporary or conditional accreditation status ~~as being on probationary status~~ or whose schools have been designated ~~as being~~ seriously impaired, in accordance with section five, article two-e, chapter eighteen of this code, shall complete the next regularly scheduled training through the academy following the date of such designation: *Provided,* That if training through the academy is scheduled to begin within thirty days from the date of such designation, such principal may complete the next scheduled training through the academy: *Provided, however,* That principals whose schools have received conditional accreditation status, whose plan for correcting the deficiency which resulted in conditional accreditation status exceeds

one year and whose schools are meeting the requirements of the plan, shall not be required to attend the academy in each successive year;

(3) All principals who are subject to an improvement plan, in accordance with section twelve, article two of this chapter, shall complete the next regularly scheduled training through the academy: *Provided*, That if training through the academy is scheduled to begin within thirty days from the date the principal is first subject to the improvement plan, then such principal may complete the next scheduled training through the academy;

(4) All principals who transfer to a school with a significantly different grade configuration shall complete the next regularly scheduled training through the academy: *Provided*, That if training through the academy is scheduled to begin within ninety days from the date such principal is transferred, then such principal may complete the next scheduled training through the academy; and

(5) All persons serving as school principals who are not described in subdivisions (1) through (4) of this subsection shall complete training through the academy at least once every four years from and after the first day of January, one thousand nine hundred ninety-seven.

(c) *Academy and attendance subject to funding.* -- The requirement that principals attend the academy shall be subject to the availability of funds for the principals academy from legislative appropriation or from other sources. If such funds are insufficient to provide for the total cost of admission to the academy for those required to complete training, then the academy shall admit the persons described in subdivisions (1) through (5), subsection (b) of this section according to the priority in which the subdivisions appear in said subsection. If such funds are insufficient to provide for the admission of all the persons described in one or more of subdivisions (1) through (5), subsection (b) of this section, the academy is authorized to determine which persons described within the said subdivision or subdivisions shall be admitted and which shall not be admitted: *Provided*, That the principals academy shall make every effort to ensure that all principals attend once every four years from and after the first day of January, one thousand nine hundred ninety-seven: *Provided, however*, That nothing in this section shall be construed to require any specific level of funding by the Legislature.

(d) *Principals standards advisory council.* -- To assist the state board in the performance of the duties described in subsection (e) of this section, there is hereby created a "Principals Standards Advisory Council", which shall consist of nine persons, as follows: The executive director, or designee, of the center for professional development, who shall serve as the ex-officio chair; three principals, one from an elementary school, one from a middle school or a junior high school, and one from a high school, and one county school superintendent, nominated by the state board and appointed by the governor; two representatives from higher education who teach in principal preparation programs, nominated by the chancellor of the state university system and appointed by the governor; and two citizen representatives who are knowledgeable on issues addressed in this section, appointed by the governor. Of the initial appointments, three of the members appointed shall serve for a term of three years, three members shall serve for a term of two years, and two members shall serve for a term of one year. All successive appointments shall be for a term of three years. Members of the council who are public employees shall be granted release time from their employment for attending meetings of the council. Members may be reimbursed for reasonable and necessary expenses actually incurred in the performance of their official duties by the center for professional development.

(e) *Establishment of standards.* -- On or before the first day of October, one thousand nine hundred ninety-six, the state board shall approve and promulgate rules regarding the minimum qualities, proficiencies and skills that will be required of principals after the first day of January, one thousand nine hundred ninety-seven. The state board shall promulgate such rules after consultation with the principals standards advisory council created in subsection (d) of this section. The rule developed by the state board shall address at least the following:

(1) Staff relations, including, but not limited to, the development and use of skills necessary to make a positive use of faculty senates, to manage faculty and staff with courtesy and mutual respect, coach and motivate employees and to build consensus as a means of management;

(2) School community leadership qualities, including, but not limited to, the ability to organize and leverage community initiative, communicate effectively, work effectively with local school improvement councils, manage change, resolve conflict and reflect the highest personal values;

(3) Educational proficiencies, including, but not limited to, knowledge of curriculum, instructional techniques, student learning styles, student assessment criteria, school personnel performance, evaluation skills and family issues; and

(4) Administrative skills, including, but not limited to, organizational, fiscal, public policy and total quality management skills and techniques.

(f) *Waivers.* -- Any person desiring to be relieved of the requirements of all or any part of this section may apply in writing to the state board for a waiver. Upon a showing of reasonable cause why relief should be granted, the state board may grant a waiver, upon such terms and conditions as the state board shall determine proper, as to all or any part of this section.

(g) *Failure to comply.* -- Any person who fails or refuses to complete training through the academy, as required by the provisions of this section, and who fails to obtain a waiver, as described in subsection (f) of this section, shall be ineligible to be employed as, or serve in the capacity of, a principal.

(h) *Tracking of requirement.* -- On or before the first day of January, one thousand nine hundred ninety-seven, the state board shall establish a system to track the progress of each person required to complete training through the academy and shall regularly advise such persons of their progress.

(i) *Payment of reasonable and necessary expenses and stipends.* -- The center for professional development may reimburse persons attending the academy for reasonable and necessary expenses. Additionally, any person whose attendance occurs outside his or her employment term, as defined in section fifteen, article five, chapter eighteen of this code, may be entitled to a stipend to be determined by and paid by the center for professional development: *Provided*, That nothing in this section shall be construed to require any specific level of funding by the Legislature.

