

FOREWORD

The West Virginia Department of Education is please to prepare Informal Guidelines for Implementing Public Education Bills Enacted in the Regular Session – 2007 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, title 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 – 2007 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 online at <http://wvde.state.wv.us> .

Please feel free to call or write if you need additional information regarding bills enacted during the 2007 regular session of the West Virginia Legislature.

Dr. Steven L. Paine
State Superintendent of Schools

NEW	REPEALED	REVISED	
6C-2-1	18-29-1	5-5-4	18A-4-8b
6C-2-2	18-29-2	5-5-5	18A-4-8f
6C-2-3	18-29-3	5-16-2	18A-4-8g
6C-2-4	18-29-4	5B-2-5	18A-4-10
6C-2-5	18-29-5	5F-2-1	18A-4-15
6C-2-6	18-29-6	9-9-3	18A-5-8
6C-2-7	18-29-7	9-9-6	18B-2A-4
6C-3-1	18-29-8	9-9-7	18B-7-4
6C-3-2	18-29-9	9-9-8	21-1B-2
6C-3-3	18-29-10	9-9-9	21-1B-3
6C-3-4	18-29-11	11-10A-8	21-1B-5
6C-3-5	18A-3-11	11-8-6f	21-5E-4
6C-3-6	29-6A-1	11-8-9	22C-7-2
9-9-21	29-6A-2	15-1B-21	29A-3B-9
9-9-22	29-6A-3	17B-2-3a	29A-3B-10
11-1C-5b	29-6A-4	17C-17-4	31-20-27
11-21-23	29-6A-5	18-1-1	33-48-2
15-1F-1b	29-6A-6	18-2E-5	49-5E-5a
18-9A-2a	29-6A-7	18-2E-7	61-10-15
18-9D-20	29-6A-8	18-5-13	Article 4 Chapter 64
18-9F-1	29-6A-10	18-7A-3	
18-9F-2	29-6A-11	18-7A-13a	
18-9F-3	29-6A-12	18-7A-14	
18-9F-4		18-7A-23	
18-9F-5		18-7B-2	
18-9F-6		18-9A-2	
18-9F-7		18-9A-2a	
18-9F-8		18-9A-10	
18A-2-5a		18-9A-11	
18A-2-14		18-9A-15	
18A-3-11		18-9D-2	
18A-4-7c		18-9D-15	
18A-4-10f		18-19-1	
21-1B-6		18-19-2	
21-1B-7		18-19-3	
60A-4-412		18-20-2	
		18-23-4a	
		18a-3-3a	
		18a-4-8a	
		18A-1-1	
		18A-2-2	
		18A-2-3	
		18A-2-8	
		18A-3-3	
		18A-4-2	
		18A-4-2a	
		18A-4-8	

TABLE OF CONTENTS

<u>ACT CODE NUMBERS</u>	<u>SUBJECT</u>	<u>PAGE NUMBERS</u>
HB 2105	School Personnel (affecting retired teachers)..... §18A-2-3	1
HB 2189	Goals for Education..... §18-1-1 §18-5-13 §18-20-2 §18A-1-1 §18A-4-7c §18A-4-8 §18A-4-8b §18A-4-8f §18A-4-8g §18A-4-10 §18A-4-10f §18A-4-15 §18A-5-8	5
HB 2585	Relating to the renewal of teaching certificates and permanent certification §5-16-2 §18-7A-3 §18-7B-2 §18-23-4a §18A-3-3 §18A-3-11	41
HB 2588	Reimbursing tuition and fees for courses for the renewal of teaching certificates §18a-3-3a	54
HB 2777	Salaries, Wages and Other Benefits §18A-4-2 §18A-4-2a §18A-4-8 §18a-4-8a	57
HB 2781	Modifying the statutory limitation on the length of school buses..... §17C-17-4	88
HB 2931	Providing for payment of tuition and fees for members of the West Virginia National Guard enrolled in graduate study §15-1B-21 §18-19-1 §18-19-2 §18-19-3	91
HB 3094	Prohibiting county and district school officers, teachers and school officials from having a pecuniary interest in certain contacts..... §61-10-15	96
SB 67	Relating to school access safety generally..... §18-9D-2 §18-9D-15 §18-9D-20 §18-9F-1 §18-9F-2 §18-9F-3 §18-9F-4 §18-9F-5 §18-9F-6 §18-9F-7 §18-9F-8	99
SB 70	Verifying legal employment status of workers §21-1B-2 §21-1B-3 §21-1B-5 §21-1B-6 §21-1B-7	113

SB 100	Requiring local school boards reimburse mileage to school service personnel using own vehicle.....	117
	§18A-2-14	
SB 121	Tolling of the running of any licensure or registration requirement.....	119
	§15-1F-1b	
SB 134	Requiring employers provide contribution information to State Teachers Retirement System.....	121
	§18-7A-13a §18-7A-14 §18-7A-23	
SB 360	Meeting of local levying bodies.....	125
	§11-8-9	
SB 412	Drivers' License.....	127
	§17B-2-3a	
SB 416	Defeating drug and alcohol screening tests.....	132
	§60A-4-412	
SB 442	Relating to grievance procedures for certain state and educational employees.....	135
	§5-5-4 §5-5-5 §5B-2-5 §5F-2-1	
	§6C-2-1 §6C-2-2 §6C-2-3 §6C-2-4	
	§6C-2-5 §6C-2-6 §6C-2-7 §6C-3-1	
	§6C-3-2 §6C-3-3 §6C-3-4 §6C-3-5	
	§6C-3-6 §11-10A-8 §18-29-1 §8-29-2	
	§18-29-3 §18-29-4 §18-29-5 §18-29-6	
	§18-29-7 §18-29-8 §18-29-9 §18-29-10	
	§18-29-11 §18A-2-8 §18B-2A-4 §18B-7-4	
	§21-5E-4 §22C-7-2 §29-6A-1 §29-6A-2	
	§29-6A-3 §29-6A-4 §29-6A-5 §29-6A-6	
	§29-6A-7 §29-6A-8 §29-6A-10 §29-6A-11	
	§29-6A-12 §31-20-27 §33-48-2 §49-5E-5a	
SB 518	Conforming WV Works Programs with federal law requirements.....	167
	§9-9-3 §9-9-6 §9-9-7 §9-9-8	
	§9-9-9 §9-9-21 §9-9-22	
SB 541	Relating to public school finance.....	174
	§11-1C-5b §11-8-6f §11-21-23 §18-9A-2	
	§18-9A-2 §18-9A-2a §18-9A-11 §18-9A-15	
SB 599	Eliminating early resignation notification bonus for certain teachers.....	188
	§18A-2-2 §18A-2-5a	
SB 603	Establishing 21 st Century Tools for 21 st Century Schools Technology Initiative.....	192
	§18-2E-7 §18-9A-10	

SB 657	Requiring State Board of Education incorporate 21 st Century Skills Initiative into certain standards	201
	§18-2E-5	
	§29A-3B-9	
	§29A-3B-10	

House Bill 2105

Effective Date: Passed January 24, 2007; effective from passage

Signed by Governor: February 2, 2007

Code Reference: Amends §18A-2-3

Title: Employment of substitute teachers and retired teachers as substitutes in areas of critical need and shortage; employment of prospective employable professional personnel

Major Provisions:

- This Act extends the expiration date of provisions permitting retired teachers to accept employment as substitutes in areas of critical need and shortage for an unlimited number of days without affecting retirement benefits. County boards of education are required to adopt a policy identifying areas of critical need and shortage and submit that policy to the WVBE for approval
- 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
- Expires June 30, 2010

ENROLLED

COMMITTEE SUBSTITUTE FOR

H. B. 2105

(By Delegates Poling, Paxton, Perry, Wells, Stephens,
Tabb, Wysong, Duke, Fragale and Sumner)

[Passed January 24, 2007; in effect from passage.]

AN ACT to amend and reenact §18A-2-3 of the Code of West Virginia, 1931, as amended, relating to extending expiration date of provisions permitting retired teachers to accept employment as substitutes in areas of critical need and shortage for an unlimited number of days without affecting retirement benefits.

Be it enacted by the Legislature of West Virginia:

That §18A-2-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. SCHOOL PERSONNEL.

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

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

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

(c) (1) The Legislature hereby finds and declares that due to a shortage of qualified substitute teachers, a compelling state interest exists in expanding the use of retired teachers to provide service as substitute teachers in areas of critical need and shortage. The Legislature further finds that diverse circumstances exist among the counties for the expanded use of retired teachers as substitutes. For the purposes of this subsection, "area of critical need and shortage" means an area of certification and training in which the number of available substitute teachers in the county who

hold certification and training in that area and who are not retired is insufficient to meet the projected need for substitute teachers.

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

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

(B) The policy sets forth the areas of critical need and shortage in the county in accordance with the definition of area of critical need and shortage set forth in subdivision (1) of this subsection;

(C) The policy provides for the employment of retired teachers as substitute teachers during the school year on an expanded basis in areas of critical need and shortage as provided in this subsection;

(D) The policy provides that a retired teacher may be employed as a substitute teacher in an area of critical need and shortage on an expanded basis as provided in this subsection only when no other teacher who holds certification and training in the area and who is not retired is available and accepts the substitute assignment;

(E) The policy is effective for one school year only and is subject to annual renewal by the county board;

(F) The state board approves the policy and the use of retired teachers as substitute teachers on an expanded basis in areas of critical need and shortage as provided in this subsection; and

(G) Prior to employment of a substitute teacher beyond the post-retirement employment limitations established by the consolidated public retirement board, the superintendent of the affected county submits to the ~~e~~Consolidated ~~p~~Public ~~r~~Retirement ~~b~~Board, in a form approved by the retirement board, an affidavit signed by the superintendent stating the name of the county, the fact that the county has adopted a policy to employ retired teachers as substitutes to address areas of critical need and shortage and the name or names of the person or persons to be employed pursuant to the policy.

(3) Any person who retires and begins work as a substitute teacher within the same employment term shall lose those retirement benefits attributed to the annuity reserve, effective from the first day of employment as a retiree substitute in that employment term and ending with the month following the date the retiree ceases to perform service as a substitute.

(4) Retired teachers employed to perform expanded substitute service pursuant to this subsection are considered day-to-day, temporary, part-time employees. The substitutes are not eligible for additional pension or other benefits paid to regularly employed employees and shall not accrue seniority.

(5) When a retired teacher is employed as a substitute to fill a vacant position, the county board shall continue to post the vacant position until it is filled with a regularly employed teacher.

(6) Until this subsection is expired pursuant to subdivision (7) of this subsection, the state board, annually, shall report to the ~~j~~Joint ~~e~~Committee on ~~g~~Government and ~~f~~Finance prior to the first day of February of each year. Additionally, a copy shall be provided to the ~~l~~Legislative ~~e~~Oversight ~~e~~Commission on ~~e~~Education ~~a~~Accountability. The report shall contain information indicating the effectiveness of the provisions of

this subsection on expanding the use of retired substitute teachers to address areas of critical need and shortage.

(7) The provisions of this subsection shall expire on the thirtieth day of June, two thousand ~~six~~ ten.

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

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

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

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

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

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

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

(5) Regular employment status for prospective employable professional personnel may be obtained only in accordance with the provisions of section seven-a, article four of this chapter. (e) The state board annually shall review the status of employing personnel under the provisions of subsection (d) of this section and annually shall report to the ~~L~~egislative ~~e~~Oversight ~~e~~Commission on ~~e~~Education ~~a~~Accountability on or before the first day of November of each year. The report shall include, but not be limited to, the following:

(A) The counties that participated in the program;

(B) The number of personnel hired;

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

(D) The venue from which personnel were employed;

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

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

House Bill 2189

Effective Date: Passed March 10, 2007; in effect ninety days from passage.
(June 8, 2007)

Signed by Governor: April 4, 2007

Code Reference: Amends §18-1-1, §18-5-13, §18-20-2, §18A-1-1, §18A-4-8,
§18A-4-8b, §18A-4-8f, §18A-4-8g, §18A-4-10,
§18A-4-15 and §18A-5-8
Adds §18A-4-7c and §18A-4-10f

Title: Authority of County Boards Generally; Transportation of Students; Training of Aides; Creation of Personal Leave Bank and Leave Donation Program; School Service Personnel Seniority; Licensed Practical Nurse Position; Summer School Employment; Autism Mentor Vacancies

Major Provisions:

- WVC §18-5-13 - Grants county boards the authority for allow schools to expend funds for student, parent, teacher or community recognition programs; specifies that the school may use funds generated only through a fund-raising or donation-solicitation activity; and requires that the school publicize that the activity is intended for this purpose prior to commencing the activity
- WVC §18-5-13 - Prohibits the transportation of students to school-sponsored activities in a county-owned vehicle that does not meet school bus or public transit ratings, which aligns State school bus safety requirements to those of the federal government; does not prohibit a parent from transporting ten (10) or fewer students in a privately-owned vehicle
- WVC §18-5-13 - Requires the State Board to establish requirements for the transportation of students to school-sponsored activities in a vehicle not owned and operated by a county board that addresses: automobile insurance coverage; vehicle safety specifications, school bus or public transit ratings; and driver training certification and criminal history record checks
- WVC §18-5-13 - Specifies that county boards may transport students to a school-sponsored activity in a vehicle which is not owned by the county board, only if the following requirements are met: the vehicle has a seating capacity of 16 or more passengers; the vehicle owner provides proof

that the vehicle and driver satisfy the requirements of the State Board rule; and the driver has met the training and certification standards set by the State Board and has submitted to a criminal background check

- WVC §18-5-13 - Allows county boards to lease school buses to public and private nonprofit organizations, including education employee organizations, for transportation associated with fairs, festivals, and other educational and cultural events and allows the boards to charge a fee for this purpose
- WVC §18-20-2 - Requires county boards to make available to all regularly employed teachers' aides 12 hours of training annually during normal working hours that satisfy the continuing education requirements for aides regarding the providing of services to children who have displayed violent behavior or those who have been diagnosed as autistic; requires that the training be structured in such a manner as to permit the employee to qualify as an autism mentor after a minimum of four years of training; and requires that the board reimburse the employee for one-half of the tuition
- WVC §18A-1-1 - Defines "long-term substitute" as a substitute employee who fills a vacant position: that the county superintendent expects to extend for at least ninety consecutive days, and is either; listed in the job posting as a long term substitute position of over 90 days; or listed in a job posting as a regular, full-time position and is not filled by a regular, full-time employee
- WVC §18A-4-7c (New) - Regarding the summer school employment of professional educators, requires a county board to give employment preference to a professional educator who is currently employed by the board over applicants who are not current employees
- WVC §18A-4-8 - Creates the new service personnel position of "licensed practical nurse; defines the position as a nurse licensed by the West Virginia board of Examiners for Licensed Practical Nurses who is employed to work in a public school under the supervision of a school nurse; prohibits a county board from transferring or reducing an aide position for the purpose of creating a vacancy for the employment of a licensed practical nurse
- WVC §18A-4-8 - Prohibits a county board from establishing the beginning work station for a bus operator or transportation aide at any site other than a board-owned

facility with available parking unless the employee agrees otherwise in writing; specifies that the workday for a bus operator or transportation aide commences at the bus at the designated beginning work station and will not end until the employee is able to leave the bus at that station, unless the employee agrees otherwise in writing

- WVC §18A-4-8b - Requires county boards to post service personnel job vacancies on any website maintained by or available for the use of the county board
- WVC §18A-4-8b - Requires county boards to notify any person who has applied for a job the status of his or her application as soon as possible after the county board makes a hiring decision regarding the posted position
- WVC §18A-4-8f - Grants school service personnel the same rights as teachers in cases of school consolidations or mergers; requires boards to give priority to the school service personnel employed at a school that is to be closed due to a consolidation or merger when filling positions at the new school, if a majority of the service personnel vote to do so; requires the elections to be held separately and specifies that priority is to be given only for new positions created as a result of the consolidation or merger
- WVC §18A-4-8(h) - Specifies that beginning July 1, 2007, a substitute school service employee who acquire regular employment status serving in posted long-term substitute assignments will no longer acquire regular employee job bidding or regular seniority while serving in such assignments
- WVC §18A-4-10 – Requires county boards to establish a personal leave bank for employees, and requires the use of leave bank days to be limited to an active employee with fewer than five days of accumulated personal leave who is absent from work due to an accident or illness; prohibits the use of leave bank days to qualify for or add to service for any retirement system administered by the state; requires that each personal leave day contributed be credited to the receiving employee as one full personal leave day without adjustment being made based on the hourly wage of each employee; restricts the use of contributed leave days to the purpose for which the leave was transferred; and requires that any contributed days remaining after the medical emergency ends revert back to the leave bank
- WVC §18A-4-10f (New) – Requires a county board to

establish a leave donation program in addition to any leave bank establishes pursuant to WVC §18A-4-10; prohibits a board from limiting the number of leave days that an employee may transfer to his or her spouse; requires a county board to adopt a rule to implement the program, which must set forth the following conditions: the donor employee voluntarily agrees to the leave transfer, the donor employee selects the employee designated to receive the donated leave, and the receiving employee requires additional personal leave because of a catastrophic medical emergency; prohibits the use of leave bank days to qualify for or add to service for any retirement system administered by the state or to extend insurance coverage; requires that each personal leave day contributed be credited to the receiving employee as one full personal leave day without adjustment being made based on the hourly wage of each employee; restricts the use of contributed leave days to the purpose for which the leave was transferred; and requires that any contributed days remaining after the medical emergency ends revert back to the leave bank

- WVC §18A-4-15 - Clarifies that when a substitute service employee who receives his or her position as the result of a regularly employed service employee's absence due to an approved leave of absence, workers' compensation injury, or suspension, shall acquire regular employment status, except for job bidding rights or regular seniority

- WVC §18A-5-8 – Prohibits an autism mentor or aide who works with autistic students from transferring to another position in the county after the fifth day of an instructional term, unless the service person holding the position does not have valid certification; allows a board, upon recommendation of the superintendent, to fill a vacant position after the fifth day of an instructional term, if it is determined to be in the best interest of students, but requires the county superintendent to notify the State Board when these types of transfers are made; and allows an autism mentor or aide who works with autistic students to apply for any posted, vacant position with the successful applicant assuming the position at the beginning of the next instructional term

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2189

(By Delegates Caputo, Paxton, Perry, Fragale and M. Poling)

[Passed March 10, 2007; in effect ninety days from passage.]

AN ACT to amend and reenact §18-1-1 of the Code of West Virginia, 1931, as amended; to amend and reenact §18-5-13 of said code; to amend and reenact §18-20-2 of said code; to amend and reenact §18A-1-1 of said code; to amend and reenact §18A-4-8, §18A-4-8b, §18A-4-8f, §18A-4-8g, §18A-4-10 and §18A-4-15 of said code; to amend said code by adding thereto two new sections, designated §18A-4-7c and §18A-4-10f; and to amend and reenact §18A-5-8 of said code, all relating to public schools and county boards of education; school service personnel; personal leave and leave banks for school personnel; authority of county boards of education; updating definitions; expanding purposes for which schools may expend funds; establishing certain vehicle and driver safety requirements for transporting students to a school-sponsored activity; expanding the purposes for which county boards may lease school buses; giving preference to a currently employed professional educator for summer employment; establishing service personnel classification title for licensed practical nurse; adding posting and notice requirements for filling service personnel positions; prohibiting displacement of aides to create vacancy for licensed practical nurse; establishing parameters for the workday and beginning work station for certain service personnel; modifying process for determining certain service personnel hiring priority in cases of school merger or consolidation; authorizing transfer of personal leave in certain circumstances; modifying employment benefits accrued by substitute service personnel; requiring county boards of education to make certain training available to all regularly employed teachers' aides; prohibiting an autism mentor or aide who works with autistic students from transferring to another position after the fifth day prior to the beginning of the instructional term under certain conditions; deleting obsolete language; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §18-1-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18-5-13 of said Code be amended and reenacted; that §18-20-2 of said Code be amended and reenacted; that §18A-1-1 of said Code be amended and reenacted; that §18A-4-8, §18A-4-8b, §18A-4-8f, §18A-4-8g, §18A-4-10 and §18A-4-15 of said Code be amended and reenacted; that said Code be amended by adding thereto two new sections, designated §18A-4-7c and §18A-4-10f; and that §18A-5-8 of said Code be amended and reenacted, all to read as follows:

CHAPTER 18. EDUCATION.

**ARTICLE 1. DEFINITIONS; LIMITATIONS OF CHAPTER; GOALS FOR EDUCATION.
§18-1-1. Definitions.**

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

- (a) "School" means the ~~pupils~~ students and ~~teacher or~~ teachers assembled in one or more buildings, organized as a unit;
- (b) "District" means county school district;
- (c) "State board" means the West Virginia Board of Education;
- (d) "County board" or "board" means ~~the~~ a county board of education;
- (e) "State superintendent" means the ~~s~~State s~~S~~uperintendent of ~~f~~Free s~~S~~chools;
- (f) "County superintendent" or "superintendent" means ~~the~~ a county superintendent of schools;
- (g) "Teacher" means a teacher, supervisor, principal, superintendent or public school librarian; registered professional nurse, licensed by the West Virginia ~~b~~Board of ~~e~~Examiners for ~~r~~Registered ~~p~~Professional ~~n~~Nurses and employed by a county board of ~~education~~, who has a baccalaureate degree; or any other person regularly employed for instructional purposes in a public school in this state;
- (h); "Service person" or "Sservice personnel", whether singular or plural, means all any non-teaching school employees who is not included in the above definition meaning of "teacher" as defined in this section, and who serves the school or schools as a whole, in a nonprofessional capacity, including such areas as secretarial, custodial, maintenance, transportation, school lunch and aides. Any reference to "service employee" or "service employees" in this chapter or chapter eighteen-a of this Code means service person or service personnel as defined in this section;
- (i) "Social worker" means a nonteaching school employee who, at a minimum, possesses an undergraduate degree in social work from an accredited institution of higher learning and who provides various professional social work services, activities or methods as defined by the ~~s~~State bBoard for the benefit of students;
- (j) "Regular full-time employee" means any person employed by a county board of ~~education~~ who has a regular position or job throughout his or her employment term, without regard to hours or method of pay;
- (k) "Career clusters" means broad groupings of related occupations;
- (l) "Work-based learning" means a structured activity that correlates with and is mutually supportive of the school-based learning of the student and includes specific objectives to be learned by the student as a result of the activity;
- (m) "School-age juvenile" means any individual who is entitled to attend or who, if not placed in a residential facility, would be entitled to attend public schools in accordance with: (1) Section five, article two of this chapter; (2) sections fifteen and eighteen, article five of this chapter; or (3) section one, article twenty of this chapter;
- (n) "Student with a disability" means an exceptional child, other than gifted, pursuant to section one, article twenty of this chapter;
- (o) "Low-density county" means a county whose ratio of student population to square miles is less than or equal to the state average ratio as computed by the ~~s~~State dDepartment of ~~e~~Education;
- (p) "High-density county" means a county whose ratio of student population to square miles is greater than the state average ratio as computed by the ~~s~~State dDepartment of ~~e~~Education; and

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-13. Authority of boards generally.

~~Each county board, s~~Subject to the provisions of this chapter and the rules of the ~~s~~State ~~b~~Board, ~~has the authority each county board may:~~

(a) ~~To c~~Control and manage all of the schools and school interests for all school activities and upon all school property, ~~whether~~ owned or leased by the county, ~~including the authority to:~~

~~(1) require~~ Requiring that schools to keep records be kept of regarding funds connected with the school or school interests, including all receipts and disbursements of all funds collected or received by:

~~(A) a~~Any principal, teacher, student or other person in connection with the schools and school interests; ~~any programs, activities or other endeavors~~

~~(B) a~~Any programs, ~~activities~~ activity or other endeavor of any nature operated or ~~carried on~~ conducted by or in the name of the school; ~~or~~ and

~~(C) a~~Any organization or body directly connected with the school; ~~;~~

~~(2) Allowing schools to expend funds for student, parent, teacher and community recognition programs. A school may use only funds it generates through a fund-raising or donation-soliciting activity. Prior to commencing the activity, the school shall:~~

~~(A) Publicize the activity as intended for this purpose; and~~

~~(B) Designate for this purpose the funds generated;~~

~~(3) to a~~Auditing the records and ~~to conserve~~ conserving the funds, ~~which shall be considered quasipublic moneys,~~ including securing surety bonds by ~~expenditure~~ expending of board moneys; ~~The funds described in this subsection are quasipublic funds, which means the moneys were received for the benefit of the school system as a result of curricular or noncurricular activities;~~

~~(b) To e~~Establish:

~~(1) s~~Schools, from preschool through high school, ~~inclusive of;~~

~~(2) v~~Vocational schools; and ~~to establish~~

~~(3) s~~Schools, and programs ~~or both,~~ for post-high school instruction, subject to approval of the ~~s~~State ~~b~~Board;

~~(c) To c~~Close any school:

~~(1) w~~Which is unnecessary and ~~to assign the pupils~~ students of the ~~school~~ to other schools; ~~Provided, That t~~The closing shall ~~be officially acted upon,~~ occur pursuant to official action of the county board. Except in emergency situations when the timing and manner of notification are subject to approval by the state superintendent, the county board shall notify the affected teachers and service personnel involved notified on or before of the county board action not later than the first Monday in April; The board shall provide notice in the same manner as provided set forth in section four of this article, except in an emergency, subject to the approval of the state superintendent or under subdivision; or

~~(2) Pursuant to the provisions of subsection (e) of this section;~~

~~(d) To c~~Consolidate schools;

~~(e) To c~~Close any elementary school whose average daily attendance falls below twenty ~~pupils~~ students for two consecutive months in ~~succession and send the pupils.~~ The county board may assign the students to other schools in the district or to schools in adjoining districts. If the teachers in the closed school are not transferred or reassigned to other schools, they shall receive one month's salary;

(f) ~~(1) To~~ Provide transportation according to rules established by the county board, as follows:

~~(1) To provide at public expense adequate means of transportation;—including transportation across county lines for students whose transfer from one district to another is agreed to by both county boards as reflected in the minutes of their respective meetings;~~

~~(A) fFor all children of school age who live more than two miles distance from school by the nearest available road; to provide at public expense, according to such rules as the board may establish, adequate means of transportation~~

~~(B) fFor school children participating in county board-approved curricular and extracurricular activities; to provide at public expense, by rules and~~

~~(C) Across county lines for students transferred from one district to another by mutual agreement of both county boards. The agreement shall be recorded in the meeting minutes each participating county board and is subject to the provisions of subsection (h) of this section; and~~

~~(D) wWithin the available revenues, transportation for those for students within two miles distance of the school; and~~

~~(2) tTo provide, at no cost to the county board and according to rules established by the board transportation for participants in projects operated, financed, sponsored or approved by the commission on aging all subject to the following: (A) Bureau of Senior Services. This transportation shall be provided at no cost to the county board and according the rules established by the board, transportation for participants in projects operated, financed, sponsored or approved bye the commission on aging, all subject to the following: (A) All costs and expenses incident in any way to this transportation for projects connected with the commission on aging shall be borne by the commission Bureau or the local or county chapter affiliate of the commission Bureau;~~

~~(B) In all cases, the school buses~~

~~(3) Any school bus owned by the county board shall be driven or may only be operated only by drivers a bus operator regularly employed by the county board;~~

~~(C) The county board may provide, under~~

~~(4) Pursuant to rules established by the sState bBoard, Tthe county board may provide, for the certification of professional employees as drivers of to be certified to drive county board-owned vehicles with that have a seating capacity of less fewer than ten passengers, used for the transportation of pupils These employees may use the vehicles to transport students for school-sponsored activities, other than transporting but may not use the vehicles to transport students between school and home. The use of the vehicles shall be limited to one for each Not more than one of these vehicles may be used for any school-sponsored activity; and (D)~~

~~(5) Students may not be transported to a school-sponsored activity in any county-owned or leased vehicle that does not meet school bus or public transit ratings. This section does not prohibit a parent from transporting ten or fewer students in a privately-owned vehicle;~~

~~(6) Students may be transported to a school-sponsored activity in a vehicle that has a seating capacity of sixteen or more passengers which is not owned and operated by the county board only as follows:~~

~~(A) The State Board shall promulgate a rule to establish requirements for:~~

~~(i) Automobile insurance coverage;~~

~~(ii) Vehicle safety specifications;~~

~~(iii) School bus or public transit ratings; and~~

(iv) Driver training, certification and criminal history record check; and
(B) The vehicle owner shall provide to the county board proof that the vehicle and driver satisfy the requirements of the State Board rule; and
(7) Buses shall be used for extracurricular activities as provided in this section only when the insurance provided for coverage required by this section is in effect;
~~(2) To enter into agreements with one another as reflected in the minutes of their respective meetings to provide, on a cooperative basis, adequate means of transportation across county lines for children of school age subject to the conditions and restrictions of this subsection and subsection (h) of this section;~~
(g) (1) To lease school buses pursuant to rules established by the county board.
(1) Leased buses may be operated only by drivers bus operators regularly employed by the county board.
(2) The lessee shall bear all costs and expenses incurred by, or incidental to the use of, the bus.
(3) The county board may lease buses to:
(A) Public and private nonprofit organizations or and private corporations to transport school-age children to and from for camps or educational activities in accordance with rules established by the county board. All costs and expenses incurred by or incidental to the transportation of the children shall be borne by the lessee.
~~(2) (B) To contract with a~~Any college, or university or officially recognized campus organizations to provide transportation for college or university organization for transporting students, faculty or and staff to and from the college or university. Only college and university students, faculty and staff may be transported pursuant to this section paragraph. The contract lease shall include consideration and compensation provisions for:
(i) Compensation for bus operators;
(ii) Consideration for insurance coverage, repairs and other costs of service, insurance;
and
(iii) Any rules concerning student behavior;
(C) Public and private nonprofit organizations, including education employee organizations, for transportation associated with fairs, festivals and other educational and cultural events. The county board may charge fees in addition to those charges otherwise required by this subsection.
(h) To provide at public expense for insurance coverage against the negligence of the drivers of school buses, trucks or other vehicles operated by the county board;
~~and if the transportation of pupils is contracted, then the contract for the transportation shall provide that the contractor shall carry~~Any contractual agreement for transportation of students shall require the vehicle owner to maintain insurance coverage against negligence in an amount specified by the county board;
~~(i) To provide solely from county board funds for all regular full time employees of the county board all or any part of the cost of the group plan or plans or insurance coverage for the full cost or any portion thereof for group plan insurance benefits not provided or available under the West Virginia Public Employees Insurance Act. Any of these benefits shall be provided:
(1) Solely from county board funds; and
(2) For all regular full-time employees of the county board;
~~(j) To employ teacher aides; to provide in-service training for teacher the aides pursuant to rules established by the State Board; the training to be in accordance with rules of the state board and, in the case of service personnel assuming duties of~~~~

~~teacher aides in exceptional children programs to provide and prior to the assignment, to provide a four-clock-hour program of training for a service person assigned duties as a teacher aide in an exceptional children program.~~ The four-clock-hour program shall consist of training prior to the assignment, which shall, in accordance with rules of the state board, consists of training in areas specifically related to the education of exceptional children;

(k) ~~To e~~Establish and conduct operate a self-supporting dormitory for the accommodation of the pupils;

(1) Students attending a high school or participating in a post high school program; and of

(2) Persons employed to teach in the high school or post high school program;

(l) At the county board's discretion, ~~to~~ employ, contract with or otherwise engage legal counsel in lieu of ~~utilizing~~ using the services of the prosecuting attorney to advise, attend to, bring, prosecute or defend, as the case may be, any matters, actions, suits and proceedings in which the county board is interested;

(m) ~~To p~~Provide appropriate uniforms for school service personnel;

(n) ~~To p~~Provide at public expense and ~~under rules as established by any county board for the~~ payment of traveling expenses incurred by any person invited to appear to be interviewed concerning possible employment by the county board, subject to rules established by the county board;

(o) ~~To a~~Allow or disallow their designated employees to use publicly provided carriage to travel from their residences to their workplace and return: ~~Provided, That, t~~The useage;

(1) ~~is~~ subject to the supervision of the county board; and is

(2) Shall be directly connected with, and required by the nature and in and essential to the performance of the employee's duties and responsibilities;

(p) ~~To p~~Provide, at public expense, adequate public liability insurance, including professional liability insurance, for county board employees;

(q) ~~To e~~Enter into cooperative agreements with ~~one another~~ other county boards to provide, ~~on a cooperative basis,~~ improvements to the instructional needs of each district. The cooperative agreements may be used to employ specialists in a field of academic study or for support functions or services, for the academic study field. The agreements are subject to approval by the ~~s~~State bBoard;

(r) ~~To p~~Provide information about vocational ~~or~~ and higher education opportunities to exceptional students ~~with handicapping conditions~~. The county board shall provide in writing to the students and their parents or guardians information relating to programs of vocational education and to programs available at state ~~funded~~ institutions of higher education. The information may include sources of available funding, including grants, mentorships and loans for students who wish to attend classes at institutions of higher education;

(s) ~~To e~~Enter into agreements with ~~one another, with approval of the state board,~~ other county boards for the transfer and receipt of any ~~and all~~ funds determined to be fair when students are permitted or required to attend school in a district other than the district of their residence. These agreements are subject to the approval of the State Board; and

(t) ~~To e~~Enter into job-sharing arrangements, as defined in section one, article one, chapter eighteen-a of this ~~e~~Code, with its employees, subject to the following provisions:

(1) A job-sharing arrangement shall meet all the requirements relating to posting, qualifications and seniority, as provided for in article four, chapter eighteen-a of this

eCode;

(2) Notwithstanding any ~~provisions~~ contrary provision of this eCode or legislative rule and specifically the provisions of article sixteen, chapter five of this eCode ~~to the contrary,~~ a county board ~~which~~ that enters into a job-sharing arrangement ~~in which two or more employees voluntarily share an authorized full-time position :~~

(A) ~~s~~Shall provide the insurance coverage to the one employee mutually agreed upon employee coverage but shall by the employees participating in that arrangement; and

(B) May not offer insurance coverage provide insurance benefits of any type to more than one of the job-sharing employees, including any group plan ~~or group plans~~ available under the ~~s~~State ~~p~~Public ~~e~~Employees ~~i~~nsurance ~~a~~Act;

(3) Each job-sharing agreement shall be in writing on a form prescribed and furnished by the county board. The agreement shall designate specifically one employee only who is entitled to the insurance coverage. Any employee who is not ~~so~~ designated is not eligible for state public employees insurance coverage regardless of the number of hours he or she works;

(4) All employees involved in the job-sharing agreement shall meet the requirements of subdivision (3), section two, article sixteen, chapter five of this eCode; and

(5) When entering into a job-sharing agreement, the county board and the participating employees involved in the job-sharing agreement shall consider issues such as retirement benefits, termination of the job-sharing agreement and any other issue the parties ~~to the agreement~~ consider appropriate. Any provision in the agreement relating to retirement benefits ~~shall~~ may not cause any cost to be incurred by the retirement system that is more than the cost that would be incurred if a single employee were filling the position- ; and

~~“Quasipublic funds” as used in this section means any money received by an principal, teacher, student or other person for the benefit of the school system as a result of curricular or noncurricular activities.~~

~~(u) Each county board shall expend~~ Under rules it establishes for each child, expend an amount not to exceed the proportion of all school funds of the district that each child would be entitled to receive if all the funds were distributed equally among all the children of school age in the district upon a per capita basis.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-2. Providing suitable educational facilities, equipment and services.

~~(a) The board of education of e~~Each county board ~~is empowered and is responsible for~~ shall providing provide suitable educational facilities, special equipment and ~~such~~ special services ~~as may be that are~~ necessary. Special services include provisions and procedures for finding and enumerating exceptional children of each type, diagnosis by appropriate specialists who will certify the child's need and eligibility for special education and make recommendations for ~~such~~ treatment and prosthesis as may alleviate his the disability, special teaching by qualified and especially trained teachers, transportation, lunches and remedial therapeutic services. Qualifications of teachers and therapists shall be in accordance with standards prescribed or approved by the ~~s~~State ~~b~~Board of education.

~~(b) Counties~~ A county board may provide for educating ~~their~~ resident exceptional children by contracting with other counties or other educational agencies which maintain ~~such~~ special education facilities. Fiscal matters ~~will~~ shall follow policies approved by the ~~s~~State ~~board of education~~.

~~(c) The county board shall provide a four-clock-hour program of training for~~ Any teacher aide employed to assist teachers in providing services to exceptional children

~~under this article shall, prior to assuming such duties, complete a four-clock-hour course the assignment. The program shall consist of training in areas specifically related to the education of exceptional children, to be provided by the county in accordance with pursuant to rules and regulations of the sState bBoard of education. Such The training shall occur during normal working hours and an opportunity to be trained shall be provided such-employee to service person prior to the filling of a vacancy in accordance with the provisions of section eight-b, article four, chapter eighteen-a of this eCode.~~ (d) The county board annually shall make available during normal working hours to all regularly employed teachers' aides twelve hours of training that satisfies the continuing education requirements for the aides regarding:

(1) Providing services to children who have displayed violent behavior or have demonstrated the potential for violent behavior; and

(2) Providing services to children diagnosed as autistic or with autism spectrum disorder. This training shall be structured to permit the employee to qualify as an autism mentor after a minimum of four years of training. The county board shall:

(A) Notify in writing all teachers' aides of the location, date and time when training will be offered for qualification as an autism mentor; and

(B) Reimburse any regularly employed or substitute teacher's aide who elects to attend this training for one-half of the cost of the tuition.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 1. GENERAL PROVISIONS.

§18A-1-1. Definitions.

The definitions contained in section one, article one, chapter eighteen of this eCode apply to this chapter. In addition, the following words used in this chapter and in any proceedings pursuant to this chapter ~~shall, have the meanings ascribed to them unless the context clearly indicates a different meaning, be construed as follows :~~

(a) "School personnel" means all personnel employed by a county board whether employed on a regular full-time basis, an hourly basis or otherwise. "School personnel" ~~shall be~~ is comprised of two categories: Professional personnel and service personnel;

(b) "Professional person" or "Professional personnel" means those persons or employees who meet the certification requirements of the state, licensing requirements of the state, or both, and includes the a professional educator and other professional employees employee;

(c) "Professional educator" has the same meaning as "teacher" as defined in section one, article one, chapter eighteen of this eCode. Professional educators ~~shall be~~ are classified as follows:

(1) "Classroom teacher" means a professional educator who has a direct instructional or counseling relationship with ~~pupils,~~ students spending and who spends the majority of his or her time in this capacity;

(2) "Principal" means a professional educator who, functions as an agent of the county board, and has responsibility for the supervision, management and control of a school or schools within the guidelines established by the county board. The principal's major area of ~~the responsibility shall be~~ is the general supervision of all the schools and all school activities involving ~~pupils~~ students, teachers and other school personnel;

(3) "Supervisor" means a professional educator who, ~~whether by this or other appropriate title,~~ is responsible for working primarily in the field with professional and other personnel in instructional and other school improvement. This category includes other appropriate titles or positions with duties that fit within this definition; and

(4) "Central office administrator" means a superintendent, associate superintendent,

assistant superintendent and other professional educators, ~~whether by these or appropriate titles,~~ who are charged with the administering and supervising of the whole or some assigned part of the total program of the countywide school system. This category includes other appropriate titles or positions with duties that fit within this definition;

(d) "Other professional employee" means ~~that a~~ person from another profession who is properly licensed and who is employed to serve the public schools ~~and~~. This definition includes a registered professional nurse, licensed by the West Virginia bBoard of eExaminers for rRegistered pProfessional nNurses, and who is employed by a county board, and who has completed either a two-year (sixty-four semester hours) or a three-year (ninety-six semester hours) nursing program;

(e) "Service person" or "Service personnel", whether singular or plural, means a non-teaching school employee who is not included in the meaning of "teacher" as defined in section one, article one, chapter eighteen of this Code, and these who serves the school or schools as a whole, in a nonprofessional capacity, including such areas as secretarial, custodial, maintenance, transportation, school lunch and aides. Any reference to "service employee" or "service employees" in this chapter or chapter eighteen of this Code means service person or service personnel as defined in this section;

(f) "Principals aAcademy" or "aAcademy" means the aAcademy created pursuant to section two-b, article three-a of this chapter;

(g) "Center for pProfessional dDevelopment" means the eCenter created pursuant to section one, article three-a of this chapter;

(h) "Job-sharing arrangement" means a formal, written agreement voluntarily entered into by a county board with two or more of its employees who wish to divide between them the duties and responsibilities of one authorized full-time position;

(i) "Prospective employable professional person~~nel~~" whether singular or plural, means a certified professional educators who:

(1) ~~Have Has~~ been recruited on a reserve list of a county board;

(2) ~~Have Has~~ been recruited at a job fair or as a result of contact made at a job fair;

(3) ~~Have Has~~ not obtained regular employee status through the job posting process provided for in section seven-a, article four of this chapter; and

(4) ~~Have Has~~ obtained a baccalaureate degree from an accredited institution of higher education within the past year;

(j) "Dangerous student" means a ~~pupil~~ student who is substantially likely to cause serious bodily injury to himself, herself or another individual within that ~~pupil's~~ student's educational environment, which may include any alternative education environment, as evidenced by a pattern or series of violent behavior exhibited by the ~~pupil~~ student, and documented in writing by the school, with the documentation provided to the student and parent or guardian at the time of any offense; and

(k) "Alternative education" means an authorized departure from the regular school program designed to provide educational and social development for students whose disruptive behavior places them at risk of not succeeding in the traditional school structures and in adult life without positive interventions.

(l) "Long-term substitute" means a substitute employee who fills a vacant position:

(1) That the county superintendent expects to extend for at least ninety consecutive days, and is either:

(A) Listed in the job posting as a long term substitute position of over ninety days; or

(B) Listed in a job posting as a regular, full-time position and:

(i) Is not filled by a regular, full-time employee; and

(ii) Is filled by a substitute employee.

For the purposes of section two, article sixteen, chapter five of this code, long-term substitute does not include a retired employee hired to fill the vacant position.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-7c. Summer employment of professional educators.

(a) A county board shall hire professional educators for positions in summer school programs in accordance with section thirty-nine, article five, chapter eighteen of this code or section seven-a of this article, as applicable, except that a professional educator who is currently employed by the county board shall be given employment preference over applicants who are not current employees.

§18A-4-8. Employment term and class titles of service personnel; definitions.

(a) The purpose of this section is to establish an employment term and class titles for service personnel. The employment term for service personnel may not be ~~no~~ less than ten months. A month is defined as twenty employment days: *Provided*, That the county board may contract with all or part of these service personnel for a longer term. The beginning and closing dates of the ten-month employment term may not exceed forty-three weeks.

(b) Service personnel employed on a yearly or twelve-month basis may be employed by calendar months. Whenever there is a change in job assignment during the school year, the minimum pay scale and any county supplement are applicable.

(c) Service personnel employed in the same classification for more than the two hundred day minimum employment term shall be paid for additional employment at a daily rate of not less than the daily rate paid for the two hundred day minimum employment term.

(d) ~~No~~ A service employee, person may not be required to report for work more than five days per week without his or her agreement, ~~may be required to report for work more than five days per week~~ and no part of any working day may be accumulated by the employer for future work assignments, unless the employee agrees thereto.

(e) ~~If an employee~~ a service person whose regular work week is scheduled from Monday through Friday agrees to perform any work assignments on a Saturday or Sunday, the ~~employee~~ service person shall be paid for at least one-half day of work for each day he or she reports for work, ~~and if the employee~~ service person works more than three and one-half hours on any Saturday or Sunday, he or she shall be paid for at least a full day of work for each day.

(f) ~~A, Custodians, aides, maintenance, office and school lunch employees~~ service person required to work a daily work schedule that is interrupted, ~~that is, who do not work a continuous period in one day,~~ shall be paid additional compensation equal to at least one eighth of their total salary as provided by their state minimum salary and any county pay supplement, ~~and payable entirely from county funds:~~ *Provided*, That when engaged in duties of transporting students exclusively, ~~aides shall not be regarded as working an interrupted schedule.~~

(1) A maintenance personnel are person is defined as personnel a person who holds a classification title other than in a custodial, aide, school lunch, office or transportation category as provided in section one, article one of this chapter.

(2) A service person's schedule is considered to be interrupted if he or she does not work a continuous period in one day. Aides are not regarded as working an interrupted schedule when engaged exclusively in the duties of transporting students;

(3) The additional compensation provided for in this subsection:

(A) Is equal to at least one eighth of a service person's total salary as provided by the state minimum pay scale and any county pay supplement; and

(B) Is payable entirely from county board funds.

~~(g) Upon the~~ When there is a change in classification or upon when a service person meeting meets the requirements of an advanced classification, ~~of or by any employee,~~ the employee's his or her salary shall be made to comply with the requirements of this article, and to any county salary schedule in excess of the minimum requirements of this article, based upon the ~~employee's~~ service person's advanced classification and allowable years of employment.

~~(h) An employee's~~ A service person's, contract as provided in section five, article two of this chapter, shall state the appropriate monthly salary the employee is to be paid, based on the class title as provided in this article and on any county salary schedule in excess of the minimum requirements of this article.

(i) The column heads of the state minimum pay scale and class titles, set forth in section eight-a of this article, are defined as follows:

(1) "Pay grade" means the monthly salary applicable to class titles of service personnel;

(2) "Years of employment" means the number of years which an employee classified as a service personnel person has been employed by a county board in any position prior to or subsequent to the effective date of this section and ~~including~~ includes service in the armed forces of the United States, if the employee ~~were~~ was employed at the time of his or her induction. For the purpose of section eight-a of this article, years of employment ~~shall be~~ is limited to the number of years shown and allowed under the state minimum pay scale as set forth in section eight-a of this article;

(3) "Class title" means the name of the position or job held by a service personnel person;

(4) "Accountant I" means ~~personnel~~ a person employed to maintain payroll records and reports and perform one or more operations relating to a phase of the total payroll;

(5) "Accountant II" means ~~personnel~~ a person employed to maintain accounting records and to be responsible for the accounting process associated with billing, budgets, purchasing and related operations;

(6) "Accountant III" means ~~personnel~~ a person ~~who are~~ employed in the county board office to manage and supervise accounts payable, ~~and/or~~ payroll procedures, or both;

(7) "Accounts payable supervisor" means ~~personnel~~ a person ~~who are~~ employed in the county board office who ~~have~~ has primary responsibility for the accounts payable function, ~~which may include the supervision of other personnel,~~ and who ~~have~~ has completed twelve college hours of accounting courses from an accredited institution of higher education or ~~have~~ has at least eight years of experience performing progressively difficult accounting tasks. Responsibilities of this class title may include supervision of other personnel;

(8) "Aide I" means ~~those personnel~~ a person selected and trained for a teacher-aide classifications such as monitor aide, clerical aide, classroom aide or general aide;

(9) "Aide II" means ~~those personnel~~ a service person referred to in the "Aide I" classification who ~~have~~ has completed a training program approved by the ~~s~~State ~~Board,~~ or who holds a high school diploma or has received a general educational development certificate. Only ~~personnel~~ a person classified in an Aide II class title may be employed as an aide in any special education program;

(10) "Aide III" means ~~those personnel~~ a service person referred to in the "Aide I" classification who holds a high school diploma or a general educational development certificate;

and

~~(A) have~~ Has completed six semester hours of college credit at an institution of higher education; ~~or are~~

~~(B) Is~~ employed as an aide in a special education program and ~~have~~ has one year's experience as an aide in special education;

(11) "Aide IV" means ~~personnel~~ a service person referred to in the "Aide I" classification who holds a high school diploma or a general educational development certificate; and ~~who have~~

~~(A) Has~~ Has completed eighteen hours of ~~sState bBoard~~-approved college credit at a regionally accredited institution of higher education, or ~~who have~~

~~(B) Has~~ Has completed fifteen hours of ~~sState bBoard~~-approved college credit at a regionally accredited institution of higher education; and has successfully completed an in-service training program determined by the ~~sState bBoard~~ to be the equivalent of three hours of college credit;

(12) "Audiovisual technician" means ~~personnel~~ a person employed to perform minor maintenance on audiovisual equipment, films, and supplies and ~~the filling of~~ who fills requests for equipment;

(13) "Auditor" means ~~personnel~~ a person employed to examine and verify accounts of individual schools and to assist schools and school personnel in maintaining complete and accurate records of their accounts;

(14) "Autism mentor" means ~~personnel~~ a person who works with autistic students and who meets standards and experience to be determined by the ~~sState bBoard~~. ~~Provided, That if any employee~~ A person who has held or holds an aide title and becomes employed as an autism mentor, ~~the employee~~ shall hold a multiclassification status that includes both aide and autism mentor titles, in accordance with section eight-b of this article;

(15) "Braille or sign language specialist" means ~~personnel~~ a person employed to provide braille and/or sign language assistance to students: ~~Provided, That if any employee,~~ A service person who has held or holds an aide title and becomes employed as a braille or sign language specialist, ~~the employe~~ shall hold a multiclassification status that includes both aide and braille or sign language specialist title, in accordance with section eight-b of this article;

(16) "Bus operator" means ~~personnel~~ a person employed to operate school buses and other school transportation vehicles as provided by the ~~sState bBoard~~;

(17) "Buyer" means ~~personnel~~ a person employed to review and write specifications, negotiate purchase bids and recommend purchase agreements for materials and services that meet predetermined specifications at the lowest available costs;

(18) "Cabinetmaker" means ~~personnel~~ a person employed to construct cabinets, tables, bookcases and other furniture;

(19) "Cafeteria manager" means ~~personnel~~ a person employed to direct the operation of a food services program in a school, including assigning duties to employees, approving requisitions for supplies and repairs, keeping inventories, inspecting areas to maintain high standards of sanitation, preparing financial reports and keeping records pertinent to food services of a school;

(20) "Carpenter I" means ~~personnel~~ a person classified as a carpenter's helper;

(21) "Carpenter II" means ~~personnel~~ a person classified as a journeyman carpenter;

(22) "Chief mechanic" means ~~personnel~~ a person employed to be responsible for directing activities which ensure that student transportation or other county board-owned vehicles are properly and safely maintained;

(23) "Clerk I" means ~~personnel~~ a person employed to perform clerical tasks;

- (24) "Clerk II" means ~~personnel~~ a person employed to perform general clerical tasks, prepare reports and tabulations and operate office machines;
- (25) "Computer operator" means a qualified ~~personnel~~ person employed to operate computers;
- (26) "Cook I" means ~~personnel~~ a person employed as a cook's helper;
- (27) "Cook II" means ~~personnel~~ a person employed to interpret menus; and to prepare and serve meals in a food service program of a school ~~and shall. This definition includes~~ personnel a service person who have has been employed as a "Cook I" for a period of four years, ~~if the personnel have not been elevated to this classification within that period of time;~~
- (28) "Cook III" means ~~personnel~~ a person employed to prepare and serve meals, make reports, prepare requisitions for supplies, order equipment and repairs for a food service program of a school system;
- (29) "Crew leader" means ~~personnel~~ a person employed to organize the work for a crew of maintenance employees to carry out assigned projects;
- (30) "Custodian I" means ~~personnel~~ a person employed to keep buildings clean and free of refuse;
- (31) "Custodian II" means ~~personnel~~ a person employed as a watchman or groundsman;
- (32) "Custodian III" means ~~personnel~~ a person employed to keep buildings clean and free of refuse, to operate the heating or cooling systems and to make minor repairs;
- (33) "Custodian IV" means ~~personnel~~ a person employed as head custodians. In addition to providing services as defined in "custodian III," ~~their~~ duties may include supervising other custodian personnel;
- (34) "Director or coordinator of services" means ~~personnel~~ an employee of a county board who are is assigned to direct a department or division.
- (A) ~~Nothing in this subdivision may prohibits~~ a professional ~~personnel~~ person or a professional educators as defined in section one, article one of this chapter, from holding this class title, ~~but;~~
- (B) ~~Professional personnel may not~~ holding this class title may not be defined or classified as service personnel unless the professional ~~personnel~~ person held a service personnel title under this section prior to holding the class title of "director or coordinator of services."
- (C) ~~The~~ Directors or coordinators of services ~~positions~~ shall be classified as either as a professional ~~personnel~~ person or a service ~~personnel~~ person for state aid formula funding purposes; and
- (D) ~~Funding for the position of~~ directors or coordinators of services ~~positions shall be~~ is based upon the employment status of the director or coordinator either as a professional ~~personnel~~ person or a service ~~personnel~~ person;
- (35) "Draftsman" means ~~personnel~~ a person employed to plan, design and produce detailed architectural/engineering drawings;
- (36) "Electrician I" means ~~personnel~~ a person employed as an apprentice electrician helper or one who holds an electrician helper license issued by the state fire marshal;
- (37) "Electrician II" means ~~personnel~~ a person employed as an electrician journeyman or one who holds a journeyman electrician license issued by the state fire marshal;
- (38) "Electronic technician I" means ~~personnel~~ a person employed at the apprentice level to repair and maintain electronic equipment;
- (39) "Electronic technician II" means ~~personnel~~ a person employed at the journeyman level to repair and maintain electronic equipment;

- (40) "Executive secretary" means ~~personnel~~ a person employed as secretary to the county school superintendent's ~~secretary~~ or as a secretary who is assigned to a position characterized by significant administrative duties;
- (41) "Food services supervisor" means a ~~qualified personnel~~ person who is not defined as a ~~professional personnel~~ person or professional educators as defined in section one, article one of this chapter;. The food services supervisor is employed to manage and supervise a county school system's food service program. The duties ~~would~~ include preparing in-service training programs for cooks and food service employees, instructing personnel in the areas of quantity cooking with economy and efficiency and keeping aggregate records and reports;
- (42) "Foreman" means a ~~skilled persons~~ employed ~~for supervision of~~ to supervise personnel who work in the areas of repair and maintenance of school property and equipment;
- (43) "General maintenance" means ~~personnel~~ a person employed as a ~~helpers to skilled~~ maintenance employees and to perform minor repairs to equipment and buildings of a county school system;
- (44) "Glazier" means ~~personnel~~ a person employed to replace glass or other materials in windows and doors and to do minor carpentry tasks;
- (45) "Graphic artist" means ~~personnel~~ a person employed to prepare graphic illustrations;
- (46) "Groundsman" means ~~personnel~~ a person employed to perform duties that relate to the appearance, repair and general care of school grounds in a county school system. Additional assignments may include the operation of a small heating plant and routine cleaning duties in buildings;
- (47) "Handyman" means ~~personnel~~ a person employed to perform routine manual tasks in any operation of the county school system;
- (48) "Heating and air conditioning mechanic I" means ~~personnel~~ a person employed at the apprentice level to install, repair and maintain heating and air conditioning plants and related electrical equipment;
- (49) "Heating and air conditioning mechanic II" means ~~personnel~~ a person employed at the journeyman level to install, repair and maintain heating and air conditioning plants and related electrical equipment;
- (50) "Heavy equipment operator" means ~~personnel~~ a person employed to operate heavy equipment;
- (51) "Inventory supervisor" means ~~personnel~~ a person ~~who are~~ employed to supervise or maintain operations in the receipt, storage, inventory and issuance of materials and supplies;
- (52) "Key punch operator" means a ~~qualified personnel~~ person employed to operate key punch machines or verifying machines;
- (53) "Licensed practical nurse" means a nurse, licensed by the West Virginia Board of Examiners for Licensed Practical Nurses, employed to work in a public school under the supervision of a school nurse;
- ~~(53)~~ (54) "Locksmith" means ~~personnel~~ a person employed to repair and maintain locks and safes;
- ~~(54)~~ (55) "Lubrication man" means ~~personnel~~ a person employed to lubricate and service gasoline or diesel-powered equipment of a county school system;
- ~~(55)~~ (56) "Machinist" means ~~personnel~~ a person employed to perform machinist tasks which include the ability to operate a lathe, planer, shaper, threading machine and

wheel press. ~~These personnel should also~~ A person holding this class title also should have, the ability to work from blueprints and drawings;

~~(56)~~ (57) "Mail clerk" means ~~personnel~~ a person employed to receive, sort, dispatch, deliver or otherwise handle letters, parcels and other mail;

~~(57)~~ (58) "Maintenance clerk" means ~~personnel~~ a person employed to maintain and control a stocking facility to keep adequate tools and supplies on hand for daily withdrawal for all school maintenance crafts;

~~(58)~~ (59) "Mason" means ~~personnel~~ a person employed to perform tasks connected with brick and block laying and carpentry tasks related to ~~such laying these activities~~;

~~(59)~~ (60) "Mechanic" means ~~personnel~~ a person employed ~~who can~~ to perform skilled duties independently ~~perform skilled duties~~ in the maintenance and repair of automobiles, school buses and other mechanical and mobile equipment to use in a county school system;

~~(60)~~ (61) "Mechanic assistant" means ~~personnel~~ a person employed as a mechanic apprentice and helper;

~~(61)~~ (62) "Multiclassification" means ~~personnel~~ a person employed to perform tasks that involve the combination of two or more class titles in this section. In these instances the minimum salary scale shall be the higher pay grade of the class titles involved;

~~(62)~~ (63) "Office equipment repairman I" means ~~personnel~~ a person employed as an office equipment repairman apprentice or helper;

~~(63)~~ (64) "Office equipment repairman II" means ~~personnel~~ a person responsible for servicing and repairing all office machines and equipment. ~~Personnel are~~ A person holding this class title is responsible for ~~parts being the purchased of parts~~ necessary for the proper operation of a program of continuous maintenance and repair;

~~(64)~~ (65) "Painter" means ~~personnel~~ a person employed to perform duties of painting, finishing and decorating of wood, metal and concrete surfaces of buildings, other structures, equipment, machinery and furnishings of a county school system;

~~(65)~~ (66) "Paraprofessional" means a person certified pursuant to section two-a, article three of this chapter to perform duties in a support capacity including, but not limited to, facilitating in the instruction and direct or indirect supervision of ~~pupils~~ students under the direction of a principal, a teacher or another designated professional educator. Provided, That no

(A) A person employed on the effective date of this section in the position of an aide may not be ~~reduced~~ subject to a reduction in force or transferred to create a vacancy for the employment of a paraprofessional. ~~Provided, however, That if any employee~~

(B) A person who has held or holds an aide title and becomes employed as a paraprofessional, ~~the employee~~ shall hold a multiclassification status that includes both aide and paraprofessional titles in accordance with section eight-b of this article. ~~Provided further, That once an employee; and~~

(C) When a service person who holds an aide title becomes certified as a paraprofessional and is required to perform duties that may not be performed by an aide without paraprofessional certification, he or she shall receive the paraprofessional title pay grade;

~~(66)~~ (67) "Payroll supervisor" means ~~personnel~~ a person ~~who are~~ employed in the county board office who has primary responsibility for the payroll function, ~~which may include the supervision of other personnel,~~ and who ~~have~~ either has completed twelve college hours of accounting from an accredited institution of higher education or ~~have~~ has at least eight years of experience performing progressively difficult accounting tasks. Responsibilities of this class title may include supervision of other personnel;

~~(67)~~ (68) "Plumber I" means ~~personnel~~ a person employed as an apprentice plumber and helper;

~~(68)~~ (69) "Plumber II" means ~~personnel~~ a person employed as a journeyman plumber;

~~(69)~~ (70) "Printing operator" means ~~personnel~~ a person employed to operate duplication equipment, and ~~as required~~ to cut, collate, staple, bind and shelve materials as required;

~~(70)~~ (71) "Printing supervisor" means ~~personnel~~ a person employed to supervise the operation of a print shop;

~~(71)~~ (72) "Programmer" means ~~personnel~~ a person employed to design and prepare programs for computer operation;

~~(72)~~ (73) "Roofing/sheet metal mechanic" means ~~personnel~~ a person employed to install, repair, fabricate and maintain roofs, gutters, flashing and duct work for heating and ventilation;

~~(73)~~ (74) "Sanitation plant operator" means ~~personnel~~ a person employed to operate and maintain a water or sewage treatment plant to ensure the safety of the plant's effluent for human consumption or environmental protection;

~~(74)~~ (75) "School bus supervisor" means a qualified ~~personnel~~ person employed to assist in selecting school bus operators and routing and scheduling school buses, operate a bus when needed, relay instructions to bus operators, plan emergency routing of buses and promote good relationships with parents, ~~pupils~~ students, bus operators and other employees;

~~(75)~~ (76) "Secretary I" means ~~personnel~~ a person employed to transcribe from notes or mechanical equipment, receive callers, perform clerical tasks, prepare reports and operate office machines;

~~(76)~~ (77) "Secretary II" means ~~personnel~~ a person employed in any elementary, secondary, kindergarten, nursery, special education, vocational or any other school as a secretary. The duties may include performing general clerical tasks; transcribing from notes ~~of~~, stenotype ~~of~~, mechanical equipment or a sound-producing machine; preparing reports; receiving callers and referring them to proper persons; operating office machines; keeping records and handling routine correspondence. ~~There is nothing implied in this subdivision that would prevent~~ the employee a service person from holding or being elevated to a higher classification;

~~(77)~~ (78) "Secretary III" means ~~personnel~~ a person assigned to the county board office administrators in charge of various instructional, maintenance, transportation, food services, operations and health departments, federal programs or departments with particular responsibilities ~~of~~ in purchasing and financial control or any ~~personnel~~ person who ~~have~~ has served for eight years in a position which meets the definition of "secretary II" or "secretary III" ~~in this section for eight years~~;

~~(78)~~ (79) "Supervisor of maintenance" means a skilled ~~personnel~~ person who is not defined as a professional ~~personnel~~ person or professional educators as defined in section one, article one of this chapter. The responsibilities ~~would~~ include directing the upkeep of buildings and shops, and issuing instructions to subordinates relating to cleaning, repairs and maintenance of all structures and mechanical and electrical equipment of a county board;

~~(79)~~ (80) "Supervisor of transportation" means a qualified ~~personnel~~ person employed to direct school transportation activities; properly and safely, and to supervise the maintenance and repair of vehicles, buses and other mechanical and mobile equipment used by the county school system;

~~(80)~~ (81) "Switchboard operator-receptionist" means ~~personnel~~ a person employed to refer incoming calls, to assume contact with the public, to direct and to give instructions as necessary, to operate switchboard equipment and to provide clerical assistance;

~~(84)~~ (82) "Truck driver" means ~~personnel~~ a person employed to operate light or heavy duty gasoline and diesel-powered vehicles;

~~(82)~~ (83) "Warehouse clerk" means ~~personnel~~ a person employed to be responsible for receiving, storing, packing and shipping goods;

~~(83)~~ (84) "Watchman" means ~~personnel~~ a person employed to protect school property against damage or theft. Additional assignments may include operation of a small heating plant and routine cleaning duties;

~~(84)~~ (85) "Welder" means ~~personnel~~ a prson employed to provide acetylene or electric welding services for a school system; and

~~(85)~~ (86) "WVEIS data entry and administrative clerk" means ~~personnel~~ a person employed to work under the direction of a school principal to assist the school counselor or counselors in the performance of administrative duties, to perform data entry tasks on the West Virginia eEducation iInformation sSystem, and to perform other administrative duties assigned by the principal.

