

**INFORMAL
GUIDELINES FOR
IMPLEMENTING PUBLIC
EDUCATION BILLS
ENACTED IN
REGULAR SESSION**



2012



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2011-2012**

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FOREWORD

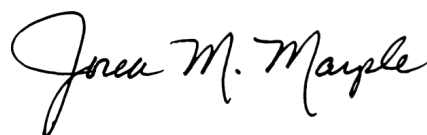
The West Virginia Department of Education is pleased to prepare Informal Guidelines for Implementing Public Education Bills Enacted in the Regular Session 2012 as a document to assist educators and others in understanding and implementing education bills enacted by this year's Legislature.

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 Laws 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 2012 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/legislature/2012greenbook.pdf>.

Please feel free to call or write if you need additional information regarding bills enacted during the 2012 regular session of the West Virginia Legislature.



Jorea Marple, Ed.D.
State Superintendent of Schools

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Senate Bill 76

Effective Date: July 1, 2012

Signed by Governor: April 2, 2012

Code Reference: Adds §22-29-1, §22-29-2, §22-29-3 and §22-29-4

Title: Creating Green Buildings Act

Major Provisions:

- Requires all public agencies, including county boards of education, to follow green construction standards in designing and constructing new buildings.
- Buildings in process that have entered the schematic design phase prior to July 1, 2012 are exempt.

ENROLLED

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 76

(SENATOR UNGER, *original sponsor*)

[Passed March 10, 2012; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §22-29-1, §22-29-2, §22-29-3 and §22-29-4, all relating to requiring new building construction projects of public agencies and projects receiving state funds to be designed and constructed complying with the ICC International Energy Conservation Code and the ANSI/ASHRAE/IESNA Standard 90.1-2007; setting forth findings; defining terms; and setting standards for construction projects with federal funding.

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 article, designated §22-29-1, §22-29-2, §22-29-3 and §22-29-4, all to read as follows:

ARTICLE 29. GREEN BUILDINGS MINIMUM ENERGY STANDARDS.

§22-29-1. Short title and effective date.

This article is called the Green Buildings Act and is effective July 1, 2012.

§22-29-2. Findings and purpose.

(a) The Legislature finds that:

(1) Encouraging the construction of energy-efficient public buildings is in the public interest and promotes the general welfare of the people of the state.

(2) Efficient energy use by public buildings contributes substantially to improving the environment.

(3) Public buildings can be built in accordance with energy- efficient standards.

(b) This article is enacted to more efficiently spend public funds and protect the health and welfare of West Virginia residents.

§22-29-3. Definitions.

As used in this article:

(a) “ANSI” means the American National Standards Institute;

(b) “ASHRAE” means the American Society of Heating, Refrigerating and Air-Conditioning Engineers;

(c) “IESNA” means the Illuminating Engineering Society of North America;

(d) “ICC” means the International Code Council; and

(e) “Public agency” means an agency of the state and political subdivisions, public institutions of higher education and boards of education.

§22-29-4. Minimum energy standards for new building construction projects of public agencies.

All new building construction projects of public agencies that have not entered the schematic design phase prior to July 1, 2012, or any building construction project receiving state grant funds and appropriations, including public schools, that have not entered the schematic design phase prior to July 1, 2012, shall be designed and constructed complying with the ICC International Energy Conservation Code, adopted by the State Fire Commission, and the ANSI/ASHRAE/IESNA Standard 90.1-2007: *Provided*, That if any construction project has a commitment of federal funds to pay for a portion of such project, this section shall only apply to the extent such standards are consistent with the federal standards.

Senate Bill 110

Effective Date: June 8, 2012

Signed by Governor: April 2, 2012

Code Reference: Amends §31-15C-3 and §31-15C-4

Title: Relating to Broadband Deployment Council

Major Provisions:

- The Broadband Deployment Council is continued under the Department of Commerce.
- Expands the membership of the Council from 11 to 15 members, adding the State Superintendent of Schools, a member representing incumbent local exchange carrier who provides broadband services in the state, a member representing competitive local exchange carriers who provide broadband services in this state, and an additional member representing the general public.
- The Council will consist of 15 members, now including the State Superintendent of Schools or his or her designee.
- The Council shall explore the potential for increased use of broadband and assist in expansion of electronic instruction and distance education services.
- The Council will utilize the powers to carry out the purpose and intent of the article.
- The Council shall exercise its powers and authority to bring broadband service to areas not served.

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FOR

Senate Bill No. 110

(SENATORS UNGER, BEACH AND KLEMPA, *original sponsors*)

[Passed March 10, 2012; in effect ninety days from passage.]

AN ACT to amend and reenact §31-15C-3 and §31-15C-4 of the Code of West Virginia, 1931, as amended, all relating to modifying and increasing the membership of the Broadband Deployment Council; increasing the number of members required for a quorum; and expanding the powers and duties of the Broadband Deployment Council.

Be it enacted by the Legislature of West Virginia:

That §31-15C-3 and §31-15C-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 15C. BROADBAND DEPLOYMENT.

§31-15C-3. Broadband Deployment Council established; members of council; administrative support.

(a) The Broadband Deployment Council is continued. The council is a governmental instrumentality of the state. The exercise by the council of the powers conferred by this article and the carrying out of its purpose and duties are considered and held to be, and are hereby determined to be, essential governmental functions and for a public purpose. The council is created under the Department of Commerce for administrative, personnel and technical support services only.

(b) The council shall consist of ~~eleven~~ fifteen voting members, designated as follows:

(1) The Governor or his or her designee;

(2) The Secretary of Commerce or his or her designee;

(3) The Secretary of Administration or his or her designee;

(4) The Director of Homeland Security and Emergency Management or his or her designee; and

(5) The State Superintendent of Schools or his or her designee; and

~~(5)~~ (6) ~~Seven~~ Ten public members that serve at the will and pleasure of the Governor and are appointed by the Governor with the advice and consent of the Senate, as follows:

(i) One member representing employees of communications and cable providers who is a member or representative of a union representing communications workers;

(ii) One member representing ~~telecommunications providers who provide broadband services~~ the interests of the business community in this state;

(iii) One member representing incumbent local exchange carriers who provide broadband services in this state;

~~(iii)~~ (iv) One member representing cable operators who provide broadband services in this state;

(v) One member representing competitive local exchange carriers who provide broadband services in this state;

~~(iv)~~ (vi) One member representing broadband equipment or device manufacturers;

~~(v)~~ (vii) One member representing higher education or secondary education; and

~~(vi)~~ (viii) ~~Two~~ Three members representing the general public who are residents of the state, one of whom shall represent rural communities, and who may not reside in the same congressional district.

~~(6)~~ (7) In addition to the ~~eleven~~ fifteen voting members of the council, the President of the Senate shall name two senators from the West Virginia Senate and the Speaker of the House shall name two delegates from the West Virginia House of Delegates, each to serve in the capacity of an ex officio, nonvoting advisory member of the council.

(c) The Secretary of Commerce or his or her designee shall chair the council and appoint one of the other council members to serve as vice chair. In the absence of the Secretary of Commerce or his or her designee, the vice chair shall serve as chair. The council shall appoint a secretary-treasurer who need not be a member of the council and who, among other tasks or functions designated by the council, shall keep records of its proceedings.

(d) The council may appoint committees or subcommittees to investigate and make recommendations to the full council. Members of these committees or subcommittees need not be members of the council.

(e) ~~Six~~ Eight voting members of the council constitute a quorum and the affirmative vote of at least the majority of those members present is necessary for any action taken by vote of the council.

(f) The council is part time. Public members appointed by the Governor may pursue and engage in another business or occupation or gainful employment. Any person employed by, owning an interest in or otherwise associated with a broadband deployment project, project sponsor or project participant may serve as a council member and is not disqualified from serving as a council member because of a conflict of interest prohibited under section five, article two, chapter six-b of this code and is not subject to prosecution for violation of said section when the violation is created solely as a result of his or her relationship with the broadband deployment project, project sponsor or project participant so long as the member recuses himself or herself from board participation regarding the conflicting issue in the manner set forth in legislative rules promulgated by the West Virginia Ethics Commission.

(g) No member of the council who serves by virtue of his or her office receives any compensation or reimbursement of expenses for serving as a member. The public members and members of any committees or subcommittees are entitled to be reimbursed for actual and necessary expenses incurred for each day or portion thereof engaged in the discharge of his or her official duties in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration.

§31-15C-4. Powers and duties of the council generally.

(a) The council shall:

(1) Explore the potential for increased use of broadband service for the purposes of education, career readiness, workforce preparation and alternative career training;

(2) Explore ways for encouraging state and municipal agencies to expand the development and use of broadband services for the purpose of better serving the public, including audio and video streaming, voice-over Internet protocol, teleconferencing and wireless networking; and

(3) Cooperate and assist in the expansion of electronic instruction and distance education services by July, 2014.

~~(a)~~ (b) In addition to the powers set forth elsewhere in this article, the council is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate the purpose and intent of this article. The council shall have the power and capacity to:

(1) Provide consultation services to project sponsors in connection with the planning, acquisition, improvement, construction or development of any broadband deployment project;

(2) Promote awareness of public facilities that have community broadband access that can be used for distance education and workforce development;

(3) Advise on deployment of e-government portals such that all public bodies and political subdivisions have homepages, encourage one-stop government access, and that all public entities stream audio and video of all public meetings;

~~(2)~~ (4) To make and execute contracts, commitments and other agreements necessary or convenient for the exercise of its powers, including, but not limited to, the hiring of consultants to assist in the mapping of the state, categorization of areas within the state and evaluation of project applications: *Provided*, That the provisions of article three, chapter five-a of this code do not apply to the agreements and contracts executed under the provisions of this article;

~~(3)~~ (5) Acquire by gift or purchase, hold or dispose of real property and personal property in the exercise of its powers and performance of its duties as set forth in this article;

~~(4)~~ (6) Receive and dispense funds appropriated for its use by the Legislature or other funding sources or solicit, apply for and receive any funds, property or services from any person, governmental agency or organization to carry out its statutory duties; and

~~(5)~~ (7) Perform any and all other activities in furtherance of its purpose.

~~(b)~~ (c) The council shall exercise its powers and authority to bring broadband service to unserved areas. The council may not duplicate or displace broadband service in areas already served or where private industry feasibly can be expected to offer services in the reasonably foreseeable future.

Senate Bill 161

Effective Date: June 8, 2012

Signed by Governor: April 2, 2012

Code Reference: Amends §49-6A-1; §49-6A-2; §49-6A-8; §49-6A-10

Title: Mandatory Reporting of Child Abuse and Neglect

Major Provisions:

- Adds as a purpose for the reporting requirements, the promotion of adult responsibility for protecting children and expands the purpose of encouraging cooperation among the states to include the prevention of future incidents of child abuse and neglect.
- Expands the list of mandatory reporters to include youth camp administrators and counselors; employees, coaches and volunteers of entities that provide organized activities for children; and commercial film and photo print processors.
- Alters the provision that allowed school employees or volunteers who are mandatory reporters to transfer their reporting duty by notifying the person in charge of the school (or a designated agent of that person) of suspected abuse or neglect. Under the revised statute, the employee or volunteer remains obligated to report to the person in charge of the institution, school or entity that provides organized activities for children, as well as the Department of Health and Human Services (DHHR) and in appropriate cases, the State Police or other law enforcement agencies. But now, the person in charge is no longer required to pass on the information to authorities, but “may” supplement the report or cause an additional report to be made. Consequently, the reporter remains statutorily responsible for ensuring that the suspected abuse or neglect is reported to the proper authorities.
- Adds the requirement that any person over the age of 18 years of age who has actual knowledge of or observes any sexual abuse or sexual assault of a child to immediately, and not more than 48 hours, report the circumstances to the State Police or other law-enforcement agency having jurisdiction to investigate the report.
- Includes the provision that if the person required to make a report believes in good faith that reporting to the police would expose the reporter, the reporter’s child, or the subject child or other in the

same household to an increased threat of serious bodily injury, the reporter is allowed to postpone reporting in order to take steps to remove him or herself or the affected child from the perceived threat, making the report as soon as the threat of harm has been reduced.

- Requires the law-enforcement agency that receives the report is required to report the allegations to DHHR and coordinate with any other law-enforcement agency, as necessary to investigate the report.
- Increases the penalty for failure to report from not more than 10 days in jail and not more than \$100, to not more than 30 days in jail and not more than \$1,000.
- Expands the educational and training requirements of the Department of Health and Human Services for persons required to report to include the implementation of evidence-based programs that reduce incidents of child maltreatment including sexual abuse.
- Specifies that the training provided by DHHR must also include for persons required to report and for the general public, indicators of child abuse and neglect, tactics used by sexual abusers, how and when to make a report, and protective factors that prevent abuse and neglect in order to promote adult responsibility for protecting children.

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COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 161

(SENATORS FOSTER, PALUMBO, KLEMPA, FANNING, UNGER, KESSLER (MR. PRESIDENT), JENKINS, BROWNING, KIRKENDOLL, WILLS, YOST, STOLLINGS AND McCABE, *original sponsors*)

[Passed March 10, 2012; in effect ninety days from passage.]

AN ACT to amend and reenact §49-6A-1, §49-6A-2, §49-6A-8 and §49-6A-10 of the Code of West Virginia, 1931, as amended, all relating to mandatory reporting of abuse and neglect of children; adding promoting adult responsibility and prevention to the purpose; adding certain persons to the mandatory reporting list for all abuse or neglect of children; creating a requirement that certain adults report sexual abuse of children when observed or when received credible reports; allowing for exceptions; requiring law enforcement who receive a report of sexual abuse to alert the Department of Health and Human Resources; encouraging law-enforcement agencies to coordinate in investigating a report; increasing the criminal penalties for failure to report; creating a crime and criminal penalties for all adults who fail to report sexual abuse of children; and requiring and amending certain educational programs and trainings.

Be it enacted by the Legislature of West Virginia:

That §49-6A-1, §49-6A-2, §49-6A-8 and §49-6A-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR NEGLECTED.

§49-6A-1. Purpose.

It is the purpose of this article, through the complete reporting of child abuse and neglect, to protect the best interests of the child, to offer protective services in order to prevent any further harm to the child or any other children living in the home, to stabilize the home environment, to preserve family life whenever possible, to promote adult responsibility for protecting children and to encourage cooperation among the states to prevent future incidents of child abuse and neglect and in dealing with the problems of child abuse and neglect.

49-6A-2. Persons mandated to report suspected abuse and neglect.

(a) ~~When~~ Any medical, dental or mental health professional, Christian Science practitioner, religious healer, school teacher or other school personnel, social service worker, child care or foster care worker, emergency medical services personnel, peace

officer or law-enforcement official, humane officer, member of the clergy, circuit court judge, family court judge, employee of the Division of Juvenile Services, ~~or~~ magistrate, youth camp administrator or counselor, employee, coach or volunteer of an entity that provides organized activities for children, or commercial film or photographic print processor who has reasonable cause to suspect that a child is neglected or abused or observes the child being subjected to conditions that are likely to result in abuse or neglect, ~~such person~~ shall immediately, and not more than forty-eight hours after suspecting this abuse or neglect, report the circumstances or cause a report to be made to the Department of Health and Human Resources: *Provided*, That in any case where the reporter believes that the child suffered serious physical abuse or sexual abuse or sexual assault, the reporter shall also immediately report, or cause a report to be made, to the State Police and any law-enforcement agency having jurisdiction to investigate the complaint: *Provided, however*, That any person required to report under this article who is a member of the staff or volunteer of a public or private institution, school, entity that provides organized activities for children, facility or agency shall also immediately notify the person in charge of ~~such~~ the institution, school, entity that provides organized activities for children, facility or agency, or a designated agent thereof, who shall may supplement the report or cause a an additional report to be made. ~~However, nothing in this article is intended to prevent individuals from reporting on their own behalf.~~

(b) Any person over the age of eighteen who receives a disclosure from a credible witness or observes any sexual abuse or sexual assault of a child, shall immediately, and not more than forty-eight hours after receiving such a disclosure or observing the sexual abuse or sexual assault, report the circumstances or cause a report to be made to the Department of Health and Human Resources or the State Police or other law-enforcement agency having jurisdiction to investigate the report. In the event that the individual receiving the disclosure or observing the sexual abuse or sexual assault has a good faith belief that the reporting of the event to the police would expose either the reporter, the subject child, the reporter's children or other children in the subject child's household to an increased threat of serious bodily injury, the individual may delay making the report while he or she undertakes measures to remove themselves or the affected children from the perceived threat of additional harm: *Provided*, That the individual makes the report as soon as practicable after the threat of harm has been reduced. The law-enforcement agency that receives a report under this subsection shall report the allegations to the Department of Health and Human Resources and coordinate with any other law-enforcement agency, as necessary to investigate the report.