## **ARTICLE 3A. CENTER FOR PROFESSIONAL DEVELOPMENT.**

### **§18A-3A-1. Center for professional development continued; intent; advisory council.**

(a) Teaching is a profession that directly correlates to the social and economic well-being of a society and its citizens. Superior teaching is essential to a well educated and productive populace. Strong academic leadership provided by principals and administrators skilled in modern management principles is also essential. The intent of this article is to recognize the value of professional involvement by experienced educators, principals and administrators in building and maintaining a superior force of professional educators and to establish avenues for applying such involvement.

~~In furtherance of this intent, the center for professional development is continued and reestablished.~~ The general mission of the center is to study matters relating to the quality of teaching and management in the schools of West Virginia and to promote the implementation primarily of statewide programs and practices as recommended by the state board to assure the highest quality in teaching and management. The center also may implement local programs if the state board, in its agenda set pursuant to section twenty-three-a, article two, chapter eighteen of this code, determines that there is a specific local need for the programs. Additionally, the center shall ~~also~~ perform such duties as are assigned to it by law.

Nothing in this article shall be construed to require any specific level of funding by the Legislature.

(b) ~~The center board existing before the effective date of this section is abolished.~~ The center board after the effective date of this section shall consist of a board of eleven persons as members as follows: The secretary of education and the arts, ex officio, ~~who shall be the board chair~~ and the state superintendent of schools, ex officio, both of whom shall be entitled to vote; three members of the state board, elected by the state board; three experienced educators, of whom two shall be working classroom teachers and one of whom shall be a school or county administrator, appointed by the governor by and with the advice and consent of the Senate; and three citizens of the state who are knowledgeable in matters relevant to the issues addressed by the center, including, but not limited to, professional development and management principles, appointed by the governor by and with the advice and consent of the Senate. Not more than two appointees shall be residents within the same congressional district. The center board shall elect a board chair. ~~The~~

~~secretary of education and the arts shall convene the first meeting of the center board.~~

~~The election and appointment of members shall be made as soon as possible after the effective date of this section. Of the initial members from the state board of education, one shall be elected for a term of one year and two shall be elected for terms of two years. All successive elections shall be for two-year terms. The state board of education shall elect another member to fill the unexpired term of any person so elected who subsequently vacates state board membership. Of the initial appointed members, three shall be appointed for one-year terms and three shall be appointed for two-year terms. All successive appointments shall be for two-year terms. The governor shall appoint a new member to fill the unexpired term of any vacancy in the appointed membership.~~

The center for professional development board shall meet at least quarterly and the appointed members shall be reimbursed for reasonable and necessary expenses actually incurred in the performance of their official duties from funds appropriated or otherwise made available for such purposes upon submission of an itemized statement therefor.

The ~~secretary of education and the arts~~ board chair, with the advice of the center board, from appropriations to the center for professional development, may employ and fix the compensation of an executive director with knowledge and experience in professional development and management principles and such other persons as may be necessary to carry out the mission and duties of the center. When practical, personnel employed by state higher education agencies and state, regional and county public education agencies shall be made available to the center to assist in the operation of projects of limited duration.

The center shall assist in the delivery of programs and activities pursuant to this article to meet statewide, and if needed as determined by the goals set by the state board pursuant to section twenty-three-a, article two, chapter eighteen of this code, the local professional development needs of teachers, principals and administrators and may contract with existing agencies or agencies created after the effective date of this section or others to provide training programs in the most efficient manner. Existing programs currently based in agencies of the state shall be continued in the agency of their origin unless the center establishes a compelling need to transfer or cancel the existing program. The center shall recommend to the governor the transfer of funds to the providing agency, if needed, to provide programs approved by the center.

Pursuant to the provisions of article ten, chapter four of this code, the center for professional development board shall continue to exist until the first day of July, two thousand one.

(c) On or before the first day of January, one thousand nine hundred ninety-eight, the center for professional development shall develop and communicate to the state board ~~of education~~ a curriculum for the principals academy. The curriculum shall be based upon the minimum qualities, proficiencies and skills necessary for principals and recommended by the state board, pursuant to the terms of section two-c, article three of this chapter.

(d) In accordance with section two-c, article three of this chapter, the center shall be responsible for paying reasonable and necessary expenses for persons attending the principals academy: *Provided*, That nothing in this section shall be construed to require any specific level of funding by the Legislature.

(e) Persons attending the professional development offerings of the center and such other courses as shall be offered by the center for professional development, except the principals academy, shall be assessed fees which shall be less than the full cost of attendance. There is hereby created in the state treasury a special revenue account known as the "center for professional development fund". All moneys collected by the center shall be deposited in the fund for expenditure by the center board for the purposes specified in this section. Moneys remaining in the fund at the end of the fiscal year are subject to reappropriation by the Legislature.