(j) Notwithstanding any provision in this Code to the contrary, and in addition to the compensation provided for service personnel in section eight-a of this article, ~~for service personnel,~~ each service employee person is, ~~notwithstanding any provisions in this code to the contrary,~~ entitled to all service personnel employee rights, privileges and benefits provided under this or any other chapter of this eCode without regard to the employee's hours of employment or the methods or sources of compensation.

(k) A Service ~~personnel~~ person whose years of employment exceeds the number of years shown and provided for under the state minimum pay scale set forth in section eight-a of this article may not be paid less than the amount shown for the maximum years of employment shown and provided for in the classification in which he or she is employed.

(l) ~~The~~ Each county boards shall review each service ~~personnel~~ person's job classification annually and shall reclassify all service employees persons as required by the job classifications. The state superintendent ~~of schools~~ may withhold state funds appropriated pursuant to this article for salaries for service personnel who are improperly classified by the county boards. Further, the state superintendent shall order a county boards to correct immediately any improper classification matter and, with the assistance of the attorney general, shall take any legal action necessary against any county board to enforce the order.

(m) ~~No service employee, w~~Without his or her written consent, a service person may not be:

(1) ~~r~~Reclassified by class title; ~~nor or may a service employee, without his or her written consent, be~~

(2) ~~r~~Relegated to any condition of employment which would result in a reduction of his or her salary, rate of pay, compensation or benefits earned during the current fiscal year; ~~or for which would result in a reduction of his or her salary, rate of pay, compensation or benefits~~ he or she would qualify by continuing in the same job position and classification held during that fiscal year and subsequent years.

(n) Any county board failing to comply with the provisions of this article may be compelled to do so by mandamus, and is liable to any party prevailing against the board for court costs and the prevailing party's reasonable attorney fee, as determined and established by the court.

(o) Notwithstanding any provisions ~~in~~ of this ~~e~~Code to the contrary, a ~~service personnel person~~ who holds a continuing contract in a specific job classification and who ~~are~~ is physically unable to perform the job's duties as confirmed by a physician chosen by the employee, shall be given priority status over any employee not holding a continuing contract in filling other service personnel job vacancies if the service person is qualified as provided in section eight-e of this article.

(p) Any person employed in an aide position on the effective date of this section may not be transferred or subject to a reduction in force for the purpose of creating a vacancy for the employment of a licensed practical nurse.

(g) Without the written consent of the service person, a county board may not establish the beginning work station for a bus operator or transportation aide at any site other than a county board-owned facility with available parking. The workday of the bus operator or transportation aide commences at the bus at the designated beginning work station and ends when the employee is able to leave the bus at the designated beginning work station, unless he or she agrees otherwise in writing. The application or acceptance of a posted position may not be construed as the written consent referred to in this subsection.

§18A-4-8b. Seniority rights for school service personnel.

(a) A county board shall make decisions affecting promotions and the filling of any service personnel positions of employment or jobs occurring throughout the school year that are to be performed by service personnel as provided in section eight of this article, on the basis of seniority, qualifications and evaluation of past service.

(b) Qualifications ~~shall~~ means that the applicant holds a classification title in his or her category of employment as provided in this section and ~~must~~ shall be given first opportunity for promotion and filling vacancies. Other employees then ~~must~~ shall be considered and shall qualify by meeting the definition of the job title as defined in section eight of this article, that relates to the promotion or vacancy. If requested by the employee, the county board ~~must~~ shall show valid cause why ~~an employee service person~~ with the most seniority is not promoted or employed in the position for which he or she applies. Applicants shall be considered in the following order:

(1) Regularly employed service personnel;

(2) Service personnel whose employment has been discontinued in accordance with this section;

(3) Professional personnel who held temporary service personnel jobs or positions prior to the ninth day of June, one thousand nine hundred eighty-two, and who apply only for ~~such~~ these temporary jobs or positions;

(4) Substitute service personnel; and

(5) New service personnel.

(c) The county board may not prohibit a service ~~employee~~ person from retaining or continuing his or her employment in any positions or jobs held prior to the effective date of this section and thereafter.

(d) A promotion ~~shall be~~ is defined as any change in his employment that the ~~employee service person~~ deems considers to improve his or her working circumstance within his the classification category of employment ~~and shall~~.

(1) A promotion includes a transfer to another classification category or place of employment if the position is not filled by an employee who holds a title within that classification category of employment.

(2) Each class title listed in section eight of this article ~~shall be~~ is considered a separate classification category of employment for service personnel, except for those class titles

having Roman numeral designations, which shall be considered a single classification of employment:

(A) The cafeteria manager class title shall be is included in the same classification category as cooks;

(B) The executive secretary class title shall be is included in the same classification category as secretaries;

(C) Paraprofessional, autism mentor and braille or sign language specialist class titles shall be are included in the same classification category as aides;

(D) The mechanic assistant and chief mechanic class titles shall be are included in the same classification category as mechanics.

(e) For purposes of determining seniority under this section an ~~employee's~~ service person's seniority begins on the date that he or she enters into ~~his~~ the assigned duties.

(f) Extra-duty assignments.

(1) For the purpose of this section, "extra-duty assignments" are defined as irregular jobs that occur periodically or occasionally such as, but not limited to, field trips, athletic events, proms, banquets and band festival trips.

(f) (2) Notwithstanding any other provisions of this chapter to the contrary, decisions affecting service personnel with respect to extra-duty assignments shall be made in the following manner:

(A) ~~An employee~~ A service person with the greatest length of service time in a particular category of employment shall be given priority in accepting extra duty assignments, followed by other fellow employees on a rotating basis according to the length of their service time until all such employees have had an opportunity to perform similar assignments. The cycle then shall be repeated: ~~Provided, That,~~

(B) ~~a~~An alternative procedure for making extra-duty assignments within a particular classification category of employment may be ~~utilized~~ used if the alternative procedure is approved both by the county board and by an affirmative vote of two thirds of the employees within that classification category of employment. ~~For the purpose of this section, "extra-duty assignments" are defined as irregular jobs that occur periodically or occasionally such as, but not limited to, field trips, athletic events, proms, banquets and band festival trips.~~

(g) County Bboards shall post and date notices of all job vacancies of established existing or newly created positions in conspicuous places for all school service ~~employees~~ personnel to observe for at least five working days.

(1) Posting locations shall include any website maintained by or available for the use of the county board.

(2) ~~The~~ a Notice of the ~~a~~ job vacancies vacancy shall include the job description, the period of employment, the amount of pay and any benefits and other information that is helpful to ~~the employees~~ prospective applicants to understand the particulars of the job. Job postings for vacancies made pursuant to this section shall be written so as to ensure that the largest possible pool of qualified applicants may apply. Job postings may not require criteria which are not necessary for the successful performance of the job and may not be written with the intent to favor a specific applicant.

(3) After the five-day minimum posting period, all vacancies shall be filled within twenty working days from the posting date notice of any job vacancies of established existing or newly created positions. ~~Job postings for vacancies made pursuant to this section shall be written so as to ensure that the largest pool of qualified applicants may apply. Job postings may not require criteria which are not necessary for the successful~~

~~performance of the job and may not be written with the intent to favor a specific applicant.~~

(4) The county board shall notify any person who has applied for a job posted pursuant to this section of the status of his or her application as soon as possible after the county board makes a hiring decision regarding the posted position.

(h) All decisions by county boards concerning reduction in work force of service personnel shall be made on the basis of seniority, as provided in this section.

(i) The seniority of any service ~~personnel~~ person shall be determined on the basis of the length of time the employee has been employed by the county board within a particular job classification. For the purpose of establishing seniority for a preferred recall list as provided in this section, when an ~~employee~~ service person has been employed in one or more classifications, the seniority accrued in each previous classification ~~shall be~~ is retained by the employee.

(j) If a county board is required to reduce the number of ~~employees~~ service personnel within a particular job classification, the following conditions apply:

(1) ~~¶~~The employee with the least amount of seniority within that classification or grades of classification shall be properly released and employed in a different grade of that classification if there is a job vacancy: ~~Provided, That;~~

(2) If there is no job vacancy for employment within the ~~that~~ classification or grades of classification, ~~he or she~~ the service person shall be employed in any other job classification which he or she previously held with the county board if there is a vacancy and shall retain any seniority accrued in the job classification or grade of classification.

(k) ~~¶~~Prior to the first day of August after a reduction in force or transfer is approved,;

(1) If the county board in its sole and exclusive judgment determines that the reason for any particular reduction in force or transfer no longer exists ~~as determined by the county board in its sole and exclusive judgement~~, the board shall rescind the reduction in force or transfer and shall notify the affected employee in writing of ~~his or her~~ the right to be restored to his or her former position of employment.

(2) Within five days of being notified, the affected employee shall notify the county board of his or her intent to return to ~~his or her~~ the former position of employment or the right of restoration to the former position ~~shall terminate~~: Provided, That

(3) ~~¶~~The county board shall not rescind the reduction in force of an employee until all ~~employees~~ service personnel with more seniority in the classification category on the preferred recall list have been offered the opportunity for recall to regular employment as provided in this section.

(4) If there are insufficient vacant positions to permit reemployment of all more senior employees on the preferred recall list within the classification category of the ~~employee~~ service person who was subject to reduction in force, the position of the released ~~employee~~ service person shall be posted and filled in accordance with this section.

(l) If two or more ~~employees~~ service persons accumulate identical seniority, the priority shall be determined by a random selection system established by the employees and approved by the county board.

(m) All ~~employees~~ service personnel whose seniority with the county board is insufficient to allow their retention by the county board during a reduction in work force shall be placed upon a preferred recall list and shall be recalled to employment by the county board on the basis of seniority.

(n) ~~Employees~~ A service person placed upon the preferred list shall be recalled to any position openings by the county board within the classification(s), where ~~they~~ he or she had previously been employed, or to any lateral position for which the ~~employee~~ service

person is qualified or to a lateral area for which an ~~employee~~ a service person has certification and/or licensure.

(o) ~~Employees~~ A service person on the preferred recall list shall not forfeit ~~their~~ the right to recall by the county board if compelling reasons require an ~~employee~~ him or her to refuse an offer of reemployment by the county board.

(p) The county board shall notify all ~~employees~~ service personnel on the preferred recall list of all position openings that exist from time to time ~~exist~~. The notice shall be sent by certified mail to the last known address of the ~~employee;~~ service person. ~~it is the duty of~~ Each such employee to service person shall notify the county board of any change in ~~the of~~ address of the ~~employee~~.

(q) No position openings may be filled by the county board, whether temporary or permanent, until all ~~employees~~ service personnel on the preferred recall list have been properly notified of existing vacancies and have been given an opportunity to accept reemployment.

(r) An ~~employee~~ A service person released from employment for lack of need as provided in sections ~~eight-a or six~~ and eight-a, article two of this chapter shall be accorded preferred recall status on the first day of July of the succeeding school year if the ~~employee~~ he or she has not been reemployed as a regular employee.

(s) ~~Any~~ A county board failing to comply with the provisions of this article may be compelled to do so by mandamus and is liable to any party prevailing against the board for court costs and the prevailing party's reasonable attorney fee, as determined and established by the court.

(1) ~~Further, employees~~ A service person denied promotion or employment in violation of this section shall be awarded the job, pay and any applicable benefits retroactively to the date of the violation and shall be paid entirely from local funds.

(2) ~~Further, the~~ The county board is liable to any party prevailing against the board for any court reporter costs including copies of transcripts.

§18A-4-8f. Seniority rights, school consolidation.

(a) Notwithstanding any provision of this article to the contrary, when a majority of the classroom teachers, ~~as defined in section one, article one of this chapter,~~ or school service personnel, who vote to do so, in accordance with procedures established ~~herein,~~ in this section, and who are employed by a county board of education, the board shall give priority to classroom teachers or school service personnel in any school or schools to be closed as a result of a consolidation or merger when filling positions in the new school created by consolidation or newly created positions in existing schools as a result of the merger.

(b) Each year a consolidation or merger is proposed, prior to the implementation of that plan, the superintendent shall cause to be prepared and distributed to all faculty senates and to all schools or other work sites a ballot on which teachers and service personnel may indicate whether or not they desire those affected by school closings to be given priority status in filling new positions. A secret ballot election shall be conducted:

(1) ~~in~~ in each faculty senate ~~and~~ for classroom teachers. ~~The~~ The faculty senate chair shall convey the results of ~~such~~ the election to the superintendent; and

(2) At each school or work site for school service personnel. The service personnel supervisor at each school or work site shall convey the results of the election to the superintendent.

(c) The superintendent shall tabulate and post all results prior to the notice requirements for reduction in force and transfer as outlined in sections two and seven, article two of this chapter. The total number of votes shall be tabulated separately for classroom

teachers and for service personnel. ~~and~~ The provisions of this section also shall be implemented separately as follows:

(1) For classroom teachers only if a majority of the total number of teachers who cast a ballot vote to do so; and

(2) For school service personnel only if a majority of the total number of service personnel who cast a ballot vote to do so.

(d) If a majority approves, the teachers or school service personnel in the school or schools to be closed have priority in filling new positions in the new or merged schools for which the teachers are certified or for which the school service personnel are qualified and meet the standards set forth in the job posting on the basis of seniority within the county: ~~Provided, That, a~~ A teacher or school service person shall only may receive priority for filling a position at a school ~~impacted~~ affected by a merger, or consolidation ~~with~~ only for the position being created by the influx of students from a consolidated or merged school into the school receiving students from their closed school or grade level.

(1) The most senior teacher ~~in~~ from the closed school or schools shall be placed first, the second most senior shall be placed next and so on until all the newly created positions are filled, or until all the teachers in the closed school or schools who wish to transfer into the newly created positions are placed: ~~Provided, however, That,~~

(2) The most senior service person from the closed school or schools has priority in filling any position within his or her classification category. The second most senior service person from the closed school or schools then has priority in filling remaining vacancies and so on until all available positions are filled.

(3) ~~if~~ there are fewer new positions in the newly created school or merged school than there are classroom teachers or school service personnel ~~in~~ from the school or schools to be closed, the teachers or school service personnel who were not placed in the new positions shall retain the same rights as all other teachers or service personnel with regard to seniority, transfer and reduction in force: ~~Provided further, That nothing herein shall be construed to~~

(4) This section does not grant any employee additional rights or protections with regard to reduction in force.

(e) For the purposes of this section only:

(1) ~~a~~ A consolidation shall mean when that one or more schools are closed, or one or more grade levels are removed from one or more schools, and the students who previously attended the closed schools or grade levels are assigned to a new school. ~~For purposes of this section only,~~

(2) ~~a~~ A merger shall mean when that one or more schools are closed or one or more grade levels are removed from one or more schools and the students who previously attended the closed schools or grade levels are assigned to another existing school.

(f) The provisions of this section shall do not apply to positions that are filled by a county board prior to the effective date of this section, as reenacted during the regular session of the Legislature, two thousand seven.

§18A-4-8g. Determination of seniority for service personnel.

(a) Seniority accumulation for a regular school service employee person:

(1) ~~b~~ Begins on the date the employee enters upon regular employment duties pursuant to a contract as provided in section five, article two of this chapter and;

(2) ~~c~~ Continues until the employee's service person's employment as a regular employee is severed with the county board; and

~~(3) Seniority shall~~ Does not cease to accumulate ~~when an employee is absent the county board has authorized an absence whether~~ without pay as authorized by the county board or the absence is or due to illness or other reasons over which the employee has no control as authorized by the county board.

(b) Seniority accumulation for a substitute employee service person:
(1) ~~shall begin upon~~ on the date the employee enters upon the duties of a substitute as provided in section fifteen of this article, after executing with the county board a contract of employment as provided in section five, article two of this chapter; and
(2) ~~The seniority of a substitute employee, once established, shall~~ continues until the employee enters into the duties of a regular employment contract as provided in section five, article two of this chapter; or employment as a substitute service person with the county board is severed.

(c) Seniority of a regular or substitute employee service person shall does not continue to accumulate ~~except during~~ under the time following conditions:

(1) ~~When an employee~~ a service person is willfully absent from employment duties because of a concerted work stoppage or strike; or

(2) When a service person is suspended without pay.

~~(b) (d)~~ For all purposes including the filling of vacancies and reduction in force, seniority shall be accumulated within particular classification categories of employment as those classification categories are referred to in section eight-e of this article: ~~Provide, That,~~

~~(e) w~~ When implementing a reduction in force, ~~an employee~~ the service person with the least seniority within a particular classification category shall be properly released and placed on the preferred recall list. The particular classification title held by ~~an employee~~ a service person within the classification category shall may not be ~~taken into consideration~~ considered when implementing a reduction in force.

~~(e) (f)~~ On or before the first day of September and the fifteenth day of January of each school year, county boards shall post at each county school or working station the current seniority list or lists of each ~~school~~ service personnel classification. Each list shall contain the name of each regularly employed school ~~service personnel~~ employed in each classification and the date that each employee began performing his or her assigned duties in each classification. Current seniority lists of substitute school service personnel shall be available to employees upon request at the county board office.

~~(d) (g)~~ The seniority of ~~an employee~~ a service person who transfers out of a class title or classification category of employment and subsequently returns to that class title or classification category of employment shall ~~be~~ is calculated as follows:

(1) The county board shall establish the number of calendar days between the date the ~~employee~~ service person left the class title or category of employment in question and the date of return to the class title or classification category of employment.

(2) This number of days shall be added to the ~~employee's~~ service person's initial seniority date to establish a new beginning seniority date within the class title or classification category.

(3) The ~~employee~~ service person shall then shall be considered as having held uninterrupted service within the class title or classification category from the newly established seniority date. The seniority of an employee who has had a break in the accumulation of seniority as a result of being willfully absent from employment duties because of a concerted work stoppage or strike shall be calculated in the same manner.

~~(e) (h)~~ Beginning on the first day of July, two thousand seven, A substitute school service ~~employee~~ person shall acquire regular employment status and, but not regular employee job bidding rights or regular seniority, if the employee receives a position

pursuant to the leave of absence or suspension provisions of subsections subdivisions (2) and (5), subsection (a), section fifteen of this article: ~~Provided, That,~~

~~(1) a~~ A substitute employee service person who shall accumulates regular substitute employee seniority while holding a position acquired pursuant to said subsections (2) and (5) shall simultaneously accumulate substitute seniority; ~~Provided, however, That,~~

~~(2) Upon termination of a the regular service person's leave of absence or a suspension, the employee substitute service person shall return to the status previously held. If the employee returns to substitute status, the employee shall retain any regular employee seniority accrued, however this seniority may not be used in the bidding process for regular positions unless the employee again attains regular employee status or has attained preferred recall status.~~

~~(3) County boards shall~~ are not be prohibited from providing any benefits of regular employment for substitute employees service personnel, but the benefits shall may not include regular employee service personnel status or seniority.

~~(f)~~ (i) If two or more employees service personnel accumulate identical seniority, the priority shall be determined by a random selection system established by the employees service personnel and approved by the county board.

(1) A board shall conduct the random selection within thirty days upon of the time the employees service personnel establishing an identical seniority date. All employees service personnel with an identical seniority date within the same class title or classification category shall participate in the random selection.

(2) As long as the affected employees hold identical seniority within the same classification category, the initial random selection conducted by the board shall be permanent for the duration of the employment within the same classification category of the employees by the board. This random selection priority applies to the filling of vacancies and to the reduction in force of school service personnel: ~~Provided, That,~~

(3) If another any other employee or employees service person subsequently acquires seniority identical to the employees involved in the original random selection, a second random selection shall be held within thirty days to determine the seniority ranking of the new employee or employees within the group.

(A) The priority between the employees who participated in the original random selection shall remains the same.

(B) The second random selection shall be is performed by placing numbered pieces of paper equal to the number of employees with identical seniority in a container. The employees Any service person who were was not involved in the original random selection shall draw a number from the container which will determine their his or her seniority within the group as a whole.

(C) This process will be repeated if any additional employees service person subsequently acquires identical seniority.

(D) The same process shall be utilized used if any additional employees service person are is subsequently discovered to have the same seniority as the original group of employees but who did not participate in the original random selection through due to oversight or mistake.

~~(g)~~ (j) Service personnel who are employed in a classification category of employment at the time when a vacancy is posted in the same classification category of employment shall be given first opportunity to fill the vacancy.

~~(h)~~ (k) Seniority acquired as a substitute service person and as a regular employee service person shall be calculated separately and shall may not be combined for any purpose. Seniority acquired within different classification categories shall be calculated

separately: ~~Provided, That when.~~ If a school service employee ~~makes application~~ applies for a position outside of the classification category he or she currently ~~held~~ holds, and if the vacancy is not filled by an applicant within the classification category of the vacancy, the applicant shall combine all regular employment seniority acquired for the purpose of bidding on the position.

~~(i)~~ (l) ~~A school service personnel~~ person who holds a multiclassification titles accrues seniority in each classification category of employment ~~which that~~ the employee holds and ~~shall be~~ is considered an employee of each classification category contained within his or her multiclassification title. ~~A Multiclassified employees are~~ service person is subject to reduction in force in any category of employment contained within ~~their~~ his or her multiclassification title, based upon the seniority accumulated within that category of employment: ~~Provided, That, if~~ a multiclassified ~~employee~~ service person is subject to a reduced reduction in force in one classification category, the ~~employee~~ service person ~~shall~~ retains employment in any of the other classification categories that he or she holds within his or her multiclassification title. In that case, the county board shall delete the appropriate classification title or classification category from the contract of the multiclassified employee.

~~(j)~~ (m) When applying to fill a vacancy outside the classification categories held by ~~the~~ a multiclassified ~~employee~~ service person, seniority acquired simultaneously in different classification categories ~~shall be~~ is calculated as if accrued in one classification category only.

~~(k)~~ (n) The seniority conferred in this section applies retroactively to all affected school service personnel, but the rights incidental to the seniority ~~shall~~ commence as of the effective date of this section.

§18A-4-10. Personal leave for illness and other causes; leave banks; substitutes.

(a) Personal Leave.

(1) At the beginning of the employment term, any full-time employee of a county board of education ~~shall be~~ is entitled annually to at least one and one-half days personal leave for each employment month or major fraction thereof in the employee's employment term. Unused leave shall be accumulative without limitation and ~~shall be~~ is transferable within the state. A change in job assignment during the school year ~~shall in no way~~ does not affect the employee's rights or benefits.

(2) A regular full-time employee who is absent from assigned duties due to accident, sickness, death in the immediate family, or life threatening illness of the employee's spouse, parents or child, or other cause authorized or approved by the board, shall be paid the full salary from his or her regular budgeted salary appropriation during the period which ~~such the~~ employee is absent, but not to exceed the total amount of leave to which ~~such the~~ employee is entitled: **Provided, That** .

(3) ~~e~~Each ~~such~~ employee ~~shall be~~ is permitted to use three days of ~~such~~ leave annually, ~~which may be taken~~ without regard to the cause for the absence; ~~except that p~~Personal leave without cause may not be ~~taken~~ used on consecutive work days unless authorized or approved by the employee's principal or immediate supervisor, as ~~the case may be:~~ **Provided, however,** That appropriate. The employee shall give notice of ~~such leave day shall be given to the employee's~~ without cause to the principal or immediate supervisor, ~~as the case may be,~~ at least twenty-four hours in advance, except that in the case of sudden and unexpected circumstances, ~~such~~ notice shall be given as soon as reasonably practicable; ~~however, the use of such day.~~ The principal or immediate supervisor may be denied deny use of the day if, at the time notice is given, either fifteen percent of the employees or three employees, whichever is greater, under

the supervision of the principal or immediate supervisor, ~~as the case may be,~~ have previously notified the principal or immediate supervisor given notice of their intention to use that day for such leave: ~~Provided further,~~ That such Personal leave shall may not be used in connection with a concerted work stoppage or strike. Where the cause for leave ~~had its origin~~ originated prior to the beginning of the employment term, the employee shall be paid for time lost after the start of the employment term. If an employee ~~should use~~ uses personal leave which the employee has not yet accumulated on a monthly basis and subsequently leaves the employment, the employee ~~shall be is~~ required to reimburse the board for the salary or wages paid ~~to him~~ for such the unaccumulated leave.

~~(4) Prior to the first day of January, one thousand nine hundred eight nine, t~~ The sState ~~b~~Board shall establish maintain a rules, ~~effective on said date,~~ to restrict the payment of personal leave benefits and the charging of personal leave time used to an employee receiving a workers' compensation benefit from a claim filed against and billed to the employee's county board by which the person is employed. If an employee is awarded such this benefit, such the employee shall receive personal leave compensation only to the extent such the compensation is required, when added to the workers' compensation benefit, to equal the amount of compensation regularly paid such the employee. If personal leave compensation equal to the employee's regular pay is paid prior to the award of the workers' compensation benefit, such the amount which, when added to the benefit, is in excess of the employee's regular pay shall be deducted from the employee's subsequent pay. The employee's accrued personal leave days shall be charged only for such days as equal the amount of personal leave compensation required to compensate the employee at the employee's regular rate of pay.

~~(5) The county board may establish reasonable rules for reporting and verification of absences for cause; and if any error in reporting absences should occurs, it shall have authority to the county board may make necessary salary adjustments;~~

~~(A) in the next pay after the employee has returned to duty; or~~
~~(B) in the final pay if the absence should occurs during the last month of the employment term.~~

~~(b) Leave Banks.~~

~~(1) A Each county board of education may shall establish a personal leave bank or banks to which that is available to all school personnel. The board may establish joint or separate banks for professional personnel and school service personnel. Each employees may contribute no more than up to two days of personal leave per school year: Provided, That such bank or banks be established either jointly or separately for both professional and school service personnel and that a bank be available to all school personnel. An employee may not be coerced or compelled to contribute to a personal leave bank.~~

~~(2) Such The personal leave bank shall be established and operated pursuant to a rules adopted by the county board: Provided, however, That such. The rules;~~

~~(A) mMay limit the maximum number of days used by an employee;;~~

~~(B) sShall require that limit the use of leave bank days be used only by to an active employee with less fewer than five days accumulated personal leave who is absent from work due to accident or illness of such the employee; and~~

~~(C) sShall prohibit the use of such days with the extension of insurance coverage pursuant to section twelve, article sixteen, chapter five of this code to;~~

(i) Qualify for or add to service for any retirement system administered by the state; or
(ii) Extend insurance coverage pursuant to section thirteen, article sixteen, chapter five of this code.

(D) Such rules shall require that each personal leave day contributed:

(i) contributions shall reduce, to the extent of such contribution, is deducted from the number of personal leave days to which an the donor employee is entitled by this section;

(ii) ~~Provided further, That such contribution shall is not reduced~~ deducted from the personal leave days without cause to which an donor employee is entitled. if sufficient general personal leave days are otherwise available to the donor employee; No employee may be compelled to contribute to such personal leave bank.

(iii) Is credited to the receiving employee as one full personal leave day;

(iv) May not be credited for more or less than a full day by calculating the value of the leave according to the hourly wage of each employee; and

(v) May be used only for an absence due to the purpose for which the leave was transferred. Any transferred days remaining when the catastrophic medical emergency ends revert back to the leave bank.

(3) The administration, subject to county board approval, may use its discretion as to the need for a substitute where limited absence may prevail, ~~W~~when an allowable absence does not;

(i) ~~d~~Directly affect the instruction of the pupils students; or

(ii) ~~when~~ Require a substitute employee may not require because of the nature of the work and the duration of the cause for the allowable absence of the regular employee, the administration, subject to board approval, may use its discretion as to the need for a substitute where limited absence may prevail.

(4) If funds in any fiscal year, including transfers, are insufficient to pay the full cost of substitutes for meeting the provisions of this section, the remainder shall be paid on or before the thirty-first day of August from the budget of the next fiscal year.

(5) Any ~~A~~ county board of education shall have authority to may supplement such the leave provisions in any manner it ~~may deem~~ considers advisable in accordance with applicable rules of the ~~s~~State ~~b~~Board and the provisions of this chapter and chapter eighteen of this code.

§18A-4-10f. Leave donation program.

(a) Definitions.

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

(1) "Catastrophic medical emergency" means a medical or physical condition that:

(A) Incapacitates an employee or an immediate family member for whom the employee will provide care;

(B) Is likely to require the prolonged absence of the employee from duty; and

(C) Will result in a substantial loss of income to the employee because the employee:

(i) Has exhausted all accrued personal leave; and

(ii) Is not eligible to receive personal leave or has exhausted personal leave available from a leave bank established pursuant to this article;

(2) "Employee" means a professional educator or school service person who is employed by a county board and entitled to accrue personal leave as a benefit of employment;

(3) "Donor employee" means a professional educator or school service person

employed by a county board who voluntarily contributes personal leave to another designated employee; and

(4) "Receiving employee" means a professional educator or school service person employed by a county board who receives donated personal leave from another employee.

(b) Leave donation program.

(1) In addition to any personal leave bank established pursuant to this article, a county board shall establish a leave donation program pursuant to which a donor employee may transfer accrued personal leave to the personal leave account of another designated employee.

(2) A county board:

(A) May not limit the number of personal leave days a donor employee may transfer to a receiving employee who is his or her spouse;

(B) May not limit the total number of personal leave days a receiving employee receives; and

(C) May limit the number of days a donor employee transfers to a receiving employee who is not his or her spouse.

(c) Rule.

(1) The county board shall adopt a rule to implement the program.

(2) The rule shall set forth at least the following conditions:

(A) The donor employee voluntarily agrees to the leave transfer;

(B) The donor employee selects the employee designated to receive the personal leave transferred; and

(C) The receiving employee requires additional personal leave because of a catastrophic medical emergency;

(D) The donated leave may not be used to:

(i) Qualify for or add to service for any retirement system administered by the state; or

(ii) Extend insurance coverage pursuant to section thirteen, article sixteen, chapter five of this code;

(E) Each personal leave day contributed:

(i) Shall be deducted from the number of personal leave days to which the donor employee is entitled by section ten of this article;

(ii) Shall not be deducted from the number of personal leave days without cause to which the donor employee is entitled if sufficient general personal leave days are otherwise available to the donor employee;

(iii) Shall be credited to the receiving employee as one full personal leave day;

(iv) May not be credited for more or less than a full day by calculating the value of the leave according to the hourly wage of each employee; and

(v) May be used only for an absence due to the purpose for which the leave was transferred. Any transferred days remaining when the catastrophic medical emergency ends revert back to the donor employee; and

(F) An employee may not be coerced or compelled to contribute to a leave donation program.

§18A-4-15. Employment of service personnel substitutes.

(a) The county board shall employ and the county superintendent, subject to the approval of the county board, shall assign substitute service personnel on the basis of seniority to perform any of the following duties:

(1) To fill the temporary absence of another service employee;

(2) To fill the position of a regular service employee ~~who~~ person as follows:

(A) If the regular service person requests a leave of absence from the county board in writing and ~~who is granted the leave in writing by the county board, and to fill the position of a;~~ or

(B) If the regular service employee person ~~who is on workers' compensation and absent: *Provided, That,*~~

(C) if the an absence pursuant to paragraph (A) or (B) of this subdivision is to extend beyond thirty working days, the county board shall post the position of the absent employee under the procedures set forth in section eight-b of this article. If a substitute service employee person is employed to fill the position of the absent employee and is employed in the position for twenty or more working days, the substitute service personnel person shall have:

(i) Acquires regular employment status with the exception of regular employee job bidding rights;

(ii) Does not accrue regular seniority; and be

(iii) Is accorded all other rights, privileges and benefits pertaining to the position until the regular employee returns to the position or ceases to be employed by the county board: *Provided, however, That;*

(D) if a regular or substitute employee fills a vacancy that is related in any manner to a leave of absence or the absence of an employee on workers' compensation in any manner as provided in this section, upon termination of the absence the employee shall be returned to his or her original position or status; ~~: *Provided further, That no*~~

(E) A service person may not be;

(i) Required to request or to take a leave of absence; ~~or *And provided further, That no service person shall be*~~

(ii) ~~d~~Deprived of any right or privilege of regular employment status for refusal to request or failure to take a leave of absence;

(3) To perform the service of a service employee person who is authorized to be absent from duties without loss of pay;

(4) To temporarily fill a vacancy in a permanent position caused by severance of employment by the resignation, transfer, retirement, permanent disability, dismissal pursuant to section eight, article two of this chapter, or death of the regular service employee person who had been assigned to fill the position: ~~*Provided, That, w*~~Within twenty working days from the commencement of the vacancy, the county board shall fill the vacancy under the procedures set ~~out~~ forth in section eight-b of this article and section five, article two of this chapter, ~~and *†*~~The person hired to fill the vacancy shall have and shall be accorded all rights, privileges and benefits pertaining to the position;

(5) To fill the vacancy created by a regular employee's suspension; ~~: *Provided, That*~~

(A) if the suspension is for more than thirty working days, the county board shall post the position of the suspended employee under the procedures set forth in section eight-b of this article.

(B) If a substitute service employee person is employed to fill the suspended employee's position, the substitute service personnel person shall have;

(i) Acquires regular employment status with the exception of regular employee job-bidding rights;

(ii) Does not accrue regular seniority; and be

(iii) Is accorded all other rights, privileges and benefits pertaining to the position until the termination by the county board becomes final or the suspended employee is returned to employment.

(C) If the suspended employee is not returned to his or her job, the county board shall fill the vacancy under the procedures set out forth in section eight-b of this article and section five, article two of this chapter; and

~~(6) To temporarily fill temporarily a vacancy in a newly created position prior to employment of employing a service personnel person on a regular basis under the procedure set forth in pursuant to section eight-b of this article.~~

~~(b) Service personnel substitutes shall be assigned in the following manner:~~

~~(1) A The substitute with the greatest length of service time, that is, in the vacant category of employment has priority in accepting the assignment throughout the period of the regular service person's absence or until the vacancy is filled on a regular basis pursuant to section eight-b of this article. Length of service time is calculated from the date he or she a substitute service person began his or her begins assigned duties as a substitute in that a particular category of employment, shall be given priority in accepting the assignment throughout the period of the regular employee's absence or until the vacancy is filled on a regular basis under the procedures set out in section eight-b of this article.~~

~~(2) All service personnel substitutes shall be are employed on a rotating basis according to the their lengths of their service time until each substitute has had an opportunity to perform similar assignments. : Provided, That if there are~~

~~(3) Any regular service employees person employed in the same building or working station and the same classification category of employment as the absent employee and who are employed in the same classification category of employment, the regular employees shall be given the first offered the opportunity to fill the position of the absent employee on a rotating and seniority basis with the substitute then filling the regular employee's position. In such case the regular service person's position is filled by a substitute service person. A regular employee service person assigned to fill the position of an absent employee shall be given has the opportunity to hold that position throughout the absence. For the purpose of this section only, all regularly employed school bus operators are considered to be employed within the same building or working station.~~

~~(c) The county board shall return a Rregular school service personnel person shall be returned by the county board of education to the same position held prior to any approved leave of absence or period of recovery from injury or illness. The school service personnel person shall:~~

~~(1) rRetains all rights, privileges and benefits which had accrued at the time of the absence or accrued under any other provision of law during the absence; and shall have~~

~~(2) Has all rights, privileges and benefits generally accorded school service employees personnel at the time of return to work.~~

~~(d) The salary of a substitute service employee person shall be is determined:~~

~~(1) bBased upon his or her years of employment as defined in section eight of this article;~~

~~(2) and aAs provided in the state minimum pay scale set forth in section eight-a of this article; and shall be~~

~~(3) iIn accordance with the salary schedule of persons regularly employed in the same position in the county in which he or she is employed.~~

~~(e) Before any A substitute service employee person enters upon his or her duties, shall execute with the county board a written contract as provided in with the county board pursuant to section five, article two of this chapter, prior to beginning assigned duties.~~

(f) ~~The following method shall be used To establish a uniform system of providing a fair, and equitable opportunity and uniform system of for assigning service personnel substitutes to enter upon their duties for the first time, the following method shall be used:~~

(1) ~~The initial order of assigning newly-employed substitutes shall be~~ is determined by a random selection system established by the affected substitute employees and approved by the county board; ~~and~~

(2) ~~This The initial priority order shall be in effect~~ is effective only until the substitute service personnel have ~~entered upon~~ begun their duties for the first time.

(g) ~~A Substitute service employees person~~ who have ~~has~~ worked thirty days for a school system ~~shall have~~ has all rights pertaining to suspension, dismissal and contract renewal as ~~is~~ are granted to regular service personnel in sections six, seven, eight and eight-a, article two of this chapter.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-8. Authority of certain aides to exercise control over students; compensation; transfers.

(a) Within the limitations provided in this section, any aide who agrees to do so shall stand in the place of the parent or guardian and shall exercise such authority and control over ~~pupils~~ students as is required of a teacher as provided in section one of this article. The principal shall designate aides in the school who agree to exercise that authority on the basis of seniority as an aide and shall enumerate the instances in which the authority shall be exercised by an aide when requested by the principal, assistant principal or professional employee to whom the aide is assigned. (b) The authority provided for in subsection (a) of this section may not extend to suspending or expelling any ~~pupil~~ student, participating in the administration of corporal punishment or performing instructional duties as a teacher or substitute teacher. However, the authority ~~shall extend~~s to supervising students undergoing in-school suspension if the instructional duties required by the supervision are limited solely to handing out class work and collecting class work. The authority to supervise students undergoing in-school suspension may not include actual instruction.

(c) An aide designated by the principal under subsection (a) of this section shall receive a salary not less than one pay grade above the highest pay grade held by the ~~employee~~ service person under section eight-a, article four of this chapter and any county salary schedule in excess of the minimum requirements of this article. (d) An aide may not be required by the operation of this section to perform noninstructional duties for an amount of time which exceeds that required under the aide's contract of employment or that required of other aides in the same school unless the assignment of the duties is mutually agreed upon by the aide and the county superintendent, or the superintendent's designated representative, subject to board approval.

(1) The terms and conditions of the agreement shall be in writing, signed by both parties, and may include additional benefits.

(2) The agreement shall be uniform as to aides assigned similar duties for similar amounts of time within the same school. (3) Aides ~~shall~~ have the option of agreeing to supervise students and of renewing related assignments annually. If an aide elects not to renew the previous agreement to supervise students, the minimum salary of the aide shall revert to the pay grade specified in section eight-a, article four of this chapter for the classification title held by the aide and any county salary schedule in excess of the minimum requirements of this article.

(e) For the purposes of this section, aide means any aide class title as defined in section eight, article four of this chapter regardless of numeric classification.

(f) Subject to the limitations set forth in subsection (g) of this section, An aide may transfer to another position of employment one time only during any one half of a school term, unless otherwise mutually agreed upon by the aide and the county superintendent, or the superintendent's designee, subject to board approval: ~~Provided, That, d~~During the first year of employment as an aide, an aide may not transfer to another position of employment during the first one-half school term of employment unless mutually agreed upon by the aide and county superintendent, subject to board approval.

(g) *Autism mentors and aides providing services to children diagnosed as autistic or with autism spectrum disorder.*

(1) Legislative findings and intent.

(A) The Legislature finds that it is not in the best interest of students with autism to have multiple teachers, mentors, aides or any combination thereof during the instructional term; and

(B) It is the intent of the Legislature that filling positions for autism mentors and aides who work with autistic students through transfers of personnel from one position to another after the fifth day prior to the beginning of the instructional term be kept to a minimum.

(2) Transfer limitations and conditions.

(A) After the fifth day prior to the beginning of the instructional term, no service person employed and assigned as an autism mentor or aide who works with autistic students may transfer to another position in the county during that instructional term unless the service person holding that position does not have valid certification.

(B) The provisions of this subsection are subject to the following conditions:

(i) The aide or autism mentor may apply for any posted, vacant position with the successful applicant assuming the position at the beginning of the next instructional term;

(ii) The county board, upon recommendation of the superintendent, may fill a position before the beginning of the next instructional term when it is determined to be in the best interest of the students; and

(iii) The county superintendent shall notify the State Board when a service person employed in a position as autism mentor or aide working with autistic students is transferred to another position after the fifth day prior to the beginning of the instructional term;

~~(g)~~ (h) Regular service personnel employed in a category of employment other than aide who seek employment as an aide shall hold a high school diploma or shall have received a general educational development certificate and shall have the opportunity to receive appropriate training pursuant to subsection (10), section thirteen, article five, chapter eighteen of this code and section two, article twenty of said chapter.

House Bill 2585

Effective Date: Passed March 10, 2007; in effect July 1, 2007.

Signed by Governor: April 4, 2007

Code Reference: Repeals §18A-3-11; amends §5-16-2, §18-7A-3, §18-7B-2, §18-23-4a, §18A-3-3; adds §18A-3-11

Title: Relating to education generally; findings; definitions; allowing for the designation of up to twenty-five professional educators as 21st Century Learner Fellows; allowing Fellows to continue as a member of either the teachers retirement system or defined contribution system, as applicable, while being employed by a state institution of higher education or a research corporation; allowing Fellows to continue to participate in public employee insurance programs during the employment; limiting the responsibility of a state institution of higher education or a research corporation for a fellow's annual and sick leave earned from prior employment; the renewal of teaching certificates and permanent certification; providing certification through National Board of Professional Teaching Standards as an additional option for attaining permanent certification; providing for state board member participation in the public employees insurance program; and making technical improvements

Major Provisions:

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This act allows the State Superintendent to designate up to 25 professional educators as 21st Century Learner Fellows; provides for these Fellows to become employed by a state institution of higher education or a research corporation without losing the benefits they received as professional educators (retirement and PEIA); includes provisions providing that the state institution of higher education or the research corporation does not assume any liability for benefits accrued by a Fellow while he or she was employed by any other entity including annual and sick leave earned from prior employment; provides that teachers who obtain their certification through the National Board for Professional Teaching Standards receive permanent certification; allows State Board members to participate in PEIA if the Board votes to allow its members to do that and if they pay the full premium; and includes provisions allowing a long-term substitute to participate in PEIA

ENROLLED

COMMITTEE SUBSTITUTE

for

H. B. 2585

(By Delegates M. Poling and Paxton (By Request))

[Passed March 10, 2007; in effect July 1, 2007.]

AN ACT to repeal §18A-3-11 of the Code of West Virginia, 1931, as amended; to amend and reenact §5-16-2 of said code; to amend and reenact §18-7A-3 of said code; to amend and reenact §18-7B-2 of said code; to amend and reenact §18-23-4a of said code; to amend and reenact §18A-3-3 of said code; and to amend said code by adding thereto a new section, designated §18A-3-11, all relating to education generally; findings; definitions; allowing for the designation of up to twenty-five professional educators as 21st Century Learner Fellows; allowing Fellows to continue as a member of either the teachers retirement system or the defined contribution system, as applicable, while being employed by a state institution of higher education or a research corporation; allowing Fellows to continue to participate in public employee insurance programs during the employment; limiting the responsibility of a state institution of higher education or a research corporation for a fellow's annual and sick leave earned from prior employment; the renewal of teaching certificates and permanent certification; providing certification through National Board for Professional Teaching Standards as an additional option for attaining permanent certification; providing for state board member participation in the public employees insurance program; and making technical improvements.

Be it enacted by the Legislature of West Virginia:

That §18A-3-11 of the Code of West Virginia, 1931, as amended, be repealed; that §5-16-2 of said code be amended and reenacted; that §18-7A-3 of said code be amended and reenacted; that §18-7B-2 of said code be amended and reenacted; that §18-23-4a of said code be amended and reenacted; that §18A-3-3 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18A-3-11, all to read as follows:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR,
SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC
WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS,
ETC.**

**ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.
§5-16-2. Definitions.**

The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, have the following meanings:

- (1) "Agency" means the public employees insurance agency created by this article.
- (2) "Director" means the director of the public employees insurance agency created by this article.

(3) "Employee" means any person, including an elected officers, who works regularly full time in the service of the ~~s~~State of West Virginia and, for the purpose of this article only, the term "employee" also means any person, including an elected officers, who works regularly full time in the service of a county board of education; a county, city or town in the state; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns; any comprehensive community mental health center or comprehensive mental retardation facility established, operated or licensed by the secretary of health and human resources pursuant to section one, article two-a, chapter twenty-seven of this code and which is supported in part by state, county or municipal funds; any person who works regularly full time in the service of the ~~university of West Virginia board of trustees or the board of directors of the state college system;~~ Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education or a governing board, as defined in section two, article one, chapter eighteen-b of this code; and any person who works regularly full time in the service of a combined city-county health department created pursuant to article two, chapter sixteen of this code.; any person designated as a 21st Century Learner Fellow pursuant to section eleven, article three, chapter eighteen-a of this code; and any person who works as a long term substitute as defined in section one, article one, chapter eighteen-a of this code , in the service of a county board of education: *Provided*, That a long term substitute who is continuously employed for at least one hundred thirty-three instructional days during an instructional term and until the end of that instructional term, is eligible for the benefits provided in this article until the first day of September following that instructional term. *Provided further*, That a long term substitute employed fewer than one hundred thirty-three instructional days during an instructional term is eligible for the benefits provided in this article only during such time as he or she is actually employed as a long term substitute. On and after the first day of January, one thousand nine hundred ninety-four, and upon election by a county board of education to allow elected board members to participate in the public employees insurance program pursuant to this article, any person elected to a county board of education shall be considered to be an "employee" during the term of office of the elected member.; Upon election by the State Board of Education to allow appointed board members to participate in the public employees insurance program pursuant to this article, any person appointed to the State Board of Education is considered an "employee" during the term of office of the appointed member: *Provided*, That the elected member of a county board of education and the appointed member of the State Board of Education shall pay the entire cost of the premium if he or she elects to be covered under this article. Any matters of doubt as to who is an employee within the meaning of this article shall be decided by the director.

On or after the first day of July, one thousand nine hundred ninety-seven, a person shall be considered an "employee" if that person meets the following criteria:

- (i) Participates in a job-sharing arrangement as defined in section one, article one, chapter eighteen-a of this code;
- (ii) Has been designated, in writing, by all other participants in that job-sharing arrangement as the "employee" for purposes of this section; and
- (iii) Works at least one third of the time required for a full-time employee.

(4) "Employer" means the state of West Virginia, its boards, agencies, commissions, departments, institutions or spending units; a county board of education; a county, city or town in the state; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns; any comprehensive community mental health center or comprehensive mental retardation facility established, operated or licensed by the secretary of health and human resources pursuant to section one, article two-a, chapter twenty-seven of this code and which is supported in part by state, county or municipal funds; a combined city-county health department created pursuant to article two, chapter sixteen of this code; and a corporation meeting the description set forth in section three, article twelve, chapter eighteen-b of this code that is employing a 21st Century Learner Fellow pursuant to section eleven, article three, chapter eighteen of this code but the corporation is not considered an employer with respect to any employee other than a 21st Century Learner Fellow. Any matters of doubt as to who is an "employer" within the meaning of this article shall be decided by the director. The term "employer" does not include within its meaning the national guard.

(5) "Finance board" means the public employees insurance agency finance board created by this article.

(6) "Person" means any individual, company, association, organization, corporation or other legal entity, including, but not limited to, hospital, medical or dental service corporations; health maintenance organizations or similar organization providing prepaid health benefits; or individuals entitled to benefits under the provisions of this article.

(7) "Plan", unless the context indicates otherwise, means the medical indemnity plan, the managed care plan option or the group life insurance plan offered by the agency.

(8) "Retired employee" means an employee of the state who retired after the twenty-ninth day of April, one thousand nine hundred seventy-one, and an employee of the ~~university of West Virginia board of trustees or the board of directors of the state college system~~ higher education policy commission, the council for community and technical college education, a state institution of higher education or a county board of education who retires on or after the twenty-first day of April, one thousand nine hundred seventy-two, and all additional eligible employees who retire on or after the effective date of this article, meet the minimum eligibility requirements for their respective state retirement system and whose last employer immediately prior to retirement under the state retirement system is a participating employer: *Provided*, That for the purposes of this article, the employees who are not covered by a state retirement system but who are covered by a state approved or state contracted retirement program shall, in the case of education employees, meet the minimum eligibility requirements of the ~~s~~State ~~t~~Teachers' ~~r~~Retirement ~~s~~System and in all other cases, meet the minimum eligibility requirements of the public employees retirement system.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS' RETIREMENT SYSTEM.

§18-7A-3. Definitions.

(a) As used in this article, unless the context clearly require a different meaning:

(1) "Accumulated contributions" means all deposits and all deductions from the gross salary of a contributor plus regular interest.

- (2) "Accumulated net benefit" means the aggregate amount of all benefits paid to or on behalf of a retired member;
- (3) "Annuities" means the annual retirement payments for life granted beneficiaries in accordance with this article.
- (4) "Average final salary" means the average of the five highest fiscal year salaries earned as a member within the last fifteen fiscal years of total service credit, including military service as provided in this article, or if total service is less than fifteen years, the average annual salary for the period on which contributions were made.
- (5) "Beneficiary" means the recipient of annuity payments made under the retirement system.
- (6) "Contributor" means a member of the retirement system who has an account in the teachers accumulation fund.
- (7) "Deposit" means a voluntary payment to his or her account by a member.
- (8) "Employer" means the agency of and within the state which has employed or employs a member.
- (9) "Employment term" means employment for at least ten months, a month being defined as twenty employment days.
- (10) "Gross salary" means the fixed annual or periodic cash wages paid by a participating public employer to a member for performing duties for the participating public employer for which the member was hired. Gross salary ~~shall~~ shall include retroactive payments made to a member to correct a clerical error, or pursuant to a court order or final order of an administrative agency charged with enforcing federal or state law pertaining to the member's rights to employment or wages, with all ~~such~~ the retroactive salary payments to be allocated to and ~~deemed~~ considered paid in the periods in which the work was or would have been done. Gross salary shall not include lump sum payments for bonuses, early retirement incentives, severance pay, or any other fringe benefit of any kind including, but not limited to, transportation allowances, automobiles or automobile allowances, or lump sum payments for unused, accrued leave of any type or character.
- (11) "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been amended.
- (12) "Member" means a member of the retirement system.
- (13) "Members of the administrative staff of the public schools" means deans of instruction, deans of men, deans of women, and financial and administrative secretaries.
- (14) "Members of the extension staff of the public schools" means every agricultural agent, boys' and girls' club agent and every member of the agricultural extension staff whose work is not primarily stenographic, clerical or secretarial.
- (15) "New entrant" means a teacher who is not a present teacher.
- (16) "Nonteaching member" means any person, except a teacher member, who is regularly employed for full-time service by: (a) Any county board of education; (b) the State Board of Education; (c) the ~~West Virginia Board of Regents [abolished];~~ or Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education or a governing board, as defined in section two, article one, chapter eighteen-b of this code; or (d) the Teachers Retirement Board-: Provided, That any person whose employment with the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education or a governing board commences on or after the first day of July, one thousand nine hundred ninety-one, is not considered a nonteaching member.

- (17) "Pick-up service" means service that a member was entitled to, but which the employer has not withheld or paid for.
- (18) "Plan year" means the twelve-month period commencing on the first day of July and ending the following thirtieth day of June of any designated year.
- (19) "Present member" means a present teacher who is a member of the retirement system.
- (20) "Present teacher" means any person who was a teacher within the thirty-five years beginning the first day of July, one thousand nine hundred thirty-four, and whose membership in the retirement system is currently active.
- (21) "Prior service" means all service as a teacher completed prior to the first day of July, one thousand nine hundred forty-one, and all service of a present member who was employed as a teacher, and did not contribute to a retirement account because he or she was legally ineligible for membership during the service.
- (22) "Public schools" means all publicly supported schools, including colleges and universities in this state.
- (23) "Refund beneficiary" means the estate of a deceased contributor or a person he or she has nominated as beneficiary of his or her contributions by written designation duly executed and filed with the retirement board.
- (24) "Refund interest" means interest compounded, according to the formula established in legislative rules, series seven of the Consolidated Public Retirement Board.
- (25) "Regular interest" means interest at four percent compounded annually, or a higher earnable rate if set forth in the formula established in legislative rules, series seven of the Consolidated Public Retirement Board.
- (26) "Regularly employed for full-time service" means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay.
- (27) "Required beginning date" means the first day of April of the calendar year following the later of: (a) The calendar year in which the member attains age seventy and one-half years; or (b) the calendar year in which the member retires or ceases covered employment under the system after having attained the age of seventy and one-half years.
- (28) "Retirement system" means the State Teachers' Retirement System provided for in this article.
- (29) "Teacher member" means the following persons, if regularly employed for full-time service: (a) Any person employed for instructional service in the public schools of West Virginia; (b) principals; (c) public school librarians; (d) superintendents of schools and assistant county superintendents of schools; (e) any county school attendance director holding a West Virginia teacher's certificate; (f) the Executive Secretary of the Retirement Board; (g) members of the research, extension, administrative or library staffs of the public schools; (h) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision, or any other employee under the State Superintendent performing services of an educational nature; (i) employees of the State Board of Education who are performing services of an educational nature; (j) any person employed in a nonteaching capacity by the State Board of Education, any county board of education, the State Department of Education or the Teachers Retirement Board, if that person was formerly employed as a teacher in the public schools; (k) all classroom teachers, principals and educational administrators in schools under the supervision of the Division of Corrections, the Division of Health or

the Division of Human Services; (l) employees of the State Board of School Finance, if that person was formerly employed as a teacher in the public schools; and (m) any person designated as a 21st Century Learner Fellow pursuant to section eleven, article three, chapter eighteen-a of this code who elects to remain a member of the Teachers' Retirement System provided for in this article.

(30) "Total service" means all service as a teacher while a member of the retirement system since last becoming a member and, in addition thereto, credit for prior service, if any.

The masculine gender shall be construed so as to include the feminine. Age in excess of seventy years shall be considered to be seventy years.

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-2. Definitions.

As used in this article, unless the context clearly requires a different meaning: (1) "Defined contribution system" or "system" means the Teachers' Defined Contribution Retirement System created and established by this article:

(2) "Existing retirement system" means the State Teachers' Retirement System established in article seven-a of this chapter;

(3) "Existing employer" means any employer who employed or employs a member of the existing retirement system;

(4) "Consolidated board" or "board" means the Consolidated Public Retirement Board created and established pursuant to article ten-d, chapter five of this code;

(5) "Member" or "employee" means the following persons, if regularly employed for full-time service: (A) Any person employed for instructional service in the public schools of West Virginia; (B) principals; (C) public school librarians; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher's certificate; (F) members of the research, extension, administrative or library staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision, or any other employee under the State Superintendent performing services of an educational nature; (H) employees of the State Board of Education who are performing services of an educational nature; (I) any person employed in a nonteaching capacity by the State Board of Education, any county board of education or the State Department of Education if that person was formerly employed as a teacher in the public schools; (J) all classroom teachers, principals and educational administrators in schools under the supervision of the Division of Corrections and the Department of Health and Human Resources; (K) any person who is regularly employed for full-time service by any county board of education or the State Board of Education and (L) the administrative staff of the public schools including deans of instruction, deans of men and deans of women, and financial and administrative secretaries; and (M) any person designated as a 21st Century Learner Fellow pursuant to section eleven, article three, chapter eighteen-a of this code who elects to remain a member of the Teachers' Defined Contribution System established by this article;

(6) "Regularly employed for full-time service" means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay;

(7) "Year of employment service" means employment for at least ten months, a month being defined as twenty employment days: *Provided*, That no more than one year of service may be accumulated in any twelve-month period;

- (8) "Employer" means the agency of and within the State of West Virginia which has employed or employs a member;
- (9) "Compensation" means the full compensation actually received by members for service whether or not a part of the compensation is received from other funds, federal or otherwise, than those provided by the state or its subdivisions;
- (10) "Public schools" means all publicly supported schools, including normal schools, colleges and universities in this state;
- (11) "Member contribution" means an amount reduced from the employee's regular pay periods, and deposited into the member's individual annuity account within the Defined Contribution Retirement System;
- (12) "Employer contribution" means an amount deposited into the member's individual annuity account on a periodic basis coinciding with the employee's regular pay period by an employer from its own funds;
- (13) "Annuity account" or "annuity" means an account established for each member to record the deposit of member contributions and employer contributions and interest, dividends or other accumulations credited on behalf of the member;
- (14) "Retirement" means a member's withdrawal from the active employment of a participating employer and completion of all conditions precedent to retirement;
- (15) "Permanent, total disability" means a mental or physical incapacity requiring absence from employment service for at least six months: *Provided*, That the incapacity is shown by an examination by a physician or physicians selected by the Board: *Provided, however*, That for employees hired on or after the first day of July, two thousand five, permanent, total disability means an inability to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, or has lasted or can be expected to last for a continuous period of not less than twelve months and the incapacity is so severe that the member is likely to be permanently unable to perform the duties of the position the member occupied immediately prior to his or her disabling injury or illness.
- (16) "Plan year" means the twelve-month period commencing on the first day of July of any designated year and ending on the following thirtieth day of June;
- (17) "Required beginning date" means the first day of April of the calendar year following the later of: (a) The calendar year in which the member attains age seventy-one and one-half years; or (b) the calendar year in which the member retires or otherwise ceases employment with a participating employer after having attained the age of seventy and one-half years; and
- (18) "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been amended.

ARTICLE 23. ADDITIONAL POWERS, DUTIES AND RESPONSIBILITIES OF GOVERNING BOARDS OF STATE INSTITUTIONS OF HIGHER EDUCATION.

§18-23-4a. Supplemental and additional retirement plans for employees; payroll deductions; authority to match employee contributions; retroactive curative and technical corrective action.

- (a) Any reference in this code to the "additional retirement plan" relating to state higher education employees, means the "higher education retirement plan" provided in this section. Any state higher education employee participating in a retirement plan upon the effective date of this section continues to participate in that plan and may not elect to participate in any other state retirement plan. Any such retirement plan continues to be governed by the provisions of law applicable on the effective date of this section.
- (b) The Higher Education Policy Commission, on behalf of the governing boards

and itself, shall contract for a retirement plan for its employees, to be known as the "Higher Education Retirement Plan". The governing boards and Higher Education Policy Commission shall make periodic deductions from the salary payments due the employees in the amount they are required to contribute to the Higher Education Retirement Plan, which deductions shall be six percent.

(c) The Higher Education Policy Commission and the governing boards, with policy commission approval, may contract for a supplemental retirement plan for any or all of their employees to supplement the benefits the employees otherwise receive. The governing boards and Higher Education Policy Commission may make additional periodic deductions from the salary payments due the employees in the amount they are required to contribute for the supplemental retirement plan.

(d) The Higher Education Policy Commission shall conduct a study of the feasibility of offering multiple vendors of retirement products and services to be offered for the benefit of higher education employees. The commission shall report the findings of the study, along with a plan for offering multiple vendors for the employees, to the Joint Committee on Pensions and Retirement no later than the first day of December, two thousand one. Upon approval by the Joint Committee on Pensions and Retirement, the commission shall provide a choice of vendors to their employees. Any selection of vendors made by the commission shall be determined according to a request for proposal issued pursuant to the provisions of section four, article five, chapter eighteen-b of this code.

(e) Each governing board and the Higher Education Policy Commission, by way of additional compensation to their employees, shall pay an amount equal to the contributions of the employees into the higher education retirement plan from funds appropriated to the board or commission for personal services.