(c) Nothing in this article is intended to prevent individuals from reporting suspected abuse or neglect on their own behalf. In addition to those persons and officials specifically required to report situations involving suspected abuse or neglect of children, any other person may make a report if such person has reasonable cause to suspect that a child has been abused or neglected in a home or institution or observes the child being subjected to conditions or circumstances that would reasonably result in abuse or neglect.

§49-6A-8. Failure to report; penalty.

Any person, official or institution required by this article to report a case involving a child known or suspected to be abused or neglected, or required by section five of this article to forward a copy of a report of serious injury, who knowingly fails to do so or knowingly prevents another person acting reasonably from doing so, ~~shall be~~ is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in ~~the county~~ jail not more than ~~ten~~ thirty days or fined not more than ~~one hundred dollars~~ \$1,000, or both.

§49-6A-10. Educational programs.

~~Within available funding and as appropriate~~ Subject to appropriation in the budget bill, the state department shall conduct educational and training programs ~~with the staff of the staff of the state department,~~ for persons required to report suspected abuse or neglect, and the general public, as well as implement evidence-based programs that reduce incidents of child maltreatment including sexual abuse. Training for persons require to report and the general public shall include indicators of child abuse and neglect, tactics used by sexual abusers, how and when to make a report, and protective factors that prevent abuse and neglect in order to promote adult responsibility for protecting children, ~~in order to~~ encourage maximum reporting of child abuse and neglect, and to improve communication, cooperation and coordination among all agencies involved in the identification, prevention and treatment of the abuse and neglect of children.

Senate Bill 186

Effective Date: March 8, 2012

Signed by Governor: March 20, 2012

Code Reference: Amends §18A-4-2; §18A-4-5; §18A-4-8a

Title: Providing Salary Equity Supplement Payments to Teachers and Service Personnel

Major Provisions:

- The bill incorporates the current supplemental salary equity requirements for teachers and service personnel in Code, whereas the salary equity schedules had previously been maintained by the WVDE; this change did not provide a salary increase for any employee.

- The bill also made effective upon passage the change in the number of county boards used in the calculation of salary equity from five to ten of the county boards offering the highest salary schedules compared to the county boards offering the lowest salary schedules; the effective date of this change had originally been July 1, 2013.

- Furthermore, in cases where the WVDE determines that the objective of salary equity is not being met in any particular year, the bill granted the WVDE the authority to include in its appropriation request for the upcoming year the additional funding necessary to meet the objective of salary equity through an across-the-board increase in the equity supplement amount of the affected class of employees.

ENROLLED

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 186

(SENATORS PLYMALE, WELLS, BROWNING, EDGELL, BOLEY, STOLLINGS, JENKINS, FOSTER,
YOST AND BEACH, *original sponsors*)

[Passed March 8, 2012; in effect from passage.]

AN ACT to amend and reenact §18A-4-2, §18A-4-5 and §18A-4-8a of the Code of West Virginia, 1931, as amended, all relating to providing salary equity supplement payments to teachers and service personnel in order to achieve salary equity among the counties; specifying the amounts of those equity supplements; changing the methods of calculating the difference in salary potential of school employees among the counties; requiring the Department of Education to request additional funds if it determines the equity objective is not being met; clarifying the amount of equity supplement to be paid from state funds; and deleting obsolete provisions.

Be it enacted by the Legislature of West Virginia:

That §18A-4-2, §18A-4-5 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 July 1, 2007, through June 30, 2008, 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 July 1, 2008, through June 30, 2011, 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.~~

(a) Beginning July 1, 2011, and continuing thereafter, each teacher shall receive the amount prescribed in the 2011-12 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.

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.	
Exp.	Class	Class	Class	A.B.	+15	M.A.	+15	+30	+45	Dec-
										terate
0	25,654	26,314	26,575	27,827	28,588	30,355	31,116	31,877	32,638	33,673
1	25,979	26,639	26,903	28,345	29,106	30,874	31,635	32,395	33,156	34,191
2	26,308	26,967	27,231	28,864	29,625	31,392	32,153	32,914	33,675	34,710
3	26,636	27,295	27,559	29,383	30,143	31,911	32,672	33,432	34,193	35,228
4	27,208	27,867	28,131	30,145	30,906	32,674	33,435	34,195	34,956	35,991
5	27,536	28,195	28,459	30,664	31,425	33,192	33,953	34,714	35,475	36,510
6	27,864	28,523	28,787	31,182	31,943	33,711	34,472	35,232	35,993	37,028
7	28,192	28,852	29,115	31,701	32,462	34,229	34,990	35,751	36,512	37,547
8	28,520	29,180	29,444	32,219	32,980	34,748	35,509	36,269	37,030	38,065
9	28,848	29,508	29,772	32,738	33,499	35,266	36,027	36,788	37,549	38,584
10	29,177	29,836	30,100	33,258	34,018	35,786	36,547	37,308	38,068	39,103
11	29,505	30,164	30,428	33,776	34,537	36,305	37,065	37,826	38,587	39,622
12	29,833	30,492	30,756	34,295	35,055	36,823	37,584	38,345	39,105	40,140
13	30,161	30,820	31,084	34,813	35,574	37,342	38,102	38,863	39,624	40,659
14	30,489	31,148	31,412	35,332	36,092	37,860	38,621	39,382	40,142	41,177
15	30,817	31,476	31,740	35,850	36,611	38,379	39,139	39,900	40,661	41,696

16	31,145	31,804	32,068	36,369	37,129	38,897	39,658	40,419	41,179	42,214
17	31,473	32,133	32,396	36,887	37,648	39,416	40,177	40,937	41,698	42,733
18	31,801	32,461	32,725	37,406	38,167	39,934	40,695	41,456	42,217	43,252
19	32,129	32,789	33,053	37,924	38,685	40,453	41,214	41,974	42,735	43,770
20	32,457	33,117	33,381	38,443	39,204	40,971	41,732	42,493	43,254	44,289
21	32,786	33,445	33,709	38,961	39,722	41,490	42,251	43,011	43,772	44,807
22	33,114	33,773	34,037	39,480	40,241	42,008	42,769	43,530	44,291	45,326
23	33,442	34,101	34,365	39,999	40,759	42,527	43,288	44,048	44,809	45,844
24	33,770	34,429	34,693	40,517	41,278	43,046	43,806	44,567	45,328	46,363
25	34,098	34,757	35,021	41,036	41,796	43,564	44,325	45,086	45,846	46,881
26	34,426	35,085	35,349	41,554	42,315	44,083	44,843	45,604	46,365	47,400
27	34,754	35,413	35,677	42,073	42,833	44,601	45,362	46,123	46,883	47,918
28	35,082	35,742	36,005	42,591	43,352	45,120	45,880	46,641	47,402	48,437
29	35,410	36,070	36,334	43,110	43,870	45,638	46,399	47,160	47,920	48,955
30	35,738	36,398	36,662	43,628	44,389	46,157	46,917	47,678	48,439	49,474
31	36,067	36,726	36,990	44,147	44,908	46,675	47,436	48,197	48,957	49,992
32	36,395	37,054	37,318	44,665	45,426	47,194	47,955	48,715	49,476	50,511
33	36,723	37,382	37,646	45,184	45,945	47,712	48,473	49,234	49,995	51,030
34	37,051	37,710	37,974	45,702	46,463	48,231	48,992	49,752	50,513	51,548

35 37,379 38,038 38,302 46,221 46,982 48,749 49,510 50,271 51,032 52,067

2011-12 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.	A.B. +15	M.A.	M.A. +15	M.A. +30	M.A. +45	Doc- torate
0	26,917	27,606	27,872	29,315	30,076	31,843	32,604	33,365	34,126	35,161
1	27,245	27,934	28,200	29,833	30,594	32,362	33,123	33,883	34,644	35,679
2	27,574	28,262	28,528	30,352	31,113	32,880	33,641	34,402	35,163	36,198
3	27,902	28,590	28,856	30,871	31,631	33,399	34,160	34,920	35,681	36,716
4	28,474	29,162	29,428	31,633	32,394	34,162	34,923	35,683	36,444	37,479
5	28,802	29,490	29,756	32,152	32,913	34,680	35,441	36,202	36,963	37,998
6	29,130	29,818	30,084	32,670	33,431	35,199	35,960	36,720	37,481	38,516
7	29,458	30,147	30,412	33,189	33,950	35,717	36,478	37,239	38,000	39,035
8	29,786	30,475	30,741	33,707	34,468	36,236	36,997	37,757	38,518	39,553
9	30,114	30,803	31,069	34,226	34,987	36,754	37,515	38,276	39,037	40,072
10	30,443	31,131	31,397	34,746	35,506	37,274	38,035	38,796	39,556	40,591
11	30,771	31,459	31,725	35,264	36,025	37,793	38,553	39,314	40,075	41,110
12	31,099	31,787	32,053	35,783	36,543	38,311	39,072	39,833	40,593	41,628
13	31,427	32,115	32,381	36,301	37,062	38,830	39,590	40,351	41,112	42,147
14	31,755	32,443	32,709	36,820	37,580	39,348	40,109	40,870	41,630	42,665
15	32,083	32,771	33,037	37,338	38,099	39,867	40,627	41,388	42,149	43,184
16	32,411	33,099	33,365	37,857	38,617	40,385	41,146	41,907	42,667	43,702
17	32,739	33,428	33,693	38,375	39,136	40,904	41,665	42,425	43,186	44,221
18	33,067	33,756	34,022	38,894	39,655	41,422	42,183	42,944	43,705	44,740
19	33,395	34,084	34,350	39,412	40,173	41,941	42,702	43,462	44,223	45,258
20	33,723	34,412	34,678	39,931	40,692	42,459	43,220	43,981	44,742	45,777
21	34,052	34,740	35,006	40,449	41,210	42,978	43,739	44,499	45,260	46,295

22	34,380	35,068	35,334	40,968	41,729	43,496	44,257	45,018	45,779	46,814
23	34,708	35,396	35,662	41,487	42,247	44,015	44,776	45,536	46,297	47,332
24	35,036	35,724	35,990	42,005	42,766	44,534	45,294	46,055	46,816	47,851
25	35,364	36,052	36,318	42,524	43,284	45,052	45,813	46,574	47,334	48,369
26	35,692	36,380	36,646	43,042	43,803	45,571	46,331	47,092	47,853	48,888
27	36,020	36,708	36,974	43,561	44,321	46,089	46,850	47,611	48,371	49,406
28	36,348	37,037	37,302	44,079	44,840	46,608	47,368	48,129	48,890	49,925
29	36,676	37,365	37,631	44,598	45,358	47,126	47,887	48,648	49,408	50,443
30	37,004	37,693	37,959	45,116	45,877	47,645	48,405	49,166	49,927	50,962
31	37,333	38,021	38,287	45,635	46,396	48,163	48,924	49,685	50,445	51,480
32	37,661	38,349	38,615	46,153	46,914	48,682	49,443	50,203	50,964	51,999
33	37,989	38,677	38,943	46,672	47,433	49,200	49,961	50,722	51,483	52,518
34	38,317	39,005	39,271	47,190	47,951	49,719	50,480	51,240	52,001	53,036
35	38,645	39,333	39,599	47,709	48,470	50,237	50,998	51,759	52,520	53,555

(b) \$600 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) To meet the objective of salary equity among the counties as set forth in section five of this article, each teacher shall be paid an equity supplement amount as applicable for his or her classification of certification or classification of training and years of experience as follows, subject to the provisions of that section:

(1) For “4th Class” at zero years of experience, \$1,781. An additional \$38 shall be paid for each year of experience up to and including thirty-five years of experience;

(2) For “3rd Class” at zero years of experience, \$1,796. An additional \$67 shall be paid for each year of experience up to and including thirty-five years of experience;

(3) For “2nd Class” at zero years of experience, \$1,877. An additional \$69 shall be paid for each year of experience up to and including thirty-five years of experience;

(4) For “A. B.” at zero years of experience, \$2,360. An additional \$69 shall be paid for each year of experience up to and including thirty-five years of experience;

(5) For “A. B. + 15” at zero years of experience, \$2,452. An additional \$69 shall be paid for each year of experience up to and including thirty-five years of experience;

(6) For “M. A.” at zero years of experience, \$2,644. An additional \$69 shall be paid for each year of experience up to and including thirty-five years of experience;

(7) For “M. A. + 15” at zero years of experience, \$2,740. An additional \$69 shall be paid for each year of experience up to and including thirty-five years of experience;

(8) For “M. A. + 30” at zero years of experience, \$2,836. An additional \$69 shall be paid for each year of experience up to and including thirty-five years of experience;

(9) For “M. A. + 45” at zero years of experience, \$2,836. An additional \$69 shall be paid for each year of experience up to and including thirty-five years of experience; and

(10) For “Doctorate” at zero years of experience, \$2,927. An additional \$69 shall be paid for each year of experience up to and including thirty-five years of experience.

These payments: (i) Shall be in addition to any amounts prescribed in the applicable State Minimum Salary Schedule, any specific additional amounts prescribed in this section and article and any county supplement in effect in a county pursuant to section five-a of this article; (ii) shall be paid in equal monthly installments; and (iii) shall be considered a part of the state minimum salaries for teachers.

§18A-4-5. Salary equity among the counties; state salary supplement.

(a) For the purposes of this section, salary equity among the counties means that the salary potential of school employees employed by the various districts throughout the state does not differ by greater than ten percent between those offering the highest salaries and those offering the lowest salaries. In the case of professional educators, the difference shall be calculated ~~utilizing~~ using the average of the professional educator salary schedules, degree classifications B. A. through doctorate and the years of experience provided ~~for~~ in the most recent state minimum salary schedule for teachers, in effect in the ~~five~~ ten counties offering the highest salary schedules compared to the lowest salary schedule in effect among the fifty-five counties. In the case of school service personnel, the difference shall be calculated utilizing the average of the school service personnel salary schedules, pay grades “A” through “H” and the years of experience provided ~~for~~ in the most recent state minimum pay scale pay grade for service personnel, in effect in the ~~five~~ ten counties offering the highest salary schedules compared to the lowest salary schedule in effect among the fifty-five counties. ~~Effective July 1, 2013, for both professional educators and school service personnel, the differences shall be calculated as otherwise required by this subsection except that the ten counties offering the highest salary schedules shall be compared to the lowest salary schedule in effect among the fifty-five counties.~~

(b) ~~To assist the state in meeting its~~ meet the objective of salary equity among the counties, as defined in subsection (a) of this section, on and after July 1, 1984, subject to available state appropriations and the conditions set forth herein, each teacher and school service personnel shall receive ~~a supplemental~~ an equity supplement amount as specified in sections two and eight-a, respectively, of this article in addition to the amount from the state minimum salary schedules provided ~~for in this article~~ those sections.

(c) State funds for this purpose shall be paid within the West Virginia public school support plan in accordance with article nine-a, chapter eighteen of this code. The amount allocated for salary equity shall be apportioned between teachers and school service personnel in direct proportion to that amount necessary to support the professional salaries and service personnel salaries statewide under sections four, five and eight, article nine-a, chapter eighteen of this code. In the event the Department of Education determines that the objective of salary equity among the counties has not been met, it shall include in its budget request for the public school support plan for the next school year a request for funding sufficient to meet the objective of salary equity through an across-the-board increase in the equity supplement amount of the affected class of employees.

(d) Pursuant to this section, each teacher and ~~school service personnel~~ person shall receive from state funds the equity supplement amount indicated ~~on the applicable State Equity Supplement Schedule or Pay Scale for 2010-11, maintained by the West Virginia Department of Education in subsection (c), section two and subsection (f), section eight-a of this article, as applicable,~~ reduced by any amount provided by the county as a salary supplement for teachers and school service personnel on January 1, 1984. ~~Provided, That effective July 1, 2011, the amounts indicated on the State Equity Supplement Pay Scale for service personnel is increased by \$37 across the board.~~

(e) The amount received pursuant to this section shall not be decreased as a result of any county supplement increase instituted after January 1, 1984: *Provided*, That any amount received pursuant to this section may be reduced proportionately based upon the amount of funds appropriated for this purpose. No county may reduce any salary supplement that was in effect on January 1, 1984, except as permitted by sections five-a and five-b of this article.

~~(f) During its 2011 interim meetings, the Legislative Oversight Commission on Education Accountability shall conduct a study on whether a recommendation should be made to the Legislature for establishing the State Equity Supplement Schedule and the State Equity Supplement Pay Scale in statute.~~

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

(a) The minimum monthly pay for each service employee shall be as follows:

~~(1) Effective July 1, 2010, through June 30, 2011, 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 2010-2011 State Minimum Pay Scale Pay Grade 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 2010-2011 State Minimum Pay Scale Pay Grade set forth in this subdivision.~~

(1) Beginning July 1, 2011, and continuing thereafter, 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 2011-12 State Minimum Pay Scale Pay Grade 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 2011-12 State Minimum Pay Scale Pay Grade set forth in this subdivision.

