

FOREWORD

The West Virginia Department of Education is pleased to prepare Informal Guidelines for Implementing Public Education Bills Enacted in the Regular Session - 2004 as a document to assist educators and others in understanding and implementing education bills enacted by this year's 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 date, date signed by the governor, code reference, topic and major new provisions. As time constraints have not permitted an in-depth analysis of these 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 - 2004 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. This document is also available on line at <http://wvde.state.wv.us> .

We would not have been able to assemble this document without the assistance of numerous people including staff members from the House and Senate Education Committees and Howard O'Cull, Executive Director of the West Virginia School Boards Association.

Please feel free to call or write if you need additional information regarding bills enacted during the 2004 regular session of the West Virginia Legislature.

David Stewart
State Superintendent of Schools

Revised Codes**New Codes**

5B-2B-2	18B-2B-2	18-5-22b
5B-2B-4	18B-2B-3	18-5-46
5B-2B-5	18B-2B-4	18-2E-3f
5B-2B-9	18B-2B-5	18-2J-1
11-8-6f	18B-2B-6	18-2J-2
18-2-1	18B-2B-7	18-2J-3
18-2-34	18B-2B-8	18-2J-4
18-2E-3f	18B-2C-3	18-2J-5
18-2E-5	18B-2C-4	18-2J-6
18-2E-5c	18B-3C-2	18-2J-7
18-2F-7	18B-3C-3	18A-2-12a
18-5-7a	18B-3C-4	18A-3A-4
18-5-15	18B-3C-5	18B-1B-11
18-5-15f	18B-3C-6	18B-2A-6
18-5-46	18B-3C-8	18B-2B-6a
18-9-3a	18B-3C-9	18B-6-2
18-7a-14b	18B-3C-10	18B-6-3
18-7A-38	18B-3C-12	18B-6-4
18-9A-7	18B-4-1	18B-6-5
18-9A-11	18B-4-2	18B-6-6
18-9D-2	18B-4-7	18B-7-12
18-9D-6	18B-5-4	18B-10-1b
18-9D-8	18B-6-1	
18-9D-15	18B-6-1a	
18-9D-16	18B-7-1	
18-20-5	18B-9-1	
18A-2-3	18B-9-2	
18A-2-12	18B-10-2	
18A-2-12a	18C-4-2	
18A-3-1	49-5-17	
18A-4-7a		
18A-4-8e		
18A-4-15		
18A-5-1		
18A-5-1a		
18B-1-1a		
18B-1-2		
18B-1-3		
18B-1-6		
18B-1A-2		
18B-1A-3		
18B-1A-4		
18B-1A-5		
18B-1A-6		
18B-1B-1		
18B-1B-2		
18B-1B-4		
18B-1B-5		
18B-1B-6		
18B-2A-1		
18B-2A-4		
18B-2B-1		

TABLE OF CONTENTS

<u>ACT CODE NUMBER</u>	<u>SUBJECT</u>	<u>PAGE NUMBER</u>
HB 2268	Teachers and substitute teachers as professional educators and addressing the critical need and shortage thereof §18-7A-38 §18C-4-2 §18A-2-3	1
HB 2423	Awarding high school diplomas to certain veterans §18-2-34	9
HB 4001	Ensuring safer schools and empowering teachers by automating student suspension and expulsion data §18-2E-5c §18-2E-5c §18-20-5 §18-5-15f §18-5-46 §18A-2-12 §18A-2-12a §18A-5-1 §18A-5-1a	12
HB 4037	Providing for safe schools through alternative education programs and providing certain juvenile justice records to public school officials §49-5-17	54
HB 4040	Relating to criteria for making decisions affecting the filling of vacancies if one or more permanently employed instructional personnel apply for a classroom teaching position §18A-4-7a	62
HB 4043	Establishing the priority for early childhood education in the basic skills of reading, mathematics and English language arts §18-2E-3f	69
HB 4072	Providing for a unified approach to the long-term planning and implementation of technology in the public schools §18-2E-7 §18-2J-1 §18-2J-2 §18-2J-3 §18-2J-4 §18-2J-5 §18-2J-6 §18-2J-7	72
HB 4111	Disposition of school property in flood control projects §18-2E-5 §18-5-7a	84
HB 4271	Requiring all schools to permit students to self-administer asthma	101

	medication §18-5-22	
HB 4297	Clarifying that the county board of education and its superintendent may designate the places where competency testing for service personnel will be held §18A-4-8e	105
HB 4411	Changing certain reporting requirements in the West Virginia workforce investment act §5B-2B-2 §5B-2B-4 §5B-2B-5 §5B-2B-9	109
HB 4478	Preparation and publication of annual financial statements §18-9-3a	115
HB 4552	Relating to grounds for the revocation of teacher certificates §18A-3-6	118
HB 4553	Relating to standards for awarding certificates to teach in the public schools §18A-3-1	121
HB 4554	Relating to the rights, privileges and benefits of substitute service personnel employed to fill vacancies created by leaves of absence §18A-4-15	125
HB 4601	Relating to public education generally. §18-9A-7 §18-9D-2 §18-9D-6 §18-9D-8 §18-9D-16 §18-9D-15	130

HB 4669	Providing for establishment of special 157 five-year demonstration professional development school project §18-2E-3f
HB 4737	Providing options for members of teachers 162 retirement to make contributions for periods of temporary total disability §18-7A-14b
SB 296	Continuing center for professional 165 development board §18A-3A-4
SB 408	Relating generally to levies by county 167 boards of education and expenditure of property taxes collected §11-8-6f §18-9A-11
SB 448	Relating to higher education generally 173 §18-2-1 §18B-1-1a §18B-1-2 §18B-1-3 §18B-1-6 §18B-1A-2 §18B-1A-3 §18B-1A-4 §18B-1A-5 §18B-1A-6 §18B-1B-1 §18B-1B-2 §18B-1B-4 §18B-1B-5 §18B-1B-6 §18B-1B-11 §18B-2A-1 §18B-2A-4 §18B-2A-6 §18B-2B-1 §18B-2B-2 §18B-2B-3 §18B-2B-4 §18B-2B-5 §18B-2B-6 §18B-2B-7 §18B-2B-8 §18B-2B-8 §18B-2B-6a §18B-2C-3 §18B-2C-4 §18B-3C-2 §18B-3C-3 §18B-3C-4 §18B-3C-5 §18B-3C-6 §18B-3C-8 §18B-3C-9 §18B-3C-10 §18B-3C-12 §18B-4-1 §18B-4-2 §18B-4-7 §18B-5-4 §18B-6-1 §18B-6-1a §18B-6-2 §18B-6-3 §18B-6-4 §18B-6-5 §18B-6-6 §18B-7-1 §18B-7-12 §18B-9-1 §18B-9-2 §18B-10-2 §18B-10-1b

House Bill 2268

Effective Date: Passed March 12, 2004; in effect from passage

Signed by Governor: April 5, 2004

Code Reference: Amends and re-enacts §18-7A-38, as amended; amends and re-enacts §18A-2-3; and to amend and re-enact §18C-4-2

Title: Relating to the maximum number of days a retired teacher may accept employment and the conditions for employment of retired teachers in areas of critical need and shortage; gives priority on the Underwood Scholarship to students pursuing teaching fields in critical shortage areas

Major Provisions:

- Allows retirees to substitute teach for up to 140 days without penalty from the Consolidated Public Retirement Board
- Defines "area of critical need and shortage" as being an area of teacher certification in which the number of "available substitute teachers in the county who hold the certification and training in that area and who are not retired is insufficient to meet the projected need for substitute teachers"
- Allows counties to employ retired teachers in "critical need and shortage areas" on an "expanded basis" as long as "...no other teacher who holds certification and training in the area and who is not retired is available and accepts the substitute assignment"
- Requires the county board to "continue to post the vacant position until it is filled with a regularly employed teacher" if a retiree is substitute teaching
- Gives priority for the Underwood-Smith Teacher Scholarship Program to students who are pursuing teaching careers in areas of critical need and shortage

1 **ENROLLED**
2 COMMITTEE SUBSTITUTE
3 FOR

4 **H. B. 2268**

5 (By Delegates Susman, Poling, Perry, Beach, Renner,
6 Hartman and Tabb)

7
8 [Passed March 12, 2004; in effect from passage.]
9

10 AN ACT to amend and reenact §18-7A-38 of the code of West Virginia,
11 1931, as amended; to amend and reenact §18A-2-3 of said code;
12 and to amend and reenact §18C-4-2 of said code, all relating
13 to the maximum number of days a retired teacher may accept
14 employment; the employment of retired teachers in areas of
15 critical need and shortage; defining area of critical need and
16 shortage; adding conditions for expanding use of retired
17 teachers to provide service as substitute teachers in areas of
18 critical need and shortage; requiring certain vacancies to
19 continue to be posted; providing for future expiration of
20 provisions; providing priority for certain applicants for the
21 Underwood-Smith scholarships; and technical amendments.

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

23 That §18-7A-38 of the code of West Virginia, 1931, as amended, be
24 amended and reenacted; that §18A-2-3 of said code be amended and
25 reenacted; and that §18C-4-2 of said code be amended and reenacted,
26 all to read as follows:

27 **CHAPTER 18. EDUCATION.**

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

29 **§18-7A-38. Calculating Maximum number of days a retired teacher**
30 **may accept employment; calculating days worked for**
31 **retirants engaged in substitute teaching.**

32 (a) The Legislature finds that:

33 (1) The consolidated public retirement board has determined that
34 retired substitute teachers should not perform substitute teaching
35 without limit;

36 (2) The consolidated public retirement board has established, by
37 rule, a maximum number of days in which a retired teacher may
38 accept employment prior to having his or her retirement benefit
39 reduced; and

40 (3) There have been inconsistencies in the manner in which county
41 boards calculate the maximum number of days established by rule.

42 ~~(b) For the purpose of calculating whether a retired substitute~~
43 ~~teacher has exceeded the maximum number of days in which a~~
44 ~~substitute teacher may accept employment without incurring a~~
45 ~~reduction in his or her retirement benefit, the number of days~~
46 ~~worked shall be determined by:—~~

47 ~~(1) Totaling the number of hours worked; and~~

48 ~~(2) Dividing by the standard number of hours that a full-time~~
49 ~~teacher works per day.~~

50 (b) The consolidated public retirement board may not set forth in
51 rule a maximum number of days in which a retired teacher may accept
52 employment prior to having his or her retirement benefit reduced
53 that is less than one hundred forty days.

54 (c) For the purpose of calculating whether a retired substitute
55 teacher has exceeded the maximum number of days in which a

1 substitute teacher may accept employment without incurring a
2 reduction in his or her retirement benefit, the number of days
3 worked shall be determined by:

4 (1) Totaling the number of hours worked; and

5 (2) Dividing by the standard number of hours that a full-time
6 teacher works per day.

7 **CHAPTER 18A. SCHOOL PERSONNEL.**

8 **ARTICLE 2. SCHOOL PERSONNEL.**

9 **§18A-2-3. Employment of substitute teachers and retired teachers**
10 **as substitutes in areas of critical need and shortage;**
11 **employment of prospective employable professional personnel.**

12 (a) The county superintendent, subject to approval of the
13 county board, may employ and assign substitute teachers to any of
14 the following duties: (~~a~~1) To fill the temporary absence of any
15 teacher or an unexpired school term made vacant by resignation,
16 death, suspension or dismissal; (~~b~~2) to fill a teaching position of
17 a regular teacher on leave of absence; and (~~c~~3) to perform the
18 instructional services of any teacher who is authorized by law to
19 be absent from class without loss of pay, providing the absence is
20 approved by the board of education in accordance with the law. The
21 substitute shall be a duly certified teacher.

22 (b) Notwithstanding any other provision of this code to the
23 contrary, a substitute teacher who has been assigned as a classroom
24 teacher in the same classroom continuously for more than one half
25 of a grading period and whose assignment remains in effect two
26 weeks prior to the end of the grading period, shall remain in the
27 assignment until the grading period has ended, unless the principal
28 of the school certifies that the regularly employed teacher has
29 communicated with and assisted the substitute with the preparation
30 of lesson plans and monitoring student progress or has been
31 approved to return to work by his or her physician. For the
32 purposes of this section, teacher and substitute teacher, in the
33 singular or plural, mean professional educator as defined in
34 section one, article one of this chapter.

35 (c)(1) The Legislature hereby finds and declares that due to
36 a shortage of qualified substitute teachers, a compelling state
37 interest exists in expanding the use of retired teachers to provide
38 service as substitute teachers in areas of critical need and
39 shortage. The Legislature further finds that diverse circumstances
40 exist among the counties for the expanded use of retired teachers
41 as substitutes. For the purposes of this subsection, "area of
42 critical need and shortage" means an area of certification and
43 training in which the number of available substitute teachers in
44 the county who hold certification and training in that area and who
45 are not retired is insufficient to meet the projected need for
46 substitute teachers.

47 (2) A person receiving retirement benefits under the
48 provisions of article seven-a of this chapter or who is entitled to
49 retirement benefits during the fiscal year in which that person
50 retired may accept employment as a substitute teacher for an
51 unlimited number of days each fiscal year without affecting the
52 monthly retirement benefit to which the retirant is otherwise
53 entitled if the following conditions are satisfied:

54 (A) The county board adopts a policy recommended by the
55 superintendent to address areas of critical need and shortage;

1 (B) ~~The policy provides for the employment of retired teachers~~
2 ~~as substitute teachers during the school year on an expanded basis~~
3 ~~as provided in sets forth the areas of critical need and shortage~~
4 ~~in the county in accordance with the definition of area of critical~~
5 ~~need and shortage set forth in subdivision (1) of this subsection;~~
6 (C) ~~The policy is effective for one school year only and is~~
7 ~~subject to annual renewal by the county board provides for the~~
8 ~~employment of retired teachers as substitute teachers during the~~
9 ~~school year on an expanded basis in areas of critical need and~~
10 ~~shortage as provided in this subsection;~~
11 (D) ~~The state board approves the policy and the use of retired~~
12 ~~teachers as substitute teachers on an expanded basis as provided in~~
13 ~~this subsection The policy provides that a retired teacher may be~~
14 ~~employed as a substitute teacher in an area of critical need and~~
15 ~~shortage on an expanded basis as provided in this subsection only~~
16 ~~when no other teacher who holds certification and training in the~~
17 ~~area and who is not retired is available and accepts the substitute~~
18 ~~assignment;~~
19 (E) ~~Prior to employment of such substitute teacher beyond the~~
20 ~~post-retirement employment limitations established by the~~
21 ~~consolidated public retirement board, the superintendent of the~~
22 ~~affected county submits to the consolidated public retirement~~
23 ~~board, in a form approved by the retirement board, an affidavit~~
24 ~~signed by the superintendent stating the name of the county, the~~
25 ~~fact that the county has adopted a policy to employ retired~~
26 ~~teachers as substitutes to address areas of critical need and~~
27 ~~shortage and the name or names of the person or persons to be~~
28 ~~employed pursuant to the policy. The policy is effective for one~~
29 ~~school year only and is subject to annual renewal by the county~~
30 ~~board;~~
31 (F) ~~The state board approves the policy and the use of retired~~
32 ~~teachers as substitute teachers on an expanded basis in areas of~~
33 ~~critical need and shortage as provided in this subsection; and~~
34 (G) ~~Prior to employment of a substitute teacher beyond the~~
35 ~~post-retirement employment limitations established by the~~
36 ~~consolidated public retirement board, the superintendent of the~~
37 ~~affected county submits to the consolidated public retirement~~
38 ~~board, in a form approved by the retirement board, an affidavit~~
39 ~~signed by the superintendent stating the name of the county, the~~
40 ~~fact that the county has adopted a policy to employ retired~~
41 ~~teachers as substitutes to address areas of critical need and~~
42 ~~shortage and the name or names of the person or persons to be~~
43 ~~employed pursuant to the policy.~~
44 (3) Any person who retires and begins work as a substitute
45 teacher within the same employment term shall lose those retirement
46 benefits attributed to the annuity reserve, effective from the
47 first day of employment as a retiree substitute in ~~such that~~
48 employment term and ending with the month following the date the
49 retiree ceases to perform service as a substitute.
50 (4) ~~With respect to the Retired teachers employed to perform~~
51 ~~expanded substitute service provided in pursuant to this~~
52 ~~subsection, retired teachers employed as such substitutes are~~
53 ~~considered day-to-day, temporary, part-time employees. The~~
54 ~~substitutes are not eligible for additional pension or other~~
55 ~~benefits paid to regularly employed employees and shall not accrue~~

1 seniority.

2 ~~(5) Until this subsection is expired pursuant to subdivision~~
3 ~~(6) of this subsection, the state board, annually, shall report to~~
4 ~~the joint committee on government and finance prior to the first~~
5 ~~day of February of each year. Additionally, a copy shall be~~
6 ~~provided to the legislative oversight commission on education~~
7 ~~accountability. The report shall contain information indicating the~~
8 ~~effectiveness of the provisions of this subsection on expanding the~~
9 ~~use of retired substitute teachers to address areas of critical~~
10 ~~need and shortage. When a retired teacher is employed as a~~
11 ~~substitute to fill a vacant position, the county board shall~~
12 ~~continue to post the vacant position until it is filled with a~~
13 ~~regularly employed teacher.~~

14 ~~(6) Until this subsection is expired pursuant to subdivision~~
15 ~~(7) of this subsection, the state board, annually, shall report to~~
16 ~~the joint committee on government and finance prior to the first~~
17 ~~day of February of each year. Additionally, a copy shall be~~
18 ~~provided to the legislative oversight commission on education~~
19 ~~accountability. The report shall contain information indicating~~
20 ~~the effectiveness of the provisions of this subsection on expanding~~
21 ~~the use of retired substitute teachers to address areas of critical~~
22 ~~need and shortage.~~

23 ~~(67) The provisions of this subsection shall expire on the~~
24 ~~thirtieth day of June, two thousand ~~three~~-~~six~~.~~

25 (d)(1) Notwithstanding any other provision of this code to the
26 contrary, each year a county superintendent may employ prospective
27 employable professional personnel on a reserve list at the county
28 level subject to the following conditions:

29 (A) The county board adopts a policy to address areas of
30 critical need and shortage as identified by the state board. The
31 policy shall include authorization to employ prospective employable
32 professional personnel;

33 (B) The county board posts a notice of the areas of critical
34 need and shortage in the county in a conspicuous place in each
35 school for at least ten working days; and

36 (C) There are not any potentially qualified applicants
37 available and willing to fill the position.

38 (2) Prospective employable professional personnel may only be
39 employed from candidates at a job fair who have or will graduate
40 from college in the current school year or whose employment
41 contract with a county board has or will be terminated due to a
42 reduction in force in the current fiscal year.

43 (3) Prospective employable professional personnel employed are
44 limited to three full-time prospective employable professional
45 personnel per one hundred professional personnel employed in a
46 county or twenty-five full-time prospective employable professional
47 personnel in a county, whichever is less.

48 (4) Prospective employable professional personnel shall be
49 granted benefits at a cost to the county board and as a condition
50 of the employment contract as approved by the county board.

51 (5) Regular employment status for prospective employable
52 professional personnel may be obtained only in accordance with the
53 provisions of section seven-a, article four of this chapter.

54 (e) The state board annually shall review the status of
55 employing personnel under the provisions of subsection (d) of this

1 section and annually shall report to the legislative oversight
2 commission on education accountability on or before the first day
3 of November of each year. The report shall include, but not be
4 limited to, the following:

5 (A) The counties that participated in the program;

6 (B) The number of personnel hired;

7 (C) The teaching fields in which personnel were hired;

8 (D) The venue from which personnel were employed;

9 (E) The place of residency of the individual hired; and

10 (F) The state board's recommendations on the prospective
11 employable professional personnel program.

12 **CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.**

13 **ARTICLE 4. UNDERWOOD-SMITH TEACHER SCHOLARSHIP PROGRAM.**

14 **§18C-4-2. Selection criteria and procedures.**

15 (a) The governor shall designate an existing scholarship
16 selection agency or panel to select the recipients of
17 Underwood-Smith teacher scholarships who meet the eligibility
18 criteria set forth in subsection (b) of this section. If no such
19 agency or panel exists, the governor shall appoint a scholarship
20 selection panel for this purpose which shall consist of seven
21 persons representative of public school administrators, teachers,
22 including preschool teachers, and parents.

23 (b) Eligibility for an Underwood-Smith teacher scholarship
24 award shall be limited to West Virginia resident students who:

25 (1) Have graduated or are graduating from high school and rank
26 in the top ten percent of their graduating class or the top ten
27 percent statewide of those West Virginia students taking the
28 American college test;

29 (2) Have a cumulative grade point average of at least three
30 and twenty-five one hundredths on a possible scale of four after
31 successfully completing two years of course work at an approved
32 institution of higher education;

33 (3) Are public school aides or paraprofessionals as defined in
34 section eight, article four, chapter eighteen-a of this code and
35 who have a cumulative grade point average of at least three and
36 twenty-five one hundredths on a possible scale of four after
37 successfully completing two years of course work at an approved
38 institution of higher education; or

39 (4) Are graduate students at the master's degree level who
40 have graduated or are graduating in the top ten percent of their
41 college graduating class.

42 (c) In accordance with the rules of the ~~governing boards~~
43 commission, the ~~senior administrator~~ vice chancellor for
44 administration shall develop criteria and procedures for the
45 selection of scholarship recipients that reflect the purposes of
46 this article and the areas in which particular efforts will be made
47 in the selection of scholars as set forth in section one of this
48 article and which also may include, but not be limited to, the
49 grade point average of the applicant, involvement in
50 extracurricular activities, financial need, current academic
51 standing and an expression of interest in teaching as expressed in
52 an essay written by the applicant. Such criteria and procedures
53 further may require the applicant to furnish letters of
54 recommendation from teachers and others. It is the intent of the
55 Legislature that academic abilities be the primary criteria for

1 selecting scholarship recipients: Provided, That the qualified
2 applicants with the highest academic abilities who intend to pursue
3 teaching careers in areas of critical need and shortage as
4 determined by the state board of education shall be given priority.

5 (d) In developing the selection criteria and procedures to be
6 used by the panel, the ~~senior administrator~~ vice chancellor for
7 administration shall solicit the views of public and private
8 education agencies and institutions and other interested parties.
9 These views: (1) Shall be solicited by means of written and
10 published selection criteria and procedures in final form for
11 implementation; and (2) may be solicited by means of public
12 hearings on the present and projected teacher needs of the state or
13 ~~such any~~ other methods as ~~the senior administrator vice chancellor~~
14 for administration may determine to be appropriate to gather ~~such~~
15 the information.

16 (e) The ~~senior administrator~~ vice chancellor for
17 administration shall make application forms for Underwood-Smith
18 teacher scholarships available to public and private high schools
19 in the state and in other locations convenient to applicants,
20 parents and others, and shall make an effort to attract students
21 from low-income backgrounds, ethnic or racial minority students,
22 students with disabilities, and women or minority students who show
23 interest in pursuing teaching careers in mathematics and science
24 and who are ~~underrepresented~~ under represented in those fields.

House Bill 2423

Effective Date: Passed March 13, 2004; in effect ninety days from passage

Signed by Governor: April 2, 2004

Code Reference: Amends and reenacts §18-2-34

Title: Relating to Authorizing Awarding of High School Diploma to Certain Surviving Veterans

Major Provisions:

- Authorizes providing a high school diploma to any surviving World War I or World War II veteran who left school prior to graduation and served in the armed forces of the United States
- Authorizes providing a high school diploma to any surviving Korean Conflict or Vietnam Conflict veteran who left high school prior to graduation and served in the armed forces of the United States

1 **ENROLLED**
2 COMMITTEE SUBSTITUTE
3 FOR
4 **H. B. 2423**

5
6 (By Delegate Louisos)
7

8 [Passed March 13, 2004; in effect ninety days from passage.]
9

10 AN ACT to amend and reenact §18-2-34 of the code of West Virginia,
11 1931, as amended, relating to authorizing awarding of high
12 school diplomas to certain surviving veterans.

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

14 That §18-2-34 of the code of West Virginia, 1931, as amended,
15 be amended and reenacted to read as follows:

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

17 **§18-2-34. High school diplomas for surviving World War I, World**
18 **War II, Korean Conflict, and Vietnam Conflict**
19 **veterans.**

20 (a) Notwithstanding any provision of this code to the
21 contrary, the state board shall provide for the awarding of high
22 school diplomas, either by the county board in the county in which
23 the veteran resides or the county in which the veteran would have
24 received his or her ~~diplomas~~ diploma, whichever location the
25 veteran chooses, to any surviving World War I ~~veteran and any,~~
26 World War II, Korean Conflict or Vietnam Conflict veteran who:

27 (1) Left ~~high~~ school prior to graduation and served in the
28 armed forces of the United States: Provided, That a veteran of the
29 Korean Conflict or the Viet Nam Conflict must have been attending
30 high school at the time he or she left prior to graduating and
31 served in the armed forces of the United States;

32 (2) Did not receive a high school diploma;

33 (3) Was discharged from the armed services under honorable
34 conditions; and

35 (4) Completes the application process as provided by the joint
36 rules of the state board and the veterans' council.

37 (b) The state board and the veterans' council, created in
38 article one, chapter nine-a of this code, shall jointly ~~promulgate~~
39 propose rules for the identification of eligible veterans and for
40 the awarding of high school diplomas. The rules shall provide for
41 an application process and the credentials required to receive the
42 high school diplomas.

43 (c) For purposes of this section:

44 (1) "World War I veteran" means any veteran who:

45 (A) Performed wartime service between April sixth, one
46 thousand nine hundred seventeen, and November eleventh, one
47 thousand nine hundred eighteen; or

48 (B) Has been awarded the World War I Victory Medal;

49 (2) "World War II veteran" means any veteran who performed
50 wartime service between September sixteenth, one thousand nine
51 hundred forty, and December thirty-first, one thousand nine hundred
52 forty-six;

53 (3) "Korean Conflict veteran" means any veteran who performed
54 military service between June twenty-seventh, one thousand nine
55 hundred fifty, and January thirty-first, one thousand nine hundred

1 fifty-five; and

2 (4) "Vietnam Conflict veteran" means any veteran who performed
3 military service between February twenty-eighth, one thousand nine
4 hundred sixty-one, and May seventh, one thousand nine hundred
5 seventy-five.

House Bill 4001

Effective Date: Passed March 13, 2004; in effect July 1, 2004

Signed by Governor: April 6, 2004

Code Reference: Amend and reenact §18-2E-5 and §18-2E-5c; amends and reenact §18-5-15f; amends by adding a new section §18-5-46; amends and reenacts §18-20-5; amends and reenacts §18A-2-12; amends by adding a new section §18A-2-12a; amends and reenacts §18A-5-1 and §18A-5-1a

Title: Ensuring Safer Schools and Empowering Teachers by Automating Student Suspension and Expulsion Data

Major Provisions:

- Requires unified school improvement plans and unified county improvement plans to be 5-year plans, and requires the plan to be revised annually in each area where the standard on the annual performance measures is not met; requires the revised annual plan to identify certain other deficiencies including any financial deficit more than a casual deficit
- Requires the Department to make available on its web site or through WVEIS an electronic unified school improvement plan boilerplate that complies with all NCLB Act requirements
- Designates the following three annual performance measures as the only measures for determining school accreditation and school system approval: (1) Student performance on certain assessments (2) attendance rates and (3) graduation rates
- Requires a uniform statewide assessment in grades 3-8 and 10 (grades in which WESTEST is currently given)
- Requires school curriculum team to determine indicators for student progress in reading and mathematics in grades K-2; provides alternate process if the school fails to meet AYP for two consecutive years
- Allows the State Board to require the West Virginia Writing Assessment at grade levels it considers appropriate

- Requires State Board to study moving the grade 10 assessment to grade 11 and the need for end of course exams in grades 9 through 12
- Makes the use of all other assessment instruments subject to determination by the school curriculum team
- Removes several annual performance measures
- Adds indicators of exemplary performance and progress
- Requires the system of education performance audits include the evaluation of certain records, reports and other information
- Limits the salary of the Director of the OEPA to 80% of the State Superintendent's salary cap
- Requires certain specific items be included in the reporting formats/checklists developed by the OEPA for use by schools or school systems to document compliance with laws, policies and process standards
- Revises the method for selecting schools or school systems for on-site reviews by eliminating the weighted selection method; limits on-site reviews to those conducted only at the specific direction of the State Board upon its determination that the performance and progress of the school or school system are persistently below standard or that other circumstances exist that warrant an on-site review
- Exempts discussions of schools subject to an on-site review or dates for which on-site reviews will be conducted from the provisions relating to open governmental proceedings
- Requires the school curriculum team to be present at the exit conference of an on-site review of a school
- Prohibits specific areas from being reviewed by the OEPA.
- Adds the option of placing the principal on the transfer list when the State Board intervenes in the operation of a school and removes the principal
- Allows the State Board to function in lieu of the county board in a transfer, sale, purchase or other transaction regarding real property when the State

Board intervenes in the operation of a school system

- Requires that the notice required to be given by the State Board to the Process for Improving Education Council whenever amending rules relating to certain issues contain a summary and explanation of the proposed changes and that the notice be sent at least 15 days prior to filing the proposal
- Requires that each student suspension and expulsion be recorded on WVEIS, and that WVEIS be consulted prior to the admission of a student to any public school
- Prohibits a teacher from being required to change a student's grade unless there is clear and convincing evidence that there was a mathematical error in calculating the student's grade
- Prohibits any state or county policy or rule governing special education from exceeding the requirements of federal law
- Prohibits a teacher from being required to post his or her lesson plan on the internet
- Requires a statement of policy and practice for the county boards and school personnel to minimize possible disagreement and misunderstanding
- Makes each county board solely responsible for the administration of discipline in the public schools

1
2
3
4

ENROLLED
COMMITTEE SUBSTITUTE
FOR

5
6

H. B. 4001

(By Mr, Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

7
8
9

[Passed March 13, 2004; in effect July 1, 2004.]

10 AN ACT to amend and reenact §18-2E-5 and §18-2E-5c of the code of
11 West Virginia, 1931, as amended; to amend and reenact §18-5-15f
12 of said code; to amend said code by adding thereto a new
13 section, designated section §18-5-46; to amend and reenact §18-
14 20-5 of said code; to amend and reenact §18A-2-12 of said code;
15 to amend said code by adding thereto a new section, designated
16 §18A-2-12a; and to amend and reenact §18A-5-1 and §18A-5-1a,
17 all relating to the process for improving education and
18 removing impediments to improving performance and progress;
19 making technical references, grammatical corrections and
20 stylistic changes; refocusing school and county improvement
21 plans; requiring unified school improvement plan boilerplate;
22 adding requirement for standards; revising performance measures
23 and specifying their use; modifying requirements for
24 assessments; adding indicators of exemplary performance and
25 progress; specifying use of efficiency indicators; reorienting
26 system of education performance audits; changing policy for
27 making on-site reviews of schools and school systems; modifying
28 who office of education performance audits reports to;
29 modifying salary cap for office director; revising and adding
30 items specified for compliance documentation on checklist
31 format; modifying process for selection of schools and school
32 systems for on-site review; open meetings exemption for state
33 board during certain discussions; modifying limitation in scope
34 of on-site review; modifying persons to be included in an on-
35 site review; expanding on-site exit conferences and specifying
36 purpose; modifying time limitations for on-site review reports;
37 making certain findings and excluding certain areas from review
38 by performance audits; further specifying conditions for
39 student transfers from seriously impaired schools; granting
40 certain authority for real estate transactions to state board
41 during state intervention; clarifying rights of principal
42 removed from seriously impaired school; specifying certain
43 notice requirements by state board to process for improving
44 education council; recording suspensions and expulsions on the
45 West Virginia education information system; prohibiting a
46 teacher from being required to change grade; exception;
47 limiting state rules, policies and standards for exceptional
48 children programs to federal requirements and directing report
49 of review and comparison of laws to legislative oversight
50 commission; restricting publication of lesson plans; setting
51 forth general statement on relations between county boards and
52 school personnel; and placing sole responsibility for proper
53 student discipline with county boards and requiring county
54 board policies.

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

56 That §18-2E-5 and §18-2E-5c of the code of West Virginia, 1931,

1 as amended, be amended and reenacted; that §18-5-15f be amended
2 and reenacted; that said code be amended by adding thereto a new
3 section, designated section §18-5-46; that §18-20-5 of said code
4 be amended and reenacted; that §18A-2-12 of said code be amended
5 and reenacted; that said code be amended by adding thereto a new
6 section, designated §18A-2-12a; and that §18A-5-1 and §18A-5-1a be
7 amended and reenacted, all to read as follows:

8 **CHAPTER 18. EDUCATION.**

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

10 **§18-2E-5. Process for improving education; education standards
11 and accountability measures; office of education
12 performance audits; school accreditation and school
13 system approval; intervention to correct impairments.**

14 (a) *Legislative findings, purpose and intent.* -- The
15 Legislature ~~finds that~~ makes the following findings with respect
16 to the process for improving education includes four primary
17 elements, these being:

18 ~~(A) Standards which set forth the things that students should know~~
19 ~~and be able to do as the result of a thorough and efficient~~
20 ~~education including measurable criteria to evaluate student~~
21 ~~performance and progress;~~

22 ~~(B) Assessments of student performance and progress toward meeting~~
23 ~~the standards;~~

24 ~~(C) A system for holding schools and school systems accountable~~
25 ~~for student performance and progress toward obtaining a high~~
26 ~~quality education which is delivered and its purpose and intent in~~
27 ~~an efficient manner; the enactment of this section:~~

28 (1) The process for improving education includes four primary
29 elements, these being:

30 (A) Standards which set forth the things that students should
31 know and be able to do as the result of a thorough and efficient
32 education including measurable criteria to evaluate student
33 performance and progress;

34 (B) Assessments of student performance and progress toward
35 meeting the standards;

36 (C) A system for holding schools

37 ~~(D) A method and school systems accountable for building the~~
38 ~~capacity student performance and improving the efficiency progress~~
39 ~~toward obtaining a high quality education which is delivered in an~~
40 ~~efficient manner; and~~

41 (D) A method for building the capacity and improving the
42 efficiency of schools and school systems to improve student
43 performance and progress.

44 (2) ~~The Legislature further finds that as~~ As the
45 constitutional body charged with the general supervision of
46 schools as provided by general law, the state board has the
47 authority and the responsibility to establish the standards,
48 assess the performance and progress of students against the
49 standards, hold schools and school systems accountable, and assist
50 schools and school systems to build capacity and improve
51 efficiency so that the standards are met, including, when
52 necessary, seeking additional resources in consultation with the
53 Legislature and the governor.

54 (3) ~~The Legislature also finds that as~~ As the constitutional
55 body charged with providing for a thorough and efficient system of
56 schools, the Legislature has the authority and the responsibility

1 to establish and be engaged constructively in the determination of
2 the things that students should know and be able to do as the
3 result of a thorough and efficient education. This determination
4 is made by using the process for improving education to determine
5 when school improvement is needed, by evaluating the results and
6 the efficiency of the system of schools, by ensuring
7 accountability, and by providing for the necessary capacity and
8 its efficient use.

9 ~~(4) Therefore~~ In consideration of these findings, the purpose
10 of this section is to establish a process for improving education
11 that includes the four primary elements as set forth in
12 subdivision (1) of this subsection to provide assurances that ~~a~~
13 ~~thorough and efficient system of schools is being provided for all~~
14 ~~West Virginia public school students on a an equal education~~
15 ~~opportunity basis and that the high quality standards are, at a~~
16 ~~minimum, being met and that a thorough and efficient system of~~
17 ~~schools is being provided for all West Virginia public school~~
18 ~~students on an equal education opportunity basis.~~

19 (5) The intent of the Legislature in enacting this section
20 and of section five-c of this article is to establish a process
21 through which the Legislature, the governor and the state board
22 can work in the spirit of cooperation and collaboration intended
23 in the process for improving education to consult and examine,
24 ~~when necessary,~~ the performance and progress of students, schools
25 and school systems and, when necessary, to consider alternative
26 measures to ensure that all students continue to receive the
27 thorough and efficient education to which they are entitled.
28 However, nothing in this section requires any specific level of
29 funding by the Legislature.

30 (b) *Unified county and school improvement plans.* -- The state
31 board shall promulgate ~~rules~~ a rule consistent with the provisions
32 of this section and in accordance with article three-b, chapter
33 twenty-nine-a of this code establishing a unified county
34 improvement plan for each county board and a unified school
35 improvement plan for each public school in this state. The rules
36 Each respective plan shall specify that the unified school
37 improvement plan shall include all appropriate plans required by
38 law including, but not limited to, the following:

39 ~~(1) The report required to be delivered to the county-wide council~~
40 ~~on productive~~ a five-year plan that includes the mission and safe
41 schools pursuant to subsection (f), section two, article five-a of
42 this chapter;

43 ~~(2) Plans or applications required in the are of technology~~
44 ~~pursuant to 20 U.S. C~~ goals of the school or school system to
45 improve student, school or school system performance and progress,
46 as applicable. §6845, section seven, article two-e of this
47 chapter, state board policy or rule or any other county, state or
48 federal law;

49 ~~(3) The strategic plan to manage the integration of special needs~~
50 ~~students as required by section five, article five-a of this~~
51 ~~chapter; and~~

52 ~~(4)The plan shall be revised annually in each area in which the~~
53 ~~school based improvement plan set forth in the Elementary and~~
54 ~~Secondary Education Act pursuant to 29 U. S.C. or system is below~~
55 ~~the standard on the annual performance measures. §6301, et seq~~
56 The revised annual plan also shall identify any deficiency which

1 is reported on the check lists identified in paragraph (G),
2 subdivision (5), subsection (j) of this section including any
3 deficit more than a casual deficit by the county board. The plans
4 are required to be included only to the extent permitted by state
5 and federal law.

6 The plan shall be revised when required pursuant to this
7 section to include each annual performance measure upon which the
8 school or school system fails to meet the standard for performance
9 and progress, the action to be taken to meet each measure, a
10 separate time line and a date certain for meeting each measure, a
11 cost estimate and, when applicable, the assistance to be provided
12 by the department and other education agencies to improve student,
13 school or school system performance and progress to meet the
14 annual performance measure.

15 The department shall make available on and after the first
16 day of July, two thousand four, to all public schools through its
17 web site or the West Virginia education information system an
18 electronic unified school improvement plan boilerplate designed
19 for use by all schools to develop a unified school improvement
20 plan which incorporates all required aspects and satisfies all
21 improvement plan requirements of the No Child Left Behind Act.

22 (c) High quality education standards and efficiency
23 standards. -- In accordance with the provisions of article three-
24 b, chapter twenty-nine-a of this code, the state board shall adopt
25 and periodically review and update high quality education
26 standards for student, school and school system performance and
27 processes in the following areas:

- 28 (1) Curriculum;
- 29 (2) Workplace readiness skills;
- 30 (3) Finance;
- 31 (4) Transportation;
- 32 (5) Special education;
- 33 (6) Facilities;
- 34 (7) Administrative practices;
- 35 (8) Training of county board members and administrators;
- 36 (9) Personnel qualifications;
- 37 (10) Professional development and evaluation;
- 38 (11) Student performance and progress;
- 39 (12) School and school system performance and progress;
- 40 (13) A code of conduct for students and employees;
- 41 (14) Indicators of efficiency; and
- 42 (15) Any other areas determined by the state board.

43 ~~(d) Performance measures~~ The standards shall assure that all
44 graduates are prepared for gainful employment or for continuing
45 post-secondary education, and training and work and that schools
46 and school systems are making progress in toward achieving the
47 education goals of the state.