### **§18A-3A-2. Professional development project.**

Subject to the provisions of section twenty-three-a, article two, chapter eighteen of this code, through this project the center shall:

(1) Identify, coordinate, arrange and otherwise assist in the delivery of professional development programs and activities

that help professional educators acquire the knowledge, skills, attitudes, practices and other such pertinent complements deemed essential for an individual to demonstrate appropriate performance as a professional personnel in the public schools of West Virginia. The basis for such performance shall be the laws, policies and regulations adopted for the public schools of West Virginia, and amendments thereto. The center also may ~~also~~ permit and encourage school personnel such as classroom aides, higher education teacher education faculty and higher education faculty in programs such as articulated tech prep associate degree and other programs to participate in appropriate professional development programs and activities with public school professional educators;

(2) Identify, coordinate, arrange and otherwise assist in the delivery of professional development programs and activities that help principals and administrators acquire knowledge, skills, attitudes and practices in academic leadership and management principles for principals and administrators and such other pertinent complements deemed essential for principals and administrators to demonstrate appropriate performance in the public schools of West Virginia. The basis for such performance shall be the laws, policies and regulations adopted for the public schools of West Virginia, and amendments thereto;

(3) Serve in a coordinating capacity to assure that the knowledge, skills, attitude and other pertinent complements of appropriate professional performance which evolve over time in the public school environment are appropriately reflected in the programs approved for the education of professional personnel, including, but not limited to, advising the teacher education programs of major statutory and policy changes in the public schools which affect the job performance requirements of professional educators, including principals and administrators;

(4) Provide for the routine updating of professional skills of professional educators, including principals and administrators, through in-service and other programs. Such routine updating may be provided by the center through statewide or regional institutes which may require a registration fee; and

(5) Provide consultation and assistance to county staff development councils established under the provisions of section eight, article three of this chapter in planning, designing, coordinating, arranging for and delivering professional development programs to meet the needs of the professional educators of their district. From legislative appropriations to the center for professional development, exclusive of such amounts required for the expenses of the principals academy, the center shall, unless otherwise directed by the Legislature, provide assistance in the delivery of programs and activities to meet the expressed needs of the school districts for professional development to help teachers, principals and administrators demonstrate appropriate performance based on the laws, policies and regulations adopted for the public schools of West Virginia.

#### **§18A-3A-2a. Development training project.**

Subject to the provisions of section twenty-three-a, article two, chapter eighteen of this code, through this project the center shall develop training in the area of developmental instruction with an emphasis in grades kindergarten through grade four.

#### **§18A-3A-2b. The principals academy.**

There is hereby established within the center for professional development the "Principals Academy". Training through the principals academy shall include at least the following:

(a) Training designed to build within principals the minimum qualities, proficiencies and skills that will be required of all principals pursuant to the rules of the state board;

(b) Intensive summer training institutes; and

(c) Specialized training and professional development programs for all principals, with special programs for the following principals:

(1) Newly appointed principals;

(2) Principals of schools which have received from designated by the state board as on probation temporary or conditional accreditation status or whose schools have been designated as seriously impaired;

(3) Principals subject to improvement plans; and

(4) Principals of schools with significantly different grade level configurations.

**§18A-3A-3. Professional personnel evaluation project.**

Subject to the provisions of section twenty-three-a, article two, chapter eighteen of this code, through this project the center shall:

(1) Establish programs that provide education and training in evaluation skills to administrative personnel who will evaluate the employment performance of professional personnel pursuant to the provisions of section twelve, article two of this chapter; and

(2) Establish programs that provide instruction to classroom teachers who will serve as beginning teacher mentors in accordance with the provisions of section two-b, article three of this chapter.

*NOTE: WVC §18-9A-10 was amended further in SB 533 (relating to the School Building Authority).*

**HOUSE BILL 4314**

**EFFECTIVE DATE:** July 1, 1998

**SIGNED BY GOVERNOR:** April 8, 1998

**CODE REFERENCE(S):** New §29-6A-12

Amends and Reenacts §§18-29-5, 29-6A-3, 29-6A-4, 29-6A-5, 29-6A-6, 29-6A-7, 29-6A-10

**TOPIC: GRIEVANCE PROCEDURE FOR STATE EMPLOYEES**

**INTRODUCTION:**

This act amends and reenacts §18-29-5, §29-6A-3,4,5,6,7,10 and adds §29-6A-12 all relating to the education and public employees grievance process; providing for expedited grievance processes; expanding the jurisdiction of the board; changing the default provisions; giving board procedural jurisdiction at levels two and three; allowing mediation at the request of any party; allowing appeals to be filed in the circuit court of Kanawha County; and increasing the cap on attorney's fees for prevailing grievants.

**MAJOR NEW PROVISIONS:**

1. The grievance board will administer the grievance procedure at levels two and three besides four.
2. The board has jurisdiction over education employees and over procedures to be followed in processing grievances filed under §29-6A for state employees.
3. The grievant prevails by default if a grievance evaluator who is required to respond to a grievance at any level fails to do so within the required time limits. Exceptions exist for extenuating circumstances.
4. The employer may request a hearing before level four hearing examiner within five days of having received written notice of a default to show that the remedy received by the grievant is contrary to law or clearly wrong.
5. A grievant who alleges discrimination or retaliation by his/her immediate supervisor may waive level one filing, and the grievance may be initiated at level two within the time required time limits.
6. The director of the division of personnel replaces mention of the personnel director of the state civil service commission.
7. A grievance involving suspension without pay, demotion or dismissal or loss of wages may be initiated at level two.
8. Appeals may be filed in the circuit court of Kanawha County.
9. Attorney's fees may be up to \$1,500.
10. Either party in a grievance procedure may request mediation.

**ENROLLED**

**COMMITTEE SUBSTITUTE**

**FOR**

**H. B. 4314**



(By Mr. Speaker, Mr. Kiss, and Delegates Martin, Staton, Manuel, Fleischauer and Givens)

[Passed March 13, 1998; in effect July 1, 1998.]