~~2010-2011 STATE MINIMUM PAY SCALE PAY GRADE~~

Years Exp.	Pay Grade							
	A	B	C	D	E	F	G	H
0	1,577	1,598	1,639	1,691	1,743	1,805	1,836	1,908
1	1,609	1,630	1,671	1,723	1,775	1,837	1,868	1,940
2	1,641	1,662	1,703	1,755	1,807	1,869	1,900	1,972
3	1,673	1,694	1,735	1,787	1,839	1,901	1,932	2,004
4	1,705	1,726	1,767	1,819	1,871	1,933	1,964	2,037
5	1,737	1,758	1,799	1,851	1,903	1,965	1,996	2,069
6	1,769	1,790	1,832	1,883	1,935	1,997	2,028	2,101
7	1,802	1,822	1,864	1,915	1,967	2,029	2,060	2,133
8	1,834	1,854	1,896	1,947	1,999	2,061	2,092	2,165
9	1,866	1,886	1,928	1,980	2,031	2,093	2,124	2,197
10	1,898	1,919	1,960	2,012	2,063	2,126	2,157	2,229
11	1,930	1,951	1,992	2,044	2,095	2,158	2,189	2,261
12	1,962	1,983	2,024	2,076	2,128	2,190	2,221	2,293
13	1,994	2,015	2,056	2,108	2,160	2,222	2,253	2,325

14	2,026	2,047	2,088	2,140	2,192	2,254	2,285	2,357
15	2,058	2,079	2,120	2,172	2,224	2,286	2,317	2,389
16	2,090	2,111	2,152	2,204	2,256	2,318	2,349	2,422
17	2,122	2,143	2,185	2,236	2,288	2,350	2,381	2,454
18	2,154	2,175	2,217	2,268	2,320	2,382	2,413	2,486
19	2,187	2,207	2,249	2,300	2,352	2,414	2,445	2,518
20	2,219	2,239	2,281	2,333	2,384	2,446	2,477	2,550
21	2,251	2,271	2,313	2,365	2,416	2,478	2,509	2,582
22	2,283	2,304	2,345	2,397	2,448	2,511	2,542	2,614
23	2,315	2,336	2,377	2,429	2,481	2,543	2,574	2,646
24	2,347	2,368	2,409	2,461	2,513	2,575	2,606	2,678
25	2,379	2,400	2,441	2,493	2,545	2,607	2,638	2,710
26	2,411	2,432	2,473	2,525	2,577	2,639	2,670	2,742
27	2,443	2,464	2,505	2,557	2,609	2,671	2,702	2,774
28	2,475	2,496	2,537	2,589	2,641	2,703	2,734	2,807
29	2,507	2,528	2,570	2,621	2,673	2,735	2,766	2,839
30	2,540	2,560	2,602	2,653	2,705	2,767	2,798	2,871
31	2,572	2,592	2,634	2,685	2,737	2,799	2,830	2,903
32	2,604	2,624	2,666	2,718	2,769	2,831	2,862	2,935
33	2,636	2,656	2,698	2,750	2,801	2,863	2,895	2,967
34	2,668	2,689	2,730	2,782	2,833	2,896	2,927	2,999
35	2,700	2,721	2,762	2,814	2,866	2,928	2,959	3,031
36	2,732	2,753	2,794	2,846	2,898	2,960	2,991	3,063
37	2,764	2,785	2,826	2,878	2,930	2,992	3,023	3,095
38	2,796	2,817	2,858	2,910	2,962	3,024	3,055	3,127
39	2,828	2,849	2,890	2,942	2,994	3,056	3,087	3,159

40 2,860 2,881 2,922 2,974 3,026 3,088 3,119 3,192

2011-12 STATE MINIMUM PAY SCALE PAY GRADE

Years

Exp.

Pay Grade

	A	B	C	D	E	F	G	H
0	1,627	1,648	1,689	1,741	1,793	1,855	1,886	1,958
1	1,659	1,680	1,721	1,773	1,825	1,887	1,918	1,990
2	1,691	1,712	1,753	1,805	1,857	1,919	1,950	2,022
3	1,723	1,744	1,785	1,837	1,889	1,951	1,982	2,054
4	1,755	1,776	1,817	1,869	1,921	1,983	2,014	2,087
5	1,787	1,808	1,849	1,901	1,953	2,015	2,046	2,119
6	1,819	1,840	1,882	1,933	1,985	2,047	2,078	2,151
7	1,852	1,872	1,914	1,965	2,017	2,079	2,110	2,183
8	1,884	1,904	1,946	1,997	2,049	2,111	2,142	2,215
9	1,916	1,936	1,978	2,030	2,081	2,143	2,174	2,247
10	1,948	1,969	2,010	2,062	2,113	2,176	2,207	2,279
11	1,980	2,001	2,042	2,094	2,145	2,208	2,239	2,311
12	2,012	2,033	2,074	2,126	2,178	2,240	2,271	2,343
13	2,044	2,065	2,106	2,158	2,210	2,272	2,303	2,375
14	2,076	2,097	2,138	2,190	2,242	2,304	2,335	2,407
15	2,108	2,129	2,170	2,222	2,274	2,336	2,367	2,439
16	2,140	2,161	2,202	2,254	2,306	2,368	2,399	2,472
17	2,172	2,193	2,235	2,286	2,338	2,400	2,431	2,504
18	2,204	2,225	2,267	2,318	2,370	2,432	2,463	2,536
19	2,237	2,257	2,299	2,350	2,402	2,464	2,495	2,568
20	2,269	2,289	2,331	2,383	2,434	2,496	2,527	2,601

21	2,301	2,321	2,363	2,415	2,466	2,528	2,559	2,634
22	2,333	2,354	2,395	2,447	2,498	2,561	2,593	2,666
23	2,365	2,386	2,427	2,479	2,531	2,594	2,625	2,699
24	2,397	2,418	2,459	2,511	2,563	2,627	2,658	2,732
25	2,429	2,450	2,491	2,543	2,596	2,659	2,691	2,764
26	2,461	2,482	2,523	2,576	2,629	2,692	2,723	2,797
27	2,493	2,514	2,555	2,608	2,661	2,724	2,756	2,829
28	2,525	2,546	2,588	2,641	2,694	2,757	2,789	2,863
29	2,557	2,579	2,621	2,673	2,726	2,790	2,821	2,896
30	2,591	2,611	2,654	2,706	2,759	2,822	2,854	2,928
31	2,623	2,644	2,687	2,739	2,792	2,855	2,887	2,961
32	2,656	2,676	2,719	2,772	2,824	2,888	2,919	2,994
33	2,689	2,709	2,752	2,805	2,857	2,920	2,953	3,026
34	2,721	2,743	2,785	2,838	2,890	2,954	2,986	3,059
35	2,754	2,775	2,817	2,870	2,923	2,987	3,018	3,092
36	2,787	2,808	2,850	2,903	2,956	3,019	3,051	3,124
37	2,819	2,841	2,883	2,936	2,989	3,052	3,083	3,157
38	2,852	2,873	2,915	2,968	3,021	3,084	3,116	3,190
39	2,885	2,906	2,948	3,001	3,054	3,117	3,149	3,222
40	2,917	2,939	2,980	3,033	3,087	3,150	3,181	3,256

(2) Each service employee shall receive the amount prescribed in the Minimum Pay Scale in accordance with the provisions of this subsection according to their class title and pay grade as set forth in this subdivision:

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.....	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
Licensed Practical Nurse	F
Locksmith	G

Lubrication Man.....	C
Machinist	F
Mail Clerk	D
Maintenance Clerk	C
Mason	G
Mechanic.....	F
Mechanic Assistant	E
Office Equipment Repairman	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.....	G
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

(b) An additional \$12 per month shall be added to the minimum monthly pay of each service employee who holds a high school diploma or its equivalent.

(c) An additional \$11 per month also shall be added to the minimum monthly pay of each service employee for each of the following:

(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;

(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;

(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;

(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;

(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;

(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;

(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;

(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;

(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;

(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 \$40 per month also shall be added to the minimum monthly pay of each service employee for each of the following:

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

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

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

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

(e) An additional \$11 per month shall be added to the minimum monthly pay of each service employee for each of the following:

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

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

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

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

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

(f) To meet the objective of salary equity among the counties, each service employee shall be paid an equity supplement, as set forth in section five of this article, of \$152 per month, subject to the provisions of that section. These payments: (i) Shall be in addition to any amounts prescribed in the applicable State Minimum Pay Scale Pay Grade, any specific additional amounts prescribed in this section and article and any county supplement in effect in a county pursuant to section five-b of this article; (ii) shall be paid in equal monthly installments; and (iii) shall be considered a part of the state minimum salaries for service personnel.

~~(f)~~ (g) 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 \$10 per month and one half of the pay shall be paid with local funds.

~~(g)~~ (h) 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.

~~(h)~~ (i) 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.

~~(i)~~ (j) 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.

~~(j)~~ (k) 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 used 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 person 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.

~~(k)~~ (l) 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 \$3 per hour or no less than \$5 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 \$30 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 used 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.

(+) (m) 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 a certified professional ~~personnel~~ person 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 a certified professional ~~personnel~~ person" means that certified professional ~~personnel~~ person is present, with and accompanying the aide.

Senate Bill 221

Effective Date: July 1, 2012

Signed by Governor: March 12, 2012

Code Reference: Amends §18A-3A-2

Title: The Jason Flatt Act of 2012

Major Provisions:

- The bill amends the code section which established the Center for Professional Development (CPD) and adds incorporation of the Jason Flatt Act of 2012 to the CPD requirements. The specific Jason Flatt Act of 2012 requires the following:
 - o The CPD shall provide for the routine education of all professional educators, including principals and administrators, and those service personnel having direct contact with students related to the warning signs and resources to assist in suicide prevention. The bill allows for the education to be accomplished through self review of suicide prevention materials and resources.
 - o The West Virginia Board of Education must establish guidelines for and approve materials and resources used to accomplish this requirement to provide suicide prevention professional development.

ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 221

(SENATORS BEACH, KESSLER (MR. PRESIDENT), MILLER AND STOLLINGS, *original sponsors*)

[Passed February 29, 2012; to take effect July 1, 2012.]

AN ACT to amend and reenact §18A-3A-2 of the Code of West Virginia, 1931, as amended, relating to requiring the Center for Professional Development to provide for the routine education of all professional educators and certain service personnel on warning signs and resources to assist in suicide prevention.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3A. CENTER FOR PROFESSIONAL DEVELOPMENT.

§18A-3A-2. Professional development project.

Subject to the provisions of section twenty-three-a, article two, chapter eighteen of this code, through this project the Center for Professional Development shall:

(1) Identify, coordinate, arrange and otherwise assist in the delivery of professional development programs and activities that help professional educators acquire the knowledge, skills, attitudes, practices and other such pertinent complements ~~deemed~~ considered essential for an individual to demonstrate appropriate performance as a professional ~~personnel~~ person in the public schools of West Virginia. The basis for ~~such~~ the performance shall be the laws, policies and regulations adopted for the public schools of West Virginia, and amendments thereto. The center also may permit and encourage school personnel such as classroom aides, higher education teacher education faculty and higher education faculty in programs such as articulated tech prep associate degree and other programs to participate in appropriate professional development programs and activities with public school professional educators;

(2) Identify, coordinate, arrange and otherwise assist in the delivery of professional development programs and activities that help principals and administrators acquire knowledge, skills, attitudes and practices in academic leadership and management principles for principals and administrators and such other pertinent complements ~~deemed~~ considered essential for principals and administrators to demonstrate appropriate performance in the public schools of West Virginia. The basis for ~~such~~ the performance shall be the laws, policies and regulations adopted for the public schools of West Virginia, and amendments thereto;

(3) Serve in a coordinating capacity to assure that the knowledge, skills, attitude and other pertinent complements of appropriate professional performance which evolve over

time in the public school environment are appropriately reflected in the programs approved for the education of professional personnel, including, but not limited to, advising the teacher education programs of major statutory and policy changes in the public schools which affect the job performance requirements of professional educators, including principals and administrators;

(4) Provide for the routine updating of professional skills of professional educators, including principals and administrators, through in-service and other programs. ~~Such~~ The routine updating may be provided by the center through statewide or regional institutes which may require a registration fee;

(5) Provide for the routine education of all professional educators, including principals and administrators, and those service personnel having direct contact with students on warning signs and resources to assist in suicide prevention under guidelines established by the state board. The education may be accomplished through self review of suicide prevention materials and resources approved by the state board. The provisions of this paragraph may be known and cited as the "Jason Flatt Act of 2012";

~~(5)~~ (6) Provide consultation and assistance to county staff development councils established under the provisions of section eight, article three of this chapter in planning, designing, coordinating, arranging for and delivering professional development programs to meet the needs of the professional educators of their district. From legislative appropriations to the center, ~~for professional development~~ exclusive of ~~such~~ the amounts required for the expenses of the principals academy, the center shall, unless otherwise directed by the Legislature, provide assistance in the delivery of programs and activities to meet the expressed needs of the school districts for professional development to help teachers, principals and administrators demonstrate appropriate performance based on the laws, policies and regulations adopted for the public schools of West Virginia; and

~~(6)~~ (7) Cooperate and coordinate with the institutions of higher education to provide professional staff development programs that satisfy some or all of the criteria necessary for currently certified professional educators to meet the requirements for an additional endorsement in an area of certification and for certification to teach in the middle school grades.

If the center is not able to reach agreement with the representatives of the institutions providing teacher education programs on which courses will be approved for credit toward additional endorsements, the state board may certify certain professional staff development courses to meet criteria required by the state board. This certification shall be done on a course by course basis.

Senate Bill 245

Effective Date: March 10, 2012

Signed by Governor: April 3, 2012

Code Reference: Amends §64-5-1, §64-5-2, §64-5-3, §64-5-4

Title: Commission for the Deaf and Hard of Hearing
(Fees and Qualifications and Ethical Standards for
Interpreters)

Major Provisions:

- This bill authorizes two legislative rules filed July 29, 2011 by Commission for the Deaf and Hard of Hearing under WV Code §5-14A-9 and §5-14A-5 relating to the establishment of fees and required qualifications and ethical standards for interpreters.
- 192 CSR 1 *Fees for Qualified Interpreters* increases minimum fees for interpreters. Although educational interpreters are not included in the provided scale, Section 3.3.18 requires educational interpreters to receive two (2) weeks of severance pay if the student for whom he/she interprets drops out, unless the interpreter is reassigned to another student.
- 192 CSR 3 *Establishment of Required Qualifications and Ethical Standards for Interpreters* requires all interpreters, including educational interpreters, to register with the commission. The rule recognizes all educational interpreters employed in public schools who meet the standards of WV Board Policy 5202 as qualified. This rule changes the length of time for which registration of interpreters is issued by the commission from two years to three years.

ENROLLED

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 245

(SENATOR MINARD, *original sponsor*)

[Passed March 10, 2012; in effect from passage.]

AN ACT to amend and reenact article 5, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Health and Human Resources; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register and as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to credentialing verification organizations; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to a safety and treatment program; authorizing the Secretary of the Department of Health and Human Resources, the Insurance Commissioner and the Chair of the West Virginia Health Care Authority to promulgate a legislative rule relating to an all-payer claims database--data submission requirements; authorizing the Secretary of the Department of Health and Human Resources, the Insurance Commissioner and the Chair of the West Virginia Health Care Authority to promulgate a legislative rule relating to the all-payer claims database program's privacy and security; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to public water systems; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to public water systems operators; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to wastewater systems and operations; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to vital statistics; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to manufactured home communities; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to AIDS-related medical testing and confidentiality; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to public water systems design standards; authorizing the Division of Human Services to promulgate a legislative rule relating to family child care facility licensing requirements; authorizing the Division of

Human Services to promulgate a legislative rule relating to family child care home registration requirements; authorizing the Division of Human Services to promulgate a legislative rule relating to a child care quality rating and improvement system; authorizing the Commission for the Deaf and Hard of Hearing to promulgate a legislative rule relating to fees for qualified interpreters; and authorizing the Commission for the Deaf and Hard of Hearing to promulgate a legislative rule relating to the establishment of required qualifications and ethical standards for interpreters and transliterators.

Be it enacted by the Legislature of West Virginia:

That article 5, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.

§64-5-1. Department of Health and Human Resources.