48 (d) Annual performance measures. - The standards shall
49 include measures of student performance and progress and measures
50 of school and school system performance annual measures of
51 student, progress school and processes that enable student
52 performance school system performance and progress. The following
53 annual measures of student performance and progress and, school
54 and school system performance, and progress and processes shall
55 include, but are not limited to, the following be the only
56 measures for determining school accreditation and school system

1 approval:

2 (1) The acquisition of student proficiencies as indicated by
3 student performance and progress by in grades three through eight,
4 inclusive, and grade level ten shall be measured, where possible,
5 by a uniform statewide assessment program;

6 ~~(2) School attendance rates;~~

7 ~~(3) The student dropout rate;~~

8 ~~(4) The high school graduation rate;~~

9 ~~(5) The percentage of graduates who enrolled in college and the
10 percentage of graduates who enrolled in other post-secondary
11 education within one year following high school graduation;~~

12 ~~(6) The percentage of graduates who received additional
13 certification of their skills, competence and readiness for
14 college, other post-secondary education or employment above the
15 level required for graduation; and~~

16 ~~(7) The percentage of students who enrolled in and the percentage
17 of students who successfully completed advanced placement, dual
18 credit and honors classes, respectively, by grade level.~~

19 ~~(e) Indicators The indicators for student progress in reading and
20 mathematics in grades kindergarten through second grade shall be
21 measured by the informal assessment established the West Virginia
22 department of efficiency education or other assessments, as
23 determined by the school curriculum team. In accordance with the
24 If the provisions of article three-b, chapter twenty-nine-a of
25 this code, the state board shall adopt and periodically review and
26 update indicators of efficiency for student and school system
27 performance and processes school fails to meet adequate yearly
28 progress in the following areas:~~

29 ~~(1) Curriculum delivery including, but not limited to, the use of
30 distance learning;~~

31 ~~(2) Transportation;~~

32 ~~(3) Facilities;~~

33 ~~(4) Administrative practices;~~

34 ~~(5) Personnel;~~

35 ~~(6) Utilization of regional educational service agency programs
36 and services, including programs and services that may be
37 established by their assigned regional educational service
38 agency, reading or other mathematics for two consecutive years, the
39 county superintendent, the school principal and the school
40 curriculum team shall decide whether a different assessment should
41 be used to verify that benchmarks are being met. regional
42 services that may be initiated between and among participating
43 county boards; and~~

44 ~~(7) Any other indicators as determined by the state board.~~

45 ~~(f) Assessment and accountability of If the county
46 superintendent, the school principal and the school system
47 performance and processes curriculum team differ on what
48 assessment is used, then each entity shall have one vote. In
49 accordance with~~

50 ~~Furthermore, the provisions of article three-b, chapter
51 twenty-nine-a of this code, the state board shall establish by
52 rule a system of education performance audits which measures the
53 quality of education and the preparation of students based on the
54 standards and measures of state board may require that student,
55 student, school and school system performance, progress and
56 processes, including, but not limited to proficiencies be measured~~

1 ~~through the West Virginia writing assessment at any of the grades~~
2 ~~that are determined by the state board to, the standards and~~
3 ~~measures set forth in subsections (c) and (d) of this section. The~~
4 ~~system of education performance audits shall assist the state~~
5 ~~board, the Legislature and the governor in ensuring that the~~
6 ~~standards and measures established pursuant to this section are,~~
7 ~~at a minimum, being met and that a thorough and efficient system~~
8 ~~of schools It is being provided the intent of the Legislature that~~
9 ~~in the future a grade eleven uniform statewide assessment be~~
10 ~~administered in lieu of the grade ten uniform statewide~~
11 ~~assessment. The system of education performance audits state~~
12 ~~board shall include. (1) The assessment perform an analysis of~~
13 ~~the costs and the benefits of student performance and progress,~~
14 ~~school and school system performance, and administering the grade~~
15 ~~eleven uniform statewide assessment in lieu of the processes in~~
16 ~~place in schools and school systems which enable student~~
17 ~~performance and progress; (2) the review of school and school~~
18 ~~system unified improvement plans; and (3) the periodic on-site~~
19 ~~review of school and school system performance and progress and~~
20 ~~compliance with the standards grade ten uniform statewide~~
21 ~~assessment.~~

22 ~~(g) Uses of school and school system assessment information.~~
23 ~~-- The state board and the process The analysis also shall include~~
24 ~~reviewing the need for improving education council established~~
25 ~~pursuant to section five-c of this article shall use information~~
26 ~~from the system of education performance audits to assist them end~~
27 ~~of course exams in ensuring that a thorough and efficient system~~
28 ~~of schools is being provided and to improve student grades nine~~
29 ~~through twelve. The state board shall report the results of the~~
30 ~~analysis to the legislative oversight commission on education~~
31 ~~accountability prior to the first day of November, school system~~
32 ~~performance and progress two thousand four. Information from the~~
33 ~~system of education performance audits further shall be used by~~
34 ~~the The state board for these purposes, including, but not limited~~
35 ~~to, the following: (1) Determining school accreditation and school~~
36 ~~system approval status; (2) holding schools and school systems~~
37 ~~accountable for the efficient use of existing resources to meet~~
38 ~~may provide other testing or exceed the standards; and (3)~~
39 ~~targeting additional resources when necessary to improve~~
40 ~~assessment instruments applicable to grade levels kindergarten~~
41 ~~through grade twelve through the statewide assessment program for~~
42 ~~the optional use by each school as determined by the school~~
43 ~~curriculum team to measure student performance and progress;~~

44 ~~(2) Only for schools that do not include grade twelve, the~~
45 ~~school attendance rate which shall be no less than ninety percent~~
46 ~~in attendance. Primary emphasis in determining school~~
47 ~~accreditation and school system approval status is based on~~
48 ~~student performance and progress, school and school system~~
49 ~~performance and progress and such other measures as selected by~~
50 ~~the state board. The following absences shall be excluded:~~

51 ~~(A) Student absences excused in accordance with the state~~
52 ~~board rule promulgated pursuant to section four, article eight of~~
53 ~~this chapter;~~

54 ~~(B) Students not in attendance due to disciplinary measures;~~
55 ~~and~~

56 ~~(C) Absent students for whom the attendance director has~~

1 pursued judicial remedies to compel attendance to the extent of
2 his or her authority; and

3 (3) The high school graduation rate which shall be no less
4 than eighty percent, or if the high school graduation rate is less
5 than eighty percent, the high school graduation rate shall be
6 higher than the high school graduation rate of the preceding year
7 as determined from information on the West Virginia education
8 information system on the fifteenth day of August.

9 (e) *Indicators of exemplary performance and progress.* - The
10 standards shall include indicators of exemplary student, school
11 and school system performance and progress. The indicators of
12 exemplary student, school and school system performance and
13 progress shall be used only as indicators for determining whether
14 accredited and approved schools and school systems should be
15 granted exemplary status. These indicators shall include, but are
16 not limited to, the following:

17 (1) The percentage of graduates who declare their intent to
18 enroll in college and other post-secondary education and training
19 following high school graduation;

20 (2) The percentage of graduates who receive additional
21 certification of their skills, competence and readiness for
22 college, other post-secondary education or employment above the
23 level required for graduation; and

24 (3) The percentage of students who successfully complete
25 advanced placement, dual credit and honors classes.

26 (f) *Indicators of efficiency.* -- In accordance with the
27 provisions of article three-b, chapter twenty-nine-a of this code,
28 the state board shall adopt and periodically review and update
29 indicators of efficiency for use by the appropriate divisions
30 within the department to ensure efficient management and use of
31 resources in the public schools in the following areas:

32 (1) Curriculum delivery including, but not limited to, the
33 use of distance learning;

34 (2) Transportation;

35 (3) Facilities;

36 (4) Administrative practices;

37 (5) Personnel;

38 (6) Utilization of regional educational service agency
39 programs and services, including programs and services that may be
40 established by their assigned regional educational service agency,
41 or other regional services that may be initiated between and among
42 participating county boards; and

43 (7) Any other indicators as determined by the state board.

44 (g) *Assessment and accountability of school and school system*
45 *performance and processes.* -- In accordance with the provisions of
46 article three-b, chapter twenty-nine-a of this code, the state
47 board shall establish by rule a system of education performance
48 audits which measures the quality of education and the preparation
49 of students based on the annual measures of student, school and
50 school system performance and progress. The system of education
51 performance audits shall provide information to the state board,
52 the Legislature and the governor, both individually and
53 collectively as the process for improving education council, upon
54 which they may judge whether a thorough and efficient system of
55 schools is being provided. The system of education performance
56 audits shall include:

1 (1) The assessment of student, school and school system
2 performance and progress based on the annual measures set forth in
3 subsection (d) of this section;

4 (2) The evaluation of records, reports and other information
5 collected by the department upon which the quality of education
6 and compliance with statutes, policies and standards may be
7 judged; (3) The review of school and school system unified
8 improvement plans; and

9 (4) The on-site review of the processes in place in schools
10 and school systems to enable school and school system performance
11 and progress and compliance with the standards.

12 (h) Uses of school and school system assessment information.

13 -- The state board and the process for improving education council
14 established pursuant to section five-c of this article shall use
15 information from the system of education performance audits to
16 assist them in ensuring that a thorough and efficient system of
17 schools is being provided and to improve student, school and
18 school system performance and progress. Information from the
19 system of education performance audits further shall be used by
20 the state board for these purposes, including, but not limited to,
21 the following:

22 (1) Determining school accreditation and school system
23 approval status;

24 (2) holding schools and school systems accountable for the
25 efficient use of existing resources to meet or exceed the
26 standards; and

27 (3) targeting additional resources when necessary to improve
28 performance and progress.

29 The state board shall make accreditation information
30 available to the Legislature, the governor, the general public and
31 to any individuals who request the information, subject to the
32 provisions of any act or rule restricting the release of
33 information.

34 (i) Early detection and intervention programs. -- Based on
35 the assessment of student, school and school system performance
36 and progress, the state board shall establish early detection and
37 intervention programs using the available resources of the
38 department of education, the regional educational service
39 agencies, the center for professional development and the
40 principals academy, as appropriate, to assist underachieving
41 schools and school systems to improve performance before
42 conditions become so grave as to warrant more substantive state
43 intervention. Assistance shall include, but is not limited to,
44 providing additional technical assistance and programmatic,
45 professional staff development, providing monetary, staffing and
46 other resources where appropriate, and, if necessary, making
47 appropriate recommendations to the process for improving education
48 council.

49 (hj) Office of education performance audits. --

50 (1) To assist the state board and the process for improving
51 education council in the operation of a system of education
52 performance audits that will enable them to evaluate whether a
53 thorough and efficient education is being provided, and to assist
54 the state board in making determinations regarding the
55 accreditation status of schools and the approval status of school
56 systems, the state board shall establish an office of education

1 performance audits ~~which shall be operated under~~ consistent with
2 ~~the direction provisions of the state board independently of the~~
3 ~~functions and supervision of the state department of education and~~
4 ~~state superintendent~~ this section. The office of education
5 performance audits shall ~~report directly to and be responsible to~~
6 ~~be operated under the direction of the state board in carrying out~~
7 ~~its duties under the provisions of this section independently of~~
8 ~~the functions and supervision of the state department of education~~
9 ~~and state superintendent.~~ The office of education performance
10 audits shall report directly to and be responsible to the state
11 board and the process for improving education council created in
12 section five-c of this article in carrying out its duties under
13 the provisions of this section.

14 (2) The office shall be headed by a director who shall be
15 appointed by the state board and who shall serve at the will and
16 pleasure of the state board. The annual salary of the director
17 shall be set by the state board and may not exceed the salary
18 eighty percent of the salary cap of the state superintendent of
19 schools.

20 (3) The state board shall organize and sufficiently staff the
21 office to fulfill the duties assigned to it by law and by the
22 state board. Employees of the state department of education who
23 are transferred to the office of education performance audits
24 shall retain their benefits and seniority status with the
25 department of education.

26 (4) Under the direction of the state board, the office of
27 education performance audits shall receive from the West Virginia
28 education information system staff research and analysis data on
29 the performance and progress of students, schools and school
30 systems, and shall receive assistance, as determined by the state
31 board, from staff at the state department of education, the
32 regional education service agencies, the center for professional
33 development, the principals academy and the state school building
34 authority to carry out the duties assigned to the office.

35 (5) In addition to other duties which may be assigned to it
36 by the state board or by statute, the office of education
37 performance audits also shall:

38 (A) Assure that all statewide assessments of student
39 performance used as annual performance measures are secure as
40 required in section one-a of this article;

41 (B) Administer all accountability measures as assigned by the
42 state board, including, but not limited to, the following:

43 (i) Processes for the accreditation of schools and the
44 approval of school systems; and-

45 (ii) Recommendations to the state board on appropriate
46 action, including, but not limited to, accreditation and approval
47 action;

48 (C) Determine, in conjunction with the assessment and
49 accountability processes, what capacity may be needed by schools
50 and school systems to meet the standards established by the state
51 board, and recommend to the state board and the process for
52 improving education council, plans to establish those needed
53 capacities;

54 (D) Determine, in conjunction with the assessment and
55 accountability processes, whether statewide system deficiencies
56 exist in the capacity of schools and school systems to meet the

1 standards established by the state board, including the
2 identification of trends and the need for continuing improvements
3 in education, and report those deficiencies and trends to the
4 state board and the process for improving education council;

5 (E) Determine, in conjunction with the assessment and
6 accountability processes, staff development needs of schools and
7 school systems to meet the standards established by the state
8 board, and make recommendations to the state board, the process
9 for improving education council, the center for professional
10 development, the regional educational service agencies, the higher
11 education policy commission, and the county boards;

12 (F) Identify, in conjunction with the assessment and
13 accountability processes, exemplary schools and school systems and
14 best practices that improve student, school and school system
15 performance, and make recommendations to the state board and the
16 process for improving education council for recognizing and
17 rewarding exemplary schools and school systems and promoting the
18 use of best practices. These processes
19 focus provide information on those measurable criteria related
20 best practices to student performance county school systems and
21 progress and to the delivery of instruction which will enable
22 student performance and progress, and

23 (ii) Recommendations to the state board on appropriate action,
24 including, but not limited to, accreditation and approval action,

25 (C) Determine, in conjunction with shall use information
26 identified through the assessment and accountability processes
27 what capacity may to select schools of excellence; and

28 (G) Develop reporting formats, such as check lists, which
29 shall be needed used by the appropriate administrative personnel
30 in schools and school systems to meet the standards established by
31 the Legislature and the state board, and recommend to the school,
32 the school system, the state board, and recommend to the school,
33 the school system, the state board and the proces for improving
34 education council, plans to establish those need capacities;

35 (D) Determine, in conjunction document compliance with the
36 assessment and accountability processes various of the applicable
37 laws, whether statewide system deficiencies exist in the capacity
38 to establish and maintain a thorough and efficient sstem of
39 schools policies and process standards as considered appropriate
40 and approved by the state board, including the identification of
41 trends and, but not limited to, the need for continuing
42 improvements in education, and report those deficiencies and
43 trends to the state board and the process for improving education
44 council,

45 (E) Determine, in conjunction with the assessment and
46 accountability processes, staff development needs of schools and
47 school systems to meet the standards established by the
48 Legislature and the state board, and make recommendations to the
49 state board, the process for improving education council, the
50 center for professional development, the regional educational
51 service agencies, the higher education policy following:

52 (i) The use of a policy commission, and the county boards,
53 for the evaluation of all school personnel that meets the
54 requirements of sections twelve and twelve-a, article two, chapter
55 eighteen-a of this code;

56 (ii) The participation of students in appropriate physical

1 assessments as determined by the state board, which assessment may
2 not be used as a part of the assessment and accountability system;
3 (iii) The appropriate licensure of school personnel; and
4 (iv) The school provides multi-cultural activities.(F)
5 Identify, in conjunction with the assessment and accountability
6 processes, exemplary schools and school systems and best practices
7 that improve student, school and school system performance, and
8 make recommendations to the state board and the process for
9 improving education council for recognizing and rewarding
10 exemplary schools and school systems and promoting the use of best
11 practices. The state board shall provide information on best
12 practices to county school systems and shall use information
13 identified through the assessment and accountability processes to
14 select schools of excellence; and
15 (G) Develop Information contained in the reporting formats such as
16 check lists, which shall be used by the appropriate administrative
17 personnel in schools and school systems to document compliance
18 with various of the applicable subject to examination during an
19 on-site review to determine compliance with laws, policies and
20 process standards as considered appropriate and approved by the
21 state board, including, but not limited to, compliance with
22 limitations on the number of pupils per teacher in a classroom and
23 the number of split grade classrooms. Information contained in the
24 reporting formats shall be examined during an on-site review to
25 determine compliance with laws, policies Intentional and standards
26 grossly negligent reporting of false information are grounds for
27 dismissal. Intentional and grossly negligent reporting of false
28 information is ground for dismissal
29 (k) On-site reviews. --
30 (i1) On-site The system of education performance audits shall
31 include on-site reviews of schools and school systems which shall
32 be conducted only at the specific direction of the state board
33 upon its determination that the performance and progress of the
34 school or school system are persistently below standard or that
35 other circumstances exist that warrant an on-site review. (A)
36 AtAny discussion by the state board or by weighted selection by
37 direction of the office of education performance audits, of
38 schools to be subject to an on-site review shall be conducted by
39 the office of education performance audits of any school or school
40 system or dates for purposed, including, but not limited to, the
41 following:
42 (A) Verifying data reported by the school or county board;
43 (B) Documenting compliance with policies and laws;
44 (C) Evaluating the effectiveness and implementation status of
45 school and school system unified improvement plans;
46 (D) Investigating official complaints submitted to the state board
47 that allege serious impairments which on-site reviews will be
48 conducted may be held in the quality of education executive
49 session, and is not subject to the provisions of article nine-a,
50 chapter six of this code, relating to open governmental
51 proceedings. in the quality of education in schools or school
52 systems;
53 (E) Investigating official complaints submitted to the state board
54 that allege that a school or county board is in violation of
55 policies or laws under which schools and county boards operate;
56 and

1 ~~(F) Determining and reporting whether required reviews and~~
2 ~~inspections have been conducted by the appropriate agencies,~~
3 ~~including, but not limited to, the state fire marshal, the health~~
4 ~~department, the school building authority and the responsible~~
5 ~~divisions within the department of education, and whether noted~~
6 ~~deficiencies have been or are in the process of being corrected.~~
7 ~~The office of education performance audits may not conduct a~~
8 ~~duplicate~~ An on-site review shall be conducted inspection nor
9 mandate more stringent compliance by the office of education
10 performance audits of a school or school system for the purpose of
11 investigating the reasons for performance and progress that are
12 persistently below standard and making recommendations to the
13 school and school system, as appropriate, and to the state board
14 on such measures as it considers necessary to improve performance
15 and progress to meet the standard.

16 ~~(2) The selection of schools and school systems for an~~
17 ~~on-site review shall use a weighted sample so that those with~~
18 ~~lower performance and progress indicators and those that have~~
19 ~~investigation may include, but is not had a recent on-site review~~
20 ~~have a greater likelihood of being selected. limited to, the~~
21 ~~following:~~

22 (A) Verifying data reported by the school or county board;

23 (B) Examining compliance with the laws and policies affecting
24 student, school and school system performance and progress;

25 (C) Evaluating the effectiveness and implementation status of
26 school and school system unified improvement plans;

27 (D) Investigating official complaints submitted to the state
28 board that allege serious impairments in the quality of education
29 in schools or school systems;

30 (E) Investigating official complaints submitted to the state
31 board that allege that a school or county board is in violation of
32 policies or laws under which schools and county boards operate;
33 and

34 (F) Determining and reporting whether required reviews and
35 inspections have been conducted by the appropriate agencies,
36 including, but not limited to, the state fire marshal, the health
37 department, the school building authority and the responsible
38 divisions within the department of education, and whether noted
39 deficiencies have been or are in the process of being corrected.

40 ~~The director of the office of education performance audits shall~~
41 ~~notify the county superintendent of schools five school days prior~~
42 ~~to commencing an on-site review of the county school system and~~
43 ~~shall notify both the county superintendent and the principal five~~
44 ~~school days prior to commencing an on-site review of an individual~~
45 ~~school: Provided, That the state board may direct the office of~~
46 ~~education performance audits to may not conduct an unannounced~~
47 ~~on-site review of a school or school system if the state board~~
48 ~~believes circumstances warrant an unannounced on-site review a~~
49 ~~duplicate review or inspection of any compliance reviews or~~
50 ~~inspections conducted by the department or its agents or other~~
51 ~~duly authorized agencies of the state, nor may it mandate more~~
52 ~~stringent compliance measures.~~

53 (32) The office director of the office of education
54 performance audits shall notify the county superintendent of
55 schools five school days prior to commencing an on-site review of
56 the county school system and shall notify both the county

1 superintendent and the principal five school days prior to
2 commencing an on-site review of an individual school: Provided,
3 That the state board may direct the office of education on-site
4 reviews which are limited in scope to specific areas in addition
5 to full reviews which cover all areas performance audits to
6 conduct an unannounced on-site review of a school or school system
7 if the state board believes circumstances warrant an unannounced
8 on-site review.

9 (43) ~~An on-site review of a school or school system shall~~
10 ~~include a person or persons who has expert knowledge and~~
11 ~~experience in the area or areas to be reviewed and who is~~
12 ~~designated by the state board from the department of education and~~
13 ~~the agencies responsible for assisting the~~ The office of education
14 performance audits shall conduct on-site reviews which are limited
15 in scope to specific areas in which performance and progress are
16 persistently below standard as determined by the state board
17 unless specifically directed by the state board to conduct a
18 review which covers additional areas. If the size of the school or
19 school system being reviewed necessitates the use of an on-site
20 review team or teams, the person or persons designated by the
21 state board shall advise and assist the director to appoint the
22 team or teams.

23 (4) An on-site review of a school or school system shall
24 include a person or persons from the department of education or a
25 public education agency in the state who has expert knowledge and
26 experience in the area or areas to be reviewed, and who has been
27 trained and designated by the state board to perform such
28 functions. If the size of the school or school system and issues
29 being reviewed necessitate the use of an on-site review team or
30 teams, the person or persons designated by the state board shall
31 advise and assist the director to appoint the team or teams. The
32 person or persons designated by the state board shall be the team
33 leaders.

34 The persons designated by the state board shall be
35 responsible for completing the report on the findings and
36 recommendations of the on-site review in their area of expertise.
37 It is the intent of the Legislature that the persons designated by
38 the state board participate in all on-site reviews that involve
39 their area of expertise, to the extent practicable, so that the
40 on-site review process will evaluate compliance with the standards
41 in a uniform, consistent and expert manner.

42 (5) The office of education performance audits shall
43 reimburse a county board for the costs of substitutes required to
44 replace county board employees while they are serving on a review
45 team.

46 (6) At the conclusion of an on-site review of a school
47 system, the director and team leaders shall hold an exit
48 conference with the superintendent and shall provide an
49 opportunity for principals to be present for at least the portion
50 of the conference pertaining to their respective schools. In the
51 case of an on-site review of a school, the exit conference shall
52 be held with the principal and curriculum team of the school and
53 the superintendent shall be provided the opportunity to be
54 present.

55 ~~—(7) The office purpose of education performance audits shall~~
56 ~~report the exit conference is to review the initial findings of~~

1 the on-site reviews to the state board, clarify and correct any
2 inaccuracies and allow the opportunity for inclusion in dialogue
3 between the evaluation reviewers and the school or school system
4 determination of to promote a school better understanding of the
5 findings.

6 ~~(7) The report on the findings office of an on-site review~~
7 ~~education performance audits shall be submitted to report the~~
8 ~~state board within thirty days following the conclusion of the on-~~
9 ~~site review and findings of an on-site review to the county~~
10 ~~superintendent and the principals of whose schools within the were~~
11 ~~reviewed school system within forty-five within thirty days~~
12 ~~following the conclusion of the on-site review. A copy The office~~
13 ~~of the report shall be provided to the process for improving~~
14 ~~education council performance audits shall report the findings of~~
15 ~~the on-site review to the state board within forty-five days~~
16 ~~after the conclusion of the on-site review.~~

17 ~~(j) School accreditation A copy of the report shall be~~
18 ~~provided to the process for improving education council at its~~
19 ~~request.~~

20 ~~(8) The state board annually shall review Legislature finds~~
21 ~~that the information from the system of education performance~~
22 ~~audits submitted for each school and shall issue to every school~~
23 ~~one accountability and oversight of the following approval levels.~~
24 ~~Exemplary accreditation status, temporary accreditation status,~~
25 ~~conditional accreditation status, or seriously impaired status,~~
26 ~~activities and programmatic areas in the public schools is~~
27 ~~controlled through other mechanisms and that additional~~
28 ~~accountability and oversight are not only unnecessary but counter~~
29 ~~productive in distracting necessary resources from teaching and~~
30 ~~learning.~~

31 ~~(1) Full accreditation status shall be given to a school when~~
32 ~~the school's performance and progress on the standards adopted by~~
33 ~~the state board pursuant to subsections (c) and (d) of this~~
34 ~~section are at a level which would be expected when all of the~~
35 ~~high quality education standards are being met. A school which~~
36 ~~meets or exceeds the measures of student performance and progress~~
37 ~~set forth in subsection (d) of this section, and which does not~~
38 ~~have Therefore, notwithstanding any deficiencies which would~~
39 ~~endanger student health or safety or other extraordinary~~
40 ~~circumstances as defined by the state board, shall remain on full~~
41 ~~accreditation status for six months other provision of this~~
42 ~~section to the contrary, the following an on-site review in which~~
43 ~~other deficiencies activities and programmatic areas are not~~
44 ~~subject to review by the office of education performance audits:~~

45 ~~(A) Work-based learning;~~

46 ~~(B) Use of advisory councils;~~

47 ~~(C) Program accreditation and student credentials;~~

48 ~~(D) Student transition plans;~~

49 ~~(E) Graduate assessment form;~~

50 ~~(F) Casual deficit;~~

51 ~~(G) Accounting practices;~~

52 ~~(H) Transportation services;~~

53 ~~(I) Special education services;~~

54 ~~(J) Safe, healthy and accessible facilities;~~

55 ~~(K) Health services;~~

56 ~~(L) Attendance director;~~

- 1 (M) Business/community partnerships;
- 2 (N) Pupil-teacher ratio/split grade classes;
- 3 (O) Local school improvement council, faculty senate, student
- 4 assistance team and curriculum team;
- 5 (P) Planning and lunch periods;
- 6 (Q) Skill improvement program;
- 7 (R) Certificate of proficiency;
- 8 (S) Training of county board members;
- 9 (T) Excellence in job performance;
- 10 (U) Staff development; and
- 11 (V) Preventive discipline, character education and student
- 12 and parental involvement.

13 (1) School accreditation. -- The school-state board annually
14 shall have an opportunity review the information from the system
15 of education performance audits submitted for each school and
16 shall issue to correct those deficiencies, notwithstanding other
17 provisions of this subsection every school one of the following
18 approval levels: Exemplary accreditation status, full
19 accreditation status, temporary accreditation status, conditional
20 accreditation status, or seriously impaired status.

21 (2) Temporary Full accreditation status shall be given to a
22 school when the measure of the school's performance and progress
23 is below meet or exceed the level required for full accreditation
24 status standards adopted by the state board pursuant to subsection
25 (d) of this section and it does not have any deficiencies which
26 would endanger student health or safety or other extraordinary
27 circumstances as defined by the state board. Whenever a A school
28 is given temporary accreditation status, the county board shall
29 ensure that the school's unified improvement plan is revised to
30 increase meets or exceeds the performance and progress of the
31 school to a standards but has the other deficiencies shall remain
32 on full accreditation status level for the remainder of the
33 accreditation period and shall have an opportunity to correct
34 those deficiencies, notwithstanding other provisions of this
35 subsection.

36 (2) Temporary accreditation status shall be given to a school
37 when the school's performance and progress are below the level
38 required for full accreditation status. Whenever a school is
39 given temporary accreditation status, the county board shall
40 ensure that the school's unified improvement plan in subsection
41 (b) of this section to increase the performance and progress of
42 the school to a full accreditation status level. The revised
43 plan shall be submitted to the state board for approval.

44 (3) Conditional accreditation status shall be given to a
45 school when the school's performance and progress on the standards
46 adopted by the state board are below the level required for full
47 accreditation, but the school's unified improvement plan meets the
48 following criteria:

49 (A) The plan has been revised to achieve full accreditation
50 status improve performance and progress on the standard or
51 standards by a date or dates certain, the;

52 (B) The plan has been approved by the state board and the;
53 and

54 (C) The school is meeting the objectives and time line
55 specified in the revised plan.

56 (4) Exemplary accreditation status shall be given to a school

1 when the school's performance and progress on the standards
2 adopted by the state board pursuant to subsections (c) and (d) of
3 this section substantially meet or exceed the minimal level which
4 would be expected when all of the high quality education standards
5 are being met standards adopted by the state board pursuant to
6 subsections (d) and (e) of this section. The state board shall
7 promulgate legislative rules in accordance with the provisions of
8 article three-b, chapter twenty-nine-a, designated to establish
9 standards of performance and progress to identify exemplary
10 schools.

11 ~~(5) The state board~~ Seriously impaired accreditation status
12 shall establish and adopt standards of performance and progress be
13 given to identify seriously impaired schools and the state board
14 may declare a school seriously impaired whenever extraordinary
15 circumstances exist as defined by the state board.

16 (A) These circumstances shall include, but are not limited
17 to, the following:

18 (i) The failure of a school on temporary accreditation status
19 to obtain approval of its revised unified school improvement plan
20 within a reasonable time period as defined by the state board;

21 (ii) The failure of a school on conditional accreditation
22 status to meet the objectives and time line of its revised unified
23 school improvement plan; or

24 (iii) The failure of a school to ~~achieve full accreditation~~
25 meet a standard by the date specified in the revised plan.

26 (B) Whenever the state board determines that the quality of
27 education in a school is seriously impaired, the state board shall
28 appoint a team of improvement consultants to make recommendations
29 within sixty days of appointment for correction of the impairment.
30 When the state board approves the recommendations, they shall be
31 communicated to the county board. If progress in correcting the
32 impairment as determined by the state board is not made within six
33 months from the time the county board receives the
34 recommendations, the state board shall place the county board on
35 temporary approval status and provide consultation and assistance
36 to the county board to assist it in the following areas:

37 (i) Improving personnel management;

38 (ii) Establishing more efficient financial management
39 practices;

40 (iii) Improving instructional programs and rules; or

41 (iv) Making any other improvements that are necessary to
42 correct the impairment.

43 (C) If the impairment is not corrected by a date certain as
44 set by the state board:

45 (i) The state board shall appoint a monitor who shall be paid
46 at county expense to cause improvements to be made at the school
47 to bring it to full accreditation status within a reasonable time
48 period as determined by the state board. The monitor's work
49 location shall be at the school and the monitor shall work
50 collaboratively with the principal. The monitor shall, at a
51 minimum, report monthly to the state board on the measures being
52 taken to improve the school's performance and the progress being
53 made. The reports may include requests for additional assistance
54 and recommendations required in the judgment of the monitor to
55 improve the school's performance, including, but not limited to,
56 the need for targeting resources strategically to eliminate

1 deficiencies;

2 (ii) The state board may make a determination, in its sole
3 judgment, that the improvements necessary to provide a thorough
4 and efficient education to the students at the school cannot be
5 made without additional targeted resources, in which case, it
6 shall establish a plan in consultation with the county board that
7 includes targeted resources from sources under the control of the
8 state board and the county board to accomplish the needed
9 improvements. Nothing in this subsection shall be construed to
10 allow a change in personnel at the school to improve school
11 performance and progress, except as provided by law;

12 (iii) If the impairment is not corrected within one year
13 after the appointment of a monitor, the state board may make a
14 determination, in its sole judgment, that continuing a monitor
15 arrangement is not sufficient to correct the impairment and may
16 intervene in the operation of the school to cause improvements to
17 be made that will provide assurances that a thorough and efficient
18 system of schools will be provided. This intervention may
19 include, but is not limited to, establishing instructional
20 programs, taking such direct action as may be necessary to correct
21 the impairments, declaring the position of principal is vacant and
22 assigning a principal for the school who shall serve at the will
23 and pleasure of and, under the sole supervision of, the state
24 board: *Provided*, That prior to declaring that the position of the
25 principal is vacant, the state board must make a determination
26 that all other resources needed to correct the impairment are
27 present at the school. If the principal who was removed elects
28 not to remain an employee of the county board, then the principal
29 assigned by the state board shall be paid by the county board. If
30 the principal who was removed elects to remain an employee of the
31 county board, then the following procedure applies:

32 (I) The principal assigned by the state board shall be paid
33 by the state board until the next school term, at which time the
34 principal assigned by the state board shall be paid by the county
35 board;

36 (II) The principal who was removed shall be ~~placed on the~~
37 ~~preferred recall list eligible~~ for all positions in the county,
38 ~~including teaching positions,~~ for which the principal is
39 certified, by either being placed on the transfer list in
40 accordance with section seven, article two, chapter eighteen-a of
41 this code, or by being placed on the preferred recall list in
42 accordance with section seven-a, article four, chapter eighteen-a
43 of this chapter code; and

44 (III) The principal who was removed shall be paid by the
45 county board and may be assigned to administrative duties, without
46 the county board being required to post that position until the
47 end of the school term;

48 (6) The county board shall take no action nor refuse any
49 action if the effect would be to impair further the school in
50 which the state board has intervened.

51 (7) The state board may appoint a monitor pursuant to the
52 provisions of this subsection to assist the school principal after
53 intervention in the operation of a school is completed.

54 (~~km~~) *Transfers from seriously impaired schools.* -- Whenever
55 a school is determined to be seriously impaired and fails to
56 improve its status within one year, following state intervention

1 in the operation of the school to correct the impairment, any
2 student attending the school may transfer once to the nearest
3 fully accredited school in the county, subject to approval of the
4 fully accredited school and at the expense of the school from
5 which the student transferred.

6 ~~(fn)~~ *School system approval.* -- The state board annually
7 shall review the information submitted for each school system from
8 the system of education performance audits and issue one of the
9 following approval levels to each county board: Full approval,
10 temporary approval, conditional approval, or nonapproval.

11 (1) Full approval shall be given to a county board whose
12 ~~education system meets or exceeds all of the high quality~~
13 ~~standards for student, school and school system performance,~~
14 ~~progress and processes adopted by the state board and whose~~
15 ~~schools have all been given full, temporary or conditional~~
16 ~~accreditation status and which does not have any deficiencies~~
17 ~~which would endanger student health or safety or other~~
18 ~~extraordinary circumstances as defined by the state board. A~~
19 ~~fully approved school system in which such other deficiencies are~~
20 ~~discovered shall remain on full accreditation status for the~~
21 ~~remainder of the approval period and shall have an opportunity to~~
22 ~~correct those deficiencies, notwithstanding other provisions of~~
23 ~~this subsection. A school system which meets or exceeds the~~
24 ~~measures of student performance and progress set forth in~~
25 ~~subsection (d) of this section, and which does not have any~~
26 ~~deficiencies which would endanger student health or safety or~~
27 ~~other extraordinary circumstances as defined by the state board,~~
28 ~~shall remain on full accreditation status for six months following~~
29 ~~an on-site review in which other deficiencies are noted.~~

30 ~~The school shall have an opportunity to correct those~~
31 ~~deficiencies, notwithstanding other provisions of this subsection.~~

32 (2) Temporary approval shall be given to a county board whose
33 education system is below the level required for full approval.
34 Whenever a county board is given temporary approval status, the
35 county board shall revise its unified county improvement plan in
36 accordance with subsection (b) of this section to increase the
37 performance and progress of the school system to a full approval
38 status level. Whenever a county board is given temporary approval
39 status, the county board shall revise its unified county
40 improvement plan to increase the performance and progress of the
41 school system to a full approval status level. The revised plan
42 shall include objectives, a time line, a plan for evaluation of
43 the success of the improvements, a cost estimate, and a date
44 certain for achieving full approval. The revised plan shall be
45 submitted to the state board for approval. The revised plan shall
46 be submitted to the state board for approval.

47 (3) Conditional approval shall be given to a county board
48 whose education system is below the level required for full
49 approval, but whose unified county improvement plan meets the
50 following criteria:

51 (i) ~~The plan has been revised to achieve full approval status~~
52 ~~by a date certain in accordance with subsection (b) of this~~
53 ~~section;~~

54 (ii) The plan has been approved by the state board; and

55 (iii) The county board is meeting the objectives and time
56 line specified in the revised plan.

1 (4) Nonapproval status shall be given to a county board which
2 fails to submit and gain approval for its unified county
3 improvement plan or revised unified county improvement plan within
4 a reasonable time period as defined by the state board or which
5 fails to meet the objectives and time line of its revised unified
6 county improvement plan or fails to achieve full approval by the
7 date specified in the revised plan.

8 (A) The state board shall establish and adopt additional
9 standards to identify school systems in which the program may be
10 nonapproved and the state board may issue nonapproval status
11 whenever extraordinary circumstances exist as defined by the state
12 board.

13 (B) Whenever a county board has more than a casual deficit,
14 as defined in section one, article one of this chapter, the county
15 board shall submit a plan to the state board specifying the county
16 board's strategy for eliminating the casual deficit. The state
17 board either shall approve or reject the plan. If the plan is
18 rejected, the state board shall communicate to the county board
19 the reason or reasons for the rejection of the plan. The county
20 board may resubmit the plan any number of times. However, any
21 county board that fails to submit a plan and gain approval for the
22 plan from the state board before the end of the fiscal year after
23 a deficit greater than a casual deficit occurred or any county
24 board which, in the opinion of the state board, fails to comply
25 with an approved plan may be designated as having nonapproval
26 status.

27 (C) Whenever nonapproval status is given to a school system,
28 the state board shall declare a state of emergency in the school
29 system and shall appoint a team of improvement consultants to make
30 recommendations within sixty days of appointment for correcting
31 the emergency. When the state board approves the recommendations,
32 they shall be communicated to the county board. If progress in
33 correcting the emergency, as determined by the state board, is not
34 made within six months from the time the county board receives the
35 recommendations, the state board shall intervene in the operation
36 of the school system to cause improvements to be made that will
37 provide assurances that a thorough and efficient system of schools
38 will be provided. This intervention may include, but is not
39 limited to, the following:

40 (i) Limiting the authority of the county superintendent and
41 county board as to the expenditure of funds, the employment and
42 dismissal of personnel, the establishment and operation of the
43 school calendar, the establishment of instructional programs and
44 rules and any other areas designated by the state board by rule,
45 which may include delegating decision-making authority regarding
46 these matters to the state superintendent;

47 (ii) Declaring that the office of the county superintendent
48 is vacant;

49 (iii) Delegating to the state superintendent both the
50 authority to conduct hearings on personnel matters and school
51 closure or consolidation matters and, subsequently, to render the
52 resulting decisions, and the authority to appoint a designee for
53 the limited purpose of conducting hearings while reserving to the
54 state superintendent the authority to render the resulting
55 decisions; and

56 (iv) Functioning in lieu of the county board of education in

1 a transfer, sale, purchase or other transaction regarding real
2 property; and

3 (v) Taking any direct action necessary to correct the
4 emergency including, but not limited to, the following:

5 (I) Delegating to the state superintendent the authority to
6 replace administrators and principals in low performing schools
7 and to transfer them into alternate professional positions within
8 the county at his or her discretion; and

9 (II) Delegating to the state superintendent the authority to
10 fill positions of administrators and principals with individuals
11 determined by the state superintendent to be the most qualified
12 for the positions. Any authority related to intervention in the
13 operation of a county board granted under this paragraph is not
14 subject to the provisions of article four, chapter eighteen-a of
15 this code;

16 (mq) Notwithstanding any other provision of this section, the
17 state board may intervene immediately in the operation of the
18 county school system with all the powers, duties and
19 responsibilities contained in subsection (n) of this section, if
20 the state board finds the following:

21 (1) That the conditions precedent to intervention exist as
22 provided in this section; and that delaying intervention for any
23 period of time would not be in the best interests of the students
24 of the county school system; or

25 (2) That the conditions precedent to intervention exist as
26 provided in this section and that the state board had previously
27 intervened in the operation of the same school system and had
28 concluded that intervention within the preceding five years.

29 (np) *Capacity.* -- The process for improving education
30 includes a process for targeting resources strategically to
31 improve the teaching and learning process. Development of unified
32 school and school system improvement plans, pursuant to subsection
33 (b) of this section, is intended, in part, to provide mechanisms
34 to target resources strategically to the teaching and learning
35 process to improve student, school and school system performance.
36 When deficiencies are detected through the assessment and
37 accountability processes, the revision and approval of school and
38 school system unified improvement plans shall ensure that schools
39 and school systems are efficiently using existing resources to
40 correct the deficiencies. When the state board determines that
41 schools and school systems do not have the capacity to correct
42 deficiencies, the state board shall work with the county board to
43 develop or secure the resources necessary to increase the capacity
44 of schools and school systems to meet the standards and, when
45 necessary, seek additional resources in consultation with the
46 Legislature and the governor.

47 The state board shall recommend to the appropriate body
48 including, but not limited to, the process for improving education
49 council, the Legislature, county boards, schools and communities
50 methods for targeting resources strategically to eliminate
51 deficiencies identified in the assessment and accountability
52 processes. When making determinations on recommendations, the
53 state board shall include, but is not limited to, the following
54 methods:

55 (1) Examining reports and unified improvement plans regarding
56 the performance and progress of students, schools and school

1 systems relative to the standards and identifying the areas in
2 which improvement is needed;

3 (2) Determining the areas of weakness and of ineffectiveness
4 that appear to have contributed to the substandard performance and
5 progress of students or the deficiencies of the school or school
6 system;

7 (3) Determining the areas of strength that appear to have
8 contributed to exceptional student, school and school system
9 performance and progress and promoting their emulation throughout
10 the system;

11 (4) Requesting technical assistance from the school building
12 authority in assessing or designing comprehensive educational
13 facilities plans;

14 (5) Recommending priority funding from the school building
15 authority based on identified needs;

16 (6) Requesting special staff development programs from the
17 center for professional development, the principals academy,
18 higher education, regional educational service agencies and county
19 boards based on identified needs;

20 (7) Submitting requests to the Legislature for appropriations
21 to meet the identified needs for improving education;

22 (8) Directing county boards to target their funds
23 strategically toward alleviating deficiencies;

24 (9) Ensuring that the need for facilities in counties with
25 increased enrollment are appropriately reflected and recommended
26 for funding;

27 (10) Ensuring that the appropriate person or entity is held
28 accountable for eliminating deficiencies; and

29 (11) Ensuring that the needed capacity is available from the
30 state and local level to assist the school or school system in
31 achieving the standards and alleviating the deficiencies.

32 **§18-2E-5c. Process for improving education council established;**
33 **membership; expenses; meetings; powers.**

34 (a) *Process for improving education council.* -- There is
35 hereby established the process for improving education council for
36 the purpose of providing opportunities for consultation among
37 state policy leaders on the process for improving education,
38 including, but not limited to, determination of the things that
39 students should know and be able to do as the result of a thorough
40 and efficient education, the performance and progress of students
41 toward meeting the high quality standards established by the state
42 board, and any further improvements necessary to increase the
43 capacity of schools and school systems to deliver a thorough and
44 efficient education.