AN ACT to amend and reenact section five, article twenty-nine, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three, four, five, six, seven and ten, article six-a, chapter twenty-nine of said code; and to further amend said article by adding thereto a new section, designated section twelve, all relating to the education and public employees grievance process; providing for expedited grievance processes; expanding the jurisdiction of the board; changing the default provisions; giving board procedural jurisdiction at levels two and three; allowing mediation at the request of any party; allowing appeals to be filed in the circuit court of Kanawha County; and increasing the cap on attorney's fees for prevailing grievants.

*Be it enacted by the Legislature of West Virginia:*

That section five, article twenty-nine, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections three, four, five, six, seven and ten, article six-a, chapter twenty-nine of said code be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section twelve, all to read as follows:

## **CHAPTER 18. EDUCATION.**

### **ARTICLE 29. GRIEVANCE PROCEDURE.**

#### **§18-29-5. Education and state employees grievance board; hearing examiners.**

(a)~~There is hereby created and shall be an~~ The education and state employees grievance board ~~which~~ shall consist of three members who ~~shall be~~ are citizens of the state appointed by the governor by and with the advice and consent of the Senate for overlapping terms of three years, ~~except that the original appointments shall be for a period of one, two and three years, respectively, commencing on the first day of July, one thousand nine hundred eighty-five.~~ No two members may be from the same congressional district, and no more than two of the appointed members may be from the same political party. No person may be appointed to membership on the board who is a member of any political party executive committee or holds any other public office or public employment under the federal government or under the government of this state. Members ~~shall be~~ are eligible for reappointment, and any vacancy on the board shall be filled within thirty days of the vacancy by the governor by appointment for the unexpired term.

A member of the board may not be removed from office except for official misconduct, incompetence, neglect of duty, gross immorality or malfeasance, and then only in the manner prescribed in article six, chapter six of this code for the removal by the governor of the state elected officers.

The board shall hold at least two meetings yearly at ~~such~~ times and places as it may prescribe and may meet at other times as may be necessary, ~~such~~ the other meetings to be agreed to in writing by at least two of the members. The compensation for Mmembers of the board ~~shall each be paid~~ is seventy-five dollars for each calendar day devoted to the work of the board, but not more than seven hundred and fifty dollars during any one fiscal year. Each member shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of board duties, but shall submit a request ~~therefor~~ for reimbursement upon a sworn itemized statement.

The board ~~is hereby authorized and required to administer~~ shall administer the grievance procedure at levels two, three and four, as provided in section five, article six-a, chapter twenty-nine of this code, and as provided for in section four of this article and shall employ at least two full-time hearing examiners on an annual basis and clerical help as is

necessary to implement the legislative intent expressed in section one of this article.

In addition to the authorization granted by this section over education employees, the board has jurisdiction over the procedures to be followed in processing grievances filed under article six-a, chapter twenty-nine of this code.

The board shall hire hearing examiners who reside in different regional educational service agency areas unless and until the number of hearing examiners exceeds the number of ~~such~~ the areas, at which time two hearing examiners may be from the same ~~such~~ area. If a grievant previously before a hearing examiner again brings a grievance, a different hearing examiner ~~shall be~~ is required to hear the grievance upon written request therefor by any party to the grievance. These hearing examiners ~~shall~~ serve at the will and pleasure of the board.

The board shall submit a yearly budget and shall report annually to the governor and Legislature regarding receipts and expenditures, number of level four hearings conducted, synopses of hearing outcomes and ~~such~~ other information as the board ~~may deem~~ determines appropriate. The board shall further evaluate on an annual basis the level four grievance process and the performance of all hearing examiners and include the evaluation in the annual report to the governor and Legislature. In making ~~such~~ the evaluation, the board shall notify all institutions, employee organizations and all grievants participating in level four grievances in the year for which evaluation is being made and shall provide for the submission of written comment ~~and/or~~ the hearing of testimony regarding the grievance process, or both. The board shall provide suitable office space for all hearing examiners in space other than that utilized by any institution as defined in section two of this article and shall ensure that reference materials are generally available.

The board is authorized to promulgate rules ~~and regulations~~ consistent with the provisions of this article; ~~such~~ the rules ~~and regulations~~ to shall be adopted in accordance with chapter twenty-nine-a of this code.

(b) Hearing examiners ~~are hereby authorized and shall have the power to~~ may consolidate grievances, allocate costs among the parties in accordance with section eight of this article, subpoena witnesses and documents in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code, provide ~~such~~ relief ~~as is deemed~~ found fair and equitable in accordance with the provisions of this article, and ~~such~~ exercise other powers as ~~will~~ provides for the effective resolution of grievances not inconsistent with any rules ~~or regulations~~ of the board or the provisions of this article.

## CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

### ARTICLE 6A. GRIEVANCE PROCEDURE FOR STATE EMPLOYEES.

#### §29-6A-3. Grievance procedure generally.

(a) (1) A grievance shall be filed within the times specified in section four of this article and shall be processed as rapidly as possible. The number of days indicated at each level specified in section four of this article ~~shall be considered as is~~ the maximum number of days allowed and, if a decision is not rendered at any level within the prescribed time limits, the grievant may appeal to the next level: *Provided*, That the specified time limits shall be extended whenever a grievant is not working because of accident, sickness, death in the immediate family or other cause necessitating the grievant to take personal leave from his or her employment.