(a) The legislative rule filed in the State Register on ~~the twenty-ninth day of July, two thousand ten~~ July 28, 2011, authorized under the authority of section ~~four~~ three, article ~~one two~~, chapter ~~sixteen~~, thirty-three of this code, ~~relating to~~ modified by the Department of Health and Human Resources (public water systems 64 CSR 3) to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 9, 2011, relating to the Department of Health and Human Resources (credentialing verification organizations, 64 CSR 89B), is authorized.

(b) The legislative rule filed in the State Register on ~~the thirtieth day of July, two thousand ten~~ July 29, 2011, authorized under the authority of section ~~six~~ three, article ~~four-e~~ five-a, chapter ~~sixteen~~, seventeen-c of this code, ~~relating to~~ modified by the Department of Health and Human Resources (specialized multipatient medical transport, 64 CSR 29) to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 14, 2011, relating to the Department of Health and Human Resources (safety and treatment program, 64 CSR 98), is authorized.

(c) The legislative rule filed in the State Register on ~~the twenty-ninth day of July, two thousand ten~~ July 28, 2011, authorized under the authority of section ~~four~~ eight, article ~~one~~ four-a, chapter ~~sixteen~~ thirty-three of this code, modified by the Secretary of the Department of Health and Human Resources , the Insurance Commissioner and the Chair of the West Virginia Health Care Authority to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on ~~the third day of January, two thousand eleven~~ October 21, 2011, relating to the Secretary of the Department of Health and Human Resources, the Insurance Commissioner and the Chair of the West Virginia Health Care Authority (food manufacturing facilities, 64 CSR 43) (all-payer claims database -- data submission requirements, 114A CSR 1), is authorized with the following amendments:

On page four, subsection 3.2., by striking out "OIC" and inserting in lieu thereof the words "Offices of the Insurance Commissioner":

On page four, subdivision 3.2.a., by striking out "OIC" and inserting in lieu thereof the words "Offices of the Insurance Commissioner":

And,

On page seven, by striking out all of subdivision 7.1.e. and inserting in lieu thereof a new subdivision 7.1.e., to read as follows:

"7.1.e. The Director of the Public Employees Insurance Agency or his or her designee, the Commissioner of the Bureau for Medical Services or his or her designee and the Director of the Children's Health Insurance Program or his or her designee."

(d) The legislative rule filed in the State Register on ~~the thirtieth day of July, two thousand ten~~ July 28, 2011, authorized under the authority of section ~~six eight~~, article ~~four-c~~ four-a, chapter ~~sixteen~~ thirty-three of this code, relating to the Secretary of the Department of Health and Human Resources, the Insurance Commissioner and the Chair of the West Virginia Health Care Authority (~~fire department rapid response services licensure, 64 CSR 44~~) (all-payer claims database program's privacy and security, 114A CSR 2), is authorized.

(e) ~~The legislative rule filed in the state register on the thirtieth day of July, two thousand ten, authorized under the authority of section six, article four-c, chapter sixteen, of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the twenty-fourth day of January, two thousand eleven, relating to the Department of Health and Human Resources (emergency medical services, 64 CSR 48), is authorized with the following amendments:~~

~~On page four, subsection 2.12., by striking out the word "commissioner" and inserting in lieu thereof the word "Commissioner";~~

~~On page seven, subsection 2.46., by striking out all of subsection 2.46.;~~

~~On page eight, subsection 3.1.d., by striking out the word "Commissions" and inserting in lieu thereof the word "commission";~~

~~On page eight, subdivision 3.2.b., by striking out all of subdivision 3.2.b. and inserting in lieu thereof a new subdivision 3.2.b. to read as follows:~~

~~"3.2.b. EMS agencies shall collect, maintain and report accurate patient data for all EMS incidents. Agencies shall complete a patient care report (PCR) for all EMS incidents. PCRs shall be complete and submitted to the West Virginia Prehospital Information~~

~~System (PreMIS) following the conclusion of providing EMS services to a patient, in accordance with policies and guidelines established by OEMS.";~~

~~On page nine, subdivision 3.2.c., by striking out the words "a minimum written patient handoff report," and inserting in lieu thereof the words "at a minimum a patient handoff report";~~

~~On page fourteen, subdivision 4.23.a., by striking out all of subdivision 4.23.a. and inserting in lieu thereof a new subdivision 4.23.a. to read as follows:~~

~~"4.23.a. The EMS agency has a rapid response program which routinely places trained and equipped personnel on the scene of potential life-threatening emergencies prior to the arrival of an ambulance in accordance with policies and guidelines established by OEMS. Five (5) points; or";~~

~~On page fifteen, subdivision 4.27.d., by striking out "of . . .";~~

~~On page eighteen, paragraph 4.36.b.2., after the word "action" by inserting the word "to";~~

~~On page nineteen, subdivision 4.37.h., by striking out the words "event of" and inserting in lieu thereof the words "the event";~~

~~On page nineteen, subdivision 4.38.a., by striking out the word "state" and inserting in lieu thereof the word "State";~~

~~On page twenty, subdivision 5.1.a., by striking out the words "Ground ambulances shall meet applicable US Government Services Agency KKK-A-1822" and inserting in lieu thereof the words "Unless specified differently herein, ground ambulances shall meet US Government Services Agency KKK-A-1822 or subsequent federally approved";~~

~~On page twenty, subdivision 5.1.c., by striking the word "Unites" and inserting in lieu thereof the word "United";~~

~~On page twenty-one, subdivision 5.1.i., by striking out the word "be";~~

~~On page twenty-one, subdivision 5.1.j., by striking out the words "medication kit and its supplies" and inserting in lieu thereof the words "medications in accordance with policies and guidelines established by OEMS";~~

~~On page twenty-two, paragraph 5.1.k.5., by striking out the words "accordance with applicable US Government Services Agency KKK-A-1822 specifications at the time of vehicle manufacture";~~

~~On page twenty-three, subdivision 5.3.b., by striking out the words "requirements are" and inserting in lieu thereof the word "is";~~

On page twenty-three, subdivision 5.3.b., after the words "practice and" by inserting the words "appropriate staff";

On page twenty-three, subsection 5.4., by striking out the words "be a Federal Aviation Administration (FAA) Part 135 air carrier certificate holder" and inserting in lieu thereof the words "operate under Federal Aviation Administration (FAA) Part 135 rules";

On page twenty-six, paragraph 5.5.b.7., by striking out the words "requirements are" and inserting the word "is";

On page twenty-six, subsection 5.5.b.7., after the words "practice and" by inserting the words "appropriate staff";

On page twenty-seven, subdivision 6.1.a., by striking out the word "a primary" and inserting in lieu thereof the word "primary";

On page thirty-three, subdivision 6.9., by striking out the word "establish" and inserting in lieu thereof the word "established";

On page thirty-five, subdivision 7.2.e., by striking out the word "Other" and inserting in lieu thereof the word "other";

On page forty-five, paragraph 8.4.a.1., by striking out "STEMS" and inserting in lieu thereof "OEMS";

On page forty-five, paragraph 8.4.a.2., by striking out "STEMS" and inserting in lieu thereof "OEMS";

On page forty-six, subparagraph 8.4.c.1.A., by striking out "STEMS" and inserting in lieu thereof "OEMS";

On page forty-six, subparagraph 8.4.c.2.E., by striking out "STEMS" and inserting in lieu thereof "OEMS";

On page forty-eight, paragraph 8.5.b.1., by striking out "STEMS" and inserting in lieu thereof "OEMS";

On page fifty, subparagraph 9.1.a.3.A., by striking out "STEMS" and inserting in lieu thereof "OEMS";

On page fifty-one, subparagraph 9.1.b.1.B., by striking out "STEMS" and inserting in lieu thereof "OEMS";

On page fifty-two, subparagraph 9.1.c.2.J., by striking out the words "Assist STEMS in ensuring" and inserting in lieu thereof the word "Ensure";

~~On page fifty two, subparagraph 9.1.c.2.N., by striking out "STEMS" and inserting in lieu thereof "OEMS";~~

~~On page fifty two, paragraph 9.1.c.3., by striking out "STEMS" and inserting in lieu thereof "OEMS";~~

~~On page fifty three, subdivision 9.2.a., by striking out "STEMS" and inserting in lieu thereof "OEMS";~~

~~On page fifty four, subparagraph 9.2.a.1.A., striking out both references to "STEMS" and inserting in lieu thereof "OEMS";~~

~~On page fifty four, subparagraph 9.2.a.1.C., by striking out "STEMS" and inserting in lieu thereof "OEMS";~~

~~On page fifty four, subparagraph 9.2.a.1.D., by striking out "STEMS" and inserting in lieu thereof "OEMS";~~

~~On page fifty four, subparagraph 9.2.a.3.E., by striking out "STEMS" and inserting in lieu thereof "OEMS";~~

~~On page fifty four, subparagraph 9.2.a.3.F., by striking out both references to "STEMS" and inserting in lieu thereof "OEMS";~~

~~On page fifty five, paragraph 9.2.a.4, by striking out "STEMS" and inserting in lieu thereof "OEMS";~~

~~On page fifty five, subdivision 10.3.d, by striking out "STEMS" and inserting in lieu thereof "OEMS";~~

And,

~~On page fifty six, subsection 10.6, by striking out "STEMS" and inserting in lieu thereof "OEMS".~~

~~(f) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand ten, authorized under the authority of section four, article one, chapter sixteen, of this code, relating to the Department of Health and Human Resources (cancer registry, 64 CSR 68), is authorized.~~

~~(g) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand ten, authorized under the authority of section four, article four-e, chapter sixteen, of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the third day of January, two thousand eleven, relating to the Department of Health and Human Resources (maternal risk screening, 64 CSR 97), is authorized with the following amendments:~~

On page two, subsection 5.3., after the words "Family Health" by inserting the words "by FAX to (304)957-0176";

And,

On page two, subsection 5.3., by deleting the words "BPH/OM/CFH Maternal Risk Screening 350 Capitol Street, Room 427 Charleston, WV 25301".

~~(h) The legislative rule filed in the state register on the thirtieth day of July, two thousand ten, authorized under the authority of section three, article five-a, chapter seventeen-c, of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the third day of December, two thousand ten, relating to the Department of Health and Human Resources (safety and treatment program, 64 CSR 98), is authorized with the following amendments:~~

~~On page one, subsection 1.2., by striking out "17C-SA-3" and inserting in lieu thereof "17C-5A-3";~~

~~On page one, after subsection 3.4., by inserting a new subsection 3.5. to read as follows:~~

~~"3.5. DUI-Any act which would constitute a violation of §17C-5-2." and renumbering the remaining subsections;~~

~~On page one, subsection 3.7., by striking out "17C-SA-3" and inserting in lieu thereof "17C-5A-3";~~

~~On page two, subsection 4.2., striking out the words "shall first approve any program curriculum used in the program." and inserting in lieu thereof the words "is also responsible for the development of program standards for individuals involved in the service delivery, for approval of program curriculum and for monitoring of compliance by providers with the standards.";~~

~~On page three, subsection 6.1., by striking out the words "in the field of substance abuse" and inserting in lieu thereof the words "who meet requirements as established in the Program Standards published by the Department";~~

~~On page three, subsection 6.5., following the word "refinement." by adding the following: "The Program Coordinator shall, at a minimum, be a Clinical Certified Addictions Counselor.";~~

~~On page four, subsection 8.1., after the words "Program Enrollment" by inserting the words "and Level I Component";~~

~~On page four, subsection 8.1., by striking out the words "Secretary fee for enrollment in the Program is established by the Secretary." and inserting in lieu thereof the words "initial fee for enrollment in the Program shall be Four Hundred Dollars (\$400.00).";~~

~~On page four, subdivision 8.3.a., by striking out the words "at any level and participation in Safety and Treatment programming which is not covered by private or public third-party sponsorship, and which is not eligible for a Community Behavioral Health Center's charity care funds" and inserting in lieu thereof the words "in the Level 1, Prevention and Education Component as set forth in 5.3 of this rule.";~~

~~On page four, subsection 8.4., by striking out all of subsection 8.4. and inserting in lieu thereof a new subsection 8.4. to read as follows:~~

~~"8.4. The Department of Health and Human Resources Safety and Treatment Fund- Upon enrollment in the Program, the Participant shall pay to the provider the sum of Four Hundred Dollars (\$400.00), except for those Participants which are determined under 8.3 to be indigent. The provider shall remit to the Department the sum of Two Hundred Twenty-Five Dollars (\$225.00) and the provider shall retain One Hundred Seventy-Five Dollars (\$175.00). The Department shall deposit One Hundred Twenty-Five Dollars (\$125.00) of this sum in the Department of Health and Human Resources Safety and Treatment Fund, to be used to reimburse providers for their portion of the enrollment fee for persons qualifying for indigent status.";~~

~~And,~~

~~On page four, subsection 8.5., by striking out all of subsection 8.5.~~

~~(i) The legislative rule filed in the state register on the thirtieth day of July, two thousand ten, authorized under the authority of section eight, article one, chapter forty-four-a, of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the third day of December, two thousand ten, relating to the Department of Health and Human Resources (requirements for licensure of nonprofit corporations for conservator service, 64 CSR 99), is authorized with the following amendments:~~

~~On page one, subsection 3.6., after the word "directors" by inserting the words "of the Corporation";~~

~~On page two, subsection 3.7., after the word "directors" by inserting the words "of the Corporation";~~

~~On page two, subsection 3.12., after the word "of" by inserting the words "The Department of";~~

~~On page four, subdivision 4.2.5., after the word "if" by inserting the words "he or";~~

On page five, subdivision 4.7.3., by striking out the words "approved, modified or rejected" and inserting in lieu thereof the words "approve, modify or reject";

On page six, subdivision 4.8.2., by striking out all of subdivision 4.8.2.. and inserting in lieu thereof a new subsection 4.8.2., to read as follows:

"4.8.2. Reports of the Secretary of any inspection or investigation shall, when appropriate, specify the nature of any deficiency in compliance with this rule or law and specifically indicate the rule or law violated.";

And,

On page seven, subsection 5.3., after the words "under this rule," by striking out the word "the" and inserting in lieu thereof the word "and".

§64-5-2. Health Care Authority Bureau for Public Health.

(a) The legislative rule filed in the State Register on the twenty-eight day of July, two thousand ten July 29, 2011, authorized under the authority of section eight-e four, article two-d one, chapter sixteen, of this code, modified by the Health Care Authority Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the eighth day of December, two thousand ten December 1, 2011, relating to the Health Care Authority Department of Health and Human Resources to promulgate a legislative rule relating to (certificates of need, 65 CSR 7) (public water systems, 64 CSR 3), is authorized with the following amendments:

On page three, subdivisions 2.14.e. and 2.14.f., by striking out all of subdivisions 2.14.e. and 2.14.f. and inserting in lieu thereof a new subdivision 2.14.e to read as follows:

"2.14.e. Notwithstanding anything in this subsection 2.14 to the contrary, any practice granted a determination of nonreviewability as a private office practice by the board on or before July 1, 2010, is and shall remain a private office practice under the Act; provided there has been no material change in the facts and circumstances provided in the original request for determination of reviewability."

(b) The legislative rule filed in the State Register on July 29, 2011, authorized under the authority of section four, article one, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 30, 2011, relating to the Department of Health and Human Resources (public water systems operators, 64 CSR 4), is authorized with the following amendments:

On page three, subsection 3.23., after the words "Water Distribution" by inserting the word "System":

And,

On page six, subdivision 5.5.c., by striking out the word “subsection” and inserting in lieu thereof the word “subdivision”.

(c) The legislative rule filed in the State Register on July 29, 2011, authorized under the authority of section four, article one, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 30, 2011, relating to the Department of Health and Human Resources (wastewater systems and operations, 64 CSR 5), is authorized with the following amendments:

On page three, subsection 3.26., by striking out the words “West Virginia Department of Environmental Protection (WVDEP)” and inserting in lieu thereof “WV DEP”;

On page four, subdivision 4.1.e., by striking out the word “Extended” and inserting in lieu thereof the words “This class includes extended”;

On page five, by striking out “5.4.a.2.” and inserting in lieu thereof “5.4.a.1.A.”;

On page five, by striking out “5.4.a.3.” and inserting in lieu thereof “5.4.a.1.B.”;

On page seven, subsection 6.2., after the words “based on” by inserting the words “his or her”;

On page nine, subdivision 7.7.a., by striking out the word “requirement” and inserting in lieu thereof the word “requirements”;

On page ten, subsection 10.1., by striking out the word “applications” and inserting in lieu thereof the word “application”;

On page ten, subsection 10.4., by striking out the word “Applicant” and inserting in lieu thereof the words “An applicant”;

On page eleven, subdivision 12.1.d., after the word “one” by inserting “(1)”;

On page twelve, subdivision 12.1.g., after the word “three” by inserting “(3)”;

On page twelve, subdivision 12.1.h., after the words “with this rule,” by inserting the word “an”;

On page twelve, subdivision 12.1.h., line eight, following the words “under this rule shall”, by striking out the word “take” and inserting in lieu thereof “complete”;

On page twelve, subdivision 12.1.h., line ten, following the words “advanced certified operator”, by inserting the words “without examination”;

And,

On page fifteen, Table 64-5B, in the row beginning with the word “Advanced”, under the column heading labeled “Education”, following the words “Commissioner-approved training course” by striking out the words “& passing the Advanced exam”.