45 (b) *Council membership.* -- The legislative oversight
46 commission on education accountability, together with the
47 governor, ex officio, or the governor's designee, and the
48 chancellor of the higher education policy commission, ex officio,
49 or the chancellor's designee, comprise the process for improving
50 education council. Ex officio members are entitled to vote. The
51 governor or the governor's designee shall convene the council, as
52 appropriate, and shall serve as chair. The council may meet at
53 any time at the call of the governor or the governor's designee.

54 (c) *Compensation.* -- Members of the council shall serve
55 without compensation, but shall be reimbursed as provided by law
56 by their respective agencies for all reasonable and necessary

1 expenses actually incurred in the performance of their official
2 duties under this section upon presentation of an itemized sworn
3 statement of their expenses.

4 (d) *Powers of the council.* --

5 The council has the following powers:

6 (1) To meet and consult with the state board, or their
7 designees, and make recommendations on issues related to student,
8 school and school system performance. The following steps are
9 part of the consultation process:

10 (A) The state board shall notify each member of the council
11 whenever the state board proposes to amend its rules on any of the
12 following issues:

13 (i) High quality education standards and efficiency standards
14 established pursuant to section five of this article;

15 (ii) Indicators of efficiency established pursuant to section
16 five of this article; and

17 (iii) Assessment and accountability of school and school
18 system performance and processes established pursuant to section
19 five of this article.

20 ~~(B) If the governor, or the governor's designee, believes it
21 is necessary for the council to meet and consult with the state
22 board, or its designees, on changes proposed to any of the issues
23 outlined in subdivision The notice to be given pursuant to
24 paragraph (1-A) of this subdivision, he or she may convene a
25 meeting shall contain a summary and explanation of the proposed
26 changes, including a draft of the proposal when available, and
27 shall be sent at least fifteen days prior to filing the proposal
28 with the secretary of the council state for public comment.~~

29 ~~(C) If both the president of the Senate and the speaker of
30 the House of Delegates believe it is necessary for the council to
31 meet and consult with the state board, or its designees, they
32 shall notify the governor, or the governor's designee, believes it
33 is necessary for the council to meet and consult with the state
34 board, or its designees, on changes proposed to any of the issues
35 outlined in subdivision who shall (1) of this subsection, he or
36 she may convene a meeting of the council.~~

37 ~~(D) If both the chancellor, or president of the chancellor's
38 designee, believes that Senate and the speaker of the House of
39 Delegates believe it is necessary for the council to meet and
40 consult with the state board, or its designees, he or she may
41 request they shall notify the governor to who shall convene a
42 meeting of the council.~~

43 ~~(2) To require the state board, or its designees, to meet with the
44 council to consult on issues that lie within the scope of the
45 council's jurisdiction;~~

46 ~~(3) To participate as observers in any on-site review of a school
47 or school system conducted by the office of education performance
48 audits; and~~

49 ~~(4) To authorize any employee of the agencies represented by
50 council members to participate as observers in any on-site review
51 of a school or school system conducted by the office of education
52 performance audits.~~

53 ~~(E) If the chancellor, or the chancellor's designee, believes
54 that it is necessary for the council to meet and consult with the
55 state board, or its designees, he or she may request the governor
56 to convene a meeting of the council.~~

1 (2) To require the state board, or its designees, to meet
2 with the council to consult on issues that lie within the scope of
3 the council's jurisdiction;

4 (3) To participate as observers in any on-site review of a
5 school or school system conducted by the office of education
6 performance audits; and

7 (4) To authorize any employee of the agencies represented by
8 council members to participate as observers in any on-site review
9 of a school or school system conducted by the office of education
10 performance audits.

11 **ARTICLE 5. COUNTY BOARD OF EDUCATION.**

12 **§18-5-15f. Affirmation regarding the suspension or expulsion of**
13 **a pupil from school.**

14 (a) Prior to the admission of a pupil to any public school in
15 West Virginia, the county superintendent shall require the pupil's
16 parent(s), guardian(s) or custodian(s) to provide, upon
17 registration, a sworn statement or affirmation indicating whether
18 the student is, at the time, under suspension or expulsion from
19 attendance at a private or public school in West Virginia or
20 another state. Any person willfully making a materially false
21 statement or affirmation shall be guilty of a misdemeanor and,
22 upon conviction, the penalty shall be the same as provided for
23 "false swearing" pursuant to section three, article five, chapter
24 sixty-one of this code.

25 ~~(b) Notwithstanding any other provision of this code to the~~
26 ~~contrary, any pupil who has been suspended or expelled from school~~
27 ~~pursuant to section one-a, article five, chapter eighteen-a of~~
28 ~~this code, or who has been suspended or expelled from a public or~~
29 ~~private school in another state, due to actions described in~~
30 ~~section one-a, article five, chapter eighteen-a of this code, may~~
31 ~~not be admitted to any public school within the state of West~~
32 ~~Virginia until the period of suspension or expulsion has expired.~~

33 (b) Prior to the admission of a pupil to any public school,
34 the principal of that school or his or her designee shall consult
35 the uniform integrated regional computer information system
36 (commonly known as the West Virginia Education Information System)
37 described in subsection (f), section twenty-six, article two,
38 chapter eighteen of this code, to determine whether the pupil
39 requesting admission is, at the time of the request for admission,
40 -serving a suspension or expulsion from another public school in
41 West Virginia.

42 (c) The state board of education shall provide for the West
43 Virginia Education Information System to disallow the recording of
44 the enrollment of any pupil who is, at the time of attempted
45 enrollment, serving a suspension or expulsion from another public
46 school in West Virginia, and for that system to notify the user
47 who has attempted to record such enrollment that the pupil may not
48 be enrolled, and to notify that user of the reason therefor.

49 ~~(d) Notwithstanding any other provision of this code to the~~
50 ~~contrary, any pupil who has been suspended or expelled from school~~
51 ~~pursuant to section one-a, article five, chapter eighteen-a of~~
52 ~~this code, or who has been suspended or expelled from a public or~~
53 ~~private school in another state, due to actions described in~~
54 ~~section one-a, article five, chapter eighteen-a of this code, may~~
55 ~~not be admitted to any public school within the state of West~~
56 ~~Virginia until the period of suspension or expulsion has expired.~~

1 **§18-5-46. Requiring teacher to change grade prohibited.**

2 No teacher may be required by a principal nor any other
3 person to change a student's grade on either an individual
4 assignment or a report card unless there is clear and convincing
5 evidence that there was a mathematical error in calculating the
6 student's grade.

7 **ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.**

8 **§18-20-5. Powers and duties of state superintendent.**

9 The state superintendent of schools shall organize, promote,
10 administer and be responsible for:

11 (1) Stimulating and assisting county boards of education in
12 establishing, organizing and maintaining special schools, classes,
13 regular class programs, home-teaching and visiting-teacher
14 services.

15 (2) Cooperating with all other public and private agencies
16 engaged in relieving, caring for, curing, educating and
17 rehabilitating exceptional children, and in helping coordinate the
18 services of such agencies.

19 ~~(3) Preparing the necessary rules, regulations, formula for~~
20 ~~distribution of available appropriated funds, reporting forms and~~
21 ~~procedures necessary to define minimum standards in providing~~
22 ~~suitable facilities for education of exceptional children and~~
23 ~~ensuring the employment, certification and approval of qualified~~
24 ~~teachers and therapists subject to approval by the state board of~~
25 ~~education.~~

26 (3) Preparing the necessary rules, policies, formula for
27 distribution of available appropriated funds, reporting forms and
28 procedures necessary to define minimum standards in providing
29 suitable facilities for education of exceptional children and
30 ensuring the employment, certification and approval of qualified
31 teachers and therapists subject to approval by the state board of
32 education: *Provided*, That no state rule, policy or standard under
33 this article nor any county board rule, policy or standard
34 governing special education may exceed the requirements of federal
35 law or regulation. The state superintendent shall conduct a
36 comprehensive review and comparison of the rules, policies and
37 standards of the state with federal law and report the findings to
38 the legislative oversight commission on education accountability
39 at its July, two thousand four interim meeting or as soon
40 thereafter as requested by the commission.

41 (4) Receiving from county boards of education their
42 applications, annual reports and claims for reimbursement from
43 such moneys as are appropriated by the Legislature, auditing such
44 claims and preparing vouchers to reimburse said counties the
45 amounts reimbursable to them.

46 (5) Assuring that all exceptional children in the state,
47 including children in mental health facilities, residential
48 institutions, private schools and correctional facilities as
49 provided in section thirteen-f, article two of this chapter
50 receive an education in accordance with state and federal laws:
51 *Provided*, That the state superintendent shall also assure that
52 adults in correctional facilities and regional jails shall receive
53 an education to the extent funds are provided therefor.

54 (6) Performing such other duties and assuming such other
55 responsibilities in connection with this program as may be needed.

56 (7) Receive the county plan for integrated classroom

1 submitted by the county boards of education and submit a state
2 plan, approved by the state board of education, to the legislative
3 oversight commission on education accountability no later than the
4 first day of December, one thousand nine hundred ninety-five.

5 Nothing herein contained shall be construed to prevent any
6 county board of education from establishing and maintaining
7 special schools, classes, regular class programs, home-teaching or
8 visiting-teacher services out of funds available from local
9 revenue.

10 **CHAPTER 18A. SCHOOL PERSONNEL.**

11 **ARTICLE 2. SCHOOL PERSONNEL.**

12 **§18A-2-12. Performance evaluations of school personnel;**
13 **professional personnel evaluation process.**

14 (a) The state board of education shall adopt a written system
15 for the evaluation of the employment performance of personnel,
16 which system shall be applied uniformly by county boards of
17 education in the evaluation of the employment performance of
18 personnel employed by the board.

19 (b) The system adopted by the state board of education for
20 evaluating the employment performance of professional personnel
21 shall be in accordance with the provisions of this section.

22 (c) For purposes of this section, "professional personnel",
23 "professional" or "professionals", means professional personnel as
24 defined in section one, article one of this chapter.

25 (d) In developing the professional personnel performance
26 evaluation system, and amendments thereto, the state board shall
27 consult with the professional development project of the center
28 for professional development created in section three, article
29 three-a of this chapter. The center shall participate actively
30 with the state board in developing written standards for
31 evaluation which clearly specify satisfactory performance and the
32 criteria to be used to determine whether the performance of each
33 professional meets such standards.

34 (e) The performance evaluation system shall contain, but
35 shall not be limited to, the following information:

36 (1) The professional personnel positions to be evaluated,
37 whether they be teachers, substitute teachers, administrators,
38 principals, or others;

39 (2) The frequency and duration of the evaluations, which
40 shall be on a regular basis and of such frequency and duration as
41 to insure the collection of a sufficient amount of data from which
42 reliable conclusions and findings may be drawn: *Provided*, That
43 for school personnel with five or more years of experience, who
44 have not received an unsatisfactory rating, evaluations shall be
45 conducted no more than once every three years unless the principal
46 determines an evaluation for a particular school employee is
47 needed more frequently: *Provided, however*, That a classroom
48 teacher may exercise the option of being evaluated at more
49 frequent intervals;

50 (3) The evaluation shall serve the following purposes:

51 (A) Serve as a basis for the improvement of the performance
52 of the personnel in their assigned duties;

53 (B) Provide an indicator of satisfactory performance for
54 individual professionals;

55 (C) Serve as documentation for a dismissal on the grounds of
56 unsatisfactory performance; and

1 (D) Serve as a basis for programs to increase the
2 professional growth and development of professional personnel;

3 (4) The standards for satisfactory performance for
4 professional personnel and the criteria to be used to determine
5 whether the performance of each professional meets such standards
6 and other criteria for evaluation for each professional position
7 evaluated. Effective the first day of July, two thousand three and
8 thereafter, professional personnel, as appropriate, shall
9 demonstrate competency in the knowledge and implementation of the
10 technology standards adopted by the state board. If a
11 professional fails to demonstrate competency, in the knowledge and
12 implementation of these standards, he or she will be subject to an
13 improvement plan to correct the deficiencies; and

14 (5) Provisions for a written improvement plan, which shall be
15 specific as to what improvements, if any, are needed in the
16 performance of the professional and shall clearly set forth
17 recommendations for improvements, including recommendations for
18 additional education and training during the professional's
19 recertification process.

20 (f) A professional whose performance is considered to be
21 unsatisfactory shall be given notice of deficiencies. A
22 remediation plan to correct deficiencies shall be developed by the
23 employing county board of education and the professional. The
24 professional shall be given a reasonable period of time for
25 remediation of the deficiencies and shall receive a statement of
26 the resources and assistance available for the purposes of
27 correcting the deficiencies.

28 (g) No person may evaluate professional personnel for the
29 purposes of this section unless the person has an administrative
30 certificate issued by the state superintendent and has
31 successfully completed education and training in evaluation skills
32 through the center for professional development, or equivalent
33 education training approved by the state board, which will enable
34 the person to make fair, professional, and credible evaluations of
35 the personnel whom the person is responsible for evaluating.
36 After the first day of July, one thousand nine hundred
37 ninety-four, no person may be issued an administrative certificate
38 or have an administrative certificate renewed unless the state
39 board determines that the person has successfully completed
40 education and training in evaluation skills through the center for
41 professional development, or equivalent education and training
42 approved by the state board.

43 (h) Any professional whose performance evaluation includes a
44 written improvement plan shall be given an opportunity to improve
45 his or her performance through the implementation of the plan. If
46 the next performance evaluation shows that the professional is now
47 performing satisfactorily, no further action may be taken
48 concerning the original performance evaluation. If the evaluation
49 shows that the professional is still not performing
50 satisfactorily, the evaluator either shall make additional
51 recommendations for improvement or may recommend the dismissal of
52 the professional in accordance with the provisions of section
53 eight of this article.

54 (i) Lesson plans are intended to serve as a daily guide for
55 teachers and substitutes for the orderly presentation of the
56 curriculum. Lesson plans may not be used as a substitute for

1 observations by an administrator in the performance evaluation
2 process. A classroom teacher, as defined in section one, article
3 one of this chapter, may not be required to post his or her lesson
4 plans on the internet or otherwise make them available to students
5 and parents nor to include in his or her lesson plans any of the
6 following:

- 7 (1) Teach and reteach strategies;
- 8 (2) Write to learn activities;
- 9 (3) Cultural diversity;
- 10 (4) Color coding; or

11 (5) Any other similar items which are not required to serve
12 as a guide to the teacher or substitute for daily instruction; and

13 (j) The Legislature finds that classroom teachers must be
14 free of unnecessary paper work so that they can focus their time
15 on instruction. Therefore, classroom teachers may not be required
16 to keep records or logs of routine contacts with parents or
17 guardians.

18 (k) Nothing in this section may be construed to prohibit
19 classroom teachers from voluntarily posting material on the
20 internet.

21 **§18A-2-12a. Statement of policy and practice for the county**
22 **boards and school personnel to minimize possible disagreement**
23 **and misunderstanding.**

24 (a) The Legislature makes the following findings:

25 (1) The effective and efficient operation of the public
26 schools depends upon the development of harmonious and cooperative
27 relationships between county boards and school personnel;

28 (2) Each group has a fundamental role to perform in the
29 educational program and each has certain separate, distinct and
30 clearly defined areas of responsibility as provided in chapters
31 eighteen and eighteen-a of this code; and

32 (3) There are instances, particularly involving questions of
33 wages, salaries and conditions of work, that are subject to
34 disagreement and misunderstanding and may not be so clearly set
35 forth.

36 (b) The purpose of this section is to establish a statement
37 of policy and practice for the county boards and school personnel,
38 as follows, in order to minimize possible disagreement and
39 misunderstanding:

40 (1) County boards, subject to the provisions of this chapter,
41 chapter eighteen of this code and the policies and rules of the
42 state board, are responsible for the management of the schools
43 within their respective counties. The powers and responsibilities
44 of county boards in setting policy and in providing for such
45 management are broad, but not absolute;

46 (2) The school personnel share the responsibility for putting
47 into effect the policies and practices approved by the county
48 board that employs them and the school personnel also have certain
49 rights and responsibilities as provided in statute, in their
50 contract;

51 (3) School personnel are entitled to meet together, form
52 associations and work in concert to improve their circumstances
53 and the circumstances of the schools; (4) County boards and
54 school personnel can most effectively discharge their total
55 responsibilities to the public and to each other by establishing
56 clear and open lines of communication. School personnel should be

1 encouraged to make suggestions, proposals and recommendations
2 through appropriate channels to the county board. Decisions of
3 the county board concerning the suggestions, proposals and
4 recommendations should be communicated to the school personnel
5 clearly and openly;

6 (5) Official meetings of county boards are public meetings.
7 School personnel are free to attend the meetings without fear of
8 reprisal and should be encouraged to attend;

9 (6) All school personnel are entitled to know how well they
10 are fulfilling their responsibilities and should be offered the
11 opportunity of an open and honest evaluation of their performance
12 on a regular basis and in accordance with the provisions of
13 section twelve of this article. All school personnel are entitled
14 to an opportunity to improve their job performance prior to the
15 termination or transfer of their services. Decisions concerning
16 the promotion, demotion, transfer or termination of employment of
17 school personnel, other than those for lack of need or governed by
18 specific statutory provisions unrelated to performance, should be
19 based upon such evaluations, and not upon factors extraneous
20 thereto. All school personnel are entitled to due process in
21 matters affecting their employment, transfer, demotion or
22 promotion; and

23 (7) All official and enforceable personnel policies of a
24 county board must be written and made available to its employees.

25 **ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.**

26 **§18A-5-1. Authority of teachers and other school personnel;**
27 **exclusion of pupils having infectious diseases; suspension or**
28 **expulsion of disorderly pupils; corporal punishment**
29 **abolished.**

30 (a) The teacher shall stand in the place of the parent(s),
31 guardian(s) or custodian(s) in exercising authority over the
32 school and shall have control of all pupils enrolled in the school
33 from the time they reach the school until they have returned to
34 their respective homes, except that where transportation of pupils
35 is provided, the driver in charge of the school bus or other mode
36 of transportation shall exercise such authority and control over
37 the children while they are in transit to and from the school.

38 (b) Subject to the rules of the state board of education, the
39 teacher shall exclude from the school any pupil or pupils known to
40 have or suspected of having any infectious disease, or any pupil
41 or pupils who have been exposed to such disease, and shall
42 immediately notify the proper health officer or medical inspector
43 of such exclusion. Any pupil so excluded shall not be readmitted
44 to the school until such pupil has complied with all the
45 requirements of the rules governing such cases or has presented a
46 certificate of health signed by the medical inspector or other
47 proper health officer.

48 (c) The teacher shall have authority to exclude from his or
49 her classroom or school bus any pupil who is guilty of disorderly
50 conduct; who in any manner interferes with an orderly educational
51 process; who threatens, abuses or otherwise intimidates or
52 attempts to intimidate a school employee or a pupil; or who
53 willfully disobeys a school employee; or who uses abusive or
54 profane language directed at a school employee. Any pupil
55 excluded shall be placed under the control of the principal of the
56 school or a designee. The excluded pupil may be admitted to the

1 classroom or school bus only when the principal, or a designee,
2 provides written certification to the teacher that the pupil may
3 be readmitted and specifies the specific type of disciplinary
4 action, if any, which was taken. If the principal finds that
5 disciplinary action is warranted, he or she shall provide written
6 and, if possible, telephonic notice of such action to the
7 parent(s), guardian(s) or custodian(s). When a teacher excludes
8 the same pupil from his or her classroom or from a school bus
9 three times in one school year, and after exhausting all
10 reasonable methods of classroom discipline provided in the school
11 discipline plan, the pupil may be readmitted to the teacher's
12 classroom only after the principal, teacher and, if possible, the
13 parent(s), guardian(s) or custodian(s) of the pupil have held a
14 conference to discuss the pupil's disruptive behavior patterns,
15 and the teacher and the principal agree on a course of discipline
16 for the pupil and inform the parent(s), guardian(s) or
17 custodian(s) of the course of action. Thereafter, if the pupil's
18 disruptive behavior persists, upon the teacher's request, the
19 principal may, to the extent feasible, transfer the pupil to
20 another setting.

21 (d) The Legislature finds that suspension from school is not
22 appropriate solely for a pupil's failure to attend class.
23 Therefore, no pupil may be suspended from school solely for not
24 attending class. Other methods of discipline may be used for the
25 pupil which may include, but are not limited to, detention, extra
26 class time or alternative class settings.

27 (e) Corporal punishment of any pupil by a school employee is
28 prohibited.

29 ~~(f) The West Virginia board of education and county boards of
30 education shall adopt policies consistent with the provisions of
31 this section encouraging the use of alternatives to corporal
32 punishment, providing for the training of school personnel in
33 alternatives to corporal punishment and for the involvement of
34 parent(s), guardian(s) or custodian(s) in the maintenance of
35 school discipline.~~

36 (f) Each county board is solely responsible for the
37 administration of proper discipline in the public schools of the
38 county and shall adopt policies consistent with the provisions of
39 this section to govern disciplinary actions. These policies shall
40 encourage the use of alternatives to corporal punishment,
41 providing for the training of school personnel in alternatives to
42 corporal punishment and for the involvement of parent(s),
43 guardian(s) or custodian(s) in the maintenance of school
44 discipline. The county boards of education shall provide for the
45 immediate incorporation and implementation in the schools of a
46 preventive discipline program which may include the responsible
47 student program and a student involvement program which may
48 include the peer mediation program, devised by the West Virginia
49 board of education. Each board may modify such programs to meet
50 the particular needs of the county. The county boards shall
51 provide in-service training for teachers and principals relating
52 to assertive discipline procedures and conflict resolution. The
53 county boards of education may also establish cooperatives with
54 private entities to provide middle educational programs which may
55 include programs focusing on developing individual coping skills,
56 conflict resolution, anger control, self-esteem issues, stress

1 management and ~~decisionmaking~~ decision making for students and
2 any other program related to preventive discipline.

3 (g) For the purpose of this section: (1) "Pupil or student"
4 shall include any child, youth or adult who is enrolled in any
5 instructional program or activity conducted under board
6 authorization and within the facilities of or in connection with
7 any program under public school direction: *Provided, That,* in the
8 case of adults, the pupil-teacher relationship shall terminate
9 when the pupil leaves the school or other place of instruction or
10 activity; and (2) "teacher" shall mean all professional educators
11 as defined in section one, article one of this chapter and shall
12 include the driver of a school bus or other mode of
13 transportation.

14 (h) Teachers shall exercise such other authority and perform
15 such other duties as may be prescribed for them by law or by the
16 rules of the state board of education not inconsistent with the
17 provisions of this chapter and chapter eighteen of this code.

18 **§18A-5-1a. Possessing deadly weapons on premises of educational**
19 **facilities; possessing a controlled substance on**
20 **premises of educational facilities; assaults and**
21 **batteries committed by pupils upon teachers or**
22 **other school personnel; temporary suspension,**
23 **hearing; procedure, notice and formal hearing;**
24 **extended suspension; sale of narcotic; expulsion;**
25 **exception; alternative education.**

26 (a) A principal shall suspend a pupil from school or from
27 transportation to or from the school on any school bus if the
28 pupil, in the determination of the principal after an informal
29 hearing pursuant to subsection (d) of this section, has: (i)
30 Violated the provisions of subsection (b), section fifteen,
31 article two, chapter sixty-one of this code; (ii) violated the
32 provisions of subsection (b), section eleven-a, article seven of
33 said chapter; or (iii) sold a narcotic drug, as defined in section
34 one hundred one, article one, chapter sixty-a of this code, on the
35 premises of an educational facility, at a school-sponsored
36 function or on a school bus. If a student has been suspended
37 pursuant to this subsection, the principal shall, within twenty-
38 four hours, request that the county superintendent recommend to
39 the county board that the student be expelled. Upon such a
40 request by a principal, the county superintendent shall recommend
41 to the county board that the student be expelled. Upon such
42 recommendation, the county board shall conduct a hearing in
43 accordance with subsections (e), (f) and (g) of this section to
44 determine if the student committed the alleged violation. If the
45 county board finds that the student did commit the alleged
46 violation, the county board shall expel the student.

47 (b) A principal shall suspend a pupil from school, or from
48 transportation to or from the school on any school bus, if the
49 pupil, in the determination of the principal after an informal
50 hearing pursuant to subsection (d) of this section, has: (i)
51 Committed an act or engaged in conduct that would constitute a
52 felony under the laws of this state if committed by an adult; or
53 (ii) unlawfully possessed on the premises of an educational
54 facility or at a school-sponsored function a controlled substance
55 governed by the uniform controlled substances act as described in
56 chapter sixty-a of this code. If a student has been suspended

1 pursuant to this subsection, the principal may request that the
2 superintendent recommend to the county board that the student be
3 expelled. Upon such recommendation by the county superintendent,
4 the county board may hold a hearing in accordance with the
5 provisions of subsections (e), (f) and (g) of this section to
6 determine if the student committed the alleged violation. If the
7 county board finds that the student did commit the alleged
8 violation, the county board may expel the student.

9 (c) A principal may suspend a pupil from school, or
10 transportation to or from the school on any school bus, if the
11 pupil, in the determination of the principal after an informal
12 hearing pursuant to subsection (d) of this section: (i) Threatened
13 to injure, or in any manner injured, a pupil, teacher,
14 administrator or other school personnel; (ii) willfully disobeyed
15 a teacher; (iii) possessed alcohol in an educational facility, on
16 school grounds, a school bus or at any school-sponsored function;
17 (iv) used profane language directed at a school employee or pupil;
18 (v) intentionally defaced any school property; (vi) participated
19 in any physical altercation with another person while under the
20 authority of school personnel; or (vii) habitually violated school
21 rules or policies. If a student has been suspended pursuant to
22 this subsection, the principal may request that the superintendent
23 recommend to the county board that the student be expelled. Upon
24 such recommendation by the county superintendent, the county board
25 may hold a hearing in accordance with the provisions of
26 subsections (e), (f) and (g) of this section to determine if the
27 student committed the alleged violation. If the county board
28 finds that the student did commit the alleged violation, the
29 county board may expel the student.

30 (d) The actions of any pupil which may be grounds for his or
31 her suspension or expulsion under the provisions of this section
32 shall be reported immediately to the principal of the school in
33 which the pupil is enrolled. If the principal determines that the
34 alleged actions of the pupil would be grounds for suspension, he
35 or she shall conduct an informal hearing for the pupil immediately
36 after the alleged actions have occurred. The hearing shall be
37 held before the pupil is suspended unless the principal believes
38 that the continued presence of the pupil in the school poses a
39 continuing danger to persons or property or an ongoing threat of
40 disrupting the academic process, in which case the pupil shall be
41 suspended immediately and a hearing held as soon as practicable
42 after the suspension.

43 The pupil and his or her parent(s), guardian(s) or
44 custodian(s), as the case may be, shall be given telephonic
45 notice, if possible, of this informal hearing, which notice shall
46 briefly state the grounds for suspension.

47 At the commencement of the informal hearing, the principal
48 shall inquire of the pupil as to whether he or she admits or
49 denies the charges. If the pupil does not admit the charges, he
50 or she shall be given an explanation of the evidence possessed by
51 the principal and an opportunity to present his or her version of
52 the occurrence. At the conclusion of the hearing or upon the
53 failure of the noticed student to appear, the principal may
54 suspend the pupil for a maximum of ten school days, including the
55 time prior to the hearing, if any, for which the pupil has been
56 excluded from school.

1 The principal shall report any suspension the same day it has
2 been decided upon, in writing, to the parent(s), guardian(s) or
3 custodian(s) of the pupil by regular United States mail. The
4 suspension also shall be reported to the county superintendent and
5 to the faculty senate of the school at the next meeting after the
6 suspension.

7 (e) Prior to a hearing before the county board, the county
8 board shall cause a written notice which states the charges and
9 the recommended disposition to be served upon the pupil and his or
10 her parent(s), guardian(s) or custodian(s), as the case may be.
11 The notice shall state clearly whether the board will attempt at
12 hearing to establish the student as a dangerous student, as
13 defined by section one, article one of this chapter. The notice
14 also shall include any evidence upon which the board will rely in
15 asserting its claim that the student is a dangerous student. The
16 notice shall set forth a date and time at which the hearing shall
17 be held, which date shall be within the ten-day period of
18 suspension imposed by the principal.

19 (f) The county board shall hold the scheduled hearing to
20 determine if the pupil should be reinstated or should or, under
21 the provisions of this section, must be expelled from school. If
22 the county board determines that the student should or must be
23 expelled from school, it may also determine whether the student is
24 a dangerous student pursuant to subsection (g) of this section.
25 At this, or any hearing before a county board conducted pursuant
26 to this section, the pupil may be represented by counsel, may call
27 his or her own witnesses to verify his or her version of the
28 incident and may confront and cross-examine witnesses supporting
29 the charge against him or her. Such a hearing shall be recorded
30 by mechanical means unless recorded by a certified court reporter.
31 Any such hearing may be postponed for good cause shown by the
32 pupil but he or she shall remain under suspension until after the
33 hearing. The state board may adopt other supplementary rules of
34 procedure to be followed in these hearings. At the conclusion of
35 the hearing the county board shall either: (1) Order the pupil
36 reinstated immediately ~~or~~ at the end of his or her initial
37 suspension; (2) suspend the pupil for a further designated number
38 of days; or (3) expel the pupil from the public schools of the
39 county.

40 (g) A county board that did not intend prior to a hearing to
41 assert a dangerous student claim, that did not notify the student
42 prior to the hearing that such a determination would be considered
43 and that determines through the course of the hearing that the
44 student may be a dangerous student shall schedule a second hearing
45 within ten days to decide the issue. The hearing may be postponed
46 for good cause shown by the pupil, but he or she remains under
47 suspension until after the hearing.

48 A county board that expels a student, and finds that the
49 student is a dangerous student, may refuse to provide alternative
50 education. However, after a hearing conducted pursuant to this
51 section for determining whether a student is a dangerous student,
52 when the student is found to be a dangerous student, is expelled
53 and is denied alternative education, a hearing shall be conducted
54 within three months after the refusal by the board to provide
55 alternative education to reexamine whether or not the student
56 remains a dangerous student and whether the student shall be

1 provided alternative education. Thereafter, a hearing for the
2 purpose of reexamining whether or not the student remains a
3 dangerous student and whether the student shall be provided
4 alternative education shall be conducted every three months for so
5 long as the student remains a dangerous student and is denied
6 alternative education. During the initial hearing, or in any
7 subsequent hearing, the board may consider the history of the
8 pupil's conduct as well as any improvements made subsequent to the
9 expulsion. If it is determined during any of the hearings that
10 the student is no longer a dangerous student or should be provided
11 alternative education, the student shall be provided alternative
12 education during the remainder of the expulsion period.

13 (h) The superintendent may apply to a circuit judge or
14 magistrate for authority to subpoena witnesses and documents, upon
15 his or her own initiative, in a proceeding related to a
16 recommended student expulsion or dangerous student determination,
17 before a county board conducted pursuant to the provisions of this
18 section. Upon the written request of any other party, the
19 superintendent shall apply to a circuit judge or magistrate for
20 the authority to subpoena witnesses, documents or both on behalf
21 of the other party in a proceeding related to a recommended
22 student expulsion or dangerous student determination before a
23 county board. If the authority to subpoena is granted, the
24 superintendent shall subpoena the witnesses, documents or both
25 requested by the other party. Furthermore, if the authority to
26 subpoena is granted, it shall be exercised in accordance with the
27 provisions of section one, article five, chapter twenty-nine-a of
28 this code.

29 Any hearing conducted pursuant to this subsection may be
30 postponed: (1) For good cause shown by the pupil; (2) when
31 proceedings to compel a subpoenaed witness to appear must be
32 instituted; or (3) when a delay in service of a subpoena hinders
33 either party's ability to provide sufficient notice to appear to
34 a witness. A pupil remains under suspension until after the
35 hearing in any case where a postponement occurs.

36 The county boards are directed to report the number of pupils
37 determined to be dangerous students to the state board of
38 education. The state board will compile the county boards'
39 statistics and shall report its findings to the legislative
40 oversight commission on education accountability.

41 (i) Pupils may be expelled pursuant to the provisions of this
42 section for a period not to exceed one school year, except that if
43 a pupil is determined to have violated the provisions of
44 subsection (a) of this section the pupil shall be expelled for a
45 period of not less than twelve consecutive months: *Provided*, That
46 the county superintendent may lessen the mandatory period of
47 twelve consecutive months for the expulsion of the pupil if the
48 circumstances of the pupil's case demonstrably warrant. Upon the
49 reduction of the period of expulsion, the county superintendent
50 shall prepare a written statement setting forth the circumstances
51 of the pupil's case which warrant the reduction of the period of
52 expulsion. The county superintendent shall submit the statement
53 to the county board, the principal, the faculty senate and the
54 local school improvement council for the school from which the
55 pupil was expelled. The county superintendent may use the
56 following factors as guidelines in determining whether or not to

1 reduce a mandatory twelve-month expulsion:
2 (1) The extent of the pupil's malicious intent;
3 (2) The outcome of the pupil's misconduct;
4 (3) The pupil's past behavior history; and
5 (4) The likelihood of the pupil's repeated misconduct.
6 (j) In all hearings under this section, facts shall be found
7 by a preponderance of the evidence.
8 (k) For purposes of this section, nothing herein may be
9 construed to be in conflict with the federal provisions of the
10 Individuals with Disabilities Education Act of 1990 (PL 101-476)
11 ~~(l) If a pupil transfers to another school in West Virginia, the~~
12 ~~principal of the school from which the pupil transfers shall~~
13 ~~provide a written record of any disciplinary action taken against~~
14 ~~the pupil to the principal of the school to which the pupil~~
15 ~~transfers.~~
16 (1) Each suspension or expulsion imposed upon a pupil under
17 the authority of this section shall be recorded in the uniform
18 integrated regional computer information system (commonly known as
19 the West Virginia Education Information System) described in
20 subsection (f), section twenty-six, article two, chapter eighteen
21 of this code.
22 (1) The principal of the school at which the pupil is
23 enrolled shall create an electronic record within twenty-four
24 hours of the imposition of the suspension or expulsion.
25 (2) Each record of a suspension or expulsion shall include
26 the pupil's name and identification number, the reason for the
27 suspension or expulsion, and the beginning and ending dates of the
28 suspension or expulsion.
29 (3) The state board of education shall collect and
30 disseminate data so that any principal of a public school in West
31 Virginia can review the complete history of disciplinary actions
32 taken by West Virginia public schools against any pupil enrolled
33 or seeking to enroll at that principal's school. The purposes of
34 this provision are to allow every principal to fulfill his or her
35 duty under subsection (b), section fifteen-f, article five,
36 chapter eighteen of this code to determine whether a pupil
37 requesting to enroll at a public school in West Virginia is
38 currently serving a suspension or expulsion from another public
39 school in West Virginia and to allow principals to obtain general
40 information about pupils' disciplinary histories.
41 (m) Principals may exercise any other authority and perform
42 any other duties to discipline pupils consistent with state and
43 federal law, including policies of the state board of education.
44 (n) Each county board is solely responsible for the
45 administration of proper discipline in the public schools of the
46 county and shall adopt policies consistent with the provisions of
47 this section to govern disciplinary actions.

House Bill 4037

Effective Date: Passed March 13, 2004; in effect 90 days from passage (June 11, 2004)

Signed by Governor: April 6, 2004

Code Reference: Amends and reenacts §49-5-17

Title: Providing for safe schools through alternative education programs and providing certain juvenile justice records to public school officials.

Major Provisions:

- Eliminates the requirement that the juvenile be charged with an offense that would be a felony if the juvenile were an adult for the requirement that a juvenile's record be automatically disclosed to certain school officials
- Requires automatic disclosure to the county superintendent and the principal of the school the child attends the following juvenile proceeding records: copies of the arrest report, copies of all investigations, copies of any psychological test results and any mental health records, copies of any evaluation reports for probation or facility placement and any other material that would alert the school to potential danger that the juvenile may pose to himself, herself or others
- Requires providing, when disclosure of records of juvenile proceedings is restricted by the Health Insurance Portability and Accountability Act of 1996, any notice of the existence of the records that is permissible under the Act, and if applicable, any action that is required to obtain the record
- Requires only material that had not previously been disclosed to the county superintendent and principal to be disclosed
- Requires the county superintendent to designate the school psychologist or psychologists to receive the juvenile's psychological test results and any mental health records; requires the person designated to review the juvenile's records and, in his or her professional judgement, to disclose them to the principal of the school the child attends and other school employees who would have a need to know

1
2
3
4
5
6
7
8
9

**ENROLLED
COMMITTEE SUBSTITUTE
FOR**

H. B. 4037

(By Delegates Williams, Renner, Perry, Tabb, Long,
Paxton and Sumner)

[Passed March 13, 2004; in effect ninety days from passage.]

10 AN ACT to amend and reenact §49-5-17 of the code of West Virginia,
11 1931, as amended, relating to providing certain juvenile
12 justice records to public school officials and limiting
13 disclosure of certain records.

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

15 That §49-5-17 of the code of West Virginia, 1931, as amended,
16 be amended and reenacted to read as follows:

17 **ARTICLE 5. JUVENILE PROCEEDINGS.**

18 **§49-5-17. Confidentiality of juvenile records.**

19 (a) Records of a juvenile proceeding conducted under this
20 chapter are not public records and shall not be disclosed to
21 anyone unless disclosure is otherwise authorized by this section.

22 (b) Notwithstanding the provisions of subsection (a) of this
23 section, a copy of a juvenile's records shall automatically be
24 disclosed to certain school officials, subject to the following
25 terms and conditions:

26 (1) Only ~~certain types of juvenile~~ the records of certain
27 juveniles shall be disclosed. These include and are limited to
28 cases in which:

29 (A) The juvenile has been charged with an offense which ~~would~~
30 ~~be a felony if the juvenile were an adult; and~~

31 ~~(i) The offense involves:~~

32 (i) Involves violence against another person;

33 ~~(ii) The offense involves~~ Involves possession of a dangerous
34 or deadly weapon; or

35 ~~(iii) The offense involves~~ Involves possession or delivery of
36 a controlled substance as that term is defined in section one
37 hundred one, article one, chapter sixty-a of this code; and

38 (B) The juvenile's case has proceeded to a point where one or
39 more of the following has occurred:

40 (i) A judge, magistrate or referee has determined that there
41 is probable cause to believe that the juvenile committed the
42 offense as charged;

43 (ii) A judge, magistrate or referee has placed the juvenile
44 on probation for the offense;

45 (iii) A judge, magistrate or referee has placed the juvenile
46 into an improvement period in accordance with section nine,
47 ~~article five, chapter forty-nine of this code~~ article; or

48 (iv) Some other type of disposition has been made of the case
49 other than dismissal.

50 (2) The circuit court for each judicial circuit in West
51 Virginia shall designate one person to supervise the disclosure of
52 juvenile records to certain school officials.

53 (3) If the juvenile attends a West Virginia public school,
54 the person designated by the circuit court shall automatically
55 disclose all records of the juvenile's case to the county

1 superintendent of schools in the county in which the juvenile
2 attends school; and to the principal of the school which the
3 juvenile attends, subject to the following:

4 ~~_____ The person designated by the circuit court shall also~~
5 ~~automatically disclose all records of a juvenile case to the~~
6 ~~principal of the school which the juvenile attends.~~

7 (A) At a minimum, the records shall disclose the following
8 information:

9 (i) Copies of the arrest report;

10 (ii) Copies of all investigations;

11 (iii) Copies of any psychological test results and any mental
12 health records;

13 (iv) Copies of any evaluation reports for probation or
14 facility placement; and

15 (v) Any other material that would alert the school to
16 potential danger that the juvenile may pose to himself, herself or
17 others;

18 (B) The disclosure of the juvenile's psychological test
19 results and any mental health records shall only be made in
20 accordance with subdivision (14) of this subsection;

21 (C) If the disclosure of any record to be automatically
22 disclosed under this section is restricted in its disclosure by
23 the Health Insurance Portability and Accountability Act of 1996
24 and any amendments and regulations under the Act, the person
25 designated by the circuit court shall provide the superintendent
26 and principal any notice of the existence of the record that is
27 permissible under the Act and, if applicable, any action that is
28 required to obtain the record; and

29 (D) When multiple disclosures are required by this
30 subsection, the person designated by the circuit court is required
31 to disclose only material in the juvenile record that had not
32 previously been disclosed to the county superintendent and the
33 principal of the school which the juvenile attends.

34 (4) If the juvenile attends a private school in West
35 Virginia, the person designated by the circuit court shall
36 determine the identity of the highest ranking person at that
37 school, and shall automatically disclose all records of a
38 juvenile's case to that person.

39 (5) If the juvenile does not attend school at the time the
40 juvenile's case is pending, the person designated by the circuit
41 court shall not transmit the juvenile's records to any school.
42 However, the person designated by the circuit court shall transmit
43 the juvenile's records to any school in West Virginia which the
44 juvenile subsequently attends.

45 (6) The person designated by the circuit court shall not
46 automatically transmit juvenile records to a school which is not
47 located in West Virginia. Instead, the person designated by the
48 circuit court shall contact the out-of-state school, inform it
49 that juvenile records exist, and make an inquiry regarding whether
50 the laws of that state permit the disclosure of juvenile records.
51 If so, the person designated by the circuit court shall consult
52 with the circuit judge who presided over the case to determine
53 whether the juvenile records should be disclosed to the out-of-
54 state school. The circuit judge shall have discretion in
55 determining whether to disclose the juvenile records, and shall

1 consider whether the other state's law regarding disclosure
2 provides for sufficient confidentiality of juvenile records, using
3 this section as a guide. If the circuit judge orders the juvenile
4 records to be disclosed, they shall be disclosed in accordance
5 with the provisions of subdivision (7) of this subsection.