(2) Any assertion by the employer that the filing of the grievance at level one was untimely shall be asserted by the employer on behalf of the employer at or before the level two hearing. The grievant prevails by default if a grievance evaluator required to respond to a grievance at any level fails to make a required response in the time limits required in this article, unless prevented from doing so directly as a result of sickness, injury, excusable neglect, unavoidable cause or fraud. Within five days of the receipt of a written notice of the default, the employer may request a hearing before a level four hearing examiner for the purpose of showing that the remedy received by the prevailing grievant is contrary to law or clearly wrong. In making a determination regarding the remedy, the hearing examiner shall presume the employee prevailed on the merits of the grievance and shall determine whether the remedy is contrary to law or clearly wrong in light of that presumption. If the examiner finds that the remedy is contrary to law, or clearly wrong, the examiner may modify the remedy to be granted to comply with the law and to make the grievant whole.

(b) If the employer or its agent intends to assert the application of any statute, policy, rule or written agreement or submits any written response to the filed grievance at any level, a copy ~~thereof of the materials~~ shall be forwarded to the grievant and any representative of the grievant named in the filed grievance. Anything submitted and the grievant's response ~~thereto to the submitted materials~~, if any, shall become part of the record. Failure to assert ~~such the~~ statute, policy, rule, ~~regulation~~ or written agreement at any level shall ~~does~~ not prevent the subsequent submission ~~thereof of the materials~~ in accordance with the provisions of this subsection.

(c) The grievant may file the grievance at the level vested with authority to grant the requested relief if each lower administrative level agrees in writing ~~thereto to filing the grievance at a higher level~~. In the event a grievance is filed at a higher level, the employer shall provide copies to each lower administrative level.

(d) An employee may withdraw a grievance at any time by notice, in writing, to the level where the grievance is then current. The grievance may not be reinstated by the grievant unless reinstatement is granted by the grievance evaluator at the level where the grievance was withdrawn. If more than one employee is named as grievant in a particular grievance, the withdrawal of one employee shall ~~does~~ not prejudice the rights of any other employee named in the grievance. In the event a grievance is withdrawn or an employee withdraws from a grievance, the employer shall notify, in writing, each lower administrative level.

(e) Grievances may be consolidated at any level by agreement of all parties.

(f) A grievant may be represented by an employee organization representative, legal counsel or any other person, including a fellow employee, in the preparation or presentation of the grievance. At the request of the grievant, ~~such that~~ person or persons may be present at any step of the procedure: *Provided*, That at level one of the grievance, as set forth in section four of this article, a grievant may have only one ~~such~~ representative.

(g) If a grievance is filed which cannot be resolved within the time limits set forth in section four of this article prior to the end of the employment term, the time limit ~~set forth in such section~~ shall be reduced as agreed to in writing by both parties so that the grievance procedure may be concluded within ten days following the end of the employment term or an otherwise reasonable time.

(h) No reprisals of any kind shall ~~may~~ be taken by any employer or agent of the employer against any interested party, or any other participant in the grievance procedure by reason of the participation. A reprisal constitutes a grievance, and any person held ~~to be~~ responsible for reprisal action shall ~~be~~ is subject to disciplinary action for insubordination.

(i) Decisions rendered at all levels of the grievance procedure shall be dated, ~~shall be~~ in writing setting forth the decision or decisions and the reasons ~~therefor~~, for the decision, and shall be transmitted to the grievant and any representative named in the grievance within the time prescribed. If the grievant is denied the relief sought, the decision shall include the name of the individual at the next level to whom appeal may be made.

(j) Once a grievance has been filed, supportive or corroborative evidence may be presented at any conference or hearing conducted pursuant to the provisions of this article. Whether evidence substantially alters the original grievance and renders it a different grievance is within the discretion of the grievance evaluator at the level where ~~in~~ the new evidence is presented. If the grievance evaluator rules that the evidence renders it a different grievance, the party offering the evidence may withdraw ~~same it~~, the parties may consent to ~~such the~~ evidence, or the grievance evaluator may decide to hear the evidence or rule that the grievant must file a new grievance. The time limitation for filing the new grievance shall ~~be~~ is measured from the date of ~~such the~~ ruling.

(k) Any change in the relief sought by the grievant shall be consented to by all parties or may be granted at level four within the discretion of the hearing examiner.

(l) Forms for filing grievances, giving notice, taking appeals, making reports and recommendations, and all other necessary documents shall be made available by the immediate supervisor to any employee upon request. ~~Such The~~ forms shall include information prescribed by the board. The grievant shall have access to the employer's equipment for purposes of preparing grievance documents subject to the reasonable rules of the employer governing the use of ~~such the~~ equipment.