(d) The legislative rule filed in the State Register on July 29, 2011, authorized under the authority of section three, article five, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 1, 2011, relating to the Department of Health and Human Resources (vital statistics, 64 CSR 32), is authorized.

(e) The legislative rule filed in the State Register on July 29, 2011, authorized under the authority of section four, article one, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 1, 2011, relating to the Department of Health and Human Resources (manufactured home communities, 64 CSR 40), is authorized with the following amendments:

On page four, by striking out all of subdivision 5.1.5. and inserting in lieu thereof a new subdivision 5.1.5., to read as follows:

“5.1.5. The Commissioner shall deny a permit if the information on the application form, plans or specifications is incomplete, inaccurate, false or misleading, or indicates that the application provisions of this rule cannot be met. A permit to construct shall be issued or denied within forty-five (45) days of receipt of the completed application. Reasons for denial shall be in writing.”;

And,

On page four, by striking out all of paragraph 5.1.5.a.

(f) The legislative rule filed in the State Register on July 29, 2011, authorized under the authority of section four, article one, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 1, 2011, relating to the Department of Health and Human Resources (AIDS-related medical testing and confidentiality, 64 CSR 64), is authorized with the following amendments:

On page four, by striking out all of paragraph 4.1.d.4. and inserting in lieu thereof a new paragraph 4.1.d.4., to read as follows:

“4.1.d.4. It is recommended that health care providers test women as early as possible during each pregnancy. Women who decline the test early in prenatal care may be encouraged to be tested at subsequent visits.”;

On page five, by striking out all of subdivision 4.2.c. and inserting in lieu thereof a new subdivision 4.2.c. to read as follows:

“4.2.c. If the pregnant woman’s HIV status is unknown at the time she presents for delivery, an HIV test shall be offered and if she refuses the test, the infant may be tested and the mother shall be informed of the testing and the results.”;

On page six, by striking out all of paragraph 4.2.c.1.; On page six, by striking out all of paragraph 4.2.c.2;

On page six, by striking out “4.2.c.3.” and inserting in lieu thereof “4.2.c.1.”;

On page six, by striking out “4.2.c.4.” and inserting in lieu thereof “4.2.c.2.”;

On page six, by striking out all of paragraph 4.3.b.1. and inserting in lieu thereof a new paragraph 4.3.b.1, to read as follows:

“4.3.b.1. A court shall order a defendant charged with an offense set forth in subdivision two, subsection f, section two, article three-c, chapter sixteen of the code, to undergo an oral test for HIV test not later than 48 hours after the date on which the information or indictment is presented”;

On page six, by striking out all of paragraph 4.3.b.3. and inserting in lieu thereof a new paragraph 4.3.b.3, to read as follows:

“4.3.b.3. Follow-up tests for HIV are authorized as may be medically appropriate, and the results of any follow-up tests shall be made available in accordance with paragraph 4.3.b.2, as soon as practicable.”;

And,

On page seven, by striking out all of subsection 5.3.

(g) The legislative rule filed in the State Register on July 29, 2011, authorized under the authority of section four, article one, chapter sixteen of this code, relating to the Department of Health and Human Resources (public water systems design standards, 64 CSR 77), is authorized with the following amendments:

On page seven, after subdivision 3.3.d., by inserting a new subsection, designated subsection 3.4., to read as follows:

“3.4. Specifications – The applicant or the applicant’s engineer shall supply complete, detailed technical specifications for the proposed project, including: pipe, valves and other building materials; a program for keeping existing public water system facilities in operation during construction of additional facilities so as to minimize interruption of service; laboratory facilities and equipment; the number and design of chemical feeding

equipment; and materials or proprietary equipment for sanitary or other facilities including any necessary backflow or backsiphonage protection.”;

On page eleven, by striking out “§65-77-5.” and inserting in lieu thereof “§64-77-5.”;

On page thirty-five, paragraph 6.3.h.2., after the words “at a minimum,” by inserting the word “of”;

On page forty, paragraph 6.4.g.1., by striking out the word “led” and inserting in lieu thereof the word “lead”;

On page forty-five, paragraph 6.4.i.2., by striking out the word “devise” and inserting in lieu thereof the word “device”;

On page sixty-seven, paragraph 7.5.d.2., by striking out the word “shall be” and inserting in lieu thereof the words “shall be”;

And,

On page sixty-seven, paragraph 7.5.e.3., by striking out the word “serve” and inserting in lieu thereof the word “severe”.

§64-5-3. Division of Human Services.

(a) The legislative rule filed in the State Register on ~~August 26, 2008~~ July 29, 2011, authorized under the authority of section four, article two-b, chapter forty-nine of this code, modified by the Division of Human Services to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on ~~November 21, 2008~~ November 23, 2011, relating to the Division of Human Services (family child care center ~~center~~ facility licensing requirements, 78 CSR 4 18), is authorized.

(b) The legislative rule filed in the State Register on July 29, 2011, authorized under the authority of section four, article two-b, chapter forty-nine of this code, modified by the Division of Human Services to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 23, 2011, relating to the Division of Human Services (family child care home registration requirements, 78 CSR 19), is authorized.

(c) The legislative rule filed in the State Register on July 29, 2011, authorized under the authority of section two, article two-e, chapter forty-nine of this code, modified by the Division of Human Services to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 23, 2011, relating to the Division of Human Services (child care quality rating and improvement system, 78 CSR 22), is authorized, with the following amendment:

On page one, subsection 1.4, line six, by striking out the words “July 1, 2012” and inserting in lieu thereof the words “This rule is effective upon the date specified in an

emergency rule promulgated by the Department of Health and Human Resources as being the date funding for implementation of the Child Care Quality Rating and Improvement System will become available pursuant to a duly enacted appropriation bill authorizing the expenditure of funds for that purpose.”;

And,

On page one, beginning on line thirteen, by striking out subsection 2.3 in its entirety and inserting in lieu thereof a new subsection 2.3, to read as follows:

“2.3 Pursuant to W.Va. Code §49-2E-4, no provision of this rule may be construed to require implementation of a quality rating and improvement system unless funds are appropriated therefor. The ‘Quality Rating and Improvement System Cost Implementation Study’ dated July 31, 2011, prepared and published by the Marshall University Center for Business and Economic Research for the Department of Health and Human Resources and accessible on-line at

<http://www.marshall.edu/cber/research/QualityRatingImprovementSystemFINAL.pdf> , is the financial plan submitted by the Secretary of the Department of Health and Human Resources pursuant to Chapter §49-2E-3, and is hereby attached by reference and incorporated into this rule as if fully set forth herein. The financial plan prioritizes the components of the system for implementation and provides for gradual implementation over a period of several years in the event that funding is not sufficient to implement all requirements in code.”.

§64-5-4. Commission for the Deaf and Hard of Hearing.

(a) The legislative rule filed in the State Register on July 29, 2011, authorized under the authority of section nine, article fourteen-a, chapter five of this code, relating to the Commission for the Deaf and Hard of Hearing (fees for qualified interpreters, 192 CSR 1), is authorized, with the following amendment:

On page four, subsection 2.24, by striking out the words “spoken translating” and inserting in lieu thereof the words “translating spoken”.

(b) The legislative rule filed in the State Register on July 29, 2011, authorized under the authority of section five, article fourteen-a, chapter five of this code, modified by the Commission for the Deaf and Hard of Hearing to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 1, 2011, relating to the Commission for the Deaf and Hard of Hearing (establishment of required qualifications and ethical standards for interpreters and transliterators, 192 CSR 3), is authorized.

Senate Bill 365

Effective Date: July 1, 2012

Signed by Governor: March 20, 2012

Code Reference: Amends §5-16-4

Title: Increasing Membership of PEIA Finance Board

Major Provisions:

- The bill increased the number of members of the PEIA Finance Board from nine to eleven by adding a member to represent a participating political subdivision and increasing the number of members selected from the public at large from four to five.

- The bill left intact that requirement the members be paid the same compensation and expense reimbursement as paid to members of the Legislature for interim duties and deleted the proviso that such compensation had to be approved by the Citizens Legislative Compensation Commission and authorized by law.

ENROLLED

Senate Bill No. 365

(BY SENATORS LAIRD, PLYMALE, BEACH AND MILLER)

[Passed March 6, 2012; to take effect July 1, 2012.]

AN ACT to amend and reenact §5-16-4 of the Code of West Virginia, 1931, as amended, relating to the Public Employees Insurance Agency Finance Board; increasing the membership of the board; and changing the composition of the board.

Be it enacted by the Legislature of West Virginia:

That §5-16-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-4. Public Employees Insurance Agency Finance Board continued; qualifications, terms and removal of members; quorum; compensation and expenses; termination date.

(a) The Public Employees Insurance Agency Finance Board is continued and consists of the Secretary of the Department of Administration or his or her designee and ~~eight~~ ten members appointed by the Governor, with the advice and consent of the Senate, for terms of four years and each may serve until his or her the appointment of their successors successor is appointed and qualified. Members may be reappointed for successive terms. No more than ~~five~~ six members, including the Secretary of the Department of Administration, may be of the same political party.

(b)(1) Of the ~~eight~~ ten members appointed by the Governor with advice and consent of the Senate, one member shall represent the interests of education employees, one shall represent the interests of public employees, one shall represent the interests of retired employees, one shall represent the interests of organized labor, one shall represent the interests of a participating political subdivision and ~~four~~ five shall be selected from the public at large. The Governor shall appoint the member representing the interests of education employees from a list of three names submitted by the largest organization of education employees in this state. The Governor shall appoint the member representing the interests of organized labor from a list of three names submitted by the state's largest organization representing labor affiliates. The ~~four~~ five members appointed from the public shall each have experience in the financing, development or management of employee benefit programs.

(2) All appointments shall be selected to represent the different geographical areas within the state and all members shall be residents of West Virginia. No member may be removed from office by the Governor except for official misconduct, incompetence,

neglect of duty, neglect of fiduciary duty or other specific responsibility imposed by this article or gross immorality.

(c) The Secretary of the Department of Administration shall serve as chair of the finance board, which shall meet at times and places specified by the call of the chair or upon the written request to the chair of at least two members. The Director of the Public Employees Insurance Agency shall serve as staff to the board. Notice of each meeting shall be given in writing to each member by the director at least three days in advance of the meeting. ~~Five~~ Six members constitute a quorum. The board shall pay each member the same compensation and expense reimbursement that is paid to members of the Legislature for their interim duties ~~as recommended by the Citizens Legislative Compensation Commission and authorized by law~~, for each day or portion of a day engaged in the discharge of official duties.

(d) Upon termination of the board and notwithstanding any provisions in this article to the contrary, the director is authorized to assess monthly employee premium contributions and to change the types and levels of costs to employees only in accordance with this subsection. Any assessments or changes in costs imposed pursuant to this subsection shall be implemented by legislative rule proposed by the director for promulgation pursuant to the provisions of article three, chapter twenty-nine-a of this code. Any employee assessments or costs previously authorized by the finance board shall then remain in effect until amended by rule of the director promulgated pursuant to this subsection.

Senate Bill 371

Effective Date: March 10, 2012

Signed by Governor: April 2, 2012

Code Reference: Adds §18-5B-12

Title: Providing School System Under Declared State of
Emergency Participate as Collaborative Innovation Zone

Major Provisions:

- The Bill amends West Virginia Code by adding thereto a new section, designated §18-5B-12, relating to:
 - Allowing flexibility within county school systems;
 - Authorizing the State Board of Education to select a county school system to serve as a school system collaborative innovation zone;
 - Giving McDowell County first opportunity to submit application;
 - Specifying effect of change in school system approval status;
 - Requiring the State Board of Education to promulgate rules and emergency rules;
 - Providing the procedure and criteria for application and selection as a school system collaborative innovation zone;
 - Requiring development of school system collaborative innovation zone plan;
 - Setting forth potential innovations;
 - Requiring public town hall meetings;
 - Requiring meeting to review input from town hall meetings and develop plan;
 - Requiring meeting to educate employees about the plan and to allow examination and discussion of plan;
 - Requiring vote to determine level of school employee support;
 - Authorizing a designated school system to submit requests for exceptions from county and state board rules, policies and interpretations;
 - Permitting exceptions from statutes subject to legislative approval;
 - Allowing revision and resubmission of approved plan;

- Setting forth duration of plan;
- Requiring annual performance reviews and reports;
- Permitting the posting of certain teaching vacancies; and including,
- A school system collaborative innovation zone and to the extent applicable, any land and infrastructure needs in the land use master plan, authorizing an area health association to work with county board in addressing health, wellness and fitness needs and authorizing an area institution of higher education to work with the county board to address certain challenges.

ENROLLED

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 371

(BY SENATORS KESSLER (MR. PRESIDENT) AND HALL,
BY REQUEST OF THE EXECUTIVE)

[Passed March 10, 2012; in effect from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5B-12, relating to allowing flexibility within county school systems; authorizing the State Board of Education to select a county school system to serve as a school system collaborative innovation zone; giving McDowell County first opportunity to submit application; specifying effect of change in school system approval status; requiring the State Board of Education to promulgate rules and emergency rules; providing the procedure and criteria for application and selection as a school system collaborative innovation zone; requiring development of school system collaborative innovation zone plan; setting forth potential innovations; requiring public town hall meetings; requiring meeting to review input from town hall meetings and develop plan; requiring meeting to educate employees about the plan and to allow examination and discussion of plan; requiring vote to determine level of school employee support; authorizing a designated school system to submit requests for exceptions from county and state board rules, policies and interpretations; permitting exceptions from statutes subject to legislative approval; allowing revision and resubmission of approved plan; setting forth duration of plan; requiring annual performance reviews and reports; permitting the posting of certain teaching vacancies; and including, for a school system collaborative innovation zone and to the extent applicable, any land and infrastructure needs in the land use master plan, authorizing an area health association to work with county board in addressing health, wellness and fitness needs and authorizing an area institution of higher education to work with the county board to address certain challenges.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-5B-12, to read as follows:

ARTICLE 5B. SCHOOL INNOVATION ZONES ACT.

§18-5B-12. School system collaborative innovation zone; requirements to qualify; application for designation; required plans for innovation zones; plan approval; waiver of statutes, policies, rules or interpretations; progress reviews and annual reports; teacher vacancies, job postings and approval.