(f) Each participating employee has a full and immediate vested interest in the retirement and death benefits accrued from all the moneys paid into the Higher Education Retirement Plan or a supplemental retirement plan for his or her benefit. Upon proper requisition of a board or the Higher Education Policy Commission, the auditor shall periodically issue a warrant, payable as specified in the requisition, for the total contributions so withheld from the salaries of all participating employees and for the governing board's or Higher Education Policy Commission's matching funds.

(g) Any person whose employment commences on or after the ~~effective date of this section~~, first day of July, one thousand nine hundred ninety-one, and who is eligible to participate in the Higher Education Retirement Plan, shall participate in that plan and is not eligible to participate in any other state retirement system.: Provided, That the foregoing provision does not apply to a person designated as a 21st Century Learner Fellow pursuant to section eleven, article three, chapter eighteen-a of this code. The additional retirement plan contracted for by the governing boards prior to the ~~effective date of this section~~ first day of July, one thousand nine hundred ninety-one, remains in effect unless changed by the Higher Education Policy Commission. Nothing in this section may be construed to consider employees of the governing boards as employees of the Higher Education Policy Commission, nor is the Higher Education Policy Commission responsible or liable for retirement benefits contracted by, or on behalf of, the governing boards.

(h) It is the intent of the Legislature in amending and reenacting this section during its two thousand one regular session solely to:

(1) Maintain the current retirement plans offered to state higher education employees in their current form;

- (2) Clarify that employees of the hHigher eEducation pPolicy eCommission are participants in the higher education retirement plan;
- (3) Codify the current contribution levels of the governing boards, the hHigher eEducation pPolicy eCommission and their employees toward the present higher education retirement plan;
- (4) Make mandatory the contribution levels of the governing boards and hHigher eEducation pPolicy eCommission;
- (5) Establish a standardized retirement policy for all state higher education employees as determined by the policy commission;
- (6) Clarify the application and purposes of the additional and supplemental retirement plans previously provided for in this section; and
- (7) Remove obsolete and archaic language.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-3. Renewal of certificates; permanent certification.

(a) Until the person qualifies for a permanent certificate, any professional or first class certificate based upon a bachelor's degree shall be renewable provided the holder: within five years from the date the certificate became valid:

- (1) Files application on a prescribed form with the sState dDepartment of eEducation;
- (2) pPresents an official transcript of six semester hours of approved credit, as may be prescribed by the state board; ~~Provided, That such renewal is completed after the beginning of the period of validity of the certificate to be renewed and within the five-year period immediately preceding the date of application for renewal;~~
- (3) sSuccessfully completes a beginning teacher internship program, if applicable; and
- (4) sSubmits a recommendation based on successful teaching experience from the county superintendent of schools of the county in which the holder last taught or resides.

(b) The holder of a professional certificate, valid for five years, shall have the certificate made permanent upon meeting either any of the following requirements:

- (1) Completion of the second renewal, in accordance with the provisions set forth in ~~(2) above;~~ subsection (a) of this section; or
- (2) aAfter five years of service in the public schools, presentation of a transcript showing the completion of requirements for a master's degree from an institution of higher education accredited to offer the master's degree and in a program relevant to the public school program or completes the fifth year of training leading to a bachelor's degree in library science from a school fully approved by the American lLibrary aAssociation. In either event; or
- (3) Receives certification through the National Board for Professional Teaching Standards.

(c) To satisfy any of the requirements of subsection (b) of this section, In either event the person must file application on a prescribed form with the sState dDepartment of eEducation and must submit a recommendation from the county superintendent of schools of the county in which the person last taught or resides.

(d) All certificates and permits, other than the professional certificate, shall be renewed in accordance with state board regulations.

(e) If the applicant seeking renewal has cause to believe that the county superintendent refuses to give a recommendation without just cause, the applicant shall have the right, in such case, to appeal to the sState sSuperintendent of sSchools whose responsibility

it shall be to investigate the matter and issue a certificate if, in the opinion of the state superintendent, the county superintendent's recommendation was withheld arbitrarily.
(f) A person who has reached the age of sixty and holds a renewable certificate, as provided in this section, need not present renewal credit but shall meet all other renewal requirements.

§18A-3-11. Study of professional development standards and best practices. Fellowship for 21st Century Learners.

The Legislative Oversight Commission on Education Accountability shall cause a study to be conducted to determine and to recommend standards and best practices for professional development that are focused on advancing student achievement. The study and a final report of recommendations shall be completed prior to the first day of September, two thousand five. The Commission shall submit the final report to the Joint Commission on Government and Finance. The Commission shall determine if resources to assist in the completion of the study are available from sources other than public funds and shall report such to the Joint Committee.

(a) The Legislature finds that:

(1) There are instances, especially for the purpose of professional development, where it would be beneficial for persons who are members of the Teachers' Retirement System or the Teachers' Defined Contribution System to be employed by state institutions of higher education or research corporations;

(2) Members of the Teachers' Retirement System are discouraged from terminating their membership to that system because their annuity is based on their final average salary and their total service credit;

(3) A member of the Teachers' Defined Contribution System may be discouraged from terminating his or her membership to that system because the member may be completely vested in that system or have made substantial progress toward being vested;

(4) These members also are discouraged from leaving employment that allows them to participate in the Public Employees Insurance Program pursuant to article sixteen, chapter five of this code; and

(5) An example of this beneficial arrangement would be the employment of a member of the Teachers' Retirement System or a member of the Teachers' Defined Contribution System by an entity that otherwise would not be considered an employer under article seven-a, chapter eighteen of this code or article seven-b, chapter eighteen of this code for the purpose of working on a joint professional development project between higher education and public education.

(b) For the purposes of this section only, unless the context clearly indicates otherwise:

(1) "Employer" means either the state institution of higher education or the research corporation employing a 21st Century Learner Fellow;

(2) "Research corporation" means a corporation meeting the description set forth in section three, article twelve, chapter eighteen-b of this code; and

(3) "State institution of higher education" means the same as defined in section two, article one, chapter eighteen-b of this code.

(c) The State Superintendent is authorized to designate up to twenty-five professional educators who are currently employed and who are members of either the Teachers' Retirement System set forth in article seven-a, chapter eighteen of this code or the Teachers' Defined Contribution System set forth in article seven-b, chapter eighteen of this code as 21st Century Learner Fellows, subject to the following:

(1) Before designating a person as a 21st Century Learner Fellow, the State

Superintendent shall consult with the state institution of higher education or the research corporation that would employ the member if designated;

(2) In determining whether or not to designate a person as a 21st Century Learner Fellow, the State Superintendent shall give preference to a person who:

(A) Is certified by the National Board for Professional Teaching Standards; and

(B) Demonstrates leadership within his or her content field in the county, regional education service agency area or the State;

(3) The duration of the person's designation as a 21st Century Learner Fellow shall be for the period in which the specific project to be undertaken by the person will last as determined by the State Superintendent at the time he or she designates the person;

and

(4) Only the employer may terminate the employment of a person designated as a 21st Century Learner Fellow prior to the end of the duration of the person's designation as set forth in subsection (3) of this subsection.

(d) Notwithstanding any other provision of the code to the contrary, the professional educators designated as 21st Century Learner Fellows may elect to remain a member of the retirement system in which they were a member of immediately preceding their designation while they are employed by either a state institution of higher education or a research corporation, subject to the following:

(1) This authorization to remain a member of the retirement system in which they were a member of immediately preceding their designation only applies to authorization to remain a member of either the Teachers' Retirement System set forth in article seven-a, chapter eighteen of this code or to the Teachers' Defined Contribution System set forth in article seven-b, chapter eighteen of this code, but not both;

(2) Both the employer and the member each shall contribute their share as required by article seven-a, chapter eighteen of this code or article seven-b, chapter eighteen of this code, as applicable;

(3) If a 21st Century Learner Fellow elects to remain a member of either the Teachers' Retirement System set forth in article seven-a, chapter eighteen of this code or the Teachers' Defined Contribution System set forth in article seven-b, chapter eighteen of this code, he or she may not participate in any retirement plan offered by the employer;

and

(4) Notwithstanding any other provision of law to the contrary, the employer does not assume any liability for benefits accrued by the 21st Century Learner Fellow while he or she was employed by any other entity.

(e) Notwithstanding any other provision of code to the contrary, each 21st Century Learner Fellow also qualifies as an employee for the purposes of being authorized to participate in the Public Employees Insurance Program pursuant to article sixteen, chapter five of this code and the state institution of higher education or the research corporation, as applicable, shall be considered an employer under that program, subject to the following:

(1) The state institution of higher education or the research corporation, as applicable, is not considered an employer with respect to any employee other than a 21st Century Learner Fellow;

(2) For any employee that elects to participate in the program pursuant to this subdivision, the employer shall pay their share of the premium and the employee shall pay his or her share of the premium pursuant to article sixteen, chapter five of this code;

and

(3) Notwithstanding any other provision of law to the contrary, the employer does not

assume any liability for benefits accrued by the 21st Century Learner Fellow while he or she was employed by any other entity.

(f) Notwithstanding any other provision of law to the contrary:

(1) The employer is not responsible for any accrued annual leave, sick leave or both that a 21st Century Learner Fellow has accumulated during any prior employment; and

(2) If a 21st Century Learner Fellow has accumulated sick leave from prior employment, and if not for this subsection that sick leave obligation or any part of that obligation otherwise would have been transferred to the employer, after expending all sick leave accrued with the employer, the 21st Century Learner may expend the sick leave accumulated with the prior employer, and the prior employer is responsible for paying the cost of the sick leave expended by the 21st Century Learner Fellow at a rate equivalent to the salary and benefits paid to the 21st Century Learner Fellow at the time his or her employment with the prior employer ended.

House Bill 2588

Effective Date: Passed March 10, 2007; in effect July 1, 2007.

Signed by Governor: March 28, 2007

Code Reference: Amends §18a-3-3a

Title: Relating to the reimbursement of tuition, registration and other fees of coursework completed by teachers for certification renewal and an additional endorsement in a shortage area; creating priority for reimbursement of courses for renewals and endorsement in shortage areas if insufficient funds appropriated; and limiting semester hours of courses reimbursed for any teacher

Major Provisions:

- This Act provides that if funds appropriated for reimbursement for courses completed toward certification renewal and additional endorsement in a shortage area are insufficient for the reimbursement for all eligible courses, the Department of Education is to make the reimbursement for courses for additional endorsement in a shortage area and certification renewal in a shortage area first; and limits reimbursement for courses completed toward additional endorsement in a shortage area to 15 semester hours of courses for any teacher

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2588

(By Delegates M. Poling and Paxton)

[Passed March 10, 2007; in effect July 1, 2007.]

AN ACT to amend and reenact §18A-3-3a of the Code of West Virginia, 1931, as amended, relating to the reimbursement of tuition, registration and other required fees for coursework completed by teachers for certification renewal and an additional endorsement in a shortage area; creating priority for reimbursement of courses for renewals and endorsement in shortage areas if insufficient funds appropriated; and limiting semester hours of courses reimbursed for any teacher.

Be it enacted by the Legislature of West Virginia:

That §18A-3-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-3a. Payment of tuition, registration and other fees for teachers; maximum payment per teacher.

(a) The West Virginia ~~e~~Department of ~~e~~Education shall promulgate rules to administer the reimbursement of tuition, registration and other required fees for coursework completed by teachers in accordance with the provisions of this section. The rules shall provide for reimbursement for courses completed toward both certification renewal and additional endorsement in a shortage area.

(b) As used in this section, the following words and phrases have the meanings ascribed to them:

(1) "Teacher" has the meaning provided in section one, article one, chapter eighteen of this code.

(2) "Shortage area" shall be defined by state board policy to indicate the subject areas for which an insufficient number of teachers are available.

(3) "Certification" and "certificate" mean a valid West Virginia:

(A) Professional teaching, service or administrative certificate, or its equivalent; or

(B) Provisional professional teaching, service or administrative certificate, or its equivalent.

(4) "Requirements for certification renewal" are those requirements of the ~~s~~State ~~e~~Department of ~~e~~Education as provided in section three of this article.

(5) "Requirements for additional endorsement" are those requirements of the ~~s~~State ~~e~~Department of ~~e~~Education as provided in section three of this article.

(6) "State institution of higher education" has the meaning provided in section two, article one, chapter eighteen-b of this code.

(c) To the extent of funds appropriated for the purposes specified in this section,

payment shall be made to any teacher who:

(1) Holds either a valid West Virginia:

(A) Certificate; or

(B) First class permit for full-time employment; and

(2) Is seeking:

(A) An additional endorsement in a shortage area, and either resides in the state or is employed regularly for instructional purposes in a public school in the state; or

(B) Certification renewal, and has a continuing contract with a county board.

(d) The payment shall be made as reimbursement for the tuition, registration and other required fees for any course completed at:

(1) Any college or university within the state; or

(2) A college or university outside the state if prior approval is granted by the department.

(e) A course is eligible for reimbursement if it meets the requirements for:

(1) An additional endorsement in a shortage area; or

(2) Certification renewal.

~~(f) In the fiscal year beginning the first day of July, two thousand two, if funds appropriated for the purposes specified in this section shall be disbursed evenly between courses completed toward certification renewal and courses toward~~ are insufficient for the reimbursement of all eligible courses within the limits provided in this section, the West Virginia Department of Education shall make the reimbursements for courses for additional endorsement in a shortage area and certification renewal in a shortage area first. ~~Thereafter, funds shall be divided between renewal and endorsement in the same proportion that the number of applications for each was made toward the total number of applications received, except that reimbursement toward either may not exceed seventy-five percent of total funds appropriated.~~

(g) Payment made for any single fee may not exceed the amount of the highest corresponding fee charged at a state institution of higher education.

(h) Reimbursement for courses completed toward certification renewal is limited to fifteen semester hours of courses for any teacher. Reimbursement for courses completed toward additional endorsement in a shortage area is limited to fifteen semester hours of courses for any teacher.

(i) The West Virginia ~~d~~Department of ~~e~~Education shall seek funding from sources other than general revenue appropriation, including, but not limited to, workforce investment funds.

(j) No provision of this section may be construed to require any appropriation or any specific amount of appropriation for the purposes specified in this section, or to require the department to expend funds for those purposes from any other amounts appropriated for expenditure by the department.

House Bill 2777

- Effective Date: Passed March 9, 2007; in effect July 1, 2007.
- Signed by Governor: April 4, 2007
- Code Reference: Amends §18A-4-2, §18A-4-2a, §18A-4-8, §18a-4-8a
- Title: Salaries, Wages and Other Benefits
- Major Provisions:
- Grants teachers and service personnel a 3.5% increase in basic salaries
 - Increases the bonus for teachers who hold a valid certificate issued by the National Board of Professional Teaching Standards (NBPTS) from \$2,500 to \$3,500
 - Creates the service personnel position of “Licensed Practical Nurse” and establishes the Pay Grade at “F”
 - Increases the pay grade of autism mentor from Pay Grade “E” to “F”
 - Increases the pay grade of sanitation plant operator from Pay Grade “F” to “G”
 - Prohibits a county board from transferring or reducing in force a currently employed aide for the purpose of creating a vacancy for the employment of a licensed practical nurse
 - Prohibits a county board from establishing the beginning work station for a bus operator or transportation aide at any site other than a board-owned facility with available parking unless the employee agrees otherwise in writing

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2777

(By Mr. Speaker, (Mr. Thompson) and Delegate Armstead)

[By Request of the Executive]

[Passed March 9, 2007; in effect July 1, 2007.]

AN ACT to amend and reenact §18A-4-2, §18A-4-2a, §18A-4-8 and §18A- 4-8a of the Code of West Virginia, 1931, as amended, all relating to providing for compensation generally; increasing annual salaries of public school teachers; increasing the annual salary bonus for classroom teachers with national board certification; creating new service personnel class title for compensation purposes and preventing such new title from resulting in displacement of other employees; increasing monthly salaries of service personnel and clarifying certain workday parameters for such; providing and modifying certain pay grades; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §18A-4-2, §18A-4-2a, §18A-4-8 and §18A-4-8a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-2. State minimum salaries for teachers.

(a) Effective the first day of July, two thousand seven, through the thirtieth day of June, two thousand eight, ~~Each~~ teacher shall receive the amount prescribed in the ~~2005-06~~ 2007-08 State Minimum Salary Schedule I as set forth in this section, specific additional amounts prescribed in this section or article and any county supplement in effect in a county pursuant to section five-a of this article during the contract year. ~~Provided, That beginning on the first day of the second quarter of the teacher's employment term in the school year two thousand five two thousand six through the thirtieth day of June, two thousand six, each teacher shall receive the amount prescribed in the 2005-06 State Minimum Salary Schedule II as set forth in this section, specific additional amounts prescribed in this section or article and any county supplement in effect in a county pursuant to section five-a of this article during the contract year: Provided, however, That any salary increases that a teacher is entitle to receive as a result of the enactment of the 2005-06 State Minimum Salary Schedule II shall not be paid until the first pay date after the first day of November, two thousand five.~~

~~Effective the first day of July, two thousand six, through the thirtieth day of June, two thousand seven, each teacher shall receive the amount prescribed in the 2006-07 State Minimum Salary Schedule as set forth in this section, specific additional amounts prescribed in this section or article and any county supplement in effect in a county pursuant to section five-a of this article during the contract year.~~

~~Effective the first day of July, two thousand seven, through the thirtieth day of June, two thousand eight, each teacher shall receive the amount prescribed in the 2007-08 State~~

~~Minimum Salary Schedule as set forth in this section, specific additional amounts prescribed in this section or article and any county supplement in effect in a county pursuant to section five-a of this article during the contract year.~~

Effective the first day of July, two thousand eight, and thereafter, each teacher shall receive the amount prescribed in the 2008-09 State Minimum Salary Schedule as set forth in this section, specific additional amounts prescribed in this section or article and any county supplement in effect in a county pursuant to section five-a of this article during the contract year.

~~2005-06 STATE MINIMUM SALARY SCHEDULE I~~

~~(1) (2) (3) (4) (5) (6) (7) (8) (9) (10) (11)~~

~~Years 4th 3rd 2nd~~

~~A.B.~~

~~M.A. M.A. M.A. Dec-~~

~~Exp.~~

~~Class Class Class A.B. +15 M.A. +15 +30 +45 torate~~

0	21,888	22,525	22,780	23,990	24,725	26,433	27,168	27,903	28,638	29,638
1	22,205	22,842	23,097	24,491	25,226	26,934	27,669	28,404	29,139	30,139
2	22,522	23,160	23,415	24,992	25,727	27,435	28,170	28,905	29,640	30,640
3	22,840	23,477	23,732	25,493	26,228	27,936	28,671	29,406	30,141	31,141
4	23,393	24,030	24,286	26,230	26,965	28,673	29,408	30,143	30,878	31,878
5	23,710	24,348	24,603	26,731	27,466	29,174	29,909	30,644	31,379	32,379
6	24,028	24,665	24,920	27,232	27,967	29,675	30,410	31,145	31,880	32,880
7	-	24,982	25,238	27,733	28,468	30,176	30,911	31,646	32,381	33,381
8		25,300	25,555	28,234	28,969	30,677	31,412	32,147	32,882	33,882
9	-	-	25,872	28,735	29,470	31,178	31,913	32,648	33,383	34,383
10		-	26,189	29,237	29,972	31,680	32,415	33,150	33,885	34,885
11		-	-	29,738	30,473	32,181	32,916	33,651	34,386	35,386
12		-	-	30,239	30,974	32,682	33,417	34,152	34,887	35,887
13		-	-	30,740	31,475	33,183	33,918	34,653	35,388	36,388
14		-	-	-	-	33,684	34,419	35,154	35,889	36,889
15		-	-	-	-	34,185	34,920	35,655	36,390	37,390
16		-	-	-	-	34,686	35,421	36,156	36,891	37,891

17		-	-	-	-	-	-	36,657	37,392	38,392
18		-	-	-	-	-	-	37,158	37,893	38,893
19		-	-	-	-	-	-	37,659	38,394	39,394

2005-06 STATE MINIMUM SALARY SCHEDULE II

(1) (2) (3) (4) (5) (6) (7) (8) (9) (10) (11)

Years 4th 3rd

2nd

A.B.

M.A. M.A. M.A. Doc-

Exp.

Class Class Class A.B. +15 M.A. +15 +30 +45 torate

0	23,238	23,875	24,130	25,340	26,075	27,783	28,518	29,253	29,988	30,988
1	23,555	24,192	24,447	25,841	26,576	28,284	29,019	29,754	30,489	31,489
2	23,872	24,510	24,765	26,342	27,077	28,785	29,520	30,255	30,990	31,990
3	24,190	24,827	25,082	26,843	27,578	29,286	30,021	30,756	31,491	32,491
4	24,743	25,380	25,636	27,580	28,315	30,023	30,758	31,493	32,228	33,228
5	25,060	25,698	25,953	28,081	28,816	30,524	31,259	31,994	32,729	33,729
6	25,378	26,015	26,270	28,582	29,317	31,025	31,760	32,495	33,230	34,230
7	25,696	26,332	26,588	29,083	29,818	31,526	32,261	32,996	33,731	34,731
8	-	26,650	26,905	29,584	30,319	32,027	32,762	33,497	34,232	35,232
9	-	26,968	27,222	30,085	30,820	32,528	33,263	33,998	34,733	35,733
10	-	-	27,539	30,587	31,322	33,030	33,765	34,500	35,235	36,235
11	-	-	27,856	31,088	31,823	33,531	34,266	35,001	35,736	36,736
12	-	-	-	31,589	32,324	34,032	34,767	35,502	36,237	37,237
13	-	-	-	32,090	32,825	34,533	35,268	36,003	36,738	37,738
14	-	-	-	32,591	33,326	35,034	35,769	36,504	37,239	38,239
15	-	-	-	-	-	35,535	36,270	37,005	37,740	38,740
16	-	-	-	-	-	36,036	36,771	37,506	38,241	39,241
17	-	-	-	-	-	36,537	37,272	38,007	38,742	39,742

18	-	-	-	-	-	-	-	38,508	39,243	40,243
19	-	-	-	-	-	-	-	39,009	39,744	40,744
20	-	-	-	-	-	-	-	39,510	40,245	41,245

2006-07 STATE MINIMUM SALARY SCHEDULE

(1) (2) (3) (4) (5) (6) (7) (8) (9) (10) (11)

Years 4th 3rd

2nd

A.B.

M.A. M.A. M.A. Doc-

Exp.

Class Class Class A.B. +15 M.A. +15 +30 +45 torate

0	23,238	23,875	24,130	25,340	26,075	27,783	28,518	29,253	29,988	30,988
1	23,555	24,192	24,447	25,841	26,576	28,284	29,019	29,754	30,489	31,489
2	23,872	24,510	24,765	26,342	27,077	28,785	29,520	30,255	30,990	31,990
3	24,190	24,827	25,082	26,843	27,578	29,286	30,021	30,756	31,491	32,491
4	24,743	25,380	25,636	27,580	28,315	30,023	30,758	31,493	32,228	33,228
5	25,060	25,698	25,953	28,081	28,816	30,524	31,259	31,994	32,729	33,729
6	25,378	26,015	26,270	28,582	29,317	31,025	31,760	32,495	33,230	34,230
7	25,696	26,332	26,588	29,083	29,818	31,526	32,261	32,996	33,731	34,731
8	26,014	26,650	26,905	29,584	30,319	32,027	32,762	33,497	34,232	35,232
9	26,332	26,968	27,222	30,085	30,820	32,528	33,263	33,998	34,733	35,733
10	26,650	27,286	27,539	30,587	31,322	33,030	33,765	34,500	35,235	36,235
11	-	27,604	27,856	31,088	31,823	33,531	34,266	35,001	35,736	36,736
12	-	27,922	28,173	31,589	32,324	34,032	34,767	35,502	36,237	37,237
13	-	-	28,490	32,090	32,825	34,533	35,268	36,003	36,738	37,738
14	-	-	28,807	32,591	33,326	35,034	35,769	36,504	37,239	38,239
15	-	-	-	33,092	33,827	35,535	36,270	37,005	37,740	38,740
16	-	-	-	33,593	34,328	36,036	36,771	37,506	38,241	39,241

17	-	-	-	34,094	34,829	36,537	37,272	38,007	38,742	39,742
18	-	-	-	-	-	37,038	37,773	38,508	39,243	40,243
19	-	-	-	-	-	37,539	38,274	39,009	39,744	40,744
20	-	-	-	-	-	38,040	38,775	39,510	40,245	41,245
24	-	-	-	-	-	-	-	40,011	40,746	41,746
22	-	-	-	-	-	-	-	40,512	41,247	42,247
23	-	-	-	-	-	-	-	41,013	41,748	42,748

2007-08 STATE MINIMUM SALARY SCHEDULE

(1) (2) (3) (4) (5) (6) (7) (8) (9) (10) (11)

Years 4th 3rd

2nd

A.B.

M.A. M.A. M.A. Doc-

Exp.

Class Class Class A.B. +15 M.A. +15 +30 +45 torate

0	23,238	23,875	24,130	25,340	26,075	27,783	28,518	29,253	29,988	30,988
1	23,555	24,192	24,447	25,841	26,576	28,284	29,019	29,754	30,489	31,489
2	23,872	24,510	24,765	26,342	27,077	28,785	29,520	30,255	30,990	31,990
3	24,190	24,827	25,082	26,843	27,578	29,286	30,021	30,756	31,491	32,491
4	24,743	25,380	25,636	27,580	28,315	30,023	30,758	31,493	32,228	33,228
5	25,060	25,698	25,953	28,081	28,816	30,524	31,259	31,994	32,729	33,729
6	25,378	26,015	26,270	28,582	29,317	31,025	31,760	32,495	33,230	34,230
7	25,696	26,332	26,588	29,083	29,818	31,526	32,261	32,996	33,731	34,731
8	26,014	26,650	26,905	29,584	30,319	32,027	32,762	33,497	34,232	35,232
9	26,332	26,968	27,222	30,085	30,820	32,528	33,263	33,998	34,733	35,733
10	26,650	27,286	27,539	30,587	31,322	33,030	33,765	34,500	35,235	36,235
11	26,968	27,604	27,856	31,088	31,823	33,531	34,266	35,001	35,736	36,736
12	27,286	27,922	28,173	31,589	32,324	34,032	34,767	35,502	36,237	37,237

13	27,604	28,240	28,490	32,090	32,825	34,533	35,268	36,003	36,738	37,738
14	-	28,558	28,807	32,591	33,326	35,034	35,769	36,504	37,239	38,239
15	-	28,876	29,124	33,092	33,827	35,535	36,270	37,005	37,740	38,740
16	-	-	29,441	33,593	34,328	36,036	36,771	37,506	38,241	39,241
17	-	-	29,758	34,094	34,829	36,537	37,272	38,007	38,742	39,742
18	-	-	-	34,595	35,330	37,038	37,773	38,508	38,243	40,243
19	-	-	-	35,096	35,831	37,539	38,274	39,009	39,744	40,744
20	-	-	-	35,597	36,332	38,040	38,775	39,510	40,245	41,245
21	-	-	-	-	-	38,541	39,276	40,011	40,746	41,746
22	-	-	-	-	-	39,042	39,777	40,512	41,247	42,247
23	-	-	-	-	-	39,543	40,278	41,013	41,748	42,748
24	-	-	-	-	-	-	-	41,514	42,249	43,249
25	-	-	-	-	-	-	-	42,015	42,750	43,750
26	-	-	-	-	-	-	-	42,516	43,251	44,251
-	-	-	-	-	-	-	-	-	-	-

~~2008-09 STATE MINIMUM SALARY SCHEDULE~~

(1) (2) (3) (4) (5) (6) (7) (8) (9) (10) (11)

Years 4th 3rd

2nd

A.B.

M.A. M.A. M.A. Doc-

Exp.

Class Class Class A.B. +15 M.A. +15 +30 +45 torate

0	23,238	23,875	24,130	25,340	26,075	27,783	28,518	29,253	29,988	30,988
1	23,555	24,192	24,447	25,841	26,576	28,284	29,019	29,754	30,489	31,489
2	23,872	24,510	24,765	26,342	27,077	28,785	29,520	30,255	30,990	31,990
3	24,190	24,827	25,082	26,843	27,578	29,286	30,021	30,756	31,491	32,491
4	24,743	25,380	25,636	27,580	28,315	30,023	30,758	31,493	32,228	33,228
5	25,060	25,698	25,953	28,081	28,816	30,524	31,259	31,994	32,729	33,729

6	25,378	26,015	26,270	28,582	29,317	31,025	31,760	32,495	33,230	34,230
7	25,696	26,332	26,588	29,083	29,818	31,526	32,261	32,996	33,731	34,731
8	26,014	26,650	26,905	29,584	30,319	32,027	32,762	33,497	34,232	35,232
9	26,332	26,968	27,222	30,085	30,820	32,528	33,263	33,998	34,733	35,733
10	26,650	27,286	27,539	30,587	31,322	33,030	33,765	34,500	35,235	36,235
11	26,968	27,604	27,856	31,088	31,823	33,531	34,266	35,001	35,736	36,736
12	27,286	27,922	28,173	31,589	32,324	34,032	34,767	35,502	36,237	37,237
13	27,604	28,240	28,490	32,090	32,825	34,533	35,268	36,003	36,738	37,738
14	27,922	28,558	28,807	32,591	33,326	35,034	35,769	36,504	37,239	38,239
15	28,240	28,876	29,124	33,092	33,827	35,535	36,270	37,005	37,740	38,740
16	28,558	29,194	29,441	33,593	34,328	36,036	36,771	37,506	38,241	39,241
17	28,876	29,512	29,758	34,094	34,829	36,537	37,272	38,007	38,742	39,742
18	29,194	29,830	30,075	34,595	35,330	37,038	37,773	38,508	38,243	40,243
19	29,512	30,148	30,392	35,096	35,831	37,539	38,274	39,009	39,744	40,744
20	29,830	30,466	30,709	35,597	36,332	38,040	38,775	39,510	40,245	41,245
21	30,148	30,784	31,026	36,098	36,833	38,541	39,276	40,011	40,746	41,746
22	30,466	31,102	31,343	36,599	37,334	39,042	39,777	40,512	41,247	42,247
23	30,784	31,420	31,660	37,100	37,835	39,543	40,278	41,013	41,748	42,748
24	31,102	31,738	31,977	37,601	38,336	40,044	40,779	41,514	42,249	43,249
25	31,420	32,056	32,294	38,102	38,837	40,545	41,280	42,015	42,750	43,750
26	31,738	32,374	32,611	38,603	39,338	41,046	41,781	42,516	43,251	44,251
27	32,056	32,692	32,928	39,104	39,839	41,547	42,282	43,017	43,752	44,752
28	32,374	33,010	33,245	39,605	40,340	42,048	42,783	43,518	44,253	45,253
29	32,692	33,328	33,562	40,106	40,841	42,549	43,284	44,019	44,754	45,754
30	33,010	33,646	33,879	40,607	41,342	43,050	43,785	44,520	45,255	46,255
31	33,328	33,964	34,196	41,108	41,843	43,551	44,286	45,021	45,756	46,756
32	33,646	34,282	34,513	41,609	42,344	44,052	44,787	45,522	46,257	47,257

33	33,964	34,600	34,830	42,110	42,845	44,553	45,288	46,023	46,758	47,758
34	34,282	34,918	35,147	42,611	43,346	45,054	45,789	46,524	47,259	48,259
35	34,600	35,236	35,464	43,112	43,847	45,555	46,290	47,025	47,760	48,760

**2007-08
STATE
MINIMUM
SALARY
SCHEDULE**

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Years Exp.	4th Class	3rd Class	2nd Class	-	A.B. +15	-	M.A. +15	M.A. +30	M.A. +45	Doc- torate
-	-	-	-	A.B.	-	M.A.	-	-	-	-
0	<u>24,051</u>	<u>24,711</u>	<u>24,975</u>	<u>26,227</u>	<u>26,988</u>	<u>28,755</u>	<u>29,516</u>	<u>30,277</u>	<u>31,038</u>	<u>32,073</u>
1	<u>24,379</u>	<u>25,039</u>	<u>25,303</u>	<u>26,745</u>	<u>27,506</u>	<u>29,274</u>	<u>30,035</u>	<u>30,795</u>	<u>31,556</u>	<u>32,591</u>
2	<u>24,708</u>	<u>25,367</u>	<u>25,631</u>	<u>27,264</u>	<u>28,025</u>	<u>29,792</u>	<u>30,553</u>	<u>31,314</u>	<u>32,075</u>	<u>33,110</u>
3	<u>25,036</u>	<u>25,695</u>	<u>25,959</u>	<u>27,783</u>	<u>28,543</u>	<u>30,311</u>	<u>31,072</u>	<u>31,832</u>	<u>32,593</u>	<u>33,628</u>
4	<u>25,608</u>	<u>26,267</u>	<u>26,531</u>	<u>28,545</u>	<u>29,306</u>	<u>31,074</u>	<u>31,835</u>	<u>32,595</u>	<u>33,356</u>	<u>34,391</u>
5	<u>25,936</u>	<u>26,595</u>	<u>26,859</u>	<u>29,064</u>	<u>29,825</u>	<u>31,592</u>	<u>32,353</u>	<u>33,114</u>	<u>33,875</u>	<u>34,910</u>
6	<u>26,264</u>	<u>26,923</u>	<u>27,187</u>	<u>29,582</u>	<u>30,343</u>	<u>32,111</u>	<u>32,872</u>	<u>33,632</u>	<u>34,393</u>	<u>35,428</u>
7	<u>26,592</u>	<u>27,252</u>	<u>27,515</u>	<u>30,101</u>	<u>30,862</u>	<u>32,629</u>	<u>33,390</u>	<u>34,151</u>	<u>34,912</u>	<u>35,947</u>
8	<u>26,920</u>	<u>27,580</u>	<u>27,844</u>	<u>30,619</u>	<u>31,380</u>	<u>33,148</u>	<u>33,909</u>	<u>34,669</u>	<u>35,430</u>	<u>36,465</u>
9	<u>27,248</u>	<u>27,908</u>	<u>28,172</u>	<u>31,138</u>	<u>31,899</u>	<u>33,666</u>	<u>34,427</u>	<u>35,188</u>	<u>35,949</u>	<u>36,984</u>
10	<u>27,577</u>	<u>28,236</u>	<u>28,500</u>	<u>31,657</u>	<u>32,417</u>	<u>34,185</u>	<u>34,946</u>	<u>35,706</u>	<u>36,467</u>	<u>37,502</u>
11	<u>27,905</u>	<u>28,564</u>	<u>28,828</u>	<u>32,175</u>	<u>32,936</u>	<u>34,704</u>	<u>35,464</u>	<u>36,225</u>	<u>36,986</u>	<u>38,021</u>
12	<u>28,233</u>	<u>28,892</u>	<u>29,156</u>	<u>32,694</u>	<u>33,454</u>	<u>35,222</u>	<u>35,983</u>	<u>36,744</u>	<u>37,504</u>	<u>38,539</u>
13	<u>28,561</u>	<u>29,220</u>	<u>29,484</u>	<u>33,212</u>	<u>33,973</u>	<u>35,741</u>	<u>36,501</u>	<u>37,262</u>	<u>38,023</u>	<u>39,058</u>
14	<u>28,561</u>	<u>29,548</u>	<u>29,812</u>	<u>33,731</u>	<u>34,491</u>	<u>36,259</u>	<u>37,020</u>	<u>37,781</u>	<u>38,541</u>	<u>39,576</u>
15	<u>28,561</u>	<u>29,876</u>	<u>30,140</u>	<u>34,249</u>	<u>35,010</u>	<u>36,778</u>	<u>37,538</u>	<u>38,299</u>	<u>39,060</u>	<u>40,095</u>
16	<u>28,561</u>	<u>29,876</u>	<u>30,468</u>	<u>34,768</u>	<u>35,528</u>	<u>37,296</u>	<u>38,057</u>	<u>38,818</u>	<u>39,578</u>	<u>40,613</u>

17	<u>28,561</u>	<u>29,876</u>	<u>30,796</u>	<u>35,286</u>	<u>36,047</u>	<u>37,815</u>	<u>38,575</u>	<u>39,336</u>	<u>40,097</u>	<u>41,132</u>
18	<u>28,561</u>	<u>29,876</u>	<u>30,796</u>	<u>35,805</u>	<u>36,566</u>	<u>38,333</u>	<u>39,094</u>	<u>39,855</u>	<u>40,615</u>	<u>41,650</u>
19	<u>28,561</u>	<u>29,876</u>	<u>30,796</u>	<u>36,323</u>	<u>37,084</u>	<u>38,852</u>	<u>39,613</u>	<u>40,373</u>	<u>41,134</u>	<u>42,169</u>
20	<u>28,561</u>	<u>29,876</u>	<u>30,796</u>	<u>36,842</u>	<u>37,603</u>	<u>39,370</u>	<u>40,131</u>	<u>40,892</u>	<u>41,653</u>	<u>42,688</u>
21	<u>28,561</u>	<u>29,876</u>	<u>30,796</u>	<u>36,842</u>	<u>37,603</u>	<u>39,889</u>	<u>40,650</u>	<u>41,410</u>	<u>42,171</u>	<u>43,206</u>
22	<u>28,561</u>	<u>29,876</u>	<u>30,796</u>	<u>36,842</u>	<u>37,603</u>	<u>40,407</u>	<u>41,168</u>	<u>41,929</u>	<u>42,690</u>	<u>43,725</u>
23	<u>28,561</u>	<u>29,876</u>	<u>30,796</u>	<u>36,842</u>	<u>37,603</u>	<u>40,926</u>	<u>41,687</u>	<u>42,447</u>	<u>43,208</u>	<u>44,243</u>
24	<u>28,561</u>	<u>29,876</u>	<u>30,796</u>	<u>36,842</u>	<u>37,603</u>	<u>40,926</u>	<u>41,687</u>	<u>42,966</u>	<u>43,727</u>	<u>44,762</u>
25	<u>28,561</u>	<u>29,876</u>	<u>30,796</u>	<u>36,842</u>	<u>37,603</u>	<u>40,926</u>	<u>41,687</u>	<u>43,484</u>	<u>44,245</u>	<u>45,280</u>
26	<u>28,561</u>	<u>29,876</u>	<u>30,796</u>	<u>36,842</u>	<u>37,603</u>	<u>40,926</u>	<u>41,687</u>	<u>44,003</u>	<u>44,764</u>	<u>45,799</u>
27	<u>28,561</u>	<u>29,876</u>	<u>30,796</u>	<u>36,842</u>	<u>37,603</u>	<u>40,926</u>	<u>41,687</u>	<u>44,003</u>	<u>44,764</u>	<u>45,799</u>
28	<u>28,561</u>	<u>29,876</u>	<u>30,796</u>	<u>36,842</u>	<u>37,603</u>	<u>40,926</u>	<u>41,687</u>	<u>44,003</u>	<u>44,764</u>	<u>45,799</u>
29	<u>28,889</u>	<u>30,204</u>	<u>31,125</u>	<u>37,360</u>	<u>38,121</u>	<u>41,445</u>	<u>42,205</u>	<u>44,522</u>	<u>45,282</u>	<u>46,317</u>
30	<u>29,217</u>	<u>30,533</u>	<u>31,453</u>	<u>37,879</u>	<u>38,640</u>	<u>41,963</u>	<u>42,724</u>	<u>45,040</u>	<u>45,801</u>	<u>46,836</u>
31	<u>29,545</u>	<u>30,861</u>	<u>31,781</u>	<u>38,397</u>	<u>39,158</u>	<u>42,482</u>	<u>43,242</u>	<u>45,559</u>	<u>46,319</u>	<u>47,354</u>
32	<u>29,873</u>	<u>31,189</u>	<u>32,109</u>	<u>38,916</u>	<u>39,677</u>	<u>43,000</u>	<u>43,761</u>	<u>46,077</u>	<u>46,838</u>	<u>47,873</u>
33	<u>30,201</u>	<u>31,517</u>	<u>32,437</u>	<u>39,435</u>	<u>40,195</u>	<u>43,519</u>	<u>44,279</u>	<u>46,596</u>	<u>47,356</u>	<u>48,391</u>
34	<u>30,529</u>	<u>31,845</u>	<u>32,765</u>	<u>39,953</u>	<u>40,714</u>	<u>44,037</u>	<u>44,798</u>	<u>47,114</u>	<u>47,875</u>	<u>48,910</u>
35	<u>30,857</u>	<u>32,173</u>	<u>33,093</u>	<u>40,472</u>	<u>41,232</u>	<u>44,556</u>	<u>45,316</u>	<u>47,633</u>	<u>48,393</u>	<u>49,428</u>
2008-09 STATE MINIMUM SALARY SCHEDULE										
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Years Exp.	4th Class	3rd Class	2nd Class	-	A.B. +15	-	M.A. +15	M.A. +30	M.A. +45	Doc- torate
-	-	-	-	A.B.	-	M.A.	-	-	-	-
0	<u>24,051</u>	<u>24,711</u>	<u>24,975</u>	<u>26,227</u>	<u>26,988</u>	<u>28,755</u>	<u>29,516</u>	<u>30,277</u>	<u>31,038</u>	<u>32,073</u>
1	<u>24,379</u>	<u>25,039</u>	<u>25,303</u>	<u>26,745</u>	<u>27,506</u>	<u>29,274</u>	<u>30,035</u>	<u>30,795</u>	<u>31,556</u>	<u>32,591</u>

2	<u>24,708</u>	<u>25,367</u>	<u>25,631</u>	<u>27,264</u>	<u>28,025</u>	<u>29,792</u>	<u>30,553</u>	<u>31,314</u>	<u>32,075</u>	<u>33,110</u>
3	<u>25,036</u>	<u>25,695</u>	<u>25,959</u>	<u>27,783</u>	<u>28,543</u>	<u>30,311</u>	<u>31,072</u>	<u>31,832</u>	<u>32,593</u>	<u>33,628</u>
4	<u>25,608</u>	<u>26,267</u>	<u>26,531</u>	<u>28,545</u>	<u>29,306</u>	<u>31,074</u>	<u>31,835</u>	<u>32,595</u>	<u>33,356</u>	<u>34,391</u>
5	<u>25,936</u>	<u>26,595</u>	<u>26,859</u>	<u>29,064</u>	<u>29,825</u>	<u>31,592</u>	<u>32,353</u>	<u>33,114</u>	<u>33,875</u>	<u>34,910</u>
6	<u>26,264</u>	<u>26,923</u>	<u>27,187</u>	<u>29,582</u>	<u>30,343</u>	<u>32,111</u>	<u>32,872</u>	<u>33,632</u>	<u>34,393</u>	<u>35,428</u>
7	<u>26,592</u>	<u>27,252</u>	<u>27,515</u>	<u>30,101</u>	<u>30,862</u>	<u>32,629</u>	<u>33,390</u>	<u>34,151</u>	<u>34,912</u>	<u>35,947</u>
8	<u>26,920</u>	<u>27,580</u>	<u>27,844</u>	<u>30,619</u>	<u>31,380</u>	<u>33,148</u>	<u>33,909</u>	<u>34,669</u>	<u>35,430</u>	<u>36,465</u>
9	<u>27,248</u>	<u>27,908</u>	<u>28,172</u>	<u>31,138</u>	<u>31,899</u>	<u>33,666</u>	<u>34,427</u>	<u>35,188</u>	<u>35,949</u>	<u>36,984</u>
10	<u>27,577</u>	<u>28,236</u>	<u>28,500</u>	<u>31,658</u>	<u>32,418</u>	<u>34,186</u>	<u>34,947</u>	<u>35,708</u>	<u>36,468</u>	<u>37,503</u>
11	<u>27,905</u>	<u>28,564</u>	<u>28,828</u>	<u>32,176</u>	<u>32,937</u>	<u>34,705</u>	<u>35,465</u>	<u>36,226</u>	<u>36,987</u>	<u>38,022</u>
12	<u>28,233</u>	<u>28,892</u>	<u>29,156</u>	<u>32,695</u>	<u>33,455</u>	<u>35,223</u>	<u>35,984</u>	<u>36,745</u>	<u>37,505</u>	<u>38,540</u>
13	<u>28,561</u>	<u>29,220</u>	<u>29,484</u>	<u>33,213</u>	<u>33,974</u>	<u>35,742</u>	<u>36,502</u>	<u>37,263</u>	<u>38,024</u>	<u>39,059</u>
14	<u>28,889</u>	<u>29,548</u>	<u>29,812</u>	<u>33,732</u>	<u>34,492</u>	<u>36,260</u>	<u>37,021</u>	<u>37,782</u>	<u>38,542</u>	<u>39,577</u>
15	<u>29,217</u>	<u>29,876</u>	<u>30,140</u>	<u>34,250</u>	<u>35,011</u>	<u>36,779</u>	<u>37,539</u>	<u>38,300</u>	<u>39,061</u>	<u>40,096</u>
16	<u>29,545</u>	<u>30,204</u>	<u>30,468</u>	<u>34,769</u>	<u>35,529</u>	<u>37,297</u>	<u>38,058</u>	<u>38,819</u>	<u>39,579</u>	<u>40,614</u>
17	<u>29,873</u>	<u>30,533</u>	<u>30,796</u>	<u>35,287</u>	<u>36,048</u>	<u>37,816</u>	<u>38,577</u>	<u>39,337</u>	<u>40,098</u>	<u>41,133</u>
18	<u>30,201</u>	<u>30,861</u>	<u>31,125</u>	<u>35,806</u>	<u>36,567</u>	<u>38,334</u>	<u>39,095</u>	<u>39,856</u>	<u>40,617</u>	<u>41,652</u>
19	<u>30,529</u>	<u>31,189</u>	<u>31,453</u>	<u>36,324</u>	<u>37,085</u>	<u>38,853</u>	<u>39,614</u>	<u>40,374</u>	<u>41,135</u>	<u>42,170</u>
20	<u>30,857</u>	<u>31,517</u>	<u>31,781</u>	<u>36,843</u>	<u>37,604</u>	<u>39,371</u>	<u>40,132</u>	<u>40,893</u>	<u>41,654</u>	<u>42,689</u>
21	<u>31,186</u>	<u>31,845</u>	<u>32,109</u>	<u>37,361</u>	<u>38,122</u>	<u>39,890</u>	<u>40,651</u>	<u>41,411</u>	<u>42,172</u>	<u>43,207</u>
22	<u>31,514</u>	<u>32,173</u>	<u>32,437</u>	<u>37,880</u>	<u>38,641</u>	<u>40,408</u>	<u>41,169</u>	<u>41,930</u>	<u>42,691</u>	<u>43,726</u>
23	<u>31,842</u>	<u>32,501</u>	<u>32,765</u>	<u>38,399</u>	<u>39,159</u>	<u>40,927</u>	<u>41,688</u>	<u>42,448</u>	<u>43,209</u>	<u>44,244</u>
24	<u>32,170</u>	<u>32,829</u>	<u>33,093</u>	<u>38,917</u>	<u>39,678</u>	<u>41,446</u>	<u>42,206</u>	<u>42,967</u>	<u>43,728</u>	<u>44,763</u>
25	<u>32,498</u>	<u>33,157</u>	<u>33,421</u>	<u>39,436</u>	<u>40,196</u>	<u>41,964</u>	<u>42,725</u>	<u>43,486</u>	<u>44,246</u>	<u>45,281</u>
26	<u>32,826</u>	<u>33,485</u>	<u>33,749</u>	<u>39,954</u>	<u>40,715</u>	<u>42,483</u>	<u>43,243</u>	<u>44,004</u>	<u>44,765</u>	<u>45,800</u>
27	<u>33,154</u>	<u>33,813</u>	<u>34,077</u>	<u>40,473</u>	<u>41,233</u>	<u>43,001</u>	<u>43,762</u>	<u>44,523</u>	<u>45,283</u>	<u>46,318</u>
28	<u>33,482</u>	<u>34,142</u>	<u>34,405</u>	<u>40,991</u>	<u>41,752</u>	<u>43,520</u>	<u>44,280</u>	<u>45,041</u>	<u>45,802</u>	<u>46,837</u>

29	<u>33,810</u>	<u>34,470</u>	<u>34,734</u>	<u>41,510</u>	<u>42,270</u>	<u>44,038</u>	<u>44,799</u>	<u>45,560</u>	<u>46,320</u>	<u>47,355</u>
30	<u>34,138</u>	<u>34,798</u>	<u>35,062</u>	<u>42,028</u>	<u>42,789</u>	<u>44,557</u>	<u>45,317</u>	<u>46,078</u>	<u>46,839</u>	<u>47,874</u>
31	<u>34,467</u>	<u>35,126</u>	<u>35,390</u>	<u>42,547</u>	<u>43,308</u>	<u>45,075</u>	<u>45,836</u>	<u>46,597</u>	<u>47,357</u>	<u>48,392</u>
32	<u>34,795</u>	<u>35,454</u>	<u>35,718</u>	<u>43,065</u>	<u>43,826</u>	<u>45,594</u>	<u>46,355</u>	<u>47,115</u>	<u>47,876</u>	<u>48,911</u>
33	<u>35,123</u>	<u>35,782</u>	<u>36,046</u>	<u>43,584</u>	<u>44,345</u>	<u>46,112</u>	<u>46,873</u>	<u>47,634</u>	<u>48,395</u>	<u>49,430</u>
34	<u>35,451</u>	<u>36,110</u>	<u>36,374</u>	<u>44,102</u>	<u>44,863</u>	<u>46,631</u>	<u>47,392</u>	<u>48,152</u>	<u>48,913</u>	<u>49,948</u>
35	<u>35,779</u>	<u>36,438</u>	<u>36,702</u>	<u>44,621</u>	<u>45,382</u>	<u>47,149</u>	<u>47,910</u>	<u>48,671</u>	<u>49,432</u>	<u>50,467</u>

(b) Six hundred dollars shall be paid annually to each classroom teacher who has at least twenty years of teaching experience. The payments: (i) Shall be in addition to any amounts prescribed in the applicable state minimum salary schedule; (ii) shall be paid in equal monthly installments; and (iii) shall be considered a part of the state minimum salaries for teachers.

~~(c) Effective the first day of July, two thousand five, through the thirtieth day of June, two thousand eight, in addition to any amounts prescribed in the applicable state minimum salary schedule, each professional educator shall be paid annually the following incremental increases in accordance with their years of experience. The payments shall be paid in equal monthly installments and shall be considered a part of the state minimum salaries for teachers.~~

**~~Years of Experience
Increment~~**

~~29
570~~

~~30
570~~

~~31
570~~

~~32
570~~

~~33
570~~

~~34
570~~

~~35
570~~

~~(d) Effective the first day of July, two thousand eight, the incremental increases prescribed in subsection (c) of this section are included as a part of the 2008-09 State~~

~~Minimum Salary Schedule, therefore, the additional incremental increases prescribed in said subsection are discontinued.~~

§18A-4-2a. State minimum salary bonus for classroom teachers with national board certification.

(a) The Legislature hereby finds and declares that the rigorous standards and processes for certification by the National Board for Professional Teaching Standards (NBPTS) helps to promote the quality of teaching and learning. Therefore, classroom teachers in the public schools of West Virginia should be encouraged to achieve national board certification through a reimbursement of expenses and an additional salary bonus which reflects their additional certification, to be paid in accordance with the provisions of this section.

(b) ~~Two~~ Three thousand five hundred dollars shall be paid annually to each classroom teacher who holds a valid certificate issued by the National Board of Professional Teaching Standards for the life of the certification, but in no event more than ten years for any one certification.

(c) The payments:

(1) Shall be in addition to any amounts prescribed in the applicable state minimum salary schedule;

(2) Shall be paid in equal monthly installments; and

(3) Shall be considered a part of the state minimum salaries for teachers.

(d) One-half the certification fee shall be paid for reimbursement once to each teacher who enrolls in the program for the National Board for Professional Teaching Standards certification and one-half the certification fee shall be paid for reimbursement once to each teacher who completes the National Board for Professional Teaching Standards certification. Completion shall be defined as the completion of ten scorable entries, as verified by the National Board for Professional Teaching Standards. Teachers who achieve National Board for Professional Teaching Standards certification may be reimbursed a maximum of six hundred dollars for expenses actually incurred while obtaining the National Board for Professional Teaching Standards certification.

(e) The state board shall limit the number of teachers who receive the initial reimbursements of the certification fees set forth in subsection (d) to two hundred teachers annually. The state board shall establish selection criteria for the teachers by the legislative rule required pursuant to subsection (g) of this section.

(f) Subject to the provisions of subsection (e) of this section, funding for reimbursement of the certification fee and expenses actually incurred while obtaining the National Board for Professional Teaching Standards certifications shall be administered by the state ~~d~~Department of ~~e~~Education from an appropriation established for that purpose by the Legislature. If funds appropriated by the Legislature to accomplish the purposes of this subsection are insufficient, the state department shall prorate the reimbursements for expenses and shall request of the Legislature, at its next regular session, funds sufficient to accomplish the purposes of this subsection, including needed retroactive payments.

(g) The state board shall promulgate legislative rules pursuant to article three-b, chapter twenty-nine-a of this code to implement the provisions of this section.

§18A-4-8. Employment term and class titles of service personnel; definitions.

(a) The purpose of this section is to establish an employment term and class titles for service personnel. The employment term for service personnel may not be less than ten months. A month is defined as twenty employment days: *Provided*, That the county board may contract with all or part of these service personnel for a longer term. The

beginning and closing dates of the ten-month employment term may not exceed forty-three weeks.

(b) Service personnel employed on a yearly or twelve-month basis may be employed by calendar months. Whenever there is a change in job assignment during the school year, the minimum pay scale and any county supplement are applicable.

(c) Service personnel employed in the same classification for more than the two hundred day minimum employment term shall be paid for additional employment at a daily rate of not less than the daily rate paid for the two hundred day minimum employment term.

(d) ~~No service employee, A service person may not be required to report for work more than five days per week without his or her agreement, may be required to report for work more than five days per week~~ and no part of any working day may be accumulated by the employer for future work assignments, unless the employee agrees thereto.

(e) ~~If any employee a service person~~ whose regular work week is scheduled from Monday through Friday agrees to perform any work assignments on a Saturday or Sunday, the service person shall be paid for at least one-half day of work for each day he or she reports for work, ~~and, if the employee service person~~ works more than three and one-half hours on any Saturday or Sunday, he or she shall be paid for at least a full day of work for each day.

(f) ~~A custodians, aides, maintenance, office and school lunch employees~~ service person required to work a daily work schedule that is interrupted, ~~that is, who do not work a continuous period in one day,~~ shall be paid additional compensation equal to ~~at least one eighth of their total salary as provided by their state minimum salary and any county pay supplement, and payable entirely from county funds:~~ *Provided, That when engaged in duties of transporting students exclusively, aides shall not be regarded as working an interrupted schedule.*

(1) A maintenance personnel person are is defined as a personnel person who holds a classification title other than in a custodial, aide, school lunch, office or transportation category as provided in section one, article one of this chapter.

(2) A service person's schedule is considered to be interrupted if he or she does not work a continuous period in one day. Aides are not regarded as working an interrupted schedule when engaged exclusively in the duties of transporting students;

(3) The additional compensation provided for in this subsection:

(A) Is equal to at least one eighth of a service person's total salary as provided by the state minimum pay scale and any county pay supplement; and

(B) Is payable entirely from county board funds.

(g) ~~Upon the~~ When there is a change in classification or upon meeting when a service person meets the requirements of an advanced classification of or by any employee, the employee's his or her salary shall be made to comply with the requirements of this article and any county salary schedule in excess of the minimum requirements of this article, based upon the ~~employee's~~ service person's advanced classification and allowable years of employment.

(h) ~~An employee~~ A service person's, contract as provided in section five, article two of this chapter, shall state the appropriate monthly salary the employee is to be paid, based on the class title as provided in this article and on any county salary schedule in excess of the minimum requirements of this article.