6 (7) The person designated by the circuit court shall transmit
7 the juvenile's records to the appropriate school official under
8 cover of a letter emphasizing the confidentiality of such records
9 and directing the official to consult this section of the code.
10 A copy of this section of the code shall be transmitted with the
11 juvenile's records and cover letter.

12 (8) Juvenile records must be treated as absolutely
13 confidential by the school official to whom they are transmitted,
14 and nothing contained within the juvenile's records shall be noted
15 on the juvenile's permanent educational record. The juvenile
16 records are to be maintained in a secure location and are not to
17 be copied under any circumstances. However, the principal of a
18 school to whom the records are transmitted shall have the duty to
19 disclose the contents of those records to any teacher who teaches
20 a class in which the subject juvenile is enrolled and to the
21 regular driver of a school bus in which the subject juvenile is
22 regularly transported to or from school, except that the
23 disclosure of the juvenile's psychological test results and any
24 mental health records shall only be made in accordance with
25 subdivision (14) of this subsection. Furthermore, any school
26 official to whom the juvenile's records are transmitted may
27 disclose the contents of such records to any adult within the
28 school system who, in the discretion of the school official, has
29 the need to be aware of the contents of those records.

30 (9) If for any reason a juvenile ceases to attend a school
31 which possesses that juvenile's records, the appropriate official
32 at that school shall seal the records and return them to the
33 circuit court which sent them to that school. If the juvenile has
34 changed schools for any reason, the former school shall inform the
35 circuit court of the name and location of the new school which the
36 juvenile attends or will be attending. If the new school is
37 located within West Virginia, the person designated by the circuit
38 court shall forward the juvenile's records to the juvenile's new
39 school in the same manner as provided in subdivision (7) of this
40 subsection. If the new school is not located within West
41 Virginia, the person designated by the circuit court shall handle
42 the juvenile records in accordance with subdivision (6) of this
43 subsection.

44 If the juvenile has been found not guilty of an offense for
45 which records were previously forwarded to the juvenile's school
46 on the basis of a finding of probable cause, the circuit court
47 shall not forward those records to the juvenile's new school.
48 However, this shall not affect records related to other prior or
49 future offenses. If the juvenile has graduated or quit school, or
50 will otherwise not be attending another school, the circuit court
51 shall retain the juvenile's records and handle them as otherwise
52 provided in this article.

53 (10) Under no circumstances shall one school transmit a
54 juvenile's records to another school.

55 (11) Under no circumstances shall juvenile records be

1 automatically transmitted to a college, university or other post-
2 secondary school.

3 (12) No one shall suffer any penalty, civil or criminal, for
4 accidentally or negligently attributing certain juvenile records
5 to the wrong person. However, such person shall have the
6 affirmative duty to promptly correct any mistake that he or she
7 has made in disclosing juvenile records when the mistake is
8 brought to his or her attention. A person who intentionally
9 attributes false information to a certain person shall be
10 subjected to both criminal and civil penalties, in accordance with
11 subsection (e) of this section.

12 (13) If a judge, magistrate or referee has determined that
13 there is probable cause to believe that a juvenile has committed
14 an offense but there has been no final adjudication of the charge,
15 the records which are transmitted by the circuit court shall be
16 accompanied by a notice which clearly states in bold print that
17 there has been no determination of delinquency and that our legal
18 system requires a presumption of innocence.

19 ~~(c) Notwithstanding the provisions of subsection (a) of this~~
20 ~~section, juvenile records may be disclosed, subject to the~~
21 ~~following terms and conditions:~~

22 ~~(1) If a juvenile case is transferred to the criminal jurisdiction~~
23 ~~of the circuit court pursuant to the provisions of subsection (c)~~
24 ~~or (d), section ten of this article, the juvenile records shall be~~
25 ~~open to public inspection.~~

26 (14) The county superintendent shall designate the school
27 psychologist or psychologists to receive the juvenile's
28 psychological test results and any mental health records. The
29 psychologist designated shall review the juvenile's psychological
30 test results and any mental health records, and, in the
31 psychologist's professional judgement, may disclose to the
32 principal of the school that the juvenile attends and other school
33 employees who would have a need to know the psychological test
34 results, mental health records and any behavior that may trigger
35 violence or other disruptive behavior by the juvenile. Other
36 school employees includes, but is not limited to, any teacher who
37 teaches a class in which the subject juvenile is enrolled and the
38 regular driver of a school bus in which the subject juvenile is
39 regularly transported to or from school.

40 (c) Notwithstanding the provisions of subsection (a) of this
41 section, juvenile records may be disclosed, subject to the
42 following terms and conditions:

43 (1) If a juvenile case is transferred to the criminal
44 jurisdiction of the circuit court pursuant to the provisions of
45 subsection (c) or (d), section ten of this article, the juvenile
46 records shall be open to public inspection.

47 (2) If a juvenile case is transferred to the criminal
48 jurisdiction of the circuit court pursuant to the provisions of
49 subsection (e), (f) or (g), section ten of this article, the
50 juvenile records shall be open to public inspection only if the
51 juvenile fails to file a timely appeal of the transfer order, or
52 the supreme court of appeals refuses to hear or denies an appeal
53 which has been timely filed.

54 (3) If a juvenile is fourteen years of age or older and a
55 court has determined there is a probable cause to believe the

1 juvenile committed an offense set forth in subsection (g), section
2 ten of this article, but the case is not transferred to criminal
3 jurisdiction, the juvenile records shall be open to public
4 inspection pending trial only if the juvenile is released on bond
5 and no longer detained or adjudicated delinquent of the offense.

6 (4) If a juvenile is younger than fourteen years of age and
7 a court has determined there is probable cause to believe that the
8 juvenile committed the crime of murder under section one, two or
9 three, article two, chapter sixty-one of this code, or the crime
10 of sexual assault in the first degree under section three, article
11 eight-b of said chapter, but the case is not transferred to
12 criminal jurisdiction, the juvenile records shall be open to
13 public inspection pending trial only if the juvenile is released
14 on bond and no longer detained or adjudicated delinquent of the
15 offense.

16 (5) Upon a written petition and pursuant to a written order,
17 the circuit court may permit disclosure of juvenile records to:

18 (A) A court which has juvenile jurisdiction and has the
19 juvenile before it in a juvenile proceeding;

20 (B) A court exercising criminal jurisdiction over the
21 juvenile which requests such records for the purpose of a
22 presentence report or disposition proceeding;

23 (C) The juvenile, the juvenile's parents or legal guardian,
24 or the juvenile's counsel;

25 (D) The officials of a public institution to which the
26 juvenile is committed if they require such records for transfer,
27 parole or discharge; or

28 (E) A person who is conducting research. However, juvenile
29 records may be disclosed for research purposes only upon the
30 condition that information which would identify the subject
31 juvenile or the juvenile's family shall not be disclosed.

32 (d) Any records open to public inspection pursuant to the
33 provisions of this section are subject to the same requirements
34 governing the disclosure of adult criminal records.

35 (e) Any person who willfully violates this section is guilty
36 of a misdemeanor and, upon conviction thereof, shall be fined not
37 more than one thousand dollars, or confined in the county or
38 regional jail for not more than six months, or both fined and
39 confined, and shall be liable for damages in the amount of three
40 hundred dollars or actual damages, whichever is greater.

House Bill 4040

Effective Date: Passed March 10, 2004; in effect from passage

Signed by Governor: April 5, 2004

Code Reference: Amends and reenacts §18A-4-7a

Title: Relating to criteria for making decisions affecting the filling of vacancies if one or more permanently employed instructional personnel apply for a classroom teaching position

Major Provisions:

- This bill alters the sixth factor to be considered in the hiring of classroom teachers. The former language which read, "receiving an overall rating of satisfactory in evaluations over the previous two years," has been changed to read, "receiving an overall rating of satisfactory in the previous two evaluations conducted pursuant to section twelve, article two of this chapter"

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55

ENROLLED
H. B. 4040

(By Delegate Mezzatesta)

[Passed March 10, 2004; in effect from passage.]

AN ACT to amend and reenact §18A-4-7a of the code of West Virginia, 1931, as amended, relating to criteria for making decisions affecting the filling of vacancies if one or more permanently employed instructional personnel apply for a classroom teaching position.

Be it enacted by the Legislature of West Virginia:

That §18A-4-7a of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-7a. Employment, promotion and transfer of professional personnel; seniority.

(a) A county board of education shall make decisions affecting the hiring of professional personnel other than classroom teachers on the basis of the applicant with the highest qualifications.

(b) The county board shall make decisions affecting the hiring of new classroom teachers on the basis of the applicant with the highest qualifications.

(c) In judging qualifications for hiring employees pursuant to subsections (a) and (b) of this section, consideration shall be given to each of the following:

(1) Appropriate certification ~~and/or~~ licensure or both;

(2) Amount of experience relevant to the position; or, in the case of a classroom teaching position, the amount of teaching experience in the subject area;

(3) The amount of course work ~~and/or~~ degree level or both in the relevant field and degree level generally;

(4) Academic achievement;

(5) Relevant specialized training;

(6) Past performance evaluations conducted pursuant to section twelve, article two of this chapter; and

(7) Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged.

(d) If one or more permanently employed instructional personnel apply for a classroom teaching position and meet the standards set forth in the job posting, the county board of education shall make ~~decisions~~ a decision affecting the filling of ~~positions~~ the position on the basis of the following criteria:

(1) Appropriate certification ~~and/or~~ licensure or both;

(2) Total amount of teaching experience;

(3) The existence of teaching experience in the required certification area;

(4) Degree level in the required certification area;

(5) Specialized training directly related to the performance of the job as stated in the job description;

(6) Receiving an overall rating of satisfactory in the previous two evaluations over the previous two years conducted pursuant to section twelve, article two of this chapter; and

1 (7) Seniority.

2 (e) In filling positions pursuant to subsection (d) of this
3 section, consideration shall be given to each criterion with each
4 criterion being given equal weight. If the applicant with the most
5 seniority is not selected for the position, upon the request of the
6 applicant a written statement of reasons shall be given to the
7 applicant with suggestions for improving the applicant's
8 qualifications.

9 (f) ~~With the exception of guidance counselors, t~~The seniority
10 of classroom teachers, as defined in section one, article one of
11 this chapter, ~~with the exception of guidance counselors,~~ shall be
12 determined on the basis of the length of time the employee has been
13 employed as a regular full-time certified and/or licensed
14 professional educator by the county board of education and shall be
15 granted in all areas that the employee is certified ~~and/or~~ licensed
16 or both.

17 (g) Upon completion of one hundred thirty-three days of
18 employment in any one school year, substitute teachers, except
19 retired teachers and other retired professional educators employed
20 as substitutes, shall accrue seniority exclusively for the purpose
21 of applying for employment as a permanent, full-time professional
22 employee. One hundred thirty-three days or more of said employment
23 shall be prorated and shall vest as a fraction of the school year
24 worked by the permanent, full-time teacher.

25 (h) Guidance counselors and all other professional employees,
26 as defined in section one, article one of this chapter, except
27 classroom teachers, shall gain seniority in their nonteaching area
28 of professional employment on the basis of the length of time the
29 employee has been employed by the county board of education in that
30 area: *Provided*, That if an employee is certified as a classroom
31 teacher, the employee accrues classroom teaching seniority for the
32 time that that employee is employed in another professional area.
33 For the purposes of accruing seniority under this paragraph,
34 employment as principal, supervisor or central office
35 administrator, as defined in section one, article one of this
36 chapter, shall be considered one area of employment.

37 (i) Employment for a full employment term shall equal one year
38 of seniority, but no employee may accrue more than one year of
39 seniority during any given fiscal year. Employment for less than
40 the full employment term shall be prorated. A random selection
41 system established by the employees and approved by the board shall
42 be used to determine the priority if two or more employees
43 accumulate identical seniority: *Provided*, That when two or more
44 principals have accumulated identical seniority, decisions on
45 reductions in force shall be based on qualifications.

46 (j) Whenever a county board is required to reduce the number
47 of professional personnel in its employment, the employee with the
48 least amount of seniority shall be properly notified and released
49 from employment pursuant to the provisions of section two, article
50 two of this chapter. The provisions of this subsection are subject
51 to the following:

52 (1) All persons employed in a certification area to be reduced
53 who are employed under a temporary permit shall be properly
54 notified and released before a fully certified employee in such a
55 position is subject to release;

1 (2) An employee subject to release shall be employed in any
2 other professional position where ~~such the~~ employee is certified
3 and was previously employed or to any lateral area for which ~~such~~
4 the employee is certified and/or, licensed or both, if ~~such the~~
5 employee's seniority is greater than the seniority of any other
6 employee in that area of certification and/or, licensure or both;

7 (3) If an employee subject to release holds certification
8 and/or, licensure or both in more than one lateral area and if ~~the~~
9 ~~such~~ employee's seniority is greater than the seniority of any
10 other employee in one or more of those areas of certification
11 and/or, licensure or both, the employee subject to release shall be
12 employed in the professional position held by the employee with the
13 least seniority in any of those areas of certification, ~~and/or~~
14 licensure or both; and

15 (4) If, prior to the first day of August of the year a
16 reduction in force is approved, the reason for any particular
17 reduction in force no longer exists as determined by the county
18 board in its sole and exclusive judgment, the board shall rescind
19 the reduction in force or transfer and shall notify the released
20 employee in writing of his or her right to be restored to his or
21 her position of employment. Within five days of being so notified,
22 the released employee shall notify the board, in writing, of his or
23 her intent to resume his or her position of employment or the right
24 to be restored shall terminate. Notwithstanding any other
25 provision of this subdivision, if there is another employee on the
26 preferred recall list with proper certification and higher
27 seniority, that person shall be placed in the position restored as
28 a result of the reduction in force being rescinded.

29 (k) For the purpose of this article, all positions which meet
30 the definition of classroom teacher as defined in section one,
31 article one of this chapter shall be lateral positions. For all
32 other professional positions, the county board of education shall
33 adopt a policy by the thirty-first day of October, one thousand
34 nine hundred ninety-three, and may modify the said policy
35 thereafter as necessary, which defines which positions shall be
36 lateral positions. The board shall submit a copy of its policy to
37 the state board within thirty days of adoption or any modification,
38 and the state board shall compile a report and submit the report
39 ~~same~~ to the legislative oversight commission on education
40 accountability by the thirty-first day of December, one thousand
41 nine hundred ninety-three, and by that such date in any succeeding
42 year in which any county board submits a modification of its policy
43 relating to lateral positions. In adopting the such a policy, the
44 board shall give consideration to the rank of each position in
45 terms of title; nature of responsibilities; salary level; and/or
46 certification, and/or licensure or both; and days in the period of
47 employment.

48 (1) After the fifth day prior to the beginning of the
49 instructional term, no person employed and assigned to a
50 professional position may transfer to another professional position
51 in the county during that instructional term unless the person
52 holding that position does not have valid certification. The
53 provisions of this subsection are subject to the following:

54 (1) The person may apply for any posted, vacant positions with
55 the successful applicant assuming the position at the beginning of

1 the next instructional term;

2 (2) Professional personnel who have been on an approved leave
3 of absence may fill these vacancies upon their return from the
4 approved leave of absence; and

5 (3) The county board, upon recommendation of the
6 superintendent may fill a position before the next instructional
7 term when it is determined to be in the best interest of the
8 students: *Provided*, That the county superintendent shall notify
9 the state board of each transfer of a person employed in a
10 professional position to another professional position after the
11 fifth day prior to the beginning of the instructional term. The
12 Legislature finds that it is not in the best interest of the
13 students particularly in the elementary grades to have multiple
14 teachers for any one grade level or course during the instructional
15 term. It is the intent of the Legislature that the filling of
16 positions through transfers of personnel from one professional
17 position to another after the fifth day prior to the beginning of
18 the instructional term should be kept to a minimum.

19 (m) All professional personnel whose seniority with the county
20 board is insufficient to allow their retention by the county board
21 during a reduction in work force shall be placed upon a preferred
22 recall list. As to any professional position opening within the
23 area where they had previously been employed or to any lateral area
24 for which they have certification and/or licensure, or both, the
25 employee shall be recalled on the basis of seniority if no regular,
26 full-time professional personnel, or those returning from leaves of
27 absence with greater seniority, are qualified, apply for and accept
28 the position.

29 (n) Before position openings that are known or expected to
30 extend for twenty consecutive employment days or longer for
31 professional personnel may be filled by the board, the board shall
32 be required to notify all qualified professional personnel on the
33 preferred list and give them an opportunity to apply, but failure
34 to apply shall not cause the employee to forfeit any right to
35 recall. The notice shall be sent by certified mail to the last
36 known address of the employee, and it shall be the duty of each
37 professional personnel to notify the board of continued
38 availability annually, of any change in address or of any change in
39 certification, and/or licensure or both.

40 (o) Openings in established, existing or newly created
41 positions shall be processed as follows:

42 (1) Boards shall be required to post and date notices which
43 shall be subject to the following:

44 (A) The notices shall be posted in conspicuous working places
45 for all professional personnel to observe for at least five working
46 days;

47 (B) The notice shall be posted within twenty working days of
48 the position openings and shall include the job description;

49 (C) Any special criteria or skills that are required by the
50 position shall be specifically stated in the job description and
51 directly related to the performance of the job;

52 (D) Postings for vacancies made pursuant to this section shall
53 be written so as to ensure that the largest possible pool of
54 qualified applicants may apply; and

55 (E) Job postings may not require criteria which are not

1 necessary for the successful performance of the job and may not be
2 written with the intent to favor a specific applicant;

3 (2) No vacancy shall be filled until after the five-day
4 minimum posting period;

5 (3) If one or more applicants meets the qualifications listed
6 in the job posting, the successful applicant to fill the vacancy
7 shall be selected by the board within thirty working days of the
8 end of the posting period;

9 (4) A position held by a ~~certified and/or licensed~~ teacher who
10 is certified, licensed or both, who has been issued a permit for
11 full-time employment and is working toward certification in the
12 permit area shall not be subject to posting if the certificate is
13 awarded within five years; and

14 (5) Nothing provided herein shall prevent the county board of
15 education from eliminating a position due to lack of need.

16 (p) Notwithstanding any other provision of the code to the
17 contrary, where the total number of classroom teaching positions in
18 an elementary school does not increase from one school year to the
19 next, but there exists in that school a need to realign the number
20 of teachers in one or more grade levels, kindergarten through six,
21 teachers at the school may be reassigned to grade levels for which
22 they are certified without that position being posted: *Provided,*
23 That the employee and the county board of education mutually agree
24 to the reassignment.

25 (q) Reductions in classroom teaching positions in elementary
26 schools shall be processed as follows:

27 (1) When the total number of classroom teaching positions in
28 an elementary school needs to be reduced, the reduction shall be
29 made on the basis of seniority with the least senior classroom
30 teacher being recommended for transfer; and

31 (2) When a specified grade level needs to be reduced and the
32 least senior employee in the school is not in that grade level, the
33 least senior classroom teacher in the grade level that needs to be
34 reduced shall be reassigned to the position made vacant by the
35 transfer of the least senior classroom teacher in the school
36 without that position being posted: *Provided,* That the employee is
37 ~~certified and/or,~~ licensed or both and agrees to the reassignment.

38 (r) Any board failing to comply with the provisions of this
39 article may be compelled to do so by mandamus and shall be liable
40 to any party prevailing against the board for court costs and
41 reasonable attorney fees as determined and established by the
42 court. Further, employees denied promotion or employment in
43 violation of this section shall be awarded the job, pay and any
44 applicable benefits retroactive to the date of the violation and
45 payable entirely from local funds. Further, the board shall be
46 liable to any party prevailing against the board for any court
47 reporter costs including copies of transcripts.

48 (s) The county board shall compile, update annually on the
49 first day of July and make available by electronic or other means
50 to all employees a list of all professional personnel employed by
51 the county, their areas of certification and their seniority.

House Bill 4043

Effective Date: Passed March 13, 2004; in effect July 1, 2004

Signed by Governor: April 6, 2004

Code Reference: Adds a new section, designated §18-2E-3f

Title: Building the Basics of Early Childhood Curriculum

Major Provisions:

Requires the state board to adopt rules to effectuate provisions that address the following:

- Reading, mathematics, and English language arts are the only subjects required to be taught daily in kindergarten through grade two;
- Instruction in other subject matter in kindergarten through grade two shall be oriented to reinforce instruction in reading mathematics and English language arts;
- Strategies for the early detection and intervention to correct student deficiencies in reading, mathematics and English language arts shall be employed throughout the instructional term in each of the early childhood grades to help students achieve mastery in these subjects;
- Accountability for student performance on the statewide assessment of student performance in the early childhood grades shall only include the basic skills of reading, mathematics and English language arts;
- Any other provisions considered necessary by the state board to achieve the intent and purpose of this section.

1
2
3
4
5
6
7
8
9

ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 4043

(By Delegates Mezzatesta, Williams, Renner, Perry, Paxton,
Swartzmiller and Shaver)

[Passed March 13, 2004; in effect July 1, 2004.]

10 AN ACT to amend the code of West Virginia, 1931, as amended, by
11 adding thereto a new section, designated §18-2E-3f, relating
12 to establishing the priority for early childhood education in
13 the basic skills of reading, mathematics and English language
14 arts; making certain findings; stating intent and purpose;
15 limiting scope of statewide assessments in early childhood;
16 and requiring state board rule.

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

18 That the code of West Virginia, 1931, as amended, be amended by
19 adding thereto a new section, designated §18-2E-3f, to read as
20 follows:

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

22 **§18-2E-3f. Building the basics early childhood curriculum;**
23 **legislative findings; state board rule.**

24 (a) Legislative findings. -- The Legislature makes the
25 following findings:

26 (1) Children entering early childhood education programs have
27 significant differences in their cognitive development, mastery of
28 the early basic skills and readiness for instruction in a formal
29 setting;

30 (2) Mastery of the basic skills of reading, mathematics and
31 English language arts is the foundation for all further learning
32 and, therefore, providing the instruction necessary for each child
33 to attain mastery in these basic skills must be the priority for
34 early childhood education programs;

35 (3) Deficiencies in the basic skills of reading, mathematics
36 and English language arts that persist in children beyond the
37 early childhood years become more difficult to overcome as they
38 retard further progress in building the basics and lead to
39 significant gaps in the basic knowledge needed to comprehend more
40 advanced content in other subject areas; and

41 (4) Intensive instruction, early detection and intervention
42 to correct student deficiencies in the basic skills of reading,
43 mathematics and English language arts during early childhood
44 education are more effective strategies for improving student
45 performance than the alternatives such as grade level retention,
46 social promotion and referral for special services and can lessen
47 the prevalence of low basic skills as a contributing factor in
48 student truancy, delinquency and dropout rates.

49 (b) Intent and purpose. -- The intent and purpose of this
50 section is to establish the priority for early childhood education
51 to provide intensive instruction in the basic skills of reading,
52 mathematics and English language arts, along with early detection
53 and intervention strategies to correct student deficiencies, to
54 address the findings of this section.

55 (c) State board rule. -- On or before the first day of July,

1 two thousand four, the state board shall adopt rules to effectuate
2 the intent and purpose of this section, including, but not limited
3 to, provisions that address the following:
4 (1) Reading, mathematics and English language arts are the
5 only subjects that are required to be taught daily in kindergarten
6 through grade two early childhood education programs;
7 (2) Instruction in other subject matter in kindergarten
8 through grade two shall be oriented to reinforce instruction in
9 reading, mathematics and English language arts;
10 (3) Strategies for the early detection and intervention to
11 correct student deficiencies in reading, mathematics and English
12 language arts shall be employed throughout the instructional term
13 in each of the early childhood grades to help students achieve
14 mastery in these subjects, including allowing flexibility in
15 student schedules to provide additional time and instruction for
16 students who are below mastery in these subjects in grades three
17 and four;
18 (4) Accountability for student performance on the statewide
19 assessment of student performance in the early childhood grades
20 shall only include the basic skills of reading, mathematics and
21 English language arts; and
22 (5) Any other provisions considered necessary by the state
23 board to achieve the intent and purpose of this section.

House Bill 4072

Effective Date: Passed March 13, 2004; in effect July 1, 2004

Signed by Governor: April 5, 2004

Code Reference: Amends and re-enacts §18-2E-7; amends by adding new Sections §18-2J-1; §18-2J-2; §18-2J-3; §18-2J-4; §18-2J-5; §18-2J-6; and §18-2J-7

Title: Providing for a unified approach to the long-term planning and implementation of technology in the public schools

Major Provisions:

- Creates an Education Technology Strategic Advisory Committee composed of sixteen members: five voting members representing public education, five voting members representing higher education and one member who is a business representative, all Governor appointed; ex officio non voting members being the CTO of Marshall University, the CTO of West Virginia University, the WV Library Commissioner and two persons designated by the State Superintendent
- Stipulates the business representative serves as chair of the advisory committee, the voting members serve staggered terms of three years, and members serve without compensation, but are entitled to expenses
- Requires the Education Technology Strategic Plan Advisory Committee to develop an Education Strategic which is a continuing plan covering 3-5 years
- Requires, on or before November 1 of each year, the advisory committee to submit the plan to the State Board and the HEPC for approval and adoption; establishes a process to reach approval and adoption
- Requires the State Board, RESA's, the HEPC and the state institutions of higher education to expend appropriations in accordance with the plan, and subjects the Basic Skills and SUCCESS programs to the plan
- Requires the State Board and the HEPC to report to LOCEA following the annual approval and adoption of the plan and to send copies of the report to the Joint Committee on Government and Finance

1 **ENROLLED**
2 COMMITTEE SUBSTITUTE
3 FOR

4 **H. B. 4072**

5 (By Delegates Swartzmiller, Stemple, Shaver, Renner,
6 Long, Perry and Tabb)

7 [Passed March 13, 2004; in effect July 1, 2004.]
8
9

10 AN ACT to amend and reenact §18-2E-7 of the code of West Virginia,
11 1931, as amended; and to amend said code by adding thereto a
12 new article, designated §18-2J-1, §18-2J-2, §18-2J-3, §18-2J-4,
13 §18-2J-5, §18-2J-6 and §18-2J-7, all relating to an education
14 technology strategic plan for public education and higher
15 education; including basic skills and SUCCESS in plan;
16 findings; intent, purpose and goals; education technology
17 strategic plan advisory committee; strategies to be included in
18 plan; state board of education and higher education policy
19 commission approval and adoption; expenditures in accordance
20 with the plan; and the report to the legislative oversight
21 commission on education accountability and joint committee on
22 government and finance.

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

24 That §18-2E-7 of the code of West Virginia, 1931, as amended, be
25 amended and reenacted; and that said code be amended by adding
26 thereto a new article, designated §18-2J-1, §18-2J-2, §18-2J-3,
27 §18-2J-4, §18-2J-5, §18-2J-6 and §18-2J-7, all to read as follows:

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

29 **§18-2E-7. Providing for high quality basic skills development and
30 remediation in all public schools.**

31 (a) The Legislature finds that teachers must be provided the
32 support, assistance and teaching tools necessary to meet
33 individual student instructional needs on a daily basis in a
34 classroom of students who differ in learning styles, learning
35 rates and in motivation to learn. The Legislature further finds
36 that attaining a solid foundation in the basic skills of reading,
37 composition and arithmetic is essential for advancement in higher
38 education, occupational and avocational pursuits and that
39 computers are an effective tool for the teacher in corrective,
40 remedial and enrichment activities. Therefore, the state board
41 shall ~~develop a plan which specifies ensure that~~ the resources to
42 be used to provide services to students in the earliest grade
43 level and ~~moving upward higher grade levels as~~ resources become
44 available ~~based on a~~ are included in the education technology
45 strategic plan developed required by each individual school team
46 article two-j of this chapter.

47 ~~This plan must provide for standardization The provision of~~
48 ~~computer hardware and software and for technology upgrade and~~
49 ~~replacement for the purposes of achieving economies of scale,~~
50 ~~facilitating teacher training, permitting the comparison of~~
51 ~~achievement of services to students in schools and counties~~
52 ~~utilizing the hardware and software and facilitating the repair of~~
53 ~~equipment and ensuring appropriate utilization of the hardware and~~
54 ~~software purchased for remediation and basic skills development~~
55 shall be based on a plan developed by each individual school team.

56 ~~The state board shall determine the computer Computer~~

1 hardware and software ~~specifications after input from practicing~~
2 ~~teachers at the appropriate grade levels and shall be purchased in~~
3 ~~accordance with the assistance of education computer experts and~~
4 ~~the curriculum technology resource center strategic plan adopted~~
5 ~~pursuant to article two-j of this chapter.~~

6 ~~Computer hardware and software shall be purchased either~~
7 ~~directly or through a lease-purchase arrangement pursuant to the~~
8 ~~provisions of article three, chapter five-a of this code in the~~
9 ~~amount equal to anticipated revenues being appropriated: Provided,~~
10 ~~That, with the approval of the The state board, the revenues~~
11 ~~appropriated may be expended directly or through contractual~~
12 ~~agreements with county boards and regional education service~~
13 ~~agencies for materials and other costs associated with~~
14 ~~installation, set-up, internet hook-up and wiring of the computer~~
15 ~~hardware and software: Provided, however, That nothing in this~~
16 ~~section shall be construed to require any shall develop and~~
17 ~~provide a program to ensure adequate teacher training, continuous~~
18 ~~teacher support and updates. specific level of funding by the~~
19 ~~Legislature.~~

20 ~~The state board shall develop and provide through the state~~
21 ~~curriculum program shall be resource center a consistent with the~~
22 ~~education technology strategic plan ensure adequate teacher~~
23 ~~training, continuous teacher support and updates adopted pursuant~~
24 ~~to article two-j of this chapter.~~

25 ~~To the extent practicable, such the technology shall be~~
26 ~~utilized used~~ to enhance student access to learning tools and
27 resources outside of the normal school day, such as: Before and
28 after school; in the evenings, on weekends and during vacations;
29 and for student use for homework, remedial work, independent
30 learning, career planning and adult basic education.

31 (b) The Legislature finds that the continued implementation
32 of computer ~~utilization use~~ under this section for high quality
33 basic skills development and remediation in the middle schools,
34 junior high schools and high schools is necessary to meet the goal
35 that high school graduates will be prepared fully for college,
36 other post-secondary education or gainful employment. Further,
37 ~~such the~~ implementation should provide a technology infrastructure
38 at the middle schools, junior high schools and high schools that
39 ~~has capable of supporting multiple technology based learning~~
40 ~~strategies designed to enable~~ students to achieve at higher
41 academic levels. The technology infrastructure should facilitate
42 student development in the following areas:

43 (1) Attaining basic computer skills such as word processing,
44 spreadsheets, data bases, internet usage, telecommunications and
45 graphic presentations;

46 (2) Learning critical thinking and decision-making skills;

47 (3) Applying academic knowledge in real life situations
48 through simulated workplace programs;

49 (4) Understanding the modern workplace environment,
50 particularly in remote areas of the state, by bringing the
51 workplace to the school;

52 (5) Making informed career decisions based upon information
53 on labor markets and the skills required for success in various
54 occupations;

55 (6) Gaining access to labor markets and job placement;

56 (7) Obtaining information and assistance about college and

1 other post-secondary education opportunities and financial aid;
2 and

3 (8) Other uses for acquiring the necessary skills and
4 information to make a smooth transition from high school to
5 college, other post-secondary education or gainful employment.

6 Therefore, the state board ~~also shall extend the plan as set~~
7 ~~forth in subsection (a) of this section, and consistent with the~~
8 ~~terms and conditions in said subsection,~~ to address the findings
9 of this subsection regarding the continued implementation of
10 computer hardware and software and technical planning support in
11 the middle schools, junior high schools and high schools of the
12 state in the education technology strategic plan required by
13 article two-j of this chapter.

14 **ARTICLE 2J. PUBLIC AND HIGHER EDUCATION TECHNOLOGY STRATEGIC**
15 **PLAN.**

16 **§18-2J-1. Findings.**

17 (a) The Legislature finds that:

18 (1) Technology is being used in public schools as an
19 instructional tool that enables teachers to meet the individual
20 instructional needs of students who differ in learning styles,
21 learning rates and the motivation to learn;

22 (2) Technology is being used in public schools as an
23 effective resource for providing corrective, remedial and
24 enrichment activities to help students achieve proficiency at
25 grade level or above in the basic skills of reading, composition
26 and arithmetic that are essential for advancement to more rigorous
27 curriculum and success in higher education, occupational and
28 avocational pursuits;

29 (3) Technology is being used in public schools to ensure that
30 all students have a basic level of computer literacy that will
31 enable them to participate fully in a society in which computers
32 are an ever more prevalent medium for social, economic, and
33 informational interaction;

34 (4) Technology is being used in public schools to provide
35 greater access for students to advanced curricular offerings,
36 virtual field trips, problem solving and team building exercises,
37 reference information and source knowledge than could be provided
38 efficiently through traditional on-site delivery formats;

39 (5) Technology is being used in public schools to help
40 students obtain information on post-secondary educational
41 opportunities, financial aid, and the credentials and skills
42 required in various occupations that will help them better prepare
43 for a successful transition following high school;

44 (6) Technology is being used in public schools to help
45 students learn to think critically, apply academic knowledge in
46 real life situations, make decisions, and gain an understanding of
47 the modern workplace environment through simulated workplace
48 programs;

49 (7) Technology is being used in public schools as a resource
50 for teachers by providing them with access to sample lesson plans,
51 curriculum resources, on-line staff development, continuing
52 education and college course-work;

53 (8) Technology is being used in public schools as a tool for
54 managing information, reporting on measures of accountability,
55 analyzing student learning and helping to improve student, school
56 and school system performance;

1 (9) Technology is being used in state institutions of higher
2 education for teaching, learning and research for all students
3 across all disciplines and programs;

4 (10) Technology is being used in state institutions of higher
5 education by students, staff and faculty to discover, create,
6 communicate and collaborate, as well as to enhance research and
7 economic development activities;

8 (11) Technology is being used in state institutions of higher
9 education for digital age literacy, problem solving, creativity,
10 effective communication, collaboration and high productivity
11 skills essential for West Virginia citizens in a rapidly changing
12 global economy;

13 (12) Technology is being used by libraries in higher
14 education to offer reference services in a virtual environment
15 online;

16 (13) Technology is being used by libraries in higher
17 education to create and share cataloging records. It is possible
18 to create a seamless resource for sharing these resources between
19 public and higher education; and

20 (14) Technology is being used in libraries in higher
21 education to offer electronic document delivery services to
22 distance education students and to a multitude of professionals
23 throughout the state.

24 (b) Each use of technology set forth in this section shall
25 apply to public education, higher education or both, as
26 appropriate. The determination of whether the use of technology
27 applies to public education, higher education or both shall be
28 made by the education technology strategic plan advisory
29 committee, the state board and the higher education policy
30 commission.

31 **§18-2J-2. Intent and purpose; goals.**

32 (a) The intent and purpose of this article is to establish a
33 unified approach to the administration and allocation of funds for
34 technology that is used for public education and higher education
35 purposes in this state which meets the following goals:

36 (1) Maintaining a reasonable balance in the resources
37 allocated among the customary diverse uses of technology in the
38 public schools and the state institutions of higher education,
39 while allowing flexibility to address unanticipated priority needs
40 and unusual local circumstances;

41 (2) Providing for uniformity in technological hardware and
42 software standards and procedures to achieve interoperability
43 between public schools and higher education to the extent that the
44 uniformity is considered prudent for reducing acquisition cost,
45 avoiding duplication, promoting expeditious repair and maintenance
46 and facilitating user training, while allowing flexibility for
47 local innovations and options when the objectives relating to
48 uniformity are reasonably met;

49 (3) Preserving the integrity of governance, administration,
50 standards and accountability for technology in the public schools
51 and institutions of higher education under the jurisdiction of the
52 state board and the higher education policy commission, while
53 encouraging collaborative service delivery and infrastructure
54 investments with other entities that will reduce cost, avoid
55 duplication or improve services, particularly with respect to
56 other entities such as the educational broadcasting system, public

1 libraries and other governmental agencies with compatible
2 technology interests;

3 (4) Improving the long-term ability of the state board and
4 the higher education policy commission to efficiently manage and
5 direct the resources available for technology in the public
6 schools and the institutions of higher education concurrent with
7 evolving technological capabilities and applications;

8 (5) Fostering closer communication between faculty, students
9 and administrators;

10 (6) Providing for individualized instruction, accommodating
11 a variety of learning styles of students or faculty members;

12 (7) Advancing new and traditional ways of learning through
13 alternative approaches in curriculum to integrate education,
14 research and technology into life long learning strategies;

15 (8) Offering new approaches to administration and
16 accountability within the education system through technology
17 application;

18 (9) Promoting the collaboration of schools, libraries,
19 researchers, community members, state agencies, organizations,
20 business and industry, post-secondary institutions and public
21 virtual learning environments to meet the needs of all learners;

22 (10) Recognizing that information literacy is a fundamental
23 competency for life-long learning and information literacy is
24 incorporated into the curricula of higher education and the
25 workplace;

26 (11) Creating the appropriate infrastructure to ensure, as
27 required, a sustainable, cost effective and transparent migration
28 to new technology platforms;

29 (12) Creating and maintaining compatible and secure
30 technology systems that enhance the efficient operation of all
31 educational systems;

32 (13) Assessing, evaluating and publicizing the effects of
33 technology use by educators and students toward student learning
34 and achievement; and

35 (14) Increasing student access to high quality blended
36 distance learning curriculum using real time interactive and
37 online distance education tools.

38 (b) Each goal set forth in this section shall apply to public
39 education, higher education or both, as appropriate. The
40 determination of whether a goal applies to public education,
41 higher education or both shall be made by the education technology
42 strategic plan advisory committee, the state board and the higher
43 education policy commission.

44 **§18-2J-3. Education technology strategic plan advisory committee.**

45 (a) On or before the first day of July, two thousand four,
46 there is established an education technology strategic plan
47 advisory committee to be composed of sixteen members. The
48 Governor shall appoint, by and with the advice and consent of the
49 Senate, the following eleven voting members to the advisory
50 committee:

51 (1) Five voting members representing public education some or
52 all of which may be from a list of five recommended appointees
53 which shall be submitted by the state board;

54 (2) Five voting members representing higher education some or
55 all of which may be from a list of five recommended appointees
56 which shall be submitted by the higher education policy

1 commission; and

2 (3) One voting member who is a business representative with
3 knowledge of technology management practices of large corporations
4 and has contributed and advanced technology in education in West
5 Virginia.

6 (b) The chief technology officer of Marshall university, or
7 a designee, and the chief technology officer of West Virginia
8 university, or a designee, shall be ex officio nonvoting members
9 of the advisory committee. The state superintendent shall
10 designate two positions within the department of education, and
11 the persons employed in those position shall be ex officio
12 nonvoting members of the advisory committee. Additionally, the
13 West Virginia library commissioner shall be an ex officio
14 nonvoting member.

15 (c) The business representative shall serve as chair of the
16 advisory committee. The advisory committee shall meet as
17 necessary, but shall hold no less than four meetings annually. A
18 majority of the voting members constitutes a quorum for conducting
19 the business of the advisory committee.

20 (d) Voting members of the advisory committee shall serve for
21 terms of three years, except that of the original appointments,
22 three members shall be appointed for one year; four members shall
23 be appointed for two years; and four members shall be appointed
24 for three years. No member may serve more than two consecutive
25 full terms nor may any member be appointed to a term which results
26 in the member serving more than six consecutive years.

27 (e) Members of the advisory committee shall serve without
28 compensation, but shall be reimbursed by the Governor for all
29 reasonable and necessary expenses actually incurred in the
30 performance of their official duties under this article upon
31 presentation of an itemized sworn statement of their expenses,
32 except that any member of the advisory committee who is an
33 employee of the state shall be reimbursed by the employing agency.