- (m) Notwithstanding the provisions of section three, article nine-a, chapter six of this code, or any other provision relating to open proceedings, all conferences and hearings pursuant to this article shall be conducted in private except that, upon the grievant's request, conferences and hearings at levels two and three shall be open to employees of the grievant's immediate office or work area or, at the request of the grievant, shall be public. Within the discretion of the hearing examiner, conferences and hearings may be public at level four.
- (n) No person may confer or correspond with a hearing examiner regarding the merits of the grievance unless all parties to the grievance are present.
- (o) Grievances shall be processed during regular working hours. Attempts shall be made to process the grievance in a manner which does not interfere with the normal operation of the employer.
- (p) The grievant or the employee selected by a grievant to represent him or her in the processing of a grievance through this procedure, or both, shall be granted necessary time off during working hours for the grievance procedure without loss of pay and without charge to annual or compensatory leave credits. In addition to actual time spent in grievance conferences and hearings, the grievant or the employee representative, or both, shall be granted time off during working hours, not to exceed four hours per grievance, for the preparation of ~~such the~~ grievance without loss of pay and without charge to annual or compensatory leave credits. However, ~~it shall be understood by all parties that~~ the first responsibility of any state employee is the work assigned by the appointing authority to the employee. An employee may not allow ~~G~~grievance preparation and representation activities ~~by an employee shall not to~~ seriously affect the overall productivity of the employee.
- (q) The aggrieved employee, employing agency and representatives of both ~~shall~~ have the right to call, examine and cross-examine witnesses who are employees of the agency against which the grievance is lodged and who have knowledge of the facts at issue.
- (r) Both parties may produce witnesses other than employees of the agency against which the grievance is lodged, and ~~such the~~ witnesses ~~shall be~~ are subject to examination and cross-examination.
- (s) ~~Should any~~ If an employer or the employer's agent causes a conference or hearing to be postponed without adequate notice to employees who are scheduled to appear during their normal work day, ~~such the~~ employees ~~will~~ may not suffer any loss in pay for work time lost.
- (t) Any grievance evaluator may be excused from participation in the grievance process for reasonable cause, including, but not limited to, conflict of interest or incapacitation, and ~~in such case~~ if this occurs the grievance evaluator at the next higher level shall designate an alternative grievance evaluator ~~if such is it~~ it is reasonable and necessary.
- (u) No less than one year following resolution of a grievance at any level, the grievant may by request in writing have removed any record of the grievant's identity from any file kept by the employer.
- (v) All grievance forms and reports shall be kept in a file separate from the personnel file of the employee and may not become a part of ~~such the~~ personnel file, but shall remain confidential except by mutual written agreement of the parties.
- (w) The number of grievances filed against an employer or agent or by an employee ~~shall is~~ not, per se, ~~be~~ an indication of ~~such the~~ employer's or agent's or the employee's job performance.
- (x) Any chief administrator with whom a grievance ~~was is~~ filed may appeal a level four decision on the grounds that the decision:
- (1) ~~was Is~~ is contrary to law or a lawfully adopted rule, ~~regulation~~ or written policy of the employer; ;
  - (2) ~~exceeded~~ Exceeds the hearing examiner's statutory authority; ;
  - (3) ~~was Is~~ is the result of fraud or deceit; ;

(4) ~~was~~ is clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or

(5) ~~was~~ is arbitrary or capricious or characterized by abuse of discretion.

~~Such~~ The appeal shall follow the procedure regarding appeal provided the grievant in section four of this article and provided both parties in section seven of this article.

#### **§29-6A-4. Procedural levels and procedure at each level.**

##### *(a) Level one.*

Within ten days following the occurrence of the event upon which the grievance is based, or within ten days of the date on which the event became known to the grievant, or within ten days of the most recent occurrence of a continuing practice giving rise to a grievance, the grievant or the designated representative, or both, may file a written grievance with the immediate supervisor of the grievant. At the request of the grievant or the immediate supervisor, an informal conference shall be held to discuss the grievance within three days of the receipt of the written grievance. The immediate supervisor shall issue a written decision within six days of the receipt of the written grievance. If a grievance alleges discrimination or retaliation by the immediate supervisor of the grievant, the level one filing may be waived by the grievant and the grievance may be initiated at level two with the administrator or his or her designee, within the time limits set forth in this subsection for filing a grievance at level one. A meeting may be held to discuss the issues in dispute, but the meeting is not required.

##### *(b) Level two.*

Within five days of receiving the decision of the immediate supervisor, the grievant may file a written appeal to the administrator of the grievant's work location, facility, area office, or other appropriate subdivision of the department, board, commission or agency. The administrator or his or her designee shall hold a conference within five days of the receipt of the appeal and issue a written decision upon the appeal within five days of the conference.

##### *(c) Level three.*

Within five days of receiving the decision of the administrator of the grievant's work location, facility, area office, or other appropriate subdivision of the department, board, commission or agency, the grievant may file a written appeal of the decision with the chief administrator of the grievant's employing department, board, commission or agency. A copy of the appeal and the level two decision shall be served upon the ~~personnel~~ director of the ~~state civil service commission~~ division of personnel by the grievant.

The chief administrator or his or her designee shall hold a hearing in accordance with section six of this article within seven days of receiving the appeal. The ~~personnel~~ director of the ~~state civil service commission~~ division of personnel or his or her designee may appear at the hearing and submit oral or written evidence upon the matters in the hearing.

The chief administrator or his or her designee shall issue a written decision affirming, modifying or reversing the level two decision within five days of ~~such~~ the hearing.