(i) The column heads of the state minimum pay scale and class titles, set forth in section eight-a of this article, are defined as follows:

(1) "Pay grade" means the monthly salary applicable to class titles of service personnel;

- (2) "Years of employment" means the number of years which an employee classified as ~~a service personnel~~ person has been employed by a county board in any position prior to or subsequent to the effective date of this section and ~~including~~ includes service in the armed forces of the United States, if the employee ~~were~~ was employed at the time of his or her induction. For the purpose of section eight-a of this article, years of employment ~~shall be~~ is limited to the number of years shown and allowed under the state minimum pay scale as set forth in section eight-a of this article;
- (3) "Class title" means the name of the position or job held by a service person;
- (4) "Accountant I" means ~~personnel~~ a person employed to maintain payroll records and reports and perform one or more operations relating to a phase of the total payroll;
- (5) "Accountant II" means ~~personnel~~ a person employed to maintain accounting records and to be responsible for the accounting process associated with billing, budgets, purchasing and related operations;
- (6) "Accountant III" means ~~personnel~~ a person employed in the county board office to manage and supervise accounts payable, ~~and/or~~ payroll procedures, or both;
- (7) "Accounts payable supervisor" means ~~personnel who are~~ a person employed in the county board office who ~~have~~ has primary responsibility for the accounts payable function, ~~which may include the supervision of other personnel,~~ and who ~~have~~ has either has completed twelve college hours of accounting courses from an accredited institution of higher education or ~~have~~ has at least eight years of experience performing progressively difficult accounting tasks. Responsibilities of this class title may include supervision of other personnel;
- (8) "Aide I" means ~~those personnel~~ a person selected and trained for a teacher-aide classifications such as monitor aide, clerical aide, classroom aide or general aide;
- (9) "Aide II" means ~~those personnel~~ a service person referred to in the "Aide I" classification who has completed a training program approved by the ~~s~~State ~~b~~Board, or who holds a high school diploma or has received a general educational development certificate. Only ~~personnel~~ a person classified in an Aide II class title may be employed as an aide in any special education program;
- (10) "Aide III" means ~~those personnel~~ a service person referred to in the "Aide I" classification who holds a high school diploma or a general educational development certificate; and
- ~~(A) have~~ Has completed six semester hours of college credit at an institution of higher education; or
- ~~(B) Are~~ Is employed as an aide in a special education program and ~~have~~ has one year's experience as an aide in special education;
- (11) "Aide IV" means ~~personnel~~ a service person referred to in the "Aide I" classification who holds a high school diploma or a general educational development certificate; and
- ~~(A) have~~ Has completed eighteen hours of ~~s~~State ~~b~~Board-approved college credit at a regionally accredited institution of higher education, or
- ~~(B) who have~~ Has completed fifteen hours of ~~s~~State ~~b~~Board-approved college credit at a regionally accredited institution of higher education; and has successfully completed an in-service training program determined by the ~~s~~State ~~b~~Board to be the equivalent of three hours of college credit;
- (12) "Audiovisual technician" means ~~personnel~~ a person employed to perform minor maintenance on audiovisual equipment, films, and supplies and ~~the filling of~~ who fills requests for equipment;

- (13) "Auditor" means ~~personnel~~ a person employed to examine and verify accounts of individual schools and to assist schools and school personnel in maintaining complete and accurate records of their accounts;
- (14) "Autism mentor" means ~~personnel~~ a person who works with autistic students and who meets standards and experience to be determined by the ~~s~~State ~~h~~Board: ~~Provided, That if any employee.~~ A person who has held or holds an aide title and becomes employed as an autism mentor, ~~the employee~~ shall hold a multiclassification status that includes both aide and autism mentor titles, in accordance with section eight-b of this article;
- (15) "Braille or sign language specialist" means ~~personnel~~ a person employed to provide braille and/or sign language assistance to students: ~~Provided, That if any employee.~~ A service person who has held or holds an aide title and becomes employed as a braille or sign language specialist, ~~the employee~~ shall hold a multiclassification status that includes both aide and braille or sign language specialist title, in accordance with section eight-b of this article;
- (16) "Bus operator" means ~~personnel~~ a person employed to operate school buses and other school transportation vehicles as provided by the ~~s~~State ~~h~~Board;
- (17) "Buyer" means ~~personnel~~ a person employed to review and write specifications, negotiate purchase bids and recommend purchase agreements for materials and services that meet predetermined specifications at the lowest available costs;
- (18) "Cabinetmaker" means ~~personnel~~ a person employed to construct cabinets, tables, bookcases and other furniture;
- (19) "Cafeteria manager" means ~~personnel~~ a person employed to direct the operation of a food services program in a school, including assigning duties to employees, approving requisitions for supplies and repairs, keeping inventories, inspecting areas to maintain high standards of sanitation, preparing financial reports and keeping records pertinent to food services of a school;
- (20) "Carpenter I" means ~~personnel~~ a person classified as a carpenter's helper;
- (21) "Carpenter II" means ~~personnel~~ a person classified as a journeyman carpenter;
- (22) "Chief mechanic" means ~~personnel~~ a person employed to be responsible for directing activities which ensure that student transportation or other county board-owned vehicles are properly and safely maintained;
- (23) "Clerk I" means ~~personnel~~ a person employed to perform clerical tasks;
- (24) "Clerk II" means ~~personnel~~ a person employed to perform general clerical tasks, prepare reports and tabulations and operate office machines;
- (25) "Computer operator" means a qualified ~~personnel~~ person employed to operate computers;
- (26) "Cook I" means ~~personnel~~ a person employed as a cook's helper;
- (27) "Cook II" means ~~personnel~~ a person employed to interpret menus; and to prepare and serve meals in a food service program of a school ~~and shall.~~ This definition include ~~personnel~~ includes a service person who ~~have~~ has been employed as a "Cook I" for a period of four years, ~~if the personnel have not been elevated to this classification within that period of time;~~
- (28) "Cook III" means ~~personnel~~ a person employed to prepare and serve meals, make reports, prepare requisitions for supplies, order equipment and repairs for a food service program of a school system;
- (29) "Crew leader" means ~~personnel~~ a person employed to organize the work for a crew of maintenance employees to carry out assigned projects;

- (30) "Custodian I" means ~~personnel~~ a person employed to keep buildings clean and free of refuse;
- (31) "Custodian II" means ~~personnel~~ a person employed as a watchman or groundsman;
- (32) "Custodian III" means ~~personnel~~ a person employed to keep buildings clean and free of refuse, to operate the heating or cooling systems and to make minor repairs;
- (33) "Custodian IV" means ~~personnel~~ a person employed as head custodians. In addition to providing services as defined in "custodian III," ~~their~~ duties may include supervising other custodian personnel;
- (34) "Director or coordinator of services" means ~~personnel~~ an employee of a county board who ~~are~~ is assigned to direct a department or division.
- (A) Nothing in this subdivision ~~may prohibits~~ a professional ~~personnel~~ person or a professional educators as defined in section one, article one of this chapter, from holding this class title, ~~but~~ ;
- (B) ~~Professional~~ Professional personnel holding this class title may not be defined or classified as service personnel unless the professional ~~personnel~~ person held a service personnel title under this section prior to holding the class title of "director or coordinator of services."
- (C) ~~The Directors~~ director or coordinators of services ~~positions~~ shall be classified either as a professional ~~personnel~~ person or a service ~~personnel~~ position person for state aid formula funding purposes; and
- (D) ~~Funding for the position of~~ directors or coordinators of services ~~positions shall be~~ is based upon the employment status of the director or coordinator either as a professional person or a service ~~personnel~~ person;
- (35) "Draftsman" means ~~personnel~~ a person employed to plan, design and produce detailed architectural/engineering drawings;
- (36) "Electrician I" means ~~personnel~~ a person employed as an apprentice electrician helper or one who holds an electrician helper license issued by the state fire marshal;
- (37) "Electrician II" means ~~personnel~~ a person employed as an electrician journeyman or one who holds a journeyman electrician license issued by the state fire marshal;
- (38) "Electronic technician I" means ~~personnel~~ a person employed at the apprentice level to repair and maintain electronic equipment;
- (39) "Electronic technician II" means ~~personnel~~ a person employed at the journeyman level to repair and maintain electronic equipment;
- (40) "Executive secretary" means ~~personnel~~ a person employed as secretary to the county school superintendent's secretary or as a secretary who is assigned to a position characterized by significant administrative duties;
- (41) "Food services supervisor" means a qualified ~~personnel~~ person who is not defined as a professional ~~personnel~~ person or professional educator as defined in section one, article one of this chapter, The food services supervisor is employed to manage and supervise a county school system's food service program. The duties include preparing in-service training programs for cooks and food service employees, instructing personnel in the areas of quantity cooking with economy and efficiency and keeping aggregate records and reports;
- (42) "Foreman" means a skilled persons employed ~~for supervision of~~ to supervise personnel who work in the areas of repair and maintenance of school property and equipment;
- (43) "General maintenance" means ~~personnel~~ a person employed as a helpers to skilled

maintenance employees and to perform minor repairs to equipment and buildings of a county school system;

(44) "Glazier" means ~~personnel~~ a person employed to replace glass or other materials in windows and doors and to do minor carpentry tasks;

(45) "Graphic artist" means ~~personnel~~ a person employed to prepare graphic illustrations;

(46) "Groundsman" means ~~personnel~~ a person employed to perform duties that relate to the appearance, repair and general care of school grounds in a county school system. Additional assignments may include the operation of a small heating plant and routine cleaning duties in buildings;

(47) "Handyman" means ~~personnel~~ a person employed to perform routine manual tasks in any operation of the county school system;

(48) "Heating and air conditioning mechanic I" means ~~personnel~~ a person employed at the apprentice level to install, repair and maintain heating and air conditioning plants and related electrical equipment;

(49) "Heating and air conditioning mechanic II" means ~~personnel~~ a person employed at the journeyman level to install, repair and maintain heating and air conditioning plants and related electrical equipment;

(50) "Heavy equipment operator" means ~~personnel~~ a person employed to operate heavy equipment;

(51) "Inventory supervisor" means ~~personnel who are~~ a person employed to supervise or maintain operations in the receipt, storage, inventory and issuance of materials and supplies;

(52) "Key punch operator" means a qualified ~~personnel~~ person employed to operate key punch machines or verifying machines;

(53) "Licensed practical nurse" means a nurse, licensed by the West Virginia Board of Examiners for Licensed Practical Nurses, employed to work in a public school under the supervision of a school nurse;

~~(53)~~ (54) "Locksmith" means ~~personnel~~ a person employed to repair and maintain locks and safes;

~~(54)~~ (55) "Lubrication man" means ~~personnel~~ a person employed to lubricate and service gasoline or diesel-powered equipment of a county school system;

~~(55)~~ (56) "Machinist" means ~~personnel~~ a person employed to perform machinist tasks which include the ability to operate a lathe, planer, shaper, threading machine and wheel press. ~~These personnel~~ A person holding this class title should also ~~should~~ have; the ability to work from blueprints and drawings;

~~(56)~~ (57) "Mail clerk" means ~~personnel~~ a person employed to receive, sort, dispatch, deliver or otherwise handle letters, parcels and other mail;

~~(57)~~ (58) "Maintenance clerk" means ~~personnel~~ a person employed to maintain and control a stocking facility to keep adequate tools and supplies on hand for daily withdrawal for all school maintenance crafts;

~~(58)~~ (59) "Mason" means ~~personnel~~ a person employed to perform tasks connected with brick and block laying and carpentry tasks related to ~~such laying~~ these activities;

~~(59)~~ (60) "Mechanic" means ~~personnel~~ a person employed ~~who can to~~ independently perform skilled duties independently in the maintenance and repair of automobiles, school buses and other mechanical and mobile equipment to use in a county school system;

~~(60)~~ (61) "Mechanic assistant" means ~~personnel~~ a person employed as a mechanic apprentice and helper;

~~(61)~~ (62) "Multiclassification" means ~~personnel~~ a person employed to perform tasks that involve the combination of two or more class titles in this section. In these instances the minimum salary scale shall be the higher pay grade of the class titles involved;

~~(62)~~ (63) "Office equipment repairman I" means ~~personnel~~ a person employed as an office equipment repairman apprentice or helper;

~~(63)~~ (64) "Office equipment repairman II" means ~~personnel~~ a person responsible for servicing and repairing all office machines and equipment. ~~Personnel~~ A person holding this class title ~~are is~~ responsible for the purchase of parts ~~being purchased~~ necessary for the proper operation of a program of continuous maintenance and repair;

~~(64)~~ (65) "Painter" means ~~personnel~~ a person employed to perform duties of painting, finishing and decorating of wood, metal and concrete surfaces of buildings, other structures, equipment, machinery and furnishings of a county school system;

~~(65)~~ (66) "Paraprofessional" means a person certified pursuant to section two-a, article three of this chapter to perform duties in a support capacity including, but not limited to, facilitating in the instruction and direct or indirect supervision of ~~pupils~~ students under the direction of a principal, a teacher or another designated professional educator.;

~~(A) Provided, That no~~ A person employed on the effective date of this section in the position of an aide may not be subject to a reduced reduction in force or transferred to create a vacancy for the employment of a paraprofessional. ~~Provided, however, That if any employee;~~

~~(B) A person who~~ has held or holds an aide title and becomes employed as a paraprofessional, ~~the employee~~ shall hold a multiclassification status that includes both aide and paraprofessional titles in accordance with section eight-b of this article ~~Provided further, That once an employee; and~~

~~(C) When a service person who~~ holds an aide title becomes certified as a paraprofessional and is required to perform duties that may not be performed by an aide without paraprofessional certification, he or she shall receive the paraprofessional title pay grade;

~~(66)~~ (67) "Payroll supervisor" means ~~personnel who are~~ a person employed in the county board office who has primary responsibility for the payroll function, ~~which may include the supervision of other personnel,~~ and who either has completed twelve college hours of accounting from an accredited institution of higher education or has at least eight years of experience performing progressively difficult accounting tasks. Responsibilities of this class title may include supervision of other personnel;

~~(67)~~ (68) "Plumber I" means ~~personnel~~ a person employed as an apprentice plumber and helper;

~~(68)~~ (69) "Plumber II" means ~~personnel~~ a person employed as a journeyman plumber;

~~(69)~~ (70) "Printing operator" means ~~personnel~~ a person employed to operate duplication equipment, and ~~as required~~ to cut, collate, staple, bind and shelve materials as required;

~~(70)~~ (71) "Printing supervisor" means ~~personnel~~ a person employed to supervise the operation of a print shop;

~~(71)~~ (72) "Programmer" means ~~personnel~~ a person employed to design and prepare programs for computer operation;

~~(72)~~ (73) "Roofing/sheet metal mechanic" means ~~personnel~~ a person employed to install, repair, fabricate and maintain roofs, gutters, flashing and duct work for heating and ventilation;

~~(73)~~ (74) "Sanitation plant operator" means ~~personnel~~ a person employed to operate

and maintain a water or sewage treatment plant to ensure the safety of the plant's effluent for human consumption or environmental protection;

~~(74)~~ (75) "School bus supervisor" means ~~a~~ qualified personnel person employed to assist in selecting school bus operators and routing and scheduling school buses, operate a bus when needed, relay instructions to bus operators, plan emergency routing of buses and ~~promoting~~ promote good relationships with parents, ~~pupils~~ students, bus operators and other employees;

~~(75)~~ (76) "Secretary I" means ~~personnel~~ a person employed to transcribe from notes or mechanical equipment, receive callers, perform clerical tasks, prepare reports and operate office machines;

~~(76)~~ (77) "Secretary II" means ~~personnel~~ a person employed in any elementary, secondary, kindergarten, nursery, special education, vocational or any other school as a secretary. The duties may include performing general clerical tasks; transcribing from notes, stenotype, ~~or~~ mechanical equipment or a sound-producing machine; preparing reports; receiving callers and referring them to proper persons; operating office machines; keeping records and handling routine correspondence. ~~There is a~~ Nothing implied in this subdivision that would prevents the employee a service person from holding or being elevated to a higher classification;

~~(77)~~ (78) "Secretary III" means ~~personnel~~ a person assigned to the county board office administrators in charge of various instructional, maintenance, transportation, food services, operations and health departments, federal programs or departments with particular responsibilities ~~of~~ in purchasing and financial control or any ~~personnel~~ person who ~~have~~ has served for eight years in a position which meets the definition of "secretary II" or "secretary III" ~~in this section for eight years~~;

~~(78)~~ (79) "Supervisor of maintenance" means a skilled personnel person who is not defined as a professional person or professional educator as defined in section one, article one of this chapter. The responsibilities ~~would~~ include directing the upkeep of buildings and shops, and issuing instructions to subordinates relating to cleaning, repairs and maintenance of all structures and mechanical and electrical equipment of a county board;

~~(79)~~ (80) "Supervisor of transportation" means a qualified personnel person employed to direct school transportation activities, properly and safely, and to supervise the maintenance and repair of vehicles, buses and other mechanical and mobile equipment used by the county school system;

~~(80)~~ (81) "Switchboard operator-receptionist" means ~~personnel~~ a person employed to refer incoming calls, to assume contact with the public, to direct and to give instructions as necessary, to operate switchboard equipment and to provide clerical assistance;

~~(81)~~ (82) "Truck driver" means ~~personnel~~ a person employed to operate light or heavy duty gasoline and diesel-powered vehicles;

~~(82)~~ (83) "Warehouse clerk" means ~~personnel~~ a person employed to be responsible for receiving, storing, packing and shipping goods;

~~(83)~~ (84) "Watchman" means ~~personnel~~ a person employed to protect school property against damage or theft. Additional assignments may include operation of a small heating plant and routine cleaning duties;

~~(84)~~ (85) "Welder" means ~~personnel~~ a person employed to provide acetylene or electric welding services for a school system; and

~~(85)~~ (86) "WVEIS data entry and administrative clerk" means ~~personnel~~ a person employed to work under the direction of a school principal to assist the school counselor or counselors in the performance of administrative duties, to perform data entry tasks on

the West Virginia eEducation iInformation sSystem, and to perform other administrative duties assigned by the principal.

(j) Notwithstanding any provision in this Code to the contrary, and in addition to the compensation provided for service personnel in section eight-a of this article, ~~for each~~ service personnel person is, ~~notwithstanding any provisions in this code to the contrary,~~ entitled to all service personnel employee rights, privileges and benefits provided under this or any other chapter of this eCode without regard to the employee's hours of employment or the methods or sources of compensation.

(k) ~~Service personnel~~ A service person whose years of employment exceeds the number of years shown and provided for under the state minimum pay scale set forth in section eight-a of this article may not be paid less than the amount shown for the maximum years of employment shown and provided for in the classification in which he or she is employed.

(l) ~~The~~ Each county boards shall review each ~~service personnel~~ person's job classification annually and shall reclassify all service persons as required by the job classifications. The state superintendent ~~of schools~~ may withhold state funds appropriated pursuant to this article for salaries for service personnel who are improperly classified by the county boards. Further, the state superintendent shall order a county board to correct immediately any improper classification matter and, with the assistance of the attorney general, shall take any legal action necessary against any county board to enforce the order.

(m) ~~No service employee, w~~Without his or her written consent, a service person may not be:

(1) ~~Reclassified by class title;~~ or

(2) ~~nor may a service employee, without his or her written consent, be~~ Relegated to any condition of employment which would result in a reduction of his or her salary, rate of pay, compensation or benefits earned during the current fiscal year; or for which he or she would result in a reduction of his or her salary, rate of pay, compensation or benefits qualify by continuing in the same job position and classification held during that fiscal year and subsequent years.

(n) Any county board failing to comply with the provisions of this article may be compelled to do so by mandamus, and is liable to any party prevailing against the board for court costs and the prevailing party's reasonable attorney fee, as determined and established by the court.

(o) Notwithstanding any provision of this eCode to the contrary, a ~~service personnel~~ person who holds a continuing contract in a specific job classification and who are is physically unable to perform the job's duties as confirmed by a physician chosen by the employee, shall be given priority status over any employee not holding a continuing contract in filling other service personnel job vacancies if the service person is qualified as provided in section eight-e of this article.

(p) Any person employed in an aide position on the effective date of this section may not be transferred or subject to a reduction in force for the purpose of creating a vacancy for the employment of a licensed practical nurse.

(q) Without the written consent of the service person, a county board may not establish the beginning work station for a bus operator or transportation aide at any site other than a county board-owned facility with available parking. The workday of the bus operator or transportation aide commences at the bus at the designated beginning work station and ends when the employee is able to leave the bus at the designated beginning work station, unless he or she agrees otherwise in writing. The application or

acceptance of a posted position may not be construed as the written consent referred to in this subsection.

18A-4-8a. Service personnel minimum monthly salaries.

(a) The minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the "State Minimum Pay Scale Pay Grade I" and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the "State Minimum Pay Scale Pay Grade I" set forth in this section: *Provided*, That beginning on the first day of the second quarter of the service employee's employment term in the school year two thousand five two thousand six, the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the State Minimum Pay Scale Pay Grade II and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the State Minimum Pay Scale Pay Grade II set forth in this section: *Provided, however*, That any salary increase that a service employee is entitled to receive as a result of the enactment of the State Minimum Pay Scale Pay Grade II shall not be paid until the first pay date after the first day of November, two thousand five.

STATE MINIMUM PAY SCALE PAY GRADE I

**Years of
Employment
Pay Grade**

**A
B C D E F G H**

0	1,366	1,386	1,426	1,476	1,526	1,586	1,616	1,686
1	1,397	1,417	1,457	1,507	1,557	1,617	1,647	1,717
2	1,428	1,448	1,488	1,538	1,588	1,648	1,678	1,748
3	1,459	1,479	1,519	1,569	1,619	1,679	1,709	1,779
4	1,490	1,510	1,550	1,600	1,650	1,710	1,740	1,810
5	1,521	1,541	1,581	1,631	1,681	1,741	1,771	1,841
6	1,552	1,572	1,612	1,662	1,712	1,772	1,802	1,872
7	1,583	1,603	1,643	1,693	1,743	1,803	1,833	1,903
8	1,614	1,634	1,674	1,724	1,774	1,834	1,864	1,934
9	1,645	1,665	1,705	1,755	1,805	1,865	1,895	1,965
10	1,676	1,696	1,736	1,786	1,836	1,896	1,926	1,996

11	1,707	1,727	1,767	1,817	1,867	1,927	1,957	2,027
12	1,738	1,758	1,798	1,848	1,898	1,958	1,988	2,058
13	1,769	1,789	1,829	1,879	1,929	1,989	2,019	2,089
14	1,800	1,820	1,860	1,910	1,960	2,020	2,050	2,120
15	1,831	1,851	1,891	1,941	1,991	2,051	2,081	2,151
16	1,862	1,882	1,922	1,972	2,022	2,082	2,112	2,182
17	1,893	1,913	1,953	2,003	2,053	2,113	2,143	2,213
18	1,924	1,944	1,984	2,034	2,084	2,144	2,174	2,244
19	1,955	1,975	2,015	2,065	2,115	2,175	2,205	2,275
20	1,986	2,006	2,046	2,096	2,146	2,206	2,236	2,306
21	2,017	2,037	2,077	2,127	2,177	2,237	2,267	2,337
22	2,048	2,068	2,108	2,158	2,208	2,268	2,298	2,368
23	2,079	2,099	2,139	2,189	2,239	2,299	2,329	2,399
24	2,110	2,130	2,170	2,220	2,270	2,330	2,360	2,430
25	2,141	2,161	2,201	2,251	2,301	2,361	2,391	2,461
26	2,172	2,192	2,232	2,282	2,332	2,392	2,422	2,492
27	2,203	2,223	2,263	2,313	2,363	2,423	2,453	2,523
28	2,234	2,254	2,294	2,344	2,394	2,454	2,484	2,554
29	2,265	2,285	2,325	2,375	2,425	2,485	2,515	2,585
30	2,296	2,316	2,356	2,406	2,456	2,516	2,546	2,616
31	2,327	2,347	2,387	2,437	2,487	2,547	2,577	2,647
32	2,358	2,378	2,418	2,468	2,518	2,578	2,608	2,678
33	2,389	2,409	2,449	2,499	2,549	2,609	2,639	2,709
34	2,420	2,440	2,480	2,530	2,580	2,640	2,670	2,740
35	2,451	2,471	2,511	2,561	2,611	2,671	2,701	2,771
36	2,482	2,502	2,542	2,592	2,642	2,702	2,732	2,802
37	2,513	2,533	2,573	2,623	2,673	2,733	2,763	2,833

38	2,544	2,564	2,604	2,654	2,704	2,764	2,794	2,864
39	2,575	2,595	2,635	2,685	2,735	2,795	2,825	2,895
40	2,606	2,626	2,666	2,716	2,766	2,826	2,856	2,926

STATE MINIMUM PAY SCALE PAY GRADE II

Years of
Employment
Pay Grade

A
B C D E
F G H

0	1,456	1,476	1,516	1,566	1,616	1,676	1,706	1,776
1	1,487	1,507	1,547	1,597	1,647	1,707	1,737	1,807
2	1,518	1,538	1,578	1,628	1,678	1,738	1,768	1,838
3	1,549	1,569	1,609	1,659	1,709	1,769	1,799	1,869
4	1,580	1,600	1,640	1,690	1,740	1,800	1,830	1,900
5	1,611	1,631	1,671	1,721	1,771	1,831	1,861	1,931
6	1,642	1,662	1,702	1,752	1,802	1,862	1,892	1,962
7	1,673	1,693	1,733	1,783	1,833	1,893	1,923	1,993
8	1,704	1,724	1,764	1,814	1,864	1,924	1,954	2,024
9	1,735	1,755	1,795	1,845	1,895	1,955	1,985	2,055
10	1,766	1,786	1,826	1,876	1,926	1,986	2,016	2,086
11	1,797	1,817	1,857	1,907	1,957	2,017	2,047	2,117
12	1,828	1,848	1,888	1,938	1,988	2,048	2,078	2,148
13	1,859	1,879	1,919	1,969	2,019	2,079	2,109	2,179
14	1,890	1,910	1,950	2,000	2,050	2,110	2,140	2,210
15	1,921	1,941	1,981	2,031	2,081	2,141	2,171	2,241
16	1,952	1,972	2,012	2,062	2,112	2,172	2,202	2,272
17	1,983	2,003	2,043	2,093	2,143	2,203	2,233	2,303

18	2,014	2,034	2,074	2,124	2,174	2,234	2,264	2,334
19	2,045	2,065	2,105	2,155	2,205	2,265	2,295	2,365
20	2,076	2,096	2,136	2,186	2,236	2,296	2,326	2,396
21	2,107	2,127	2,167	2,217	2,267	2,327	2,357	2,427
22	2,138	2,158	2,198	2,248	2,298	2,358	2,388	2,458
23	2,169	2,189	2,229	2,279	2,329	2,389	2,419	2,489
24	2,200	2,220	2,260	2,310	2,360	2,420	2,450	2,520
25	2,231	2,251	2,291	2,341	2,391	2,451	2,481	2,551
26	2,262	2,282	2,322	2,372	2,422	2,482	2,512	2,582
27	2,293	2,313	2,353	2,403	2,453	2,513	2,543	2,613
28	2,324	2,344	2,384	2,434	2,484	2,544	2,574	2,644
29	2,355	2,375	2,415	2,465	2,515	2,575	2,605	2,675
30	2,386	2,406	2,446	2,496	2,546	2,606	2,636	2,706
31	2,417	2,437	2,477	2,527	2,577	2,637	2,667	2,737
32	2,448	2,468	2,508	2,558	2,608	2,668	2,698	2,768
33	2,479	2,499	2,539	2,589	2,639	2,699	2,729	2,799
34	2,510	2,530	2,570	2,620	2,670	2,730	2,760	2,830
35	2,541	2,561	2,601	2,651	2,701	2,761	2,791	2,861
36	2,572	2,592	2,632	2,682	2,732	2,792	2,822	2,892
37	2,603	2,623	2,663	2,713	2,763	2,823	2,853	2,923
38	2,634	2,654	2,694	2,744	2,794	2,854	2,884	2,954
39	2,665	2,685	2,725	2,775	2,825	2,885	2,915	2,985
40	2,696	2,716	2,756	2,806	2,856	2,916	2,946	3,016

<u>Years Exp.</u>	<u>PAY GRADE</u>							
-	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u>	<u>G</u>	<u>H</u>

0	<u>1,507</u>	<u>1,528</u>	<u>1,569</u>	<u>1,621</u>	<u>1,673</u>	<u>1,735</u>	<u>1,766</u>	<u>1,838</u>
1	<u>1,539</u>	<u>1,560</u>	<u>1,601</u>	<u>1,653</u>	<u>1,705</u>	<u>1,767</u>	<u>1,798</u>	<u>1,870</u>
2	<u>1,571</u>	<u>1,592</u>	<u>1,633</u>	<u>1,685</u>	<u>1,737</u>	<u>1,799</u>	<u>1,830</u>	<u>1,902</u>
3	<u>1,603</u>	<u>1,624</u>	<u>1,665</u>	<u>1,717</u>	<u>1,769</u>	<u>1,831</u>	<u>1,862</u>	<u>1,934</u>
4	<u>1,635</u>	<u>1,656</u>	<u>1,697</u>	<u>1,749</u>	<u>1,801</u>	<u>1,863</u>	<u>1,894</u>	<u>1,967</u>
5	<u>1,667</u>	<u>1,688</u>	<u>1,729</u>	<u>1,781</u>	<u>1,833</u>	<u>1,895</u>	<u>1,926</u>	<u>1,999</u>
6	<u>1,699</u>	<u>1,720</u>	<u>1,762</u>	<u>1,813</u>	<u>1,865</u>	<u>1,927</u>	<u>1,958</u>	<u>2,031</u>
7	<u>1,732</u>	<u>1,752</u>	<u>1,794</u>	<u>1,845</u>	<u>1,897</u>	<u>1,959</u>	<u>1,990</u>	<u>2,063</u>
8	<u>1,764</u>	<u>1,784</u>	<u>1,826</u>	<u>1,877</u>	<u>1,929</u>	<u>1,991</u>	<u>2,022</u>	<u>2,095</u>
9	<u>1,796</u>	<u>1,816</u>	<u>1,858</u>	<u>1,910</u>	<u>1,961</u>	<u>2,023</u>	<u>2,054</u>	<u>2,127</u>
10	<u>1,828</u>	<u>1,849</u>	<u>1,890</u>	<u>1,942</u>	<u>1,993</u>	<u>2,056</u>	<u>2,087</u>	<u>2,159</u>
11	<u>1,860</u>	<u>1,881</u>	<u>1,922</u>	<u>1,974</u>	<u>2,025</u>	<u>2,088</u>	<u>2,119</u>	<u>2,191</u>
12	<u>1,892</u>	<u>1,913</u>	<u>1,954</u>	<u>2,006</u>	<u>2,058</u>	<u>2,120</u>	<u>2,151</u>	<u>2,223</u>
13	<u>1,924</u>	<u>1,945</u>	<u>1,986</u>	<u>2,038</u>	<u>2,090</u>	<u>2,152</u>	<u>2,183</u>	<u>2,255</u>
14	<u>1,956</u>	<u>1,977</u>	<u>2,018</u>	<u>2,070</u>	<u>2,122</u>	<u>2,184</u>	<u>2,215</u>	<u>2,287</u>
15	<u>1,988</u>	<u>2,009</u>	<u>2,050</u>	<u>2,102</u>	<u>2,154</u>	<u>2,216</u>	<u>2,247</u>	<u>2,319</u>
16	<u>2,020</u>	<u>2,041</u>	<u>2,082</u>	<u>2,134</u>	<u>2,186</u>	<u>2,248</u>	<u>2,279</u>	<u>2,352</u>
17	<u>2,052</u>	<u>2,073</u>	<u>2,115</u>	<u>2,166</u>	<u>2,218</u>	<u>2,280</u>	<u>2,311</u>	<u>2,384</u>
18	<u>2,084</u>	<u>2,105</u>	<u>2,147</u>	<u>2,198</u>	<u>2,250</u>	<u>2,312</u>	<u>2,343</u>	<u>2,416</u>
19	<u>2,117</u>	<u>2,137</u>	<u>2,179</u>	<u>2,230</u>	<u>2,282</u>	<u>2,344</u>	<u>2,375</u>	<u>2,448</u>
20	<u>2,149</u>	<u>2,169</u>	<u>2,211</u>	<u>2,263</u>	<u>2,314</u>	<u>2,376</u>	<u>2,407</u>	<u>2,480</u>
21	<u>2,181</u>	<u>2,201</u>	<u>2,243</u>	<u>2,295</u>	<u>2,346</u>	<u>2,408</u>	<u>2,439</u>	<u>2,512</u>
22	<u>2,213</u>	<u>2,234</u>	<u>2,275</u>	<u>2,327</u>	<u>2,378</u>	<u>2,441</u>	<u>2,472</u>	<u>2,544</u>
23	<u>2,245</u>	<u>2,266</u>	<u>2,307</u>	<u>2,359</u>	<u>2,411</u>	<u>2,473</u>	<u>2,504</u>	<u>2,576</u>
24	<u>2,277</u>	<u>2,298</u>	<u>2,339</u>	<u>2,391</u>	<u>2,443</u>	<u>2,505</u>	<u>2,536</u>	<u>2,608</u>
25	<u>2,309</u>	<u>2,330</u>	<u>2,371</u>	<u>2,423</u>	<u>2,475</u>	<u>2,537</u>	<u>2,568</u>	<u>2,640</u>
26	<u>2,341</u>	<u>2,362</u>	<u>2,403</u>	<u>2,455</u>	<u>2,507</u>	<u>2,569</u>	<u>2,600</u>	<u>2,672</u>

<u>27</u>	<u>2,373</u>	<u>2,394</u>	<u>2,435</u>	<u>2,487</u>	<u>2,539</u>	<u>2,601</u>	<u>2,632</u>	<u>2,704</u>
<u>28</u>	<u>2,405</u>	<u>2,426</u>	<u>2,467</u>	<u>2,519</u>	<u>2,571</u>	<u>2,633</u>	<u>2,664</u>	<u>2,737</u>
<u>29</u>	<u>2,437</u>	<u>2,458</u>	<u>2,500</u>	<u>2,551</u>	<u>2,603</u>	<u>2,665</u>	<u>2,696</u>	<u>2,769</u>
<u>30</u>	<u>2,470</u>	<u>2,490</u>	<u>2,532</u>	<u>2,583</u>	<u>2,635</u>	<u>2,697</u>	<u>2,728</u>	<u>2,801</u>
<u>31</u>	<u>2,502</u>	<u>2,522</u>	<u>2,564</u>	<u>2,615</u>	<u>2,667</u>	<u>2,729</u>	<u>2,760</u>	<u>2,833</u>
<u>32</u>	<u>2,534</u>	<u>2,554</u>	<u>2,596</u>	<u>2,648</u>	<u>2,699</u>	<u>2,761</u>	<u>2,792</u>	<u>2,865</u>
<u>33</u>	<u>2,566</u>	<u>2,586</u>	<u>2,628</u>	<u>2,680</u>	<u>2,731</u>	<u>2,793</u>	<u>2,825</u>	<u>2,897</u>
<u>34</u>	<u>2,598</u>	<u>2,619</u>	<u>2,660</u>	<u>2,712</u>	<u>2,763</u>	<u>2,826</u>	<u>2,857</u>	<u>2,929</u>
<u>35</u>	<u>2,630</u>	<u>2,651</u>	<u>2,692</u>	<u>2,744</u>	<u>2,796</u>	<u>2,858</u>	<u>2,889</u>	<u>2,961</u>
<u>36</u>	<u>2,662</u>	<u>2,683</u>	<u>2,724</u>	<u>2,776</u>	<u>2,828</u>	<u>2,890</u>	<u>2,921</u>	<u>2,993</u>
<u>37</u>	<u>2,694</u>	<u>2,715</u>	<u>2,756</u>	<u>2,808</u>	<u>2,860</u>	<u>2,922</u>	<u>2,953</u>	<u>3,025</u>
<u>38</u>	<u>2,726</u>	<u>2,747</u>	<u>2,788</u>	<u>2,840</u>	<u>2,892</u>	<u>2,954</u>	<u>2,985</u>	<u>3,057</u>
<u>39</u>	<u>2,758</u>	<u>2,779</u>	<u>2,820</u>	<u>2,872</u>	<u>2,924</u>	<u>2,986</u>	<u>3,017</u>	<u>3,089</u>
<u>40</u>	<u>2,790</u>	<u>2,811</u>	<u>2,852</u>	<u>2,904</u>	<u>2,956</u>	<u>3,018</u>	<u>3,049</u>	<u>3,122</u>

**CLASS TITLE
PAY GRADE**

- Accountant I D
- Accountant II E
- Accountant III F
- Accounts Payable Supervisor G
- Aide I A
- Aide II B
- Aide III C
- Aide IV D
- Audiovisual Technician C
- Auditor G
- Autism Mentor E F
- Braille or Sign Language Specialist E
- Bus Operator D
- Buyer F
- Cabinetmaker G
- Cafeteria Manager D
- Carpenter I E
- Carpenter II F
- Chief Mechanic G
- Clerk I B
- Clerk II C

Computer Operator	E
Cook I	A
Cook II	B
Cook III	C
Crew Leader	F
Custodian I	A
Custodian II	B
Custodian III	C
Custodian IV	D
Director or Coordinator of Services	H
Draftsman	D
Electrician I	F
Electrician II	G
Electronic Technician I	F
Electronic Technician II	G
Executive Secretary	G
Food Services Supervisor	G
Foreman	G
General Maintenance	C
Glazier	D
Graphic Artist	D
Groundsman	B
Handyman	B
Heating and Air Conditioning Mechanic I	E
Heating and Air Conditioning Mechanic II	G
Heavy Equipment Operator	E
Inventory Supervisor	D
Key Punch Operator	B
<u>Licensed Practical Nurse</u>	<u>F</u>
Locksmith	G
Lubrication Man	C
Machinist	F
Mail Clerk	D
Maintenance Clerk	C
Mason	G
Mechanic	F
Mechanic Assistant	E
Office Equipment Repairman I	F
Office Equipment Repairman II	G
Painter	E
Paraprofessional	F
Payroll Supervisor	G
Plumber I	E
Plumber II	G
Printing Operator	B
Printing Supervisor	D
Programmer	H
Roofing/Sheet Metal Mechanic	F
Sanitation Plant Operator	<u>F</u> <u>G</u>

School Bus Supervisor	E
Secretary I	D
Secretary II	E
Secretary III	F
Supervisor of Maintenance	H
Supervisor of Transportation	H
Switchboard Operator-Receptionist	D
Truck Driver	D
Warehouse Clerk	C
Watchman	B
Welder	F
WVEIS Data Entry and Administrative Clerk .	B

~~(2)~~ (b) An additional twelve dollars per month shall be added to the minimum monthly pay of each service employee who holds a high school diploma or its equivalent.

~~(3)~~ (c) ~~Until the first day of July, two thousand two, an additional ten dollars per month also shall be added to the minimum monthly pay of each service employee for each of the following, and beginning the first day of July, two thousand two, the ten dollars per month shall be increased to a~~ An additional eleven dollars per month also shall be added to the minimum monthly pay for of each of subdivisions (A) through (J), inclusive, of this subsection only and beginning the first day of July, two thousand two, the ten dollars per month shall be increased to an additional forty dollars per month for each of subdivisions (K) through (N), inclusive, of this subsection only service employee for each of the following:

~~(A)~~ (1) A service employee who holds twelve college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

~~(B)~~ (2) A service employee who holds twenty-four college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

~~(C)~~ (3) A service employee who holds thirty-six college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

~~(D)~~ (4) A service employee who holds forty-eight college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

~~(E)~~ (5) A service employee who holds sixty college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

~~(F)~~ (6) A service employee who holds seventy-two college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

~~(G)~~ (7) A service employee who holds eighty-four college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

~~(H)~~ (8) A service employee who holds ninety-six college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

~~(I)~~ (9) A service employee who holds one hundred eight college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

~~(J)~~ (10) A service employee who holds one hundred twenty college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(d) An additional forty dollars per month also shall be added to the minimum monthly pay of each service employee for each of the following:

~~(K)~~ (1) A service employee who holds an associate's degree;

~~(L)~~ (2) A service employee who holds a bachelor's degree;

~~(M)~~ (3) A service employee who holds a master's degree;

~~(N)~~ (4) A service employee who holds a doctorate degree.

~~(4)~~ ~~(e)~~ ~~Effective the first day of July, two thousand two, a~~ An additional eleven dollars per month shall be added to the minimum monthly pay of each service employee for each of the following:

~~(A)~~ ~~(1)~~ A service employee who holds a bachelor's degree plus fifteen college hours;

~~(B)~~ ~~(2)~~ A service employee who holds a master's degree plus fifteen college hours;

~~(C)~~ ~~(3)~~ A service employee who holds a master's degree plus thirty college hours;

~~(D)~~ ~~(4)~~ A service employee who holds a master's degree plus forty-five college hours; and

~~(E)~~ ~~(5)~~ A service employee who holds a master's degree plus sixty college hours.

~~(5)~~ ~~(f)~~ When any part of a school service employee's daily shift of work is performed between the hours of six o'clock p.m. and five o'clock a.m. the following day, the employee shall be paid no less than an additional ten dollars per month and one half of the pay shall be paid with local funds.

~~(6)~~ ~~(g)~~ Any service employee required to work on any legal school holiday shall be paid at a rate one and one-half times the employee's usual hourly rate.

~~(7)~~ ~~(h)~~ Any full-time service personnel required to work in excess of their normal working day during any week which contains a school holiday for which they are paid shall be paid for the additional hours or fraction of the additional hours at a rate of one and one-half times their usual hourly rate and paid entirely from county board funds.

~~(8)~~ ~~(i)~~ No service employee may have his or her daily work schedule changed during the school year without the employee's written consent and the employee's required daily work hours may not be changed to prevent the payment of time and one-half wages or the employment of another employee.

~~(9)~~ ~~(j)~~ The minimum hourly rate of pay for extra duty assignments as defined in section eight-b of this article shall be no less than one seventh of the employee's daily total salary for each hour the employee is involved in performing the assignment and paid entirely from local funds: *Provided*, That an alternative minimum hourly rate of pay for performing extra duty assignments within a particular category of employment may be utilized if the alternate hourly rate of pay is approved both by the county board and by the affirmative vote of a two-thirds majority of the regular full-time employees within that classification category of employment within that county: *Provided, however*, That the vote shall be by secret ballot if requested by a service personnel employee within that classification category within that county. The salary for any fraction of an hour the employee is involved in performing the assignment shall be prorated accordingly. When performing extra duty assignments, employees who are regularly employed on a one-half day salary basis shall receive the same hourly extra duty assignment pay computed as though the employee were employed on a full-day salary basis.

~~(10)~~ ~~(k)~~ The minimum pay for any service personnel employees engaged in the removal of asbestos material or related duties required for asbestos removal shall be their regular total daily rate of pay and no less than an additional three dollars per hour or no less than five dollars per hour for service personnel supervising asbestos removal responsibilities for each hour these employees are involved in asbestos related duties. Related duties required for asbestos removal include, but are not limited to, travel, preparation of the work site, removal of asbestos decontamination of the work site, placing and removal of equipment and removal of structures from the site. If any member of an asbestos crew is engaged in asbestos related duties outside of the employee's regular employment county, the daily rate of pay shall be no less than the minimum amount as established in the employee's regular employment county for asbestos removal and an additional thirty dollars per each day the employee is engaged

in asbestos removal and related duties. The additional pay for asbestos removal and related duties shall be payable entirely from county funds. Before service personnel employees may be utilized in the removal of asbestos material or related duties, they shall have completed a federal Environmental Protection Act-approved training program and be licensed. The employer shall provide all necessary protective equipment and maintain all records required by the Environmental Protection Act.

~~(44)~~ (l) For the purpose of qualifying for additional pay as provided in section eight, article five of this chapter, an aide shall be considered to be exercising the authority of a supervisory aide and control over pupils if the aide is required to supervise, control, direct, monitor, escort or render service to a child or children when not under the direct supervision of certificated professional personnel within the classroom, library, hallway, lunchroom, gymnasium, school building, school grounds or wherever supervision is required. For purposes of this section, "under the direct supervision of certificated professional personnel" means that certificated professional personnel is present, with and accompanying the aide.

House Bill 2781

Effective Date: Passed March 10, 2007; in effect ninety days from passage (June 8, 2007)

Signed by Governor: April 2, 2007

Code Reference: Amends §17C-17-4

Title: Related to modifying the statutory limitation on the length of school buses

Major Provisions:

- This bill allows bus manufacturers to sell their 90 passenger buses to counties
- This bill increased the maximum length of a school bus from 40 to 45 feet, which will allow WV to meet the National School Bus Specifications. This additional length is only necessary for 90 passenger buses. Last year six of the 273 school buses purchased were for this type of bus

ENROLLED

H. B. 2781

(By Delegate Hrutkay)

[Passed March 10, 2007; in effect ninety days from passage.]

AN ACT to amend and reenact §17C-17-4 of the Code of West Virginia, 1931, as amended, related to modifying the statutory limitation on the length of school buses.

Be it enacted by the Legislature of West Virginia:

That §17C-17-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 17. SIZE, WEIGHT AND LOAD.

§17C-17-4. Height and length of vehicles and loads.

(a) A vehicle, including any load thereon, may not exceed a height of thirteen feet six inches, but the owner or owners of such vehicles shall be responsible for damage to any bridge or highway structure and to municipalities for any damage to traffic control devices or other highway structures where such bridges, devices or structures have a vehicle clearance of less than thirteen feet six inches.

(b) A motor vehicle, including any load thereon, may not exceed a length of forty feet extreme overall dimension, inclusive of front and rear bumpers, except that a motor home and school bus may not exceed a length of forty-five feet, exclusive of front and rear bumpers.

(c) Except as hereinafter provided in this subsection or in subsection (d) of this section, a combination of vehicles coupled together may not consist of more than two units and no combination of vehicles including any load thereon shall have an overall length, inclusive of front and rear bumpers, in excess of fifty-five feet except as provided in section eleven-b of this article and except as otherwise provided in respect to the use of a pole trailer as authorized in section five of this article. The limitation that a combination of vehicles coupled together may not consist of more than two units may not apply to:

(1) A combination of vehicles coupled together by a saddle-mount device used to transport motor vehicles in a drive-away service when no more than three saddle mounts are used, if equipment used in the combination meets the requirements of the safety regulations of the United States Department of Transportation and may not exceed an overall length of more than seventy-five feet; or (2) a combination of vehicles coupled together, one of which is a travel trailer or folding camping trailer having an overall length, exclusive of front and rear bumpers, not exceeding sixty-five feet.

(d) A combination of two vehicles coupled together, one of which is a motor home, or a combination of vehicles coupled together, one of which is a travel trailer or folding camping trailer, may not exceed an overall length, exclusive of front and rear bumpers of sixty-five feet.

(e) Notwithstanding the provisions of subsections (a), (b), (c) and (d) of this section, the commissioner may designate, upon his or her own motion or upon the petition of an interested party, a combination vehicle length not to exceed seventy feet.

(f) The length limitations for truck tractor-semitrailer combinations and truck tractor-semitrailer-trailer combinations operating on the national system of interstate and defense highways and those classes of qualifying federal-aid primary system highways so designated by the United States secretary of transportation and those highways providing reasonable access to and from terminals, facilities for food, fuel, repairs and rest and points of loading and unloading for household goods carriers from such highways and further, as to other highways so designated by the West Virginia commissioner of highways, shall be as follows: The maximum length of a semitrailer unit operating in a truck tractor-semitrailer combination shall not exceed forty-eight feet in length except where semitrailers have an axle spacing of not more than thirty-seven feet between the rear axle of the truck tractor and the front axle of the semitrailer, such semitrailer shall be allowed to be not more than fifty-three feet in length and the maximum length of any semitrailer or trailer operating in a truck tractor-semitrailer-trailer combination may not exceed twenty-eight feet in length and in no event shall any combinations exceed three units, including the truck tractor: *Provided*, That nothing herein contained shall impose an overall length limitation as to commercial motor vehicles operating in truck tractor-semitrailer or truck tractor-semitrailer-trailer combinations.

(g) The commissioner shall publish annually an official map designating the highways of the state and the various maximum vehicle lengths relating thereto.

House Bill 2931

Effective Date: Passed March 9, 2007; in effect ninety days from passage.
(June 7, 2007)

Signed by Governor: March 20, 2007

Code Reference: Amends §15-1B-21, §18-19-1, §18-19-2, §18-19-3

Title: Relating to educational opportunities for the armed services and spouses of deceased armed services personnel; providing for the payment of tuition and fees for members of the West Virginia Army National Guard and West Virginia Air National Guard enrolled in a Master's degree program; and providing that, in addition to children, spouses of deceased armed service personnel are eligible for state-funded student financial aid resources

Major Provisions:

- Extends the payment of tuition and fees for members of the West Virginia Army and Air National Guards to those enrolled in Master's degree programs
- Adds spouses of deceased armed service personnel as being eligible for state-funded student financial aid resources, in addition to children

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2931

(By Delegates Wysong, Tabb, Longstreth,

laquinta, M. Poling, Shaver and Perry)

[Passed March 9, 2007; in effect ninety days from passage.]

AN ACT to amend and reenact §15-1B-21 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18-19-1, §18-19-2 and §18-19-3, all relating to educational opportunities for the armed services and spouses of deceased armed services personnel; providing for the payment of tuition and fees for members of the West Virginia Army National Guard and West Virginia Air National Guard enrolled in a Master's degree program; and providing that, in addition to children, spouses of deceased armed service personnel are eligible for state- funded student financial aid resources.

Be it enacted by the Legislature of West Virginia:

That §15-1B-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §18-19-1, §18-19-2 and §18-19-3 be amended and reenacted, all to read as follows:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 1B. NATIONAL GUARD.

§15-1B-21. Tuition and fees for guard members at institutions of higher education.

(a) Any member of the Army National Guard or Air National Guard who is enrolled in a course of undergraduate study or a Master's degree program and is attending any accredited college, university, business or trade school located in West Virginia or is attending any aviation school located in West Virginia for the purpose of taking college-credit courses, may be entitled to payment of tuitions and fees at that college, university, business or trade school or aviation school during the period of his or her service in the National Guard: ~~Provided, That, ¶~~ The Adjutant General may prescribe criteria of eligibility for payment of tuition and fees at the college, university, business or trade school or aviation school: ~~Provided, however, That, ¶~~ The payment is contingent upon appropriations being made by the Legislature for this express purpose. A member may receive payment for only one Master's degree pursuant to this section.

(b) The amount of the payment for members attending a state-supported school shall be determined by the Adjutant General and may not exceed the actual amount of tuition and fees at the school. The amount of the payment for members attending a private school shall be determined by the Adjutant General, but in ~~no~~ any event may ~~it~~ not exceed the highest amounts payable at any state-supported school.

(c) Any member of the Army National Guard or Air National Guard who is enrolled in a course of ~~postgraduate~~ undergraduate study or a Master's degree program and is

attending any accredited college or university located in West Virginia, and is receiving payments under ~~the Army a federally funded~~ continuing education system, may be entitled to payment of tuition and fees at that college or university during his or her period of service in the Army National Guard or Air National Guard: *Provided*, That the sum of payments received under this subsection and ~~the Army a federally funded~~ continuing education system may not exceed the actual amount of tuition and fees at the school and in no event may exceed the highest amounts payable at any state-supported school. The payments are contingent upon appropriations being made by the Legislature for this express purpose.

(d) The Adjutant General may, in lieu of the tuition payment authorized by this section, pay an amount equal to the amount of tuition which otherwise would have been paid, directly to members of the West Virginia Army National Guard or West Virginia Air National Guard who are participating in the PROMISE Scholarship program provided in article seven, chapter eighteen-c of this code.

(e) A member of the West Virginia Army National Guard or West Virginia Air National Guard who is receiving payments for tuition and fees under this section, and is discharged from the military service due to wounds or injuries received in the line of duty, may continue to receive payments for tuition and fees under this section as if he or she were still a member of ~~the West Virginia National Guard~~.

(f) The Adjutant General shall administer the tuition and fee payments authorized under this section and shall propose policies to implement the provisions of this section.

CHAPTER 18. EDUCATION.

ARTICLE 19. EDUCATIONAL OPPORTUNITIES FOR CHILDREN AND SPOUSES OF DECEASED SOLDIERS, SAILORS, MARINES AND AIRMEN.

§18-19-1. Appropriation to provide educational opportunities.

(a) The purpose of this article is to provide educational opportunities for the children and spouses of those:

(1) Who served in:

(A) The Army, Navy or Marine Corps of the United States during the world war from the sixth day of April, one thousand nine hundred seventeen, to the second day of July, one thousand nine hundred twenty-one, all dates inclusive;

(B) The ~~a~~Armed f~~E~~Forces of the United States of America at any time between the first day of December, one thousand nine hundred forty-one, and the declaration of peace by the Congress of the United States, all dates inclusive;

(C) The ~~a~~Armed f~~E~~Forces of the United States of America at any time between the twenty-seventh day of June, one thousand nine hundred fifty, and the thirty-first day of January, one thousand nine hundred fifty-five, all dates inclusive;

(D) The ~~a~~Armed f~~E~~Forces of the United States of America at any time between the fifth day of August, one thousand nine hundred sixty-four, and the seventh day of May, one thousand nine hundred seventy-five, all dates inclusive; or

(E) The Armed Forces of the United States of America at any time during which the forces or members of the reserve components are called to active duty by the President of the United States under Title 10 of the United States Code for the purpose of entering into armed combat; and

(2) Who were killed in action or have died or may hereafter die from disease or disability resulting from their war service.

(b) For the purpose of this article, there is appropriated from the State ~~Fund~~, General Revenue Fund the sum of at least five thousand dollars for each fiscal year commencing the first day of July and ending on the thirtieth day of June of each year of

the next biennium to be used for the benefit of these children and spouses while attending post-secondary education or training institutions.

(c) This benefit also shall be given to children and spouses of a service member killed during hostile actions as defined by the agency administering this section.

(d) The term "children" as used in this article includes any child of a veteran who has been legitimized by operation of law prior to the veteran's demise.

(e) The term "spouse" as used in this article includes any spouse who remained married to the veteran prior to the veteran's demise and who was neither the plaintiff nor defendant in any active divorce or annulment proceedings against the veteran at the time of the veteran's demise.

§18-19-2. Eligibility of applicant for benefits; application forms; preference.

(a) To be eligible for the benefits of this article, a child or spouse set forth in section one of this article shall be:

(1) At least sixteen and not more than twenty-five years of age:

(2) Enrolled in a post-secondary education or training institution in this state; and

(3) The child or spouse of an enlistee who designated West Virginia as his or her state of record.

(b) The application shall be made to, and upon forms provided by, the West Virginia Division of Veterans' Affairs. The division shall determine the eligibility of those who apply and the yearly amount to be allotted each applicant. The amount, in the discretion of the division, may vary from year to year, but may not exceed the sum of one thousand dollars in any one semester or a total of two thousand dollars in any one year. In selecting those to receive the benefits of this article, preference shall be given those who are otherwise financially unable to secure the educational opportunities.

§18-19-3. No tuition fees to be charged; how funds to be expended; cessation of allowances.

(a) A state post-secondary education or training institution may not charge tuition and fees to an eligible applicant attending that institution pursuant to this article. The funds ~~herein~~ appropriated in this article shall be expended by the West Virginia Division of Veterans' Affairs only for matriculation fees, board, room rent, books, supplies and other necessary living expenses of those children.

(b) In the event that a child or spouse eligible for a tuition waiver pursuant to this section attends a private post-secondary education or training institution where the tuition waiver is not applicable, that child or spouse remains eligible for up to two thousand dollars per year in education benefits pursuant to section two of this article.

(c) In addition to the tuition waiver available pursuant to this section, a child or spouse attending a state post-secondary education or training institution is eligible for up to two thousand dollars per year in education benefits as provided in section two of this article.

(d) The division is charged with the duty of disbursing the funds ~~herein~~ provided in this article and shall draw its requisitions upon the State Auditor for that purpose. In its discretion, the division, if satisfied as to the accuracy and amounts of the expenditures, shall make the requisitions payable to the post-secondary education or training institutions or to those furnishing to the children or spouses board, room rent, books, supplies and other necessary living expenses.

~~(e) (f) If a child receiving benefits of tuition waivers pursuant to this article withdraws from the institution, all allowances to the child shall cease. A member or employee of the division may not receive any additional compensation for the services required in this article.~~

(f) ~~(g)~~ Acceptance of benefits or tuition waivers pursuant to this article does not limit the acceptance of any other scholarship or grant for which a student may be eligible.

~~(h) Notwithstanding the provisions of this article to the contrary, until the first day of January two thousand seven, benefits received pursuant to this article may be used for educational opportunities received at an education or training institution that is below the post-secondary level.~~

House Bill 3094

Effective Date: Passed March 10, 2007; in effect ninety days from passage (June 8, 2007)

Signed by Governor: April 3, 2007

Code Reference: Amends §61-10-15

Title: Pecuniary Interest

Major Provisions:

- Exempts from the provisions of this code section any person who has a pecuniary interest in a public utility which is subject to regulation by the Public Service Commission
- Allows an affected governmental body or agency to make written application to the West Virginia Ethics Commission for an exemption to the provisions of the code section in the following cases:
 - o Loss of a quorum in a public body or agency
 - o Excess cost
 - o Undue hardship
 - o Substantial interference with the operation of a governmental body or agency

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 3094

(By Delegates Webster, Proudfoot, Staggers, Long, Burdiss, Kessler, Hrutkay, Shook, Moore, Pino and Hamilton)

[Passed March 10, 2007; in effect ninety days from passage.]

AN ACT to amend and reenact §61-10-15 of the Code of West Virginia, 1931, as amended, relating to prohibiting county and district officers, teachers and school officials from having a pecuniary interest in certain contracts; and exemptions.

Be it enacted by the Legislature of West Virginia:

That §61-10-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.

§ 61-10-15. Pecuniary interest of county and district officers, teachers and school officials in contract; exceptions; offering or giving compensation; penalties.

(a) It is unlawful for any member of a county commission, overseer of the poor, district school officer, secretary of a board of education, supervisor or superintendent, principal or teacher of public schools or any member of any other county or district board or any county or district officer to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in the furnishing of any supplies in the contract for or the awarding or letting of a contract if, as a member, officer, secretary, supervisor, superintendent, principal or teacher, he or she may have any voice, influence or control: *Provided*, That nothing in this section prevents or makes unlawful the employment of the spouse of a member, officer, secretary, supervisor, superintendent, principal or teacher as a principal or teacher or auxiliary or service employee in the public schools of any county or prevents or makes unlawful the employment by any joint county and circuit clerk of his or her spouse.

(b) Any person who violates the provisions of subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars nor more than five hundred dollars ~~and may, in the discretion of the court, be or~~ confined in ~~the county or regional jail for a period not to exceed~~ more than one year, or both fined and confined.

(c) Any person convicted of violating the provisions of subsection (a) of this section shall also be removed from his or her office and the certificate or certificates of any teacher, principal, supervisor or superintendent so convicted shall, upon conviction thereof, be immediately revoked: *Provided*, That no person may be removed from office and no certificate may be revoked for a violation of the provisions of this section unless the person has first been convicted of the violation.

(d) Any person, firm or corporation that offers or gives any compensation or thing of value or who forebears to perform an act to any of the persons named in subsection (a)

of this section or to or for any other person with the intent to secure the influence, support or vote of the person for any contract, service, award or other matter as to which any county or school district becomes or may become the paymaster is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than twenty-five hundred dollars and, in the court's discretion, the person or any member of the firm or, if it is a corporation, any agent or officer of the corporation offering or giving any compensation or other thing of value may, in addition to a fine, be confined in ~~the county or regional~~ jail for a period not to exceed one year.

(e) The provisions of subsection (a) of this section do not apply to any person who, ~~or person whose spouse,~~ is a salaried employee of a vendor or supplier under a contract subject to the provisions of said subsection if the employee, his or her spouse or child:

(1) Is not a party to the contract;

(2) Is not an owner, a shareholder, a director or an officer of a private entity under the contract;

(3) Receives no commission, bonus or other direct remuneration or thing of value by virtue of the contract;

(4) Does not participate in the deliberations or awarding of the contract; and

(5) Does not approve, ~~vote for~~ or otherwise authorize the payment for any services performed or supplies furnished under the contract.

(f) The provisions of subsection (a) of this section do not apply to any person who has a pecuniary interest in a bank within the county serving or under consideration to serve as a depository of funds for the county or board of education, as the case may be, if the person does not participate in the deliberations or any ultimate determination of the depository of the funds.

(g) The provisions of subsection (a) of this section do not apply to any publications in newspapers required by law to be made person who has a pecuniary interest in a public utility which is subject to regulation by the public service commission of this state.

(h) Where the provisions of subsection (a) of this section would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a governmental body or agency, the affected governmental body or agency may make written application to the West Virginia Ethics Commission pursuant to subsection (d), section five, article two, chapter six-B of the Code, for an exemption from subsection (a) of this section.

(i) The provisions of this section do not apply to publications in newspapers required by law to be made.

~~(h)~~ (j) No school employee or school official subject to the provisions of subsection (a) of this section has an interest in the sale, proceeds or profits in any book or other thing used or to be used in the free school system of this state, as proscribed in section nine, article XII of the constitution of West Virginia, if they qualify for the exceptions set forth in subsections (e), ~~or (f), (g) or (h)~~ of this section.

Senate Bill 67

Effective Date: Passed March 10, 2007; in effect ninety days from passage (June 8, 2007)

Signed by Governor: April 4, 2007

Code Reference: Amends §18-9D-2 and §18-9D-15
Adds §18-9D-20; §18-9F-1, §18-9F-2; §18-9F-3; §18-9F-4
§18-9F-5; §18-9F-6; §18-9F-7; §18-9F-8

Title: School access safety authorizing the school building authority to facilitate and provide funding for enhancing school access safety

Major Provisions:

- Authorizes the School Building Authority (SBA) to facilitate and provide state funds for the construction and major improvement of school facilities under Article 9F of the school access safety act
- Establishes guidelines and procedures for school access safety plans, guidelines for modifications and updates, guidelines for project evaluations and guidelines for onsite inspection of facilities
- Establishes a school access safety fund with guidelines for allocations and distributions of funds
- Requires counties to submit school access safety plans to the SBA to be eligible for school access safety funds
- Requires 15% matching funds from county board to be eligible for school access safety funds
- Establishes school access safety requirements for new schools

ENROLLED

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 67

(By Senators Tomblin, Mr. President, and Caruth,

By Request of the Executive)

[Passed March 10, 2007; in effect ninety days from passage.]

AN ACT to amend and reenact §18-9D-2 and §18-9D-15 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §18-9D-20; and to amend said code by adding thereto a new article, designated §18-9F-1, §18-9F-2, §18-9F-3, §18-9F-4, §18-9F-5, §18-9F-6, §18-9F-7 and §18-9F-8, all relating to the School Building Authority and school access safety generally; declaring legislative findings and intent; defining certain terms; authorizing the School Building Authority to facilitate and provide funding for enhancing the safe ingress to and egress from public schools; providing for county boards to develop and submit to the authority school access safety plans; requiring authority to establish certain guidelines and procedures regarding the plans, plan modifications and evaluation of projects developed pursuant to the plans; creating a special account in the State Treasury; authorizing carry-forward of account funds; providing process, requirements and eligibility for allocating and disbursing moneys to counties; establishing school access safety requirements for certain new school buildings; authorizing legislative rules; requiring refiling of authority rules; requiring certain rules of authority to be refiled as legislative rules; and requiring report on implementation of school access safety requirements.

Be it enacted by the Legislature of West Virginia:

That §18-9D-2 and §18-9D-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §18-9D-20; that said code be amended by adding thereto a new article, designated §18-9F-1, §18-9F-2, §18-9F-3, §18-9F-4, §18-9F-5, §18-9F-6, §18-9F-7 and §18-9F-8, all to read as follows:

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-2. Definitions.