34 **§18-2J-4. Education technology strategic plan.**

35 (a) The education technology strategic plan advisory
36 committee shall develop an education technology strategic plan
37 that achieves the intent and purpose of this article. The plan
38 shall be a continuing plan that covers a period of not less than
39 three and not more than five years and is updated annually. In
40 addition to other strategies considered necessary for achieving
41 the intent and purpose of this section, the education technology
42 strategic plan shall address the following:

43 (1) The strategy for using technology in the public schools
44 and in the institutions of higher education of the state
45 consistent with the intent and purpose of this article for each of
46 the purposes for which the Legislature finds that technology is
47 used in public schools and institutions of higher education as
48 described in section one of this article and for any other
49 purposes considered necessary by the state board and the higher
50 education policy commission for using technology in the public
51 schools and institutions of higher education to improve
52 performance and progress;

53 (2) The strategy for allocating the resources available and
54 developing the capacity necessary to achieve the purposes
55 addressed in the plan. The strategy shall allow for reasonable
56 flexibility for:

1 (A) County boards and regional education service agencies to
2 receive assistance with the development and implementation of
3 technological solutions designed to improve performance, enrich
4 the curriculum and increase student access to high level courses;
5 (B) County boards, regional education service agencies and
6 institutional boards of governors to implement technological
7 solutions that address local priorities consistent with achieving
8 the major objectives set forth in the education technology
9 strategic plan; and
10 (C) Using the most cost effective alternative allowable
11 pursuant to section six of this article for expending funds for
12 technology acquisition and implementation consistent with the
13 goals of the plan;
14 (3) For public education, the strategy for using technology
15 to maintain equity in the array and quality of educational
16 offerings and professional qualifications among the counties
17 notwithstanding circumstances of geography and population density;
18 (4) For public education, the strategy for developing and
19 using the capacity of the public school system to implement,
20 support and maintain technology in the public schools through the
21 allocation of funds either directly or through contractual
22 agreements with county boards and regional education service
23 agencies for labor, materials and other costs associated with the
24 installation, set-up, internet hook-up, wiring, repair and
25 maintenance of technology in the public schools and state
26 institutions of higher education;
27 (5) The strategy for ensuring that the capabilities and
28 capacities of the technology infrastructure within the state and
29 its various regions is adequate for acceptable performance of the
30 technology being implemented in the public schools and the state
31 institutions of higher education, for developing the necessary
32 capabilities and capacities, or for pursuing alternative
33 solutions;
34 (6) The strategy for maximizing student access to learning
35 tools and resources at all times including before and after school
36 or class, in the evenings, on weekends and holidays, and for
37 public education, non instructional days, and during vacations for
38 student use for homework, remedial work, independent learning,
39 career planning and adult basic education;
40 (7) The strategy for providing access to individualized
41 instruction through computer-based technology, video and other
42 technology-based instruction;
43 (8) The strategy for improving teaching and learning and the
44 ability to meet individual students' needs to increase student
45 achievement;
46 (9) The strategy for improving curriculum delivery to help
47 meet the needs for educational equity across the state;
48 (10) The strategy for improving delivery of professional
49 development;
50 (11) The strategy for improving the efficiency and
51 productivity of administrators;
52 (12) The strategy for encouraging development by the private
53 sector and acquisition by districts of technologies and
54 applications appropriate for education;
55 (13) The strategy for ensuring efficient and equitable use of
56 technology at all levels from primary school through higher

1 education, including vocational and adult education;

2 (14) The strategy for taking advantage of bulk purchasing
3 abilities to the maximum extent feasible. This may include, but
4 is not limited to:

5 (A) A method of recording all technology purchases across
6 both the public education system and the higher education system;

7 (B) Combining the purchasing power of the public education
8 system and the higher education system with the purchasing power
9 of other state entities or all state entities; or

10 (C) A method of allowing public education and higher
11 education to purchase from competitively bid contracts initiated
12 through the southern regional education board educational
13 technology cooperative and the American TeleEdCommunications
14 Alliance;

15 (15) A strategy for seeking funding through grants, gifts,
16 donations or any other source for uses related to education
17 technology; and

18 (16) A strategy for allowing any other flexibility that is
19 determined to be needed for the effective use of technology in
20 public education and higher education.

21 (b) Each strategy to be included in the education technology
22 strategic plan pursuant to this section shall apply to public
23 education, higher education or both, as appropriate. The
24 determination of whether the strategy applies to public education,
25 higher education or both shall be made by the education technology
26 strategic plan advisory committee, the state board and the higher
27 education policy commission.

28 (c) Nothing in this section may be construed to conflict with
29 a state higher education institution's mission as set forth in its
30 compact.

31 **§18-2J-5. State board and higher education policy commission**
32 **approval and adoption.**

33 On or before the first day of November, two thousand four,
34 and each year thereafter, the education technology strategic plan
35 advisory committee shall submit the education technology strategic
36 plan to the state board and the higher education policy commission
37 for approval and adoption. This time line also shall be in
38 accordance with the federal E-rate discount program. If the state
39 board, the higher education policy commission or both do not
40 approve and adopt the plan, the state board, the higher education
41 policy commission and the education technology strategic plan
42 advisory committee shall collaborate in addressing any objection,
43 agree to a plan and then formally approve and adopt the plan
44 agreed to. The procedure for collaboration shall be determined
45 through agreement of the state board, the higher education policy
46 commission and the education technology strategic plan advisory
47 committee. The plan shall become effective the school year
48 following the time of approval and adoption by both the state
49 board and the higher education policy commission.

50 **§18-2J-6. Allocation and expenditure of appropriations.**

51 (a) The state board, regional education service agencies, the
52 higher education policy commission and the state institutions of
53 higher education shall allocate and expend appropriations for
54 technology in the public schools or the state institutions of
55 higher education, as appropriate, in accordance with the education
56 technology strategic plan except that expenditures from grants

1 which can only be used for certain purposes are not subject to
2 this requirement. For public education, the expenditures shall be
3 made directly, or through lease-purchase arrangements pursuant to
4 the provisions of article three, chapter five-a of this code, or
5 through contractual agreements or grants to county boards and
6 regional education service agencies or any combination of the
7 foregoing options as shall best implement the strategic plan in
8 the most cost effective manner.

9 (b) Nothing in this section requires any specific level of
10 appropriation by the Legislature.

11 **§18-2J-7. Report to the legislative oversight commission on**
12 **education accountability.**

13 The state board and the higher education policy commission
14 shall report to the legislative oversight commission on education
15 accountability annually as soon as practical following the annual
16 adoption and approval of the education technology strategic plan.
17 Additionally, as soon as practical following the annual adoption
18 and approval of the education technology strategic plan, the state
19 board and the higher education policy commission shall submit
20 copies of the report to the joint committee on government and
21 finance. The report shall summarize the expenditures and other
22 related activities undertaken to achieve the objectives of the
23 plan during the past fiscal year, all modifications made in the
24 updated education technology strategic plan and any other matters
25 considered important by the state board and the higher education
26 policy commission to inform the Legislature on the state of
27 education technology in the public schools and the institutions of
28 higher education.

House Bill 4111

Effective Date: Passed January 23, 2004; in effect from passage

Signed by Governor: January 29, 2004

Code Reference: Amends and reenacts 18-2E-5 and 18-5-7a

Title: Disposition of school property in flood control projects

Major Provisions:

- Allows county boards to sell, dismantle, move or relocate any buildings in any federal flood control project
- Allows county boards to contract with the federal government for the sale or exchange, without auction, its interest in land and/or property
- Grants the State Board the aforementioned powers if the flood control project is proposed in a county where the State Board of Education has intervened in the operation of the county school system

1 to establish and be engaged constructively in the determination of
2 the things that students should know and be able to do as the
3 result of a thorough and efficient education. This determination
4 is made by using the process for improving education to determine
5 when school improvement is needed, by evaluating the results and
6 the efficiency of the system of schools, by ensuring
7 accountability, and by providing for the necessary capacity and
8 its efficient use.

9 (4) Therefore, the purpose of this section is to establish a
10 process for improving education that includes the four primary
11 elements as set forth in subdivision (1) of this subsection to
12 provide assurances that a thorough and efficient system of schools
13 is being provided for all West Virginia public school students on
14 an equal education opportunity basis and that the high quality
15 standards are, at a minimum, being met.

16 (5) The intent of the Legislature in enacting this section is
17 to establish a process through which the Legislature, the governor
18 and the state board can work in the spirit of cooperation and
19 collaboration intended in the process for improving education to
20 consult and examine, when necessary, the performance and progress
21 of students, schools and school systems and consider alternative
22 measures to ensure that all students continue to receive the
23 thorough and efficient education to which they are entitled.
24 However, nothing in this section requires any specific level of
25 funding by the Legislature.

26 (b) *Unified county and school improvement plans.* -- The state
27 board shall promulgate rules in accordance with article three-b,
28 chapter twenty-nine-a of this code establishing a unified county
29 improvement plan for each county board and a unified school
30 improvement plan for each public school in this state. The rules
31 shall specify that the unified school improvement plan shall
32 include all appropriate plans required by law including, but not
33 limited to, the following:

34 (1) The report required to be delivered to the county-wide
35 council on productive and safe schools pursuant to subsection (f),
36 section two, article five-a of this chapter;

37 (2) Plans or applications required in the area of technology
38 pursuant to 20 U.S.C. §6845, section seven, article two-e of this
39 chapter, state board policy or rule or any other county, state or
40 federal law;

41 (3) The strategic plan to manage the integration of special
42 needs students as required by section five, article five-a of this
43 chapter; and

44 (4) The school based improvement plan set forth in the
45 Elementary and Secondary Education Act pursuant to 29 U.S.C.
46 §6301, *et seq.*

47 The plans are required to be included only to the extent
48 permitted by state and federal law.

49 (c) *High quality education standards and efficiency*
50 *standards.* -- In accordance with the provisions of article three-
51 b, chapter twenty-nine-a of this code, the state board shall adopt
52 and periodically review and update high quality education
53 standards for student, school and school system performance and
54 processes in the following areas:

55 (1) Curriculum;

56 (2) Workplace readiness skills;

- 1 (3) Finance;
- 2 (4) Transportation;
- 3 (5) Special education;
- 4 (6) Facilities;
- 5 (7) Administrative practices;
- 6 (8) Training of county board members and administrators;
- 7 (9) Personnel qualifications;
- 8 (10) Professional development and evaluation;
- 9 (11) Student performance and progress;
- 10 (12) School and school system performance and progress;
- 11 (13) A code of conduct for students and employees;
- 12 (14) Indicators of efficiency; and
- 13 (15) Any other areas determined by the state board.

14 (d) *Performance measures.* -- The standards shall assure that
15 all graduates are prepared for gainful employment or for
16 continuing post-secondary education and training and that schools
17 and school systems are making progress in achieving the education
18 goals of the state.

19 The standards shall include measures of student performance
20 and progress and measures of school and school system performance,
21 progress and processes that enable student performance. The
22 measures of student performance and progress and school and school
23 system performance, progress and processes shall include, but are
24 not limited to, the following:

25 (1) The acquisition of student proficiencies as indicated by
26 student performance and progress by grade level measured, where
27 possible, by a uniform statewide assessment program;

28 (2) School attendance rates;

29 (3) The student dropout rate;

30 (4) The high school graduation rate;

31 (5) The percentage of graduates who enrolled in college and
32 the percentage of graduates who enrolled in other post-secondary
33 education within one year following high school graduation;

34 (6) The percentage of graduates who received additional
35 certification of their skills, competence and readiness for
36 college, other post-secondary education or employment above the
37 level required for graduation; and

38 (7) The percentage of students who enrolled in and the
39 percentage of students who successfully completed advanced
40 placement, dual credit and honors classes, respectively, by grade
41 level.

42 (e) *Indicators of efficiency.* -- In accordance with the
43 provisions of article three-b, chapter twenty-nine-a of this code,
44 the state board shall adopt and periodically review and update
45 indicators of efficiency for student and school system performance
46 and processes in the following areas:

47 (1) Curriculum delivery including, but not limited to, the
48 use of distance learning;

49 (2) Transportation;

50 (3) Facilities;

51 (4) Administrative practices;

52 (5) Personnel;

53 (6) Utilization of regional educational service agency
54 programs and services, including programs and services that may be
55 established by their assigned regional educational service agency,
56 or other regional services that may be initiated between and among

1 participating county boards; and

2 (7) Any other indicators as determined by the state board.

3 (f) *Assessment and accountability of school and school system*
4 *performance and processes.* -- In accordance with the provisions of
5 article three-b, chapter twenty-nine-a of this code, the state
6 board shall establish by rule a system of education performance
7 audits which measures the quality of education and the preparation
8 of students based on the standards and measures of student, school
9 and school system performance, progress and processes, including,
10 but not limited to, the standards and measures set forth in
11 subsections (c) and (d) of this section. The system of education
12 performance audits shall assist the state board, the Legislature
13 and the governor in ensuring that the standards and measures
14 established pursuant to this section are, at a minimum, being met
15 and that a thorough and efficient system of schools is being
16 provided.

17 The system of education performance audits shall include:

18 (1) The assessment of student performance and progress,
19 school and school system performance and progress, and the
20 processes in place in schools and school systems which enable
21 student performance and progress;

22 (2) The review of school and school system unified
23 improvement plans; and

24 (3) The periodic on-site review of school and school system
25 performance and progress and compliance with the standards.

26 (g) *Uses of school and school system assessment information.*
27 -- The state board and the process for improving education council
28 established pursuant to section five-c of this article shall use
29 information from the system of education performance audits to
30 assist them in ensuring that a thorough and efficient system of
31 schools is being provided and to improve student, school and
32 school system performance and progress. Information from the
33 system of education performance audits further shall be used by
34 the state board for these purposes, including, but not limited to,
35 the following: (1) Determining school accreditation and school
36 system approval status; (2) holding schools and school systems
37 accountable for the efficient use of existing resources to meet or
38 exceed the standards; and (3) targeting additional resources when
39 necessary to improve performance and progress. Primary emphasis
40 in determining school accreditation and school system approval
41 status is based on student performance and progress, school and
42 school system performance and progress and such other measures as
43 selected by the state board. The state board shall make
44 accreditation information available to the Legislature, the
45 governor, the general public and to any individuals who request
46 the information, subject to the provisions of any act or rule
47 restricting the release of information.

48 Based on the assessment of student, school and school system
49 performance and progress, the state board shall establish early
50 detection and intervention programs using the available resources
51 of the department of education, the regional educational service
52 agencies, the center for professional development and the
53 principals academy, as appropriate, to assist underachieving
54 schools and school systems to improve performance before
55 conditions become so grave as to warrant more substantive state
56 intervention. Assistance shall include, but is not limited to,

1 providing additional technical assistance and programmatic,
2 professional staff development, providing monetary, staffing and
3 other resources where appropriate, and, if necessary, making
4 appropriate recommendations to the process for improving education
5 council.

6 (h) *Office of education performance audits.* --

7 (1) To assist the state board and the process for improving
8 education council in the operation of a system of education
9 performance audits that will enable them to evaluate whether a
10 thorough and efficient education is being provided, and to assist
11 the state board in making determinations regarding the
12 accreditation status of schools and the approval status of school
13 systems, the state board shall establish an office of education
14 performance audits which shall be operated under the direction of
15 the state board independently of the functions and supervision of
16 the state department of education and state superintendent. The
17 office of education performance audits shall report directly to
18 and be responsible to the state board in carrying out its duties
19 under the provisions of this section.

20 (2) The office shall be headed by a director who shall be
21 appointed by the state board and who shall serve at the will and
22 pleasure of the state board. The salary of the director shall not
23 exceed the salary of the state superintendent of schools.

24 (3) The state board shall organize and sufficiently staff the
25 office to fulfill the duties assigned to it by law and by the
26 state board. Employees of the state department of education who
27 are transferred to the office of education performance audits
28 retain their benefit and seniority status with the department of
29 education.

30 (4) Under the direction of the state board, the office of
31 education performance audits shall receive from the West Virginia
32 education information system staff research and analysis data on
33 the performance and progress of students, schools and school
34 systems, and shall receive assistance, as determined by the state
35 board, from staff at the state department of education, the
36 regional education service agencies, the center for professional
37 development, the principals academy and the state school building
38 authority to carry out the duties assigned to the office.

39 (5) In addition to other duties which may be assigned to it
40 by the state board or by statute, the office of education
41 performance audits also shall:

42 (A) Assure that all statewide assessments of student
43 performance are secure as required in section one-a of this
44 article;

45 (B) Administer all accountability measures as assigned by the
46 state board, including, but not limited to, the following:

47 (i) Processes for the accreditation of schools and the
48 approval of school systems. These processes shall focus on those
49 measurable criteria related to student performance and progress
50 and to the delivery of instruction which will enable student
51 performance and progress; and

52 (ii) Recommendations to the state board on appropriate
53 action, including, but not limited to, accreditation and approval
54 action;

55 (C) Determine, in conjunction with the assessment and
56 accountability processes, what capacity may be needed by schools

1 and school systems to meet the standards established by the
2 Legislature and the state board, and recommend to the school, the
3 school system, the state board and the process for improving
4 education council, plans to establish those needed capacities;

5 (D) Determine, in conjunction with the assessment and
6 accountability processes, whether statewide system deficiencies
7 exist in the capacity to establish and maintain a thorough and
8 efficient system of schools, including the identification of
9 trends and the need for continuing improvements in education, and
10 report those deficiencies and trends to the state board and the
11 process for improving education council;

12 (E) Determine, in conjunction with the assessment and
13 accountability processes, staff development needs of schools and
14 school systems to meet the standards established by the
15 Legislature and the state board, and make recommendations to the
16 state board, the process for improving education council, the
17 center for professional development, the regional educational
18 service agencies, the higher education policy commission, and the
19 county boards;

20 (F) Identify, in conjunction with the assessment and
21 accountability processes, exemplary schools and school systems and
22 best practices that improve student, school and school system
23 performance, and make recommendations to the state board and the
24 process for improving education council for recognizing and
25 rewarding exemplary schools and school systems and promoting the
26 use of best practices. The state board shall provide information
27 on best practices to county school systems and shall use
28 information identified through the assessment and accountability
29 processes to select schools of excellence; and

30 (G) Develop reporting formats, such as check lists, which
31 shall be used by the appropriate administrative personnel in
32 schools and school systems to document compliance with various of
33 the applicable laws, policies and process standards as considered
34 appropriate and approved by the state board, including, but not
35 limited to, compliance with limitations on the number of pupils
36 per teacher in a classroom and the number of split grade
37 classrooms. Information contained in the reporting formats shall
38 be examined during an on-site review to determine compliance with
39 laws, policies and standards. Intentional and grossly negligent
40 reporting of false information is ground for dismissal.

41 (i) *On-site reviews.* --

42 (1) At the direction of the state board or by weighted
43 selection by the office of education performance audits, an on-
44 site review shall be conducted by the office of education
45 performance audits of any school or school system for purposes,
46 including, but not limited to, the following:

47 (A) Verifying data reported by the school or county board;

48 (B) Documenting compliance with policies and laws;

49 (C) Evaluating the effectiveness and implementation status of
50 school and school system unified improvement plans;

51 (D) Investigating official complaints submitted to the state
52 board that allege serious impairments in the quality of education
53 in schools or school systems;

54 (E) Investigating official complaints submitted to the state
55 board that allege that a school or county board is in violation of
56 policies or laws under which schools and county boards operate;

1 and

2 (F) Determining and reporting whether required reviews and
3 inspections have been conducted by the appropriate agencies,
4 including, but not limited to, the state fire marshal, the health
5 department, the school building authority and the responsible
6 divisions within the department of education, and whether noted
7 deficiencies have been or are in the process of being corrected.
8 The office of education performance audits may not conduct a
9 duplicate review or inspection nor mandate more stringent
10 compliance measures.

11 (2) The selection of schools and school systems for an on-
12 site review shall use a weighted sample so that those with lower
13 performance and progress indicators and those that have not had a
14 recent on-site review have a greater likelihood of being selected.
15 The director of the office of education performance audits shall
16 notify the county superintendent of schools five school days prior
17 to commencing an on-site review of the county school system and
18 shall notify both the county superintendent and the principal five
19 school days prior to commencing an on-site review of an individual
20 school: *Provided*, That the state board may direct the office of
21 education performance audits to conduct an unannounced on-site
22 review of a school or school system if the state board believes
23 circumstances warrant an unannounced on-site review.

24 (3) The office of education performance audits may conduct
25 on-site reviews which are limited in scope to specific areas in
26 addition to full reviews which cover all areas.

27 (4) An on-site review of a school or school system shall
28 include a person or persons who has expert knowledge and
29 experience in the area or areas to be reviewed and who is
30 designated by the state board from the department of education and
31 the agencies responsible for assisting the office. If the size of
32 the school or school system being reviewed necessitates the use of
33 an on-site review team or teams, the person or persons designated
34 by the state board shall advise and assist the director to appoint
35 the team or teams. The person or persons designated by the state
36 board shall be the team leaders.

37 The persons designated by the state board shall be
38 responsible for completing the report on the findings and
39 recommendations of the on-site review in their area of expertise.
40 It is the intent of the Legislature that the persons designated by
41 the state board participate in all on-site reviews that involve
42 their area of expertise to the extent practicable so that the on-
43 site review process will evaluate compliance with the standards in
44 a uniform, consistent and expert manner.

45 (5) The office of education performance audits shall
46 reimburse a county board for the costs of substitutes required to
47 replace county board employees while they are serving on a review
48 team.

49 (6) At the conclusion of an on-site review of a school
50 system, the director and team leaders shall hold an exit
51 conference with the superintendent and shall provide an
52 opportunity for principals to be present for at least the portion
53 of the conference pertaining to their respective schools. In the
54 case of an on-site review of a school, the exit conference shall
55 be held with the principal and the superintendent shall be
56 provided the opportunity to be present.

1 (7) The office of education performance audits shall report
2 the findings of the on-site reviews to the state board for
3 inclusion in the evaluation and determination of a school's or
4 county board's accreditation or approval status as applicable.
5 The report on the findings of an on-site review shall be submitted
6 to the state board within thirty days following the conclusion of
7 the on-site review and to the county superintendent and principals
8 of schools within the reviewed school system within forty-five
9 days following the conclusion of the on-site review. A copy of
10 the report shall be provided to the process for improving
11 education council.

12 (j) *School accreditation.* -- The state board annually shall
13 review the information from the system of education performance
14 audits submitted for each school and shall issue to every school
15 one of the following approval levels: Exemplary accreditation
16 status, full accreditation status, temporary accreditation status,
17 conditional accreditation status, or seriously impaired status.

18 (1) Full accreditation status shall be given to a school when
19 the school's performance and progress on the standards adopted by
20 the state board pursuant to subsections (c) and (d) of this
21 section are at a level which would be expected when all of the
22 high quality education standards are being met. A school which
23 meets or exceeds the measures of student performance and progress
24 set forth in subsection (d) of this section, and which does not
25 have any deficiencies which would endanger student health or
26 safety or other extraordinary circumstances as defined by the
27 state board, shall remain on full accreditation status for six
28 months following an on-site review in which other deficiencies are
29 noted. The school shall have an opportunity to correct those
30 deficiencies, notwithstanding other provisions of this subsection.

31 (2) Temporary accreditation status shall be given to a school
32 when the measure of the school's performance and progress is below
33 the level required for full accreditation status. Whenever a
34 school is given temporary accreditation status, the county board
35 shall ensure that the school's unified improvement plan is revised
36 to increase the performance and progress of the school to a full
37 accreditation status level. The revised unified school
38 improvement plan shall include objectives, a time line, a plan for
39 evaluation of the success of the improvements, cost estimates, and
40 a date certain for achieving full accreditation. The revised plan
41 shall be submitted to the state board for approval.

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

50 (4) Exemplary accreditation status shall be given to a school
51 when the school's performance and progress on the standards
52 adopted by the state board pursuant to subsections (c) and (d) of
53 this section substantially exceed the minimal level which would be
54 expected when all of the high quality education standards are
55 being met. The state board shall promulgate legislative rules in
56 accordance with the provisions of article three-b, chapter

1 twenty-nine-a, designated to establish standards of performance
2 and progress to identify exemplary schools.

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

8 (A) These circumstances shall include, but are not limited
9 to, the following:

10 (i) The failure of a school on temporary accreditation status
11 to obtain approval of its revised unified school improvement plan
12 within a reasonable time period as defined by the state board;

13 (ii) The failure of a school on conditional accreditation
14 status to meet the objectives and time line of its revised unified
15 school improvement plan; or

16 (iii) The failure of a school to achieve full accreditation
17 by the date specified in the revised plan.

18 (B) Whenever the state board determines that the quality of
19 education in a school is seriously impaired, the state board shall
20 appoint a team of improvement consultants to make recommendations
21 within sixty days of appointment for correction of the impairment.
22 When the state board approves the recommendations, they shall be
23 communicated to the county board. If progress in correcting the
24 impairment as determined by the state board is not made within six
25 months from the time the county board receives the
26 recommendations, the state board shall place the county board on
27 temporary approval status and provide consultation and assistance
28 to the county board to assist it in the following areas:

29 (i) Improving personnel management;

30 (ii) Establishing more efficient financial management
31 practices;

32 (iii) Improving instructional programs and rules; or

33 (iv) Making any other improvements that are necessary to
34 correct the impairment.

35 (C) If the impairment is not corrected by a date certain as
36 set by the state board:

37 (i) The state board shall appoint a monitor who shall be paid
38 at county expense to cause improvements to be made at the school
39 to bring it to full accreditation status within a reasonable time
40 period as determined by the state board. The monitor's work
41 location shall be at the school and the monitor shall work
42 collaboratively with the principal. The monitor shall, at a
43 minimum, report monthly to the state board on the measures being
44 taken to improve the school's performance and the progress being
45 made. The reports may include requests for additional assistance
46 and recommendations required in the judgment of the monitor to
47 improve the school's performance, including, but not limited to,
48 the need for targeting resources strategically to eliminate
49 deficiencies;

50 (ii) The state board may make a determination, in its sole
51 judgment, that the improvements necessary to provide a thorough
52 and efficient education to the students at the school cannot be
53 made without additional targeted resources, in which case, it
54 shall establish a plan in consultation with the county board that
55 includes targeted resources from sources under the control of the
56 state board and the county board to accomplish the needed

1 improvements. Nothing in this subsection shall be construed to
2 allow a change in personnel at the school to improve school
3 performance and progress, except as provided by law;

4 (iii) If the impairment is not corrected within one year
5 after the appointment of a monitor, the state board may make a
6 determination, in its sole judgment, that continuing a monitor
7 arrangement is not sufficient to correct the impairment and may
8 intervene in the operation of the school to cause improvements to
9 be made that will provide assurances that a thorough and efficient
10 system of schools will be provided. This intervention may
11 include, but is not limited to, establishing instructional
12 programs, taking such direct action as may be necessary to correct
13 the impairments, declaring the position of principal is vacant and
14 assigning a principal for the school who shall serve at the will
15 and pleasure of and, under the sole supervision of, the state
16 board: *Provided*, That prior to declaring that the position of the
17 principal is vacant, the state board must make a determination
18 that all other resources needed to correct the impairment are
19 present at the school. If the principal who was removed elects
20 not to remain an employee of the county board, then the principal
21 assigned by the state board shall be paid by the county board. If
22 the principal who was removed elects to remain an employee of the
23 county board, then the following procedure applies:

24 (I) The principal assigned by the state board shall be paid
25 by the state board until the next school term, at which time the
26 principal assigned by the state board shall be paid by the county
27 board;

28 (II) The principal who was removed shall be placed on the
29 preferred recall list for all positions in the county for which
30 the principal is certified, as defined in section seven, article
31 four of this chapter; and

32 (III) The principal who was removed shall be paid by the
33 county board and may be assigned to administrative duties, without
34 the county board being required to post that position until the
35 end of the school term;

36 (6) The county board shall take no action nor refuse any
37 action if the effect would be to impair further the school in
38 which the state board has intervened.

39 (7) The state board may appoint a monitor pursuant to the
40 provisions of this subsection to assist the school principal after
41 intervention in the operation of a school is completed.

42 (k) *Transfers from seriously impaired schools.* -- Whenever a
43 school is determined to be seriously impaired and fails to improve
44 its status within one year, any student attending the school may
45 transfer once to the nearest fully accredited school, subject to
46 approval of the fully accredited school and at the expense of the
47 school from which the student transferred.

48 (1) *School system approval.* -- The state board annually shall
49 review the information submitted for each school system from the
50 system of education performance audits and issue one of the
51 following approval levels to each county board: Full approval,
52 temporary approval, conditional approval, or nonapproval.

53 (1) Full approval shall be given to a county board whose
54 education system meets or exceeds all of the high quality
55 standards for student, school and school system performance,
56 progress and processes adopted by the state board and whose

1 schools have all been given full, temporary or conditional
2 accreditation status. A school system which meets or exceeds the
3 measures of student performance and progress set forth in
4 subsection (d) of this section, and which does not have any
5 deficiencies which would endanger student health or safety or
6 other extraordinary circumstances as defined by the state board,
7 shall remain on full accreditation status for six months following
8 an on-site review in which other deficiencies are noted. The
9 school shall have an opportunity to correct those deficiencies,
10 notwithstanding other provisions of this subsection.

11 (2) Temporary approval shall be given to a county board whose
12 education system is below the level required for full approval.
13 Whenever a county board is given temporary approval status, the
14 county board shall revise its unified county improvement plan to
15 increase the performance and progress of the school system to a
16 full approval status level. The revised plan shall include
17 objectives, a time line, a plan for evaluation of the success of
18 the improvements, a cost estimate, and a date certain for
19 achieving full approval. The revised plan shall be submitted to
20 the state board for approval.

21 (3) Conditional approval shall be given to a county board
22 whose education system is below the level required for full
23 approval, but whose unified county improvement plan meets the
24 following criteria:

25 (i) The plan has been revised to achieve full approval status
26 by a date certain;

27 (ii) The plan has been approved by the state board; and

28 (iii) The county board is meeting the objectives and time
29 line specified in the revised plan.

30 (4) Nonapproval status shall be given to a county board which
31 fails to submit and gain approval for its unified county
32 improvement plan or revised unified county improvement plan within
33 a reasonable time period as defined by the state board or which
34 fails to meet the objectives and time line of its revised unified
35 county improvement plan or fails to achieve full approval by the
36 date specified in the revised plan.

37 (A) The state board shall establish and adopt additional
38 standards to identify school systems in which the program may be
39 nonapproved and the state board may issue nonapproval status
40 whenever extraordinary circumstances exist as defined by the state
41 board.

42 (B) Whenever a county board has more than a casual deficit,
43 as defined in section one, article one of this chapter, the county
44 board shall submit a plan to the state board specifying the county
45 board's strategy for eliminating the casual deficit. The state
46 board either shall approve or reject the plan. If the plan is
47 rejected, the state board shall communicate to the county board
48 the reason or reasons for the rejection of the plan. The county
49 board may resubmit the plan any number of times. However, any
50 county board that fails to submit a plan and gain approval for the
51 plan from the state board before the end of the fiscal year after
52 a deficit greater than a casual deficit occurred or any county
53 board which, in the opinion of the state board, fails to comply
54 with an approved plan may be designated as having nonapproval
55 status.

56 (C) Whenever nonapproval status is given to a school system,

1 the state board shall declare a state of emergency in the school
2 system and shall appoint a team of improvement consultants to make
3 recommendations within sixty days of appointment for correcting
4 the emergency. When the state board approves the recommendations,
5 they shall be communicated to the county board. If progress in
6 correcting the emergency, as determined by the state board, is not
7 made within six months from the time the county board receives the
8 recommendations, the state board shall intervene in the operation
9 of the school system to cause improvements to be made that will
10 provide assurances that a thorough and efficient system of schools
11 will be provided. This intervention may include, but is not
12 limited to, the following:

13 (i) Limiting the authority of the county superintendent and
14 county board as to the expenditure of funds, the employment and
15 dismissal of personnel, the establishment and operation of the
16 school calendar, the establishment of instructional programs and
17 rules and any other areas designated by the state board by rule,
18 which may include delegating decision-making authority regarding
19 these matters to the state superintendent;

20 (ii) Declaring that the office of the county superintendent
21 is vacant;

22 (iii) Delegating to the state superintendent both the
23 authority to conduct hearings on personnel matters and school
24 closure or consolidation matters and, subsequently, to render the
25 resulting decisions, and the authority to appoint a designee for
26 the limited purpose of conducting hearings while reserving to the
27 state superintendent the authority to render the resulting
28 decisions;

29 (iv) Functioning in lieu of the county board of education in
30 a transfer, sale, purchase or other transaction regarding real
31 property; and

32 (v) Taking any direct action necessary to correct the
33 emergency including, but not limited to, the following:

34 (I) Delegating to the state superintendent the authority to
35 replace administrators and principals in low performing schools
36 and to transfer them into alternate professional positions within
37 the county at his or her discretion; and

38 (II) Delegating to the state superintendent the authority to
39 fill positions of administrators and principals with individuals
40 determined by the state superintendent to be the most qualified
41 for the positions. Any authority related to intervention in the
42 operation of a county board granted under this paragraph is not
43 subject to the provisions of article four, chapter eighteen-a of
44 this code;

45 (m) Notwithstanding any other provision of this section, the
46 state board may intervene immediately in the operation of the
47 county school system with all the powers, duties and
48 responsibilities contained in subsection (l) of this section, if
49 the state board finds the following:

50 (1) That the conditions precedent to intervention exist as
51 provided in this section; and that delaying intervention for any
52 period of time would not be in the best interests of the students
53 of the county school system; or

54 (2) That the conditions precedent to intervention exist as
55 provided in this section and that the state board had previously
56 intervened in the operation of the same school system and had

1 concluded that intervention within the preceding five years.

2 (n) *Capacity*. -- The process for improving education includes
3 a process for targeting resources strategically to improve the
4 teaching and learning process. Development of unified school and
5 school system improvement plans, pursuant to subsection (b) of
6 this section, is intended, in part, to provide mechanisms to
7 target resources strategically to the teaching and learning
8 process to improve student, school and school system performance.
9 When deficiencies are detected through the assessment and
10 accountability processes, the revision and approval of school and
11 school system unified improvement plans shall ensure that schools
12 and school systems are efficiently using existing resources to
13 correct the deficiencies. When the state board determines that
14 schools and school systems do not have the capacity to correct
15 deficiencies, the state board shall work with the county board to
16 develop or secure the resources necessary to increase the capacity
17 of schools and school systems to meet the standards and, when
18 necessary, seek additional resources in consultation with the
19 Legislature and the governor.

20 The state board shall recommend to the appropriate body
21 including, but not limited to, the process for improving education
22 council, the Legislature, county boards, schools and communities
23 methods for targeting resources strategically to eliminate
24 deficiencies identified in the assessment and accountability
25 processes. When making determinations on recommendations, the
26 state board shall include, but is not limited to, the following
27 methods:

28 (1) Examining reports and unified improvement plans regarding
29 the performance and progress of students, schools and school
30 systems relative to the standards and identifying the areas in
31 which improvement is needed;

32 (2) Determining the areas of weakness and of ineffectiveness
33 that appear to have contributed to the substandard performance and
34 progress of students or the deficiencies of the school or school
35 system;

36 (3) Determining the areas of strength that appear to have
37 contributed to exceptional student, school and school system
38 performance and progress and promoting their emulation throughout
39 the system;

40 (4) Requesting technical assistance from the school building
41 authority in assessing or designing comprehensive educational
42 facilities plans;

43 (5) Recommending priority funding from the school building
44 authority based on identified needs;

45 (6) Requesting special staff development programs from the
46 center for professional development, the principals academy,
47 higher education, regional educational service agencies and county
48 boards based on identified needs;

49 (7) Submitting requests to the Legislature for appropriations
50 to meet the identified needs for improving education;

51 (8) Directing county boards to target their funds
52 strategically toward alleviating deficiencies;

53 (9) Ensuring that the need for facilities in counties with
54 increased enrollment are appropriately reflected and recommended
55 for funding;

56 (10) Ensuring that the appropriate person or entity is held

1 accountable for eliminating deficiencies; and

2 (11) Ensuring that the needed capacity is available from the
3 state and local level to assist the school or school system in
4 achieving the standards and alleviating the deficiencies.

5 **ARTICLE 5. COUNTY BOARD OF EDUCATION.**

6 **§18-5-7a. Disposition of school property in flood control**
7 **projects.**

8 (a) If at any time the board ~~shall~~ascertains that any land
9 or part thereof then being used for school purposes is to be
10 included in any federal flood control project the board may:

11 ~~(a) (1) Sell~~, dismantle, remove or relocate any buildings
12 thereon;

13 ~~(b) (2) Contract~~ with the United States of America, or any
14 instrumentality, agency or political subdivision thereof, for the
15 sale or exchange of its interest in the land or any part thereof;
16 and

17 ~~(c) (3) Without auction sell or exchange~~ its interest in ~~such~~
18 the land or any part thereof to the United States of America, or
19 any instrumentality, agency or political subdivision thereof, in
20 accordance with the terms and provisions of the contract.

21 (b) If the flood control project is proposed in a county
22 where the state board of education has intervened in the operation
23 of the county school system pursuant to the provisions of section
24 five, article two-e of this chapter or any other constitutional or
25 statutory authority to intervene, the powers granted in this
26 section are vested in the state board.

27 (c) Notwithstanding the provisions of section seven of this
28 article, neither the grantor of ~~such the~~land or any part thereof
29 nor his heirs or assigns ~~shall have~~has the right to purchase ~~said~~
30 the land or any part thereof or have any other rights whatever
31 under section seven of this article.

House Bill 4271

Effective Date: Passed March 12, 2004; in effect July 1, 2004

Signed by Governor: April 5, 2004

Code Reference: Amends by adding new Section 18-5-22b

Title: Providing for Self-administration of Asthma Medication

Major Provisions:

- Defines medication, physician, physician's assistant, advance practice registered nurse, self-administration
- Applies to student enrolled in public, private, parochial or denominational schools located within the state
- Authorizes self-administration of asthma medication with written authorization from the parent/guardian, physician or advanced practice nurse (licensed prescriber)
- Defines roles and responsibilities for students, school nurses, licensed prescriber and parents
- Requires county boards of education or nonpublic schools to provide a notice of exemption from liability
- Provides schools, county school boards or nonpublic schools and their employees and agent exemption from any liability except for willful and wanton conduct, as a result of any injury arising from the self-administration of asthma medication by the student
- Defines record keeping procedures, time limitations, and clause to revoke self-administration permission when appropriate
- Defines "school" as it applies to the conditions of this rule
- Requires the state board to promulgate rules necessary to effectuate the provisions of this rule.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4271

(By Delegates Foster, Palumbo, Hatfield and Iaquinta)
[Passed March 12, 2004; in effect July 1, 2004.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-22b, relating to permitting public and private school students to self-administer asthma medication when certain conditions are met; providing for revocation of permission; limiting liability for injury; providing certain definitions; and providing for state board rule.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-5-22b, to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-22b. Providing for self-administration of asthma medication; definitions; conditions; indemnity from liability; rules.

(a) For the purposes of this section, the following words have the meanings specified unless the context clearly indicates a different meaning:

(1) "Medication" means asthma medicine, prescribed by:

(A) A physician licensed to practice medicine in all its branches; or

(B) A physician assistant who has been delegated the authority to prescribe asthma medications by a supervising physician; or (C) An advanced practice registered nurse who has a written collaborative agreement with a collaborating physician. Such agreement shall delegate the authority to prescribe the medications for a student that pertain to the student's asthma and that have an individual prescription label.

(2) "Self-administration" or "self-administer" means a student's discretionary use of prescribed asthma medication.

(b) A student enrolled in a public, private, parochial or denominational school located within this state may possess and self-administer asthma medication subject to the following conditions:

(1) The parents or guardians of the student have provided to the school:

(A) A written authorization for the self-administration of asthma medication; and

(B) A written statement from the physician or advanced practice registered nurse which contains the name, purpose, appropriate usage and dosage of the student's medication and the time or times at which, or the special circumstances under which, the medication is to be administered;

(2) The student has demonstrated the ability and understanding to self-administer asthma medication by:

(A) Passing an assessment by the school nurse evaluating the student's technique of self-administration and level of

1 understanding of the appropriate use of the asthma medication; or
2 (B) In the case of nonpublic schools that do not have a
3 school nurse, providing to the school from the student's physician
4 or advanced practice registered nurse written verification that
5 the student has passed such an assessment; and
6 (3) The parents or guardians of the student have acknowledged
7 in writing that they have read and understand a notice provided by
8 the county board or nonpublic school that:
9 (A) The school, county school board or nonpublic school and
10 its employees and agents are exempt from any liability, except for
11 willful and wanton conduct, as a result of any injury arising from
12 the self-administration of asthma medication by the student; and
13 (B) The parents or guardians indemnify and hold harmless the
14 school, the county board of education or nonpublic school and its
15 employees or guardians and agents against any claims arising out
16 of the self-administration of the medication by the student.
17 (c) The information provided to the school pursuant to
18 subsection (b) of this section shall be kept on file in the office
19 of the school nurse or, in the absence of a school nurse, in the
20 office of the school administrator.
21 (d) Permission for a student to self-administer asthma
22 medication is effective for the school year for which it is
23 granted and shall be renewed each subsequent school year if the
24 requirements of this section are met.
25 (e) Permission to self-administer medication may be revoked
26 if the administrative head of the school finds that the student's
27 technique of self-administration and understanding of the use of
28 the asthma medication is not appropriate or is willfully
29 disregarded.
30 (f) A student with asthma who has met the requirements of
31 this section may possess and use asthma medication:
32 (1) In school;
33 (2) At a school-sponsored activity;
34 (3) Under the supervision of school personnel; or
35 (4) Before or after normal school activities, such as before
36 school or after school care on school operated property.
37 (g) The state board shall promulgate rules necessary to
38 effectuate the provisions of this section in accordance with the
39 provisions of article three-b, chapter twenty-nine-a of this code.

House Bill 4297

Effective Date: Passed March 12, 2004; in effect 90 days from passage

Signed by Governor: April 7, 2004

Code Reference: Amends and re-enacts §18A-4-8e

Title: Service personnel competency testing

Major Provisions:

- Allows county boards of education and superintendents to designate sites for school service personnel competency testing
- Allows sites other than county vocational schools may be used

1
2
3
4
5
6
7
8
9

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4297

(By Delegates Perry, Ennis, Cann, Tabb, Crosier and Williams)

[Passed March 12, 2004; in effect ninety days from passage.]

10 AN ACT to amend and reenact §18A-4-8e of the code of West
11 Virginia, 1931, as amended, relating to competency testing of
12 service personnel; and clarifying that county board of education
13 and superintendent may designate places for testing.