(a) The Legislature makes the following findings and expressions of legislative intent:

(1) The Legislature created a performance-based accreditation system in 1988 and has amended these provisions several times, significantly in 1998 to set forth a process for improving education consisting of four elements: (i) High quality education standards; (ii) an assessment of the performance and progress of schools and school systems in achieving these standards with a primary focus on student learning; (iii) holding schools and school systems accountable for performance and progress to provide assurances that a thorough and efficient education is being provided; and (iv) a process for targeting resources strategically to improve teaching and learning. These provisions include a process for the state board to declare a state of emergency and intervene in the operation of a school system when its educational program does not meet the standards and it fails to implement an improvement plan or meet the plan's deadlines and improve with a reasonable time. Since the inception of these provisions, the state board has declared a state of emergency in nine county school systems and intervened, including delegating decision-making authority to the state superintendent or his or her designee for system operations. Of these nine school systems, three improved sufficiently over a period of time for the state of emergency to be rescinded, the longest of which took ten years and six months. Of the six systems remaining under state board intervention, although most are fairly recent, one school system has been under state intervention for more than ten years and its improvement is progressing slowly;

(2) School systems do not exist in a vacuum and external circumstances and events can have a significant impact on them and the students they serve, as well as on the system's capacity to deliver the thorough and efficient education to which those students are entitled. For example, the McDowell County school system which in the 1950's at its height of employment in coal production had a total population of about 100,000 residents, faced much different challenges than it does today with that county's total population now at 22,113 based on the 2010 census. This school system has lost nearly 70% of its enrollment in the past 30 years, declining from 11,715 students in 1981-82 to 3,535 in 2011-12. Along with the steep decline in the historical bedrock of employment in the county in the coal industry and the large number of middle class workers and services it supported, including housing, utilities and medical care, the county's rugged mountainous topography contributes to its vulnerability to natural disasters such as the devastating floods in 2001 and 2002 that swept away many homes and much of the infrastructure along the creek beds throughout the county. This topography also significantly limits the amount of land suitable for development and transportation networks, and makes planning for future economic development alternatives difficult. The social and economic byproducts of these external circumstances and events leave a school system with many atypical challenges for addressing the needs of its students and making the improvements in performance and progress needed to assure a thorough and efficient education;

(3) Among the findings, intent and purposes of this article are that: (i) Allowing exceptions from certain statutes, policies, rules and interpretations through the creation of innovation zones will enable greater local control over the important educational

factors that impact student achievement and the delivery of educational services to improve student learning; and (ii) Innovation zones will provide greater flexibility and local control to meet the needs of a diverse population of students. In addition, among the findings of the Local Solution Dropout Prevention and Recovery Innovation Zone Act as set forth in section eleven of this article are findings that when educators, parents, elected officials, business leaders, faith-based leaders, human service personnel, judicial personnel and civic leaders collectively work together they are often able to find innovative solutions to address school and community problems. Since the creation of this article, forty-five innovation zone projects have been approved by the state board, nine of which were Dropout Prevention and Recovery Innovation Zone projects. Twenty-seven policy waivers and five statutory waivers have been granted to enable implementation of these projects. In one county, an innovation zone project was expanded to all of the remaining schools in the county when the schools used the Local School Improvement Council waiver process to request and receive a statutory waiver to implement a comprehensive new teacher induction process county-wide. Collectively, these projects illustrate how local schools, and in some cases school systems, have increased their capacity by using the innovation zone process to collaboratively plan and implement a variety of changes to increase student engagement, develop more flexible schedules, enhance student and teacher ownership of the learning process and increase student achievement;

(4) Choosing one county school system under a declared state of emergency due to nonapproval status to designate as an innovation zone would allow the testing of innovations that could be replicated in other school systems facing similar circumstances across the state, nation and world;

(5) Numerous studies have shown an association between a young person's health status and his or her ability to succeed in educational settings;

(6) McDowell County is unique and should be given the first opportunity to use innovative solutions to improve its education system when the totality of the circumstances set forth in this subsection are considered. Other facts specifically applicable to McDowell County include the following:

(A) The McDowell County school system has been under a continuous declared state of emergency by the state board due to nonapproval status longer than any other county that is currently under a declared state of emergency;

(B) McDowell County school system is engaged in a public-private partnership to begin addressing challenges both within the school system and in the community at large; and

(C) McDowell County has a chronic shortage of good roads, public transportation, housing, Internet bandwidth, recreation centers and health clinics;

(7) This section is intended as an additional tool for an eligible school system in collaboration with community and business partners to plan and implement new

approaches to improve the performance and progress of the students, schools and system to achieve full approval at the earliest possible date. It is further the intent of the Legislature that the process for an eligible school system to apply for exceptions under this section should allow multiple opportunities to apply for additional exceptions as the system moves forward with its partners toward fulfillment of its improvement goals; and

(8) In accordance with the intent of this section as an additional tool for planning and implementing new approaches to improve the performance and progress of the students, schools and school system to achieve full approval at the earliest possible date, the state board shall rescind the state of emergency and nonapproval status of a school system designated as a school system collaborative innovation zone as soon as the requisite conditions are met as provided in section five, article two-e of this chapter, notwithstanding the designation. If a school system that has been designated as a school system collaborative innovation zone is subsequently issued a school system approval status that would make it ineligible for the designation, the designation shall remain in effect as provided in this section.

(b) The state board is authorized to choose one county school system currently under a declared state of emergency by the state board due to nonapproval status to participate a program to test the effectiveness of allowing such county school systems to be considered school system collaborative innovation zones. Due to the reasons set forth in subsection (a) of this section, the McDowell County Board of Education shall be provided the first opportunity to submit a school system collaborative innovation zone application under this article. If the McDowell County Board of Education has not submitted an application by April 1, 2013 or less than fifty percent cast ballots in an election to approve a school system collaborative innovation zone plan, the state board may accept applications from other county boards under a declared state of emergency by the state board due to nonapproval status.

(c) The Legislature finds that an emergency exists and, therefore, no later than April 16, 2012, the state board shall promulgate an emergency rule in accordance with section ten, article three-b, chapter twenty-nine-a of this code, to implement the provisions of this article. The state board also shall promulgate a legislative rule, in accordance with article three-b, chapter twenty-nine-a of this code, to implement this section. Both rules shall include, but not be limited to, the following provisions:

(1) The manner, time and process for the submission of a school system collaborative innovation zone application;

(2) The contents of the application, which must include a general description of the innovations the county school district seeks to institute;

(3) Factors to be considered by the state board when evaluating an application, which shall include, but are not limited to, the following factors:

(A) Support from teachers, staff, parents, students, the county board of education, the local school improvement council and school business partners; and

(B) The potential for an applicant to be successful in raising student achievement as a school system collaborative innovation zone; and

(4) Standards for the state board to review applications for designation as a school system collaborative innovation zone and to make determinations on the designation of a school system collaborative innovation zone.

(d) The state board shall review school system collaborative innovation zone applications in accordance with the standards adopted by the board and shall determine whether to designate the applicant as a school system collaborative innovation zone. The state board shall notify an applicant of the board's determination within thirty days of receipt of the application.

(e) Prior to designation by the state board as a school system collaborative innovation zone, county school systems submitting applications shall develop school system collaborative innovation zone plans. The school system collaborative innovation zone plan may include, but is not limited to, the following proposals:

(1) Allowing increased collaborative site-based decision-making powers over the budgeting for and spending on programs and services for students;

(2) Allowing increased collaborative site-based decision-making powers over teacher recruitment;

(3) Allowing a collaborative process which ensures accountability and transparency to all stakeholders;

(4) Allowing a collaborative process which provides input and demonstrative buy-in from education personnel regarding appropriate professional development, supports, resources and working conditions.

(5) Allowing a collaborative site-based process to reduce certain requirements to allow staff to meet the school's mission;

(6) Allowing, through a collaborative site-based process, flexibility to the alternative teacher certification provided in section one-a, article three, chapter eighteen-a of this code;

(7) Utilizing virtual school courses aligned with the Southern Regional Education Board's Standards for Quality Online Courses; and

(8) Other innovation zone plans approved under the provisions of this article and being implemented in other schools and school systems throughout the state.

(f) Prior to submitting a school system collaborative innovation zone plan to the state board:

(1) The school system in collaboration with its public-private partnership shall conduct public town hall meetings in at least two schools in the county for the purpose of soliciting input from those in attendance on the challenges affecting the quality of education in the county and the potential strategies and priorities for addressing them. The two meetings shall occur within ten days of each other;

(2) Within fifteen days after the town hall meetings, the county superintendent shall hold a meeting for the purpose of reviewing the input gathered at the public town hall meetings and developing the school system collaborative innovation zone plan. The meeting shall include the principals employed within the county, the chairs of the faculty senates of each school in the county, employee organization representatives, school service person from each work-site, parents and other stakeholders;

(3) Within fifteen days after the meeting to develop the school system collaborative innovation zone plan, the county superintendent shall hold a meeting of all regularly employed school employees for the purpose of educating those employees about the plan and for the purpose of providing the employees an opportunity to examine and discuss the school system collaborative innovation zone plan; and

(4) At the meeting required by subdivision (3) of this subsection, the county superintendent shall direct that a vote of all regularly employed school employees in the county be conducted to determine the level of school employee support for the school system collaborative innovation zone plan. The vote shall be completed within fifteen days after the meeting required by subdivision (3) of this subsection. The vote shall be by secret ballot administered by the panels created in subsection (c) section six of this article for each school and shall be administered in accordance with that subsection. For the vote to be valid, ballots must be cast by at least fifty percent of all regularly employed school employees in the county. The plan may not be submitted to the state board and the state board may not designate the school system as a school system collaborative innovation zone unless at least two-thirds of the employees voting vote to submit the plan.

(g) Approval of a school system collaborative innovation zone plan pursuant to this section is at the sole discretion of the state board. Any approval requirement not contained within this section does not apply.

(h) The plan is intended to serve as the basis for the innovation zone activities of the school system and to provide a vision for the school improvement goals it will work to accomplish in collaboration with its school and community partners. The plan is not intended as a limit on the normal school improvement activities that all school systems are expected to pursue, nor is the plan intended as a restriction on the ability of the school system or its schools to pursue other innovative strategies in accordance with the

other provisions of this article, specifically the designation as a Local Solution Dropout Prevention and Recovery Innovation Zone in accordance with section eleven of this article.

(i) The designation as a school system collaborative innovation zone authorizes the school system to submit requests as provided in subsection (j) of this section to the state board for exceptions to statutes, policies, rules and interpretations that are required to permit implementation by the school system of the innovative strategies contemplated in its strategic plan for school improvement. The designation shall be for a period of five years, during which the school system may submit multiple individual requests for exceptions to permit implementation of different strategies contemplated in the plan as the strategies are developed. Each request for an exception shall be submitted and may be approved by the state board in accordance with subsection (j) of this subsection.

(j)(1) A school system designated as a school system collaborative innovation zone may request an exception to a statute, policy, rule or interpretation by submitting an application to the state board that contains the following information:

(A) A description of the program or initiative the school system intends to implement as an innovative strategy to improve student achievement if the request is approved by the state board;

(B) An explanation of the specific exception to a statute, policies, rule or interpretation, in the singular or plural, that the school system has identified as prohibiting or constraining the implementation of the program or initiative and why the exception is necessary;

(C) An explanation of how the program or initiative furthers the activities contemplated in the strategic plan for improvement;

(D) A certification by the county superintendent that the request for an exception was approved by a vote of the eligible employees in accordance with the process for voting as set forth in section six of this article, except that notwithstanding subsection (d) of said section six, at least two-thirds of the eligible employees voting must vote to request the exception for it to be approved for submission to the state board: *Provided, That for the vote to be valid, ballots must be cast by at least fifty percent of the eligible employees; and*

(E) Any other information the state board requires as set forth in its rule pursuant to subsection (c) of this section.

(2) The state board shall review request in accordance with the standards adopted by the board in its rule and shall determine whether to approve or disapprove the request. The approval or disapproval of a request is at the sole discretion of the state board. Any approval requirement not contained within this section does not apply.

(3) Except as provided in subdivision (5) of this subsection, the state board shall approve or disapprove the request within thirty days of receipt, subject to the following:

(A) No exceptions to state board policies, rules or interpretations are granted unless the state board approves the request at least conditionally pursuant to subdivisions (2) and (5) of this subsection; and

(B) If the request is disapproved, the state board shall communicate its reasons for the disapproval to the school system and shall make recommendations for improving the request. The school system may amend and resubmit the request.

(4) Upon approval of the request by the state board, all of the exceptions to state board policies, rules and interpretations the were requested are granted; and

(5) If a request, or a part thereof, may not be implemented unless an exception to a statute is granted by an Act of the Legislature, the state board may approve the request, or the part thereof, only upon the condition that the Legislature acts to grant the exception. If the state board approves a request on that condition, the state board shall submit the request for an exception to a statute, along with supporting reasons, to the Legislative Oversight Commission of Education Accountability. The commission shall review the request and make a recommendation to the Legislature regarding the exception requested.

(k) Upon approval of the exception by the state board, all exceptions to county and state board rules, policies and interpretations listed in the plan are granted.

(l) A county board designated as an school system collaborative innovation zone pursuant to this section that has an approved innovation zone plan may revise its plan and resubmit its plan to the state board for approval after conducting the vote pursuant to subdivision (4), subsection (f) of this section and complying with all other applicable plan requirements set forth in this section except for holding the public town hall meetings required by subdivision (1), subsection (f) of this section.

(m) The designation of a county school system as a school system collaborative innovation zone shall be for a period of five years. The state board, upon request of the school system, may extend the designation for an additional two years if the school system has outstanding items in its school system collaborative innovation zone plan that it still wants to pursue and only for the purpose of pursuing those outstanding items. The expiration of the designation does not negate any exceptions to statutes, policies, rules or interpretations granted to the school system, unless and until specifically revoked, repealed or modified by the state board or by the Legislature, as applicable.

(n) The state board or its designated committee shall perform annual performance reviews and provide annual reports in accordance with section seven of this article.

(o) A county school system whose plan has been approved may make a job posting for a teacher vacancy in accordance with the procedures and approval provided by section eight of this article.

(p) For any county that is designated as a school system collaborative innovation zone under the provisions of this section and to the extent the following provisions are applicable:

(1) The county commission of the designated county shall collaborate with the Office of Coalfield Community Development in including any land and infrastructure needs in the land use master plan provided for in section nine, article two-a, chapter five-b of this code. These needs may include, but are not limited to, advancement of public education, economic development, highway development, recreational amenities and housing development;

(2) An area health organization, such as Tug River Health Association, Inc. is authorized to work with the county board to address the health, wellness and fitness needs of students, parents, school personnel and all others in the county. Tug River Health Association may partner with the Robert C. Byrd Center for Rural Health and the Marshall University Medical School in addressing these needs. In addressing the health, wellness and fitness needs, the following should be considered:

(A) New evaluations of school-aged children are needed to reassess their health status and direct further interventions;

(B) Prior to developing new assessment tools and initiating programs, a comprehensive inventory of prior assessment tools and programs is needed to determine their strengths and weaknesses. This can direct further studies and interventions;

(C) New assessment tools should include objective markers of disease as well as subjective opinions of individual health status and barriers to health;

(D) Objective and subjective data should be linked at individual and disease-specific levels;

(E) Disease-specific data may be used to address common barriers to health as perceived by a specific population and tailor interventions to these specific populations;

(F) The effectiveness of interventions should be assessed using the same health status markers used to develop the intervention;

(G) Interventions should use available technology that allows individuals to track measures of health and provide assistance in making informed decisions about their health;

(H) Assessments and interventions should be developed and implemented using community-based participatory research models; and

(I) Assessments and interventions should be multidisciplinary, collaborative efforts with existing organizations and programs; and

(3) Area institutions of higher education, such as Concord University and the June Harless Center at Marshall University, are authorized to work with the county board on innovative strategies to address challenges facing the school system and community, including but not limited to, the areas of critical need and shortage in the teaching force, educator professional development and improving the college going rate. In addressing the areas of critical need shortage in the teaching force, consideration should be given to the implementation of an intensively supervised and mentored teacher-in-residence program for prospective teachers during their senior year in lieu of student teaching.

Senate Bill 436

Effective Date: March 10, 2012

Signed by Governor: April 2, 2012

Code Reference: Repeals §18-27-1, §18-27-2, §18-27-3, §18-27-4, §18-27-5, §18-27-6, §18-27-7, §18-27-8, §18-27-9, §18-27-10, §18-27-11, §18-27-12, §18-27-13, §18-27-14, §18-27-15, §18-27-16, §18-27-17, §18-27-18, §18-27-19, §18-27-20, §18-27-21 and §18-27-22

Amends §18-2-10, §18-2B-1, §18-2B-2, §18-2B-3, §18-2B-4, §18-2B-7, §18B-3C-1, §18B-3C-2 and §18B-3C-4

Adds §18-13-1, §18-13-2, §18-13-3, §18-13-4, §18-13-5, §18B-3B-1, §18B-3B-2 and §18B-3B-3 and §18B-14-1

Title: Facilitating Collaboration Between Public School and Higher Education Systems to Promote Seamless Curricula

Major Provisions:

- The bill repealed statutes that established and governed the West Virginia Education Loan Bond program.
- The balance of the bill promotes and requires collaboration between public education and institutions of higher education.
- Adds language that requires the state board to provide Adult Basic Education at each community and technical college.
- Sections of the State Code §18-2B-1 thru §18-2B-4 removed language to reflect current practice.
- Section §18-13-1 codifies the West Virginia EDGE initiative in state code and is required to be a joint effort between the Community and Technical System and Public Schools to create a seamless curriculum that aligns programs of study between educational levels.
- Section §18-13-2 identifies the Goals for the Edge Initiative.
- Section §18-13-3 identifies program administration and accountability. It identifies that the EDGE is administered by the Assistant State Superintendent of the Division of Technical, Adult,

and Institutional Education.

- Section §18-13-4 requires the State Board and the Council for Community and Technical College Education to promulgate a joint rule that incorporates strategies designed to achieve overall goals of the EDGE initiative, methods of operation, and step by step procedures for achieving the objectives and the collaborative program's requirements.
- Section §18-13-5 states that funding is subject to appropriation by the legislature and no funds were appropriated.
- Section §18B-3B-2 requires the development of Collaborative Degree Completion Programs through an established collaborative partnership known as the Community and Technical College/Career and Technical Education Consortia.
- Section §18B-3B-3 delineates the members of the Community and Technical College/Career and Technical Education Consortia and requires a memorandum of understanding between the members that delineates the Consortia's activities and members' responsibilities.
- Article 3C relates specifically to Community and Technical colleges and requires the colleges to work with public schools to implement seamless and advanced program of studies.
- Article 14 deals only with higher education.