~~The following terms, wherever used or referred to in this article, have the following meanings~~ For the purposes of this article, unless a different meaning clearly appears from the context:

- (1) "Authority" means the ~~s~~School ~~b~~Building ~~a~~Authority of West Virginia ~~or, if the authority is abolished, any board or officer succeeding to the principal functions of the school building authority or to whom the powers given to the authority are given by law;~~
- (2) "Bonds" means bonds issued by the authority pursuant to this article;
- (3) "Construction project" means a project in the furtherance of a facilities plan with a cost ~~of the project~~ greater than five hundred thousand dollars for the new construction, expansion or major renovation of facilities, buildings and structures for school purposes, including :
- (A) ~~†~~The acquisition of land for current or future use in connection with the construction project, ~~as well as;~~
- (B) ~~n~~New or substantial upgrading of existing equipment, machinery, and furnishings;;
- (C) ~~i~~Installation of utilities and other similar items ~~convenient in connection with placing related to making the construction project into operation operational;~~ ~~Provided, That a~~
- (D) ~~e~~Construction project ~~may~~ does not include such items as books, computers or equipment used for instructional purposes; fuel; supplies; routine utility services fees; routine maintenance costs; ordinary course of business improvements ~~and;~~ other items which are customarily considered to result in a current or ordinary course of business operating charge: ~~Provided, however, That a construction project may not include or a major improvement project;~~
- (4) "Cost of project" means the cost of construction, expansion, renovation, repair and safety upgrading of facilities, buildings and structures for school purposes; the cost of land, equipment, machinery, furnishings, installation of utilities and other similar items ~~convenient in connection with placing related to making the project into operation operational;~~ and the cost of financing, interest during construction, professional service fees and all other charges or expenses necessary, appurtenant or incidental to the foregoing, including the cost of administration of this article;
- (5) "Facilities plan" means the ten-year countywide comprehensive educational facilities plan established by ~~the~~ a county board in accordance with guidelines adopted by the authority to meet the goals and objectives of this article that:
- (i)~~(A)~~ Addresses the existing school facilities and facility needs of the county to provide a thorough and efficient education in accordance with the provisions of this code and policies of the state board;
- (ii)~~(B)~~ Best serves the needs of ~~the~~ individual students, the general school population and the communities served by the facilities;
- (iii)~~(C)~~ Concludes a the school major improvement plan ~~as defined in this section;~~
- (D) Includes the county board's school access safety plan required by section three, article nine-f of this chapter;
- (iv)~~(E)~~ Eis updated annually to reflect projects completed, current enrollment projections and new or continuing needs; and
- (v)~~(F)~~ Fis approved by the state board and the authority prior to the distribution of state funds pursuant to this article to any county board or other entity applying for funds;
- (6) "Project" means a construction project or a major improvement project;
- (7) "Region" means the area encompassed within and serviced by a regional educational service agency established pursuant to section twenty-six, article two of this chapter;
- (8) "Revenue" or "revenues" means moneys;
- (A) ~~d~~Developed in the ~~s~~School ~~b~~Building ~~e~~Capital ~~i~~Improvements ~~f~~Fund pursuant to ~~the operation of section ten, article nine-a of this chapter;~~

~~(B) moneys d~~Deposited in the ~~s~~School ~~e~~Construction ~~f~~Fund pursuant to the operation of section thirty, article fifteen, chapter eleven of this code and pursuant to the operation of section eighteen, article twenty-two, chapter twenty-nine of this code;

~~(C) moneys d~~Deposited in the ~~s~~School ~~b~~Building ~~e~~Debt ~~s~~Service ~~f~~Fund pursuant to section eighteen, article twenty-two, chapter twenty-nine of this code;

~~(D) moneys d~~Deposited in the ~~s~~School ~~m~~Major ~~i~~Improvement ~~f~~Fund pursuant to the operation of section thirty, article fifteen, chapter eleven of this code;

~~(E) any moneys r~~Received, directly or indirectly, from any source for use in any project completed pursuant to this article; and

~~(F) and other moneys r~~Received by the authority for the purposes of this article;

(9) "School major improvement plan" means a ten-year school maintenance plan that:

~~(i)(A) Is prepared by a county board of education in accordance with the guidelines established by the authority and incorporated in its eCountywide eComprehensive eEducational fFacilities pPlan, or is prepared by the state board of education or the administrative council of an area vocational educational center in accordance with the guidelines if the entities seek funding from the authority for a major improvement project;~~

~~(ii)(B) aAddresses the regularly scheduled maintenance for all school facilities of the county or under the jurisdiction of the entity seeking funding;~~

~~(iii)(C) iIncludes a projected repair and replacement schedule for all school facilities of the county or of entity seeking funding;~~

~~(iv)(D) aAddresses the major improvement needs of each school within the county or under the jurisdiction of the entity seeking funding; and~~

~~(v)(E) iIs required prior to the distribution of state funds for a major improvement project pursuant to this article to the county board, state board or administrative council; and~~

(10) "School major improvement project" means a project with a cost greater than fifty thousand dollars and less than five hundred thousand dollars for the renovation, expansion, repair and safety upgrading of existing school facilities, buildings and structures, including the substantial repair or upgrading of equipment, machinery, building systems, utilities and other similar items ~~convenient in connection with such related to the~~ renovation, repair or upgrading in the furtherance of a school major improvement plan: ~~Provided, That, a~~ major improvement project ~~may~~ does not include such items as books, computers or equipment used for instructional purposes; fuel; supplies; routine utility services fees; routine maintenance costs; ordinary course of business improvements ~~and; or~~ other items which are customarily considered to result in a current or ordinary course of business operating charge.

§18-9D-15. Legislative intent; allocation of money among categories of projects; lease purchase options; limitation on time period for expenditure of project allocation; county maintenance budget requirements; project disbursements over period of years; preference for multicounty arrangements; submission of project designs; set-aside to encourage local participation; etc.

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

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

(1) Moneys paid into the ~~s~~School ~~b~~Building ~~e~~Capital ~~i~~mprovements ~~f~~Fund pursuant to section ten, article nine-a of this chapter;

(2) ~~t~~The issuance of revenue bonds for which moneys in the ~~s~~School ~~b~~Building ~~d~~Debt ~~s~~Service ~~f~~Fund are pledged as security;

(3) ~~m~~Moneys paid into the ~~s~~School ~~e~~Construction ~~f~~Fund pursuant to section six of this article; and

(4) ~~a~~Any other moneys received by the authority, except moneys paid into the ~~s~~School ~~m~~Major ~~i~~mprovement ~~f~~Fund pursuant to section six of this article; and moneys deposited into the School Access Safety Fund pursuant to section five, article nine-f of this chapter, may be allocated and may be expended by the authority for projects authorized in accordance with the provisions of section sixteen of this article that service the educational community statewide or, upon application by the state board, for educational programs that are under the jurisdiction of the state board. In addition, upon application by the state board or the administrative council of an area vocational educational center established pursuant to article two-b of this chapter, the authority may allocate and expend under this subsection moneys for school major improvement projects authorized in accordance with the provisions of section sixteen of this article proposed by the state board or an administrative council for school facilities under the direct supervision of the state board or an administrative council, respectively. Furthermore, upon application by a county board, the authority may allocate and expend under this subsection moneys for school major improvement projects for vocational programs at comprehensive high schools, vocational schools cooperating with community and technical college programs, or both. Each county board is encouraged to cooperate with community and technical colleges in the use of existing or development of new vocational technical facilities. All projects eligible for funds from this subsection shall be submitted directly to the authority which shall be solely responsible for the project's evaluation: ~~—Provided, That,~~ subject to the following:

(A) ~~t~~The authority may not expend any moneys for a school major improvement project proposed by the state board or the administrative council of an area vocational educational center unless the state board or an administrative council has submitted a ten-year facilities plan: ~~Provided, however, That; and~~

(B) ~~t~~The authority shall, before allocating any moneys to the state board or the administrative council of an area vocational educational center for a school improvement project, consider all other funding sources available for the project.

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

(1) Moneys paid into the ~~s~~School ~~b~~Building ~~e~~Capital ~~i~~mprovements ~~f~~Fund pursuant to section ten, article nine-a of this chapter;

(2) ~~t~~The issuance of revenue bonds for which moneys in the ~~s~~School ~~b~~Building ~~d~~Debt ~~s~~Service ~~f~~Fund are pledged as security;

(3) ~~m~~Moneys paid into the ~~s~~School ~~e~~Construction ~~f~~Fund pursuant to section six of this article; and

(4) ~~a~~Any other moneys received by the authority, except moneys deposited into the ~~s~~School ~~m~~Major ~~i~~mprovement ~~f~~Fund; and moneys deposited into the School Access Safety Fund pursuant to section five, article nine-f of this chapter, shall be set aside by

the authority as an emergency fund to be distributed in accordance with the guidelines adopted by the authority.

(d) An amount that is ~~no~~ not more than five percent of the moneys that are determined by the authority to be available for distribution during the current fiscal year from:

(1) Moneys paid into the ~~s~~S~~chool~~ ~~b~~B~~uilding~~ ~~e~~C~~apital~~ ~~i~~I~~mprovements~~ ~~f~~F~~und~~ pursuant to section ten, article nine-a of this chapter;

(2) ~~t~~T~~he~~ issuance of revenue bonds for which moneys in the ~~s~~S~~chool~~ ~~b~~B~~uilding~~ ~~d~~D~~ebt~~ ~~s~~S~~ervice~~ ~~f~~F~~und~~ are pledged as security;

(3) ~~m~~M~~oneys~~ paid into the ~~s~~S~~chool~~ ~~e~~C~~onstruction~~ ~~f~~F~~und~~ pursuant to section six of this article; and

(4) ~~a~~A~~ny~~ other moneys received by the authority, except moneys deposited into the ~~s~~S~~chool~~ ~~m~~M~~ajor~~ ~~i~~I~~mprovement~~ ~~f~~F~~und~~, and moneys deposited into the School Access Safety Fund pursuant to section five, article nine-f of this chapter, may be reserved by the authority for multiuse vocational-technical education facilities projects that may include post-secondary programs as a first priority use. The authority may allocate and expend under this subsection moneys for any purposes authorized in this article on multiuse vocational-technical education facilities projects, including equipment and equipment updates at the facilities, authorized in accordance with the provisions of section sixteen of this article. If the projects approved under this subsection do not require the full amount of moneys reserved, moneys above the amount required may be allocated and expended in accordance with other provisions of this article. A county board, the state board, an administrative council or the joint administrative board of a vocational-technical education facility which includes post-secondary programs may propose projects for facilities or equipment, or both, which are under the direct supervision of the respective body: *Provided*, That the authority shall, before allocating any moneys for a project under this subsection, consider all other funding sources available for the project.

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

(1) Moneys paid into the ~~s~~S~~chool~~ ~~b~~B~~uilding~~ ~~e~~C~~apital~~ ~~i~~I~~mprovements~~ ~~f~~F~~und~~ pursuant to section ten, article nine-a of this chapter;

(2) ~~t~~T~~he~~ issuance of revenue bonds for which moneys in the ~~s~~S~~chool~~ ~~b~~B~~uilding~~ ~~d~~D~~ebt~~ ~~s~~S~~ervice~~ ~~f~~F~~und~~ are pledged as security;

(3) ~~m~~M~~oneys~~ paid into the ~~s~~S~~chool~~ ~~e~~C~~onstruction~~ ~~f~~F~~und~~ pursuant to section six of this article; and

(4) ~~a~~A~~ny~~ other moneys received by the authority, except moneys deposited into the ~~s~~S~~chool~~ ~~m~~M~~ajor~~ ~~i~~I~~mprovement~~ ~~f~~F~~und~~, and moneys deposited into the School Access Safety Fund pursuant to section five, article nine-f of this chapter, shall be allocated and expended on the basis of need and efficient use of resources for projects funded in accordance with the provisions of section sixteen of this article.

(f) If a county board ~~of education~~ proposes to finance a project that is authorized in accordance with section sixteen of this article through a lease with an option to purchase leased premises upon the expiration of the total lease period pursuant to an investment contract, the authority may not allocate ~~no~~ moneys to the county board in connection with the project: *Provided*, That the authority may transfer moneys to the state board of education which, with the authority, shall lend the amount transferred to the county board to be used only for a one-time payment due at the beginning of the lease term, made for the purpose of reducing annual lease payments under the investment contract, subject to the following conditions:

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

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

(A) ~~i~~n the event a county board which has received a loan from the authority for a one-time payment at the beginning of the lease term does not renew the ~~subject~~ lease annually until performance of the investment contract in its entirety is completed, the county board is in default and the principal of the loan, together with all unpaid interest accrued to the date of the default, shall, at the option of the authority, in consultation with the state board, become due and payable immediately or subject to renegotiation among the state board, the authority and the county board: ~~Provided, however, That;~~

(B) ~~i~~f a county board renews the lease annually through the performance of the investment contract in its entirety, the county board shall exercise its option to purchase the leased premises: ~~Provided further, That;~~

(C) ~~t~~he failure of the county board to make a scheduled payment pursuant to the investment contract constitutes an event of default under the loan agreement: ~~And provided further, That;~~

(D) ~~u~~pon a default by a county board, the principal of the loan, together with all unpaid interest accrued to the date of the default, shall, at the option of the authority, in consultation with the state board, become due and payable immediately or subject to renegotiation among the state board, the authority and the county board: ~~And provided further, That; and~~

(E) ~~i~~f the loan becomes due and payable immediately, the authority, in consultation with the state board, shall use all means available under the loan agreement and law to collect the outstanding principal balance of the loan, together with all unpaid interest accrued to the date of payment of the outstanding principal balance; and

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

(g) To encourage county boards to proceed promptly with facilities planning and to prepare for the expenditure of any state moneys derived from the sources described in this section, any county board or other entity to whom moneys are allocated by the authority that fails to expend the money within three years of the allocation shall forfeit the allocation and thereafter is ineligible for further allocations pursuant to this section until it is ready to expend funds in accordance with an approved facilities plan: *Provided*, That the authority may authorize an extension beyond the three-year forfeiture period not to exceed an additional two years. Any amount forfeited shall be added to the total funds available in the school construction fund of the authority for future allocation and distribution. Funds may not be distributed for any project under this article unless the responsible entity has a facilities plan approved by the state board and the ~~s~~School ~~b~~Building ~~a~~Authority and is prepared to commence expenditure of the funds during the fiscal year in which the moneys are distributed.

(h) The remaining moneys that are determined by the authority to be available for distribution during the then current fiscal year from moneys paid into the ~~§~~School ~~Major Improvement~~ ~~Fund~~ pursuant to section six of this article shall be allocated and distributed on the basis of need and efficient use of resources for projects authorized in accordance with the provisions of section sixteen of this article, ~~Provided, That,~~ subject to the following:

~~(1) The moneys may not be distributed for any project under this section unless the responsible entity has a facilities plan approved by the state board and the authority and is to commence expenditures of the funds during the fiscal year in which the moneys are distributed: Provided, however, That;~~

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

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

~~(i) No Local matching funds may not be required under the provisions of this section. However, the this article does not negate the responsibilities of the county boards of education to maintain school facilities are not negated by the provisions of this article.~~

To be eligible to receive an allocation of school major improvement funds from the authority, a county board must have expended in the previous fiscal year an amount of county moneys equal to or exceeding the lowest average amount of money included in the county board's maintenance budget over any three of the previous five years and must have budgeted an amount equal to or greater than the average in the current fiscal year: *Provided, That* the state board shall promulgate rules relating to county boards' maintenance budgets, including items which shall be included in the budgets.

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

(k) Funds in the ~~§~~School ~~e~~Construction ~~Fund~~ shall first be transferred and expended as follows:

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

~~(2) To the extent that funds are available in the §School eConstruction Fund in excess of that amount appropriated in any fiscal year, the excess funds may be expended for projects authorized in accordance with the provisions of section sixteen of this article. Any projects which the authority identified and announced for funding on or before the first day of August, one thousand nine hundred ninety-five, or identified and announced for funding on or before the thirty-first day of December, one thousand nine hundred ninety-five, shall be funded by the authority in an amount which is not less than the amount specified when the project was identified and announced.~~

(l) It is the intent of the Legislature to encourage county boards to explore and consider arrangements with other counties that may facilitate the highest and best use of all available funds, which may result in improved transportation arrangements for students or which otherwise may create efficiencies for county boards and the students. In order to address the intent of the Legislature contained in this subsection, the authority shall

grant preference to those projects which involve multicounty arrangements as the authority shall determine reasonable and proper.

(m) County boards shall submit all designs for construction of new school buildings to the ~~s~~School ~~b~~Building ~~a~~Authority for review and approval prior to preparation of final bid documents: ~~Provided, That, a~~ vendor who has been debarred pursuant to the

provisions of sections thirty-three-a through thirty-three-f, inclusive, article three, chapter five-a of this code, may not bid on or be awarded a contract under this section.

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

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

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

(3) In order to encourage local participation in funding school construction projects, the authority may set aside limited funding, not to exceed five hundred thousand dollars, in reserve for one additional year to provide a county the opportunity to complete financial planning for a project prior to the allocation of construction funds. Any funding shall be on a reserve basis and converted to a part of the construction grant only after all project budget funds have been secured and all county commitments have been fulfilled. Failure of the county to solidify the project budget and meet its obligations to the state within eighteen months of the date the funding is set aside by the authority will result in expiration of the reserve and the funds shall be reallocated by the authority in the succeeding funding cycle.

§18-9D-20. Rules.

(a) The authority is hereby empowered to promulgate, adopt, amend or repeal rules in accordance with the provisions of article three-a, chapter twenty-nine-a of this code.

(b) All rules adopted or promulgated by the authority and in effect immediately prior to the effective date of this section shall be refiled pursuant to the provisions of article three-a, chapter twenty-nine-a of this code on or before the first day of September, two thousand seven.

(1) Any interpretive or procedural rule shall continue in effect until rescinded or appropriately refiled by the authority.

(2) Any legislative rule shall continue in effect until approved or rejected by the Legislature or rescinded by the authority.

ARTICLE 9F. SCHOOL ACCESS SAFETY ACT.

§18-9F-1. Legislative findings and intent.

(a) The Legislature finds that:

(1) Establishing and maintaining safe and secure schools is critical to fostering a healthy learning environment and maximizing student achievement;

(2) All school facilities in the state should be designed, constructed, furnished and maintained in a manner that enhances a healthy learning environment and provides necessary safeguards for the health, safety and security of persons who enter and use the facilities;

(3) Adequate safeguards for the ingress to and egress from school facilities of pupils, school employees, parents, visitors and emergency personnel are critical to the overall safety of the public schools in this state;

(4) Safety upgrades to the means of ingress to and egress from school facilities for pupils, school employees, parents, visitors and emergency personnel must be part of a

comprehensive analysis of overall school safety issues that takes into consideration the input of local law-enforcement agencies, local emergency services agencies, community leaders, parents, pupils, teachers, administrators and other school employees interested in the prevention of school crime and violence.

(b) It is the intent of the Legislature to empower the School Building Authority to facilitate and provide state funds for the design, construction, renovation, repair and upgrading of facilities so as to enhance school access safety and provide secure ingress to and egress from school facilities to pupils, school employees, parents, visitors and emergency personnel.

§18-9F-2. Definitions.

As used in this article, these terms have the meanings ascribed unless the context clearly indicates a different meaning:

(1) "Authority" means the School Building Authority of West Virginia;

(2) "Department of Education" means the West Virginia Department of Education;

(3) "New school building" means any public school in the state for educating students in any of grades kindergarten through twelve, for which design and construction begin after the first day of July, two thousand seven;

(4) "Project cost" means the cost of:

(A) Evaluating a school facility to ascertain its safety needs;

(B) Determining appropriate measures to address safety needs;

(C) Developing a safety plan;

(D) Administering a safety project;

(E) The design, construction, renovation, repair and safety upgrading of a school's means of ingress and egress;

(F) Equipment, machinery, installation of utilities and other similar items necessary to making the project operational;

(G) Effectively maintaining structural and equipment investments made pursuant to this article, including, but not limited to, such provisions as maintenance contracts on security equipment and video surveillance services; and

(H) All other charges necessary, appurtenant or incidental to the provisions of this subdivision, including the cost of administering this article;

(5) "School Access Safety Fund" means the special account established in section five of this article;

(6) "School access safety plan" or "safety plan" means the comprehensive countywide school access safety plan that:

(A) Is prepared by each county board seeking funding under this article and incorporated into its comprehensive educational facilities plan in accordance with guidelines established by the authority;

(B) Addresses the access safety needs for all school facilities in the county;

(C) Includes a projected school access safety repair and renovation schedule for all school facilities of the county; and

(D) Is required prior to the disbursement of state funds for a school access safety project pursuant to this article; and

(7) "School access safety project" or "safety project" means a project administered in furtherance of a school access safety plan pursuant to the provisions of this article.

§18-9F-3. School access safety plan.

(a) To facilitate the goals of this article and to ensure the prudent and resourceful expenditure of state funds, each county board seeking funds for school access safety projects during a fiscal year shall submit to the authority a school access safety plan or

annual plan update that addresses the school access safety needs of each school facility in the county. In developing its plan, the county board shall consult with the Countywide Council on Productive and Safe Schools in accordance with the provisions of this section and section forty-two, article five of this chapter.

(b) The safety plan shall include at least the following:

(1) A countywide inventory of each school facility's means of ingress to and egress from the school for students, school employees, parents, visitors and emergency personnel including, but not limited to:

(A) The number of controlled points of ingress to the school facility;

(B) The number and placement of exterior doors;

(C) The use of monitoring systems on exterior doors;

(D) The use of timed, magnetic or other locks on exterior doors;

(E) The use of two-way communication systems between points of ingress and school personnel;

(F) The use of functional panic or other alarm hardware on exterior doors; and

(G) The use of remote visitor access systems on points of ingress;

(2) The recommendations and guidelines developed by the Countywide Council on Productive and Safe Schools pursuant to section forty-two, article five of this chapter, together with the county board's assessment of the recommendations and guidelines;

(3) Recommendations for effective communication and coordination between school facilities, local law-enforcement agencies and local emergency services agencies in the county;

(4) An assessment of the current status of crime committed on school campuses and at school-related functions;

(5) A projected school access safety repair and renovation schedule for all school facilities in the county;

(6) A prioritized list of all projects contained in the plan, including the projected cost of each project;

(7) A description of how:

(A) The plan addresses the goals of this article and guidelines established by the authority;

(B) Each project furthers the county board's safety plan, facilities plan and school major improvement plan;

(8) Notation of the funds available for allocation and disbursement to the county board pursuant to section six of this article;

(9) A description of any source of local funds that the county board intends to contribute to the safety projects, or an approved financial hardship waiver, to satisfy the local contribution requirements of section six of this article; and

(10) Any other element considered appropriate by the authority or required by the guidelines established pursuant to section three of this article, including any project and maintenance specification.

§18-9F-4. Guidelines and procedures for school access safety plans; project evaluation; on-site inspection of facilities.

(a) By the first day of June, two thousand seven, the authority shall establish and distribute to each county board guidelines and procedures regarding school access safety plans and school access safety projects, which shall address at least the following:

(1) All of the necessary elements of the school access safety plan required in accordance with the provisions of section three of this article;

(2) The manner, time line and process for submission to the authority of each safety plan and annual plan update, including guidelines for modification of an approved safety plan;

(3) Any project and maintenance specifications considered appropriate by the authority;

(4) Procedures for a county board to submit a preliminary plan, plan outline or plan proposal to the authority prior to submitting the safety plan. The preliminary plan, plan outline or plan proposal shall be the basis for a consultation meeting between representatives of the county board and the authority. The meeting shall be held as soon as practicable following submission in order to:

(A) Ensure understanding of the goals of this article;

(B) Discuss ways the plan may be structured to meet the goals of this article; and

(C) Ensure efficiency and productivity in the approval process; and

(5) Procedures for notifying county boards of the funds available for allocation and disbursement during each fiscal year pursuant to section six of this article.

(b) By the first day of June, two thousand seven, the authority shall establish and distribute to each county board guidelines and procedures for evaluating safety plans and safety projects that address at least the following:

(1) Whether the proposed safety project furthers the safety plan and complies with the guidelines established by the authority;

(2) How the safety plan and safety project will ensure the prudent and resourceful expenditure of state funds and achieve the purposes of this article;

(3) Whether the safety plan and safety project advance student health and safety needs, including, but not limited to, critical health and safety needs;

(4) Whether the safety plan and safety project include regularly scheduled preventive maintenance; and

(5) Consideration of the prioritized list of projects required by section three of this article.

(c) The authority shall establish guidelines and procedures for allocating and disbursing funds in accordance with section six of this article, subject to the availability of funds.

(d) Each county board receiving funds pursuant to this article annually shall conduct an on-site inspection and submit an audit review to the state board. The inspection shall be conducted in accordance with the provisions of the Department of Education's Handbook on Planning School Facilities.

§18-9F-5. School Access Safety Fund.

(a) There is hereby established in the State Treasury a special account designated the School Access Safety Fund.

(b) All funds accruing to the authority pursuant to the provisions of this article shall be deposited into the fund and expended in accordance with provisions of this article.

(c) Any funds remaining in the account at the end of a fiscal year, including accrued interest, do not revert to the General Revenue Fund, but remain in the account.

(d) The authority may transfer moneys from the fund to custodial accounts maintained by the authority with a state financial institution, as necessary to the performance of any contracts executed by the authority in accordance with the provisions of this article.

§18-9F-6. Allocation of funds; eligibility for funding.

(a) On or before the first day of May of each year, the authority shall determine the amount of funds available in the School Access Safety Fund for allocation and disbursement during that fiscal year.

(b) The authority shall divide the amount of funds available pursuant to subsection (a) of this section by the total net enrollment in public schools for the state as a whole. That quotient is the per pupil amount. The authority shall allocate to each county board the

per pupil amount of funds for each student in net enrollment of that county, as defined in section two, article nine-a of this chapter.

(c) The authority shall notify in writing each county board of education the amount of funds available to that board as soon as practicable upon determining that amount pursuant to subsection (b) of this section.

(d) Except as provided in subdivision (3) of this subsection, to be eligible to receive a disbursement of funds pursuant to this article, a county board shall contribute local funds derived from bonding, special levy or other identified sources to the school access safety projects contained in the county board's school access safety plan.

(1) The amount of a county board's contribution shall equal at least fifteen percent of the funds available to the county board pursuant to subsection (b) of this section.

(2) A county board may submit a financial hardship waiver request to the state board for consideration regarding the county board's inability to provide the contribution required by this subsection. Upon review and approval of the request by the state board, the authority shall waive the contribution requirement for that county board and allocate and disburse funds pursuant to this article.

(e) The authority may disburse funds pursuant to this section only to a county board that:

(1) Has a safety plan that has been approved by the authority; and

(2) Is prepared to commence expending the funds during the fiscal year in which the funds are disbursed.

(f) The authority may disburse funds to a county board in a lump sum or according to a schedule of payments adopted by the authority that is consistent with its guidelines.

(g) To encourage county boards to proceed promptly with school access safety planning and to prepare for the expenditure of funds derived pursuant to this article, a county board forfeits any funds that it fails to expend within one year of disbursement by the authority. The county board is ineligible for any additional allocation or disbursement pursuant to this article until it is prepared to expend funds according to an approved school access safety plan.

(1) The authority may authorize an extension beyond the one- year forfeiture period not to exceed an additional six months.

(2) Any forfeited funds shall be returned to the School Access Safety Fund and made available for future allocation and disbursement.

§18-9F-7. School access safety requirements for new schools.

(a) Notwithstanding any other provision of this code to the contrary, and in an effort to enhance school access safety, the design and construction of any new school building receiving funds from the authority shall comply with the school access safety standards established by the authority. Any new school building that does not comply with the school access safety standards may not receive any funds from the authority pursuant to this article.

(b) The authority shall propose a rule for legislative approval in accordance with the provisions of article three-a, chapter twenty-nine-a of this code that establishes standards for school access safety in public school buildings. The rule shall require for any project that will receive funding pursuant to this article that the county board shall submit any new school design to the authority for review and approval for compliance with this section prior to preparing final bid documents.

§18-9F-8. Report.

The authority shall report to the Legislative Oversight Commission on Education Accountability during the June and September, two thousand seven, and January, two

thousand eight, interim meeting periods regarding implementation of the provisions of this article.

Senate Bill 70

- Effective Date: Passed March 18, 2007; in effect ninety days from passage
- Signed by Governor: April 3, 2007
- Code Reference: Amends §21-1B-2, §21-1B-3, §21-1B-5, and adds §21-1B-6 and §21-1B-7
- Title: Verifying legal employment status of workers
- Major Provisions:
- Expands the misdemeanor criminal penalties for employers who knowingly employ, hire, recruit, or refer an unauthorized worker
 - Defines unauthorized worker as a person who does not have the legal right to be employed or is employed in violation of WVC §21-1B-2
 - Increases the penalties to the following: first offenses are punishable by fines from \$100 to \$1,000 for each violation; second offenses by fines from \$500 to \$5,000 per violation, and third and subsequent offenses, by fines from \$1,000 to \$10,000 and/or jail sentence of 30 days to one year.
 - Adds two new misdemeanor criminal offenses for employers: (i) knowingly and willingly providing false record about an employee's legal status or authorization, and (ii) knowingly and willfully, with fraudulent intent, transferring or disposing of substantially all assets to evade the record-keeping requirements of the unauthorized workers law
 - Grants the Commissioner of Labor access to information maintained by any other state agency for the limited purpose of confirming workers' legal status or authorization to work

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 70

(Senators McKenzie, Bowman, Kessler, McCabe, Hall, Love, Wells and Hunter, *original sponsors*)

[Passed March 18, 2007; in effect ninety days from passage.]

AN ACT to amend and reenact §21-1B-2, §21-1B-3 and §21-1B-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §21-1B-6 and §21-1B-7, all relating to employment of unauthorized workers; defining terms; authorizing limited access to state agency information to confirm legal status of workers; establishing criminal penalties for violations of article; denying tax deduction for certain employment expenses if convicted of violating this article; authorizing suspension or revocation of license; creating presumption for administrative action against license upon conviction; and establishing notice requirements.

Be it enacted by the Legislature of West Virginia:

That §21-1B-2, §21-1B-3 and §21-1B-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §21- 1B-6 and §21-1B-7, all to read as follows:

ARTICLE 1B. VERIFYING LEGAL EMPLOYMENT STATUS OF WORKERS.

§21-1B-2. Definitions.

(a) "Employer" means any individual, person, corporation, department, board, bureau, agency, commission, division, office, company, firm, partnership, council or committee of the state government, public benefit corporation, public authority or political subdivision of the state or other business entity which employs or seeks to employ an individual or individuals.

(b) "Commissioner" means the labor commissioner or his or her designated agent.

(c) "Unauthorized worker" means a person who does not have the legal right to be employed or is employed in violation of law.

(d) "Records" means records that may be required by the commissioner of labor for the purposes of compliance with the provisions of this article.

(e) "Knowingly" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware by documentation or action that the person's conduct is of that nature or that the circumstance exists. Failure to request or review documentation of an employee's legal status or authorization to work is deemed to be "knowingly".

(f) "License" means any permit, certificate, approval, registration, charter or similar form

of authorization that is required by law and that is issued for the purpose of operating a business in this state.

§21-1B-3. Unauthorized workers; employment prohibited.

(a) It is unlawful for any employer to knowingly employ, hire, recruit or refer, either for him or herself or on behalf of another, for private or public employment within the state, an unauthorized worker who is not duly authorized to be employed by law.

(b) Employers shall be required to verify a prospective employee's legal status or authorization to work prior to employing the individual or contracting with the individual for employment services.

(c) For purposes of this article, proof of legal status or authorization to work includes, but is not limited to, a valid social security card, a valid immigration or nonimmigration visa, including photo identification, a valid birth certificate, a valid passport, a valid photo identification card issued by a government agency, a valid work permit or supervision permit authorized by the ~~d~~Division of ~~l~~abor, a valid permit issued by the ~~d~~Department of ~~j~~Justice or other valid document providing evidence of legal residence or authorization to work in the United States.

(d) For purposes of enforcing the provisions of this article, and notwithstanding any other provision of this code to the contrary, the commissioner or his or her authorized representative may access information maintained by any other state agency, including, but not limited to, the Bureau of Employment Programs and the Division of Motor Vehicles, for the limited purpose of confirming the validity of a worker's legal status or authorization to work. The commissioner shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code to safeguard against the release of any confidential or identifying information that is not necessary for the limited purpose of enforcing the provisions of this article.

§21-1B-5. Penalties.

~~(a) The first violation of the provisions of this article is a misdemeanor and, upon conviction thereof, an employer shall be fined not less than one hundred dollars nor more than one thousand dollars for each violation. Any employer who knowingly violates the provisions of section three of this article by employing, hiring, recruiting or referring an unauthorized worker is guilty of a misdemeanor and, upon conviction thereof, is subject to the following penalties:~~

(1) For a first offense, a fine of not less than one hundred dollars nor more than one thousand dollars for each violation;

(2) For a second offense, a fine of not less than five hundred dollars nor more than five thousand dollars for each violation;

(3) For a third or subsequent offense, a fine of not less than one thousand dollars nor more than ten thousand dollars, or confinement in jail for not less than thirty days nor more than one year, or both.

~~(b) Any employer who has previously been convicted of a violation of this article and who thereafter violates the provisions of this article shall be deemed to have knowingly violated the provisions of this article and shall be guilty of a misdemeanor and shall be fined not less than five hundred or more than five thousand dollars for each violation. Any employer who knowingly and willfully provides false records as to the legal status or authorization to work of any employee to the commissioner or his or her authorized representative is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not more than one year or fined not more than two thousand five hundred dollars, or both.~~

(c) Any employer who knowingly and willfully and with fraudulent intent sells, transfers

or otherwise disposes of substantially all of the employer's assets for the purpose of evading the record-keeping requirements of section four of this article is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not more than one year or fined not more than ten thousand dollars, or both.

§21-1B-6. Denial of deductible business expense.

On or after the first day of January, two thousand eight, no wages or remuneration for services paid to an unauthorized worker of six hundred dollars (\$600.00) or more per annum may be claimed and allowed as a deductible business expense for state income tax purposes by a taxpayer if the employer has been convicted under this article of employing, hiring, recruiting or referring the unauthorized worker. The commissioner shall notify the Department of Revenue of any conviction of an employer under this article and the department is to take the appropriate action against the taxpayer.

§21-1B-7. Suspension or revocation of license.

(a) If, upon examination of the record or records of conviction, the commissioner determines that an employer has been convicted of a third or subsequent offense under subsection (a), section five of this article or has been convicted of the offenses described in subsection (b) or (c) of said section, the commissioner may enter an order imposing the following disciplinary actions:

(1) Permanently revoke or file an action to revoke any license held by the employer; or
(2) Suspend a license or move for a suspension of any license held by the employer for a specified period;

(b) The order shall contain the reasons for the revocation or suspension and the revocation or suspension periods. Further, the order shall give the procedures for requesting a hearing. The person shall be advised in the order that because of the receipt of the record of conviction by the commissioner a presumption exists that the person named in the record of conviction is the person named in the commissioner's order and this constitutes sufficient evidence to support a revocation or suspension and that the sole purpose for the hearing held under this section is for the person requesting the hearing to present evidence that he or she is not the person named in the record of conviction. A copy of the order shall be forwarded to the person by registered or certified mail, return receipt requested. No revocation or suspension shall become effective until ten days after receipt of a copy of the order.

Senate Bill 100

Effective Date: Passed March 10, 2007; to take effect July 1, 2007

Signed by Governor: April 4, 2007

Code Reference: Adds §18A-2-14

Title: Relating to requiring county boards of education to reimburse school personnel for mileage costs when the employee is required to use a personal vehicle in the course of employment; and establishing parameters for rate of reimbursement

Major Provisions:

- Requires county boards of education to reimburse school personnel for mileage when using their privately owned vehicles in the course of employment

- Specifies that the rate is to be at least the lesser of, and not more than the greater of, the federal standard mileage rate or the rate authorized by the State Department of Administration, Travel Management Office

ENROLLED

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 100

(Senators Hunter and Unger, *original sponsors*)

[Passed March 10, 2007; to take effect July 1, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18A-2-14, relating to requiring county boards of education to reimburse school personnel for mileage costs when the employee is required to use a personal vehicle in the course of employment; and establishing parameters for rate of reimbursement.

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-2-14, to read as follows:

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-14. Mileage reimbursement for school personnel.

A county board shall reimburse any school personnel for each mile traveled when the employee is required to use a personal motor vehicle in the course of employment. The county board shall reimburse at the same rate for all employees in that county. The rate of reimbursement shall be at least the lesser of, and not more than the greater of, the federal standard mileage rate and the rate authorized by the travel management rule of the Department of Administration.

Senate Bill 121

Effective Date: Passed March 10, 2007; In effect ninety days from passage (June 10, 2007)

Signed by Governor: March 18, 2007

Code Reference: Amends §15-1F-1b

Title: Tolling of the running of any licensure or registration requirement

Major Provisions:

- Tolls the running of any licensure or registration requirement while a member of the National Guard or any other Armed Forces reserve component is absent for active duty, and for a period of 60 days after the service member returns from active duty
- Requires that the service member be given a period of time equal to the period of active duty to fulfill any continuing education requirements for licensure or registration

ENROLLED

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 121

(Senators Tomblin, Mr. President, Minard,

Barnes and Stollings, *original sponsors*)

[Passed March 10, 2007;

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 §15-1F-1b, relating to tolling any state licensure or registration requirement for persons on active duty in the National Guard or other reserve component of the armed services of the United States.

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 §15-1F-1b, to read as follows:

ARTICLE 1F. PRIVILEGES AND PROHIBITIONS.

§15-1F-1b. Tolling of the running of any licensure or registration requirement.

The running of any licensure or registration requirement, including, but not limited to, the payment of any license or registration fees of a licensing board or commission of the state shall be tolled during the period of absence for active duty for any member of the National Guard or other reserve component of the armed services of the United States until sixty days after the return of the member from active duty: *Provided*, That the service member shall be granted a period of time equal to the period of active duty to fulfill any continuing education requirements needed for licensure or registration.

Senate Bill 134

Effective Date: Passed March 6, 2007; in effect ninety days from passage (June 4, 2007)

Signed by Governor: March 26, 2007

Code Reference: Amends §18-7A-13a, §18-7A-14 and §18-7A-23

Title: Relating to the State Teachers Retirement System; establishing deadline for remittance of contributions due the State Teachers Retirement System; requiring that a summary of amounts of contributions withheld accompany the remittance; and clarifying certain terms used in the language of the statute

Major Provisions:

- Requires employers whose employees are members in the State Teachers' Retirement System to submit member contributions and a summary of member contributions to the Teachers' Retirement System within fifteen (15) days following the end of each calendar month

- Requires that each remittance is to be accompanied by a detailed summary of the sums withheld from the compensation of each member for that month on forms, either paper or electronic, provided by the Teachers' Retirement System for that purpose

ENROLLED

Senate Bill No. 134

(By Senators Foster and Plymale)

[Passed March 6, 2007; in effect ninety days from passage.]

AN ACT to amend and reenact §18-7A-13a, §18-7A-14 and §18-7A-23 of the Code of West Virginia, 1931, as amended, all relating to the State Teachers Retirement System; establishing deadline for remittance of contributions due the State Teachers Retirement System; requiring that a summary of amounts of contributions withheld accompany the remittance; and clarifying certain terms used in the language of the statute.

Be it enacted by the Legislature of West Virginia:

That §18-7A-13a, §18-7A-14 and §18-7A-23 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-13a. Resumption of service by retired teachers.

(a) For the purpose of this section, reemployment of a former or retired teacher as a teacher shall in no way impair the teacher's eligibility for a prior service pension, or any other benefit provided by this article. (b) Retired teachers, who qualified for an annuity because of age or service, may not receive prior service allowance from the retirement board when employed as a teacher and when regularly employed by the State of West Virginia. The payment of such the allowance shall be discontinued on the first day of the month within which such employment begins, and shall be resumed on the first day of the month succeeding the month within which such employment ceases. The annuity paid any such the teacher on first retirement resulting from the Teachers' Accumulation Fund and the Employers' Accumulation Fund shall continue throughout the governmental service and thereafter according to the option selected by the teacher upon first retirement.

(c) Retired teachers, who qualified for an annuity because of disability, shall receive no further retirement payments, if the retirement board finds that the disability of the teacher no longer exists; payment shall be discontinued on the first day of the month within which such the finding is made. If such the retired teacher returns to service as a teacher, he or she shall contribute to the Teachers' Accumulation Fund as a member of the system. His or her prior service eligibility, if any, shall not be impaired because of his or her disability retirement. His or her accumulated contributions and interest which were transferred to the benefit fund upon his or her retirement shall be returned to his or her individual account in the Teachers' Accumulation Fund, minus retirement payments received which were not supported by such contributions and interest. Upon subsequent retirement, he or she shall receive credit for all of his or her contributory experience, anything to the contrary in this article notwithstanding.

(d) Notwithstanding any provision of this code to the contrary, a person who retires under the system provided by this article may subsequently become employed on either a full-time basis, part-time basis or contract basis by any institution of higher education without any loss of retirement annuity or retirement benefits if the person's retirement commences between the effective date of the enactment of this section in two thousand

two and the thirty-first day of December, two thousand two: *Provided*, That ~~such~~ the person shall not be eligible to participate in any other state retirement system provided by this code.

(e) The retirement board is herewith authorized to require of the retired teachers and their employers such reports as it deems necessary to effectuate the provisions of this section.

§18-7A-14. Contributions by members; contributions by employers.

(a) At the end of each month every member of the retirement system shall contribute six percent of that member's monthly gross salary to the ~~R~~retirement ~~B~~board: *Provided*, That any member employed by ~~the West Virginia Board of Directors of the State College System or the Board of Trustees of University System~~ at an a state institution of higher education ~~under its control~~ shall contribute on the member's full earnable compensation, unless otherwise provided in section fourteen-a of this article. The sums are due the Teachers Retirement System at the end of each calendar month in arrears and shall be paid not later than fifteen days following the end of the calendar month. Each remittance shall be accompanied by a detailed summary of the sums withheld from the compensation of each member for that month on forms, either paper or electronic, provided by the Teachers Retirement System for that purpose.

(b) Annually, the contributions of each member shall be credited to the member's account in the Teachers Retirement System Fund. The contributions shall be deducted from the salaries of the members as prescribed in this section, and every member shall be considered to have given consent to the deductions. No deductions, however, shall be made from the earnable compensation of any member who retired because of age or service, and then resumed service unless as provided in section thirteen-a of this article.

(c) The aggregate of employer contributions, due and payable under this article, shall equal annually the total deductions from the gross salary of members required by this section. Beginning the first day of July, one thousand nine hundred ninety-four, the rate shall be seven and one-half percent; beginning on the first day of July, one thousand nine hundred ninety-five, the rate shall be nine percent; beginning on the first day of July, one thousand nine hundred ninety-six, the rate shall be ten and one-half percent; beginning on the first day of July, one thousand nine hundred ninety-seven, the rate shall be twelve percent; beginning on the first day of July, one thousand nine hundred ninety-eight, the rate shall be thirteen and one-half percent; and beginning on the first day of July, one thousand nine hundred ninety-nine and thereafter, the rate shall be fifteen percent: *Provided*, That the rate shall be seven and one-half percent for any individual who becomes a member of the Teachers Retirement System for the first time on or after the first day of July, two thousand five, or any individual who becomes a member of the Teachers Retirement System as a result of the merger contemplated in article seven-c of this chapter.

(d) Payment by an employer to a member of the sum specified in the employment contract minus the amount of the employee's deductions shall be considered to be a full discharge of the employer's contractual obligation as to earnable compensation.

(e) Each contributor shall file with the ~~R~~retirement ~~B~~board or with the employer to be forwarded to the ~~R~~retirement ~~B~~board an enrollment form showing the contributor's date of birth and other data needed by the ~~R~~retirement ~~B~~board.

§18-7A-23. Withdrawal and death benefits.

(a) Benefits upon withdrawal from service prior to retirement under the provisions of this article shall be as follows:

~~(a)~~ (1) A contributor who withdraws from service for any cause other than death or retirement shall, upon application, be paid his or her accumulated contributions ~~plus interest~~ up to the end of the fiscal year preceding the year in which application is made, but in no event shall interest be paid beyond the end of five years following the year in which the last contribution was made: *Provided*, That such contributor, at the time of application, is then no longer under contract, verbal or otherwise, to serve as a teacher; or

~~(b)~~ (2) If such contributor has completed twenty years of total service, he or she may elect to receive at retirement age an annuity which shall be computed as provided in this article: *Provided*, That if such contributor has completed at least five, but fewer than twenty, years of total service in this state, he or she may elect to receive at age sixty-two an annuity which shall be computed as provided in this article. The contributor must notify the retirement board in writing concerning ~~such~~ the election. If ~~such~~ the contributor has completed fewer than five years of service in this state, he or she shall be subject to the provisions as outlined in ~~subsection~~ division ~~(a)~~ (1) ~~above~~ of this subsection.

(b) Benefits upon the death of a contributor prior to retirement under the provisions of this article shall be paid as follows:

(1) If the contributor was at least fifty years old, and if his or her total service as a teacher was at least twenty-five years at the time of his or her death, then the surviving spouse of the deceased, provided the spouse is designated as the sole refund beneficiary, is eligible for an annuity computed as though the deceased were actually a retired teacher at the time of death, and had selected a survivorship option which pays the spouse the same monthly amount which would have been received by the deceased; or

(2) If the facts do not permit payment under ~~the preceding paragraph~~ subdivision (1), of this subsection, then the following sum shall be paid to the refund beneficiary of the contributor: The contributor's accumulated contributions ~~with refund interest~~ up to the year of his or her death plus ~~the~~ an amount of equal to his or her accumulated employee contributions. The latter sum shall emanate from the ~~e~~ Employer's ~~a~~ Accumulation f Fund.

Senate Bill 360

Effective Date: Passed February 14, 2007; in effect from passage

Signed by Governor: March 2, 2007

Code Reference: Amends §11-8-9

Title: Meeting of local levying bodies

Major Provisions:

- Extends the time that a local levying body must meet to ascertain its financial condition from the current time period of March 7th through March 28th to the first day of June in cases where a levy is placed on the ballot for consideration during a primary election

ENROLLED

Senate Bill No. 360

(By Senators Bowman and Kessler)

[Passed February 14, 2007; in effect from passage.]

AN ACT to amend and reenact §11-8-9 of the Code of West Virginia, 1931, as amended, relating to extending the time a local levying body may meet as a levying body.

Be it enacted by the Legislature of West Virginia:

That §11-8-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. LEVIES.

§11-8-9. Meetings of local levying bodies.

(a) Each local levying body shall hold a meeting or meetings between the seventh and twenty-eighth days of March for the transaction of business generally and particularly for the business herein required.

(b) When a levy is placed on the ballot for consideration during a primary election, each local levying body may extend its time to meet as a levying body until the first day of June of that year.

Senate Bill 412

Effective Date: Passed February 27, 2007; in effect ninety days from passage

Signed by Governor: March 13, 2007

Code Reference: Amends §17B-2-3a

Title: Drivers' License

Major Provisions:

- Establishes a penalty for holders of level one instruction permits and level two intermediate driver's licenses, under the age of 18, who use a wireless communication device while operating a motor vehicle, except to contact a 911 system
- Establishes the following misdemeanor penalties: First offenses are punishable by a \$25 fine, second offenses by a \$50 fine, and third offense by a \$75 fine

ENROLLED

Senate Bill No. 412

(By Senators Kessler, Oliverio, Foster, Green, Hunter, Jenkins, Minard, Stollings, Wells, White, Barnes, Caruth, Hall and McKenzie)

[Passed February 27, 2007; in effect ninety days from passage.]

AN ACT to amend and reenact §17B-2-3a of the Code of West Virginia, 1931, as amended, relating to providing penalties for violation of prohibited use of a handheld wireless communication device while driving by a minor holding a level one instruction permit or a level two intermediate driver's license.

Be it enacted by the Legislature of West Virginia:
That §17B-2-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-3a. Graduated driver's licenses.

(a) Any person under the age of eighteen may not operate a motor vehicle unless he or she has obtained a graduated driver's license in accordance with the three-level graduated driver's license system described in the following provisions.

(b) Any person under the age of twenty-one, regardless of class or level of licensure, who operates a motor vehicle with any measurable alcohol in his or her system is subject to the provisions of section two, article five, chapter seventeen-c of this code and section two, article five-a ~~both of chapter seventeen-c of this code of said chapter~~. Any person under the age of eighteen, regardless of class or licensure level, is subject to the mandatory school attendance provisions of section eleven, article eight, chapter eighteen of this code.

(c) *Level one instruction permit.* -- An applicant who is fifteen years or older meeting all other requirements prescribed in this code may be issued a level one instruction permit.

(1) *Eligibility.* -- The division shall not issue a level one instruction permit unless the applicant:

(A) Presents a completed application, as prescribed by the provisions of section six of this article, and which is accompanied by a writing, duly acknowledged, consenting to the issuance of the graduated driver's license and executed by a parent or guardian entitled to custody of the applicant;

(B) Presents a certified birth certificate issued by a state or other governmental entity responsible for vital records, evidencing that the applicant meets the minimum age requirement;

(C) Passes the vision and written knowledge examination, and completes the driving under the influence awareness program, as prescribed in section seven of this article;

(D) Presents a current school enrollment form or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code; and

(E) Pays a fee of five dollars.

(2) *Terms and conditions of instruction permit.* -- A level one instruction permit issued under the provisions of this section is valid until thirty days after the date the applicant attains the age of eighteen and is not renewable. However, any permit holder who

allows his or her permit to expire prior to successfully passing the road skills portion of the driver examination, and who has not committed any offense which requires the suspension, revocation or cancellation of the instruction permit, may reapply for a new instruction permit under the provisions of section six of this article. The division shall immediately revoke the permit upon receipt of a second conviction for a moving violation of traffic regulations and laws of the road or violation of the terms and conditions of a level one instruction permit, which convictions have become final unless a greater penalty is required by this section or any other provision of this code. Any person whose instruction permit has been revoked is disqualified from retesting for a period of ninety days. However, after the expiration of ninety days, the person may retest if otherwise eligible. In addition to all other provisions of this code for which a driver's license may be restricted, suspended, revoked or canceled, the holder of a level one instruction permit may only operate a motor vehicle under the following conditions:

- (A) Under the direct supervision of a licensed driver, twenty-one years of age or older, or a driver's education or driving school instructor who is acting in an official capacity as an instructor, who is fully alert and unimpaired, and the only other occupant of the front seat. The vehicle may be operated with no more than two additional passengers, unless the passengers are family members;
- (B) Between the hours of five a. m. and eleven p. m.;
- (C) All occupants must use safety belts in accordance with the provisions of section forty-nine, article fifteen, chapter seventeen-c of this code;
- (D) Without any measurable blood alcohol content, in accordance with the provisions of subsection (h), section two, article five, chapter seventeen-c of this code; and
- (E) Maintains current school enrollment or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code.
- (F) A holder of a level one instruction permit ~~or a level two intermediate driver's license~~ who is under the age of eighteen years may not use a wireless communication device while operating a motor vehicle, unless the use of the wireless communication device is for contacting a 9-1-1 system. A law-enforcement officer may enforce the provisions of this paragraph only as a secondary action when a law-enforcement officer with probable cause detains a driver for a suspected violation of another provision of this code. A person violating the provisions of this paragraph is guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined twenty-five dollars; for a second offense be fined fifty dollars; and for a third or subsequent offense be fined seventy-five dollars.

(d) *Level two intermediate driver's license.* -- An applicant sixteen years of age or older, meeting all other requirements of the code, may be issued a level two intermediate driver's license.

(1) *Eligibility.* -- The division shall not issue a level two intermediate driver's license unless the applicant:

(A) Presents a completed application as prescribed in section six of this article;

(B) Has held the level one instruction permit conviction-free for the one hundred eighty days immediately preceding the date of application for a level two intermediate license;

(C) Has completed either a driver's education course approved by the ~~s~~State ~~d~~Department of ~~e~~Education or thirty hours of behind-the-wheel driving experience certified by a parent or legal guardian or other responsible adult over the age of twenty-one as indicated on the form prescribed by the division: *Provided*, That nothing in this paragraph shall be construed to require any school or any county board of education to

provide any particular number of driver's education courses or to provide driver's education training to any student;

(D) Presents a current school enrollment form or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code;

(E) Passes the road skills examination as prescribed by section seven of this article; and

(F) Pays a fee of five dollars.

(2) *Terms and conditions of a level two intermediate driver's license.* -- A level two intermediate driver's license issued under the provisions of this section shall expire thirty days after the applicant attains the age of eighteen, or until the licensee qualifies for a level three full Class E license, whichever comes first. In addition to all other provisions of this code for which a driver's license may be restricted, suspended, revoked or canceled, the holder of a level two intermediate driver's license may only operate a motor vehicle under the following conditions:

(A) Unsupervised between the hours of five a. m. and eleven p. m.;

(B) Only under the direct supervision of a licensed driver, age twenty-one years or older, between the hours of eleven p. m. and five a. m. except when the licensee is going to or returning from:

(i) Lawful employment;

(ii) A school-sanctioned activity;

(iii) A religious event; or

(iv) An emergency situation that requires the licensee to operate a motor vehicle to prevent bodily injury or death of another;

(C) All occupants shall use safety belts in accordance with the provisions of section forty-nine, article fifteen, chapter seventeen-c of this code;

(D) Operates the vehicle with no more than three passengers under the age of nineteen, unless the passengers are family members, in addition to the driver;

(E) Without any measurable blood alcohol content in accordance with the provisions of subsection (h), section two, article five, chapter seventeen-c of this code;

(F) Maintains current school enrollment or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code;

(G) A holder of a level ~~one instruction permit~~ or a two intermediate driver's license who is under the age of eighteen years may not use a wireless communication device while operating a motor vehicle, unless the use of the wireless communication device is for contacting a 9-1-1 system. A law-enforcement officer may enforce the provisions of this paragraph only as a secondary action when a law-enforcement officer with probable cause detains a driver for a suspected violation of another provision of this code. A person violating the provisions of this paragraph is guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined twenty-five dollars; for a second offense be fined fifty dollars; and for a third or subsequent offense be fined seventy-five dollars.

(H) Upon the first conviction for a moving traffic violation or a violation of paragraph (A), (B), (C), (D) or (G), subdivision (1), subsection (d) of this section of the terms and conditions of a level two intermediate driver's license, the licensee shall enroll in an approved driver improvement program unless a greater penalty is required by this section or by any other provision of this code.

At the discretion of the commissioner, completion of an approved driver improvement program may be used to negate the effect of a minor traffic violation as defined by the

commissioner against the one year conviction-free driving criteria for early eligibility for a level three driver's license; and

(l) Upon the second conviction for a moving traffic violation or a violation of the terms and conditions of the level two intermediate driver's license, the licensee's privilege to operate a motor vehicle shall be revoked or suspended for the applicable statutory period or until the licensee's eighteenth birthday, whichever is longer unless a greater penalty is required by this section or any other provision of this code. Any person whose driver's license has been revoked as a level two intermediate driver, upon reaching the age of eighteen years and if otherwise eligible may reapply for an instruction permit, then a driver's license in accordance with the provisions of sections five, six and seven of this article.

(e) *Level three, full Class E license.* -- The level three license is valid until the day designated by the commissioner of the month in which the licensee attains the age of twenty-one. Unless otherwise provided in this section or any other section of this code, the holder of a level three full Class E license is subject to the same terms and conditions as the holder of a regular Class E driver's license.

A level two intermediate licensee whose privilege to operate a motor vehicle has not been suspended, revoked or otherwise canceled and who meets all other requirements of the code, may be issued a level three full Class E license without further examination or road skills testing, if the licensee:

(1) Has reached the age of seventeen years; and

(A) Presents a completed application as prescribed by the provisions of section six of this article;

(B) Has held the level two intermediate license conviction free for the twelve-month period immediately preceding the date of the application;

(C) Has completed any driver improvement program required under paragraph (G), subdivision (2), subsection (d) of this section; and

(D) Pays a fee of two dollars and fifty cents for each year the license is valid. An additional fee of fifty cents shall be collected to be deposited in the eCombined vVoter rRegistration and dDriver's lLicensing fFund established in section twelve, article two, chapter three of this code; or

(2) Reaches the age of eighteen years; and

(A) Presents a completed application as prescribed by the provisions of section six of this article; and

(B) Pays a fee of two dollars and fifty cents for each year the license is valid. An additional fee of fifty cents shall be collected to be deposited in the eCombined vVoter rRegistration and dDriver's lLicensing fFund established in section twelve, article two, chapter three of this code.

Senate Bill 416

Effective Date: Passed March 5, 2007; in effect ninety days from passage

Signed by Governor: April 3, 2007

Code Reference: Adds §60A-4-412

Title: Defeating drug and alcohol screening tests

Major Provisions:

- Make it a crime to attempt to defeat drug and alcohol screening tests
- Establishes misdemeanor offenses to (i) knowingly sell, give away, distribute or market any substance or product in West Virginia, or transport it into the state, with the intent that it will be used to defeat drug or alcohol screening tests, (ii) attempt to defeat such a test by the substitution of a false sample, (iii) knowingly advertise for sale or distribution a substance or product where the advertised purpose is to defeat a bodily fluid screening test for drugs or alcohol, (iv) adulterate a bodily fluid sample with the intent to defeat a drug or alcohol screening test, (v) knowingly possess adulterants for the purpose of defeating such a test, or (vi) knowingly sell adulterants which are intended to be used to adulterate a urine or other bodily fluid sample for the purpose of defeating a drug or alcohol screening test
- The penalties are: first offenses are punishable by fines of not more than \$1,000, second offenses by fines of not more than \$5,000, and third or subsequent offenses by fines of not more than \$10,000 and/or confinement in a regional jail for not more than a year

ENROLLED

Senate Bill No. 416

(By Senators Kessler, Oliverio, Chafin, Foster, Hunter, Jenkins, Minard, Stollings, Wells, White, Barnes, Caruth, Deem, Hall, McKenzie and Yoder)

[Passed March 5, 2007; 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 §60A-4-412, relating to creating misdemeanor offenses for adulterating or defeating or attempting to adulterate or defeat bodily fluid test results and drug and alcohol tests; creating adulteration offenses; defining terms; and penalties for first, second and subsequent offenses.

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 §60A-4-412, to read as follows:

ARTICLE 4. OFFENSES AND PENALTIES.

§ 60A-4-412. Defeating drug and alcohol screening tests; penalties.

(a)

Any person who:

(1) Knowingly sells, gives away, distributes or markets any substance or product in this state or transports such a substance or product into this state with the intent that the substance or product will be used to defeat a drug or alcohol screening test;

(2) Attempts to defeat a drug or alcohol screening test by the substitution of a false sample;

(3) Knowingly advertises for sale or distribution any substance or product the advertised purpose of which is to defeat a bodily fluid screening test for drugs or alcohol;

(4) Adulterates a bodily fluid sample with the intent to defeat a drug or alcohol screening test;

(5) Knowingly possesses adulterants for the purpose of defeating a drug or alcohol screening test; or

(6) Knowingly sells adulterants which are intended to be used to adulterate a urine or other bodily fluid sample for the purpose of defeating a drug or alcohol screening test.

(b) A person who violates a provision of subsection (a) of this section:

(1) For a first offense is guilty of a misdemeanor and, upon conviction, shall be fined not more than one thousand dollars;

(2) For a second offense is guilty of a misdemeanor and, upon conviction, be fined not more than five thousand dollars; and

(3) For a third or subsequent offense is guilty of a misdemeanor and, upon conviction, be fined not more than ten thousand dollars or confined in the regional jail for not more than one year, or both.

(c) As used in this section, "adulterate" means a substance that is not expected to be in human fluids but that is a concentration so high that it is not consistent with human

bodily fluids, including, but not limited to:

(1) Bleach;

(2) Chromium;

(3) Creatinine;

(4) Detergent;

(5) Glutaraldehyde;

(6) Glutaraldehyde/squalene;

(7) Hydrochloric acid;

(8) Hydroiodic acid;

(9) Iodine;

(10) Nitrite;

(11) Peroxidase;

(12) Potassium dichromate;

(13) Potassium nitrate;

(14) Pyridinium chlorochromate; and

(15) Sodium nitrite.

Senate Bill 442

- Effective Date: Passed March 7, 2007; effective from passage
- Signed by Governor: April 4, 2007
- Code Reference: Repeal §18-29-1, §18-29-2, §18-29-3, §18-29-4, §18-29-5, §18-29-6, §18-29-7, §18-29-8, §18-29-9, §18-29-10, §18-29-11, §29-6A-1, §29-6A-2, §29-6A-3, §29-6A-4, §29-6A-5, §29-6A-6, §29-6A-7, §29-6A-8, §29-6A-10, §29-6A-11 and §29-6A-12
Amends §5-5-4, §5-5-5, §5B-2-5, §5F-2-1, §11-10A-8, §18A-2-8, §18B-2A-4, §18B-7-4, §21-5E-4, §22C-7-2, §31-20-27, §33-48-2 and §49-5E-5a
Adds §6C-2-1, §6C-2-2, §6C-2-3, §6C-2-4, §6C-2-5, §6C-2-6, §6C-2-7, §6C-3-1, §6C-3-2, §6C-3-3, §6C-3-4, §6C-3-5 and §6C-3-6
- Title: Relating to state employees grievance procedures for certain state and educational employees
- Major Provisions:
- Within 15 working days of a grievable event, or within 15 working days of employee knowledge of the event, or within 15 days of the most recent occurrence of the continuing practice, an employee may file a written grievance with the county superintendent (state superintendent for WVDE employees) and the Grievance Board stating the nature of the grievance, the relief requested, and requesting a conference or a hearing
 - Notice of the conference or the hearing shall be sent at least 5 working days prior to the hearing or conference to all parties, their representatives and shall include the date, time and place of the hearing
 - The conference or the hearing shall be conducted by the superintendent within 10 working days of receiving the written grievance. The conference or hearing shall be conducted in private
 - A written level one decision that is dated and that sets forth the reason for the decision [and if the grievance is denied a description of appeal options] shall be issued and transmitted to the Grievance Board, the employer and the grievant within 15 working days of the conference or the hearing

- Within 10 working days of receiving an adverse level one decision, an employee may file a request for mediation, private mediation or mediation-arbitration with the Grievance Board (level two)
- Within 20 working days of a request for mediation the Grievance Board shall schedule a mediation between the parties. Agreements reached through mediation shall be documented in writing within 15 days of the mediation
- If the employee requests private mediation and the parties agree in writing to private mediation, the chosen private mediator shall schedule a mediation within 20 days of the request for private mediation. Agreements reached through private mediation shall be documented in writing within 15 days of the conclusion of the mediation
- If the employee requests mediation-arbitration and the parties agree in writing to mediation-arbitration, the Grievance Board shall schedule a mediation-arbitration between the parties within 20 working days of receipt of the request for mediation-arbitration. Agreements reached through mediation or arbitration decisions shall be documented within 15 working days of the conclusion of the mediation-arbitration
- Within 15 working days of an unsuccessful mediation or mediation-arbitration the ALJ serving as the mediator or mediator-arbitrator may provide a written summary to the parties stating the issues presented and issue a scheduling and discovery order. Within 10 working days of receiving a written report stating that alternative dispute resolution was unsuccessful, the employee may file a written appeal with the county board of education and the Grievance Board (level three). The ALJ shall schedule a hearing
- An employee may proceed directly to level three upon the agreement of the employee and the superintendent, when discharged, suspended without pay, demoted, or reclassified resulting in loss of compensation or benefits. Appeals directly to level three must be made within 5 working days of receipt of notice of suspension or discharge
- Within 30 working days following a hearing the ALJ shall render a written decision setting forth findings of fact and conclusions of law
- Within 30 working days of receipt of an ALJ's decision, any party may appeal the matter to the Kanawha County Circuit Court

ENROLLED

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 442

(Senators Bowman, Jenkins, Plymale, Minard,

McKenzie, White and Hunter, *original sponsors*)

[Passed March 7, 2007; in effect from passage.]