##### *(d) Level four.*

(1) If the grievant is not satisfied with the action taken by the chief administrator or his or her designee, within five days of the written decision the grievant may request, in writing, on a form furnished by the employer, that the grievance be submitted to a hearing examiner as provided for in section five of this article; ~~such~~ The hearing ~~to~~ shall be conducted in accordance with section six of this article within fifteen days following the request ~~therefor~~ for the hearing. *Provided*, That ~~such~~ the hearing may be held within thirty days following the request, or within a time ~~that~~ as is mutually agreed upon by the parties, if the hearing examiner gives reasonable cause, in writing, as to the necessity for ~~such~~ the delay. A copy of the appeal shall be served by the grievant upon the director of ~~personnel of the state civil service commission~~ of the division of personnel. The director of ~~personnel of the state civil service commission~~ the division of personnel, or his or her designee, may appear at ~~such~~ the hearing and submit oral or written evidence upon the matters in the hearing.

(2) Within thirty days following the hearing, the hearing examiner shall render a decision in writing to all parties setting forth findings and conclusions on the issues submitted. Subject to the provisions of section seven of this article, the decision of the hearing examiner ~~shall be~~ is final upon the parties and is enforceable in circuit court.

(e) *Expedited grievance process.*

(1) A grievance involving suspension without pay, demotion or dismissal or loss of wages may be initiated at level two with the administrator of the grievant's work location, facility, area office, or other appropriate subdivision of the department, board, commission or agency.

(2) An employee may grieve a final action of the employer involving a dismissal, demotion or suspension exceeding twenty days directly to the hearing examiner. The expedited grievance shall be in writing and shall be filed within ten days of the date of the final action with the chief administrator and the director of the ~~state civil service commission~~ division of personnel.

### **§29-6A-5. Education and state employees grievance board; hearing examiners.**

(a) The education employees grievance board, created by virtue of the provisions of section five, article twenty-nine, chapter eighteen of this code, ~~shall be hereafter known and referred to as~~ is renamed the education and state employees grievance board and, in addition to those duties set forth in ~~said~~ chapter eighteen, ~~is hereby authorized and required to~~ shall administer the grievance procedure at level four as provided for in section four of this article. ~~The board has jurisdiction regarding procedural matters at levels two and three of the grievance procedure.~~ The board shall employ, in addition to those persons employed as hearing examiners for educational employee grievances, at least two full-time hearing examiners for the purpose of conducting hearings at level four, as provided in section four of this article. ~~Such~~ The hearing examiners ~~shall be~~ are employed on an annual basis along with ~~such the~~ clerical help ~~as is~~ necessary to implement the legislative intent expressed in section one of this article.

In addition to the budget required for submission to the Legislature by virtue of the provisions of section five, article twenty-nine, chapter eighteen of this code, the board shall submit a yearly budget and shall report annually to the governor and the Legislature regarding proceedings conducted under this article, including receipts and expenditures, the number of level four hearings conducted, synopses of hearing outcomes and ~~such~~ other information as the board ~~may deem~~ determines appropriate. The board shall further evaluate on an annual basis the level four grievance process and the performance of all hearing examiners and include ~~such the~~ evaluation in the annual report to the governor and the Legislature. In making ~~such the~~ evaluation the board shall notify all employers, employee organizations, the director of the ~~state civil service commission~~ division of personnel and all grievants participating in level four grievances in the year for which evaluation is being made and shall provide for the submission of written comment ~~and/or~~ the hearing of testimony regarding the grievance process, or both.

The board shall provide suitable office space for all hearing examiners in space other than that utilized by any employer as defined in section two of this article and shall ensure that reference materials are generally available. The board shall provide forms for filing grievances, giving notice, taking appeals, making reports and recommendations and ~~such~~ other documents as the board ~~deems~~ determines necessary for any stage of a grievance under this article.

The board is authorized to ~~promulgate~~ propose rules and regulations for promulgation consistent with the provisions of this article, ~~such rules and regulations to be adopted~~ and in accordance with article three, chapter twenty-nine-a of this code.

(b) Hearing examiners ~~are hereby authorized and shall have the power to~~ may consolidate grievances, allocate costs among the parties in accordance with section eight of this article, subpoena witnesses and documents in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code, provide relief as is determined fair and equitable in accordance with the provisions of this article, and ~~such other powers as will~~ take any other action to provide for the effective resolution of grievances not inconsistent with any rules ~~and regulations~~ of the board or the provisions of this article: *Provided*, That in all cases the hearing examiner ~~shall have~~ has the authority to provide appropriate remedies including, but not limited to, making the employee whole.

**§29-6A-6. Hearings generally.**

(a) The chief administrator or his or her designee acting as a grievance evaluator or the hearing examiner shall conduct all hearings in an impartial manner and shall ensure that all parties are accorded procedural and substantive due process. All parties shall have an opportunity to present evidence and argument with respect to the matters and issues involved, to cross-examine and to rebut evidence. Reasonable notice of a hearing shall be sent prior to the hearing to all parties and their named representative and shall include the date, time and place of the hearing. Level one, level two and level three hearings shall be at a convenient place accessible to the aggrieved employee. All ~~such~~ hearings shall be held on the employer's premises or on other premises mutually agreeable to the parties and within regular working hours: *Provided*, That any ~~such~~ hearing might continue beyond normal working hours. Level four hearings shall be at a place to be designated by the hearing examiner.

(b) The employer that is party to the grievance shall produce prior to ~~such~~ the hearing any documents, not privileged, and which are relevant to the subject matter involved in the pending grievance, that have been requested by the grievant, in writing.