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

15 That §18A-4-8e of the code of West Virginia, 1931, as amended,
16 be amended and reenacted to read as follows:

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

18 **§18A-4-8e. Competency testing for service personnel.**

19 (a) The state board of education shall develop and cause to be
20 made available competency tests for all of the classification
21 titles defined in section eight and listed in section eight-a of
22 this article for service personnel. Each classification title
23 defined and listed ~~shall be~~ is considered a separate
24 classification category of employment for service personnel and
25 ~~shall have~~ has a separate competency test, except for those class
26 titles having Roman numeral designations, which ~~shall be~~ are
27 considered a single classification of employment and ~~shall have~~ are
28 a single competency test. The cafeteria manager class title ~~shall~~
29 ~~be~~ is included in the same classification category as cooks and
30 ~~shall have~~ has the same competency test. The executive secretary
31 class title ~~shall be~~ is included in the same classification
32 category as secretaries and ~~shall have~~ has the same competency
33 test. The classification titles of chief mechanic, mechanic and
34 assistant mechanic are included in one classification title and
35 have the same competency test.

36 (b) The purpose of these tests is to provide county boards of
37 education a uniform means of determining whether school service
38 personnel employees who do not hold a classification title in a
39 particular category of employment ~~can~~ meet the definition of the
40 classification title in another category of employment as defined
41 in section eight of this article. Competency tests ~~shall~~ may not
42 be used to evaluate employees who hold the classification title in
43 the category of their employment.

44 (c) The competency test ~~shall consist~~ is of an objective written
45 ~~and/or~~ or performance test, or both: *Provided*, That applicants
46 ~~shall have~~ are the opportunity of ~~taking to take~~ take the written test
47 orally if requested. Oral tests ~~shall be~~ are recorded
48 mechanically and kept on file. ~~Persons administering the oral~~
49 ~~test shall not~~ The oral test is administered by persons who do not
50 know the applicant personally. The performance test for all
51 classifications and categories other than bus operator is
52 administered by ~~a vocational school which serves an employee of~~
53 the county board of education at a location designated by the
54 superintendent and approved by the board. The location may be a
55 vocational school that serves the county. A standard passing score

1 ~~shall be~~ is established by the state department of education for
2 each test and ~~shall be~~ is used by county boards of education. The
3 subject matter of each competency test ~~shall be~~ is commensurate
4 with the requirements of the definitions of the classification
5 titles as provided in section eight of this article. The subject
6 matter of each competency test ~~shall be~~ is designed in such a
7 manner that achieving a passing grade ~~will~~ does not require
8 knowledge and skill in excess of the requirements of the
9 definitions of the classification titles. Achieving a passing
10 score shall conclusively demonstrates the qualification of an
11 applicant for a classification title. Once an employee passes the
12 competency test of a classification title, the applicant ~~shall be~~
13 is fully qualified to fill vacancies in that classification
14 category of employment as provided in section eight-b of this
15 article and shall not be required to take the competency test
16 again.

17 (d) An applicant who fails to achieve a passing score ~~shall be~~ is
18 given other opportunities to pass the competency test when making
19 application for another vacancy within the classification
20 category.

21 (e) Competency tests are administered to applicants in a uniform
22 manner under uniform testing conditions. County boards of
23 education are responsible for scheduling competency tests,
24 notifying applicants of the date and time of the one day of
25 training prior to taking the test and the date and time of the
26 test. County boards of education ~~shall~~ may not ~~utilize~~ use a
27 competency test other than the test authorized by this section.

28 (f) When scheduling of the competency test conflicts with the work
29 schedule of a school employee who has applied for a vacancy, the
30 employee ~~shall be~~ is excused from work to take the competency test
31 without loss of pay.

32 (g) A minimum of one day of appropriate in-service training ~~shall~~
33 ~~be~~ provided to employees to assist them in preparing to take the
34 competency tests.

35 (h) Competency tests ~~shall be utilized~~ are used to determine the
36 qualification of new applicants seeking initial employment in a
37 particular classification title as either a regular or substitute
38 employee.

39 (i) Notwithstanding any provisions in this code to the contrary,
40 once an employee holds or has held a classification title in a
41 category of employment, that employee is considered qualified for
42 the classification title even though that employee no longer holds
43 that classification.

44 (j) The requirements of this section ~~shall do~~ not be construed to
45 alter the definitions of class titles as provided in section eight
46 of this article ~~nor or~~ the procedure and requirements of section
47 eight-b of this article.

House Bill 4411

Effective Date: Passed March 13, 2004; in effect ninety days from passage

Signed by Governor: April 5, 2004

Code Reference: Amends and reenacts §5B-2B-2, §5B-2B-4, §5B-2B-5 and §5B-2B-9

Title: Relating to the West Virginia Workforce Investment Act; updating terms; outlining duties; and creating the workforce investment interagency collaborative team

Major Provisions:

- Defines the function of the Workforce Investment Council to include the establishment of an overall workforce investment public agenda with goals and benchmarks of success for state, state agencies and for local workforce investment boards
- Requires a report to the Legislative Oversight Commission on Workforce Investment on or before January 15 of each year, including recommendations for the establishment of an overall workforce investment public agenda with goals and benchmarks of success for state, state agencies and local workforce investment boards
- Requires any state agency that receives state or federal funding used for workforce investment activities for the past fiscal year to submit a report to the Council by the first day of November each year
- Creates an interagency collaborative team to address issues or concerns related to building and maintaining the most effective implementation of the federal Workforce Investment Act and overall workforce development system in West Virginia
- Each state agency shall appoint two representatives to the team, consisting of the official responsible for overseeing the workforce investment program or activities at the state level

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50

ENROLLED
H. B. 4411

(By Delegates Mezzatesta, Cann, Frederick,
Stalnaker and Walters)

[Passed March 13, 2004; in effect ninety days from passage.]

AN ACT to amend and reenact §5B-2B-2, §5B-2B-4, §5B-2B-5 and §5B-2B-9 of the code of West Virginia, 1931, as amended, all relating to the West Virginia workforce investment act; updating terms; outlining duties; and creating the workforce investment interagency collaborative team.

Be it enacted by the Legislature of West Virginia:

That §5B-2B-2, §5B-2B-4, §5B-2B-5 and §5B-2B-9 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2B. WEST VIRGINIA WORKFORCE INVESTMENT ACT.

§5B-2B-2. Definitions.

As used in this article, the following terms have the following meanings, unless the context clearly indicates otherwise:

(1) "Commission" or "legislative oversight commission" means the legislative oversight commission on workforce investment for economic development created pursuant to section seven of this article.

(2) "Council" means the West Virginia workforce investment council.

(3) "Team" means the workforce investment interagency collaborative team.

§5B-2B-4. Duties of the workforce investment council.

(a) The council shall assist the governor in the:

(1) Development and revision of a strategic five-year state workforce investment plan; ~~(2) Development and continuous improvement, including the establishment of a statewide team of an overall workforce investment activities including.~~

~~(A) Development public agenda with goals and benchmarks of linkages in order to assure coordination success for the state, state agencies and nonduplication of services and activities of workforce investment programs conducted by various entities in the state; and~~

~~(B) The review of strategic plans created and submitted by for local workforce investment boards;~~

(2) Development and continuous improvement of a statewide system of workforce investment activities including:

(A) Development of linkages in order to assure coordination and nonduplication of services and activities of workforce investment programs conducted by various entities in the state; and

(B) The review of strategic plans created and submitted by local workforce investment boards;

1 (3) Commenting at least annually on the measures taken by the
2 state pursuant to the Carl D. Perkins Vocational and Applied
3 Technology Education Act, 20 U.S.C. §2323;

4 (4) Designation and revision of local workforce investment
5 areas;

6 (5) Development and revision of allocation formulas for the
7 distribution of funds for adult employment and training activities
8 and youth activities to local areas;

9 (6) Development and continuous improvement of comprehensive
10 state performance measures, including state adjusted levels of
11 performance, to assess the effectiveness of the workforce
12 investment activities in the state;

13 (7) Preparation of the annual report to the secretary of labor
14 as required by the Workforce Investment Act, 29 U.S.C. §2871;

15 (8) Development and continued improvement of a statewide
16 employment statistics system; and

17 (9) Development and revision of an application for workforce
18 investment incentive grants.

19 (b) The council shall make a report to the legislative
20 oversight commission on or before the ~~first~~fifteenth day of
21 ~~September~~January of each year detailing: (1) All the publicly
22 funded workforce investment programs operating in the state,
23 including the amount of federal and state funds expended by each
24 program, how the funds are spent and the resulting improvement to
25 the workforce; (2) ~~its~~the council's recommendations concerning
26 future use of funds for workforce investment programs; (3) ~~its~~the
27 council's analysis of operations of local workforce investment
28 programs; (4) the council's recommendations for the establishment
29 of an overall workforce investment public agenda with goals and
30 benchmarks of success for the state, state agencies and for local
31 workforce investment boards; and (5) any other information the
32 commission may require.

33 **§5B-2B-5. State agencies.**

34 On or before the first day of ~~August~~November any state agency that
35 receives federal or state funding that ~~may be~~has been used for
36 workforce investment activities for the past fiscal year shall
37 provide to the council a report, detailing the source and amount of
38 federal, state or other funds received; the purposes for which the
39 funds were provided; the services provided in each regional
40 workforce investment area; the measures used to evaluate program
41 performance, including current and baseline performance data; and
42 any other information requested by the council. All reports
43 submitted pursuant to this section are to be in a form approved by
44 the council.

45 **§5B-2B-9. Coordination between agencies providing workforce**
46 **investment programs, local workforce investment boards and the**
47 **executive director of the West Virginia development office.**

48 (a) ~~Beginning the first day of January, two thousand three, in~~
49 ~~order to lawfully continue any workforce investment activities, any~~
50 ~~agency subject to the reporting provisions of section five of this~~
51 ~~article shall enter into a memorandum of understanding with the~~
52 ~~executive director of the West Virginia development office and any~~

1 ~~local workforce investment board representing an area of this state~~
2 ~~in which the agency is engaged in workforce investment activities.~~
3 ~~To the extent permitted by federal law, the agreements are to~~
4 ~~maximize coordination of workforce investment activities and~~
5 ~~eliminate duplication of services on both state and local levels.~~
6 To provide on-going attention to addressing issues that will build
7 and continually improve the overall workforce investment system,
8 the workforce investment interagency collaborative team is hereby
9 created. The team shall be the single state interagency source for
10 addressing issues or concerns related to building and maintaining
11 the most effective and efficient implementation of the federal
12 workforce investment act and the overall workforce development
13 system in West Virginia. The team shall focus on how best to
14 collaborate between and among the state agencies directly involved
15 in workforce investment activities and shall develop a strategic
16 plan to that end. The team shall serve as a forum for the council
17 to seek information or recommendations in furtherance of its
18 responsibilities under this article. The West Virginia development
19 office is the entity which shall convene the team at least monthly
20 and shall provide administrative and other services to the team as
21 the team requires.

22 (b) ~~No memorandum of understanding may be effective for more~~
23 ~~than one year without annual reaffirmation by the parties. The~~
24 ~~team shall consist of members from each agency subject to the~~
25 ~~reporting provisions of section five of this article. Each agency~~
26 ~~shall appoint two representatives to the team consisting of the~~
27 ~~chief official of the department or division and the official~~
28 ~~within that department or division who is directly responsible for~~
29 ~~overseeing the workforce investment program or activities at the~~
30 ~~state level. A designee may be selected to represent a member~~
31 ~~appointed to the team: *Provided*, That the designee has policy-~~
32 ~~making decision authority regarding workforce investment activities~~
33 ~~including program and fiscal issues. The team members have~~
34 ~~authority to make decisions on behalf of the agency at the level~~
35 ~~required for the team to address issues and advance system~~
36 ~~improvements.~~

37 (c) ~~Any state agency entering a memorandum of understanding~~
38 ~~shall deliver a copy thereof to both the West Virginia workforce~~
39 ~~investment council and the legislative oversight commission. The~~
40 ~~team shall coordinate the development of a self-sufficiency~~
41 ~~standard study for the State of West Virginia. The self-~~
42 ~~sufficiency standard is to measure how much income is needed for a~~
43 ~~household of a given composition in a given place to adequately~~
44 ~~meet its basic needs without public or private assistance.~~
45 ~~Beginning on the first day of November, two thousand four, and~~
46 ~~every two years thereafter, this study is to be reported to the~~
47 ~~speaker of the House of Delegates, the president of the Senate, the~~
48 ~~workforce investment council and the legislative oversight~~
49 ~~commission on workforce investment for economic development.~~

50 (d) ~~Beginning the first day of January, two thousand three, in~~
51 ~~order to lawfully continue any workforce investment activities, any~~
52 ~~agency subject to the reporting provisions of section five of this~~

1 article shall enter into a memorandum of understanding with the
2 executive director of the West Virginia development office and any
3 local workforce investment board representing an area of this state
4 in which the agency is engaged in workforce investment activities.
5 To the extent permitted by federal law, the agreements are to
6 maximize coordination of workforce investment activities and
7 eliminate duplication of services on both state and local levels.
8 (e) No memorandum of understanding may be effective for more
9 than one year without annual reaffirmation by the parties.
10 (f) Any state agency entering a memorandum of understanding
11 shall deliver a copy thereof to both the West Virginia workforce
12 investment council and the legislative oversight commission.

House Bill 4478

Effective Date: Passed March 11, 2004; in effect July 1, 2004

Signed by Governor: April 5, 2004

Code Reference: Amends and reenacts §18-9-3a

Title: Preparation and Publication of Annual
Financial Statements

Major Provisions:

- Extends the time in which county boards of education have to prepare and publish their annual financial statements from sixty (60) days to ninety (90) days after the beginning of each fiscal year
- Increases the threshold from fifty dollars (\$50) to two-hundred fifty dollars (\$250) for the supplemental list that must be published of the names of each firm, corporation and person to whom more than \$250 was paid during the year by the school board
- Increases the threshold from fifty dollars (\$50) to five hundred dollars (\$500) for the supplemental list that must be provided upon request of the names of each firm, corporation and person to whom less than \$500 was paid during the year by the school board

1 **ENROLLED**
2 **H. B. 4478**
3

4 (By Delegates Kuhn, Renner, Canterbury, Beach,
5 Tabb, Poling and Hamilton)
6

7 [Passed March 11, 2004; in effect July 1, 2004.]
8
9

10 AN ACT to amend and reenact §18-9-3a of the code of West Virginia,
11 1931, as amended, relating to lengthening the time period within
12 which county boards are required to publish a year-end financial
13 statement; and increasing the threshold dollar amount paid to
14 persons, firms and corporations that must be revealed in the
15 statement.

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

17 That §18-9-3a of the code of West Virginia, 1931, as amended, be
18 amended and reenacted to read as follows:

19 **ARTICLE 9. SCHOOL FINANCES.**

20 **§18-9-3a. Preparation, publication and disposition of financial**
21 **statements by county boards of education.**

22 The county board of every county, within ~~sixty-ninety~~ days after
23 the beginning of each fiscal year, shall prepare on a form to be
24 prescribed by the state tax commissioner and the state
25 superintendent of free schools, and cause to be published a
26 statement revealing: (a) ~~the~~ The receipts and expenditures of the
27 board during the previous fiscal year arranged under descriptive
28 headings; (b) the name of each firm, corporation, and person who
29 received more than two hundred fifty dollars in the aggregate from
30 all funds during the previous fiscal year, together with the
31 aggregate amount received from all funds and the purpose for which
32 paid: *Provided*, That such statement shall not include the name of
33 any person who has entered into a contract with this board pursuant
34 to the provisions of sections two, three, four and five, article
35 two, chapter eighteen-a of this code; and (c) all debts of the
36 board, the purpose for which each debt was contracted, its due
37 date, and to what date the interest thereon has been paid. Such
38 statement shall be published as a Class I-0 legal advertisement in
39 compliance with the provisions of article three, chapter fifty-nine
40 of this code, and the publication area for such publication shall
41 be the county. The county board shall pay the cost of publishing
42 such statement from the maintenance fund of the board.

43 As soon as is practicable following the close of the fiscal year,
44 a copy of the published statement herein required shall be filed by
45 the county board with the state tax commissioner and with the state
46 superintendent of free schools.

47 The county board shall transmit to any resident of the county
48 requesting the same a copy of the published statement for the
49 fiscal year designated, supplemented by a list of the names of all
50 school personnel employed by the board during such fiscal year
51 showing the amount paid to each, and a list of the names of each
52 firm, corporation, and person who received less than ~~fifty-five~~
53 hundred dollars from any fund during such fiscal year showing the
54 amount paid to each and the purpose for which paid.

House Bill 4552

Effective Date: Passed March 13, 2004; in effect ninety days from passage

Signed by Governor: April 2, 2004

Code Reference: Amends and reenacts §18A-3-6

Title: Grounds for revocation of certificates; recalling certificates for correction

Major Provisions:

- Changes the "causes" for certification revocation to: intemperance; untruthfulness; cruelty; immorality; the conviction of a felony or a guilty plea or a plea of no contest to a felony charge; the conviction, guilty plea or plea of no contest to any charge involving sexual misconduct with a minor or a student; or for using fraudulent, unapproved or insufficient credit to obtain the certificates
- Requires a "rational nexus" between the conduct of the teacher and the performance of his/her job for conduct involving: intemperance; cruelty; immorality; or using fraudulent, unapproved or insufficient credit to obtain the certificates
- Increases the burden of proving the "cause" that the teacher is "unfit to teach" to "clear and convincing evidence" for revocations initiated regarding the teacher after the employing county disciplined him/her, less than dismissal, or for which the teacher is meeting or has met an improvement plan

1 ENROLLED
2 H. B. 4552
3

4 (By Delegates Tabb, Williams, Renner, Shelton,
5 Crosier, Long and Canterbury)
6

7 [Passed March 13, 2004; in effect ninety days from passage.]
8
9

10 AN ACT to amend and reenact §18A-3-6 of the code of West Virginia,
11 1931, as amended, relating to grounds for the revocation of
12 teacher certificates; providing additional specification of
13 grounds; and limitations.

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

15 That §18A-3-6 of the code of West Virginia, 1931, as amended, be
16 amended and reenacted to read as follows:

17 **ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL**
18 **DEVELOPMENT.**

19 **§18A-3-6. Grounds for revocation of certificates; recalling**
20 **certificates for correction.**

21 The state superintendent may, after ten days' notice and upon
22 proper evidence, revoke the certificates of any teacher for
23 ~~drunkenness, any of the following causes: Intemperance;~~
24 ~~untruthfulness; cruelty; immorality, or for any physical, mental~~
25 ~~or moral defect which would render him unfit for the proper~~
26 ~~performance of his duties as; the conviction of a felony or a~~
27 ~~guilty plea or a teacher, or for any neglect of duty plea of no~~
28 ~~contest to a felony charge; the conviction, guilty plea or refusal~~
29 ~~to perform the same, plea of no contest to any charge involving~~
30 ~~sexual misconduct with a minor or a student; or for using~~
31 ~~fraudulent, unapproved, or insufficient credit, or for any other~~
32 ~~cause which would have justified to obtain the certificates:~~
33 ~~Provided, That the withholding certificates of a certificate when~~
34 ~~teacher may not be revoked for any matter for which the same~~
35 ~~teacher was issued. disciplined, less than dismissal, by the county~~
36 ~~board that employs the teacher, nor for which the teacher is~~
37 ~~meeting or has met an improvement plan determined by the county~~
38 ~~board, unless it can be proven by clear and convincing evidence~~
39 ~~that the teacher has committed one of the offenses listed in this~~
40 ~~subsection and his or her actions render him or her unfit to teach:~~
41 ~~Provided, however, That in order for any conduct of a teacher~~
42 ~~involving intemperance; cruelty; immorality; or using fraudulent,~~
43 ~~unapproved or insufficient credit to obtain the certificates to~~
44 ~~constitute grounds for the revocation of the certificates of the~~
45 ~~teacher, there must be a rational nexus between the conduct of the~~
46 ~~teacher and the performance of his or her job. The state~~
47 ~~superintendent may designate the West Virginia commission for~~
48 ~~professional teaching standards or members thereof to conduct~~
49 ~~hearings on revocations or license certificate denials and make~~
50 ~~recommendations for action by the state superintendent.~~

51 It shall be the duty of any county superintendent who knows of
52 any ~~immorality or neglect of duty acts~~ on the part of any teacher
53 ~~for which a certificate may be revoked in accordance with this~~
54 ~~section~~ to report the same, together with all the facts and

1 evidence, to the state superintendent for such action as in ~~his~~ the
2 state superintendent's judgment may be proper.

3 If a certificate has been granted through an error, oversight,
4 or misinformation, the state superintendent has authority to recall
5 the certificate and make such corrections as will conform to the
6 requirements of law and the state board. If a certificate has been
7 granted through an error, oversight, or misinformation, the state
8 superintendent of schools shall have authority to recall the
9 certificate and make such corrections as will conform to the
10 requirements of law and the state board of education.

House Bill 4553

Effective Date: Passed March 13, 2004; in effect from passage

Signed by Governor: April 5, 2004

Code Reference: Amends and re-enacts §18A-3-1

Title: Relating to standards for awarding certificates to teach in the public schools; and establishing condition on award of certificates to teachers certified by another state

Major Provisions:

- Grants any teacher who holds a valid teaching certificate issued by another state a WV teaching certificate
- Requires the teacher with a valid out-of-state teaching certificate to have graduated from a regionally accredited institution of higher education and to make application for the WV teaching certificate
- Awards certification for the same grade level (s) and subject area (s) that are valid in West Virginia
- Requires an applicant for WV licensure who holds a valid out-of-state certificate to comply with W.Va. Code §18A-3-10 that requires a criminal history check through the WV State Police and the FBI

1
2
3
4
5
6
7
8
9

ENROLLED
H. B. 4553

(By Delegates Tabb, Swartzmiller, Crosier, Hartman,
Poling, Renner and Long)

[Passed March 13, 2004; in effect from passage.]

10 AN ACT to amend and reenact §18A-3-1 of the code of West Virginia,
11 1931, as amended, relating to standards for awarding
12 certificates to teach in the public schools; and establishing
13 condition on award of certificates to teachers certified by
14 another state.

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

16 That §18A-3-1 of the code of West Virginia, 1931, as amended, be
17 amended and reenacted to read as follows:

18 **ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL**
19 **DEVELOPMENT.**

20 **§18A-3-1. Teacher preparation programs; program approval and**
21 **standards; authority to issue teaching**
22 **certificates.**

23 (a) The education of professional educators in the state shall
24 be under the general direction and control of the state board of
25 education after consultation with the secretary of education and
26 the arts and the chancellor ~~of the~~ for higher education ~~policy~~
27 ~~commission~~, who shall represent the interests of teacher
28 preparation programs within the institutions of higher education in
29 this state as those institutions are defined in section two,
30 article one, chapter eighteen-b of this code.

31 The education of professional educators in the state includes
32 all programs leading to certification to teach or serve in the
33 public schools including: (1) Those programs in all institutions
34 of higher education, including student teaching in the public
35 schools; (2) beginning teacher internship programs; (3) the
36 granting of West Virginia certification to persons who received
37 their preparation to teach outside the boundaries of this state;
38 ~~(4) any alternative preparation programs, except as provided in~~
39 ~~subsection (b) of this section;~~ (4) any alternative preparation
40 programs in this state leading to certification, including programs
41 established pursuant to the provisions of section one-a of this
42 article and programs which are in effect on the effective date of
43 this section; and (5) any continuing professional education,
44 professional development and in-service training programs for
45 professional educators employed in the public schools in the state.

46 (b) The state board of education, after consultation with the
47 secretary of education and the arts and the chancellor ~~of the~~ for
48 ~~higher education policy commission~~, who shall represent the
49 interests of teacher preparation programs within the institutions
50 of higher education in this state as those institutions are defined
51 in section two, article one, chapter eighteen-b of this code, shall
52 adopt standards for the education of professional educators in the
53 state and for the awarding of certificates valid in the public
54 schools of this state subject to the following conditions:

55 (1) The standards approved by the board for teacher

1 preparation shall include a provision for the study of
2 multicultural education. As used in this section, multicultural
3 education means the study of the pluralistic nature of American
4 society including its values, institutions, organizations, groups,
5 status positions and social roles;

6 (2) Effective the first day of January, one thousand nine
7 hundred ninety-three, the standards approved by the board shall
8 also include a provision for the study of classroom management
9 techniques and shall include methods of effective management of
10 disruptive behavior which shall include societal factors and their
11 impact on student behavior; and

12 (3) Effective on the effective date of this section, any
13 teacher who has graduated from a teacher preparation program at a
14 regionally accredited institution of higher education and who holds
15 a valid teaching certificate or certificates issued by another
16 state shall be, upon application, awarded a teaching certificate or
17 certificates for the same grade level or levels and subject area or
18 areas valid in the public schools of this state, subject only to
19 the provisions of section ten of this article. As used in this
20 section, multicultural education means the study of the pluralistic
21 nature of American society including its values, institutions,
22 organizations, groups, status positions and social roles.

23 ~~(2) Effective the first day of January, one thousand nine~~
24 ~~hundred ninety-three, the standards approved by the board shall~~
25 ~~also include a provision for the study of classroom management~~
26 ~~techniques and shall include methods of effective management of~~
27 ~~disruptive behavior which shall include societal factors and their~~
28 ~~impact on student behavior.~~

29 (c) To give prospective teachers the teaching experience
30 needed to demonstrate competence as a prerequisite to
31 certification, the state board of education may enter into an
32 agreement with county boards for the use of the public schools.
33 Such agreement shall recognize student teaching as a joint
34 responsibility of the teacher preparation institution and the
35 cooperating public schools and shall include: (1) The minimum
36 qualifications for the employment of public school teachers
37 selected as supervising teachers; (2) the remuneration to be paid
38 public school teachers by the state board, in addition to their
39 contractual salaries, for supervising student teachers; and (3)
40 minimum standards to guarantee the adequacy of the facilities and
41 program of the public school selected for student teaching. The
42 student teacher, under the direction and supervision of the
43 supervising teacher, shall exercise the authority of a substitute
44 teacher.

45 (d) The state superintendent of schools may issue certificates
46 to graduates of teacher education programs and alternative teacher
47 education programs approved by the state board of education and in
48 accordance with this section and rules adopted by the state board
49 after consultation with the secretary of education and the arts and
50 the chancellor ~~of the for~~ higher education ~~policy~~ commission. A
51 certificate to teach shall not be granted to any person who is not
52 a citizen of the United States, is not of good moral character and
53 physically, mentally and emotionally qualified to perform the
54 duties of a teacher and who has not attained the age of eighteen
55 years on or before the first day of October of the year in which

1 his or her certificate is issued; except that an exchange teacher
2 from a foreign country, or an alien person who meets the
3 requirements to teach, may be granted a permit to teach within the
4 public schools of the state.

5 (e) In consultation with the secretary of education and the
6 arts and the chancellor ~~of the~~ for higher education ~~policy~~
7 ~~commission~~, institutions of higher education approved for teacher
8 preparation may cooperate with each other, with the center for
9 professional development and with one or more county boards in the
10 organization and operation of centers to provide selected phases of
11 the teacher preparation program such as student teaching, beginning
12 teacher internship programs, instruction in methodology and seminar
13 programs for college students, teachers with provisional
14 certification, professional support team members and supervising
15 teachers.

16 The institutions of higher education, the center for
17 professional development and county boards may by mutual agreement
18 budget and expend funds for the operation of the centers through
19 payments to the appropriate fiscal office of the participating
20 institutions, the center for professional development and the
21 county boards.

22 (f) The provisions of this section shall not be construed to
23 require the discontinuation of an existing student teacher training
24 center or school which meets the standards of the state board of
25 education.

26 (g) All institutions of higher education approved for teacher
27 preparation in the school year of one thousand nine hundred
28 sixty-two--sixty-three shall continue to hold that distinction so
29 long as they meet the minimum standards for teacher preparation.
30 Nothing contained herein shall infringe upon the rights granted to
31 any institution by charter given according to law previous to the
32 adoption of this code.

House Bill 4554

Effective Date: Passed March 10, 2004; in effect from passage

Signed by Governor: March 25, 2004

Code Reference: Amends and re-enacts §18A-4-15

Title: Relating to the rights, privileges and benefits of substitute service personnel employed to fill vacancies created by leaves of absence, workers' compensation and suspensions for more than thirty working days; and considering certain bus operators to be employed in the same building or working station

Major Provisions:

- Gives full-time school service personnel employees have priority over substitute employees who may be filling vacancies caused by leaves of absences, employee leaves due to Workers' Compensation, and employee leaves due to suspensions
- Requires the county board is to post the position and fill the position according to §18A-4-8b (seniority basis) if the leave extends for more than 30 working days
- Requires a substitute employed to fill the position for more than 20 working days regular employment status "until the regular employee returns to the position or ceases to be employed by the county board"
- Requires a regular or substitute employee to fill the position until the regular employee returns for leave due to receiving Workers' Compensation to return to his/her original position
- Allows county boards of education and superintendents to designate sites for school service personnel competency testing
- Allows sites other than county vocational schools

1
2
3
4
5
6
7
8
9

ENROLLED
H. B. 4554

(By Delegates Shaver, Beach, Howard, Paxton,
Long, Canterbury and Mezzatesta)

[Passed March 10, 2004; in effect from passage.]

10 AN ACT to amend and reenact §18A-4-15 of the code of West
11 Virginia, 1931, as amended, relating to the rights, privileges and
12 benefits of substitute service personnel employed to fill
13 vacancies created by leaves of absence, workers' compensation and
14 suspensions for more than thirty working days; and considering
15 certain bus operators to be employed in the same building or
16 working station.

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

18 That Enacting Section §18A-4-15 of the code of West Virginia, 1931,
19 as amended, be amended and reenacted to read as follows:

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

21 **§18A-4-15. Employment of service personnel substitutes.**

22 (a) The county board shall employ and the county
23 superintendent, subject to the approval of the county board, shall
24 assign substitute service personnel on the basis of seniority to
25 perform any of the following duties:

26 (1) To fill the temporary absence of another service
27 employee;

28 (2) To fill the position of a regular service employee who
29 requests a leave of absence from the county board in writing and
30 who is granted the leave in writing by the county board, and to
31 fill the position of a regular service employee who is on workers'
32 compensation and absent: Provided, That if the absence is to
33 extend beyond thirty working days, the county board, within twenty
34 working days from the commencement of the leave of absence, shall
35 give regular employee status to a person hired to fill the
36 position. The person employed on a regular basis shall be
37 selected shall post the position of the absent employee under the
38 procedures set forth in section eight-b of this article. The
39 substitute shall hold the position and regular employee status
40 only until the regular employee returns to the position and the
41 substitute shall have and shall be accorded all rights, privileges
42 and benefits pertaining to the position: If a substitute service
43 employee is employed to fill the position of the absent employee
44 and is employed in the position for twenty or more working days,
45 the substitute service personnel shall have regular employment
46 status and be accorded all rights, privileges and benefits
47 pertaining to the position until the regular employee returns to
48 the position or ceases to be employed by the county board:
49 Provided, however, That if a regular or substitute employee fills
50 a vacancy that is related to a leave of absence in any manner or
51 the absence of an employee on workers' compensation in any manner
52 as provided in this section, upon termination of the leave of
53 absence the employee shall be returned to his or her original
54 position: Provided further, That no service person may be required
55 to request or to take a leave of absence: And provided further,

1 That no service person shall be deprived of any right or privilege
2 of regular employment status for refusal to request or failure to
3 take a leave of absence;

4 (3) To perform the service of a service employee who is
5 authorized to be absent from duties without loss of pay;

6 (4) To temporarily fill a vacancy in a permanent position
7 caused by severance of employment by the resignation, transfer,
8 retirement, permanent disability, dismissal pursuant to section
9 eight, article two of this chapter, or death of the regular
10 service employee who had been assigned to fill the position:
11 *Provided*, That within twenty working days from the commencement of
12 the vacancy, the board shall fill the vacancy under the procedures
13 set out in section eight-b of this article and section five,
14 article two of this chapter and the person hired to fill the
15 vacancy shall have and shall be accorded all rights, privileges
16 and benefits pertaining to the position;

17 (5) To fill the vacancy created by a regular employee's
18 suspension: *Provided*, That if the suspension is for more than
19 thirty working days ~~the substitute service employee shall be~~
20 ~~assigned to fill the vacancy on a regular basis and shall have and~~
21 ~~be accorded all rights, privileges and benefits pertaining to the~~
22 ~~position until the termination by the county board becomes final.~~
23 the county board shall post the position of the suspended employee
24 under the procedures set forth in section eight-b of this article.
25 If a substitute service employee is employed to fill the suspended
26 employee's position, the substitute service personnel shall have
27 regular employment status and be accorded all rights, privileges
28 and benefits pertaining to the position until the termination by
29 the county board becomes final or the suspended employee is
30 returned to employment. If the suspended employee is not returned
31 to his or her job, the board shall fill the vacancy under the
32 procedures set out in section eight-b of this article and section
33 five, article two of this chapter; and

34 (6) To temporarily fill a vacancy in a newly created position
35 prior to employment of a service personnel on a regular basis
36 under the procedure set forth in section eight-b of this article.

37 (b) Substitutes shall be assigned in the following manner:
38 A substitute with the greatest length of service time, that is,
39 from the date he or she began his or her assigned duties as a
40 substitute in that particular category of employment, shall be
41 given priority in accepting the assignment throughout the period
42 of the regular employee's absence or until the vacancy is filled
43 on a regular basis under the procedures set out in section eight-b
44 of this article. All substitutes shall be employed on a rotating
45 basis according to the length of their service time until each
46 substitute has had an opportunity to perform similar assignments:
47 *Provided*, That if there are regular service employees employed in
48 the same building or working station as the absent employee and
49 who are employed in the same classification category of
50 employment, the regular employees shall be first offered the
51 opportunity to fill the position of the absent employee on a
52 rotating and seniority basis with the substitute then filling the
53 regular employee's position. A regular employee assigned to fill
54 the position of an absent employee shall be given the opportunity
55 to hold that position throughout the absence. For the purpose of

1 this section only, all regularly employed school bus operators are
2 considered to be employed within the same building or working
3 station.

4 (c) Regular school service personnel shall be returned by the
5 county board of education to the same position held prior to any
6 approved leave of absence or period of recovery from injury or
7 illness. The school service personnel shall retain all rights,
8 privileges and benefits which had accrued at the time of the
9 absence or accrued under any other provision of law during the
10 absence and shall have all rights, privileges and benefits
11 generally accorded school service employees at the time of return
12 to work.

13 (d) The salary of a substitute service employee shall be
14 based upon his or her years of employment as defined in section
15 eight of this article and as provided in the state minimum pay
16 scale set forth in section eight-a of this article and shall be in
17 accordance with the salary schedule of persons regularly employed
18 in the same position in the county in which he or she is employed.

19 (e) Before any substitute service employee enters upon his or
20 her duties, he or she shall execute with the county board a
21 written contract as provided in section five, article two of this
22 chapter.

23 (f) To establish a uniform system of providing a fair and
24 equitable opportunity for substitutes to enter upon their duties
25 for the first time, the following method shall be used: The
26 initial order of assigning newly employed substitutes shall be
27 determined by a random selection system established by the
28 affected substitute employees and approved by the county board.
29 This initial priority order shall be in effect only until the
30 substitute service personnel have entered upon their duties for
31 the first time.

32 (g) Substitute service employees who have worked thirty days
33 for a school system shall have all rights pertaining to
34 suspension, dismissal and contract renewal as is granted to
35 regular service personnel in sections six, seven, eight and eight-
36 a, article two of this chapter.

House Bill 4601

Effective Date: Passed March 13, 2004; in effect from passage.

Signed by Governor: April 7, 2004

Code Reference: Amends and reenacts §18-9A-7, §18-9D-2, §18-9D-6, §18-9D-8, §18-9D-15, and §18-9D-16

Title: Relating to public education generally

Major Provisions:

- For the 2004-05 school year only, removes the amount provided through the school aid formula for the replacement of school buses
- For the 2004-05 school year only, requires the transportation allowance of each county to include an allocation for the purpose of trips related to academic classroom curriculum in an equal amount that was provided during the current school year
- Redefines "facilities plan" and "school major improvement plan" to include in the definitions various requirements that were previously spread through other sections
- For the school year beginning July 1, 2004 only, provides that funds that in other years would be made available from excess lottery funds to the school construction fund may not be transferred to the school construction fund, and in lieu thereof, are to be made available for legislative appropriation
- For the school year beginning July 1, 2004 only, up to \$5 million dollars of the amounts in the fund may be appropriated by the Legislature for budget shortfalls
- Allows the SBA to use part of the 3% of certain revenues to fund vocational programs at comprehensive high schools and vocational schools cooperating with community and technical college programs; encourages county boards to cooperate with community and technical colleges in the use of existing or the development of new vocational technical facilities; and requires all projects eligible for funds from the 3% to be submitted directly to the SBA and makes the SBA solely responsible for evaluating the project
- Prohibits the expenditure of 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 10-year facilities plan

- Requires the SBA to provide a county with an explanation of the factors for the decision to fund or not fund a project
- Throughout the bill, clarifies that the SBA can only expend certain moneys on projects authorized in accordance with §18-9D-16; authorizes the SBA to establish guidelines and procedures for project evaluation, etc.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55

ENROLLED
H. B. 4601

(By Delegates Mezzatesta, Williams, Tabb, Renner,
Swartzmiller, Kuhn and Hartman)

[Passed March 13, 2004; in effect from passage.]

AN ACT to amend and reenact §18-9A-7 of the code of West Virginia, 1931, as amended; and to amend and reenact §18-9D-2, §18-9D-6, §18-9D-8, §18-9D-15 and §18-9D-16 of said code, all relating to public education; suspending basic foundation allocation for bus replacement and providing allocation for academic trips for one school year; school building authority; redefining certain terms; correcting references; allowing expenditure of certain moneys for vocational programs at comprehensive high schools and vocational schools cooperating with community and technical college programs; encouraging cooperation relating to vocational technical facilities; authorizing appropriation of up to certain amount of school construction funds for budget purposes for next school year only; providing that excess lottery revenues not be transferred to school construction fund for the next school year only, with funds made available for legislative appropriation; project submission and evaluation; requiring facilities plan as condition of receiving funds; providing for certain guidelines and procedures by authority for plans, plan modifications and evaluating projects; clarifying that certain revenues can only be expended on projects authorized in accordance with the guidelines and procedures section; and providing for certified list of projects to joint committee.

Be it enacted by the Legislature of West Virginia:

That §18-9A-7 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that §18-9D-2, §18-9D-6, §18-9D-8, §18-9D-15 and §18-9D-16 of said code be amended and reenacted, all to read as follows:

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-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 ninety-eight, and thereafter, in the event a~~ any county that 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, the allowance in the foundation school program for ~~each such~~ the county for that portion of its school bus system shall be ninety-five percent of the transportation cost for maintenance, operation and related costs,

1 exclusive of all salaries, incurred by the use of the
2 alternatively fueled school buses: *Provided, however,* That any
3 county using an alternative fuel and qualifying for the additional
4 allowance shall submit a plan regarding the intended future use of
5 alternatively fueled school buses;

6 (2) The total cost, within each county, of insurance premiums
7 on buses, buildings and equipment used in transportation:
8 *Provided, That ~~such the~~ premiums were procured through competitive*
9 *bidding;*

10 (3) ~~For the school year beginning the first day of July, one~~
11 ~~thousand nine hundred ninety-nine, and thereafter, a~~An amount
12 equal to eight and one-third percent of the current replacement
13 value of the bus fleet within each county as determined by the
14 state board, ~~such amount to be used only for the replacement of~~
15 ~~buses. The amount shall only be used for the replacement of buses.~~
16 Buses purchased after the first day of July, one thousand nine
17 hundred ninety-nine, that are driven one hundred eighty thousand
18 miles, regardless of year model, will be subject to the
19 replacement value of eight and one-third percent as determined by
20 the state board: *Provided, That for the school year beginning on*
21 *the first day of July, two thousand four, only, the allowance in*
22 *the foundation school program for each county for transportation*
23 *shall not include an amount for the replacement of buses. In*
24 *addition, in any school year in which its net enrollment increases*
25 *when compared to the net enrollment the year immediately*
26 *preceding, a school district may apply to the state superintendent*
27 *for funding for an additional bus. The state superintendent shall*
28 *make a decision regarding each application based upon an analysis*
29 *of the individual school district's net enrollment history and*
30 *transportation needs: *Provided, however,* That the superintendent*
31 *shall not consider any application which fails to document that*
32 *the county has applied for federal funding for additional buses.*
33 *If the state superintendent finds that a need exists, a request*
34 *for funding shall be included in the budget request submitted by*
35 *the state board for the upcoming fiscal year;*

36 (4) Eighty-five percent of the cost of contracted
37 transportation services and public utility transportation within
38 each high-density county and ninety percent of the cost of
39 contracted transportation services and public utility
40 transportation within each low-density county;

41 (5) Aid in lieu of transportation equal to the state average
42 amount per pupil for each pupil receiving the aid within each
43 county; and

44 (6) Ninety-five percent of the transportation cost for
45 maintenance, operation and related costs, exclusive of all
46 salaries, for transporting students to and from classes at a
47 multicounty vocational center.