AN ACT to repeal §18-29-1, §18-29-2, §18-29-3, §18-29-4, §18-29-5, §18-29-6, §18-29-7, §18-29-8, §18-29-9, §18-29-10 and §18-29-11 of the Code of West Virginia, 1931, as amended; to repeal §29-6A-1, §29-6A-2, §29-6A-3, §29-6A-4, §29-6A-5, §29-6A-6, §29-6A-7, §29-6A-8, §29-6A-9, §29-6A-10, §29-6A-11 and §29-6A-12 of said code; to amend and reenact §5-5-4 and §5-5-5 of said code; to amend and reenact §5B-2-5 of said code; to amend and reenact §5F-2-1 of said code; to amend said code by adding thereto a new article, designated §6C-2-1, §6C-2-2, §6C-2-3, §6C-2-4, §6C-2-5, §6C-2-6 and §6C-2-7; to amend said code by adding thereto a new article, designated §6C-3-1, §6C-3-2, §6C-3-3, §6C-3-4, §6C-3-5 and §6C-3-6; to amend and reenact §11-10A-8 of said code; to amend and reenact §18A-2-8 of said code; to amend and reenact §18B-2A-4 of said code; to amend and reenact §18B-7-4 of said code; to amend and reenact §21-5E-4 of said code; to amend and reenact §22C-7-2 of said code; to amend and reenact §31-20-27 of said code; to amend and reenact §33-48-2 of said code; and to amend and reenact §49-5E-5a of said code, all relating to state employees grievance procedures; establishing a new West Virginia public employees grievance procedure; discontinuing the Education and State Employees Grievance Board; creating the West Virginia Public Employees Grievance Board with five members appointed by the Governor; giving the board new powers, duties, rule-making authority and data collection responsibilities; creating a uniform grievance procedure with three levels for certain public employees; clarifying definitions and general grievance procedures; prohibiting supervisors from representing employees they evaluate; clarifying and reorganizing general provisions; increasing time frames in grievance procedure; defining default provisions; eliminating laches and defining back pay; establishing that employees may be represented at conferences, hearings and meetings at any step of the procedure; clarifying the procedure for conferences and hearings; removing hearing examiners from the grievance procedure; and making technical corrections to affected sections of the code.

Be it enacted by the Legislature of West Virginia:

That §18-29-1, §18-29-2, §18-29-3, §18-29-4, §18-29-5, §18-29-6, §18-29-7, §18-29-8, §18-29-9, §18-29-10 and §18-29-11 of the Code of West Virginia, 1931, as amended, be repealed; that §29-6A-1, §29-6A-2, §29-6A-3, §29-6A-4, §29-6A-5, §29-6A-6, §29-6A-7, §29-6A-8, §29-6A-9, §29-6A-10, §29-6A-11 and §29-6A-12 of said code be repealed; that §5-5-4 and §5-5-5 of said code be amended and reenacted; that §5B-2-5 of said code be amended and reenacted; that §5F-2-1 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §6C-2-1, §6C-2-2, §6C-2-3, §6C-2-4, §6C-2-5, §6C-2-6 and §6C-2-7; that said code be amended by adding thereto a new article, designated §6C-3-1, §6C-3-2, §6C-3-3, §6C-3-4, §6C-3-5 and §6C-3-6; that §11-10A-8 of said code be amended and reenacted; that §18A-2-8 of said code be amended and reenacted; that §18B-2A-4 of said code be amended and reenacted; that §18B-7-4 of said code be amended and reenacted; that §21-5E-4 of said code be amended and reenacted; that §22C-7-2 of said code be amended and reenacted; that §31-20-27 of said code be amended and reenacted; that §33-48-2 of said code be amended and reenacted; and that §49-5E-5a of said code be amended and reenacted, all to read as follows:

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-4. Department of Health and Human Resources pay equity salary adjustment.

The Legislature hereby directs that a pay equity salary adjustment be provided for employees of the various agencies of the ~~d~~Department of ~~h~~Health and ~~h~~Human ~~r~~Resources. This salary adjustment shall be provided from the funding appropriated to the department in the fiscal year two thousand and may not be construed to require additional appropriations from the Legislature. In the event any provision of this section conflicts with any rule, policy or provision of this code, the provisions of this section shall control. In determining the pay equity salary adjustments, the department may give consideration to employee tenure, relevant average salaries and such other factors as may be determined relevant by the secretary. Due to the limits of funding, the results of the pay equity salary adjustments shall not be subject to the provisions of article ~~six-a two~~, chapter ~~twenty-nine~~ six-c of this code. The provisions of this section are rehabilitative in nature and it is the specific intent of the Legislature that no private cause of action, either express or implied, shall arise pursuant to the provisions or implementation of this section.

§5-5-5. Pay equity adjustment.

The Legislature hereby directs that a gender-based pay equity salary adjustment be provided to public employees as determined by the ~~s~~Secretary of the ~~d~~Department of ~~a~~Administration, based on recommendations of the equal pay commission, within the limitations provided by this section. This salary adjustment shall be provided from the funding appropriated to the ~~d~~Department of ~~a~~Administration, office of the secretary, for purposes of a "pay equity reserve" in the fiscal year two thousand two and may not be construed to require additional appropriations from the Legislature. If any provision of this section conflicts with any rule, policy or provision of this code, the provisions of this section shall control. Because the provisions of this section are rehabilitative in nature, the results of the pay equity salary adjustments are not subject to the provisions of article ~~six-a two~~, chapter ~~twenty-nine~~ six-c of this code. Further, it is the specific intent of

the Legislature that no private cause of action, either express or implied, is created by or otherwise arises from the enactment, provisions or implementation of this section.

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

5B-2-5. Economic development representatives.

(a) The director is ~~expressly authorized to~~ may employ economic development representatives to be paid a base salary within legislative appropriations to the West Virginia ~~d~~Development ~~e~~Office, subject to provisions set forth by the council in its reorganization plan and applicable contract provisions pursuant to section four of this article. Economic development representatives may receive performance-based incentives and expenses paid from private funds from a nonprofit corporation contracting with the West Virginia ~~d~~Development ~~e~~Office pursuant to the provisions of section four of this article. The director shall establish job descriptions and responsibilities of economic development representatives, subject to the provisions of any contract with a nonprofit corporation entered into pursuant to section four of this article.

(b) Notwithstanding any provision of this code to the contrary, economic development representatives employed within the West Virginia ~~d~~Development ~~e~~Office are not subject to the procedures and protections provided by articles six and six-a, chapter twenty- nine of this code. Any employee of the West Virginia ~~d~~Development ~~e~~Office on the effective date of this article who applies for employment as an economic development representative is not entitled to the protections of article six, chapter twenty-nine with respect to hiring procedures and qualifications; and upon accepting employment as an economic development representative, the employee relinquishes the protections provided for in ~~articles six and six-a~~ article two, chapter six-c and article six, chapter twenty-nine of this code.

CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-1. Transfer and incorporation of agencies and boards; funds.

(a) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Administration:

- (1) Building Commission provided in article six, chapter five of this code;
- (2) Public Employees Insurance Agency and Public Employees Insurance Agency Advisory Board provided in article sixteen, chapter five of this code;
- (3) Governor's Mansion Advisory Committee provided for in article five, chapter five-a of this code;
- (4) Commission on Uniform State Laws provided in article one-a, chapter twenty-nine of this code;
- (5) ~~Education and State~~ West Virginia Public Employees Grievance Board provided for in article ~~twenty-nine three~~, chapter ~~eighteen~~ six-c and ~~article six-a, chapter twenty-nine~~ of this code;
- (6) Board of Risk and Insurance Management provided for in article twelve, chapter twenty-nine of this code;
- (7) Boundary Commission provided in article twenty-three, chapter twenty-nine of this code;
- (8) Public Defender Services provided in article twenty-one, chapter twenty-nine of this code;

- (9) Division of Personnel provided in article six, chapter twenty-nine of this code;
- (10) The West Virginia Ethics Commission provided in article two, chapter six-b of this code; and
- (11) Consolidated Public Retirement Board provided in article ten-d, chapter five of this code; and
- (12) Real Estate Division provided in article ten, chapter five-a of this code.
- (b) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Commerce:
- (1) Division of Labor provided in article one, chapter twenty-one of this code, which includes:
- (A) Occupational Safety and Health Review Commission provided in article three-a, chapter twenty-one of this code; and
- (B) Board of Manufactured Housing Construction and Safety provided in article nine, chapter twenty-one of this code;
- (2) Office of Miners' Health, Safety and Training provided in article one, chapter twenty-two-a of this code. The following boards are transferred to the Office of Miners' Health, Safety and Training for purposes of administrative support and liaison with the Office of the Governor:
- (A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review Committee provided in article six, chapter twenty-two-a of this code;
- (B) Board of Miner Training, Education and Certification provided in article seven, chapter twenty-two-a of this code; and
- (C) Mine Inspectors' Examining Board provided in article nine, chapter twenty-two-a of this code;
- (3) The West Virginia Development Office, which includes the Division of Tourism and the Tourism Commission provided in article two, chapter five-b of this code;
- (4) Division of Natural Resources and Natural Resources Commission provided in article one, chapter twenty of this code;
- (5) Division of Forestry provided in article one-a, chapter nineteen of this code;
- (6) Geological and Economic Survey provided in article two, chapter twenty-nine of this code; and
- (7) ~~The Bureau of Employment Programs~~ Workforce West Virginia provided in chapter twenty-one-a of this code, which includes:
- (A) Division of Unemployment Compensation;
- (B) Division of Employment Service;
- (C) Division of Workforce Development; and
- (D) Division of Research, Information and Analysis; and
- (8) Division of Energy provided in article two-f, chapter five-b of this code.
- (c) The Economic Development Authority provided in article fifteen, chapter thirty-one of this code is continued as an independent agency within the executive branch.
- (d) The Water Development Authority and Board provided in article one, chapter twenty-two-c of this code is continued as an independent agency within the executive branch.
- (e) ~~Workers' Compensation Commission provided in article one, chapter twenty-three of this code is continued as an independent agency within the executive branch. The following agencies and boards, including all of the allied, advisory and affiliated entities, are transferred to the Department of Environmental Protection for purposes of administrative support and liaison with the office of the Governor:~~

- (1) Air Quality Board provided in article two, chapter twenty-two-b of this code;
- (2) Solid Waste Management Board provided in article three, chapter twenty-two-c of this code;
- (3) Environmental Quality Board, or its successor board, provided in article three, chapter twenty-two-b of this code;
- (4) Surface Mine Board provided in article four, chapter twenty-two-b of this code;
- (5) Oil and Gas Inspectors' Examining Board provided in article seven, chapter twenty-two-c of this code;
- (6) Shallow Gas Well Review Board provided in article eight, chapter twenty-two-c of this code; and
- (7) Oil and Gas Conservation Commission provided in article nine, chapter twenty-two-c of this code.

(f) The following agencies and boards, including all of the allied, advisory, and affiliated or related entities, are transferred to the Department of Environmental Protection for purposes of administrative support and liaison with the Office of the Governor and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Education and the Arts:

- (1) Air Quality Board provided in article two, chapter twenty-two-b e Library Commission provided in article one, chapter ten of this code;
- (2) Solid Waste Management Board provided in article three, chapter twenty-two-c Educational Broadcasting Authority provided in article five, chapter ten of this code;
- (3) Environmental Quality Board, or its successor board, provided in article three, chapter twenty-two-b Division of Culture and History provided in article one, chapter twenty-nine of this code;
- (4) Surface Mine Board provided in article four, chapter twenty-two-b Division of Rehabilitation Services provided in section two, article ten-a, chapter eighteen of this code.
- (5) Oil and Gas Inspectors' Examining Board provided in article seven, chapter twenty-two-c of this code;
- (6) Shallow Gas Well Review Board provided in article eight, chapter twenty-two-c of this code; and
- (7) Oil and Gas Conservation Commission provided in article nine, chapter twenty-two-c of this code.

(g) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Education and the Arts Health and Human Resources:

- (1) Library Commission provided in article one, chapter ten Human Rights Commission provided in article eleven, chapter five of this code;
- (2) Educational Broadcasting Authority provided in article five, chapter ten Division of Human Services provided in article two, chapter nine of this code;
- (3) Division of Culture and History provided in article one, chapter twenty-nine Bureau for Public Health provided in article one, chapter sixteen of this code;
- (4) Division of Rehabilitation Services provided in section two, article ten-a, chapter eighteen Office of Emergency Medical Services and Advisory Council provided in article four-c, chapter sixteen of this code;
- (5) Health Care Authority provided in article twenty-nine-b, chapter sixteen of this code;
- (6) Commission on Mental Retardation provided in article fifteen, chapter twenty-nine of this code;

(7) Women's Commission provided in article twenty, chapter twenty-nine of this code; and

(8) The Child Support Enforcement Division provided in chapter forty-eight of this code.

(h) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of ~~Health and Human Resources~~ Military Affairs and Public Safety:

~~(1) Human Rights Commission provided in article eleven, chapter five~~ Adjutant General's Department provided in article one-a, chapter fifteen of this code;

~~(2) Division of Human Services provided in article two, chapter nine~~ Armory Board provided in article six, chapter fifteen of this code;

~~(3) Bureau for Public Health provided in article one, chapter sixteen~~ Military Awards Board provided in article one-g, chapter fifteen of this code;

~~(4) Office of Emergency Medical Services and Advisory Council provided in article four-e, chapter sixteen~~ West Virginia State Police provided in article two, chapter fifteen of this code;

~~(5) Health Care Authority provided in article twenty-nine-b, chapter sixteen~~ Division of Homeland Security and Emergency Management and Disaster Recovery Board provided in article five, chapter fifteen of this code and Emergency Response Commission provided in article five-a of said chapter;

~~(6) Commission on Mental Retardation provided in article fifteen, chapter twenty-nine~~ Sheriffs' Bureau provided in article eight, chapter fifteen of this code;

~~(7) Women's Commission provided in article twenty, chapter twenty-nine~~ Division of Corrections provided in chapter twenty-five of this code; and

~~(8) The Child Support Enforcement Division provided in chapter forty-eight~~ Fire Commission provided in article three, chapter twenty-nine of this code;

(9) Regional Jail and Correctional Facility Authority provided in article twenty, chapter thirty-one of this code;

(10) Board of Probation and Parole provided in article twelve, chapter sixty-two of this code; and

(11) Division of Veterans' Affairs and Veterans' Council provided in article one, chapter nine-a of this code.

(i) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of ~~Military Affairs and Public Safety~~ Revenue:

~~(1) Adjutant General's Department provided in article one-a, chapter fifteen~~ Tax Division provided in article one, chapter eleven of this code;

~~(2) Armory Board provided in article six, chapter fifteen~~ Racing Commission provided in article twenty-three, chapter nineteen of this code;

~~(3) Military Awards Board provided in article one-g, chapter fifteen~~ Lottery Commission and position of Lottery Director provided in article twenty-two, chapter twenty-nine of this code;

~~(4) West Virginia State Police provided in article two, chapter fifteen~~ Agency of Insurance Commissioner provided in article two, chapter thirty-three of this code;

~~(5) Division of Homeland Security and Emergency Management and Disaster Recovery Board provided in article five, chapter fifteen~~ of this code and Emergency Response Commission provided in article five-a of said chapter Office of Alcohol Beverage Control Commissioner provided in article sixteen, chapter eleven of this code and article two, chapter sixty of this code;

- (6) ~~Sheriffs' Bureau provided in article eight, chapter fifteen~~ Board of Banking and Financial Institutions provided in article three, chapter thirty-one-a of this code;
- (7) ~~Division of Corrections provided in chapter twenty-five~~ Lending and Credit Rate Board provided in chapter forty-seven-a of this code;
- (8) ~~Fire Commission provided in article three, chapter twenty-nine~~ Division of Banking provided in article two, chapter thirty-one-a of this code;
- (9) ~~Regional Jail and Correctional Facility Authority provided in article twenty, chapter thirty-one~~ The State Budget Office provided in article two of this code chapter;
- (10) ~~Board of Probation and Parole provided in article twelve, chapter sixty-two~~ The Municipal Bond Commission provided in article three, chapter thirteen of this code;
- (11) ~~Division of Veterans' Affairs and Veterans' Council provided in article one, chapter nine-a~~ The Office of Tax Appeals provided in article ten-a, chapter eleven of this code; and
- (12) The State Athletic Commission provided in article five-a, chapter twenty-nine of this code.
- (j) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of ~~Revenue~~ Transportation:
- (1) ~~Tax Division provided in article one, chapter eleven~~ Division of Highways provided in article two-a, chapter seventeen of this code;
- (2) ~~Racing Commission provided in article twenty-three, chapter nineteen~~ Parkways, Economic Development and Tourism Authority provided in article sixteen-a, chapter seventeen of this code;
- (3) ~~Lottery Commission and position of Lottery Director provided in article twenty-two, chapter twenty-nine~~ Division of Motor Vehicles provided in article two, chapter seventeen-a of this code;
- (4) ~~Agency of Insurance Commissioner provided in article two, chapter thirty-three~~ Driver's Licensing Advisory Board provided in article two, chapter seventeen-b of this code;
- (5) ~~Office of Alcohol Beverage Control Commission provided in article sixteen, chapter eleven~~ Aeronautics Commission provided in article two-a, chapter twenty-nine of this code and article two, chapter sixty of this code;
- (6) ~~Board of Banking and Financial Institutions provided in article three, chapter thirty-one~~ State Rail Authority provided in article eighteen, chapter twenty-nine of this code; and
- (7) ~~Lending and Credit Rate Board provided in chapter forty-seven-a~~ Port Authority provided in article sixteen-b, chapter seventeen of this code; and
- (8) ~~Division of Banking provided in article two, chapter thirty-one-a~~ of this code;
- (9) ~~The State Budget Office provided in article two~~ of this chapter;
- (10) ~~The Municipal Bond Commissioner provided in article three, chapter thirteen~~ of this code;
- (11) ~~The Office of Tax Appeals provided in article ten-a, chapter eleven~~ of this code; and
- (12) ~~The State Athletic Commission provided in article five-a, chapter twenty-nine~~ of this code.
- (k) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of ~~Transportation~~ Except for powers, authority and duties that have been delegated to the secretaries of the departments by the

provisions of section two of this article, the position of administrator and the powers, authority and duties of each administrator and agency are not affected by the enactment of this chapter.

~~(1) Division of Highways provided in article two-a, chapter seventeen of this code;~~

~~(2) Parkways, Economic Development and Tourism Authority provided in article sixteen-a, chapter seventeen of this code;~~

~~(3) Division of Motor Vehicles provided in article two, chapter seventeen-a of this code;~~

~~(4) Driver's Licensing Advisory Board provided in article two, chapter seventeen-b of this code;~~

~~(5) Aeronautics Commission provided in article two-a, chapter twenty-nine of this code;~~

~~(6) State Rail Authority provided in article eighteen, chapter twenty-nine of this code;~~
and

~~(7) Port Authority provided in article sixteen-b, chapter seventeen of this code.~~

~~(l) Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of section two of this article, the position of administrator and the existence, powers, authority and duties of each administrator and agency boards and the membership, terms and qualifications of members of the boards are not affected by the enactment of this chapter. All boards that are appellate bodies or are independent decisionmakers shall not have their appellate or independent decision-making status affected by the enactment of this chapter.~~

~~(m) Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence, powers, authority and duties of boards and the membership, terms and qualifications of members of the boards are not affected by the enactment of this chapter. All boards and appellate bodies or are independent decision makers shall not have their appellate or independent decision-making status affected by the enactment of this chapter. Any department previously transferred to and incorporated in a department by prior enactment of this section means a division of the appropriate department. Wherever reference is made to any department transferred to and incorporated in a department created in section two, article one of this chapter, the reference means a division of the appropriate department and any reference to a division of a department so transferred and incorporated means a section of the appropriate division of the department.~~

~~(n) Any department previously transferred to and incorporated in a department by prior enactment of this section means a division of the appropriate department. Wherever reference is made to any department transferred to and incorporated in a department created in section two, article one of this chapter, the reference means a division of the appropriate department and any reference to a division of a department so transferred and incorporated means a section of the appropriate division of the department. When an agency, board or commission is transferred under a bureau or agency other than a department headed by a secretary pursuant to this section, that transfer is solely for purposes of administrative support and liaison with the Office of the Governor, a department secretary or a bureau. Nothing in this section extends the powers of department secretaries under section two of this article to any person other than a department secretary and nothing limits or abridges the statutory powers and duties of statutory commissioners or officers pursuant to this code.~~

~~(o) When an agency, board or commission is transferred under a bureau or agency other than a department headed by a secretary pursuant to this section, that transfer is solely for purposes of administrative support and liaison with the Office of the Governor, a department secretary or a bureau. Nothing in this section extends the powers of~~

~~department secretaries under section two of this article to any person other than a department secretary and nothing limits or abridges the statutory powers and duties of statutory commissioners or officers pursuant to this code.~~

CHAPTER 6C. PUBLIC EMPLOYEES.

ARTICLE 2. WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE PROCEDURE.

§6C-2-1. Purpose.

(a) The purpose of this article is to provide a procedure for the resolution of employment grievances raised by the public employees of the State of West Virginia, except as otherwise excluded in this article.

(b) Resolving grievances in a fair, efficient, cost-effective and consistent manner will maintain good employee morale, enhance employee job performance and better serve the citizens of the State of West Virginia.

(c) Nothing in this article prohibits the informal disposition of grievances by stipulation or settlement agreed to in writing by the parties, nor the exercise of any hearing right provided in chapter eighteen or eighteen-a of this code.

(d) Effective the first day of July, two thousand seven, any reference in this code to the education grievance procedure, the state grievance procedure, article twenty-nine, chapter eighteen of this code or article six-a, chapter twenty-nine of this code, or any subsection thereof, shall be considered to refer to the appropriate grievance procedure pursuant to this article.

(e) Any grievance proceeding which is in process on the effective date of the enactment of this article will be completed as expeditiously as possible, and all outstanding orders for hearings must be completed by the first day of July, two thousand seven. Parties to grievances for which a hearing has not been held may, by agreement, proceed to either level two or level three.

§6C-2-2. Definitions.

For the purpose of this article and article three of this chapter:

(a) "Board" means the West Virginia Public Employees Grievance Board created in article three of this chapter.

(b) "Chief administrator" means, in the appropriate context, the commissioner, chancellor, director, president or head of any state department, board, commission, agency, state institution of higher education, commission or council, the state superintendent, the county superintendent, the executive director of a regional educational service agency or the director of a multicounty vocational center who is vested with the authority to resolve a grievance. A "chief administrator" includes a designee, with the authority delegated by the chief administrator, appointed to handle any aspect of the grievance procedure as established by this article.

(c) "Days" means working days exclusive of Saturday, Sunday, official holidays and any day in which the employee's workplace is legally closed under the authority of the chief administrator due to weather or other cause provided for by statute, rule, policy or practice.

(d) (1) "Employee" means any person hired for permanent employment by an employer for a probationary, full- or part-time position.

(2) A substitute education employee is considered an "employee" only on matters related to days worked or when there is a violation, misapplication or misinterpretation of a statute, policy, rule or written agreement relating to the substitute.

(3) "Employee" does not mean a member of the West Virginia State Police employed pursuant to article two, chapter fifteen of this code, but does include civilian employees

hired by the Superintendent of the State Police. "Employee" does not mean an employee of a constitutional officer unless he or she is covered under the civil service system, an employee of the Legislature, or a patient or inmate employed by a state institution.

(e) "Employee organization" means an employee advocacy organization with employee members that has filed with the board the name, address, chief officer and membership criteria of the organization.

(f) "Employer" means a state agency, department, board, commission, college, university, institution, state board of education, department of education, county board of education, regional educational service agency or multicounty vocational center, or agent thereof, using the services of an employee as defined in this section.

(g) (1) "Grievance" means a claim by an employee alleging a violation, a misapplication or a misinterpretation of the statutes, policies, rules or written agreements applicable to the employee including:

(i) Any violation, misapplication or misinterpretation regarding compensation, hours, terms and conditions of employment, employment status or discrimination, unless the discrimination is related to the actual job responsibilities of the employee or agreed to in writing by the employee;

(ii) Any discriminatory or otherwise aggrieved application of unwritten policies or practices of his or her employer;

(iii) Any specifically identified incident of harassment, including repeated or continual disturbance, irritation or annoyance of an employee that is contrary to the demeanor expected by law, policy and profession, or favoritism, including unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of another similarly situated employee; or

(iv) Any action, policy or practice constituting a substantial detriment to or interference with the effective job performance of the employee, or the health and safety of the employee.

(2) "Grievance" does not mean any pension matter or other issue relating to public employees insurance in accordance with article sixteen, chapter five of this code, retirement or any other matter in which the authority to act is not vested with the employer.

(h) "Grievant" means an employee or group of similarly situated employees filing a grievance.

(i) "Party" and "parties" mean the grievant, employer and the Director of the Division of Personnel for state government employee grievances. The Division of Personnel shall not be a party to grievances involving higher education employees.

(j) "Representative" means any employee organization, fellow employee, legal counselor or other person designated by the grievant as the grievant's representative and may not include a supervisor who evaluates the grievant.

§6C-2-3. Grievance procedure generally.

(a) *Time limits.* --

(1) An employee shall file a grievance within the time limits specified in this article.

(2) The specified time limits may be extended to a date certain by mutual written agreement, and shall be extended whenever a grievant is not working because of accident, sickness, death in the immediate family or other cause for which the grievant has approved leave from his or her employment.

(b) *Default.* --

(1) The grievant prevails by default if a required response is not made by the employer within the time limits established in this article, unless the employer is prevented from doing so directly as a result of injury, illness or a justified delay not caused by negligence or intent to delay the grievance process.

(2) Within ten days of the default, the grievant may file with the chief administrator a written notice of intent to proceed directly to the next level or to enforce the default. If the chief administrator objects to the default, then the chief administrator may request a hearing before an administrative law judge for the purpose of stating a defense to the default, as permitted by subdivision one of this subsection, or showing that the remedy requested by the prevailing grievant is contrary to law or contrary to proper and available remedies. In making a determination regarding the remedy, the administrative law judge shall determine whether the remedy is proper, available and not contrary to law.

(3) If the administrative law judge finds that the employer has a defense to the default as permitted by subdivision (1) of this subsection, or that the remedy is contrary to law or not proper or available at law, the administrative law judge may deny the default, or modify the remedy to be granted to comply with the law or otherwise make the grievant whole.

(c) *Defenses and limitations.* --

(1) *Untimeliness.* -- Any assertion by the employer that the filing of the grievance at level one was untimely shall be asserted by the employer at or before level two.

(2) *Back Pay.* -- A one-year statute of limitations applies to the recovery of back pay. In the case of a willful violation by the employer in which it can be shown by a preponderance of the evidence that the employer acted in bad faith in concealing the facts giving rise to the claim for back pay, an eighteen-month statute of limitations applies. Further, a grievant's right to back pay tolls from the time that the grievant has actual or constructive knowledge of his or her right to back pay.

(3) *Statutory defense.* -- If the employer intends to assert the application of any statute, policy, rule or written agreement as a defense at any level, then a copy of the materials shall be forwarded to the grievant and his or her representative.

(d) *Withdrawal and reinstatement of grievance.* -- An employee may withdraw a grievance at any time by filing a written notice of withdrawal with the chief administrator or the board. The grievance may not be reinstated by the grievant unless reinstatement is granted by the chief administrator or the board. If more than one employee is named as a grievant, the withdrawal of one employee does not prejudice the rights of any other employee named in the grievance.

(e) *Consolidation and Groups of Similarly Situated Employees.* --

(1) Grievances may be consolidated at any level by agreement of all parties, or at the discretion of the administrative law judge.

(2) Class actions are not permitted. However, a grievance may be filed by one or more employees on behalf of a group of similarly situated employees, but any similarly situated employee shall indicate in writing his or her intent to join the group of similarly situated employees. Only one employee filing a grievance on behalf of similarly situated employees shall be required to participate in the level one hearing required in section four of this article.

(f) *Intervention.* -- Upon a timely request, any employee may intervene and become a party to a grievance at any level when the employee demonstrates that the disposition of the action may substantially and adversely affect his or her rights or property and that his or her interest is not adequately represented by the existing parties.

(g) Representation. -- An employee may designate a representative who may be present at any step of the procedure as well as at any meeting that is held with the employee for the purpose of discussing or considering disciplinary action.

(h) Reprisal. -- No reprisal or retaliation of any kind may be taken by an employer against a grievant or any other participant in the grievance procedure by reason of his or her participation. Reprisal or retaliation constitutes a grievance, and any person held responsible is subject to disciplinary action for insubordination. Further, any supervisor or administrator responsible for a willful act of bad faith toward an employee or who intentionally works an employee out of classification may be subject to disciplinary action, including demotion or discharge.

(i) Forms. -- The board shall create the forms for filing grievances, giving notice, taking appeals, making reports and recommendations, and all other necessary documents provide them to chief administrators to make available to any employee upon request.

(j) Discovery. -- The parties are entitled to copies of all material submitted to the chief administrator or the administrative law judge by any party. All documents submitted become part of the record.

(k) Conferences and Hearings. --

(1) Impartiality. -- The administrative law judge shall conduct all level three hearings in an impartial manner and shall ensure that all parties are accorded procedural and substantive due process.

(2) Closed Conferences and Hearings. -- All conferences and hearings shall be conducted in private. Hearings may be public at level three at the discretion of the administrative law judge.

(3) Evidence. -- All parties may present supportive or corroborative evidence and argument with respect to the grievance at a conference or hearing. Formal rules of evidence do not apply, but parties are bound by the rules of privilege recognized by law, and the rules and procedures established by the board.

4) Witnesses. -- At level one, the chief administrator may call witnesses and may allow parties to call witnesses during a conference or hearing upon request. The parties have the right to call, examine and cross-examine witnesses during any hearing. Administrative law judges may issue subpoenas for witnesses, limit witnesses, administer oaths and may exercise other powers granted by rule or law. No employee may be compelled to testify against himself or herself in a grievance hearing.

(5) Notice. -- Reasonable notice of a conference or hearing shall be sent at least five days prior to the hearing to all parties and their representatives and shall include the date, time and place of the hearing. If an employer causes a conference or hearing to be postponed without adequate notice to employees who are scheduled to appear during their normal work day, the employees may not suffer any loss in pay for work time lost.

(6) Location. -- All proceedings shall be at a convenient place accessible to all parties and the location of the level three hearing shall be set by the administrative law judge.

(7) Date and Time. -- Conferences and hearings shall be scheduled within the time frames established at a reasonable time of day in accommodation to the parties' work schedules. Disagreements shall be decided by the board or the administrative law judge.

(8) Record. -- Conferences are not required to be recorded, but all evidence submitted and the decision become part of the record. All the testimony and evidence at a hearing shall be recorded by mechanical means, and a copy of the recording provided to any party upon request. The board is responsible for paying for and promptly providing a

certified transcript of a hearing to a requesting party or the court for a mandamus or appellate proceeding.

(l) *Grievance decisions.* –

(1) Prior to a decision, any party may propose findings of fact and conclusions of law.

(2) Decisions rendered at all levels of the grievance procedure shall be dated, in writing, setting forth the decision or decisions and the reasons for the decision, and transmitted to the board, the employer and the grievant within the time limits prescribed. If the grievant is denied the relief sought, the decision shall include the procedure for the next level of appeal for the grievant.

(m) *Preparation time.* –

(1) The grievance shall be processed during regular working hours with minimal interference with the normal operations of the employer and schedule of the employee.

(2) The grievant, witnesses and an employee representative shall be granted reasonable and necessary time off during working hours for grievance proceedings without loss of pay and without charge to annual or compensatory leave credits.

(3) In addition to actual time spent in grievance conferences and hearings, the grievant and an employee representative shall be granted time off during working hours, not to exceed four hours per grievance, for the preparation of the grievance without loss of pay and without charge to annual or compensatory leave credits. However, the first responsibility of any employee is the work assigned to the employee. An employee may not allow grievance preparation and representation activities to seriously affect the overall productivity of the employee.

(4) The grievant and an employee representative shall have access to the employer's equipment for purposes of preparing grievance documents subject to the reasonable rules of the employer governing the use of the equipment for non-work purposes.

(5) Disagreements regarding preparation time shall be decided by the board or the presiding administrative law judge.

(n) *Grievance files.* –

(1) All grievance forms and reports shall be kept in a file separate from the personnel file of the employee and may not become a part of the personnel file, but shall remain confidential except by mutual written agreement of the parties.

(2) The grievant may file a written request to have the grievant's identity removed from any files kept by the employer one year following the conclusion of the grievance.

(o) *Number of Grievances.* -- The number of grievances filed against an employer by an employee is not, per se, an indication of the employer's or the employee's job performance.

(p) *Procedures and Rules.* -- The board shall prescribe rules and procedures in compliance with this article, article three of this chapter and the State Administrative Procedures Act under chapter twenty-nine-a of this code for all matters relating to the grievance procedure.

§6C-2-4. Grievance procedural levels.

(a) *Level one: Chief Administrator.* -

(1) Within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date upon which the event became known to the employee, or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, an employee may file a written grievance with the chief administrator stating the nature of the grievance and the relief requested and request either a conference or a hearing. The employee shall also file a copy of the grievance with the board. State government employees shall further file a copy of the grievance

with the Director of the Division of Personnel, who may participate at any level in person or by a designee.

(2) The chief administrator shall hold the conference or hearing, as requested by the grievant, within ten days of receiving the grievance and issue a written decision within fifteen days of the conference or hearing.

(3) An employee may proceed directly to level three upon the agreement of the employee and the chief administrator or when discharged, suspended without pay or demoted or reclassified resulting in a loss of compensation or benefits.

(b) *Level two: Alternative dispute resolution.* –

(1) Within ten days of receiving an adverse written decision at level one, the grievant shall file a written request for mediation, private mediation or mediation-arbitration with the board if the grievant desires to continue the grievance process.

(A) *Mediation.* -- The board shall schedule the mediation between the parties within twenty days of the request. Mediation shall be conducted by an administrative law judge pursuant to standard mediation practices and board procedures at no cost to the parties. Parties may be represented and shall have the authority to resolve the dispute. Agreements reached through mediation shall be documented in writing within fifteen days. Agreements are binding and enforceable in this state by a writ of mandamus.

(B) *Private Mediation.* -- The parties may agree in writing to retain their choice of a private mediator and share the cost. The mediator shall schedule the mediation within twenty days of the written request and shall follow standard mediation practices and any applicable board procedures. Parties may be represented and shall have the authority to resolve the dispute. Agreements reached through mediation shall be documented in writing within fifteen days. Agreements are binding and enforceable in this state by a writ of mandamus.

(C) *Mediation-arbitration.* -- The parties may agree in writing to participate in mediation-arbitration. The board shall schedule the mediation-arbitration between the parties within twenty days of the request. Mediation-arbitration shall be conducted by an administrative law judge pursuant to standard mediation and arbitration practices and board procedures, at no cost to the parties. In the event the mediation does not result in a resolution, the mediator may become an arbitrator and proceed to decide the matter. The parties may be represented and may resolve the dispute. Agreements reached through mediation and decisions issued through arbitration are to be documented in writing within fifteen days, and are binding and enforceable in this state by a writ of mandamus.

(2) *Neutral Evaluation.* -- Within fifteen days of the conclusion of an unsuccessful mediation or mediation-arbitration, the administrative law judge serving as the mediator or mediator- arbitrator may provide a written summary to the parties as a neutral evaluator stating the issues presented, and issue a scheduling and discovery order that is binding upon the parties in preparation for level three.

(c) *Level three: Adjudication.* –

(1) Within ten days of receiving a written report stating that alternative dispute resolution at level two was unsuccessful, the grievant may file a written appeal with the employer and the board requesting a hearing and adjudication on the grievance. The administrative law judge shall schedule the hearing, and any other proceedings or deadlines, within a reasonable time in consultation with the parties. State government employees shall also serve a copy of the appeal upon the Director of the Division of Personnel, or his or her designee, who may appear at the hearing and submit oral or written evidence upon matters at issue.

(2) Both the employer and the employee shall at all times act in good faith and make every possible effort to resolve disputes at the lowest level of the grievance procedure. The administrative law judge may make a determination of bad faith and in extreme instances allocate the cost of the hearing to the party found to be acting in bad faith. The allocation of costs shall be based on the relative ability of the party to pay the costs.

(3) Within thirty days following the hearing, the administrative law judge shall render a decision in writing to all parties setting forth findings of fact and conclusions of law on the issues submitted.

§6C-2-5. Enforcement and appeal.

(a) The decision of the administrative law judge is final upon the parties and is enforceable in the circuit court of Kanawha County.

(b) A party may appeal the decision of the administrative law judge on the grounds that the decision:

(1) Is contrary to law or a lawfully adopted rule or written policy of the employer;

(2) Exceeds the administrative law judge's statutory authority;

(3) Is the result of fraud or deceit;

(4) Is clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or

(5) Is arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(c) A party shall file the appeal in the circuit court of Kanawha County within thirty days of receipt of the administrative law judge's decision. The decision of the administrative law judge is not automatically stayed upon the filing of an appeal, but a stay may be granted by the circuit court upon a separate motion for a stay.

(d) The court shall review the entire record that was before the administrative law judge, and the court may hear oral arguments and require written briefs. The court may reverse, vacate or modify the decision of the administrative law judge, or may remand the grievance to the administrative law judge or the chief administrator for further proceedings.

§6C-2-6. Allocation of expenses and attorney's fees.

(a) Any expenses incurred relative to the grievance procedure at levels one, two or three shall be borne by the party incurring the expenses.

(b) In the event a grievant or employer appeals an adverse level three decision to the circuit court of Kanawha County, or an adverse circuit court decision to the Supreme Court of Appeals of West Virginia, and the grievant substantially prevails upon the appeal, the grievant may recover from the employer court costs and reasonable attorney's fees for the appeal to be set by the court.

§6C-2-7. Mandamus proceeding.

Any employer failing to comply with the provisions of this article may be compelled to do so by a mandamus proceeding and may be liable to a prevailing party for court costs and reasonable attorney's fees to be set by the court.

ARTICLE 3. WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD.

§6C-3-1. West Virginia Public Employees Grievance Board.

(a) Effective the thirtieth day of June, two thousand seven, the Education and State Employees Grievance Board, and the employment of the hearing examiners and administrative law judges under the board, terminate.

(b) Effective the first day of July, two thousand seven, the West Virginia Public Employees Grievance Board is created as an independent entity under the Department of Administration and all references to the Education and State Employees Grievance

Board in the code shall be considered to refer to the West Virginia Public Employees Grievance Board.

(c) On or before the first day of July, two thousand seven, the Governor, by and with the advice and consent of the Senate, shall appoint the following five members to the board for the following terms:

(1) One person representing the largest labor organization in the state for a term of three years;

(2) One person representing an education employee organization in the state for a term of two years;

(3) One employer representative from the executive branch for a term of two years;

(4) One employer representative from secondary or higher education for a term of three years; and

(5) One citizen member, who is not a current employee, employer or a representative of employees in a workplace in the public, educational or higher educational sector of this state, for a term of one year.

(d) After the initial appointment, the board term shall be three years.

(e) No member may serve more than two consecutive full terms and any member having served two consecutive full terms may not be appointed for one year after completion of his or her second full term. A member shall continue to serve until his or her successor has been appointed and qualified.

(f) A vacancy on the board shall be filled by the Governor by appointment of a like member for the unexpired term of the member whose office is vacant.

(g) The membership of the board shall represent each congressional district, with no more than two members from any one district and no more than three members may be from the same political party.

(h) Each member of the board, at the time of his or her appointment, must have been a resident of this state for a period of not less than one year immediately preceding the appointment and each member of the board shall remain a resident of this state during the appointment term.

(i) The Governor may remove any member from the board for neglect of duty, incompetency, criminal convictions or official misconduct.

(j) Any member of the board immediately and automatically forfeits his or her membership if he or she is convicted of a felony under the laws of any state or the United States, or becomes a nonresident of this state.

(k) The board shall hold at least four meetings per year. Other meetings shall be held at the call of the chairperson or upon the written request of two members, at such time and place as designated in the call or request.

(l) The board shall designate one of its members as chairperson and one member as secretary-treasurer who shall serve at the will of the board.

(m) A majority of the members of the board constitute a quorum.

(n) Each member of the board is entitled to receive compensation and expense reimbursement as is accorded legislators in the performance of their duties.

§6C-3-2. Powers and duties of the board.

The board shall:

(1) Maintain jurisdiction over procedural matters in the grievance process;

(2) Employ competent administrative law judges and a chief administrative law judge and pay them commensurately with other administrative law judges in the state, who shall be:

(A) Residents of the State of West Virginia;

- (B) Members in good standing of the West Virginia State Bar; and
- (C) Persons who have knowledge and legal experience regarding public and education employment law and alternative dispute resolution;
- (3) Provide suitable office space for the board and the administrative law judges separate from any workplace in the public, educational and higher educational sectors, so that the administrative law judges are accessible statewide;
- (4) Hire, discharge, set the job requirements for and fix the compensation of the director, employees and administrative law judges, who serve at the will and pleasure of the board, necessary to enforce the provisions of this article and article two of this chapter;
- (5) Prepare and submit an annual budget;
- (6) Establish and provide all forms necessary for the grievance process and make them easily accessible;
- (7) Establish procedures to obtain and maintain records, outcomes and costs at each level of the grievance process;
- (8) Keep accurate and complete records of its proceedings and hearings and certify the records as may be appropriate;
- (9) Evaluate, on an annual basis, the grievance process, including written comment from employers, employees and employee organizations that participate in the process;
- (10) Submit an annual report to the Joint Committee on Government and Finance, the Legislature and the Governor that includes a compilation of all data received regarding outcomes and costs at each level of the grievance process;
- (11) File a mandamus proceeding against any employer failing to comply with the reporting requirements of this article; and
- (12) Take all other actions necessary and proper to effectuate the purposes of this article.

§6C-3-3. Data collection and reporting requirements.

- (a) Each employer involved in a grievance matter shall maintain the forms and all records created in the grievance process, and shall provide this information to the board in the form and manner prescribed by the board.
- (b) The board shall obtain and maintain all records of grievance matters.
- (c) The board shall annually report to the Joint Committee on Government and Finance, the Legislature and the Governor. The report shall contain the following:
 - (1) An overview of grievance-related issues;
 - (2) The number of grievances against each employer;
 - (3) Identification of each grievance by type of grievance, level of resolution and cost of the grievance, including the estimated cost of employee time to handle the grievance and actual cost of any legal time or damages paid in the resolution of the grievance;
 - (4) The number and type of grievances granted, denied or resolved by other means, including informal resolutions and alternative dispute resolution, and the actual or estimated cost of handling the grievance at each level of the grievance process;
 - (5) Any legislative recommendations for changes to the grievance process as a result of the data collected; and
 - (6) The caseload of each administrative law judge, the type of grievance, the number of grievances resolved and the number of decisions issued.
- (d) Nothing contained in the annual report may breach the confidentiality of a party to the dispute, nor may any matter be disclosed if the disclosure may violate any provision of law.

§6C-3-4. Rule-making authority.

(a) The rules established by the Education and State Employees Grievance Board in effect on the effective date of this article that are consistent with the provisions of this article and article two of this chapter remain in effect until they are amended, modified or repealed.

(b) The board may adopt, modify, amend and repeal procedural rules promulgated in accordance with article three, chapter twenty- nine-a of this code, necessary to effectuate the provisions of this article and article two of this chapter including, but not limited to, procedures to create and distribute forms, obtain and maintain records and collect and report data.

(c) The board shall adopt, modify, amend, repeal and enforce rules for legislative approval necessary to effectuate the provisions of this article and article two of this chapter, including any emergency rules, pursuant to article three, chapter twenty-nine-a of this code.

§6C-3-5. Continuation of the West Virginia Public Employees Grievance Board.

Pursuant to the provisions of article ten, chapter four of this code, the West Virginia Public Employees Grievance Board shall continue to exist until the first day of July, two thousand ten, unless sooner terminated, continued or reestablished.

§6C-3-6. Review of the grievance procedure.

On or before the first day of January, two thousand ten, the Joint Committee on Government and Finance shall review the grievance procedure and the board, evaluate its usefulness and make recommendations concerning its continuation or termination.

CHAPTER 11. TAXATION.

ARTICLE 10A. WEST VIRGINIA OFFICE OF TAX APPEALS.

§11-10A-8. Jurisdiction of eOffice of tTax aAppeals.

The eOffice of tTax aAppeals has exclusive and original jurisdiction to hear and determine all:

- (1) Appeals from tax assessments issued by the tTax eCommissioner pursuant to article ten of this chapter;
- (2) Appeals from decisions or orders of the tTax eCommissioner denying refunds or credits for all taxes administered in accordance with the provisions of article ten of this chapter;
- (3) Appeals from orders of the tTax eCommissioner denying, suspending, revoking, refusing to renew any license or imposing any civil money penalty for violating the provisions of any licensing law administered by the tTax eCommissioner;
- (4) Questions presented when a hearing is requested pursuant to the provisions of any article of this chapter which is administered by the provisions of article ten of this chapter;
- (5) Matters which the tTax dDivision is required by statute or legislatively approved rules to hear, except employee grievances filed pursuant to article ~~six-a~~ two, chapter ~~twenty-nine~~ six-c of this code; and
- (6) Other matters which may be conferred on the office of tax appeals by statute or legislatively approved rules.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-8. Suspension and dismissal of school personnel by board; appeal.

(a) Notwithstanding any other provisions of law, a board may suspend or dismiss any person in its employment at any time for: Immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, the conviction of a felony or a guilty plea or a plea of nolo contendere to a felony charge.

(b) A charge of unsatisfactory performance shall not be made except as the result of an employee performance evaluation pursuant to section twelve of this article. The charges shall be stated in writing served upon the employee within two days of presentation of ~~said~~ the charges to the board.

(c) The affected employee shall be given an opportunity, within five days of receiving ~~such~~ the written notice, to request, in writing, a level ~~four~~ three hearing and appeals pursuant to the provisions of article ~~twenty-nine~~ two, chapter ~~eighteen~~ six-c of ~~the~~ this code of West Virginia, ~~one thousand nine hundred thirty-one, as amended,~~ except that dismissal for the conviction of a felony or guilty plea or plea of nolo contendere to a felony charge is not by itself a grievable dismissal grounds for a grievance proceeding. An employee charged with the commission of a felony may be reassigned to duties which do not involve direct interaction with pupils pending final disposition of the charges.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

§18B-2A-4. Powers and duties of governing boards generally.

Each governing board separately has the power and ~~duties~~ duty to:

(a) Determine, control, supervise and manage the financial, business and education policies and affairs of the state institutions of higher education under its jurisdiction;

(b) Develop a master plan for the institutions under its jurisdiction, except the administratively linked community and technical colleges which retain an institutional board of advisors shall develop their master plans subject to the provisions of section one, article six of this chapter.

(1) The ultimate responsibility for developing and updating the master plans at the institutional level resides with the board of governors, or board of advisors, as applicable, but the ultimate responsibility for approving the final version of the institutional master plans, including periodic updates, resides with the ~~C~~commission or ~~C~~council, as appropriate.

(2) Each master plan shall include, but not be limited to, the following:

(A) A detailed demonstration of how the master plan will be used to meet the goals and objectives of the institutional compact;

(B) A well-developed set of goals outlining missions, degree offerings, resource requirements, physical plant needs, personnel needs, enrollment levels and other planning determinates and projections necessary in ~~such~~ a plan to assure that the needs of the institution's area of responsibility for a quality system of higher education are addressed;

(C) ~~Documentation~~ Document of the involvement of the ~~C~~commission or ~~C~~council, as appropriate, institutional constituency groups, clientele of the institution and the general public in the development of all segments of the institutional master plan.

(3) The plan shall be established for periods of not less than three nor more than six years and shall be revised periodically as necessary, including the addition or deletion of degree programs as, in the discretion of the appropriate governing board, may be necessary;

(c) Prescribe for the institutions under its jurisdiction, in accordance with its master plan and the compact for each institution, specific functions and responsibilities to meet the higher education needs of its area of responsibility and to avoid unnecessary duplication;

(d) Direct the preparation of a budget request for the institutions under its jurisdiction,

~~such request to which~~ relates directly to missions, goals and projections as found in the institutional master plans and the institutional compacts;

(e) Consider, revise and submit to the ~~C~~ommission or ~~C~~ouncil, as appropriate, a budget request on behalf of the institutions under its jurisdiction;

(f) Review, at least every five years, all academic programs offered at the institutions under its jurisdiction. The review shall address the viability, adequacy and necessity of the programs in relation to its institutional master plan, the institutional compact and the education and workforce needs of its responsibility district. As a part of the review, each governing board shall require the institutions under its jurisdiction to conduct periodic studies of its graduates and their employers to determine placement patterns and the effectiveness of the education experience. Where appropriate, these studies should coincide with the studies required of many academic disciplines by their accrediting bodies;

~~The governing boards shall~~ ensure that the sequence and availability of academic programs and courses offered by the institutions under their jurisdiction is such that students have the maximum opportunity to complete programs in the time frame normally associated with program completion. Each governing board is responsible to see that the needs of nontraditional college-age students are appropriately addressed and, to the extent it is possible for the individual governing board to control, to assure core course work completed at institutions under its jurisdiction is transferable to any other state institution of higher education for credit with the grade earned;

~~Subject to the provisions of article one-b of this chapter, the appropriate governing board has the exclusive authority to~~ approve the teacher education programs offered in the institution under its control. In order to permit graduates of teacher education programs to receive a degree from a nationally accredited program and in order to prevent expensive duplication of program accreditation, the Commission may select and ~~utilize~~ use one nationally recognized teacher education program accreditation standard as the appropriate standard for program evaluation;

~~Utilize~~ Use faculty, students and classified employees in institutional-level planning and decisionmaking when those groups are affected;

(j) Subject to the provisions of federal law and pursuant to the provisions of article nine of this chapter and to rules adopted by the ~~C~~ommission and the ~~C~~ouncil, administer a system for the management of personnel matters, including, but not limited to, personnel classification, compensation and discipline for employees at the institutions under their jurisdiction;

(k) Administer a system for hearing employee grievances and appeals. Notwithstanding any other provision of this code to the contrary, the procedure established in article ~~six-a two~~, chapter ~~twenty-nine~~ six-c of this code is the exclusive mechanism for hearing prospective employee grievances and appeals. ~~In construing the application of said article to grievances of higher education employees, the following apply:~~

~~(1) "Chief administrator" means the president of a state institution of higher education as to those employees employed by the institution and the appropriate chancellor as to those employees employed by the Commission or Council;~~

~~(2) The State Division of Personnel may not be a party to nor have any authority regarding a grievance initiated by a higher education employee; and~~

~~(3) The provisions of this section supersede and replace the grievance procedure set out in article twenty-nine, chapter eighteen of this code for any grievance initiated by a higher education employee after the first day of July, two thousand one;~~

- (l) Solicit and ~~utilize~~ use or expend voluntary support, including financial contributions and support services, for the institutions under its jurisdiction;
- (m) Appoint a president for the institutions under its jurisdiction subject to the provisions of section six, article one-b of this chapter;
- (n) Conduct written performance evaluations of the president pursuant to section six, article one-b of this chapter;
- (o) Employ all faculty and staff at the institution under its jurisdiction. ~~Such~~ The employees operate under the supervision of the president, but are employees of the governing board;
- (p) Submit to the ~~C~~ommission or ~~C~~ouncil, as appropriate, no later than the first day of November of each year an annual report of the performance of the institution under its jurisdiction during the previous fiscal year as compared to stated goals in its master plan and institutional compact;
- (q) Enter into contracts or consortium agreements with the public schools, private schools or private industry to provide technical, vocational, college preparatory, remedial and customized training courses at locations either on campuses of the public institution of higher education or at off-campus locations in the institution's responsibility district. To accomplish this goal, the boards ~~are permitted to~~ may share resources among the various groups in the community;
- (r) Provide and transfer funding and property to certain corporations pursuant to section ten, article twelve of this chapter;
- (s) Delegate, with prescribed standards and limitations, the part of its power and control over the business affairs of the institution to the president in any case where it considers the delegation necessary and prudent in order to enable the institution to function in a proper and expeditious manner and to meet the requirements of its institutional compact. If a governing board elects to delegate any of its power and control under the provisions of this subsection, it shall enter ~~such~~ the delegation in the minutes of the meeting when the decision was made and shall notify the ~~C~~ommission or ~~C~~ouncil, as appropriate. Any ~~such~~ delegation of power and control may be rescinded by the appropriate governing board, the ~~C~~ommission or ~~C~~ouncil, as appropriate, at any time, in whole or in part, except that the ~~C~~ommission may not revoke delegations of authority made by the governing boards of Marshall University or West Virginia University as they relate to the state institutions of higher education known as Marshall University and West Virginia University;
- (t) Unless changed by the ~~C~~ommission or the ~~C~~ouncil, as appropriate, ~~the governing boards shall~~ continue to abide by existing rules setting forth standards for acceptance of advanced placement credit for their respective institutions. Individual departments at institutions of higher education may, upon approval of the institutional faculty senate, require higher scores on the advanced placement test than scores designated by the appropriate governing board when the credit is to be used toward meeting a requirement of the core curriculum for a major in that department;
- (u) ~~Each governing board, or its designee, shall c~~onsult, cooperate and work with the State Treasurer and the State Auditor to update as necessary and maintain an efficient and cost-effective system for the financial management and expenditure of special revenue and appropriated state funds at the institutions under its jurisdiction that ensures that properly submitted requests for payment be paid on or before due date but, in any event, within fifteen days of receipt in the State Auditor's office;
- (v) ~~The governing boards i~~n consultation with the appropriate chancellor and the Secretary of the Department of Administration, ~~shall~~ develop, update as necessary and

maintain a plan to administer a consistent method of conducting personnel transactions, including, but not limited to, hiring, dismissal, promotions and transfers at the institutions under their jurisdiction. Each such personnel transaction shall be accompanied by the appropriate standardized system or forms which ~~will~~ shall be submitted to the respective governing board and the Department of Finance and Administration;

~~(w) *Transfer of funds.*—(1) Notwithstanding any other provision of this code to the contrary, the governing boards may transfer funds from any account specifically appropriated for their use to any corresponding line item in a general revenue account at any agency or institution under their jurisdiction as long as such transferred funds are used for the purposes appropriated;~~

~~(2) The governing boards may transfer funds from appropriated special revenue accounts for capital improvements under their jurisdiction to special revenue accounts at agencies or institutions under their jurisdiction as long as such transferred funds are used for the purposes appropriated.~~

~~(x) Notwithstanding any other provisions of this code to the contrary, the governing boards may acquire legal services as are considered necessary, including representation of the governing boards, their institutions, employees and officers before any court or administrative body. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the governing boards may, but are not required to, call upon the Attorney General for legal assistance and representation as provided by law; Transfer funds from appropriated special revenue accounts for capital improvements under their jurisdiction to special revenue accounts at agencies or institutions under their jurisdiction as long as such transferred funds are used for the purposes appropriated;~~

~~(y) Each governing board which has under its jurisdiction an administratively linked community and technical college or a regional campus offering community and technical college education programs shall create within the administrative structure of its governing board a subcommittee for community and technical college education. The subcommittee shall have at least four members, one of whom is the chairperson of the board of advisors of the community and technical college or, in the case of the Governing Board of West Virginia University, both the member representing the community and technical college and the member representing the regional campus; and Notwithstanding any other provision of this code to the contrary, acquire legal services that are necessary, including representation of the governing boards, their institutions, employees and officers before any court or administrative body. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the governing boards may, but are not required to, call upon the Attorney General for legal assistance and representation as provided by law;~~

~~(z) A governing board may contract and pay for disability insurance for a class or classes of employees at a state institution of higher education under its jurisdiction. For each governing board which has under its jurisdiction an administratively linked community and technical college or a regional campus offering community and technical college education programs, create within the administrative structure of its governing board a subcommittee for community and technical college education. The subcommittee shall have at least four members, one of whom is the chairperson of the board of advisors of the community and technical college or, in the case of the Governing Board of West Virginia University, both the member representing the community and technical college and the member representing the regional campus;~~
and

(aa) Contract and pay for disability insurance for a class or classes of employees at a state institution of higher education under its jurisdiction.

ARTICLE 7. PERSONNEL GENERALLY.

§18B-7-4. Notice to probationary faculty members of retention or nonretention; hearing.

(a) ~~For any probationary faculty~~ the president or other administrative head of each state institution of higher education shall give written notice to probationary faculty members concerning their retention or nonretention for the ensuing academic year: (1) Not later than the first day of March for those probationary faculty members who are in their first academic year of service; (2) not later than the fifteenth day of December for those probationary faculty members who are in their second academic year of service; and (3) at least one year before the expiration of an appointment for those probationary faculty members who have been employed two or more years with the institution. Such notice to those probationary faculty members not being retained shall be by certified mail, return receipt requested.

(b) ~~For any probationary faculty member employed after the effective date of this section, if a request is made by the probationary faculty member not retained, the president or other administrative head of each~~ the institution shall give written notice concerning retention or inform the probationary faculty member by certified mail within ten days of the reasons for nonretention for the ensuing academic year not later than the first day of March. Any probationary faculty member who desires to appeal the decision may proceed to level three of the grievance procedure established in article two, chapter six-c of this code. If the administrative law judge decides that the reasons for nonretention are arbitrary or capricious or without a factual basis, the faculty member shall be retained for the ensuing academic year.

(c) ~~If a request is made by the probationary faculty member not retained, the president or other administrative head of the institution shall inform the probationary faculty member by certified mail within ten days of the reasons for nonretention. Any probationary faculty member who desires to appeal the decision shall use the grievance procedure established in article six-a, chapter twenty-nine of this code. If it is concluded that the reasons for nonretention are arbitrary or capricious or without a factual basis, the faculty member shall be retained for the ensuing academic year. The term "probationary faculty member" shall be defined according to rules promulgated by the governing boards. The rights provided to probationary faculty members by this section are in addition to, and not in lieu of, other rights afforded them by other rules and other provisions of law.~~

(d) ~~The term "probationary faculty member" shall be defined according to rules promulgated by the governing boards. The rights provided to probationary faculty members by this section are in addition to, and not in lieu of, other rights afforded them by other rules and other provisions of law.~~

CHAPTER 21. LABOR.

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

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

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

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

(c) The rights and procedures provided under this section are subject to the provisions of the rules promulgated by the Equal Pay Commission in accordance with section six of this article.

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

CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS.

ARTICLE 7. ENVIRONMENTAL RESOURCES.

§22C-7-2. Oil and gas inspectors; eligibility for appointment; qualifications; salary; expenses; removal.

(a) No person is eligible for appointment as an oil and gas inspector or supervising inspector unless, at the time of his or her probationary appointment, ~~such~~ the person: (1) ~~is~~ is a citizen of West Virginia, in good health, and of good character, reputation and temperate habits; (2) has had at least six years' actual relevant experience in the oil and gas industry: *Provided*, That not exceeding three years of ~~such~~ the experience shall be satisfied by any combination of: (i) a A bachelor of science degree in science or engineering which shall be considered the equivalent of three years' actual relevant experience in the oil and gas industry; (ii) an associate degree in petroleum technology which shall be considered the equivalent of two years actual relevant experience in the oil and gas industry; and (iii) actual relevant environmental experience including, without limitation, experience in wastewater, solid waste or reclamation each full year of which shall be considered as a year of actual relevant experience in the oil and gas industry; and (3) has good theoretical and practical knowledge of oil and gas drilling and production methods, practices and techniques, sound safety practices and applicable mining laws.

(b) In order to qualify for appointment as an oil and gas inspector or supervising inspector, an eligible applicant shall submit to a written and oral examination by the ~~e~~Oil and ~~g~~Gas ~~i~~nspectors' ~~e~~Examining ~~b~~Board and shall furnish ~~such~~ any evidence of good health, character and other facts establishing eligibility ~~as such~~ required by the board ~~may require~~. If ~~such~~ the board finds after investigation and examination that an applicant: (1) ~~is~~ is eligible for appointment; and (2) has passed all written and oral examinations, the board shall add ~~such~~ the applicant's name and grade to the register of qualified eligible candidates and certify its action to the director of the ~~d~~Division of ~~e~~Environmental ~~p~~Protection. No candidate's name may remain on the register for more than three years without requalifying.