(c) The chief administrator or his or her designee or the hearing examiner ~~shall have~~ has the power to (1) administer oaths and affirmations; (2) subpoena witnesses; (3) regulate the course of the hearing; (4) hold conferences for the settlement or simplification of the issues ~~by consent of the parties~~; (5) exclude immaterial, irrelevant or repetitious evidence; (6) sequester witnesses; (7) restrict the number of advocates; and (8) take any other action not inconsistent with the rules ~~and regulations~~ of the board or the provisions of this article.

(d) All the testimony and evidence at any level three or level four hearing shall be recorded by mechanical means, and all recorded testimony and evidence at ~~such~~ the hearing shall be transcribed and certified by affidavit. The chief administrator is responsible for promptly providing a copy of the certified transcript of a level three hearing to any party to that hearing who requests ~~such~~ the transcript. The hearing examiner may also request and be provided a transcript upon appeal to level four and allocate the costs ~~therefor~~ for the transcript as prescribed in section eight of this article. The board ~~shall be~~ is responsible for promptly providing a copy of the certified transcript of a level four hearing to any party to that hearing who requests ~~such~~ the transcript.

(e) Formal rules of evidence ~~shall~~ may not be applied, but parties ~~shall be~~ are bound by the rules of privilege recognized by law. No employee ~~shall~~ may be compelled to testify against himself or herself in a grievance involving disciplinary action. The burden of proof ~~shall~~ rests with the employer in disciplinary matters.

(f) All materials submitted in accordance with section three of this article; the mechanical recording of all testimony and evidence or the transcription ~~thereof of the testimony~~, if any; the decision; and any other materials considered in reaching the decision ~~shall be made a part and shall constitute~~ are the record of a grievance. ~~Such~~ The record shall be submitted to any level at which appeal has been made, and ~~such~~ the record shall be considered, but the development of ~~such~~ the record ~~shall~~ is not limited thereby.

(g) Every decision pursuant to a hearing shall be in writing and shall be accompanied by findings of fact and conclusions of law.

(h) Prior to ~~such~~ the decision any party may propose findings of fact and conclusions of law.

**§29-6A-7. Enforcement and reviewability; costs; good faith.**

(a) The decision of the hearing examiner ~~shall be~~ is final upon the parties and ~~shall be~~ is enforceable in circuit court: ~~Provided that~~.

(b) ~~e~~Either party or the ~~state civil service commission~~ director of the division of personnel may appeal to the circuit court of Kanawha County or to the circuit court of the county in which the grievance occurred on the grounds that the hearing examiner's decision:

(1) ~~was~~ is contrary to law or a lawfully adopted rule, ~~regulation~~ or written policy of the employer;

- (2) ~~exceeded~~ Exceeds the hearing examiner's statutory authority; ~~;~~
- (3) ~~was~~ Is the result of fraud or deceit; ~~;~~
- (4) ~~was~~ Is clearly wrong in view of the reliable, probative and substantial evidence on the whole record; ~~;~~ or
- (5) ~~was~~ Is arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(c) ~~Such~~ The appeal shall be filed ~~in the circuit court of the county in which the grievance occurred~~ within thirty days of receipt of the hearing examiner's decision. The decision of the hearing examiner ~~shall~~ is not be automatically stayed; automatically; upon the filing of an appeal, but a stay may be granted by the circuit court upon separate motion ~~therefor for a stay.~~

(d) The court's ruling shall be upon the entire record made before the hearing examiner, and the court may hear oral arguments and require written briefs. The court may reverse, vacate or modify the decision of the hearing examiner or may remand the grievance to the appropriate chief administrator for further proceedings.

(e) Both employer and employee shall at all times act in good faith and make every possible effort to resolve disputes at the lowest level of the grievance procedure. The hearing examiner may make a determination of bad faith and in extreme instances allocate the cost of the hearing to the party found to be acting in bad faith. ~~Such~~ The allocation of costs shall be based on the relative ability of the party to pay ~~such~~ the costs.

#### **§29-6A-10. Employee's right to attorney's fees and costs.**

If an employee ~~shall~~ appeals to a circuit court an adverse decision of a hearing examiner rendered in a grievance proceeding pursuant to provisions of this article or is required to defend an appeal and ~~such~~ the person substantially prevails, the adverse party or parties ~~shall be~~ is liable to ~~such~~ the employee, upon final judgment or order, for court costs, and for reasonable attorney's fees, to be set by the court, for representing ~~such~~ the employee in all administrative hearings and before the circuit court and the supreme court of appeals, and ~~shall be~~ is further liable to ~~such~~ the employee for any court reporter's costs incurred during any ~~such~~ administrative hearings or court proceedings: *Provided*, That in no event shall such attorney's fees be awarded in excess of a total of one thousand five hundred dollars for the administrative hearings and circuit court proceedings nor an additional one thousand dollars for supreme court proceedings: *Provided, however*, That the requirements of this section shall not be construed to limit the employee's right to recover reasonable attorney's fees in a mandamus proceeding brought under section nine of this article.

#### **§29-6A-12. Mediation required at request of either party.**

Upon the request of either party, the board may require mediation or other alternative dispute resolution technique to assist the parties in identifying, clarifying and resolving issues regarding the grievance. Mediation may be requested at any time prior to the level four hearing. All of the information that is provided by parties during mediation is and shall remain confidential. Mediators may not be called as witnesses to provide testimony in unresolved grievances that proceed to a grievance hearing, and any hearing examiner involved in a mediation process may not hear the grievance or be consulted regarding the merits of the grievance.