48 The total state share for this purpose shall be the sum of the
49 county shares: *Provided, That no county shall receive an*
50 *allowance which is greater than one-third above the computed state*
51 *average allowance per transportation mile multiplied by the total*
52 *transportation mileage in the county: *Provided, however,* That one*
53 *half of one percent of the transportation allowance distributed to*
54 *each county shall be for the purpose of trips related to academic*
55 *classroom curriculum and not related to any extracurricular*

1 activity: Provided further, That for the school year beginning on
2 the first day of July, two thousand four, only the transportation
3 allowance of each county shall include an allocation for the
4 purpose of trips related to academic classroom curriculum and not
5 related to any extracurricular activity. The allocation shall
6 equal the amount distributed to the county for this purpose in the
7 school year beginning on the first day of July, two thousand
8 three: And provided further, That any remaining funds credited to
9 a county for the purpose of trips related to academic classroom
10 curriculum during the fiscal year shall be carried over for use in
11 the same manner the next fiscal year and shall be separate and
12 apart from, and in addition to, the appropriation for the next
13 fiscal year: And provided further, That the state board may
14 request a county to document the use of funds for trips related to
15 academic classroom curriculum if the board determines that it is
16 necessary.

17 ~~The state department of education shall cause a comprehensive~~
18 ~~study to be made relating to student transportation. The study~~
19 ~~shall examine, but is not limited to, the issues of funding,~~
20 ~~timeliness of data used for formula distribution, service~~
21 ~~personnel needed, inter-county service, regionalization of~~
22 ~~services, bus routes, amount of time students spend on buses,~~
23 ~~maintenance, safety training, and alternative transportation~~
24 ~~systems. The state department of education shall submit a report~~
25 ~~of the study to the legislative oversight commission on education~~
26 ~~accountability by the fifteenth day of January, one thousand nine~~
27 ~~hundred ninety-nine.~~

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

29 **§18-9D-2. Definitions.**

30 The following terms, wherever used or referred to in this article,
31 have the following meanings, unless a different meaning clearly
32 appears from the context:

33 (1) "Authority" means the school building authority of West
34 Virginia or, if the authority ~~shall be~~ is abolished, any board or
35 officer succeeding to the principal functions ~~thereof,~~ or the
36 school building authority or to whom the powers given to the
37 authority are given by law;

38 (2) "Bonds" means bonds issued by the authority pursuant to
39 this article;

40 (3) "Construction project" means a project in the furtherance
41 of a facilities plan with a cost of the project greater than five
42 hundred thousand dollars for the new construction, expansion or
43 major renovation of facilities, buildings and structures for
44 school purposes, including the acquisition of land for current or
45 future use in connection therewith, with the construction project,
46 as well as new or substantial upgrading of existing equipment,
47 machinery, furnishings, installation of utilities and other
48 similar items convenient in connection with placing the
49 construction project into operation: Provided, That a
50 construction project may not include such items as books,
51 computers or equipment used for instructional purposes, fuel,
52 supplies, routine utility services fees, routine maintenance
53 costs, ordinary course of business improvements and other items
54 which are customarily ~~deemed~~ considered to result in a current or
55 ordinary course of business operating charge: Provided, however,

1 That a construction project may not include a major improvement
2 project;

3 (4) "Cost of project" means the cost of construction,
4 expansion, renovation, repair and safety upgrading of facilities,
5 buildings and structures for school purposes; the cost of land,
6 equipment, machinery, furnishings, installation of utilities and
7 other similar items convenient in connection with placing the
8 ~~foregoing project into~~ operation; and the cost of financing,
9 interest during construction, professional service fees and all
10 other charges or expenses necessary, appurtenant or incidental to
11 the foregoing, including the cost of administration of this
12 article;

13 (5) "Facilities plan" means a ten-year countywide
14 comprehensive educational facilities plan for school facilities
15 required prior to the distribution of state funds to any county
16 board pursuant to subsection (s), section sixteen of this article;
17 established by the county board in accordance with guidelines
18 adopted by the authority to meet the goals and objectives of this
19 article that: (i) Addresses the existing school facilities and
20 facility needs of the county to provide a thorough and efficient
21 education in accordance with the provisions of this code and
22 policies of the state board; (ii) best serves the needs of the
23 individual student, the general school population and the
24 communities served by the facilities; (iii) includes a school
25 major improvement plan as defined in this section; (iv) is updated
26 annually to reflect projects completed, current enrollment
27 projections and new or continuing needs; and (v) is approved by
28 the state board and the authority prior to the distribution of
29 state funds pursuant to this article to any county board or other
30 entity applying for funds;

31 (6) "Project" means a construction project or a major
32 improvement project;

33 (7) "Region" means the area encompassed within and serviced
34 by a regional educational service agency established pursuant to
35 section twenty-six, article two of this chapter;

36 (8) "Revenue" or "revenues" means moneys deposited in the
37 school building capital improvements fund pursuant to the
38 operation of section ten, article nine-a of this chapter; moneys
39 deposited in the school construction fund pursuant to the
40 operation of section thirty, article fifteen, chapter eleven of
41 this code and pursuant to the operation of section eighteen,
42 article twenty-two, chapter twenty-nine of this code; moneys
43 deposited in the school building debt service fund pursuant to
44 section eighteen, article twenty-two, chapter twenty-nine of this
45 code; moneys deposited in the school major improvement fund
46 pursuant to the operation of section thirty, article fifteen,
47 chapter eleven of this code; any moneys received, directly or
48 indirectly, from any source for use in any project completed
49 pursuant to this article; and any other moneys received by the
50 authority for the purposes of this article;

51 (9) "School major improvement plan" means a ten-year school
52 maintenance plan that: (i) Is prepared by a county board of
53 education in accordance with the guidelines established by the
54 authority and incorporated in its countywide comprehensive
55 educational facilities plan or is to be prepared by each county

1 ~~board of education and by the state board of education or the~~
2 ~~administrative council of an area vocational educational center if~~
3 ~~in accordance with the guidelines if such entity the entities~~
4 ~~seeks funding from the authority for a major improvement project;~~
5 ~~which school major improvement plan is required prior to the~~
6 ~~distribution of state funds for a major improvement project~~
7 ~~pursuant to subsection (b), section sixteen of this article; and~~
8 ~~(ii) addresses the regularly scheduled maintenance for all school~~
9 ~~facilities of the county or under the jurisdiction of the entity~~
10 ~~seeking funding; (iii) includes a projected repair and replacement~~
11 ~~schedule for all school facilities of the county or of entity~~
12 ~~seeking funding; (iv) addresses the major improvement needs of~~
13 ~~each school within the county or under the jurisdiction of the~~
14 ~~entity seeking funding; and (v) is required prior to the~~
15 ~~distribution of state funds for a major improvement project~~
16 ~~pursuant to this article to the county board, state board or~~
17 ~~administrative council; and~~

18 (10) "School major improvement project" means a project with
19 a cost greater than fifty thousand dollars and less than five
20 hundred thousand dollars for the renovation, expansion, the repair
21 and safety upgrading of existing school facilities, buildings and
22 structures, including the substantial repair or upgrading of
23 equipment, machinery, building systems, utilities and other
24 similar items convenient in connection with such renovation,
25 repair or upgrading in the furtherance of a school major
26 improvement plan: Provided, That a major improvement project may
27 not include such items as books, computers or equipment used for
28 instructional purposes, fuel, supplies, routine utility services
29 fees, routine maintenance costs, ordinary course of business
30 improvements and other items which are customarily deemed
31 considered to result in a current or ordinary course of business
32 operating charge.

33 **§18-9D-6. School building capital improvements fund in state**
34 **treasury; school construction fund in state**
35 **treasury; school building debt service fund in state**
36 **treasury; school improvement fund in state treasury;**
37 **collections to be paid into special funds; authority**
38 **to pledge the collections as security for refunding**
39 **revenue bonds; authority to finance projects on a**
40 **cash basis.**

41 (a) There is continued in the state treasury a school
42 building capital improvements fund to be expended by the authority
43 as provided in this article. The school building capital
44 improvements fund shall be an interest-bearing account with
45 interest credited to and deposited in the school building capital
46 improvements fund and expended in accordance with the provisions
47 of this article.

48 The school building authority may pledge all or any part of
49 the revenues paid into the school building capital improvements
50 fund that are needed to meet the requirements of any revenue bond
51 issue or issues authorized by this article prior to the twentieth
52 day of July, one thousand nine hundred ninety-three, or revenue
53 bonds issued to refund revenue bonds issued prior to that date,
54 including the payment of principal of, interest and redemption
55 premium, if any, on the revenue bonds and the establishing and

1 maintaining of a reserve fund or funds for the payment of the
2 principal of, interest and redemption premium, if any, on the
3 revenue bond issue or issues when other moneys pledged may be
4 insufficient for the payment of the principal, interest and
5 redemption premium, including any additional protective pledge of
6 revenues that the authority in its discretion has provided by
7 resolution authorizing the issuance of the bonds or in any trust
8 agreement made in connection with the bond issue. Additionally,
9 the authority may provide in the resolution and in the trust
10 agreement for priorities on the revenues paid into the school
11 building capital improvements fund that are necessary for the
12 protection of the prior rights of the holders of bonds issued at
13 different times under the provisions of this article.

14 Any balance remaining in the school building capital
15 improvements fund after the authority has issued bonds authorized
16 by this article and after the requirements of all funds, including
17 reserve funds established in connection with the bonds issued
18 prior to the twentieth day of July, one thousand nine hundred
19 ninety-three, pursuant to this article have been satisfied may be
20 used for the redemption of any of the outstanding bonds issued
21 under this article which by their terms are then redeemable, or
22 for the purchase of the bonds at the market price, but not
23 exceeding the price, if any, at which the bonds are in the same
24 year redeemable and all bonds redeemed or purchased shall
25 immediately be canceled and shall not again be issued.

26 The school building authority, in its discretion, may use the
27 moneys in the school building capital improvements fund to finance
28 the cost of projects authorized in accordance with the provisions
29 of section sixteen of this article on a cash basis. Any pledge of
30 moneys in the fund for revenue bonds issued prior to the twentieth
31 day of July, one thousand nine hundred ninety-three, is a prior
32 and superior charge on the fund over the use of any of the moneys
33 in the fund to pay for the cost of any project on a cash basis:
34 *Provided*, That any expenditures from the fund, other than for the
35 retirement of revenue bonds, may only be made by the authority in
36 accordance with the provisions of this article.

37 (b) There is continued in the state treasury a special
38 revenue fund named the school building debt service fund into
39 which shall be deposited, the amounts specified in section
40 eighteen, article twenty-two, chapter twenty-nine of this code.
41 All amounts deposited in the fund shall be pledged to the
42 repayment of the principal, interest and redemption premium, if
43 any, on any revenue bonds or refunding revenue bonds authorized by
44 this article: *Provided*, That deposited moneys may not be pledged
45 to the repayment of any revenue bonds issued prior to the first
46 day of January, one thousand nine hundred ninety-four, or with
47 respect to revenue bonds issued for the purpose of refunding
48 revenue bonds issued prior to the first day of January, one
49 thousand nine hundred ninety-four. Additionally, the authority
50 may provide in the resolution and in the trust agreement for
51 priorities on the revenues paid into the school building debt
52 service fund that are necessary for the protection of the prior
53 rights of the holders of bonds issued at different times under the
54 provisions of this article. On or prior to the first day of May
55 of each year, the authority shall certify to the state lottery

1 director the principal and interest and coverage ratio
2 requirements for the following fiscal year on any revenue bonds
3 issued on or after the first day of January, one thousand nine
4 hundred ninety-four, and for which moneys deposited in the school
5 building debt service fund have been pledged, or will be pledged,
6 for repayment pursuant to this section.

7 After the authority has issued bonds authorized by this
8 article and after the requirements of all funds have been
9 satisfied, including coverage and reserve funds established in
10 connection with the bonds issued pursuant to this article, any
11 balance remaining in the school building debt service fund may be
12 used for the redemption of any of the outstanding bonds issued
13 under this article which, by their terms, are then redeemable or
14 for the purchase of the outstanding bonds at the market price, but
15 not to exceed the price, if any, at which the bonds are redeemable
16 and all bonds redeemed or purchased shall be immediately canceled
17 and shall not again be issued: *Provided*, That after the authority
18 has issued bonds authorized by this article and after the
19 requirements of debt service and all associated funds have been
20 satisfied for the fiscal year, including coverage and reserve
21 funds established in connection with the bonds issued pursuant to
22 this article, any remaining balance in the school building debt
23 service fund may be transferred to the school construction fund
24 created in subsection (c) of this section and used by the school
25 building authority in its discretion to finance the cost of school
26 construction or improvement projects authorized in accordance with
27 the provisions of section sixteen of this article on a cash basis.

28 (c) There is continued in the state treasury a special
29 revenue fund named the school construction fund into which shall
30 be deposited the amounts specified in section thirty, article
31 fifteen, chapter eleven of this code and section eighteen-a,
32 article twenty-two, chapter twenty-nine of this code, together
33 with any moneys appropriated to the fund by the Legislature:
34 *Provided*, That for the school year beginning the first day of
35 July, two thousand and four, only, funds from the excess lottery
36 allocated in section eighteen-a, article twenty-two, chapter
37 twenty-nine of this code shall not be transferred to the school
38 construction fund and, in lieu thereof, made available for
39 legislative appropriation: *Provided however*, That for the school
40 year beginning the first day of July, two thousand and four, only,
41 up to five million dollars of the amounts in the fund may be
42 appropriated by the Legislature for budget shortfalls.
43 Expenditures from the school construction fund shall be for the
44 purposes set forth in this article, including lease-purchase
45 payments under agreements made pursuant to subsection (e), section
46 fifteen of this article and section nine, article five of this
47 chapter and are authorized from collections in accordance with the
48 provisions of article three, chapter twelve of this code and from
49 other revenues annually appropriated by the Legislature from
50 lottery revenues as authorized by section eighteen, article
51 twenty-two, chapter twenty-nine of this code pursuant to the
52 provisions set forth in article two, chapter five-a of this code.
53 Amounts collected which are found, from time to time, to exceed
54 the funds needed for purposes set forth in this article may be
55 transferred to other accounts or funds and redesignated for other

1 purposes by appropriation of the Legislature. The school
2 construction fund shall be an interest-bearing account, with the
3 interest credited to and deposited in the school construction fund
4 and expended in accordance with the provisions of this article.
5 Deposits to and expenditures from the school construction fund are
6 subject to the provisions of subsection (k), section fifteen of
7 this article.

8 (d) There is continued in the state treasury a special
9 revenue fund named the school major improvement fund into which
10 shall be deposited the amounts specified in section thirty,
11 article fifteen, chapter eleven of this code, together with any
12 moneys appropriated to the fund by the Legislature. Expenditures
13 from the school major improvement fund shall be for the purposes
14 set forth in this article and are authorized from collections in
15 accordance with the provisions of article three, chapter twelve of
16 this code and from other revenues annually appropriated by the
17 Legislature from lottery revenues as authorized by section
18 eighteen, article twenty-two, chapter twenty-nine of this code
19 pursuant to the provisions set forth in article two, chapter
20 five-a of this code. Amounts collected which are found, from time
21 to time, to exceed the funds needed for purposes set forth in this
22 article may be transferred to other accounts or funds and
23 redesignated for other purposes by appropriation of the
24 Legislature. The school major improvement fund shall be an
25 interest-bearing account, with interest being credited to and
26 deposited in the school major improvement fund and expended in
27 accordance with the provisions of this article.

28 (e) The Legislature finds and declares that the supreme court
29 of appeals of West Virginia has held that the issuance of
30 additional revenue bonds authorized under the school building
31 authority act, as enacted in this article prior to the twentieth
32 day of July, one thousand nine hundred ninety-three, constituted
33 an indebtedness of the state in violation of section four, article
34 X of the constitution of West Virginia, but that revenue bonds
35 issued under this article prior to the twentieth day of July, one
36 thousand nine hundred ninety-three, are not invalid. The
37 Legislature further finds and declares that the financial capacity
38 of a county to construct, lease and improve school facilities
39 depends upon the county's bonding capacity (local property
40 wealth), voter willingness to pass bond issues and the county's
41 ability to reallocate other available county funds instead of
42 criteria related to educational needs or upon the ability of the
43 school building authority created in this article to issue bonds
44 that comply with the holding of the West Virginia supreme court of
45 appeals or otherwise assist counties with the financing of
46 facilities construction and improvement. The Legislature further
47 finds and declares that this section, as well as section eighteen,
48 article twenty-two, chapter twenty-nine of this code, have been
49 reenacted during the first extraordinary session of the West
50 Virginia Legislature in the year one thousand nine hundred
51 ninety-four in an attempt to comply with the holding of the
52 supreme court of appeals of West Virginia.

53 The Legislature further finds and declares that it intends,
54 through the reenactment of this section and section eighteen,
55 article twenty-two, chapter twenty-nine of this code, to dedicate

1 a source of state revenues to special revenue funds for the
2 purposes of paying the debt service on bonds and refunding bonds
3 issued subsequent to the first day of January, one thousand nine
4 hundred ninety-four, the proceeds of which will be used for the
5 construction and improvement of school building facilities. The
6 Legislature further finds and declares that it intends, through
7 the reenactment of this section and section thirty, article
8 fifteen, chapter eleven of this code and section eighteen, article
9 twenty-two, chapter twenty-nine of this code, to appropriate
10 revenues to two special revenue funds for the purposes of
11 construction and improvement of school building facilities.
12 Furthermore, the Legislature intends to encourage county boards to
13 maintain existing levels of county funding for construction,
14 improvement and maintenance of school building facilities and to
15 generate additional county funds for those purposes through bonds
16 and special levies whenever possible. The Legislature further
17 encourages the school building authority, the state board and
18 county boards of education to propose uniform project
19 specifications for comparable projects whenever possible to meet
20 county needs at the lowest possible cost.

21 The Legislature further finds and declares that it intends,
22 through the reenactment of this section and section eighteen,
23 article twenty-two, chapter twenty-nine of this code, to comply
24 with the provisions of sections four and six, article X of the
25 constitution of West Virginia; and section one, article XII of
26 said constitution.

27 **§18-9D-8. Use of proceeds of bonds; bonds exempt from taxation.**

28 (a) The maximum aggregate face value of bonds that may be
29 issued by the authority, for which the moneys in the school
30 building debt service fund are to be pledged, is four hundred
31 million dollars. The issuance of revenue bonds under the
32 provisions of this article shall be authorized, from time to time,
33 by resolution or resolutions of the school building authority,
34 which shall set forth the proposed projects authorized in
35 accordance with the provisions of section sixteen of this article
36 and provide for the issuance of bonds in amounts sufficient, when
37 ~~sold as hereinafter as provided in this section~~, to provide moneys
38 considered sufficient by the authority to pay the costs, less the
39 amounts of any other funds available for the costs or from any
40 appropriation, grant or gift for the costs: *Provided*, That bond
41 issues from which bond revenues are to be distributed in
42 accordance with section fifteen of this article for projects
43 authorized pursuant to the provisions of section sixteen of this
44 article are shall be not required to set forth the proposed
45 projects in the resolution. The resolution shall prescribe the
46 rights and duties of the bondholders and the school building
47 authority, and, for that purpose, may prescribe the form of the
48 trust agreement ~~hereinafter~~ referred to in this section. The
49 bonds may be issued, from time to time, in such amounts; shall be
50 of such series; bear such date or dates; mature at such time or
51 times not exceeding forty years from their respective dates; bear
52 interest at such rate or rates; be in such denominations; be in
53 such form, either coupon or registered, carrying such
54 registration, exchangeability and interchangeability privileges;
55 be payable in such medium of payment and at such place or places

1 within or without the state; be subject to such terms of
2 redemption at such prices not exceeding one hundred five percent
3 of the principal amount of the bonds; and be entitled to such
4 priorities on the revenues paid into the fund pledged for
5 repayment of the bonds as may be provided in the resolution
6 authorizing the issuance of the bonds or in any trust agreement
7 made in connection with the bonds: *Provided, however,* That
8 revenue bonds issued on or after the first day of January, one
9 thousand nine hundred ninety-four, which are secured by lottery
10 proceeds shall mature at such time or times not exceeding ten
11 years from their respective dates.

12 (b) The bonds shall be signed by the governor, and by the
13 president or vice president of the authority, under the great seal
14 of the state, attested by the secretary of state, and the coupons
15 attached to the bonds shall bear the facsimile signature of the
16 president or vice president of the authority. In case any of the
17 officers whose signatures appear on the bonds or coupons cease to
18 be officers before the delivery of the bonds, the signatures shall
19 nevertheless be valid and sufficient for all purposes the same as
20 if the officers had remained in office until the delivery. The
21 revenue bonds shall be sold in the manner determined by the
22 authority to be for the best interests of the state.

23 (c) Any pledge of revenues made by the school building
24 authority for revenue bonds issued prior to the twentieth day of
25 July, one thousand nine hundred ninety-three, pursuant to this
26 article is valid and binding between the parties from the time the
27 pledge is made; and the revenues pledged shall immediately be
28 subject to the lien of the pledge without any further physical
29 delivery ~~thereof~~ of the revenues pledged or further act. The lien
30 of the pledge is valid and binding against all parties having
31 claims of any kind in tort, contract or otherwise, irrespective of
32 whether the parties have notice of the lien of the pledge, and the
33 pledge shall be a prior and superior charge over any other use of
34 the revenues pledged.

35 (d) The proceeds of any bonds shall be used solely for the
36 purpose or purposes as may be generally or specifically set forth
37 in the resolution authorizing those bonds and shall be disbursed
38 in the manner and with the restrictions, if any, that the
39 authority provides in the resolution authorizing the issuance of
40 the bonds or in the trust agreement referred to in this section
41 securing the ~~same~~ bonds. If the proceeds of the bonds, by error
42 in calculations or otherwise, are less than the cost of any
43 projects specifically set forth in the resolution, additional
44 bonds may in like manner be issued to provide the amount of the
45 deficiency; and unless otherwise provided for in the resolution or
46 trust agreement hereinafter mentioned, the additional bonds shall
47 be considered to be of the same issue, and are entitled to payment
48 from the same fund, without preference or priority, as the bonds
49 before issued for the projects. If the proceeds of bonds issued
50 for the projects specifically set forth in the resolution
51 authorizing the bonds issued by the authority exceed the cost of
52 the bonds, the surplus may be used for any other projects
53 ~~determined by the school building authority~~ authorized in
54 accordance with the provisions of section sixteen of this article
55 or in any other manner that the resolution authorizing the bonds

1 provides. Prior to the preparation of definitive bonds, the
2 authority may, under like restrictions, issue temporary bonds with
3 or without coupons, exchangeable for definitive bonds upon the
4 issuance of the definitive bonds.

5 (e) After the issuance of any of revenue bonds, the revenues
6 pledged for the revenue bonds shall not be reduced as long as any
7 of the revenue bonds are outstanding and unpaid except under the
8 terms, provisions and conditions that are contained in the
9 resolution, trust agreement or other proceedings under which the
10 revenue bonds were issued.

11 (f) The revenue bonds and the revenue refunding bonds, and
12 bonds issued for combined purposes ~~shall~~, together with the
13 interest on the bonds, are exempt from all taxation by the state
14 of West Virginia, or by any county, school district, municipality
15 or political subdivision thereof.

16 (g) To meet the operational costs of the school building
17 authority, the school building authority may transfer to a special
18 revenue account in the state treasury interest on any debt service
19 reserve funds created within any resolution authorizing the issue
20 of bonds or any trust agreement made in connection with the bonds,
21 for expenditure in accordance with legislative appropriation or
22 allocation of appropriation.

23 (h) Any school construction bonds issued under this section
24 shall be issued on parity with any existing school building
25 authority bonds previously issued under this article.

1 **§18-9D-15. Legislative intent; allocation of money among**
2 **categories of projects; lease purchase options;**
3 **limitation on time period for expenditure of project**
4 **allocation; county maintenance budget requirements;**
5 **project disbursements over period of years;**
6 **preference for multicounty arrangements; submission**
7 **of project designs; set-aside to encourage local**
8 **participation; etc.**

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

20 (b) An amount that is no more than three percent of the sum
21 of moneys that are determined by the authority to be available for
22 distribution during the then current fiscal year from: (1) Moneys
23 paid into the school building capital improvements fund pursuant
24 to section ten, article nine-a of this chapter; (2) the issuance
25 of revenue bonds for which moneys in the school building debt
26 service fund are pledged as security; (3) moneys paid into the
27 school construction fund pursuant to section six of this article;
28 and (4) any other moneys received by the authority, except moneys
29 paid into the school major improvement fund pursuant to section
30 six of this article, may be allocated and may be expended by the
31 authority for projects authorized in accordance with the
32 provisions of section sixteen of this article that service the
33 educational community statewide or, upon application by the state
34 board, for educational programs that are under the jurisdiction of
35 the state board. In addition, upon application by the state board
36 or the administrative council of an area vocational educational
37 center established pursuant to article two-b of this chapter, the
38 authority may allocate and expend under this subsection moneys for
39 school major improvement projects authorized in accordance with
40 the provisions of section sixteen of this article proposed by the
41 state board or an administrative council for school facilities
42 under the direct supervision of the state board or an
43 administrative council, respectively. Furthermore, upon
44 application by a county board, the authority may allocate and
45 expend under this subsection moneys for school major improvement
46 projects for vocational programs at comprehensive high schools,
47 vocational schools cooperating with community and technical,
48 college programs, or both. Each county board is encouraged to
49 cooperate with community and technical colleges in the use of
50 existing or development of new vocational technical facilities.
51 All projects eligible for funds from this subsection shall be
52 submitted directly to the authority which shall be solely
53 responsible for the project's evaluation: Provided, That the
54 authority may not expend any moneys for a school major improvement
55 project proposed by the state board or the administrative council

1 of an area vocational educational center unless the state board or
2 an administrative council has submitted a ten-year facilities
3 plan, ~~to be updated annually, pursuant to section sixteen of this~~
4 ~~article:~~ *Provided, however,* That the authority shall, before
5 allocating any moneys to the state board or the administrative
6 council of an area vocational educational center for a school
7 improvement project, consider all other funding sources available
8 for the project.

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

21 (d) An amount that is no more than five percent of the moneys
22 that are determined by the authority to be available for
23 distribution during the current fiscal year from: (1) Moneys paid
24 into the school building capital improvements fund pursuant to
25 section ten, article nine-a of this chapter; (2) the issuance of
26 revenue bonds for which moneys in the school building debt service
27 fund are pledged as security; (3) moneys paid into the school
28 construction fund pursuant to section six of this article; and (4)
29 any other moneys received by the authority, except moneys
30 deposited into the school major improvement fund, may be reserved
31 by the authority for multiuse vocational-technical education
32 facilities projects that may include post-secondary programs as a
33 first priority use. The authority may allocate and expend under
34 this subsection moneys for any purposes authorized in this article
35 on multiuse vocational-technical education facilities projects,
36 including and for equipment and equipment updates at the
37 facilities, authorized in accordance with the provisions of
38 section sixteen of this article. If the projects approved under
39 this subsection do not require the full amount of moneys reserved,
40 moneys above the amount required may be allocated and expended in
41 accordance with other provisions of this article. A county board,
42 the state board, an administrative council or the joint
43 administrative board of a vocational-technical education facility
44 which includes post-secondary programs may propose projects for
45 facilities or equipment, or both, which are under the direct
46 supervision of the respective body: *Provided,* That the authority
47 shall, before allocating any moneys for a project under this
48 subsection, consider all other funding sources available for the
49 project.

50 (e) The remaining moneys determined by the authority to be
51 available for distribution during the then current fiscal year
52 from: (1) Moneys paid into the school building capital
53 improvements fund pursuant to section ten, article nine-a of this
54 chapter; (2) the issuance of revenue bonds for which moneys in the
55 school building debt service fund are pledged as security; (3)

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

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

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

27 (2) The loan agreement shall provide for the state board and
28 the authority to defer the payment of principal and interest upon
29 any loan made to the county board during the term of the
30 investment contract, and annual renewals of the investment
31 contract, among the state board, the authority, the county board
32 and a lessor: *Provided*, That in the event a county board which has
33 received a loan from the authority for a one-time payment at the
34 beginning of the lease term does not renew the subject lease
35 annually until performance of the investment contract in its
36 entirety is completed, the county board is in default and the
37 principal of the loan, together with all unpaid interest accrued
38 to the date of the default, shall, at the option of the authority,
39 in consultation with the state board, become due and payable
40 immediately or subject to renegotiation among the state board, the
41 authority and the county board: *Provided, however*, That if a
42 county board renews the lease annually through the performance of
43 the investment contract in its entirety, the county board shall
44 exercise its option to purchase the leased premises: *Provided*
45 *further*, That the failure of the county board to make a scheduled
46 payment pursuant to the investment contract constitutes an event
47 of default under the loan agreement: *And provided further*, That
48 upon a default by a county board, the principal of the loan,
49 together with all unpaid interest accrued to the date of the
50 default, shall, at the option of the authority, in consultation
51 with the state board, become due and payable immediately or
52 subject to renegotiation among the state board, the authority and
53 the county board: *And provided further*, That if the loan becomes
54 due and payable immediately, the authority, in consultation with
55 the state board, shall use all means available under the loan

1 agreement and law to collect the outstanding principal balance of
2 the loan, together with all unpaid interest accrued to the date of
3 payment of the outstanding principal balance; and

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

9 (g) To encourage county boards to proceed promptly with
10 facilities planning and to prepare for the expenditure of any
11 state moneys derived from the sources described in this section,
12 any county board or other entity to whom moneys are allocated by
13 the authority that fails failing to expend the money within three
14 years of the allocation shall forfeit the allocation and
15 thereafter is ineligible for further allocations pursuant to this
16 section until ~~the county board~~ it is ready to expend funds in
17 accordance with an approved facilities plan: *Provided*, That the
18 authority may authorize an extension beyond the three-year
19 forfeiture period not to exceed an additional two years. Any
20 amount forfeited shall be added to the total funds available in
21 the school construction fund of the authority for future
22 allocation and distribution. Funds may not be distributed to ~~any~~
23 ~~county board that does not have a comprehensive educational~~
24 ~~facility plan approved by the state board and the~~ for any project
25 under this article unless the responsible entity has a facilities
26 plan approved by the state board and the school building authority
27 and is prepared to commence expenditure of the funds during the
28 fiscal year in which the moneys are distributed.

29 (h) The remaining moneys that are determined by the authority
30 to be available for distribution during the then current fiscal
31 year from moneys paid into the school major improvement fund
32 pursuant to section six of this article shall be allocated and
33 distributed on the basis of need and efficient use of resources;
34 ~~the basis to be determined by the authority for projects~~
35 authorized in accordance with the provisions of section sixteen of
36 this article: Provided, That the moneys may not be distributed to
37 ~~any county board that does not have an approved school major~~
38 ~~improvement plan or to any county board that is not prepared to~~
39 for any project under this section unless the responsible entity
40 has a facilities plan approved by the state board and the
41 authority and is to commence expenditures of the funds during the
42 fiscal year in which the moneys are distributed: Provided,
43 however, That any moneys allocated to a ~~county board project~~ and
44 not distributed to ~~that county board for that project~~ shall be
45 deposited in an account to the credit of ~~that county board the~~
46 project, the principal amount to remain to the credit of and
47 available to the ~~county board project~~ for a period of two years.
48 Any moneys which are unexpended after a two-year period shall be
49 redistributed on the basis of need from the school major
50 improvement fund in that fiscal year.

51 (i) No local matching funds may be required under the
52 provisions of this section. However, the responsibilities of the
53 county boards of education to maintain school facilities are not
54 negated by the provisions of this article. To be eligible to
55 receive an allocation of school major improvement funds from the

1 authority, a county board must have expended in the previous
2 fiscal year an amount of county moneys equal to or exceeding the
3 lowest average amount of money included in the county board's
4 maintenance budget over any three of the previous five years and
5 must have budgeted an amount equal to or greater than the average
6 in the current fiscal year: *Provided*, That the state board shall
7 promulgate rules relating to county boards' maintenance budgets,
8 including items which shall be included in the budgets.

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

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

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

32 (l) It is the intent of the Legislature to encourage county
33 boards to explore and consider arrangements with other counties
34 that may facilitate the highest and best use of all available
35 funds, which may result in improved transportation arrangements
36 for students or which otherwise may create efficiencies for county
37 boards and the students. In order to address the intent of the
38 Legislature contained in this subsection, the authority shall
39 grant preference to those projects which involve multicounty
40 arrangements as the authority shall determine reasonable and
41 proper.

42 (m) County boards shall submit all designs for construction
43 of new school buildings to the school building authority for
44 review and approval prior to preparation of final bid documents:
45 *Provided*, That a vendor who has been debarred pursuant to the
46 provisions of sections thirty-three-a through thirty-three-f,
47 inclusive, article three, chapter five-a of this code, may not bid
48 on or be awarded a contract under this section.

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

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

54 (2) The authority may not approve the use of more than fifty
55 percent of the revenue available for distribution in any given

1 fiscal year for projects that are to be funded over ~~more~~ a period
2 of more than one year; and

3 (3) In order to encourage local participation in funding
4 school construction projects, the authority may set aside limited
5 funding, not to exceed five hundred thousand dollars, in reserve
6 for one additional year to provide a county the opportunity to
7 complete financial planning for a project prior to the allocation
8 of construction funds. Any ~~such~~ funding shall be on a reserve
9 basis and converted to a part of the construction grant only after
10 all project budget funds have been secured and all county
11 commitments have been fulfilled. Failure of the county to
12 solidify the project budget and meet its obligations to the state
13 within eighteen months of the date the funding is set aside by the
14 authority will result in expiration of the reserve and the funds
15 shall be reallocated by the authority in the succeeding funding
16 cycle.

17 **§18-9D-16. Authority to establish guidelines and procedures for**
18 **facilities and major improvement plans generally;**
19 **need-based eligibility; guidelines for modifications**
20 **and updates, etc.; guidelines for project**
21 **evaluation; submission of certified list of projects**
22 **to be funded; department on-site inspection of**
23 **facilities; enforcement of required changes or**
24 **additions to project plans.**

25 (a) The authority shall establish guidelines and procedures
26 to promote the intent and purposes of this article and assure the
27 prudent and resourceful expenditure of state funds for projects
28 under this article including, but not limited to, the following:
29 To facilitate the goals as stated in section fifteen of this
30 article and to assure the prudent and resourceful expenditure of
31 state funds for construction projects as described in subsection
32 (d) of said section, each county board of education shall submit
33 a countywide comprehensive educational facilities plan that
34 addresses the facilities and major improvement needs of the county
35 and includes up-to-date projections of student enrollments
36 pursuant to such guidelines as shall be adopted by the authority
37 in accordance with this section and in accordance with each
38 county's facilities plan approved by the state board of education.
39 Any project receiving funding must be in furtherance of the
40 approved countywide facilities plan.

41 (1) Guidelines and procedures for the facilities plans,
42 school major improvement plans and projects submitted in the
43 furtherance of the plans that address, but are not limited to, the
44 following: To assure efficiency and productivity in the project
45 approval process, the countywide facilities plan may be submitted
46 only after a preliminary plan, a plan outline or a proposal for a
47 plan has been submitted to the authority. Selected members of the
48 authority, which selection shall include citizen members, shall
49 then meet promptly with those persons designated by the county
50 board to attend the facilities plan consultation. The purpose of
51 the consultation is to assure understanding of the general goals
52 of the school building authority and the specific goals
53 encompassed in the following criteria and to discuss ways the plan
54 may be structured to meet those goals.

55 (A) All of the elements of the respective plans as defined in

1 section two of this article;

2 (B) The procedures for a county to submit a preliminary plan,
3 a plan outline or a proposal for a plan to the authority prior to
4 the submission of the facilities plan. The preliminary plan, plan
5 outline or proposal for a plan shall be the basis for a
6 consultation meeting between representatives of the county and
7 members of the authority, including at least one citizen member,
8 which shall be held promptly following submission of the
9 preliminary plan, plan outline or proposal for a plan to assure
10 understanding of the general goals of this article and the
11 objective criteria by which projects will be evaluated, to discuss
12 ways the plan may be structured to meet those goals, and to assure
13 efficiency and productivity in the project approval process;

14 (C) The manner, time line and process for the submission of
15 each plan and annual plan updates to the authority;

16 (D) The requirements for public hearings, comments or other
17 means of providing broad-based input on plans and projects under
18 this article within a reasonable time period as the authority may
19 consider appropriate. The submission of each plan must be
20 accompanied by a synopsis of all comments received and a formal
21 comment by the county board, the state board or the administrative
22 council of an area vocational educational center submitting the
23 plan;

24 (E) Any project specifications and maintenance specifications
25 considered appropriate by the authority including, but not limited
26 to, such matters as energy efficiency, preferred siting,
27 construction materials, maintenance plan and any other matter
28 related to how the project is to proceed;

29 (F) A prioritization by the county board, the state board or
30 the administrative council submitting the plan of each project
31 contained in the plan. In prioritizing the projects, the county
32 board, the state board or the administrative council submitting
33 the plan shall make determinations in accordance with the
34 objective criteria formulated by the school building authority in
35 accordance with this section. The priority list is one of the
36 criteria that shall be considered by the authority deciding how
37 the available funds should be expended;

38 (G) The objective means to be set forth in the plan and used
39 in evaluating implementation of the overall plan and each project
40 included in the plan. The evaluation must measure how the plan
41 addresses the goals of this article and any guidelines adopted
42 under this article, and how each project is in furtherance of the
43 facilities plan and school major improvement plan, as applicable,
44 as well as the importance of the project to the overall success of
45 the facilities plan or school major improvement plan and the
46 overall goals of the authority; and

47 (H) Any other matters considered by the authority to be
48 important reflections of how a construction project or a major
49 improvement project or projects will further the overall goals of
50 this article.

51 (2) The guidelines for the development of a facilities plan
52 must state the manner, timeline and process for submission of any
53 plan to the authority; project specifications considered
54 appropriate by the authority, and those matters which are
55 considered by the authority to be important reflections of how the

1 ~~project will further the overall goals of the authority and~~
2 ~~procedures which may be adopted by the authority for requiring~~
3 ~~that a county board modify, update, supplement or otherwise submit~~
4 ~~changes or additions to an approved facilities plan or for~~
5 ~~requiring that a county board, the state board or the~~
6 ~~administrative council of an area vocational educational center~~
7 ~~modify, update, supplement or otherwise submit changes or~~
8 ~~additions to an approved school major improvement plan. The~~
9 ~~authority shall provide reasonable notification and sufficient~~
10 ~~time for the change or addition as delineated in guidelines~~
11 ~~developed by the authority.~~

12 ~~(3) Guidelines and procedures for evaluating project~~
13 ~~proposals that are submitted to the authority that address, but~~
14 ~~are not limited to, the following:~~

15 ~~(A) Any project funded by the authority must be in~~
16 ~~furtherance of the facilities plan or school major improvement~~
17 ~~plan and in compliance with the guidelines established by the~~
18 ~~authority;~~

19 ~~(B) If a project is to benefit more than one county in the~~
20 ~~region, the facilities plan must state the manner in which the~~
21 ~~cost and funding of the project will be apportioned among the~~
22 ~~counties;~~

23 ~~(C) If a county board proposes to finance a construction~~
24 ~~project through a lease with an option to purchase pursuant to an~~
25 ~~investment contract as described in subsection (f), section~~
26 ~~fifteen of this article, the specifications for the project must~~
27 ~~include the term of the lease, the amount of each lease payment,~~
28 ~~including the payment due upon exercise of the option to purchase,~~
29 ~~and the terms and conditions of the proposed investment contract;~~
30 ~~and~~

31 ~~(D) The objective criteria for the evaluation of projects~~
32 ~~which shall include, but are not limited to, the following:~~

33 ~~(i) How the current facilities do not meet and how the plan~~
34 ~~and any project under the plan meets the following:~~

35 ~~(I) Student health and safety including, but not limited to,~~
36 ~~critical health and safety needs;~~

37 ~~(II) Economies of scale, including compatibility with similar~~
38 ~~schools that have achieved the most economical organization,~~
39 ~~facility use and pupil-teacher ratios;~~

40 ~~(III) Reasonable travel time and practical means of~~
41 ~~addressing other demographic considerations;~~

42 ~~(IV) Multicounty and regional planning to achieve the most~~
43 ~~effective and efficient instructional delivery system;~~

44 ~~(V) Curriculum improvement and diversification, including the~~
45 ~~use of instructional technology, distance learning and access to~~
46 ~~advanced courses in science, mathematics, language arts and social~~
47 ~~studies;~~

48 ~~(VI) Innovations in education;~~

49 ~~(VII) Adequate space for projected student enrollments;~~

50 ~~(VIII) The history of efforts taken by the county board to~~
51 ~~propose or adopt local school bond issues or special levies to the~~
52 ~~extent constitutionally permissible; and~~

53 ~~(IX) Regularly scheduled preventive maintenance; and~~

54 ~~(ii) How the project will assure the prudent and resourceful~~
55 ~~expenditure of state funds and achieve the purposes of this~~

1 article for constructing, expanding, renovating or otherwise
2 improving and maintaining school facilities for a thorough and
3 efficient education.

4 (4) Guidelines and procedures for evaluating projects for
5 funding that address, but are not limited to, the following:

6 (A) Requiring each county board's facilities plan and school
7 major improvement plan to prioritize all the construction projects
8 or major improvement projects, respectively, within the county.
9 A school major improvement plan submitted by the state board or
10 the administrative council of an area vocational educational
11 center shall prioritize all the school improvement projects
12 contained in the plan. The priority list shall be one of the
13 criteria to be considered by the authority in determining how
14 available funds shall be expended. In prioritizing the projects,
15 the county board, the state board or the administrative council
16 submitting a plan shall make determinations in accordance with the
17 objective criteria formulated by the school building authority;

18 (B) The return to each county submitting a project proposal
19 an explanation of the evaluative factors underlying the decision
20 of the authority to fund or not to fund the project; and

21 (C) The allocation and expenditure of funds in accordance
22 with this article, subject to the availability of funds.