(c) Within the limits provided by law, the salary of each inspector and of the supervising inspector shall be fixed by the director, and the ~~e~~Oil and ~~g~~Gas ~~i~~nspectors' ~~e~~Examining ~~b~~Board may make recommendations for salary determinations. In fixing salaries of the oil and gas inspectors and of the supervising inspector, the director shall consider ability, performance of duty and experience. Inspectors and supervising inspectors are entitled to mileage expense reimbursement at the rate established for in-state travel of public employees, in the ~~g~~Governor's travel rules, as administered by the ~~d~~Department of ~~a~~Administration. No reimbursement for traveling expenses may be made except upon an itemized account of ~~such~~ the expenses submitted by the inspector or supervising inspector, as the case may be, who shall verify, upon oath, that ~~such~~ the expenses were actually incurred in the discharge of official duties.

(d) (1) For grievances concerning matters other than suspension or dismissal, inspectors may file written grievances in accordance with the procedures set forth in

article ~~six-a two~~, chapter ~~twenty-nine~~ six-c of this code. For a level one grievance, the inspector shall file the grievance with the supervising inspector. For a level two grievance, the inspector shall file the grievance with the chief of the Office of Oil and Gas.

(2) An inspector or the supervising inspector, after having received a permanent appointment, shall be suspended or dismissed by the chief of the Office of Oil and Gas only for physical or mental impairment, incompetency, neglect of duty, drunkenness, malfeasance in office or other good cause.

(3) Not less than twenty reputable citizens engaged in oil and gas drilling and production operations in the state may petition the chief of the office of oil and gas for the dismissal of an inspector or the supervising inspector. If ~~such~~ the petition is verified by at least one of the petitioners, based on actual knowledge of the affiant, and alleges facts which, if true, warrant the removal of the inspector or supervising inspector, the chief shall cause an investigation of the facts to be made. If, after ~~such~~ investigation, the chief finds that there is substantial evidence which, if true, warrants dismissal of the inspector or supervising inspector, the chief shall bring the petition before the Oil and Gas Inspectors' Examining Board requesting dismissal of the inspector or supervising inspector.

(4) A level three grievance is a hearing before the board to consider the appeal of a level two grievance, the appeal of suspension or dismissal by the chief, or a citizens' petition seeking dismissal of an inspector or supervising inspector. For any level three grievance, the chief may not preside over the hearing and may not vote. The remaining members of the board shall select a member of the board to serve as acting chair, who may not vote.

(5) An appeal of an inspector from a suspension or dismissal by the chief may be filed by the end of the tenth day following the suspension or dismissal notwithstanding the time limits and requirements set forth in ~~subsection (c), section four, article six-a two of,~~ chapter ~~twenty-nine~~ six-c of this code.

(6) On receipt of an appeal of a level two grievance, an appeal of suspension or dismissal by the chief, or a citizens' petition seeking dismissal of an inspector or the supervising inspector, the Oil and Gas Inspectors' Examining Board shall promptly notify the inspector or supervising inspector, as the case may be, to appear before it at a time and place designated in ~~said~~ the notice, which time shall be not less than fifteen days nor more than thirty days thereafter notwithstanding the time limits and requirements set forth in ~~subsection (c), section four, article six-a two, of~~ chapter ~~twenty-nine~~ six-c of this code. There shall be attached to the copy of the notice served upon the inspector or supervising inspector a copy of the appeal or petition filed with ~~such~~ the board.

(7) At the time and place designated in ~~said~~ the notice, the Oil and Gas Inspectors' Examining Board shall conduct a level three grievance proceeding in which the testimony shall be recorded to enable a transcript to be prepared for any further appeal. The board shall hear all evidence offered in support of the appeal or petition and on behalf of the inspector or supervising inspector. Each witness shall be sworn and a transcript shall be made of all evidence taken and proceedings had at any ~~such~~ hearing. No continuance may be granted except for good cause shown.

(8) The acting chair of the board may administer oaths and subpoena witnesses.

(9) An inspector or supervising inspector who willfully refuses or fails to appear before ~~such~~ the board, or having appeared, refuses to answer under oath any relevant question on the ground that the inspector's testimony or answer might incriminate ~~such~~

the inspector, or refuses to accept a grant of immunity from prosecution on account of any relevant matter about which the inspector may be asked to testify at ~~such~~ the hearing before ~~such~~ the board, forfeits the inspector's position notwithstanding any provisions to the contrary in ~~section six, article six-a two, chapter twenty-nine six-c~~ of this code.

(10) If, after hearing, the ~~e~~Oil and ~~g~~Gas ~~i~~nspectors' ~~e~~Examining ~~b~~Board finds that the inspector or supervising inspector should be suspended, dismissed or otherwise disciplined, it shall enter an order to that effect. An appeal of the decision of the board shall proceed as a level ~~four~~ three proceeding under the provisions of ~~subsection (d), section four, article six-a two, chapter twenty-nine six-c~~ of this code. ~~The provisions of subsection (e) of that section regarding an expedited grievance shall not apply to oil and gas inspectors.~~

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-27. Correctional officers; regional jails; priority of hiring.

(a) Notwithstanding any provision of this code to the contrary, the authority, when employing correctional officers to complete the approved staffing plan of a regional jail completed after the effective date of this section, shall employ any correctional officer applying for a position as a correctional officer at a regional jail who was employed in good standing at a county jail facility in the region at the time of its closing or at a prison facility operated by the ~~d~~Division of ~~e~~Corrections: ~~Provided~~ Provided, That the regional jail is located within the same region as the prison facility that was closed due to relocation of the prison facility to a site outside the region. Only those correctional officers, who are employees in good standing at the time the prison facility is closed, are eligible for transfer under the provisions of this subsection. Correctional officers, employed under the provisions of this subsection, shall be employed at a salary and with benefits consistent with the approved plan of compensation of the ~~d~~Division of ~~p~~Personnel, created under section five, article six, chapter twenty-nine of this code. All correctional officers employed under this subsection shall also be covered by the policies and procedures of the ~~education and state~~ West Virginia Public ~~e~~Emloyees ~~g~~Grievance ~~b~~Board, created under ~~section five, article six-a two, chapter twenty-nine six-c~~ of this code and the classified-exempt service protection policies of the ~~d~~Division of ~~p~~Personnel.

(b) The authority shall, when employing correctional officers to fill positions within the approved staffing plan of any regional jail, employ any correctional officer applying for a position as a correctional officer at a regional jail who was previously employed as a correctional officer in good standing at any local jail facility: ~~Provided~~ Provided, That the local jail facility is located within the same region as the regional jail at the time of the local jail facility's closing or reduction in size and was reduced in size or closed prior to or due to the completion of the regional jail within the region. Correctional officers, employed under the provisions of this subsection, shall be employed at a salary and with benefits consistent with the approved plan of compensation of the ~~d~~Division of ~~p~~Personnel, created under section five, article six, chapter twenty-nine of this code. Only those county correctional officers who are employees in good standing at the time the local jail facility is closed are eligible for transfer under the provisions of this subsection. All correctional officers employed under this subsection shall also be covered by the policies and procedures of the ~~education and state~~ West Virginia Public ~~e~~Emloyees ~~g~~Grievance ~~b~~Board created under ~~section five, article six-a two, chapter~~

~~twenty-nine~~ five-c of this code and the classified-exempt service protection of the ~~d~~Division of ~~p~~Personnel.

CHAPTER 33. INSURANCE.

ARTICLE 48. MODEL HEALTH PLAN FOR UNINSURABLE INDIVIDUALS ACT.

§33-48-2. Operation of the plan.

(a) There is ~~hereby created~~ continued within the department a body corporate and politic to be known as the West Virginia ~~h~~Health ~~i~~nsurance ~~p~~lan which shall be ~~deemed~~ considered to be an instrumentality of the state and a public corporation. The plan shall have perpetual existence and any change in the name or composition of the plan shall in no way impair the obligations of any contracts existing under this article.

(b) The plan shall operate subject to the supervision and control of the board. The board shall consist of the commissioner or his or her designated representative, who shall serve as an ex officio member of the board and shall be its chairperson, and six members appointed by the Governor. At least two board members shall be individuals, or the parent, spouse or child of individuals, reasonably expected to qualify for coverage by the plan. At least two board members shall be representatives of insurers. At least one board member shall be a hospital administrator. A majority of the board shall be composed of individuals who are not representatives of insurers or health care providers.

~~(c) The initial board members shall be appointed as follows: One third of the members to Board members shall serve for a term of two three years; one third of the members to serve for four years; and one third of the members to serve a term of six years. Subsequent board members shall serve for a term of three years. A board member's term shall continue until his or her successor is appointed.~~

(d) Vacancies in the board shall be filled by the Governor. Board members may be removed by the Governor for cause.

(e) Board members shall not be compensated in their capacity as board members but shall be reimbursed for reasonable expenses incurred in the necessary performance of their duties.

(f) The board shall submit to the commissioner a plan of operation for the plan and any amendments ~~thereto~~ to the plan necessary or suitable to assure the fair, reasonable and equitable administration of the plan. The plan of operation shall become effective upon approval in writing by the commissioner consistent with the date on which the coverage under this article must be made available. If the board fails to submit a suitable plan of operation within one hundred eighty days after the appointment of the board of directors, or at any time thereafter fails to submit suitable amendments to the plan of operation, the commissioner shall adopt and promulgate ~~such~~ any rules ~~as are~~ necessary or advisable to effectuate the provisions of this section. ~~Such~~ The rules shall continue in force until modified by the commissioner or superseded by a plan of operation submitted by the board and approved by the commissioner.

(g) The plan of operation shall:

(1) Establish procedures for operation of the plan: *Provided*, That the plan shall be operated so as to qualify as an acceptable alternative mechanism under the federal Health Insurance Portability and Accountability Act and as an option to provide health insurance coverage for individuals eligible for the federal health care tax credit established by the federal Trade Adjustment Assistance Reform Act of 2002 (Section 35 of the Internal Revenue Code of 1986);

(2) Establish procedures for selecting an administrator in accordance with section six of this article;

- (3) Establish procedures for the handling, accounting and auditing of assets, moneys and claims of the plan and the plan administrator;
- (4) Develop and implement a program to publicize the existence of the plan, the eligibility requirements and procedures for enrollment;
- (5) Establish procedures under which applicants and participants may have grievances reviewed by a grievance committee appointed by the board. The grievances shall be reported to the board after completion of the review. The board shall retain all written complaints regarding the plan for at least three years; and
- (6) Provide for other matters ~~as may be~~ that are necessary and proper for the execution of the board's powers, duties and obligations under this article.
- (h) The plan shall have the general powers and authority granted under the laws of this state to health insurers and, in addition thereto, the specific authority to:
 - (1) Enter into contracts ~~as~~ that are necessary or proper to carry out the provisions and purposes of this article, including the authority, with the approval of the commissioner, to enter into contracts with similar plans of other states for the joint performance of common administrative functions or with persons or other organizations for the performance of administrative functions: *Provided*, That the provisions of article three, chapter five-a of this code relating to the Division of Purchasing of the Department of Administration do not apply to any contracts executed by or on behalf of the plan under this article;
 - (2) Sue or be sued, including taking any legal actions necessary or proper to recover or collect assessments due the plan;
 - (3) Take ~~such~~ any necessary legal action ~~as necessary~~:
 - (A) To avoid the payment of improper claims against the plan or the coverage provided by or through the plan;
 - (B) To recover any amounts erroneously or improperly paid by the plan;
 - (C) To recover any amounts paid by the plan as a result of mistake of fact or law; or
 - (D) To recover other amounts due the plan;
 - (4) Establish and modify, from time to time, as appropriate, rates, rate schedules, rate adjustments, expense allowances, agents' referral fees, claim reserve formulas and any other actuarial function appropriate to the operation of the plan. Rates and rate schedules may be adjusted for appropriate factors such as age, sex and geographic variation in claim cost and shall take into consideration appropriate factors in accordance with established actuarial and underwriting practices;
 - (5) Issue policies of insurance in accordance with the requirements of this article;
 - (6) Appoint appropriate legal, actuarial and other committees as necessary to provide technical assistance in the operation of the plan, policy and other contract design and any other function within the authority of the pool;
 - (7) Borrow money to effect the purposes of the plan. Any notes or other evidence of indebtedness of the plan not in default shall be legal investments for insurers and may be carried as admitted assets;
 - (8) Establish rules, conditions and procedures for reinsuring risks of participating insurers desiring to issue plan coverages in their own name. Provision of reinsurance shall not subject the plan to any of the capital or surplus requirements, if any, otherwise applicable to reinsurers;
 - (9) Employ and fix the compensation of employees, including an executive director of the plan. The executive director shall have overall management responsibility for the plan and is exempt from the classified service and not subject to the procedures and

protections provided by article ~~six and six-a~~ two, chapter ~~twenty-nine~~ six-c of this code and article six, chapter twenty-nine of this code;

(10) Prepare and distribute certificate of eligibility forms and enrollment instruction forms to insurance producers and to the general public;

(11) Provide for reinsurance of risks incurred by the plan;

(12) Issue additional types of health insurance policies to provide optional coverages, including medicare supplemental insurance; (13) Provide for and employ cost containment measures and requirements, including, but not limited to, preadmission screening, second surgical opinion, concurrent utilization review and individual case management for the purpose of making the benefit plan more cost effective;

(14) Design, ~~utilize~~ use, contract or otherwise arrange for the delivery of cost-effective health care services, including establishing or contracting with preferred provider organizations, health maintenance organizations and other limited network provider arrangements: *Provided*, That all contracts with preferred provider organizations, health maintenance organizations, other network providers or other health care providers shall provide that plan participants are not personally liable for the cost of services covered by the plan other than applicable deductibles or copayments, including any balance claimed by the provider to be owed as being the difference between that provider's charge or charges and the amount payable by the plan; and

(15) Adopt bylaws, policies and procedures ~~as may be~~ that are necessary or convenient for the implementation of this article and the operation of the plan.

(i) The board shall make an annual report to the Governor which shall also be filed with the Legislature. The report shall summarize the activities of the plan in the preceding calendar year, including the net written and earned premiums, plan enrollment, the expense of administration, and the paid and incurred losses.

~~(j) Study and recommend to the Legislature in January, two thousand six, alternative funding mechanisms for the continuation of the health plan for uninsurable individuals.~~

~~(k) Neither the board nor its employees shall be~~ are liable for any obligations of the plan. No member or employee of the board shall be liable, and no cause of action of any nature may arise against them, for any act or omission related to the performance of their powers and duties under this article unless ~~such~~ the act or omission constitutes willful or wanton misconduct. The board may provide in its bylaws or rules for indemnification of, and legal representation for, its members and employees.

CHAPTER 49. CHILD WELFARE.

ARTICLE 5E. DIVISION OF JUVENILE SERVICES.

§49-5E-5a. Juvenile detention and corrections facilities; employees; priority of hiring.

(a) Notwithstanding any provision of this code to the contrary, the division, when employing any persons to complete the approved staffing plan of any of its juvenile detention or corrections facilities, shall employ any person otherwise qualified who applies for a position at the juvenile detention or corrections facility who was also employed in good standing at a county or local jail facility, at the time of its closing, that was closed due to the completion of a regional jail.

(b) All persons employed at a juvenile detention or corrections facility shall be employed at a salary and with benefits consistent with the approved plan of compensation of the ~~d~~Division of p~~ersonnel~~, created under section five, article six, chapter twenty-nine of this code; all ~~such~~ employees shall also be covered by the policies and procedures of the ~~education and state~~ West Virginia Public ~~e~~mployees ~~g~~rievance ~~b~~oard, created under section five, article ~~six-a~~ two, chapter ~~twenty-nine~~ six-c of this code and the

classified service protection policies of the ~~e~~Division of ~~p~~The term "probationary faculty member" shall be defined according to rules promulgated by the governing boards. The rights provided to probationary faculty members by this section are in addition to, and not in lieu of, other rights afforded them by other rules and other provisions of law.ersonnel.

Senate Bill 518

Effective Date: Passed March 10, 2007; in effective ninety days from passage (June 8, 2007)

Signed by Governor: April 3, 2007

Code Reference: Amends §9-9-3, §9-9-6, §9-9-7, §9-9-8 and §9-9-9
Adds §9-9-21 and §9-9-22

Title: Relates to bringing the West Virginia Works Program into compliance with federal law as required by the Deficit Reduction Act; providing for state funding of two- and four-year post-secondary education for West Virginia Works eligibility; and providing for state funding for two-parent families to remain eligible for West Virginia Works

Major Provisions:

- Brings the West Virginia Works Program into compliance with the Federal law as required by the Deficit Reduction Act. Provides for state funding of two and four-year postsecondary education for West Virginia Works eligibility. Provides for state funding for two parent families to remain eligible for West Virginia Works Program

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 518

(Senators Prezioso, Hunter, Caruth, Hall, Plymale, Unger and Foster, *original sponsors*)

[Passed March 10, 2007; in effect ninety days from passage.]

AN ACT to amend and reenact §9-9-3, §9-9-6, §9-9-7, §9-9-8 and §9-9-9 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §9-9-21 and §9-9-22, all relating to bringing the West Virginia Works Program into compliance with federal law as required by the Deficit Reduction Act; providing for state funding of two- and four-year post-secondary education for West Virginia Works eligibility; and providing for state funding for two-parent families to remain eligible for West Virginia Works.

Be it enacted by the Legislature of West Virginia:

That §9-9-3, §9-9-6, §9-9-7, §9-9-8 and §9-9-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §9-9-21 and §9-9-22, all to read as follows:

ARTICLE 9. WEST VIRGINIA WORKS PROGRAM.

§9-9-3. Definitions.

In addition to the rules for the construction of statutes in section ten, article two, chapter two of this code and the words and terms defined in section two, article one of this chapter, unless a different meaning appears from the context:

(a) "At-risk family" means a group of persons living in the same household, living below the federally designated poverty level, lacking the resources to become self-supporting and consisting of a dependent minor child or children living with a parent, stepparent or caretaker-relative; an "at-risk family" may include an unmarried minor parent and his or her dependent child or children who live in an adult-supervised setting;

(b) "Beneficiary" or "participant" means any parent, work eligible individuals or caretaker-relative in an at-risk family who receives cash assistance for himself or herself and family members;

(c) "Caretaker-relative" means grandparents or other nonparental caretakers not included in the assistance group or receiving cash assistance directly.

~~(e)~~ (d) "Cash assistance" means temporary assistance for needy families;

~~(d)~~ (e) "Challenge" means any fact, circumstance or situation that prevents a person from becoming self-sufficient or from seeking, obtaining or maintaining employment of any kind, including physical or mental disabilities, lack of education, testing, training, counseling, child care arrangements, transportation, medical treatment or substance abuse treatment;

~~(e)~~ (f) "Community or personal development" means activities designed or intended to eliminate challenges to participation in self-sufficiency activities. These activities are to provide community benefit and enhance personal responsibility, including, but not limited to, classes or counseling for learning life skills or parenting, dependent care, job

readiness, volunteer work, participation in sheltered workshops or substance abuse treatment;

~~(f)~~ (g) "Department" means the state ~~d~~Department of ~~h~~Health and ~~h~~Human ~~r~~Resources;

~~(g)~~ (h) "Education and training" means hours spent regularly attending and preparing for classes in any approved course of schooling or training;

~~(h)~~ (i) "Family assessments" means evaluation of the following: Work skills, prior work experience, employability, education and challenges to becoming self-sufficient such as mental health and physical health issues along with lack of transportation and child care;

~~(i)~~ (j) "Income" means money received by any member of an at-risk family which can be used at the discretion of the household to meet its basic needs: *Provided*, That income does not include:

(1) Supplemental security income paid to any member or members of the at-risk family;

(2) Earnings of minor children;

(3) Payments received from earned income tax credit or tax refunds;

(4) Earnings deposited in an individual development account approved by the department;

(5) Any educational grant or scholarship income regardless of source; or

(6) Any moneys specifically excluded from countable income by federal law;

(k) "Minor child head of household" means an emancipated minor under the age of eighteen years;

(l) "Nonrecipient parent" means an adult or adults excluded or disqualified by federal or state law from receiving cash assistance;

~~(j)~~ (m) "Personal responsibility contract" means a written agreement entered into by the department and a beneficiary for purposes of participation in the ~~WV~~ West Virginia ~~w~~Works ~~p~~Program;

~~(k)~~ (n) "Secretary" means the secretary of the state ~~d~~Department of ~~h~~Health and ~~h~~Human ~~r~~Resources;

~~(l)~~ (o) "Subsidized employment" means employment with earnings provided by an employer who receives a subsidy from the department for the creation and maintenance of the employment position;

~~(m)~~ (p) "Support services" includes, but is not limited to, the following services: Child care; ~~m~~Medicaid; transportation assistance; information and referral; resource development services which includes assisting families to receive child support and supplemental security income; family support services which includes parenting, budgeting and family planning; relocation assistance; and mentoring services;

(q) "Temporary assistance to needy families" is the federal program funded under Part A, Title IV of the Social Security Act, codified at 42 U. S. C. §601, et. seq.;

~~(n)~~ (r) "Transitional assistance" may include medical assistance, food stamp assistance, child care and supportive services as defined by the secretary and as funding permits;

(s) "Two-parent family" means two parents with a common child residing in the same household and included in a common West Virginia Works grant payment or, two parents with a common child residing in the same home and one or both of the parents are "work eligible individuals", as that term is defined in this section, but are excluded from the West Virginia Works payments unless the exclusion is due to an exemption as provided in section eight of this article.

~~(o)~~ (t) "Unsubsidized employment" means employment with earnings provided by an employer who does not receive a subsidy from the department for the creation and maintenance of the employment position;

(u) "Vocational educational training" means organized educational programs, not to exceed twelve months for any individual, that are directly related to the preparation of individuals for employment in current or emerging occupations requiring training other than a baccalaureate or advance degree;

~~(p)~~ (v) "Work" means unsubsidized employment, subsidized employment, work experience, community or personal development and education and training; ~~and~~

(w) "Work eligible individual" means an adult or minor child head-of-household receiving assistance under the West Virginia Works Program or a nonrecipient parent living with a child receiving the assistance; and

~~(q)~~ (x) "Work experience" means ~~unpaid structured work activities that are provided in an environment where performance expectations are similar to those existing in unsubsidized employment and provide training in occupational areas that can realistically be expected to lead to unsubsidized employment~~ a publically assisted work activity, including work associated with the refurbishing of publically assisted housing, performed in return for program benefits that provide general skills, training, knowledge and work habits necessary to obtain employment. This activity must be supervised daily and on an ongoing basis by an employer, work site sponsor or other responsible party.

§9-9-6. Program participation.

(a) Unless otherwise noted in this article, all adult beneficiaries of cash assistance and work eligible individuals shall participate in the ~~WV West Virginia wWorks pProgram~~ in accordance with the provisions of this article. The level of participation, services to be delivered and work requirements shall be defined through legislative rules established by the secretary.

(b) Any individual exempt under the provisions of section eight of this article may participate in the activities and programs offered through the ~~WV West Virginia wWorks pProgram~~.

(c) Support services other than cash assistance through the ~~WV West Virginia wWorks pProgram~~ may be provided to at-risk families to assist in meeting the work requirements or to eliminate the need for cash assistance.

(d) Cash assistance through the ~~WV West Virginia wWorks pProgram~~ may be provided to an at-risk family if the combined family income, as defined in ~~subsection (h)~~, section three of this article, is below the income test levels established by the department: ~~Provided, That,~~ subject to the following:

~~(1) a~~ (1) Any adult member of an at-risk family who receives supplemental security income shall be excluded from the benefit group: ~~Provided, however, That;~~

~~(2) w~~ (2) Within the limits of funds appropriated therefor, an at-risk family that includes a married man and woman and dependent children of either one or both may receive an additional cash assistance benefit in an amount of one hundred dollars or less: ~~Provided further, That;~~ and

~~(3) a~~ (3) An at-risk family shall receive an additional cash assistance benefit in the amount of twenty-five dollars regardless of the amount of child support collected in a month on behalf of a child or children of the at-risk family, as allowed by federal law.

§9-9-7. Work requirements.

(a) Unless otherwise exempted by the provisions of section eight of this article, the ~~WV West Virginia wWorks pProgram~~ shall require that anyone who possesses a high school diploma, or its equivalent, or anyone who is of the age of twenty years or more, to work or attend an educational or training program for at least the minimum number of hours per week required by federal law under the work participation rate requirements for all families in order to receive any form of cash assistance. Participation in any education

or training activity, as defined in section three of this article, shall be counted toward satisfaction of the work requirement imposed by this section to the extent permissible under federal law and regulation: *Provided*, That the participant demonstrates adequate progress toward completion of the program: ~~*Provided, however*, That participants who are enrolled in post-secondary courses leading to a two- or four-year degree may be required to engage in no more than ten hours per week of federally defined work activities, unless the department certifies that allowing education to count toward required work activities would affect the state's ability to meet federal work participation rates.~~ In accordance with federal law or regulation, the work, education and training requirements of this section are waived for any qualifying participant with a child under six years of age if the participant is unable to obtain appropriate and available child care services.

(b) The department and representatives of ~~all college and university systems of West Virginia~~ the Higher Education Policy Commission and the West Virginia Council for Community and Technical College Education shall develop and implement a plan to use and expand the programs available at the state's community and technical colleges, colleges and universities to assist beneficiaries or participants who are enrolled or wish to become enrolled in ~~two and four-year degree programs of post-secondary education~~ vocational-educational training not to exceed twelve months with respect to any individual to meet the work requirements of this section. Vocational-educational training shall be supervised daily and on an ongoing basis.

§9-9-8. Exemptions.

The secretary shall establish by rule categories of persons exempt, but the exemption applies only to the work requirements of the program: *Provided*, That a person who is exempt from the work requirements may nevertheless participate voluntarily in work activities. The categories of exemptions ~~shall include, but are not~~ are limited to, the following:

- ~~(a) A parent caring for a dependent child with a life-threatening illness;~~
- ~~(b) Individuals over the age of sixty years;~~
- ~~(c) Full-time students who are less than twenty years of age and are pursuing a high school diploma or its equivalent;~~
- ~~(d) Persons with a physical or mental incapacity or persons suffering from a temporary debilitating injury lasting more than thirty days, as defined by the secretary;~~
- ~~(e) Relatives providing in-home care for an individual who would otherwise be institutionalized; and~~
- ~~(f) Any beneficiary who has a child in his or her at-risk family which has not attained twelve months of age, for a period of six months, and for a period of six months upon the birth of any additional child: *Provided*, That no more than one beneficiary in an at-risk family may be exempt at the same time.~~

(1) Undocumented aliens and aliens under the five-year ban;

(2) Parents, or at state option on a case-by-case basis, anyone receiving supplemental security income;

(3) A parent who is providing medically necessary care for a disabled family member who resides in the home and is not a full-time student;

(4) Minor parents who are not head of household (spouses of the head of household); and

(5) Grandparents and other nonparental caretakers.

§9-9-9. Personal responsibility contract.

(a) (1) Every eligible adult beneficiary and work eligible individual shall participate in a program orientation, family assessments and in the development, and subsequent revisions, of a personal responsibility contract. The contract shall be defined based on the program time limits, support services available, work requirements and family assessments.

(2) The participant's contract shall include the following requirements:

~~(A)~~ That the participant develop and maintain, with the appropriate health care provider, a schedule of preventive care for his or her dependent child or children, including routine examinations and immunizations;

~~(B)~~ Assurance of school attendance for school-age children under his or her care;

~~(C)~~ Assurance of properly supervised child care, including after-school care;

~~(D)~~ Establishment of paternity or active pursuit of child support, or both, if applicable and if considered necessary; and

~~(E)~~ Nutrition or other counseling, parenting or family- planning classes.

(3) If the participant is a teenage parent, he or she may work, but the contract shall include the requirements that the participant:

(A) Remain in an educational activity to complete high school, obtain a general equivalency diploma or obtain vocational training and make satisfactory scholastic progress;

(B) Attend parenting classes or participate in a mentorship program, or both, if appropriate; and

(C) Live at home with his or her parent or guardian or in some other adult-supervised arrangements if he or she is an unemancipated minor.

(4) If the participant is under the age of twenty years and does not have a high school diploma or its equivalent, the contract shall include requirements to participate in mandatory education or training which, if the participant is unemployed, may include a return to high school, with satisfactory scholastic progress required.

(b) In order to receive cash assistance, the participant shall enter into a personal responsibility contract. If the participant refuses to sign the personal responsibility contract, the participant and family members are ineligible to receive cash assistance: *Provided*, That a participant who alleges that the terms of a personal responsibility contract are inappropriate based on his or her individual circumstances may request and shall be provided a fair and impartial hearing in accordance with administrative procedures established by the department and due process of law. A participant who signs a personal responsibility contract or complies with a personal responsibility contract does not waive his or her right to request and receive a hearing under this subsection.

(c) Personal responsibility contracts shall be drafted by the department on a case-by-case basis; take into consideration the individual circumstances of each beneficiary; reviewed and reevaluated periodically, but not less than on an annual basis; and, in the discretion of the department, amended on a periodic basis.

§9-9-21. West Virginia Works Separate State College Program; eligibility; special revenue account.

~~Repealed.~~

~~Acts, 2003 Reg. Sess., Ch. 253.~~

(a) There is established the West Virginia Works Separate State College Program. The program shall provide funding for participants who are enrolled in post-secondary courses leading to a two- or four-year degree. There is created within the State Treasury a special revenue account to be known as the West Virginia Works Separate

State College Program Fund. Expenditures from the fund shall be for the purposes set forth in this section and are not authorized from collections but are to be made only in accordance with appropriations by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code. Necessary expenditures include wage reimbursements to participating employers, temporary assistance to needy families, payments for support services, employment-related child care payments, transportation expenses and administrative costs directly associated with the operation of the program.

(b) All eligible adults attending post-secondary courses leading to a two- or four-year degree and who are not participating in vocational education training, as that term is defined in this article, shall be enrolled in the West Virginia Works Separate State College Program. Participants in the program shall not be required to engage in more than ten hours per week of federally defined work activities. The work, education and training requirements of this article are waived for any qualifying participant with a child under six years of age if the participant is unable to obtain appropriate and available child care services. All other requirements of West Virginia Works apply to program administration for adults enrolled in the program.

(c) The Department of Health and Human Resources shall work with the Higher Education Policy Commission, as set forth in article one-b, chapter eighteen-b of this code, and the Council for Community and Technical College Education, as set forth in article two-b, chapter eighteen-b of this code, to develop and implement a plan to use and expend funds for the programs available at the state's community and technical colleges and colleges and universities to assist participants who are enrolled, or wish to become enrolled, in two- and four-year degree programs of post-secondary education to meet the work requirements of this article.

§9-9-22. West Virginia Works Separate State Two-Parent Families Program.

(a) There is established the West Virginia Works Separate State Two-Parent Families Program. The program shall provide funding for participants who are a two-parent family as that term is defined in this article. There is created within the State Treasury a special revenue account to be known as the West Virginia Works Separate State Two-Parent Program Fund. Expenditures from the fund shall be for the purposes set forth in this section and are not authorized from collections but are to be made only in accordance with appropriations by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code. Necessary expenditures include wage reimbursements to participating employers, temporary assistance to needy families, payments for support services, employment-related child care payments, transportation expenses and administrative costs directly associated with the operation of the program.

(b) All eligible two parent families, as that term is defined in this article, shall enroll in the West Virginia Works Separate State Two-Parent Families Program. All requirements of West Virginia Works shall apply to program administration for two-parent families enrolled in the program.

Senate Bill 541

Effective Date: Passed March 10, 2007; to take effect July 1, 2007

Signed by Governor: April 4, 2007

Code Reference: Adds §11-1C-5b, §11-21-23 and §18-9A-2a;
Amends §11-8-6f, §18-9A-2, §18-9A-11 and §18-9A-15

Title: Relating to public school finance; requiring local share to be calculated assuming properties are being assessed at sixty percent of market value; increasing the limit of revenue generated by the regular school board levy; amending "growth county" definition and clarifying what new property values to include for the purposes of the Growth County School Facilities Act; increasing state aid to counties by reducing the percentage used to calculate levies for general current expense purposes subject to exception; providing for a refundable property tax credit for real property taxes paid in excess of a certain percent of income; requiring that a library funding obligation created by special act be paid from certain funds; limiting a library funding obligation; allowing, under certain conditions, a transfer of library funding obligation so that the obligation is paid from excess levy revenues; voiding the library funding obligation under certain conditions; and providing extraordinary sustained increased enrollment impact supplement

Major Provisions:

- Reduces the local share percentage from 98% to **94%** for the 2007-08 year
- Reduces further the local share percentage from 94% to **90%** for the 2008-09 year
- Imposes the requirement that beginning with the 2009-10 year, the local share percentage will be **98%** for any county that is not assessing property at least at 54% of market value
- States that the indicator to be used for determining the percent of market value that properties are being assessed at is the median ratio of the assessed values to actual selling prices in the assessment ratio study applicable to the immediate preceding year
- Provides that, effective beginning with the 2013-14 year, the local share is to be computed based on a report of total

assessed values provided by the state tax commissioner rather than the certificates of assessed valuation issued by the county assessors

- States that it is the intent of the Legislature that local share be calculated on the assumption that the assessed values of the types of property included in the assessment ratio study are assessed at 60% of market value; provides that if the sales ratio study indicates that assessments are within 10% of 60% of market value (54% to 66%), assessments will be considered to be at 60%
- Increases the threshold at which the Legislature must reduce the regular school levy rate from 1% growth in the projected regular levy gross tax collections to a 2% growth, exclusive of new property and improvements to existing property
- Revises the definition of net enrollment used in determining the county boards that are eligible for funding under the Growth Counties Facilities Act by removing the exclusion of “kindergarten students less than five years of age without an individualized education program” from the definition
- Provides for a refundable credit for real property taxes paid in excess of four percent of adjusted gross income; the credit is not to be paid if less than \$10 and is not to exceed \$1,000
- Provides that any funding obligation that a county board may have for the support of their public libraries from their regular levy as a result of a special act of the Legislature is to be paid from that portion of the regular levy which exceeds the portion determined to be local share
- Provides that if the library funding obligation is greater than the amount available in excess of the county’s local share, the obligation created by the special is reduced to the amount which is available
- Provides that the county boards with special acts for the support of their public libraries may choose to transfer the library obligation from the regular levy to an excess levy, subject to the following:
 - o The library funding obligation shall remain an obligation of the regular levy until after a vote on the excess levy occurs;
 - o The obligation shall be included in the same amount in the excess levy
 - o Regardless of whether or not the excess levy passes,

effective the fiscal year after the year in which the excess levy vote occurs, the county board's obligation on its regular levy revenues becomes void;

- Nothing in this section prohibits a county board from funding its public library voluntarily.

- Provides for an additional allowance for increased enrollment under the Public School Support Program for the county boards whose three-year average growth in net enrollment is 2% or more and states that the additional allowance is to be 25% of the state average per pupil state aid multiplied by the increase in the county's net enrollment

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FOR

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 541

(Senators Plymale and Edgell, *original sponsors*)

[Passed March 10, 2007; to take effect July 1, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-1C-5b; to amend and reenact §11-8-6f of said code; to amend said code by adding thereto a new section, designated §11-21-23; to amend and reenact §18-9A-2, §18-9A-11 and §18-9A-15 of said code; and to amend said code by adding thereto a new section, designated §18-9A-2a, all relating to public school finance; requiring local share to be calculated assuming properties are being assessed at sixty percent of market value; increasing the limit on revenue generated by the regular school board levy; amending "growth county" definition and clarifying what new property values to include for the purposes of the Growth County School Facilities Act; increasing state aid to counties by reducing the percentage used to calculate levies for general current expense purposes subject to exception; providing for a refundable property tax credit for real property taxes paid in excess of a certain percent of income; requiring that a library funding obligation created by special act be paid from certain funds; limiting a library funding obligation; allowing, under certain conditions, a transfer of the library funding obligation so that the obligation is paid from excess levy revenues; voiding the library funding obligation under certain conditions; and providing extraordinary sustained increased enrollment impact supplement.

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 §11-1C-5b; that §11-8-6f of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §11-21-23; that §18-9A-2, §18-9A-11 and §18-9A-15 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18-9A-2a, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-5b. Assessment for purpose of calculating local share.

(a) This section is effective the first day of July, two thousand thirteen.

(b) The Tax Commissioner shall calculate the total assessed values for the purpose of calculating local share for each county each year pursuant to this section and report the

total assessed values to the State Board of Education on or before the first day of December of each year.

(c) To provide for assessors to assess at sixty percent of market value, it is the intent of the Legislature that local share, as set forth in section eleven, article nine-a, chapter eighteen of this code, be calculated assuming that the types of property included in the assessment ratio study in each county are assessed at a level in which the assessment ratio study indicates would be sixty percent of market value.

(d) For each of Classes II, III and IV as set forth in section five, article eight of this chapter, all real property of the type that is or would be included in the assessment ratio study if sold is assumed for the purpose of calculating local share to be assessed at the amount the property would be assessed at if all the property in the class were adjusted under the assumption that, using a ratio of sixty percent, all the property were under or over assessed to the same extent as that property included in the assessment ratio study so that using the assessment ratio study as an indicator all the property in the class would be assessed at the ratio of sixty percent of market value: *Provided*, That if the sales ratio analysis indicates that assessments are within ten percent of sixty percent of market value, assessments are considered to be sixty percent of market value for the purposes of this section.

(e) The amount of the assumed assessed values determined pursuant to subsection (d) of this section shall be added to the actual assessed values of personal property, farmland, managed timberland, public utility property or any other centrally assessed property provided in paragraphs (A), (B), (C) and (D), subdivision (2), subsection (a), section five of this article and the sum of these values is the total assessed value for the purpose of calculating local share.

ARTICLE 8. LEVIES.

§11-8-6f. ~~Effect on r~~Regular school board levy rate when appraisal results in tax increase; creation and implementation of gGrowth eCounty sSchool fFacilities aAct; creation of gGrowth eCounty sSchool fFacilities aAct fFund.

(a) Notwithstanding any other provision of law, where any annual appraisal, triennial appraisal or general valuation of property would produce a statewide aggregate assessment that would cause an increase of ~~one~~ two percent or more in the total property tax revenues that would be realized were the then current regular levy rates of the county boards of education to be imposed, the rate of levy for county boards of education shall be reduced uniformly statewide and proportionately for all classes of property for the forthcoming tax year so as to cause the rate of levy to produce no more than one hundred ~~one~~ two percent of the previous year's projected statewide aggregate property tax revenues from extending the county board of education levy rate, unless subsection (b) of this section is complied with. The reduced rates of levy shall be calculated in the following manner: (1) The total assessed value of each class of property as it is defined by section five, of this ~~article eight of this chapter~~ for the assessment period just concluded shall be reduced by deducting the total assessed value of newly created properties not assessed in the previous year's tax book for each class of property; (2) the resulting net assessed value of Class I property shall be multiplied by .01; the value of Class II by .02; and the values of Classes III and IV, each by .04; (3) total the current year's property tax revenue resulting from regular levies for the boards of education throughout this state and multiply the resulting sum by one hundred ~~one~~ two percent: *Provided*, That the one hundred ~~one~~ two percent figure shall be increased by the amount the boards of education's increased levy provided for in subsection (b), section eight, article one-c of this chapter; (4) divide the total regular levy

tax revenues, thus increased in subdivision (3); of this subsection, by the total weighted net assessed value as calculated in subdivision (2) of this subsection and multiply the resulting product by one hundred; the resulting number is the Class I regular levy rate, stated as cents-per-one hundred dollars of assessed value; and (5) the Class II rate is two times the Class I rate; Classes III and IV, four times the Class I rate as calculated in the preceding subdivision.

An additional appraisal or valuation due to new construction or improvements, including beginning recovery of natural resources, to existing real property or newly acquired personal property shall not be an annual appraisal or general valuation within the meaning of this section, nor shall the assessed value of the improvements be included in calculating the new tax levy for purposes of this section. Special levies shall not be included in any calculations under this section.

(b) After conducting a public hearing, the Legislature may, by act, increase the rate above the reduced rate required in subsection (a) of this section if an increase is determined to be necessary.

(c) The State Tax Commissioner shall report to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability by the first day of March of each year on the progress of assessors in each county in assessing properties at the constitutionally required sixty percent of market value and the effects of increasing the limit on the increase in total property tax revenues set forth in this section to two percent.

~~(e)~~ (d) Growth eCounty sSchool fFacilities aAct. -- Legislative findings. –

The Legislature finds and declares that there has been, overall, a statewide decline in enrollment in the public schools of this state; due to this decline, most public schools have ample space for students, teachers and administrators; however, some counties of this state have experienced significant increases in enrollment due to significant growth in those counties; that those counties experiencing significant increases do not have adequate facilities to accommodate students, teachers and administrators. Therefore, the Legislature finds that county ~~commissions~~ boards of education in those high-growth counties should have the authority to designate revenues generated from the application of the regular school board levy due to new construction or improvements placed in a gGrowth eCounty sSchool fFacilities aAct fFund be used for school facilities in those counties to promote the best interests of this state's students.

(1) For the purposes of this subsection, "growth county" means any county that has experienced an increase in second month net enrollment, ~~excluding kindergarten students less than five years of age without an individualized education program,~~ of fifty or more during any three of the last five years, as determined by the State dDepartment of eEducation.

(2) The provisions of this subsection shall only apply to any growth county, as defined in subdivision (1) of this subsection, that, by resolution of its county board of education, chooses to use the provisions of this subsection.

(3) For any growth county, as defined in subdivision (1) of this subsection, that adopts a resolution choosing to use the provisions of this subsection, pursuant to subdivision (2) of this subsection, assessed values resulting from additional appraisal or valuation due to new construction or improvements, ~~including beginning recovery of natural resources,~~ to existing real property ~~or newly acquired personal property,~~ shall be designated as new property values and identified by the county assessor. The statewide regular school board levy rate as established by the Legislature shall be applied to the assessed value designated as new property values and the resulting property tax

revenues collected from application of the regular school board levy rate shall be placed in a separate account, designated as the growth eCounty sSchool fFacilities act fund. Revenues deposited in the growth eCounty sSchool fFacilities act fund shall be appropriated by the county board of education for construction, maintenance or repair of school facilities. Revenues in the fund may be carried over for an indefinite length of time and may be used as matching funds for the purpose of obtaining funds from the sSchool building authority or for the payment of bonded indebtedness incurred for school facilities. For any growth county choosing to use the provisions of this subsection, Estimated school board revenues generated from application of the regular school board levy rate to new property values are not to be considered as local funds for purposes of the computation of local share under the provisions of section eleven, article nine-a, chapter eighteen of this code.

~~(d)~~ (e) This section, as amended during the legislative session in the year two thousand four, shall be effective as to any regular levy rate imposed for the county boards of education for taxes due and payable on or after the first day of July, two thousand four. If any provision of this section is held invalid, the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or its application and to this end the provisions of this section are declared to be severable.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-23. Refundable credit for real property taxes paid in excess of four percent of income.

~~Reserved for future use.~~

(a) For the tax years beginning on or after the first day of January, two thousand eight, any homeowner living in his or her homestead shall be allowed a refundable credit against the taxes imposed by this article equal to the amount of real property taxes paid in excess of four percent of their income. If the refundable credit provided in this section exceeds the amount of taxes imposed by this article, the State Department of Revenue shall refund that amount to the homeowner.

(b) Due to the administrative cost of processing, the refundable credit authorized by this section may not be refunded if less than ten dollars.

(c) The credit for each property tax year shall be claimed by filing a claim for refund within twelve months after the real property taxes are paid on the homestead.

(d) For the purposes of this section:

(1) "Gross household income" is defined as federal adjusted gross income plus the sum of the following:

(A) Modifications in subsection (b), section twelve of this article increasing federal adjusted gross income;

(B) Federal tax-exempt interest reported on federal tax return;

(C) Workers' compensation and loss of earnings insurance; and

(D) Nontaxable social security benefits; and

(2) For the tax years beginning before the first day January, two thousand eight, "real property taxes paid" means the aggregate of regular levies, excess levies and bond levies extended against the homestead that are paid during the calendar year and determined after any application of any discount for early payment of taxes but before application of any penalty or interest for late payment of property taxes for property tax years that begin on or after the first day of January, two thousand eight.

(e) A homeowner is eligible to benefit from this section or section twenty-one of this article, whichever section provides the most benefit as determined by the homeowner.

No homeowner may receive benefits under both this section and section twenty-one of this article during the same taxable year. Nothing in this section denies those entitled to the homestead exemption provided in section three, article six-b of this chapter.
(f) No homeowner may receive a refundable tax credit imposed by this article in excess of one thousand dollars. This amount shall be reviewed annually by the Legislature to determine if an adjustment is necessary.

CHAPTER 18. EDUCATION.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-2. Definitions.

For the purpose of this article:

(a) "State board" means the West Virginia Board of Education.

(b) "County board" or "board" means a county board of education.

(c) "Professional salaries" means the state legally mandated salaries of the professional educators as provided in article four, chapter eighteen-a of this code.

(d) "Professional educator" shall be synonymous with and shall have the same meaning as "teacher" as defined in section one, article one, ~~chapter eighteen~~ of this ~~code~~ chapter.

(e) "Professional instructional personnel" means a professional educator whose regular duty is as that of a classroom teacher, librarian, counselor, attendance director, school psychologist or school nurse with a bachelor's degree and who is licensed by the West Virginia Board of Examiners for Registered Professional Nurses. A professional educator having both instructional and administrative or other duties shall be included as professional instructional personnel for that ratio of the school day for which he or she is assigned and serves on a regular full-time basis in appropriate instruction, library, counseling, attendance, psychologist or nursing duties.

(f) "Service personnel salaries" shall mean the state legally mandated salaries for service personnel as provided in section eight-a, article four, chapter eighteen-a of this code.

(g) "Service personnel" shall mean all personnel as provided for in section eight, article four, chapter eighteen-a of this code. For the purpose of computations under this article of ratios of service personnel to adjusted enrollment, a service employee shall be counted as that number found by dividing his or her number of employment days in a fiscal year by two hundred: *Provided*, That the computation for any such service person employed for three and one-half hours or less per day as provided in section eight-a, article four, chapter eighteen-a of this code shall be calculated as one-half an employment day.

(h) "Net enrollment" means the number of pupils enrolled in special education programs, kindergarten programs and grades one to twelve, inclusive, of the public schools of the county. Commencing with the school year beginning on the first day of July, one thousand nine hundred eighty-eight, net enrollment further shall include adults enrolled in regular secondary vocational programs existing as of the effective date of this section, subject to the following: *Provided*, That

(1) Net enrollment shall include no more than one thousand such of those adults counted on the basis of full-time equivalency and apportioned annually to each county in proportion to the adults participating in regular secondary vocational programs in the prior year counted on the basis of full-time equivalency: ~~*Provided, however, That;*~~ and

(2) Net enrollment does not include any adult charged ~~no~~ tuition or special fees beyond that required of the regular secondary vocational student ~~is charged for such adult~~ students.

~~(i) "Adjusted enrollment" means the net enrollment plus twice the number of pupils enrolled for special education. Commencing with the school year beginning on the first day of July, one thousand nine hundred ninety, adjusted enrollment means the net enrollment plus twice the number of pupils enrolled in special education, including gifted pupils in grades one through eight and exceptional gifted, pupils in grades nine through twelve, plus the number of pupils in grades nine through twelve enrolled for honors and advanced placement programs, plus the number of pupils enrolled on the first day of July, one thousand nine hundred eighty-nine, in the gifted program in grades nine through twelve: Provided, That commencing with the school year beginning on the first day of July, one thousand nine hundred ninety, subject to the following:~~

~~(1) No more than four percent of net enrollment of grades one through eight may be counted as enrolled in gifted education and no more than six percent of net enrollment of grades nine through twelve may be counted as enrolled in gifted education, exceptional gifted education (subject to the limitation set forth in section one, article twenty of this chapter) and honors and advanced placement programs for the purpose of determining adjusted enrollment within a county: Provided, however, That:~~

~~(2) Nothing herein shall be construed to limit the number of students who may actually enroll in gifted, exceptional gifted, honors or advanced placement education programs in any county: Provided further, That until the school year beginning on the first day of July, one thousand nine hundred ninety-two, the preceding percentage limitations shall not restrict the adjusted enrollment definition for a county to the extent that those limitations are exceeded by students enrolled in gifted education programs on the first day of July, one thousand nine hundred eighty-nine: And provided further, That:~~

~~(3) No pupil may be counted more than three times for the purpose of determining adjusted enrollment.;~~

~~(4) Such The enrollment shall be adjusted to the equivalent of the instructional term and in accordance with such the eligibility requirements and rules established by the state board.;~~ and

~~(5) No pupil shall be counted more than once by reason of transfer within the county or from another county within the state, and no pupil shall be counted who attends school in this state from another state.~~

~~(j) "Levies for general current expense purposes" means ninety-eight four percent of the levy rate for county boards of education calculated or set by the Legislature pursuant to the provisions of section six-f, article eight, chapter eleven of this code: Provided, That beginning the first day of July, two thousand eight, "levies for general current expense purposes" means ninety percent of the levy rate for county boards of education calculated or set by the Legislature pursuant to the provisions of section six-f, article eight, chapter eleven of this code: Provided, however, That effective the first day of July, two thousand ten, the definitions set forth in this subsection are subject to the provisions of section two-a of this article.~~

~~"Basic resources per pupil" for the state and the several counties means the total of (a) ninety-five percent of the property tax revenues computed at the levy rate for county boards of education calculated or set by the Legislature pursuant to the provisions of section six-f, article eight, chapter eleven of this code, , but excluding revenues from increased levies as provided in section ten, article X of the Constitution of West Virginia, and (b) basic state aid as provided in sections twelve and thirteen of this article, but excluding the foundation allowance to improve instructional programs as provided in section ten of this article, and excluding any funds appropriated for the purpose of achieving salary equity among county board employees, this total divided by the~~

~~number of students in adjusted enrollment: Provided, That beginning with the school year commencing on the first day of July, one thousand nine hundred ninety-one, and thereafter, the foundation allowance for transportation costs as provided in section seven of this article shall also be excluded and the total shall be divided by the number of students in net enrollment: Provided, however, That any year's allocations to the counties of the eighty percent portion of the foundation allowance to improve instructional programs, as provided in section ten of this article, shall be determined on the basis of the immediately preceding school year's basic resources per pupil.~~

§18-9A-2a. Definition of levies for general current expense purposes.

(a) For the purposes of this section only, "property" means only Classes II, III and IV properties exclusive of natural resources property as defined in section ten, article one-c, chapter eleven of this code, personal property, farmland, managed timberland, public utility property or any other centrally assessed property provided in paragraphs (A), (B), (C) and (D), subdivision (2), subsection (a), section five, article one-c, chapter eleven of this code: *Provided*, That nothing in this subsection may be construed to require that levies for general current expense purposes be applied only to those properties that are included in this definition.

(b) For the purposes of this section only, the median ratio of the assessed values to actual selling prices in the assessment ratio study applicable to the immediately preceding fiscal year shall be used as the indicator to determine the percentage market value that properties are being assessed at.

(c) Notwithstanding any other provision of this section or section two of this article, effective the first day of July, two thousand ten, for any county that is not assessing property at least at fifty-four percent of market value, "levies for general current expense purposes" means ninety-eight percent of the levy rate for county boards of education set by the Legislature pursuant to section six-f, article eight, chapter eleven of this code.

(d) Any county that receives additional state aid due to its using a percentage less than ninety-eight percent in the calculation of levies for general current expense purposes, shall report to the state board how the additional state aid was used. The state board shall compile the reports from all the county boards into a single report, and shall report to the Legislative Oversight Commission on Education Accountability how the county boards used this additional state aid. The report shall be made annually as soon as practical after the end of each fiscal year.

§18-9A-11. Computation of local share; appraisal and assessment of property; public library support.

(a) On the basis of each county's certificates of valuation as to all classes of property as determined and published by the assessors pursuant to section six, article three, chapter eleven of this code for the next ensuing fiscal year in reliance upon the assessed values annually developed by each county assessor pursuant to the provisions of articles one-c and three of said chapter, the state board shall for each county compute by application of the levies for general current expense purposes, as defined in section two of this article, the amount of revenue which the levies would produce if levied upon one hundred percent of the assessed value of each of the several classes of property contained in the report or revised report of the value, made to it by the Tax Commissioner as follows:

(1) The state board shall first take ninety-five percent of the amount ascertained by applying these rates to the total assessed public utility valuation in each classification of property in the county.

(2) The state board shall then apply these rates to the assessed taxable value of other property in each classification in the county as determined by the ~~†Tax e~~Commissioner and shall deduct therefrom five percent as an allowance for the usual losses in collections due to discounts, exonerations, delinquencies and the like. All of the amount so determined shall be added to the ninety-five percent of public utility taxes computed as provided in subdivision (1) of this subsection and this total shall be further reduced by the amount due each county assessor's office pursuant to the provisions of section eight, article one-c, chapter eleven of this code and this amount shall be the local share of the particular county.

As to any estimations or preliminary computations of local share ~~that may be~~ required prior to the report to the Legislature by the ~~†Tax e~~Commissioner, the ~~state board of education~~ shall use the most recent projections or estimations that may be available from the ~~†Tax d~~Department for that purpose.

(b) Commencing with the two thousand thirteen fiscal year and each fiscal year thereafter, subsection (a) of this section is void and local share shall be calculated in accordance with the following:

(1) The state board shall for each county compute by application of the levies for general current expense purposes, as defined in sections two and two-a of this article, the amount of revenue which the levies would produce if levied upon one hundred percent of the assessed value calculated pursuant to section five-b, article one-c, chapter eleven of this code;

(2) Five percent shall be deducted from the revenue calculated pursuant to subdivision (1) of this subsection as an allowance for the usual losses in collections due to discounts, exonerations, delinquencies and the like; and

(3) The amount calculated in subdivision (2) of this subsection shall further be reduced by the sum of money due each assessor's office pursuant to the provisions of section eight, article one-c, chapter eleven of this code and this reduced amount shall be the local share of the particular county.

~~(b)~~ (c) Whenever in any year a county assessor or a county commission shall fail or refuse to comply with the provisions of this section in setting the valuations of property for assessment purposes in any class or classes of property in the county, the ~~s~~State ~~†Tax e~~Commissioner shall review the valuations for assessment purposes made by the county assessor and the county commission and shall direct the county assessor and the county commission to make corrections in the valuations as necessary so that they shall comply with the requirements of chapter eleven of this code and this section and the ~~†Tax e~~Commissioner shall enter the county and fix the assessments at the required ratios. Refusal of the assessor or the county commission to make the corrections constitutes grounds for removal from office.

~~(e)~~ (d) For the purposes of any computation made in accordance with the provisions of this section, in any taxing unit in which tax increment financing is in effect pursuant to the provisions of article eleven-b, chapter seven of this code, the assessed value of a related private project shall be the base-assessed value as defined in section two of said article.

~~(d)~~ (e) For purposes of any computation made in accordance with the provisions of this section, in any county where the county board of education has adopted a resolution choosing to use the provisions of the ~~g~~Growth ~~e~~County ~~s~~School ~~f~~Facilities ~~a~~Act set forth in section six-f, article eight, chapter eleven of this code, estimated school board revenues generated from application of the regular school board levy rate to new property values, as that term is designated in said section, may not be considered local

share funds and shall be subtracted before the computations in subdivisions (1) and (2), subsection (a) of this section or in subdivisions (2) and (3), subsection (b) of this section as applicable, are made.

(f) The Legislature finds that public school systems throughout the state provide support in varying degrees to public libraries through a variety of means including budgeted allocations, excess levy funds and portions of their regular school board levies as may be provided by special act. A number of public libraries are situated on the campuses of public schools and several are within public school buildings serving both the students and public patrons. To the extent that public schools recognize and choose to avail the resources of public libraries toward developing within their students such legally recognized elements of a thorough and efficient education as literacy, interests in literature, knowledge of government and the world around them and preparation for advanced academic training, work and citizenship, public libraries serve a legitimate school purpose and may do so economically. For the purposes of any computation made in accordance with the provisions of this section, the library funding obligation on the regular school board levies created by a special act shall be paid from that portion of the levies which exceeds the proportion determined to be local share. If the library funding obligation is greater than the amount available in excess of the county's local share, the obligation created by the special act is reduced to the amount which is available, notwithstanding any provisions of the special act to the contrary.

(g) It is the intent of the Legislature that whenever a provision of subsection (f) of this section is contrary to any special act of the Legislature which has been or may in the future be enacted by the Legislature that creates a library funding obligation on the regular school board levy of a county, subsection (f) of this section controls over the special act. Specifically, the special acts which are subject to said subsection upon the enactment of this section during the two thousand seven regular session of the Legislature include:

(1) Enrolled Senate Bill No. 11, passed on the twelfth day of February, one thousand nine hundred seventy, applicable to the Berkeley County Board of Education;

(2) Enrolled House Bill No. 1352, passed on the seventh day of April, one thousand nine hundred eighty-one, applicable to the Hardy County Board of Education;

(3) Enrolled Committee Substitute for House Bill No. 2833, passed on the fourteenth day of March, one thousand nine hundred eighty-seven, applicable to the Harrison County Board of Education;

(4) Enrolled House Bill No. 161, passed on the sixth day of March, one thousand nine hundred fifty-seven, applicable to the Kanawha County Board of Education;

(5) Enrolled Senate Bill No. 313, passed on the twelfth day of March, one thousand nine hundred thirty-seven, as amended by Enrolled House Bill No. 1074, passed on the eighth day of March, one thousand nine hundred sixty-seven, and as amended by Enrolled House Bill No. 1195, passed on the eighteenth day of January, one thousand nine hundred eighty-two, applicable to the Ohio County Board of Education;

(6) Enrolled House Bill No. 938, passed on the twenty-eighth day of February, one thousand nine hundred sixty-nine, applicable to the Raleigh County Board of Education;

(7) Enrolled House Bill No. 398, passed on the first day of March, one thousand nine hundred thirty-five, applicable to the Tyler County Board of Education;

(8) Enrolled Committee Substitute for Senate Bill No. 450, passed on the eleventh day of March, one thousand nine hundred ninety-four, applicable to the Upshur County Board of Education; and

(9) Enrolled House Bill No. 2994, passed on the thirteenth day of March, one thousand nine hundred eighty-seven, applicable to the Wood County Board of Education.

(h) Notwithstanding any provision of any special act set forth in subsection (g) of this section to the contrary, the county board of any county with a special act creating a library obligation out of the county's regular school levy revenues may transfer that library obligation so that it becomes an obligation of its excess levy revenues instead of its regular school levy revenues, subject to the following:

(1) If a county board chooses to transfer the library obligation pursuant to this subsection, the library funding obligation shall remain an obligation of the regular school levy revenues until after the fiscal year in which a vote on an excess levy occurs;

(2) If a county board chooses to transfer the library obligation pursuant to this subsection, the county board shall include the funding of the public library obligation in the same amount as its library funding obligation on its regular levy revenues as the purpose or one of the purposes for the excess levy to be voted on;

(3) If a county board chooses to transfer the library obligation pursuant to this subsection, regardless of whether or not the excess levy passes, effective the fiscal year after the fiscal year in which a vote on the excess levy occurs, a county's library obligation on its regular levy revenues is void notwithstanding any provision of the special acts set forth in subsection (g) of this section to the contrary; and

(4) Nothing in subdivision (3) of this subsection prohibits a county board from funding its public library obligation voluntarily.

§18-9A-15. Allowance for increased enrollment; extraordinary sustained increased enrollment impact supplement.

(a) To provide for the support of increased net enrollments in the counties in a school year over the net enrollments used in the computation of total state aid for that year, there shall be appropriated for that purpose from the ~~g~~General ~~r~~Revenue ~~f~~Fund an amount to be determined ~~in accordance with this section~~ as follows:

~~(b) (1) On or before the first day of September, two thousand five,~~ (b) (1) The State Board shall promulgate a rule pursuant to article three-b, chapter twenty-nine-a of this code that establishes an objective method for projecting the increase in net enrollment for each school district. The State Superintendent shall use the method prescribed by the rule to project the increase in net enrollment for each school district.