ENROLLED

Senate Bill No. 436

(BY SENATORS PLYMALE, BROWNING, UNGER, KESSLER (MR. PRESIDENT), PREZIOSO, KLEMPA, BEACH AND JENKINS)

[Passed March 10, 2012; in effect from passage.]

AN ACT to repeal §18-27-1, §18-27-2, §18-27-3, §18-27-4, §18-27-5, §18-27-6, §18-27-7, §18-27-8, §18-27-9, §18-27-10, §18-27-11, §18-27-12, §18-27-13, §18-27-14, §18-27-15, §18-27-16, §18-27-17, §18-27-18, §18-27-19, §18-27-20, §18-27-21 and §18-27-22 of the Code of West Virginia, 1931, as amended; to amend and reenact §18-2-10 of said code; to amend and reenact §18-2B-1, §18-2B-2, §18-2B-3, §18-2B-4 and §18-2B-7 of said code; to amend said code by adding thereto a new article, designated §18-13-1, §18-13-2, §18-13-3, §18-13-4 and §18-13-5; to amend said code by adding thereto a new article, designated §18B-3B-1, §18B-3B-2 and §18B-3B-3; to amend and reenact §18B-3C-1, §18B-3C-2 and §18B-3C-4 of said code; and to amend said code by adding thereto a new section, designated §18B-14-1, all relating to public education generally; state institutions of higher education; career and technical education; seamless curricula; programs of study; requiring state board to provide adult basic education programs on certain college campuses; creating West Virginia EDGE initiative; establishing initiative goals; providing for administration and accountability; requiring certain joint rule; clarifying that no specific level of appropriation is required; creating collaborative degree completion program; setting forth legislative findings, intent and program objectives; specifying program applicability; setting forth powers and duties of participating agencies; requiring certain agreements and specifying approval procedures; clarifying legislative findings and intent regarding community and technical college system; renaming certain consortia planning districts and clarifying duties; specifying certain accountability procedures; providing for consortia cochairs; assigning responsibility for developing collaborative degree completion programming; defining programs of study and directing consortia to focus on identifying and providing student programs of study leading to placement in high-demand, high-wage occupations; requiring initial consortia compacts and annual updates by certain date and specifying approval process; specifying facilitating institutions for certain consortia; providing for select committee to examine higher education outcomes-based funding models; specifying membership; requiring report of findings with recommendations to Legislative Oversight Commission on Education Accountability and Joint Committee on Government and Finance by certain date; updating names of agencies and institutions; making technical corrections; and deleting obsolete language.

Be it enacted by the Legislature of West Virginia:

That §18-27-1, §18-27-2, §18-27-3, §18-27-4, §18-27-5, §18-27-6, §18-27-7, §18-27-8, §18-27-9, §18-27-10, §18-27-11, §18-27-12, §18-27-13, §18-27-14, §18-27-15, §18-27-16, §18-27-17, §18-27-18, §18-27-19, §18-27-20, §18-27-21 and §18-27-22 of the Code

of West Virginia, 1931, as amended, be repealed; that §18-2-10 of said code be amended and reenacted; that §18-2B-1, §18-2B-2, §18-2B-3, §18-2B-4 and §18-2B-7 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §18-13-1, §18-13-2, §18-13-3, §18-13-4 and §18-13-5; that said code be amended by adding thereto a new article, designated §18B-3B-1, §18B-3B-2 and §18B-3B-3; that §18B-3C-1, §18B-3C-2 and §18B-3C-4 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18B-14-1, all to read as follows:

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-10. Certificates and awards.

The State Board of ~~education~~ shall make promulgate rules and ~~regulations~~ shall determine the minimum standards for the granting of certificates and awards for secondary vocational education, adult basic education, adult occupational education and adult technical preparatory education, subject to the provisions of section two, article two-b of this chapter and article three-a of chapter eighteen-b of this code.

The State Board shall provide a program of adult basic education at each state community and technical college campus where developmental education services are provided in cooperation with the West Virginia Council for Community and Technical College Education and the institutional board of governors of each college. This approach to providing adult basic education links these programs with developmental education and creates a simpler, clearer pathway for adults to enter college.

ARTICLE 2B. AREA VOCATIONAL PROGRAM.

§18-2B-1. Aims and purposes of program; areas where available.

The aims and purposes of the area vocational educational program ~~shall be~~ are to provide vocational training or retraining on an organized basis designed to prepare individuals for useful employment in recognized occupations. The program shall be made available to residents of West Virginia in an area or areas designated and approved by the ~~West Virginia State Board of vocational education~~.

~~§18-2B-2. State board of vocational education; Authority to establish programs, etc.; until July 1, 1990; Joint Commission for Vocational-Technical-Occupational Education; state board of education and board of directors; authority to establish programs, etc.; Division of Vocational Education established; rules and regulations; director.~~

(a) For the purpose of this article, The State Board of ~~education~~ is designated as the state board of vocational education serving and meeting as the sole agency responsible for the administration of vocational education and for supervision of the administration thereof by local educational agencies and is hereby authorized and empowered to may establish, operate and maintain area vocational educational programs including the

acquisition by purchase, lease, gift or otherwise of necessary lands and the construction, expansion, remodeling, alteration and equipping of necessary buildings for the purpose of operating and conducting educational training centers. The state board of vocational education may delegate for such period of time as it may determine its operational authority for multi-county vocational centers to an administrative council composed of equal representation from each of the participating county boards of education, the superintendent of schools from each participating county, and the state director of vocational education or his representative. To this end, there is hereby expressly established in the state board of education a division of vocational education which shall establish the area or areas in which the programs are to be conducted and shall have authority to promulgate, pursuant to the provisions of chapter twenty-nine-a of this code, rules and regulations necessary to carry out the provisions of this article. The administration and supervision of the area vocational educational programs shall be administered by the director of the division of vocational education.

~~(b) Effective the first day of July, one thousand nine hundred ninety, the West Virginia joint commission for Vocational-Technical-Occupational Education, hereinafter referred to as "Joint Commission," established pursuant to the provisions of article three-a, chapter eighteen-b of this code, is designated as the sole agency responsible for the administration of vocational-technical-occupational education in the state. The joint commission is designated thereafter to receive federal money for vocational-technical-occupational education in the state as of the first day of July, one thousand nine hundred ninety. Effective the first day of July, one thousand nine hundred eighty-nine, the joint commission shall determine which adult occupational education programs and which adult technical preparatory educational programs as defined in section one-b, article three-a, chapter eighteen-b of this code, shall be under the jurisdiction of the state board of education and which said programs shall be under the jurisdiction of the board of directors. Effective the first day of July, one thousand nine hundred eighty-nine, any proposed new program by the state board of education or the board of directors in the areas of adult occupational education or adult technical preparatory education as defined in section one-b, article three-a, chapter eighteen-b of this code shall be filed with the joint commission with notice of intent to plan, which such new program shall require approval by the joint commission prior to institution of such new program. The secondary and post-secondary vocational education programs of the state existing as of the effective date of this article shall remain in place until the first day of July, one thousand nine hundred ninety, during which time the joint commission shall conduct a study of secondary and post-secondary vocational education in the state including definitions of same, and shall make recommendations to the Legislature respecting secondary and post-secondary vocational education in the state, including recommendations as to the definitions of same, on or before the first day of December, one thousand nine hundred ninety. As of the first day of July, one thousand nine hundred ninety, the joint commission is authorized to implement policies to supervise and coordinate the secondary and post-secondary vocational education programs in the state. The joint commission is hereby empowered as of the first day of July, one thousand nine hundred ninety, to determine the standards for the certification and awards of vocational programs in the state or to delegate said authority, based on the~~

~~joint commission's aforesaid study of the secondary and post-secondary vocational education in the state. The state board of education shall be responsible for the administration of secondary vocational education programs, as determined by the joint commission, and for supervision of the administration thereof by local educational agencies and is hereby authorized and empowered to establish, operate and maintain area vocational educational programs including the acquisition by purchase, lease, gift or otherwise of necessary lands and the construction, expansion, remodeling, alteration and equipping of necessary buildings for the purpose of operating and conducting secondary educational training centers. The state board of education may delegate for such period of time as it may determine its operational authority for multicounty vocational centers to an administrative council composed of equal representation from each of the participating county boards of education, the superintendent of schools from each participating county, and the state director of vocational education or his or her representative. To this end, there is hereby expressly established in the State Board of education a division of secondary vocational education which shall ~~establish~~ determine the area or areas in which the programs are to be conducted and ~~shall have authority is~~ authorized to promulgate rules necessary to carry out the provisions of this article, pursuant to the provisions of article three-b, chapter twenty-nine-a of this code, ~~rules and regulations necessary to carry out the provisions of this article.~~ The administration and supervision of the area vocational educational programs shall be administered by the director of the division of vocational education administers and supervises the area vocational educational programs. The state board of vocational education, previously established under this article, is abolished effective the first day of July, one thousand nine hundred ninety.~~

~~The board of directors shall be responsible for the administration of all post-secondary vocational education in the state, as determined by the joint commission, which shall be administered as a part of the state college system as defined in section two, article one, chapter eighteen-b of this code. In the development of the post-secondary education portion of any and all state plans or amendments thereto as may be required for participation in the Vocational Education Act of 1963, as amended, or as may be required for state participation in any federally funded post-secondary vocational-technical or occupational education programs, the board of directors shall solicit recommendations from the state board of education and the director of the division of vocational education for the post-secondary education provisions to be included in all such plans.~~

~~The joint commission shall, in any and all plans submitted for federal vocational education funds in support of vocational-technical or occupational education, provide that:~~

~~(a) The secondary vocational-technical-occupational education programs administered by the state board of education shall be eligible to receive vocational-technical-occupational education funds in accordance with federal guidelines;~~

~~(b) The comprehensive community college education service regions as established by the board of directors shall be eligible to receive post-secondary vocational-technical-occupational funds in accordance with federal guidelines;~~

~~(c) Services, programs, equipment and facilities may be contracted between comprehensive community colleges, area vocational technical schools and county boards of education as a means of preventing unnecessary duplication;~~

~~(d) Federal funds provided to the state in support of vocational-technical-occupational education shall be allocated to the state board of education and to the board of directors for use in the state system of comprehensive vocational-technical-occupational education in an amount in direct proportion as the respective vocational-technical-occupational enrollments of each program is to the total vocational-technical-occupational enrollment of the state.~~

~~(e) There shall be established an implementation team to review the work of the joint commission for vocational-technical-occupational education and to file a report with the governor and the Legislature by the first day of December, one thousand nine hundred ninety, and shall also file a report with the legislative oversight commission on education accountability no later than the first day of December, one thousand nine hundred eighty-nine. The implementation team shall be composed of one representative of the state department of education, one representative of the community colleges, three members of the senate education committee and three members of the house education committee, all to be appointed by the governor. The secretary of education and the arts shall be responsible for staffing the implementation team utilizing existing personnel, equipment and offices of the board of directors of the state college system and the state board of education.~~

§18-2B-3. Area vocational education program funds.

There is hereby established a fund to be known as " the Area Vocational Education Program Fund for Secondary Education. " There is hereby established a separate fund to be known as "the Area Vocational Education Program Fund for Post-Secondary Vocational Education." All moneys appropriated for such purpose by the Legislature as well as any gifts or grants made to the appropriate fund by any governmental subdivision of the state or by the United States government or by any individual, firm or corporation, to carry out the provisions of this article shall be expended by the State Board of education or the board of directors, as the case may be.

§18-2B-4. Expenditure of funds; title to property.

The State Board of education and the board of directors, as the case may be, are authorized and empowered to may expend the area vocational education program funds for salaries; teachers' retirement contributions; and necessary traveling expenses of teachers; and other necessary employees, including, but not limited to, vocational guidance counselors; for purchase, rental, maintenance and repair of instructional equipment, buildings and supplies; and for the necessary costs of transportation of certified students.

§18-2B-7. Transportation of students.

The State Board of vocational education is hereby authorized and empowered to may pay for the transportation of any certified unemployed person participating in any area vocational educational program during the period of time that he or she is engaged in said the training program at any of the instructional centers.

ARTICLE 13. West Virginia EDGE.

§18-13-1. Earn a Degree - Graduate Early (EDGE) initiative established; purposes.

The Earn a Degree - Graduate Early initiative herein established is known and may be cited as “West Virginia EDGE”. This program is part of the programs of study and seamless curriculum initiative that focuses on aligning curriculum between education levels. Specifically, West Virginia EDGE is established to connect public schools with higher education for the following purposes:

(a) To prepare public high school students for success in the workplace or postsecondary education; and

(b) To provide the opportunity for these students to earn community and technical college credit free-of-charge for the duplicated secondary and postsecondary courses identified during the curriculum alignment process.

§18-13-2. Goals for West Virginia EDGE.

In order to serve the citizens of the state by promoting a higher college-going rate, reducing the time and cost for students to obtain college credentials and expanding opportunities for economic development, the West Virginia EDGE initiative shall meet the following goals:

(1) Create incentives for more students to continue their education beyond high school by providing all students with information about and access to courses that will prepare them to meet college-level standards;

(2) Expand successful concurrent enrollment programs that include all students, not just those who are designated as college bound. The goal here is to prepare all students for both work and postsecondary education with the same rigorous curriculum;

(3) Align junior and senior year secondary courses with community and technical college certificate and associate degree programs. This alignment provides access to early entrance college courses which offer all students the opportunity to establish a college transcript while still in high school;

(4) Increase the number of students attending public community and technical colleges by participating in a collaborative partnership between the public schools and the state community and technical colleges; and

(5) Establish programs of study pathways in combination with early entrance college courses which together allow a student to obtain an associate degree one year after high school graduation or to receive an associate degree along with the high school diploma.

§18-13-3. Program administration and accountability.

(a) West Virginia EDGE is administered by the Assistant State Superintendent of the Division of Technical, Adult and Institutional Education who serves as State Tech-Prep Coordinator. The community and technical college/career and technical education consortia planning districts created by section four, article three-c, chapter eighteen-b of this code serve as regional consortia to implement the program.

(b) The duties of State Tech-Prep Coordinator include, but are not limited to, the following:

(1) Developing a collaborative agreement with the facilitating state community and technical college or colleges in each consortium district and with the Council for Community and Technical College Education to meet the goals and objectives of this article.

(2) Meeting the record-keeping requirements of section nine, article eight, chapter five of this code:

(A) By developing or adapting an existing comprehensive relational data base and data analysis system for student tracking to assure that consistent, reliable data relevant to the goals of the program are available; and

(B) By tracking and evaluating EDGE outcomes across all eight consortia districts and by creating a standardized reporting procedure for collecting consistent EDGE data at the state level;

(3) Assuring that coordinators in the district consortia prepare and retain reliable supporting source documents necessary to validate the data included with the state electronic database;

(4) Providing documentation to substantiate program outcomes, including, but not limited to, the number of students who enroll in the program, specific courses taken, student course and final exam grades, the number who earn EDGE credits and, of these, the number who apply the credits in pursuit of degrees or certifications at state community and technical colleges; and

(5) Collecting data relevant to the goals and objectives established for this initiative, analyzing the data, and preparing a report for the Legislative Oversight Commission on Education Accountability by December 1, 2012, and annually thereafter. The specific focus of the report is the analysis of data on program outcomes to demonstrate to what degree the initiative has met the goals and objectives of this article.

§18-13-4. Joint rule required.

The State Board and the West Virginia Council for Community and Technical College Education, created in section three, article two-b, chapter eighteen-b of this code, shall promulgate a joint legislative rule in accordance with article three-b, chapter twenty-nine-a of this code, for the administration of West Virginia EDGE. This rule shall incorporate strategies designed to achieve the overall goals of the program, methods of operation, and step-by-step procedures for achieving the objectives outlined in section two and for implementing the reporting and accountability measures set forth in section three of this article.

§18-13-5. No specific level of appropriation required.

The Legislature recognizes the importance of the West Virginia EDGE Program and will endeavor to provide sufficient funds to meet program goals and objectives. However, funding is subject to appropriation by the Legislature and nothing in this article requires any specific level of appropriation.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 3B. COLLABORATIVE DEGREE COMPLETION PROGRAM.

§18B-3B-1. Legislative findings and intent.

(a) The Legislature makes the following findings:

(1) Evidence from national studies shows clearly that the need to increase the number of Americans who hold post-secondary credentials has reached a critical point. According to *Complete College America*, the United States has fallen from its long-held position as first among the nations and now ranks tenth in the percentage of young adults with a college degree. Even more discouraging is the statistic which shows that, for the first time in national history, the current generation of college-age Americans will be less educated than their parents' generation.