23 (b) Prior to final action on approving projects for funding
24 under this article, the authority shall submit a certified list of
25 the projects to the joint committee on government and finance. To
26 facilitate the goals as stated in section fifteen of this article
27 and to assure the prudent and resourceful expenditure of state
28 funds derived from the school major improvement fund, each county
29 board of education shall submit to the authority a ten-year
30 countywide school major improvement plan that addresses the major
31 improvement needs of each school within the county. If the state
32 board of education or the administrative council of an area
33 vocational educational center chooses to seek funding for a major
34 improvement project from the authority pursuant to subsection (f)
35 of said section, the state board or the administrative council
36 shall submit a ten-year school major improvement plan that
37 addresses the major improvement needs of the school or area
38 vocational educational center for which funding is sought. Each
39 ten-year school major improvement plan must be prepared pursuant
40 to guidelines adopted by the authority in accordance with this
41 section and must be updated annually to reflect projects
42 completed, current enrollment projections and new or continuing
43 needs. Any school major improvement project funded by the
44 authority must be in furtherance of the approved school major
45 improvement plan.

46 The guidelines for the development and annual updates of a
47 ten-year school major improvement plan must state the manner,
48 timeline and process for submission of any plan, including a
49 repair and replacement schedule for school facilities, to the
50 authority; the maintenance specifications considered appropriate
51 by the authority; and those matters which are considered by the
52 authority to be important reflections of how the major improvement
53 project or projects will further the overall goals of the
54 authority.

55 (c) The state department of education shall conduct on-site

1 inspections, at least annually, of all facilities which have been
2 funded wholly or in part by moneys from the authority or state
3 board to ensure compliance with the county board's facilities plan
4 and school major improvement plan as related to the facilities; to
5 preserve the physical integrity of the facilities to the extent
6 possible; and to otherwise extend the useful life of the
7 facilities: Provided, That the state board shall submit reports
8 regarding its on-site inspections of facilities to the authority
9 within thirty days of completion of the on-site inspections:
10 Provided, however, That the state board shall promulgate rules
11 regarding the on-site inspections and matters relating thereto, in
12 consultation with the authority, as soon as practical and shall
13 submit proposed rules for legislative review no later than the
14 first day of December, one thousand nine hundred ninety-four.The
15 guidelines regarding submission of the facilities plans and school
16 major improvement plans must include requirements for public
17 hearings, comments or other means of providing broad-based input
18 within a reasonable time period as the authority may consider
19 appropriate. The submission of each plan must be accompanied by a
20 synopsis of all comments received and a formal comment by the
21 county board, the state board or the administrative council of an
22 area vocational educational center submitting the plan.

23 ~~_____ The guidelines regarding project specifications may include~~
24 ~~such matters as energy efficiency, preferred siting, construction~~
25 ~~materials, maintenance plan or any other matter related to how the~~
26 ~~project is to proceed. If a county board of education proposes to~~
27 ~~finance a construction project through a lease with an option to~~
28 ~~purchase pursuant to an investment contract as described in~~
29 ~~subsection (e), section fifteen of this article, the~~
30 ~~specifications for the project must include the term of the lease,~~
31 ~~the amount of each lease payment, including the payment due upon~~
32 ~~exercise of the option to purchase, and the terms and conditions~~
33 ~~of the proposed investment contract.~~

34 (d) Based on its on-site inspection or notification by the
35 authority to the state board that the changes or additions to a
36 county's board facilities plan or school major improvement plan
37 required by the authority have not been implemented within the
38 time period prescribed by the authority, the state board shall
39 restrict the use of the necessary funds or otherwise allocate
40 funds from moneys appropriated by the Legislature for those
41 purposes set forth in section nine, article nine-a of this
42 chapter. The guidelines pertaining to quality educational
43 facilities must require that a facilities plan address how the
44 current facilities do not meet and how the proposed plan and any
45 project thereunder does meet the following goals:

- 46 ~~_____ (1) Student health and safety;~~
47 ~~_____ (2) Economies of scale, including compatibility with similar~~
48 ~~schools that have achieved the most economical organization,~~
49 ~~facility utilization and pupil-teacher ratios;~~
50 ~~_____ (3) Reasonable travel time and practical means of addressing~~
51 ~~other demographic considerations;~~
52 ~~_____ (4) Multicounty and regional planning to achieve the most~~
53 ~~effective and efficient instructional delivery system;~~
54 ~~_____ (5) Curriculum improvement and diversification, including~~
55 ~~computerization and technology and advanced senior courses in~~

1 science, mathematics, language arts and social studies;
2 ~~_____ (6) Innovations in education;~~
3 ~~_____ (7) Adequate space for projected student enrollments; and~~
4 ~~_____ (8) To the extent constitutionally permissible, each~~
5 ~~facilities plan must address the history of efforts taken by the~~
6 ~~county board to propose or adopt local school bond issues or~~
7 ~~special levies.~~
8 ~~If the project is to benefit more than one county in the region,~~
9 ~~the facilities plan must state the manner in which the cost and~~
10 ~~funding of the project will be apportioned among the counties.~~
11 ~~_____ (e) The guidelines pertaining to quality educational~~
12 ~~facilities must require that a school major improvement plan~~
13 ~~address how the proposed plan and any project thereunder meet the~~
14 ~~following goals:~~
15 ~~_____ (1) Student health and safety, including, but not limited to,~~
16 ~~critical health and safety needs; and~~
17 ~~_____ (2) Economies of scale, including regularly scheduled~~
18 ~~preventive maintenance: Provided, That each county board's school~~
19 ~~maintenance plan must address regularly scheduled maintenance for~~
20 ~~all facilities within the county.~~
21 ~~_____ (f) Each county board's facilities plan and school major~~
22 ~~improvement plan must prioritize all the construction projects or~~
23 ~~major improvement projects, respectively, within the county. A~~
24 ~~school major improvement plan submitted by the state board or the~~
25 ~~administrative council of an area vocational educational center~~
26 ~~must prioritize all the school improvement projects contained in~~
27 ~~the plan. The priority list is one of the criteria to be~~
28 ~~considered by the authority in determining how available funds~~
29 ~~must be expended. In prioritizing the projects, the county board,~~
30 ~~the state board or the administrative council submitting a plan,~~
31 ~~shall make determinations in accordance with the objective~~
32 ~~criteria formulated by the school building authority.~~
33 ~~_____ (g) Each facilities plan and school major improvement plan~~
34 ~~must include the objective means to be used in evaluating~~
35 ~~implementation of the overall plan and each project included~~
36 ~~therein. The evaluation must measure each project's furtherance of~~
37 ~~each applicable goal stated in this section and any guidelines~~
38 ~~adopted hereunder, as well as the overall success of any project~~
39 ~~as it relates to the facilities plan or school major improvement~~
40 ~~plan and the overall goals of the authority.~~
41 ~~_____ (h) The state department of education shall conduct on-site~~
42 ~~inspections, at least annually, of all facilities which have been~~
43 ~~funded wholly or in part by moneys from the authority or state~~
44 ~~board to ensure compliance with the county board's facilities plan~~
45 ~~and school major improvement plan as related to the facilities; to~~
46 ~~preserve the physical integrity of the facilities to the extent~~
47 ~~possible; and to otherwise extend the useful life of the~~
48 ~~facilities: Provided, That the state board shall submit reports~~
49 ~~regarding its on-site inspections of facilities to the authority~~
50 ~~within thirty days of completion of the on-site inspections:~~
51 ~~Provided, however, That the state board shall promulgate rules~~
52 ~~regarding the on-site inspections and matters relating thereto, in~~
53 ~~consultation with the authority, as soon as practical and shall~~
54 ~~submit proposed rules for legislative review no later than the~~
55 ~~first day of December, one thousand nine hundred ninety-four.~~

1 ~~—— (i) The authority may adopt guidelines for requiring that a~~
2 ~~county board modify, update, supplement or otherwise submit~~
3 ~~changes or additions to an approved facilities plan or for~~
4 ~~requiring that a county board, the state board or the~~
5 ~~administrative council of an area vocational educational center~~
6 ~~modify, update, supplement or otherwise submit changes or~~
7 ~~additions to an approved county board facilities plan or school~~
8 ~~major improvement plan. The authority shall provide reasonable~~
9 ~~notification and sufficient time for the change or addition as~~
10 ~~delineated in guidelines developed by the authority.~~

11 ~~—— (j) Based on its on-site inspection or notification by the~~
12 ~~authority to the state board that the changes or additions to a~~
13 ~~county's board facilities plan or school major improvement plan~~
14 ~~required by the authority have not been implemented within the~~
15 ~~time period prescribed by the authority, the state board shall~~
16 ~~restrict the use of the necessary funds or otherwise allocate~~
17 ~~funds from moneys appropriated by the Legislature for those~~
18 ~~purposes set forth in section nine, article nine-a of this~~
19 ~~chapter.~~

HOUSE BILL 4669

Effective Date: Passed March 13, 2004; in effect from passage

Signed by Governor: March 31, 2004

Code Reference: Amends code by adding a new section designated §18-2E-3f

Title: Relating to providing for special five-year demonstration professional development schools project

Major Provisions:

- Establishes a special five-year demonstration professional development school project to improve the academic achievement of all children
- Places the program under the direction of the state superintendent beginning with the 2004-05 school year
- Intends to provide an environment within which the public schools included in the project may collaborate with higher education, community organizations and the state board to develop replicable strategies to improve academic achievement for disadvantaged, minority and under-achieving students.
- Gives the state superintendent the following powers and duties:
 - a) To select three public elementary or middle schools with significant enrollments of disadvantaged, minority and under-achieving students in each county containing five percent or more African-American students based on second month enrollment
 - b) To require county board cooperation to facilitate program implementation and resource coordination and allocation
 - c) To require professional development of staff in participating schools that is related to improving the performance of disadvantaged, minority and under-achieving students
 - d) To craft job descriptions regarding training and experience and specify job duties as related to job performance in order to accomplish the mission of the demonstration project

- e) To provide specifications and direct county boards to post positions for school personnel that encompass the special qualifications and duties required of personnel; disallows any assertion that job descriptions and postings are narrowly defined to be the basis for a grievance relative to an employment decision
 - f) To direct the West Virginia Department of Education, Center for Professional Development and RESAs to provide essential technical assistance and professional development relative to the successful implementation of programs
 - g) To collaborate with higher education in developing professional development school program models with funds appropriated for this purpose subject to state board approval
 - h) To require collaboration with local community organizations to improve student achievement and to increase parent/guardian involvement
 - i) To provide for an independent evaluation of the demonstration school project
 - j) To recommend to the state board and county boards the waiver of any policy that impedes implementation of programs
- Requires the state superintendent to provide status reports to LOCEA and to the state board annually; such reports may included improvement recommendations

Requires the state superintendent to recommend continuation or termination of the project prior to the regular session of the 2010 Legislature

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55

ENROLLED

H. B. 4669

(By Delegate Tabb, Williams, Paxton, Beach,
Crosier, Swartzmiller and Long)

[Passed March 13, 2004; in effect from passage.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2E-3f, related to requiring establishment of special five-year demonstration professional development school project; making certain findings; providing certain powers and duties of state superintendent with respect to project; requiring reports; and excluding requirement of specific appropriations.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-2E-3f, to read as follows:

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-3f. Special demonstration professional development school project for improving academic achievement.

(a) The Legislature makes the following findings:

(1) Well-educated children and families are essential for maintaining safe and economically sound communities;

(2) Low student achievement is associated with increased delinquent behavior, higher drug use and pregnancy rates, and higher unemployment and adult incarceration rates;

(3) Each year, more students enter school with circumstances in their lives that schools are ill-prepared to accommodate;

(4) Ensuring access for all students to the rigorous curriculum they deserve requires effective teaching strategies that include, but are not limited to, using a variety of instructional approaches, using varied curriculum materials, engaging parent and community involvement and support in the educational process, and providing the professional development, support and leadership necessary for an effective school; and

(5) The achievement of all students can be dramatically improved when schools focus on factors within their control, such as the instructional day, curriculum and teaching practices.

(b) The purpose of this section is to provide for the establishment of a special five-year demonstration professional development school project to improve the academic achievement of all children. The program shall be under the direction of the state superintendent and shall be for a period of five years beginning with the two thousand four - two thousand five school year. The intent of this section is to provide a special demonstration environment wherein the public schools included in the demonstration project may work in collaboration with higher education, community organizations and the state board to develop and implement strategies that may be replicated in other public schools with significant enrollments of disadvantaged, minority and under-achieving students to improve academic achievement. For this purpose, the state superintendent has the following powers and

1 duties with respect to the demonstration project:
2 _____ (1) To select for participation in the demonstration project
3 three public elementary or middle schools with significant
4 enrollments of disadvantaged, minority and under-achieving students
5 in each county in which the number of the African American students
6 is five percent or more of the total second month enrollment;
7 _____ (2) To require cooperation from the county board of the county
8 wherein a demonstration project school is located to facilitate
9 program implementation and avoid any reallocation of resources for
10 the schools that are disproportionate with those for other schools
11 of the county of similar classification, accreditation status and
12 federal Title I identification;
13 _____ (3) To require specialized training and knowledge of the
14 needs, learning styles and strategies that will most effectively
15 improve the performance of disadvantaged, minority and under-
16 achieving students in demonstration project schools. These powers
17 include, but not limited to, the authority to craft job
18 descriptions with requirements regarding training and experience
19 and the right to specify job duties which are related to job
20 performance that reflect the mission of the demonstration project
21 school;
22 _____ (4) To provide specifications and direct the county board to
23 post the positions for school personnel employed at the
24 demonstration project school that encompass the special
25 qualifications and any additional duties that will be required of
26 the personnel as established in the job descriptions authorized
27 pursuant to subdivision (3) of this section. The assertion that
28 the job descriptions and postings are narrowly defined may not be
29 used as the basis for the grievance of an employment decision for
30 positions at a demonstration project school;
31 _____ (5) To direct the department of education, the center for
32 professional development and the regional educational service
33 agency to provide any technical assistance and professional
34 development necessary for successful implementation of the
35 demonstration school programs, including, but not limited to, any
36 early intervention or other programs of the department to assist
37 low performing schools;
38 _____ (6) To collaborate and enter into agreements with colleges and
39 universities willing to assist with efforts at a demonstration
40 school to improve student achievement, including, but not limited
41 to, the operation of a professional development school program
42 model: *Provided*, That the expenditure of any funds appropriated for
43 the state board or department for this purpose shall be subject to
44 approval of the state board;
45 _____ (7) To require collaboration with local community
46 organizations to improve student achievement and increase the
47 involvement of parents and guardians in improving student
48 achievement;
49 _____ (8) To provide for an independent evaluation of the
50 demonstration school project, its various programs and their
51 effectiveness on improving student academic achievement; and
52 _____ (9) To recommend to the state board and the county board the
53 waiver of any of their respective policies that impede the
54 implementation of demonstration school programs.
55 _____ (c) The state superintendent shall make status reports to the

1 legislative oversight commission on education accountability and to
2 the state board annually and may include in those reports any
3 recommendations based on the progress of the demonstration project
4 that he or she considers either necessary for improving the
5 operations of the demonstration project or prudent for improving the
6 student achievement in other public schools through replication of
7 successful demonstration school programs. The state superintendent
8 shall make a recommendation to the Legislature not later than its
9 regular session, two thousand ten, for continuation or termination
10 of the program, which recommendation shall be accompanied by the
11 findings and recommendations of the independent evaluation and
12 these findings and recommendations shall be a major factor
13 considered by the superintendent in making his or her
14 recommendation.

15 (d) Nothing in this section shall require any specific level
16 of appropriation by the Legislature.

House Bill 4737

Effective Date: Passed March 12, 2004; in effect ninety days from passage

Signed by Governor: April 5, 2004

Code Reference: Amends and reenacts §18-7A-14b

Title: State Teachers Retirement System

Major Provisions:

- Revises the statute to enable any member of the State Teachers' Defined Benefit Retirement System who is absent from work while receiving temporary total disability benefits from the Workers' Compensation Division to purchase credited service for the time period that the member was absent from work as a result of a compensable injury
- Changes the time period that a member who desires to purchase credited service towards retirement from the one year period July 1, 2003 through June 30, 2004 to within two years of the disability period for which credit is sought
- Reduces the maximum number of years that may be purchased from five (5) years to two (2) years

1
2
3
4
5
6
7
8
9

ENROLLED
H. B. 4737

(By Delegates Romine, Poling, Stemple, Williams,
Renner, Fragale and Paxton)

[Passed March 12, 2004; in effect ninety days from passage.]

10 AN ACT to amend and reenact §18-7A-14b of the code of West
11 Virginia, 1931, as amended, relating to providing options for
12 members of teachers retirement to make contributions for periods
13 of temporary total disability.

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

15 That §18-7A-14b of the code of West Virginia, 1931, as amended, be
16 amended and reenacted to read as follows:

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

18 **§18-7A-14b. Members' option to make contributions for periods of**
19 **temporary total disability.**

20 Any member who was absent from work while receiving temporary
21 total disability benefits pursuant to the provisions of chapter
22 twenty-three of this code as a result of a compensable injury
23 received in the course of and as a result of his or her employment
24 with the covered employer ~~during the time period beginning the~~
25 ~~first day of January, one thousand nine hundred eighty-eight and~~
26 ~~the thirty-first day of December, one thousand nine hundred ninety-~~
27 ~~eight,~~ may purchase credited service for that time period or those
28 time periods the member was absent from work as a result of a
29 compensable injury and receiving temporary total disability
30 benefits: *Provided*, That the member returned to work with his or
31 her covered employer within one year following the cessation of
32 temporary total disability benefits. The member desiring to
33 purchase such credited service may do so only by lump sum payment
34 from personal funds within two years of the end of the disability
35 period for which credit is sought to be purchased: *Provided*,
36 however, That in order to the purchase of such service credit
37 pursuant to the provisions of this section shall be completed
38 between the time period beginning the first day of July, two
39 thousand three and ending the thirtieth day of June, two thousand
40 four: *Provided further*, That in order to purchase such service
41 credit, the member shall pay to the board his or her regular
42 contribution and an equal amount that represents the employer's
43 contribution, based on the salary the member was receiving
44 immediately prior to having sustained such compensable injury: the
45 member shall pay to the board his or her regular contribution and
46 an equal amount that represents the employer's contribution, based
47 on the salary the member was receiving immediately prior to having
48 sustained such compensable injury: *Provided further*, That the
49 member purchasing service credit under the provisions of this
50 section may not be charged interest. The maximum number of years
51 of service credit that may be purchased under this section shall
52 not exceed ~~five~~ two: *And provided further*, That each year
53 purchased under this section shall count as a year of experience
54 for purposes of the increment set forth in section two or section
55 eight-a, article four, chapter eighteen-a of this code, as

1 applicable.

Senate Bill 296

Effective Date: Passed March 5, 2004; in effect ninety days from passage

Signed by Governor: March 18, 2004

Code Reference: Amends and adds new sections §18A-3A-4

Title: Relating to Continuation of the Center for Professional Development Board

Major Provisions:

- Authorizes continuation of the Center for Professional Development Board until July 1, 2010, unless sooner terminated, continued, or reestablished

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

ENROLLED

Senate Bill No. 296

(BY SENATORS BOWMAN, BAILEY, CALDWELL, JENKINS, KESSLER, MCCABE, MINARD,
ROWE, SNYDER, WHITE, BOLEY, MINEAR AND WEEKS)

[Passed March 5, 2004; in effect ninety days from passage.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18A-3A-4, relating to continuation of the center for professional development board.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18A-3A-4, to read as follows:

ARTICLE 3A. CENTER FOR PROFESSIONAL DEVELOPMENT.

§18A-3A-4. Continuation of center for professional development board.

The center for professional development board shall continue to exist until the first day of July, two thousand ten, unless sooner terminated, continued or reestablished pursuant to the provisions of article ten, chapter four of this code.

Senate Bill 408

Effective Date: Passed March 13, 2004; in effect from passage

Signed by Governor: April 6, 2004

Code Reference: Amends and reenacts §11-8-6f and §18-9A-11

Title: Growth County School Facility Act

Major Provisions:

- Creates the Growth County School Facility Act
- Defines a growth county as any county that has experienced an increase in second month net enrollment of fifty or more during any three of the last five years
- Requires any county board that qualifies to pass a resolution to confirm that it has chosen to participate
- Allows any county board that qualifies and has chosen to participate to place in a separate account, designated as the Growth Counties Facilities Act Fund, the tax collections received from the regular property tax levy on the assessed values of new construction or improvements to existing real property, or newly acquired personal property
- Specifies that the estimated tax collections from application of the regular school board levy rate to these new property values shall be excluded from the local share calculation

1 **ENROLLED**
2 COMMITTEE SUBSTITUTE
3 FOR
4 COMMITTEE SUBSTITUTE
5 FOR

6 **Senate Bill No. 408**

7 (BY SENATORS SNYDER, HELMICK, ROSS AND UNGER)

8
9 [Passed march 13, 2004; in effect from passage.]
10
11

12 A BILL to amend and reenact §11-8-6f of the code of West Virginia,
13 1931, as amended; and to amend and reenact §18-9A-11 of said
14 code, all relating generally to levies by county boards of
15 education and expenditure of property taxes collected from the
16 levies; allowing growth counties to use provisions of growth
17 county school facilities act; providing that high-growth
18 counties may place certain property tax revenues in a growth
19 county school facilities act fund to be used for the benefit
20 of school facilities in the high-growth county; allowing
21 moneys in the fund to be carried over from year to year; and
22 providing that revenues deposit in a growth county school
23 facilities act fund are not considered local share for
24 purposes of the state aid formula.

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

26 That §11-8-6f of the code of West Virginia, 1931, as amended,
27 be amended and reenacted; and that §18-9A-11 of said code be
28 amended and reenacted, all to read as follows:

29 **CHAPTER 11. TAXATION.**

30 **ARTICLE 8. LEVIES.**

31 **§11-8-6f. Effect on regular school board levy rate when appraisal**
32 **results in tax increase; creation and implementation**
33 **of growth county school facilities act; creation of**
34 **growth county school facilities act fund.**

35 (a) Notwithstanding any other provision of law, where any annual
36 appraisal, triennial appraisal or general valuation of property
37 would produce a statewide aggregate assessment that would cause an
38 increase of one percent or more in the total property tax revenues
39 that would be realized were the then current regular levy rates of
40 the county boards of education to be imposed, ~~such~~the rate of levy
41 for county boards of education shall be reduced uniformly statewide
42 and proportionately for all classes of property for the forthcoming
43 tax year so as to cause the rate of levy to produce no more than
44 one hundred one percent of the previous year's projected statewide
45 aggregate property tax revenues from extending the county board of
46 education levy rate, unless subsection (b) of this section is
47 complied with. The reduced rates of levy shall be calculated in
48 the following manner: (1) The total assessed value of each class
49 of property as it is defined by section five, article eight of this
50 chapter for the assessment period just concluded shall be reduced
51 by deducting the total assessed value of newly created properties
52 not assessed in the previous year's tax book for each class of
53 property; (2) the resulting net assessed value of Class I property

1 shall be multiplied by .01; the value of Class II by .02; and the
2 values of Class III and IV, each by .04; (3) total the current
3 year's property tax revenue resulting from regular levies for the
4 boards of education throughout this state and multiply ~~the resulting~~
5 the resulting sum by one hundred one percent: *Provided*, That the
6 one hundred one percent figure shall be increased by the amount the
7 boards of educations' increased levy provided for in subsection
8 (b), section eight, article one-c of this chapter; (4) divide the
9 total regular levy tax revenues, thus increased in subdivision (3),
10 ~~above of this subsection~~, by the total weighted net assessed value
11 as calculated in ~~paragraph two subdivision~~ (2) of this subsection
12 and multiply the resulting product by one hundred; the resulting
13 number is the Class I regular levy rate, stated as cents-per-one
14 hundred dollars of assessed value; and (5) the Class II rate is two
15 times the Class I rate; Classes III and IV, four times the Class I
16 rate as calculated in the preceding subdivision: ~~Provided, however,~~
17 ~~That the rate of levy for county boards of education for the fiscal~~
18 ~~year beginning on the first day of July, one thousand nine hundred~~
19 ~~ninety-three shall be equal to the rate of levy calculated for the~~
20 ~~fiscal year beginning on the first day of July, one thousand nine~~
21 ~~hundred ninety-two, pursuant to the provisions of this subsection.~~
22 An additional appraisal or valuation due to new construction or
23 improvements, including beginning recovery of natural resources, to
24 existing real property or newly acquired personal property shall
25 not be an annual appraisal or general valuation within the meaning
26 of this section, nor shall the assessed value of ~~such the~~
27 improvements be included in calculating the new tax levy for
28 purposes of this section. Special levies shall not be included in
29 any calculations under this section.

30 (b) After conducting a public hearing, the Legislature may, by act,
31 increase the rate above the reduced rate required in subsection (a)
32 of this section if ~~any such an~~ increase is ~~deemed determined~~
33 necessary.

34 ~~(c) This section shall be effective as to any regular levy rate~~
35 ~~imposed for the Growth county boards of education for taxes due and~~
36 ~~payable on or after the first day of July, one thousand nine~~
37 ~~hundred ninety-one school facilities act. -If any provision of~~
38 ~~this section is held invalid, such invalidity shall not affect~~
39 ~~other provisions or applications of this section which can be given~~
40 ~~effect without the invalid provision or its application and to this~~
41 ~~end the provisions of this section are declared to be severable.--~~
42 Legislative Findings. -

43 The Legislature finds and declares that there has been, overall,
44 a statewide decline in enrollment in the public schools of this
45 state; due to this decline, most public schools have ample space
46 for students, teachers and administrators; however, some counties
47 of this state have experienced significant increases in enrollment
48 due to significant growth in those counties; that those counties
49 experiencing significant increases do not have adequate facilities
50 to accommodate students, teachers and administrators. Therefore,
51 the Legislature finds that county commissions in those high-growth
52 counties should have the authority to designate revenues generated
53 from the application of the regular school board levy due to new

1 construction or improvements placed in a growth county school
2 facilities act fund to be used to for school facilities in those
3 counties to promote the best interests of this state's students.

4 (1) For the purposes of this subsection, "growth county" means any
5 county that has experienced an increase in second month net
6 enrollment, excluding kindergarten students less than five years of
7 age without an individualized education program, of fifty or more
8 during any three of the last five years, as determined by the
9 department of education.

10 (2) The provisions of this subsection shall only apply to any
11 growth county, as defined in subdivision (1) of this subsection,
12 that, by resolution of its county board of education, chooses to
13 use the provisions of this subsection.

14 (3) For any growth county, as defined in subdivision (1) of this
15 subsection, that adopts a resolution choosing to use the provisions
16 of this subsection, pursuant to subdivision (2) of this subsection,
17 assessed values resulting from additional appraisal or valuation
18 due to new construction or improvements, including beginning
19 recovery of natural resources, to existing real property or newly
20 acquired personal property, shall be designated as new property
21 values and identified by the county assessor. The statewide
22 regular school board levy rate as established by the Legislature
23 shall be applied to the assessed value designated as new property
24 values and the resulting property tax revenues collected from
25 application of the regular school board levy rate shall be placed
26 in a separate account, designated as the growth counties school
27 facilities act fund. Revenues deposited in the growth counties
28 school facilities act fund shall be appropriated by the county
29 board of education for construction, maintenance or repair of
30 school facilities. Revenues in the fund may be carried over for an
31 indefinite length of time and may be used as matching funds for the
32 purpose of obtaining funds from the school building authority or
33 for the payment of bonded indebtedness incurred for school
34 facilities. Estimated school board revenues generated from
35 application of the regular school board levy rate to new property
36 values are not to be considered as local funds for purposes of the
37 computation of local share under the provisions of section eleven,
38 article nine-a, chapter eighteen of this code.

39 (d) This section, as amended during the legislative session in the
40 year two thousand four, shall be effective as to any regular levy
41 rate imposed for the county boards of education for taxes due and
42 payable on or after the first day of July, two thousand four. If
43 any provision of this section is held invalid, the invalidity shall
44 not affect other provisions or applications of this section which
45 can be given effect without the invalid provision or its
46 application and to this end the provisions of this section are
47 declared to be severable.

48 **CHAPTER 18. EDUCATION.**

49 **ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

50 **§18-9A-11. Computation of local share; appraisal and assessment of** 51 **property.**

52 (a) For the fiscal year beginning on the first day of July,
53 one thousand nine hundred ninety-three, and thereafter, on On the

1 basis of each county's certificates of valuation as to all classes
2 of property as determined and published by the assessors pursuant
3 to section six, article three, chapter eleven of this code for the
4 next ensuing fiscal year in reliance upon the assessed values
5 annually developed by each county assessor pursuant to the
6 provisions of articles one-c and three, ~~chapter eleven~~ of this
7 ~~code~~ said chapter, the state board shall for each county compute by
8 application of the levies for general current expense purposes, as
9 defined in section two of this article, the amount of revenue which
10 ~~such the~~ levies would produce if levied upon one hundred percent of
11 the assessed value of each of the several classes of property
12 contained in the report or revised report of the value, made to it
13 by the tax commissioner as follows:

14 (1) The state board shall first take ninety-five percent of
15 the amount ascertained by applying these rates to the total
16 assessed public utility valuation in each classification of
17 property in the county.

18 (2) The state board shall then apply these rates to the
19 assessed taxable value of other property in each classification in
20 the county as determined by the tax commissioner and shall deduct
21 therefrom five percent as an allowance for the usual losses in
22 collections due to discounts, exonerations, delinquencies and the
23 like. All of the amount so determined shall be added to the
24 ninety-five percent of public utility taxes computed as provided
25 ~~above~~, in subdivision (1) of this subsection and this total shall
26 be further reduced by the amount due each county assessor's office
27 pursuant to the provisions of section eight, article one-c, chapter
28 eleven of this code and this amount shall be the local share of the
29 particular county.

30 As to any estimations or preliminary computations of local
31 share that may be required prior to the report to the Legislature
32 by the tax commissioner, the state board of education shall use the
33 most recent projections or estimations that may be available from
34 the tax department for ~~such~~ that purpose.

35 (b) Whenever in any year a county assessor or a county
36 commission shall fail or refuse to comply with the provisions of
37 this section in setting the valuations of property for assessment
38 purposes in any class or classes of property in the county, the
39 state tax commissioner shall review the valuations for assessment
40 purposes made by the county assessor and the county commission and
41 shall direct the county assessor and the county commission to make
42 ~~such~~ corrections in the valuations as ~~may be~~ necessary so that they
43 shall comply with the requirements of chapter eleven of this code
44 and this section, and the tax commissioner shall enter the county
45 and fix the assessments at the required ratios. Refusal of the
46 assessor or the county commission to make the corrections ~~shall~~
47 constitute ground constitutes grounds for removal from office.

48 (c) For the purposes of any computation made in accordance
49 with the provisions of this section, in any taxing unit in which
50 tax increment financing is in effect pursuant to the provisions of
51 article eleven-b, chapter seven of this code, the assessed value of
52 a related private project shall be the base assessed value as
53 defined in section two of said article.

1 (d) For purposes of any computation made in accordance with
2 the provisions of this section, in any county where the county
3 board of education has adopted a resolution choosing to use the
4 provisions of the growth county school facilities act set forth in
5 section six-f, article eight, chapter eleven of this code,
6 estimated school board revenues generated from application of the
7 regular school board levy rate to new property values, as that term
8 is designated in said section, may not be considered local share
9 funds and shall be subtracted before the computations in
10 subdivisions (1) and (2), subsection (a) of this section are made.

SB 448

Effective Date: Passed March 13, 2004; in effect ninety days from passage

Signed by Governor: April 7, 2004

Code Reference: Repeals §18B-1A-B, §18B-3C-7, §18B-6-2a, §18B-6-3a, §18B-6-4, §18B-6-4b and §18B-113-7; amends and reenacts §18-2-1, §18B-1-1a, §18B-1-2, §18B-1-3, §18B-1-6, §18B-1A-2, §18B-1B-4, §18B-1B-5, §18B-1B-6, §18B-2A-1, §18B-2A-4, §18B-2B-1, §18B-2B-2, §18B-2B-3, §18B-2B-4, §18B-2A-6, §18B-2B-1, §18B-2B-2, §18B-2B-3, §18B-2B-4, §18B-2B-5, §18B-2B-6, §18B-2B-7, §18B-2B-8, §18B-2C-3, §18B-2C-4, §18B-3C-2, §18B-3C-3, §18B-3C-4, §18B-3C-5, §18B-3C-6, §18B-3C-8, §18B-3C-9, §18B-3C-10, §18B-3C-12, §18B-4-1, §18B-4-2, §18B-4-7, §18B-5-4, §18B-6-1, §18B-6-1a, §18B-7-1, §18B-9-1, §18B-9-2, §18B-10-2; and to add new sections designated §18B-1B-11, §18B-2A-6, §18B-2B-6a, §18B-6-2, §18B-6-3, §18B-6-4, §18B-6-6, §18B-7-12, and §18B-10-16

Title: Relating to education generally; higher education; community and technical college education; post-secondary education; state board membership; powers and duties of higher education policy commission and council for community and technical college education; goals for post-secondary education; definitions; transferring certain rules and expanding and clarifying rule-making authority; developing and approving institutional compacts and master plans; establishing benchmarks and indicators; authorizing emergency rule; selecting peer institutions; legislative financing goals; budget authority of commission and council; provision of baccalaureate and graduate education; reducing duration of certain grants; higher education personnel; developing public policy agenda; commission membership; consistency and cooperation among commission, council and certain boards and groups; establishing priorities and distributing funds for capital projects; employment of staff; appointments to boards and commissions; transfer of certain course credits; approval of new institutions, programs and courses; employment of chancellor for higher education;

powers and duties; evaluations and contracts; appointment of institutional presidents; evaluations; role of governing and advisory boards, commission and council in appointments; requiring study of certain institutions providing post-secondary education; requiring reports to legislative oversight commission on education accountability; powers and duties of governing boards and institutional boards of advisors; authority of governing board in determining institutional status; changing status of certain baccalaureate institutions; establishing or continuing governing and advisory boards for certain institutions; membership; terms of office; legislative findings; employment of chancellor for community and technical college education; evaluations and contracts; maintenance of employee benefits; council membership and terms of office; qualifications; jurisdiction and authority of council; employment of staff; tuition and fees; certain fee transfer; developing standards for remedial and developmental courses; higher education report card; authorization to withdraw certain powers from a governing board; transfer and expansion of certain administrative, programmatic and budgetary control; establishing certain deadlines for commission and council; transferring certain fund and authorizing expenditures; employee transfer; powers and duties of chancellor; establishing and conforming structure of certain advisory groups; membership and terms of office; exceptions; meetings; development of search and screening guidelines; establishing certain advisory groups; clarifying certain expenses; modifying deadline for attaining independent accreditation; exceptions; council options; district consortia elimination; community and technical college consortia districts established; consortia powers, duties, responsibilities and operation; modifying title of certain employees; continuation in office; council authority over certain degree programs; service and fee requirement modification and limitation; employee reorganization; supervision of certain employees; essential services; employment of vice chancellor for administration; deadline for employment; modifying certain purchasing and competitive bidding requirements; certain

employee seniority and displacement authority modification; duty of council regarding personnel classification system; creation, collection and use of certain fees; and eliminating certain obsolete provisions

Major Provisions: (Impacting Public Education)

- Removes the WV Community and Technical College Council (CTCC) from the jurisdiction of the Higher Education Policy Commission (HEPC) and designates it as the governing board for community/technical colleges
- Requires both the CTCC and HEPC to participate in developing and articulating the state Public Policy Agenda for Higher Education
- Requires the CTCC and HEPC to employ a chancellor who serves as its will and pleasure
- Deletes language that allows the State Superintendent of Schools to designate someone to serve on the HEPC in his place
- Defines CEO of CTCC as "Chancellor for Community and Technical College Education"(ChCTC)
- Requires the CTC Chancellor to work closely with members of the State Board of Education and with the State Superintendent of Schools to assure that the following goals are met:
 - * Development and implementation of a seamless kindergarten-through-college system of education; and
 - * Appropriate coordination of missions and programs
- Requires the ChCTC to serve as an ex officio, nonvoting member of the State Board of Education thereby furthering the goals of cooperation and coordination between the CTCC and the State Board of Education
- Adds the following members to the CTCC:
 - * Chairperson of the West Virginia Work Force Investment Council;
 - * Director of the West Virginia Development Office, or designee;
 - * President or designee of state AFL-CIO; and

- * Chair of the HEPC, who serves as an ex officio, nonvoting member
- Establishes policies to ensure that students can transfer and apply toward the requirements for a degree the maximum number of credits earned at any regionally accredited in-state or out-of-state higher education institution with as few requirements to repeat courses or to incur additional costs as is consistent with sound academic policy
- Establishes policies in cooperation with the CTCs, for students who have gained knowledge and skills through employment, participation in education and training at career-technical schools, etc., to receive academic credit or advanced placement standing toward a college degree
- Establishes a President as CEO at each CTC, including those administratively linked
- Requires the development of state plans for Secondary and Postsecondary Vocational-Technical-Occupational and Adult Basic Education in conjunction with the State Board of Education
- Requires that CTC service offerings in each region will include implementation of Seamless Curricula and the EDGE program
- Establishes "CTC Consortia Districts" in lieu of District Consortia
- Maintains a unified effort between CTCs and public career technical centers to meet the documented workforce training needs of the district
- Integrates secondary and postsecondary curriculum and programs that are targeted to meet regional labor market needs
- Increases integration of Adult Literacy, Adult Basic Education, Federal WIAs, and CTC programs and services to expedite the transition of adults from welfare to gainful employment
- Designates a CTC in each Consortia District to serve as the Facilitating Institution
- Facilitates development of Statements of Commitment signed by all participating institutions in the region, as to how community and technical college education will be delivered
- Provides that participating institutions are not subordinate to the facilitating institution
- Establishes CTC Consortia Planning Districts as

follows:

- * Northern Panhandle CTC District
Hancock, Brooke, Ohio, Marshall and Wetzel
Facilitating institution is West Virginia
Northern CTC
Participating institutions:
 - WVNCTC
 - John Marshall High School
 - John D. Rockefeller Center and
 - Other public career-technical education
schools offering postsecondary programs
- * North Central WV CTC District
Monongalia, Marion, Preston, Taylor, Barbour,
Randolph, Doddridge, Harrison, Braxton, Lewis,
Calhoun, Gilmer and Upshur
Facilitating institution is Fairmont State CTC
Participating institutions:
 - Fairmont State CTC
 - Glennville State College
 - Randolph County Vocational-Technical Center
 - Monongalia County Technical Education Center
 - United Technical Center
 - Marion County Technical Center
 - Fred W. Eberle Technical Center and
 - Other public career- technical schools
offering postsecondary programs
- * Mid-Ohio Valley CTC District
Tyler, Pleasants, Ritchie, Wood, Wirt, Jackson
and Roane
Facilitating institution is WVU at Parkersburg
Participating institutions:
 - WVU at Parkersburg
 - WV Northern CTC
 - Roane-Jackson Technical Center
 - Gaston Caperton Center
 - Wood County Technical Center and
 - Other public career- technical schools
offering postsecondary program
- * Potomac Highlands CTC District

Tucker, Pendleton, Grant, Hardy, Mineral and Hampshire

Facilitating institution is Eastern WV CTC

Participating institutions:

Eastern WV CTC

South Branch Career and Technical Center

Mineral County Technical Center and

Other public career-technical schools

offering postsecondary programs

* Shenandoah Valley CTC District

Berkeley, Jefferson and Morgan

Facilitating institution is Shepherd CTC

Participating institutions:

Shepherd CTC

James Rumsey Technical Institute and

Other public career- technical schools

offering postsecondary programs

* Advantage Valley CTC District

Fayette, Kanawha, Clay, Putnam, Cabell, Mason and Wayne

Facilitating institution is Marshall CTC

Participating institutions:

WVU Tech CTC

WV State CTC

Marshall CTC

Carver Career Center

Garnet Career Center

Ben Franklin Career Center

Putnam County Technical Center

Cabell County Career-Technical Center

and

Other public career- technical schools

offering postsecondary programs

* Southern Mountains CTC District

Lincoln, Boone, Logan, Mingo, Wyoming and McDowell

Facilitating institution is Southern WV CTC

Participating institutions:

Southern WV CTC

New River CTC
Boone County Career and Technical Center
Wyoming County Technical Center
Ralph R. Willis Career and Technical
Center
McDowell County Career and Technology
Center
Mingo County Vocational-Technical Center
Charles Yeager Technical Center; and
Other public career- technical schools
offering postsecondary programs

* Southern CTC District
Raleigh, Summers, Fayette, Nicholas, Webster,
Pocahontas, Greenbrier, Monroe and Mercer
Facilitating institution is New River CTC

Participating institutions:

New River CTC
Southern WV CTC
Bluefield State College
Academy of Careers and Technology
Fayette Plateau Vocational-Technical Center
Summers County High School
Monroe County Technical Center
Mercer county Technical Center and
Other public career-technical schools offering
postsecondary programs

* Concord College, Fairmont State College,
Shepherd College and West Virginia State
College become universities on the effective
date of the bill

This lengthy bill is related to higher education. To either read or download this bill, go to <ftp://129.71.164.29/2004/RS/senate/SB400-499/> and click on SB 448 to open the bill.