~~(c) (2) The State Superintendent shall multiply the average total state aid per net pupil by the sum of the projected increases in net enrollment for all school districts and report this amount to the Governor for inclusion in his or her proposed budget to the Legislature. The Legislature shall appropriate to the West Virginia Department of Education the amount calculated by the State Superintendent and proposed by the Governor.~~

~~(d) (3) The State Superintendent shall calculate each school district's share of the appropriation by multiplying the projected increase in net enrollment for the school district by the average total state aid per net pupil and shall distribute sixty percent of each school district's share to the school district on or before the first day of September of each year. The State Superintendent shall make a second distribution of the remainder of the appropriation in accordance with ~~subsection~~ subdivision (e) (4) of this subsection.~~

~~(e) (4) After the first distribution pursuant to ~~subsection~~ subdivision (d) (3) of this subsection is made and after the actual increase in net enrollment is available, the State Superintendent shall compute the total actual amount to be allocated to each school district for the year. The total actual amount to be allocated to each school~~

district for the year is the actual increase in the school district's net enrollment multiplied by the average total state aid per net pupil. The ~~S~~state ~~S~~uperintendent shall make the second distribution to each school district in an amount determined so that the total amount distributed to the district for the year, in both the first and second distributions, equals the actual increase in net enrollment multiplied by the average total state aid per net pupil. The ~~S~~state ~~S~~uperintendent shall make the second distribution on or before the thirty-first day of December of each year: *Provided*, That if the amount distributed to a school district during the first distribution is greater than the total amount to which a district is entitled to receive for the year, the district shall refund the difference to the Department of Education prior to the thirtieth day of June of the fiscal year in which the excess distribution is made.

~~(f)~~ (5) If the amount of the appropriation for increased enrollment is not sufficient to provide payment in full for the total of these several allocations, each county allocation shall be reduced to an amount which is proportionate to the appropriation compared to the total of the several allocations and the allocations as thus adjusted shall be distributed to the counties as provided in this section: *Provided*, That the Governor shall request a supplemental appropriation at the next legislative session for the reduced amount.

(b) To help offset the budgetary impact of extraordinary and sustained increases in net enrollment in a county, there shall be included in the basic state aid of any county whose most recent three-year average growth in second month net enrollment is two percent or more, an amount equal to one fourth of the state average per pupil state aid multiplied by the increase in the county's second month net enrollment in the latest year.

~~(g)~~ (c) No provision of this section shall be construed to in any way affect the allocation of moneys for educational purposes to a county under other provisions of law.

Senate Bill 599

Effective Date: Passed March 10, 2007; in effective ninety days from passage (June 8, 2007)

Signed by Governor: April 4, 2007

Code Reference: Amends §18A-2-2; Adds §18A-2-5a

Title: Relating to employment of teachers and other school employees; eliminating the early notification payment for a classroom teacher who gives notice of resignation; authorizing a payment for early notification of retirement to employees other than classroom teachers under certain circumstances; and making certain technical changes

Major Provisions:

- Eliminates the early notification bonus for classroom teachers who resign from employment; leaves intact the \$500 early notification bonus for any classroom teacher who give written notification on or before February 1 of his or her retirement at the conclusion of the current school year

- Authorizes county boards to pay, entirely from local funds, a \$500 bonus to any professional employee who is not a classroom teacher or any service personnel who gives written notice on or before February 1 of his or her retirement with the board at the conclusion of the current school year

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 599

(Senators Plymale and Edgell, *original sponsors*)

[Passed March 10, 2007; in effect ninety days from passage.]

AN ACT to amend and reenact §18A-2-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §18A-2-5a, all relating to employment of teachers and other school employees; eliminating the early notification payment for a classroom teacher who gives notice of resignation; authorizing a payment for early notification of retirement to employees other than classroom teachers under certain circumstances; and making certain technical changes.

Be it enacted by the Legislature of West Virginia:

That §18A-2-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18A-2-5a, all to read as follows:

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof.

(a) Before entering upon their duties, all teachers shall execute a contract with their county boards of education, which contract shall state the salary to be paid and shall be in the form prescribed by the state superintendent of schools. ~~Every such~~ Each contract shall be signed by the teacher and by the president and secretary of the county board of education and ~~when so signed~~ shall be filed, together with the certificate of the teacher, by the secretary of the office of the county board.

(b) A teacher's contract, under this section, shall be for a term of not less than one nor more than three years, one of which shall be for completion of a beginning teacher internship pursuant to the provisions of section two-b, article three of this chapter, if applicable; ~~and if~~, after three years of such employment, the teacher who holds a professional certificate, based on at least a bachelor's degree, has met the qualifications for ~~the same~~ a bachelor's degree and the county board of education enter into a new contract of employment, it shall be a continuing contract: ~~Provided, That,~~ subject to the following:

(1) ~~a~~ Any teacher holding a valid certificate with less than a bachelor's degree who is employed in a county beyond the ~~said~~ three-year probationary period shall upon qualifying for ~~said~~ the professional certificate based upon a bachelor's degree, if reemployed, be granted continuing contract status: ~~Provided, however, That; and~~

(2) ~~a~~ A teacher holding continuing contract status with one county shall be granted continuing contract status with any other county upon completion of one year of acceptable employment if ~~such~~ the employment is during the next succeeding school

year or immediately following an approved leave of absence extending no more than one year.

(c) The continuing contract of any teacher shall remain in full force and effect except as modified by mutual consent of the school board and the teacher, unless and until terminated, subject to the following:

(1) A continuing contract may not be terminated except:

~~(4) (A)~~ By a majority vote of the full membership of the county board on or before the first Monday of April of the then current year, after written notice, served upon the teacher, return receipt requested, stating cause or causes and an opportunity to be heard at a meeting of the board prior to the board's action ~~thereon~~ on the termination issue; or

~~(2) (B)~~ ~~By~~ written resignation of the teacher before that date, to initiate termination of a continuing contract;

~~(2) Such~~ The termination shall take effect at the close of the school year in which the contract is ~~so~~ terminated: ~~Provided, That;~~

~~(3)~~ The contract may be terminated at any time by mutual consent of the school board and the teacher;

~~(4) and that t~~ This section shall does not affect the powers of the school board to suspend or dismiss a principal or teacher pursuant to section eight of this article: ~~Provided, however;~~

~~(5) that a~~ A continuing contract for any teacher holding a certificate valid for more than one year and in full force and effect during the school year one thousand nine hundred eighty- four and ~~--~~one thousand nine hundred eighty-five shall remain in full force and effect ~~Provided further, That;~~

~~(6) a~~ A continuing contract shall not operate to prevent a teacher's dismissal based upon the lack of need for the teacher's services pursuant to the provisions of law relating to the allocation to teachers and pupil-teacher ratios. The written notification of teachers being considered for dismissal for lack of need shall be limited to only those teachers whose consideration for dismissal is based upon known or expected circumstances which will require dismissal for lack of need. An employee who was not provided notice and an opportunity for a hearing pursuant to this subsection ~~(a) of this section~~ may not be included on the list. In case of such dismissal for lack of need, ~~the teachers so a~~ dismissed teacher shall be placed upon a preferred list in the order of their length of service with that board, ~~and.~~ No teacher shall be employed by the board until each qualified teacher upon the preferred list, in order, ~~shall have~~ has been offered the opportunity for reemployment in a position for which ~~they are~~ he or she is qualified: ~~And provided further, That he or she,~~ not including a teacher who has not accepted a teaching position elsewhere. ~~Such~~ The reemployment shall be upon a teacher's preexisting continuing contract and ~~shall have~~ has the same effect as though the contract had been suspended during the time the teacher was not employed.

(d) In the assignment of position or duties of a teacher under ~~said~~ a continuing contract, the board may provide for released time of a teacher for any special professional or governmental assignment without jeopardizing the contractual rights of ~~such~~ the teacher or any other rights, privileges or benefits under the provisions of this chapter. Released time shall be provided for any professional educator while serving as a member of the Legislature during any duly constituted session of that body and its interim and statutory committees and commissions without jeopardizing his or her contractual rights or any other rights, privileges, benefits or accrual of experience for placement on the state

minimum salary schedule in the following school year under the provisions of this chapter, board policy and law.

(e) Any teacher who fails to fulfill his or her contract with the board, unless prevented from ~~so~~ doing so by personal illness or other just cause or unless released from ~~such~~ his or her contract by the board, or who violates any lawful provision ~~thereof~~ of the contract, shall be disqualified to teach in any other public school in the state for a period of the next ensuing school year and the ~~s~~State ~~d~~Department of ~~e~~Education or board may hold all papers and credentials of ~~such~~ the teacher on file for a period of one year for ~~such~~ the violation: *Provided*, That marriage of a teacher shall not be considered a failure to fulfill, or violation of, the contract.

(f) Any classroom teacher, as defined in section one, article one of this chapter, who desires to resign employment with a county board ~~of education~~ or request a leave of absence, ~~such~~ the resignation or leave of absence to become effective on or before the fifteenth day of July of the same year and after completion of the employment term, may do so at any time during the school year by written notification ~~thereof~~ of the resignation or leave of absence and any ~~such~~ notification received by a county board ~~of education~~ shall automatically extend ~~such~~ the teacher's public employee insurance coverage until the thirty-first day of August of the same year.

(g) Any classroom teacher who gives written notice to the county board ~~of education~~ on or before the first day of February of the school year of their ~~resignation or~~ retirement from employment with the board ~~of education~~ at the conclusion of the school year shall be paid five hundred dollars from the "Early Notification of Retirement" line item established for the ~~d~~Department of ~~e~~Education for this purpose, subject to appropriation by the Legislature. If the appropriations to the ~~d~~Department of ~~e~~Education for this purpose are insufficient to compensate all applicable teachers, the ~~d~~Department of ~~e~~Education shall request a supplemental appropriation in an amount sufficient to compensate all such teachers. Additionally, if funds are still insufficient to compensate all applicable teachers, the priority of payment is for teachers who give written notice the earliest. This payment shall not be counted as part of the final average salary for the purpose of calculating retirement.

§18A-2-5a. Authorizing payment for notification of retirement.

Each county board is authorized to pay, entirely from local funds, five hundred dollars or less to any service employee, or to any professional employee who is not a classroom teacher, who gives written notice to the county board on or before the first day of February of the school year of his or her retirement from employment with the board at the conclusion of the school year.

Senate Bill 603

Effective Date: Passed March 10, 2007; to take effect July 1, 2007

Signed by Governor: April 4, 2007

Code Reference: Amend §18-2E-7, §18-9A-10

Title: Providing for twenty-first century instruction and learning in all public schools

Major Provisions:

- Amends and reenacts state code relating to programs previously known as the Basic Skills/Computer Education Program and the SUCCESS Initiative
- Establishes a 21st Century Tools for 21st Century Schools Technology Initiative
- Identifies several legislative findings relative to technology use in West Virginia schools, including that teachers and students must have equitable access to twenty-first century technology tools and resources
- The technology services are to be provided to students in grades pre-kindergarten through twelve
- Funds shall be allocated equitably to county school systems, based upon approved plans; expenditures shall be made pursuant to the provisions of article three, chapter five-a of state code
- Appropriate uses for the technology are identified
- The resources to be used are to be included in a West Virginia 21st Century Strategic Technology Learning Plan developed by the West Virginia Department of Education with stakeholder input
- County and school technology plans, as components of the electronic strategic improvement plans, are to align with the goals and objectives of the West Virginia 21st Century Strategic Technology Learning Plan
- Provisions to be addressed by the West Virginia 21st Century Strategic Technology Learning Plan are identified

- Specifies that the allowance for Step 7 under the Public School Support Program is to be 15% of the increase in local share added to the amount appropriated for Step 7 for the previous year

- Specifies that the allowance for 21st Century technology initiatives is to be 15% of the increase in local share added to the amount appropriated for technology initiatives for the previous year

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 603

(Senators Plymale, Edgell, Unger, Jenkins, McCabe, Foster and Hunter, *original sponsors*)

[Passed March 10, 2007; to take effect July 1, 2007.]

AN ACT to amend and reenact §18-2E-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18-9A-10 of said code, all relating to establishing a 21st Century Tools for 21st Century Schools Technology Initiative to replace and enhance current technology programs and provide formula funding therefor; findings; requiring a West Virginia 21st Century Strategic Technology Learning Plan and setting forth specific areas it should address; requiring that the provision of technologies and services to students and teachers be based on a plan aligned with the goals of the West Virginia 21st Century Strategic Technology Learning Plan; allocation of technology funds; purchasing; use of technology and technology infrastructure; including funding stream in public school support plan from proportion of growth in local share; changing plans used for the allocation of funds to improve instructional programs; and including employment of technology integration specialists as justification prior to authorization to expend certain funds.

Be it enacted by the Legislature of West Virginia:

That §18-2E-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §18-9A-10 of said code be amended and reenacted, all to read as follows:

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-7. Providing for high quality basic skills development and remediation twenty-first century instruction and learning in all public schools.

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

~~Computer hardware and software shall be purchased in accordance with the education technology strategic plan adopted pursuant to article two-j of this chapter.~~

~~The state board shall develop and provide a program to ensure adequate teacher training, continuous teacher support and updates. The program shall be consistent with the education technology strategic plan adopted pursuant to article two-j of this chapter. To the extent practicable, the technology shall be used to enhance student access to learning tools and resources outside of the normal school day, such as: Before and after school; in the evenings, on weekends and during vacations; and for student use for homework, remedial work, independent learning, career planning and adult basic education.~~

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

- ~~(1) Attaining basic computer skills such as word processing, spreadsheets, data bases, internet usage, telecommunications and graphic presentations;~~
- ~~(2) Learning critical thinking and decision-making skills;~~
- ~~(3) Applying academic knowledge in real life situations through simulated workplace programs;~~
- ~~(4) Understanding the modern workplace environment, particularly in remote areas of the state, by bringing the workplace to the school;~~
- ~~(5) Making informed career decisions based upon information on labor markets and the skills required for success in various occupations;~~
- ~~(6) Gaining access to labor markets and job placement;~~
- ~~(7) Obtaining information and assistance about college and other post-secondary education opportunities and financial aid; and~~
- ~~(8) Other uses for acquiring the necessary skills and information to make a smooth transition from high school to college, other post-secondary education or gainful employment.~~

~~Therefore, the state board also shall address the findings of this subsection regarding the continued implementation of computer hardware and software and technical planning support in the middle schools, junior high schools and high schools of the state in the education technology strategic plan required by article two-j of this chapter.~~

~~(1) The knowledge and skills children need to succeed in the twenty-first century are changing dramatically and that West Virginia students must develop proficiency in twenty-first century content, technology tools and learning skills to succeed and prosper in life, in school and on the job;~~

~~(2) Students must be equipped to live in a multitasking, multifaceted, technology-driven world;~~

~~(3) The provision of twenty-first century technologies and software resources in grades prekindergarten through twelve is necessary to meet the goal that high school graduates will be prepared fully for college, other post-secondary education or gainful employment;~~

~~(4) This goal reflects a fundamental belief that the youth of the state exit the system equipped with the skills, competencies and attributes necessary to succeed, to continue learning throughout their lifetimes and to attain self-sufficiency;~~

(5) To promote twenty-first century learning, teachers must be competent in twenty-first century content and learning skills and must be equipped to fully integrate technology to transform instructional practice and to support twenty-first century skills acquisition;

(6) For students to learn twenty-first century skills, students and teachers must have equitable access to high quality, twenty-first century technology tools and resources;

(7) When aligned with standards and curriculum, technology- based assessments can be a powerful tool for teachers; and

(8) Teachers must understand how to use technology to create classroom assessments for accurate, timely measurements of student proficiency in attainment of academic content and twenty-first century skills.

(b) The state board shall ensure that the resources to be used to provide technology services to students in grades prekindergarten through twelve are included in a West Virginia 21st Century Strategic Technology Learning Plan to be developed by the Department of Education as an integral component of the county and school electronic strategic improvement plans as required in section five of this article. The provision of technologies and services to students and teachers shall be based on a plan developed by each individual school team and aligned with the goals and objectives of the West Virginia 21st Century Strategic Technology Learning Plan. This plan shall be an integral component of the county and school electronic strategic improvement plans as required in section five of this article. Funds shall be allocated equitably to county school systems following peer review of the plans that includes providing necessary technical assistance prior to submission and allows timely review and approval by the West Virginia Department of Education. Technology tools, including hardware, software, network cabling, network electronics and related professional development, shall be purchased pursuant to the provisions of article three, chapter five-a of this code in the amount equal to anticipated revenues being appropriated and based on the approved county and school plans. County allocations that support this legislation shall adhere to state contract prices: *Provided*, That contingent upon approval of the county technology plan, counties that identify, within that plan, specific software or peripheral equipment not listed on the state contract, but necessary to support implementation of twenty-first century skills, may request the West Virginia Department of Education to secure state purchasing prices for those identified items. Total expenditure to purchase these additional items may not exceed ten percent of the annual county allocation. To the extent practicable, the technology shall be used:

(1) To maximize student access to learning tools and resources at all times including during regular school hours, before and after school or class, in the evenings, on weekends and holidays and for public education, noninstructional days and during vacations; and

(2) For student use for homework, remedial work, independent learning, career planning and adult basic education.

(c) The implementation of this section should provide a technology infrastructure capable of supporting multiple technology-based learning strategies designed to enable students to achieve at higher academic levels. The technology infrastructure should facilitate student development by addressing the following areas:

(1) Mastery of rigorous core academic subjects in grades prekindergarten through eight by providing software, other technology resources or both aligned with state standards in reading, mathematics, writing, science, social studies, twenty- first century learning skills and twenty-first century learning tools;

(2) Mastery of rigorous core academic subjects in grades nine through twelve by providing appropriate twenty-first century technology tools aligned with state standards for learning skills and technology tools;

(3) Attainment of twenty-first century skills outcomes for all students in the use of technology tools and learning skills;

(4) Proficiency in new, emerging twenty-first century content;

(5) Participation in relevant, contextual instruction that uses dynamic, real-world contexts that are engaging and meaningful for students, making learning relevant to life outside of school and bridging the gap between how students live and how they learn in school;

(6) Ability to use digital and emerging technologies to manage information, communicate effectively, think critically, solve problems, work productively as an individual and collaboratively as part of a team and demonstrate personal accountability and other self-directional skills;

(7) Providing students with information on post-secondary educational opportunities, financial aid and the skills and credentials required in various occupations that will help them better prepare for a successful transition following high school;

(8) Providing greater access to advanced and other curricular offerings than could be provided efficiently through traditional on-site delivery formats, including increasing student access to quality distance learning curricula and online distance education tools;

(9) Providing resources for teachers in differentiated instructional strategies, technology integration, sample lesson plans, curriculum resources and online staff development that enhance student achievement; and

(10) Providing resources to support basic skills acquisition and improvement at the above mastery and distinguished levels.

(d) Developed with input from appropriate stakeholder groups, the West Virginia 21st Century Strategic Technology Learning Plan shall be an integral component of the electronic strategic county and school improvement plans as required in section five of this article. The West Virginia 21st Century Strategic Technology Learning Plan shall be comprehensive and shall address, but not necessarily be limited to, the following provisions:

(1) Allocation of adequate resources to provide students with equitable access to twenty-first century technology tools, including instructional offerings and appropriate curriculum, assessment and technology integration resources aligned to both the content and rigor of state content standards as well as to learning skills and technology tools;

(2) Providing students and staff with equitable access to a technology infrastructure that supports the acquisition of twenty-first century skills, including the ability to access information, solve problems, communicate clearly, make informed decisions, acquire new knowledge, construct products, reports and systems and access online assessment systems;

(3) Inclusion of various technologies that enable and enhance the attainment of twenty-first century skills outcomes for all students;

(4) Collaboration with various partners, including parents, community organization, higher education, schools of education in colleges and universities, employers and content providers;

(5) Seeking of applicable federal government funds, philanthropic funds, other partnership funds or any combination of those types of funds to augment state

appropriations and encouraging the pursuit of funding through grants, gifts, donations or any other sources for uses related to education technology;

(6) Sufficient bandwidth to support teaching and learning and to provide satisfactorily for instructional management needs;

(7) Protection of the integrity and security of the network, as well as student and administrative workstations;

(8) Flexibility to adjust the plan based on developing technology, federal and state requirements and changing local school and county needs;

(9) Incorporation of findings based upon validation from research-based evaluation findings from previous West Virginia- based evaluation projects;

(10) Continuing study of emerging technologies for application in a twenty-first century learning environment and inclusion in the technology plan, as appropriate;

(11) An evaluation component to determine the effectiveness of the program and make recommendations for ongoing implementation;

(12) A program of embedded, sustained professional development for teachers that is strategically developed to support a twenty- first century education for all students and that aligns with state standards for technology, integrates twenty-first century skills into educational practice and supports the implementation of twenty-first century software, technology and assessment resources in the classroom;

(13) Providing for uniformity in technological hardware and software standards and procedures;

(14) The strategy for ensuring that the capabilities and capacities of the technology infrastructure is adequate for acceptable performance of the technology being implemented in the public schools;

(15) Providing for a comprehensive, statewide uniform, integrated education management and information system for data collection and reporting to the Department of Education as provided in section twenty-six, article two of this chapter and commonly referred to as the West Virginia Education Information System;

(16) Providing for an effective model for the distance delivery, virtual delivery or both types of delivery of instruction in subjects where there exists low student enrollment or a shortage of certified teachers or where the delivery method substantially improves the quality of an instructional program such as the West Virginia Virtual School;

(17) Providing a strategy to implement, support and maintain technology in the public schools;

(18) Providing a strategy to provide ongoing support and assistance to teachers in integrating technology into twenty-first century instruction such as with technology integration specialists;

(19) A method of allowing public education to take advantage of appropriate bulk purchasing abilities and to purchase from competitively bid contracts initiated through the southern regional education board educational technology cooperative and the America TelEdCommunications Alliance;

(20) Compliance with United States Department of Education regulations and Federal Communications Commission requirements for federal E-rate discounts; and

(21) Other provisions as considered appropriate, necessary or both to align with applicable guidelines, policies, rules, regulations and requirements of the West Virginia Legislature, the Board of Education and the Department of Education.

(e) Any state code and budget references to the Basic Skills/Computer Education Program and the SUCCESS Initiative will be understood to refer to the statewide

technology initiative referenced in this section, commonly referred to as the 21st Century Tools for 21st Century Schools Technology Initiative.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

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

~~(a) For each school year, beginning on the first day of July, one thousand nine hundred ninety-eight, and thereafter, the sum of the allocations shall be the amount appropriated by the Legislature for those purposes: The total allowance to improve instructional programs shall be the sum of the following:~~

~~(1) For instructional improvement in accordance with county and school electronic strategic improvement plans required by section five, article two-e of this chapter, an amount equal to fifteen percent of the increase in the local share amount for the next school year above any required allocation pursuant to section six-b of this article shall be added to the amount of the appropriation for this purpose for the immediately preceding school year. The sum of these amounts shall be distributed to the counties as follows:~~

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

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

~~(3) Up to twenty-five percent of this allocation may be used to employ professional educators and service personnel in counties after all applicable provisions of sections four and five of this article have been fully utilized.~~

~~Prior to the use of any funds from this section for personnel costs, the county board must receive authorization from the state superintendent of schools. The state superintendent shall require the district county board to demonstrate: (1) The need for the allocation; (2) efficiency and fiscal responsibility in staffing; ~~and~~ (3) sharing of services with adjoining counties and the regional educational service agency for that county in the use of the total local district board budget; and (4) employment of technology integration specialists to meet the needs for implementation of the West Virginia 21st Century Strategic Technology Learning Plan. ~~District County~~ boards shall make application for available funds for the next fiscal year by the first day of May of each year. On or before the first day of June, the state superintendent shall review all applications and notify applying district county boards of the distribution of the allocation. The funds shall be distributed during the fiscal year appropriate. The state superintendent shall require the county board to demonstrate the need for an allocation for personnel based upon the county's inability to meet the requirements of state law or state board policy: *Provided, That the funds available for personnel under this section may not be used to increase the total number of professional noninstructional personnel in the central office beyond four. The instructional improvement plan shall be made available for distribution to the public at the office of each affected county board;* plus~~

(2) For the purposes of the West Virginia 21st Century Strategic Technology Learning Plan provided for in section seven, article two-e of this chapter, an amount equal to fifteen percent of the increase in the local share amount for the next school year above any required allocation pursuant to section six-b of this article shall be added to the amount of the appropriation for this purpose for the immediately preceding school year. The sum of these amounts shall be allocated to the counties as provided in section seven, article two-e of this chapter to meet the objectives of the West Virginia 21st Century Strategic Technology Learning Plan; plus

(b) (3) An amount not less than the amount required to meet debt service requirements on any revenue bonds issued prior to the first day of January, one thousand nine hundred ninety-four, and the debt service requirements on any revenue bonds issued for the purpose of refunding revenue bonds issued prior to the first day of January, one thousand nine hundred ninety-four, shall be paid into the sSchool bBuilding eCapital iImprovements fFund created by section six, article nine-d of this chapter and shall be used solely for the purposes of that article. The sSchool bBuilding eCapital iImprovements fFund shall not be utilized to meet the debt services requirement on any revenue bonds or revenue refunding bonds for which moneys contained within the sSchool bBuilding dDebt sService fFund have been pledged for repayment pursuant to that section.

(b) When the school improvement bonds secured by funds from the sSchool bBuilding eCapital iImprovements fFund mature, the sState bBoard of eEducation shall annually deposit an amount equal to twenty-four million dollars from the funds allocated in this section into the sSchool eConstruction fFund created pursuant to the provisions of section six, article nine-d ~~chapter eighteen~~ of this ~~code~~ chapter to continue funding school facility construction and improvements.

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

Senate Bill 657

Effective Date: Passed March 10, 2007; to take effect July 1, 2007

Signed by Governor: April 4, 2007

Code Reference: Amends §18-2E-5, §29A-3B-9 and §29A-3B-10

Title: Relates to public education generally; standards, assessment and accountability for student performance and progress; requiring 21st Century Skills Initiative incorporation into standards; renaming unified improvement plans as strategic improvement plans; revising uniform statewide student assessment program; designating current annual performance measures as performance measures for the No Child Left Behind Act of 2001; adding state annual performance measures; providing additional category of school accreditation and renaming existing category; revising criteria for accreditation status; removing obsolete provisions; and allowing electronic filing of state board rules with the Legislative Oversight Commission on Education Accountability

Major Provisions:

- The purpose of this bill is to revise the standards, assessment, and accountability system to accommodate the higher order thinking and learning skills consistent with the state's 21st Century initiative. Additionally, the NCLB accountability requirements are separated from *school and school system accreditation*
- The assessment language defines a comprehensive statewide assessment program and the assessments that may be administered under the direction of the State Board of Education in grades 3-12. The assessment program is broadened to authorize a variety of formative assessments across the grade levels to support summative assessment, improve student achievement, and promote 21st century skills. Participation in K-2 assessment is determined by the Local School Improvement Council
- The annual performance measures used for the federal *No Child Left Behind Act* are separated from those required by *school and school system accreditation*. The *No Child Left Behind* grade levels for accountability purposes will be 3-8 and 11

- However, another level of accreditation status is added for schools in which the indicators may be determined by the State Board of Education. The bill defines “distinguished status” and renames “seriously impaired status” as “low performing status”

- Also, if schools/school systems achieve Adequate Yearly Progress (AYP), the school/school system would be eligible for full approval status. If school/school systems do not achieve Adequate Yearly Progress (AYP), the state accreditation process would be activated

ENROLLED

Senate Bill No. 657

(By Senators Plymale, Edgell, Unger, Stollings and McCabe)

[Passed March 10, 2007; to take effect July 1, 2007.]

AN ACT to amend and reenact §18-2E-5 of the Code of West Virginia, 1931, as amended; and to amend and reenact §29A-3B-9 and §29A-3B-10 of said code, all relating to public education generally; standards, assessment and accountability for student performance and progress; requiring 21st Century Skills Initiative incorporation into standards; renaming unified improvement plans as strategic improvement plans; revising uniform statewide student assessment program; providing annual performance measures for the No Child Left Behind Act of 2001; providing state annual performance measures; providing additional category of school accreditation and renaming existing category; revising criteria for accreditation status; providing for appeal of on-site findings and report to oversight commission; removing obsolete provisions; and allowing electronic filing of state board rules with the Legislative Oversight Commission on Education Accountability.

Be it enacted by the Legislature of West Virginia:

That §18-2E-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §29A-3B-9 and §29A-3B-10 of said code be amended and reenacted, all to read as follows:

CHAPTER 18. EDUCATION.

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-5. Process for improving education; education standards and accountability—measures; statewide assessment program; accountability measures; Office of Education Performance Audits; school accreditation and school system approval; intervention to correct impairments low performance.

(a) *Legislative findings, purpose and intent.* -- The Legislature makes the following findings with respect to the process for improving education and its purpose and intent in the enactment of this section:

(1) The process for improving education includes four primary elements, these being:
(A) Standards which set forth the ~~things~~ knowledge and skills that students should know and be able to do as the result of a thorough and efficient education that prepares them for the twenty-first century, including measurable criteria to evaluate student performance and progress;

(B) Assessments of student performance and progress toward meeting the standards;
(C) A system for holding schools and school systems accountable for student performance and progress toward obtaining the knowledge and skills intrinsic to a high quality education in the twenty-first century which is delivered in an efficient manner; and

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

(2) As the constitutional body charged with the general supervision of schools as provided by general law, the state board has the authority and the responsibility to

establish the standards, assess the performance and progress of students against the standards, hold schools and school systems accountable, and assist schools and school systems to build capacity and improve efficiency so that the standards are met, including, when necessary, seeking additional resources in consultation with the Legislature and the Governor.

(3) As the constitutional body charged with providing for a thorough and efficient system of schools, the Legislature has the authority and the responsibility to establish and be engaged constructively in the determination of the ~~things~~ knowledge and skills that students should know and be able to do as the result of a thorough and efficient education. This determination is made by using the process for improving education to determine when school improvement is needed, by evaluating the results and the efficiency of the system of schools, by ensuring accountability, and by providing for the necessary capacity and its efficient use.

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

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

(b) *Unified Electronic county and school strategic improvement plans.* -- The state board shall promulgate a rule consistent with the provisions of this section and in accordance with article three-b, chapter twenty-nine-a of this code establishing a an ~~unified~~ electronic county strategic improvement plan for each county board and a an ~~unified~~ electronic school strategic improvement plan for each public school in this state. Each respective plan shall be a five-year plan that includes the mission and goals of the school or school system to improve student, school or school system performance and progress, as applicable. The strategic plan shall be revised annually in each area in which the school or system is below the standard on the annual performance measures. The revised annual plan also shall identify any deficiency which is reported on the check lists identified in paragraph (G), subdivision (5), subsection (j l) of this section including any deficit more than a casual deficit by the county board. The plan shall be revised when required pursuant to this section to include each annual performance measure upon which the school or school system fails to meet the standard for performance and progress, the action to be taken to meet each measure, a separate time line and a date certain for meeting each measure, a cost estimate and, when applicable, the assistance to be provided by the department and other education agencies to improve student, school or school system performance and progress to meet the annual performance measure.

The department shall make available to all public schools through its website or the West Virginia ~~e~~Education ~~i~~Information ~~s~~System an electronic ~~unified~~ school strategic improvement plan boilerplate designed for use by all schools to develop a an ~~unified~~

electronic school strategic improvement plan which incorporates all required aspects and satisfies all improvement plan requirements of the No Child Left Behind Act.

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

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

The standards, as applicable, shall incorporate the state's 21st Century Skills Initiative and shall assure that graduates are prepared for continuing post-secondary education, training and work and that schools and school systems are making progress toward achieving the education goals of the state.

(d) Comprehensive statewide student assessment program. -- The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code establishing a comprehensive statewide student assessment program to assess student performance and progress in grades three through twelve. The state board may require that student proficiencies be measured through the ACT EXPLORE and the ACT PLAN assessments or other comparable assessments, which are approved by the state board and provided by future vendors. The state board may require that student proficiencies be measured through the West Virginia writing assessment at any of the grade levels four, seven and ten determined by the state board to be appropriate: *Provided, That, effective the first day of July, two thousand eight, the state board may require that student proficiencies be measured through the West Virginia writing assessment at any of the grade levels four, seven and eleven determined by the state board to be appropriate.* The state board may provide through the statewide assessment program other testing or assessment instruments applicable to grade levels kindergarten through grade twelve which may be used by each school upon approval by the school curriculum team to promote student achievement. The use of assessment results are subject to the following:

(1) The assessment results for grade levels three through eight and eleven are the only assessment results which may be used for determining whether any school or school system has made adequate yearly progress (AYP);

(2) Only the assessment results in the subject areas of reading/language arts and mathematics may be used for determining whether a school or school system has made adequate yearly progress (AYP);

(3) The results of the West Virginia writing assessment, the ACT EXPLORE assessments and the ACT PLAN assessments may not be used for determining whether a school or school system has made adequate yearly progress (AYP);

(4) The results of testing or assessment instruments provided by the state board for optional use by schools and school systems to promote student achievement may not be used for determining whether a school or school system has made adequate yearly progress (AYP); and

(5) All assessment provisions of the comprehensive statewide student assessment program in effect for the school year two thousand six--two thousand seven shall remain in effect until replaced by the state board rule.

(d) (e) Annual performance measures for Public Law 107-110, the Elementary and Secondary Education Act of 1965, as amended (No Child Left Behind Act of 2001). --

The standards shall include annual measures of student, school and school system performance and progress for the grade levels and the content areas defined by the act. The following annual measures of student, school and school system performance and progress shall be the only measures for determining school accreditation and school system approval whether adequately yearly progress under the No Child Left Behind Act has been achieved:

(1) The acquisition of student proficiencies as indicated by student performance and progress in grades three through eight, inclusive, and grade ten shall be measured by a uniform statewide assessment program on the required accountability assessments at the grade levels and content areas as required by the act subject to the limitations set forth in subsection (d) of this section. The indicators for student progress in reading and mathematics in grades kindergarten through second grade shall be measured by the informal assessment established by the West Virginia Department of Education or other assessments, as determined by the school curriculum team. If the school fails to meet adequate yearly progress in reading or mathematics for two consecutive years, the county superintendent, the school principal and the school curriculum team shall decide whether a different assessment should be used to verify that benchmarks are being met. If the county superintendent, the school principal and the school curriculum team differ on what assessment is used, then each entity shall have one vote. Furthermore, the state board may require that student proficiencies be measured through the West Virginia writing assessment at any of the grades that are determined by the state board to be appropriate. It is the intent of the Legislature that in the future a grade eleven uniform statewide assessment be administered in lieu of the grade ten uniform statewide assessment. The state board shall perform an analysis of the costs and the benefits of administering the grade eleven uniform statewide assessment in lieu of the grade ten uniform statewide assessment. The analysis shall include a review of the need for end of course exams in grades nine through twelve. The state board shall report the results of the analysis to the legislative oversight commission on education accountability. The state board may provide other testing or assessment instruments applicable to grade levels kindergarten through grade twelve through the statewide assessment program for optional use by each school as determined by the school curriculum team to measure student performance and progress;

(2) The student participation rate in the uniform statewide assessment must be at least ninety-five percent or the average of the participation rate for the current and the preceding two years is ninety-five percent for the school, county and state;

(2) (3) Only for schools that do not include grade twelve, the school attendance rate

which shall be no less than ninety percent in attendance for the school, county and state. The following absences shall be excluded:

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

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

(C) Absent students for whom the attendance director has pursued judicial remedies compelling attendance to the extent of his or her authority; and

~~(3)~~ (4) The high school graduation rate which shall be no less than eighty percent, for the school, county and state; or if the high school graduation rate is less than eighty percent, the high school graduation rate shall be higher than the high school graduation rate of the preceding year as determined from information on the West Virginia eEducation iInformation sSystem on the fifteenth day of August.

(f) State annual performance measures for school and school system accreditation. -- The state board shall establish a system to assess and weigh annual performance measures for state accreditation of schools and school systems in a manner that gives credit or points such as an index to prevent any one measure alone from causing a school to achieve less than full accreditation status or a school system from achieving less than full approval status: Provided, That a school or school system that achieves adequate yearly progress is eligible for no less than full accreditation or approval status, as applicable, and the system established pursuant to this subsection shall only apply to schools and school systems that do not achieve adequate yearly progress. The following types of measures, as may be appropriate at the various programmatic levels, may be approved by the state board for the school and school system accreditation:

(1) The acquisition of student proficiencies as indicated by student performance and progress on the uniform statewide assessment program at the grade levels as provided in subsection (d) of this section. The state board may approve providing bonus points or credits for students scoring at or above mastery and distinguished levels;

(2) Writing assessment results in grades tested;

(3) School attendance rates;

(4) Percentage of courses taught by highly qualified teachers;

(5) Percentage of students scoring at benchmarks on the currently tested ACT EXPLORE and ACT PLAN assessments or other comparable assessments, which are approved by the state board and provided by future vendors;

(6) Graduation rates;

(7) Job placement rates for vocational programs;

(8) Percent of students passing end-of-course career/technical tests;

(9) Percent of students not requiring college remediation classes; and

(10) Bonus points or credits for subgroup improvement, advanced placement percentages, dual credit completers and international baccalaureate completers.

~~(e)~~ (g) Indicators of exemplary performance and progress. -- The standards shall include indicators of exemplary student, school and school system performance and progress. The indicators of exemplary student, school and school system performance and progress shall be used only as indicators for determining whether accredited and approved schools and school systems should be granted exemplary status. These indicators shall include, but are not limited to, the following:

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

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

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

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

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

(2) Transportation;

(3) Facilities;

(4) Administrative practices;

(5) Personnel;

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

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

~~(g)~~ (i) *Assessment and accountability of school and school system performance and processes.* -- In accordance with the provisions of article three-b, chapter twenty-nine-a of this code, the state board shall establish by rule a system of education performance audits which measures the quality of education and the preparation of students based on the annual measures of student, school and school system performance and progress. The system of education performance audits shall provide information to the state board, the Legislature and the Governor, individually and collectively as the ~~p~~Process for ~~i~~Improving eE~~e~~C~~c~~ouncil, upon which they may determine whether a thorough and efficient system of schools is being provided. The system of education performance audits shall include:

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

(2) The evaluation of records, reports and other information collected by the department upon which the quality of education and compliance with statutes, policies and standards may be determined;

(3) The review of school and school system ~~unified~~ electronic strategic improvement plans; and

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

~~(h)~~ (j) *Uses of school and school system assessment information.* -- The state board and the ~~p~~Process for ~~i~~Improving eE~~e~~C~~c~~ouncil established pursuant to section five-c of this article shall use information from the system of education performance audits to assist them in ensuring that a thorough and efficient system of schools is being provided and to improve student, school and school system performance and progress. Information from the system of education performance audits further shall be used by the state board for these purposes, including, but not limited to, the following:

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

- (2) Holding schools and school systems accountable for the efficient use of existing resources to meet or exceed the standards; and
- (3) Targeting additional resources when necessary to improve performance and progress.

The state board shall make accreditation information available to the Legislature, the Governor, the general public and to any individual who requests the information, subject to the provisions of any act or rule restricting the release of information.

(+) (k) *Early detection and intervention programs.* -- Based on the assessment of student, school and school system performance and progress, the state board shall establish early detection and intervention programs using the available resources of the Department of Education, the regional educational service agencies, the eCenter for pProfessional dDevelopment and the pPrincipals aAcademy, as appropriate, to assist underachieving schools and school systems to improve performance before conditions become so grave as to warrant more substantive state intervention. Assistance shall include, but is not limited to, providing additional technical assistance and programmatic, professional staff development, providing monetary, staffing and other resources where appropriate, and, if necessary, making appropriate recommendations to the pProcess for iImproving eEducation eCouncil.

(+) (l) *Office of Education Performance Audits.* --

(1) To assist the state board and the pProcess for iImproving eEducation eCouncil in the operation of a system of education performance audits, the state board shall establish an eOffice of eEducation pPerformance aAudits consistent with the provisions of this section. The eOffice of eEducation pPerformance aAudits shall be operated under the direction of the state board independently of the functions and supervision of the State Department of Education and SState Ssuperintendent. The eOffice of eEducation pPerformance aAudits shall report directly to and be responsible to the state board and the pProcess for iImproving eEducation eCouncil created in section five-c of this article in carrying out its duties under the provisions of this section.

(2) The office shall be headed by a director who shall be appointed by the state board and who shall serve at the will and pleasure of the state board. The annual salary of the director shall be set by the state board and may not exceed eighty percent of the salary cap of the sState sSuperintendent of sSchools.

(3) The state board shall organize and sufficiently staff the office to fulfill the duties assigned to it by law and by the state board. Employees of the State Department of Education who are transferred to the eOffice of eEducation pPerformance aAudits shall retain their benefits and seniority status with the Department of Education.

(4) Under the direction of the state board, the eOffice of eEducation pPerformance aAudits shall receive from the West Virginia education information system staff research and analysis data on the performance and progress of students, schools and school systems, and shall receive assistance, as determined by the state board, from staff at the State Department of Education, the regional education service agencies, the eCenter for pProfessional eDevelopment, the pPrincipals aAcademy and the state sSchool bBuilding aAuthority to carry out the duties assigned to the office.

(5) In addition to other duties which may be assigned to it by the state board or by statute, the eOffice of eEducation pPerformance aAudits also shall:

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

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

- (i) Processes for the accreditation of schools and the approval of school systems; and
- (ii) Recommendations to the state board on appropriate action, including, but not limited to, accreditation and approval action;

(C) Determine, in conjunction with the assessment and accountability processes, what capacity may be needed by schools and school systems to meet the standards established by the state board; and recommend to the state board and the Process for Improving Education Council, plans to establish those needed capacities;

(D) Determine, in conjunction with the assessment and accountability processes, whether statewide system deficiencies exist in the capacity of schools and school systems to meet the standards established by the state board, including the identification of trends and the need for continuing improvements in education, and report those deficiencies and trends to the state board and the Process for Improving Education Council;

(E) Determine, in conjunction with the assessment and accountability processes, staff development needs of schools and school systems to meet the standards established by the state board; and make recommendations to the state board, the Process for Improving Education Council, the Center for Professional Development, the regional educational service agencies, the Higher Education Policy Commission and the county boards;

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

(G) Develop reporting formats, such as check lists, which shall be used by the appropriate administrative personnel in schools and school systems to document compliance with various of the applicable laws, policies and process standards as considered appropriate and approved by the state board, including, but not limited to, the following:

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

- (ii) The participation of students in appropriate physical assessments as determined by the state board, which assessment may not be used as a part of the assessment and accountability system;

- (iii) The appropriate licensure of school personnel; and

- (iv) The school provides multicultural activities.

Information contained in the reporting formats is subject to examination during an on-site review to determine compliance with laws, policies and standards. Intentional and grossly negligent reporting of false information are grounds for dismissal.

~~(k)~~ (m) *On-site reviews.* –

(1) The system of education performance audits shall include on-site reviews of schools and school systems which shall be 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. Any discussion by the state board of schools to be subject to an on-site

review or dates for which on-site reviews will be conducted may be held in executive session, and is not subject to the provisions of article nine-a, chapter six of this code, relating to open governmental proceedings. An on-site review shall be conducted by the eOffice of eEducation pPerformance aAudits of a school or school system for the purpose of investigating the reasons for performance and progress that are persistently below standard and making recommendations to the school and school system, as appropriate, and to the state board on such measures as it considers necessary to improve performance and progress to meet the standard. The investigation may include, but is not limited to, the following:

- (A) Verifying data reported by the school or county board;
- (B) Examining compliance with the laws and policies affecting student, school and school system performance and progress;
- (C) Evaluating the effectiveness and implementation status of school and school system ~~unified~~ electronic strategic improvement plans;
- (D) Investigating official complaints submitted to the state board that allege serious impairments in the quality of education in schools or school systems;
- (E) Investigating official complaints submitted to the state board that allege that a school or county board is in violation of policies or laws under which schools and county boards operate; and

(F) Determining and reporting whether required reviews and inspections have been conducted by the appropriate agencies, including, but not limited to, the State Fire Marshal, the Health Department, the School Building Authority and the responsible divisions within the Department of Education, and whether noted deficiencies have been or are in the process of being corrected. The eOffice of eEducation pPerformance aAudits may not conduct a duplicate review or inspection of any compliance reviews or inspections conducted by the department or its agents or other duly authorized agencies of the state, nor may it mandate more stringent compliance measures.

(2) The dDirector of the eOffice of eEducation pPerformance aAudits shall notify the county superintendent of schools five school days prior to commencing an on-site review of the county school system and shall notify both the county superintendent and the principal five school days prior to commencing an on-site review of an individual school: *Provided*, That the state board may direct the eOffice of eEducation pPerformance aAudits to conduct an unannounced on-site review of a school or school system if the state board believes circumstances warrant an unannounced on-site review.

(3) The eOffice of eEducation pPerformance aAudits shall conduct on-site reviews which are limited in scope to specific areas in which performance and progress are persistently below standard as determined by the state board unless specifically directed by the state board to conduct a review which covers additional areas.

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

The persons designated by the state board shall be responsible for completing the report on the findings and recommendations of the on-site review in their area of

expertise. It is the intent of the Legislature that the persons designated by the state board participate in all on-site reviews that involve their area of expertise, to the extent practicable, so that the on-site review process will evaluate compliance with the standards in a uniform, consistent and expert manner.

(5) The eOffice of eEducation pPerformance aAudits shall reimburse a county board for the costs of substitutes required to replace county board employees while they are serving on a review team.

(6) At the conclusion of an on-site review of a school system, the director and team leaders shall hold an exit conference with the superintendent and shall provide an opportunity for principals to be present for at least the portion of the conference pertaining to their respective schools. In the case of an on-site review of a school, the exit conference shall be held with the principal and curriculum team of the school and the superintendent shall be provided the opportunity to be present. The purpose of the exit conference is to review the initial findings of the on-site review, clarify and correct any inaccuracies and allow the opportunity for dialogue between the reviewers and the school or school system to promote a better understanding of the findings.

(7) The eOffice of eEducation pPerformance aAudits shall report the findings of an on-site review to the county superintendent and the principals whose schools were reviewed within thirty days following the conclusion of the on-site review. The eOffice of eEducation pPerformance aAudits shall report the findings of the on-site review to the state board within forty-five days after the conclusion of the on-site review. A copy of the report shall be provided to the pProcess for improving eEducation eCouncil at its request. A school or county that believes one or more findings of a review are clearly inaccurate, incomplete or misleading, misrepresent or fail to reflect the true quality of education in the school or county, or address issues unrelated to the health, safety and welfare of students and the quality of education, may appeal to the state board for removal of the findings. The state board shall establish a process for it to receive, review and act upon the appeals. The state board shall report to the Legislative Oversight Commission on Education Accountability during its July interim meetings, or as soon thereafter as practical, on each appeal during the preceding school year.

(8) The Legislature finds that the accountability and oversight of the following activities and programmatic areas in the public schools is controlled through other mechanisms and that additional accountability and oversight are not only unnecessary but counterproductive in distracting necessary resources from teaching and learning. Therefore, notwithstanding any other provision of this section to the contrary, the following activities and programmatic areas are not subject to review by the eOffice of eEducation pPerformance aAudits:

- (A) Work-based learning;
- (B) Use of advisory councils;
- (C) Program accreditation and student credentials;
- (D) Student transition plans;
- (E) Graduate assessment form;
- (F) Casual deficit;
- (G) Accounting practices;
- (H) Transportation services;
- (I) Special education services;
- (J) Safe, healthy and accessible facilities;
- (K) Health services;
- (L) Attendance director;

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

(4) ~~(n)~~ (n) School accreditation. -- The state board annually shall review the information from the system of education performance audits submitted for each school and shall issue to every school one of the following approval levels: Exemplary accreditation status, distinction accreditation status, full accreditation status, temporary accreditation status, conditional accreditation status, or ~~seriously impaired~~ low performing accreditation status.

(1) Full accreditation status shall be given to a school when the school's performance and progress meet or exceed the standards adopted by the state board pursuant to subsection ~~(d)~~ (e) or (f), as applicable, of this section and it does not have any deficiencies which would endanger student health or safety or other extraordinary circumstances as defined by the state board. A school that meets or exceeds the performance and progress standards but has the other deficiencies shall remain on full accreditation status for the remainder of the accreditation period and shall have an opportunity to correct those deficiencies, notwithstanding other provisions of this subsection.

(2) Temporary accreditation status shall be given to a school when the school's performance and progress are below the level required for full accreditation status. Whenever a school is given temporary accreditation status, the county board shall ensure that the school's ~~unified~~ electronic strategic improvement plan is revised in accordance with subsection (b) of this section to increase the performance and progress of the school to a full accreditation status level. The revised plan shall be submitted to the state board for approval.

(3) Conditional accreditation status shall be given to a school when the school's performance and progress are below the level required for full accreditation, but the school's ~~unified~~ electronic strategic improvement plan meets the following criteria:

- (A) The plan has been revised to improve performance and progress on the standard or standards by a date or dates certain;
- (B) The plan has been approved by the state board; and
- (C) The school is meeting the objectives and time line specified in the revised plan.

(4) Exemplary accreditation status shall be given to a school when the school's performance and progress ~~meet or~~ substantially exceed the standards adopted by the state board pursuant to subsections ~~(d)~~ (f) and ~~(e)~~ (g) of this section. The state board shall promulgate legislative rules in accordance with the provisions of article three-b, chapter twenty-nine-a, of this code designated to establish standards of performance and progress to identify exemplary schools.

(5) ~~Seriously impaired~~ Distinction accreditation status shall be given to a school ~~whenever extraordinary circumstances exist as defined~~ the school's performance and progress exceed the standards adopted by the state board. The state board shall

promulgate legislative rules in accordance with the provisions of article three-b, chapter twenty-nine-a of this code establishing standards of performance and progress to identify schools of distinction.

(6) Low-performing accreditation status shall be given to a school whenever extraordinary circumstances exist as defined by the state board.

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

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

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

(iii) The failure of a school to meet a standard by the date specified in the revised plan.

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

(i) Improving personnel management;

(ii) Establishing more efficient financial management practices;

(iii) Improving instructional programs and rules; or

(iv) Making any other improvements that are necessary to correct the ~~impairment~~ low performance.

(C) If the ~~impairment~~ low performance is not corrected by a date certain as set by the state board:

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

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

(iii) If the ~~impairment~~ low performance is not corrected within one year after the appointment of a monitor, the state board may make a determination, in its sole judgment, that continuing a monitor arrangement is not sufficient to correct the ~~impairment~~ low performance and may intervene in the operation of the school to cause

improvements to be made that will provide assurances that a thorough and efficient system of schools will be provided. This intervention may include, but is not limited to, establishing instructional programs, taking such direct action as may be necessary to correct the ~~impairments~~ low performance, declaring the position of principal is vacant and assigning a principal for the school who shall serve at the will and pleasure of and, under the sole supervision of, the state board: *Provided*, That prior to declaring that the position of the principal is vacant, the state board must make a determination that all other resources needed to correct the ~~impairment~~ low performance are present at the school. If the principal who was removed elects not to remain an employee of the county board, then the principal assigned by the state board shall be paid by the county board. If the principal who was removed elects to remain an employee of the county board, then the following procedure applies:

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

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

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

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

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

~~(m)~~ (o) *Transfers from ~~seriously impaired~~ low-performing schools.* -- Whenever a school is determined to be ~~seriously impaired~~ low performing and fails to improve its status within one year, following state intervention in the operation of the school to correct the ~~impairment~~ low performance, any student attending the school may transfer once to the nearest fully accredited school in the county, subject to approval of the fully accredited school and at the expense of the school from which the student transferred.

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

(1) Full approval shall be given to a county board whose schools have all been given full, temporary or conditional accreditation status and which does not have any deficiencies which would endanger student health or safety or other extraordinary circumstances as defined by the state board. A fully approved school system in which other deficiencies are discovered shall remain on full accreditation status for the remainder of the approval period and shall have an opportunity to correct those deficiencies, notwithstanding other provisions of this subsection.

(2) Temporary approval shall be given to a county board whose education system is below the level required for full approval. Whenever a county board is given temporary approval status, the county board shall revise its ~~unified~~ electronic county strategic improvement plan in accordance with subsection (b) of this section to increase the

performance and progress of the school system to a full approval status level. The revised plan shall be submitted to the state board for approval.

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

(i) The plan has been revised in accordance with subsection (b) of this section;
(ii) The plan has been approved by the state board; and (iii) The county board is meeting the objectives and time line specified in the revised plan.

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

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

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

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

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

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

(iii) Delegating to the ~~S~~state ~~S~~superintendent both the authority to conduct hearings on personnel matters and school closure or consolidation matters and, subsequently, to render the resulting decisions, and the authority to appoint a designee for the limited

purpose of conducting hearings while reserving to the state superintendent the authority to render the resulting decisions;

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

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

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

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

~~(e)~~ (g) Notwithstanding any other provision of this section, the state board may intervene immediately in the operation of the county school system with all the powers, duties and responsibilities contained in subsection ~~(n)~~ (p) of this section, if the state board finds the following:

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

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

~~(p)~~ (r) *Capacity*. -- The process for improving education includes a process for targeting resources strategically to improve the teaching and learning process. Development of ~~unified electronic~~ school and school system strategic improvement plans, pursuant to subsection (b) of this section, is intended, in part, to provide mechanisms to target resources strategically to the teaching and learning process to improve student, school and school system performance. When deficiencies are detected through the assessment and accountability processes, the revision and approval of school and school system ~~unified electronic strategic~~ improvement plans shall ensure that schools and school systems are efficiently using existing resources to correct the deficiencies. When the state board determines that schools and school systems do not have the capacity to correct deficiencies, the state board shall work with the county board to develop or secure the resources necessary to increase the capacity of schools and school systems to meet the standards and, when necessary, seek additional resources in consultation with the Legislature and the Governor.

The state board shall recommend to the appropriate body including, but not limited to, the ~~p~~rocess for ~~i~~mproving ~~e~~ducation ~~c~~ouncil, the Legislature, county boards, schools and communities methods for targeting resources strategically to eliminate deficiencies identified in the assessment and accountability processes. When making determinations on recommendations, the state board shall include, but is not limited to, the following methods:

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

- (2) Determining the areas of weakness and of ineffectiveness that appear to have contributed to the substandard performance and progress of students or the deficiencies of the school or school system;
- (3) Determining the areas of strength that appear to have contributed to exceptional student, school and school system performance and progress and promoting their emulation throughout the system;
- (4) Requesting technical assistance from the sSchool bBuilding aAuthority in assessing or designing comprehensive educational facilities plans;
- (5) Recommending priority funding from the School Building Authority based on identified needs;
- (6) Requesting special staff development programs from the eCenter for pProfessional dDevelopment, the pPincipals aAcademy, higher education, regional educational service agencies and county boards based on identified needs;
- (7) Submitting requests to the Legislature for appropriations to meet the identified needs for improving education;
- (8) Directing county boards to target their funds strategically toward alleviating deficiencies;
- (9) Ensuring that the need for facilities in counties with increased enrollment are appropriately reflected and recommended for funding;
- (10) Ensuring that the appropriate person or entity is held accountable for eliminating deficiencies; and
- (11) Ensuring that the needed capacity is available from the state and local level to assist the school or school system in achieving the standards and alleviating the deficiencies.

CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES ACT.

ARTICLE 3B. STATE BOARD OF EDUCATION RULEMAKING.

§29A-3B-9. Submission of legislative rules to the lLegislative eOversight eCommission on eEducation aAccountability.

(a) When the board proposes a legislative rule, the board shall submit the following to the lLegislative eOversight eCommission on eEducation aAccountability ~~or at a regular meeting of the commission twenty copies of:~~ (1) The full text of the legislative rule as proposed by the board and filed with the office of the sSecretary of sState, with new language underlined and with language to be deleted from any existing rule stricken through but clearly legible; (2) a brief summary of the content of the legislative rule and a description and a copy of any existing rule which the agency proposes to amend or repeal; (3) a statement of the circumstances which require the rule; (4) a fiscal note containing all information included in a fiscal note for either house of the Legislature and a statement of the economic impact of the rule on the state or its residents; and (5) any other information which the commission may request or which may be required by law.

(b) At its discretion, the board may meet the filing requirement of subsection (a) of this section using either of the following methods:

(1) By submitting twenty copies of the proposed rule to the Legislative Oversight Commission on Education Accountability at its offices or at a regular meeting of the commission; or

(2) By submitting the proposed rule electronically to the Legislative Oversight Commission on Education Accountability. Proposed rules submitted electronically shall be transmitted in a timely manner, shall contain all required information and shall be compatible with computer applications in use by the Legislative Oversight Commission on Education Accountability.

~~(b)~~ (c) The commission shall review each proposed legislative rule and, in its discretion, may hold public hearings thereon. Such review shall include, but not be limited to, a determination of:

(1) Whether the board has exceeded the scope of its statutory authority in approving the proposed legislative rule;

(2) Whether the proposed legislative rule is in conformity with the legislative intent of the statute which the rule is intended to implement, extend, apply, interpret or make specific;

(3) Whether the proposed legislative rule conflicts with any other provision of this code or with any other rule adopted by the same or a different agency;

(4) Whether the proposed legislative rule is necessary to fully accomplish the objectives of the statute under which the proposed rule was promulgated;

(5) Whether the proposed legislative rule is reasonable, especially as it affects the convenience of the general public or of persons particularly affected by it;

(6) Whether the proposed legislative rule could be made less complex or more readily understandable by the general public; and

(7) Whether the proposed legislative rule was promulgated in compliance with the requirements of this article and with any requirements imposed by any other provision of this code.

~~(e)~~ (d) After reviewing the legislative rule, the commission may recommend to the board any changes needed to comply with the legislative intent of the statute upon which the rule is based or otherwise to modify the activity subject to the rule, or may make any other recommendations to the board as it considers appropriate.

~~(d)~~ (e) When the board finally adopts a legislative rule, the board shall submit to the Legislative e Oversight e Commission on e Education a Accountability at its offices or at a regular meeting of the commission six copies of the rule as adopted by the board. The board, at its discretion, may meet the filing requirement contained in this subsection by submitting the legislative rule in electronic format to the Legislative Oversight Commission on Education Accountability. Rules submitted electronically shall be transmitted in a timely manner and shall be compatible with computer applications in use by the Legislative Oversight Commission on Education Accountability.

(f) After reviewing the legislative rule, the commission may recommend to the Legislature any statutory changes needed to clarify the legislative intent of the statute upon which the rule is based or may make any other recommendations to the Legislature as it considers appropriate.

§29A-3B-10. Emergency legislative rules; procedure for promulgation; definition.

(a) The board may, without hearing, find that an emergency exists requiring that emergency rules be promulgated and promulgate the same in accordance with this section. Such emergency rules, together with a statement of the facts and circumstances constituting the emergency, shall be filed in the s State r Register and shall become effective immediately upon such filing. Such emergency rules may adopt, amend or repeal any legislative rule, but the circumstances constituting the emergency requiring such adoption, amendment or repeal shall be stated with particularity and be subject to de novo review by any court having original jurisdiction of an action challenging their validity. ~~Ten copies of the rules and of the required statement shall be filed forthwith with the legislative oversight commission on education accountability.~~

(b) The board shall file ten copies of the rules and of the required statement with the Legislative Oversight Commission on Education Accountability. At its discretion, the board may meet the filing requirement contained in this subsection by submitting the

emergency rule electronically to the Legislative Oversight Commission on Education Accountability. Proposed rules submitted electronically shall be transmitted in a timely manner, shall contain all required information and shall be compatible with computer applications in use by the Legislative Oversight Commission on Education Accountability.

(c) An emergency rule shall be effective for not more than fifteen months and shall expire earlier if any of the following occurs:

(1) The board has not previously filed and fails to file a notice of public hearing on the proposed rule within sixty days of the date the proposed rule was filed as an emergency rule; in which case the emergency rule expires on the sixty-first day.

(2) The board has not previously filed and fails to file the proposed rule with the Legislative Oversight Commission on Education Accountability within one hundred eighty days of the date the proposed rule was filed as an emergency rule; in which case the emergency rule expires on the one hundred eighty-first day.

(3) The board adopts a legislative rule dealing with substantially the same subject matter since such emergency rule was first promulgated; and in which case the emergency rule expires on the date the authorized rule is made effective.

~~(b)~~ (d) Any amendment to an emergency rule made by the board shall be filed in the state register and does not constitute a new emergency rule for the purpose of acquiring additional time or avoiding the expiration dates in subdivision (1), (2) or (3), subsection ~~(a)~~ (c) of this section.

~~(e)~~ (e) Once an emergency rule expires due to the conclusion of fifteen months or due to the effect of subdivision (1), (2) or (3), subsection ~~(a)~~ (c) of this section, the board may not refile the same or similar rule as an emergency rule.

~~(d)~~ (f) Emergency legislative rules currently in effect under the prior provisions of this section may be refiled under the provisions of this section.

~~(e)~~ (g) The provision of this section shall not be used to avoid or evade any provision of this article or any other provisions of this code, including any provisions for legislative review of proposed rules. Any emergency rule promulgated for any such purpose may be contested in a judicial proceeding before a court of competent jurisdiction.

~~(f)~~ (h) The Legislative Oversight Commission on Education Accountability may review any emergency rule to determine: (1) whether the board has exceeded the scope of its statutory authority in promulgating the emergency rule; (2) whether there exists an emergency justifying the promulgation of such rule; and (3) whether the rule was promulgated in compliance with the requirements and prohibitions contained in this section. The commission may recommend to the board, the Legislature, or the secretary of state such action as it may deem proper.