(2) In West Virginia, the large numbers of high school students who are uninterested and/or unprepared for college can be attributed to three primary factors:

(A) Lack of alignment in courses between public education and public colleges and universities;

(B) Lack of clear career pathways presented to students early enough to help them choose and follow an articulated path from high school through postsecondary education; and

(C) Lack of knowledge among students and parents about financial aid opportunities that can help them and their families defray the cost of attending college.

(3) Sixty-three percent of jobs now available or to become available in the near future require postsecondary education. This statistic is particularly relevant for community and technical college students, but even for students who choose to pursue a four-year degree, it is critical that they be clearly focused on career goals in order to succeed.

(4) Currently, a severe gap exists between the demands for technically skilled workers in West Virginia and the aspirations and programmatic focus of many of our students. Nearly thirty percent of the state's high school students have failed to enroll in either the pre-baccalaureate professional pathway or the career and technical education skilled pathway. Most of these individuals could be better served in a focused program of study that begins in the public schools and makes a seamless transition to the postsecondary level in the state community and technical colleges.

(5) The best way to promote this focus on career goals among our students is through implementation of career pathways. This is an integrated collection of programs and services intended to develop students' core academic, technical and employability skills; provide them with continuous education and training; and place them in high-demand, high-opportunity jobs.

(6) In West Virginia, preparing students to achieve higher levels of education is a responsibility shared among the state agencies responsible for providing education and workforce development training. Since increasing the education level of state citizens enhances West Virginia's economic future and the general well-being of its citizens, providing additional opportunities to earn a college credential is the responsibility of all public secondary education and state institutions of higher education.

(b) It is the intent of the Legislature to encompass the entire public higher education system to remove those obstacles that block these pathways to college completion and to direct agencies and institutions to collaborate and cooperate to deliver needed services. Therefore, the object of this article is two-fold:

(1) To set forth a viable collaborative model that public community and technical colleges and public school career centers shall adopt to increase the number of West Virginians with a college credential; and

(2) To maximize existing resources and capacity to train the work force in West Virginia by encouraging the most efficient expenditure of available dollars.

§18B-3B-2. Collaborative degree completion program established; program applicability and objectives.

(a) The Collaborative Degree Completion Program is hereby established as a collaborative partnership which includes the following:

(1) The public school career and technical centers which includes state technology centers, technical centers, career centers and career/technical centers; and

(2) The state community and technical colleges.

(b) The program shall meet the following objectives:

(1) Increasing the number of West Virginians who hold a college credential and providing opportunities for a larger number of adults to earn that credential;

(2) Increasing the education and technical skill levels of the state's work force; and

(3) Delivering post-secondary technical education in the most effective and cost efficient manner by maximizing the available resources of career centers and community and technical colleges.

(c) The program shall be adopted by each community and technical college/career and technical education consortia planning district. Each district shall assess the needs of its employers, institutions and centers and may adapt the basic model to fit the needs of the area to be served; however, each model shall include the following basic strategies to meet the objectives established in this article:

(1) Identify postsecondary adult career-technical education programs offered by the public school career centers that are to be evaluated for delivery as a Certificate of Applied Science or an Associate of Applied Science Degree;

(2) Ensure that all collaborative programs meet the conditions of the Higher Learning Commission of the North Central Association of Schools and Colleges which is the accrediting body for state community and technical colleges;

(3) Ensure that all collaborative programs meet the academic standards of the participating college; and

(4) Provide for the collaborative program to remain onsite at the career and technical center if participating agencies determine that site to be the best location for achieving program objectives.

§18B-3B-3. Powers and duties of agencies participating in collaborative degree completion program.

Members of each community and technical college/career and technical education consortia planning district shall enter into an agreement that delineates the division of responsibilities among the facilitating community and technical college pursuant to section four, article three-c of this chapter and the career and technical centers, including activities for which these entities are jointly responsible.

(a) The following activities are the responsibility of the facilitating community and technical college in each consortia planning district:

(1) Approve all curricula course and/or programs through the college's approval process;

(2) Maintain authority over the curriculum as required by the college's accrediting agency;

(3) Deliver all program general education courses;

(4) Award the appropriate degree;

(5) Employ all general education faculty and approve the employment of all technical program faculty;

(6) Enroll students through the college's admission and registration process and administer student financial aid, including coordinating and administering veterans' education benefits;

(7) Charge and collect the college's tuition and fees; and

(8) Pay the career and technical center for technical faculty time.

(b) The following activities are the responsibility of each career and technical center within the consortium planning district:

(1) Deliver the majority of the technical content courses;

(2) Maintain equipment and laboratories and provide adequate instructional space if the program is delivered onsite at the career and technical center; and

(3) Employ technical content faculty, if needed. If participants choose, these faculty members may be provided by the facilitating community and technical college.

(c) The following activities are the joint responsibility of the facilitating community and technical college and each career and technical center in the consortium planning district:

(1) Maintain programmatic accreditation, if required;

(2) Maintain student transcripts at both the community and technical college and the career and technical center. The college transcript is the official transcript of record;

(3) Determine admission standards and student acceptance into the programs;

(4) Market the program and share the cost of marketing as determined in the consortia agreement;

(5) Develop and implement a program of cross counseling in which counselors from secondary and postsecondary career and technical centers and state community and

technical colleges meet with students and their parents, beginning in the eighth grade to answer their education and career-related questions, to serve as a source of support through high school graduation and to provide specific, targeted information on career pathways and financial aid opportunities; and

(6) Determine the feasibility of collaboratively developing and implementing postsecondary-level programs to extend high school programs that currently are terminal.

ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.

§18B-3C-1. Legislative findings.

(a) ~~Findings~~— The Legislature hereby finds makes the following findings related to state community and technical colleges:

~~(1) That Community and technical colleges in every region of West Virginia are essential elements of a statewide strategy to prepare students for further post-secondary education, life long learning and development of the workforce necessary to diversity and grow the state's economy are a distinctively American invention. They fill a critical gap between public secondary education and the baccalaureate institutions and universities and they provide a connection between adult basic education and higher education. Their overriding mission is to provide affordable access to postsecondary education and to provide this education and related services to people who otherwise might not have enrolled in a college or university. They provide access to students who live in geographic proximity and who seek low-cost postsecondary education.~~

~~(2) That, despite progress in the past decade, West Virginia continues to lag behind neighboring states and the nation in the competitiveness of its workforce for the new economy. Specifically, West Virginia: As the state's primary provider of workforce education and training, community and technical colleges located in every region of West Virginia are essential to a statewide strategy to prepare students for high-demand, high-wage jobs, workforce development necessary to diversify and grow the state's economy, and further postsecondary education and life long learning.~~

~~(A) Ranks fiftieth among the states in the preparation of its workforce for the new economy;~~

~~(B) Continues to have low rates of participation among high school graduates in post-secondary education and ranks last among competitor states in the proportion of high school graduates who attend a community college;~~

~~(C) Ranks forty-seventh in the nation in the proportion of its adult population at the lowest levels of literacy; and~~

~~(D) Ranks tenth among eleven competitor states in the number of certificates and associate degrees granted.~~

~~(3) That, despite progress made in developing community and technical colleges pursuant to Senate Bill No. 547, most of these colleges remain subordinated to colleges and universities with four-year and graduate missions. The mission of state community and technical colleges is to provide comprehensive education services that combine the critical functions of career-technical education and work force development, non-credit industry training, transfer education, developmental education and continuing education.~~

~~(4) That, while the number of high school graduates is declining and the needs of adults for further education and training is increasing, less than twenty-five percent of the students enrolled in West Virginia institutions are over age twenty-five. While the student population of state community and technical colleges is now evenly divided between those who are under age twenty-five and adults who are twenty-five and older, the number in both categories who earn a degree or industry-recognized certificate within six years remains low. The declining numbers of high school graduates in the state makes it imperative for the community and technical college system to focus on increasing the numbers of adults who enroll and who complete programs to earn a degree or industry-recognized certificate within six years.~~

~~(5) That only half the enrollment in community and technical colleges is in institutions independently accredited to carry out that mission.~~

~~(6) That in most of the component community and technical colleges the majority of faculty are appointed and rewarded according to the policies of the four-year institution, not the community and technical college.~~

~~(7) That West Virginia is one of only five states in which most of the enrollment in associate degree programs is in institutions that are not independently accredited as two-year institutions.~~

~~(8) That the community and technical college mission in West Virginia continues to be seen by many as narrowly defined and offering primarily associate degree programs and rather than the critical functions of workforce development, developmental education, community outreach and regional economic development as defined in Senate Bill No. 547.~~

~~(9) That half the community and technical college students in West Virginia pay the higher tuition and fees of the sponsoring four-year institution and not the lower rate of free-standing community and technical colleges.~~

~~(10) That, despite the needs of place-bound adults, adults in the workplace and employers, current higher education financing policy provides strong disincentives for both free-standing and component community and technical colleges to provide off-campus programs and services.~~

~~(11) That Senate Bill No. 547 set forth a definition of the kinds of community and technical college programs or service that should be available and accessible in every region of West Virginia.~~

~~(12) That over the past forty years, West Virginia has debated forming a distinct system of community and technical colleges with a focused mission in each region of the state. However, the state already had a network of public colleges in each region and, because of severe resource limitation and low population density, West Virginia evolved a system of community and technical colleges that depends in large part on the existing four-year colleges to offer associate degrees and other community and technical college services. West Virginia has established only a limited number of freestanding community and technical colleges.~~

~~(13) That Senate Bill No. 547 sought to strengthen the state's community and technical colleges in a number of ways.~~

~~(14) That the implementation of specific structural and procedural provisions of Senate Bill No. 547 was decidedly mixed.~~

~~(15) That Senate Bill No. 547 had widely varying impact on the availability of community and technical college services throughout West Virginia. The scope of services in several regions of the state, especially those with component colleges, has fallen far short of the kind of comprehensive, dynamic services envisioned in Senate Bill No. 547.~~

~~(16) That since the enactment of Senate Bill No. 547 increasing attention has been given to the related priority of workforce development.~~

~~(17) That since the enactment of Senate Bill No. 547 changes have accelerated dramatically in post-secondary education demand and delivery systems.~~

~~(18) That the substantive goal of Senate Bill No. 547 to ensure access to community and technical college programs and services remains valid and is even more important today than five years ago; and~~

~~(19) That there are essential conditions which must be met by each community and technical college in West Virginia in order to address the needs of the people of the state.~~

~~(b) *Legislative Intent.* — It is the intent of the Legislature, that the process for achieving independently accredited community and technical colleges be carried out using the most effective and most efficient method available. In implementing this process the governing boards and institutions of higher education should utilize facilities that already are available. These include, but are not limited to, the facilities of public high schools and vocational education centers. It is further the intent of the Legislature that this article not be implemented in such a manner as to require an extensive building program. Prior to pursuing any capital project, an institution shall follow the guidelines for developing~~

capital projects provided for in subdivision (13), subsection (a), section four, article one-b of this chapter. In carrying out their mission, the governing boards of the community and technical colleges shall collaborate with public high schools and career and technical centers to deliver services effectively and efficiently in the locations where they are needed most.

§18B-3C-2. Purposes of article Legislative intent.

The general purpose of this article are The following comprise the intent of the Legislature in enacting this article:

(a) ~~To establish community and technical college education that is well articulated with the public schools and four-year colleges; that makes maximum use of shared facilities, faculty, staff, equipment and other resources;~~ the career and technical education centers and other state institutions of higher education; that encourages traditional and nontraditional students and adult learners to pursue a lifetime of learning; that serves as an instrument of economic development; and that has the independence and flexibility to respond quickly to changing needs of citizens and employers in the state;

(b) ~~To change the respective governing boards with providing community and technical college education at state institutions of higher education under their jurisdiction that has be administrative, programmatic and budgetary control necessary to allow maximum flexibility and responsiveness to district and community needs. Education services shall be provided consistent with the goal of sharing facilities, faculty, staff, equipment and other resources within and among the districts, the other systems of public and higher education and other education and training programs~~ To establish community and technical college/career and technical education consortia districts for each of the community and technical colleges in order to ensure that the full range of community and technical college education programs and services is provided in all areas of the state, including the implementation of seamless programs of study as exemplified by West Virginia EDGE, established in article thirteen, chapter eighteen of this code and the Collaborative Degree Completion Program, established in article three-b of this chapter;

(c) ~~To establish the essential conditions for community and technical college programs and services, as defined in section three of this article, necessary to ensure that each region of West Virginia is served by a community and technical college meeting the needs of the people of the region~~ To define the full range of programs and services that each community and technical college has the responsibility to provide; and

(d) ~~To establish a mechanism for assuring that, where applicable, a transition plan for meeting the essential conditions is developed by each relevant community and technical college;~~ other policies and procedures necessary to ensure that the needs of West Virginia, its people and its businesses are met for the programs and services that can be provided through a comprehensive system of community and technical colleges.

~~(e) To establish community and technical college consortia districts for each of the community and technical colleges to ensure accountability that the full range of community and technical college education programs and services is provided in all areas of the state, including the implementation of seamless curricula and the West Virginia EDGE, "Earn a Degree Graduate Early" program;~~

~~(f) To define the full range of programs and services that each community and technical college has the responsibility to provide; and~~

~~(g) To establish such other policies and procedures necessary to ensure that the needs of West Virginia, its people and its businesses are met for the programs and services that can be provided through a comprehensive system of community and technical colleges.~~

§18B-3C-4. Community and technical college/career and technical education consortia planning districts.

(a) Unless otherwise designated, the presidents of each the community and technical colleges facilitates the formation of community and technical college/career and technical education consortia in the state. Each consortium which includes representatives of community and technical colleges, public vocational-technical career and technical education centers, and public state baccalaureate institutions offering associate degrees. The community and technical college consortium shall is responsible for carrying out the following actions:

(1) ~~Complete~~ Completing a comprehensive assessment of the district to determine what education and training programs are necessary to meet the short- and long-term workforce development needs of the district;

(2) ~~Coordinate~~ Coordinating efforts with regional labor market information systems to identify the ongoing needs of business and industry, both current and projected, and to provide information to assist in an informed program of planning and decision-making;

(3) Planning and developing a unified effort between the community and technical colleges and public vocational career and technical education to meet the documented workforce development needs of the district through individual and cooperative programs; shared facilities, faculty, staff, equipment and other resources; and the development and use of distance learning and other education technologies;

(4) ~~Regularly review and revise curricula to ensure that the workforce needs are met, develop new programs and phase out or modify existing programs as appropriate to meet such needs, streamline procedures for designing and implementing customized training programs~~ Collaborating and developing jointly the collaborative programming for adults between the community and technical colleges and the public career and technical centers. The focus of these collaborative efforts is the development of advanced skill programming that builds on the secondary curriculum and allows career

and technical education graduates to acquire more in-depth preparation in their occupational area of interest;

~~(5) Increase the integration of secondary and post-secondary curriculum and programs that are targeted to meet regional labor market needs, including implementation of seamless curricula projects in all major career pathways and the West Virginia EDGE, Earn a Degree, Graduate Early Program~~ As a consortium, regularly reviewing and revising curricula to ensure that the work force needs are met; developing new programs and phasing out or modifying existing programs, as appropriate, to meet such needs; and streamlining procedures for designing and implementing customized training programs;

~~(6) Plan and implement integrated professional development activities for secondary and post-secondary faculty, staff and administrators~~ Increasing the integration of secondary and post-secondary curriculum and programs that are targeted to meet regional labor market needs, including implementing seamless programs of study, including West Virginia EDGE, and the Collaborative Degree Completion Program:

(A) Research shows that well-planned, well-coordinated programs of study have a positive impact on school attendance, student grades, achievement scores, retention rates and career planning. To be successful, programs of study must include coherent and rigorous content aligned with challenging academic standards and relevant career and technical education content. They must provide for student movement through a coordinated, nonduplicative progression of courses that align secondary education with community and technical college education to prepare students to succeed at the community and technical college level and in high-wage, high-demand occupations;

(B) Therefore, the focus of each consortium is to identify the high-demand, high-wage occupations within the service district and develop programs of study, based on the findings, that lead to an industry-recognized credential, a certificate of applied science degree or an associate degree;

(C) The initial consortium compact and each annual update required in subsection (d) of this section shall identify the programs of study that are to be implemented in the district service area;

~~(6)~~ (7) Planning and implementing integrated professional development activities for secondary and post-secondary faculty, staff and administrators;

~~(7)~~ (8) Ensure Ensuring that program graduates have attained the competencies required for successful employment through the involvement of business, industry and labor in establishing student credentialing;

~~(8)~~ (9) Performance assessment of Assessing student knowledge and skills which may be gained from multiple sources so that students gain credit toward program completion

and advance more rapidly without repeating course work in which they already possess competency;

~~(9)~~ (10) Cooperate Cooperating with workforce investment boards in ~~establishing to~~ establish one-stop-shop career centers with integrated employment and training and labor market information systems that enable job seekers to assess their skills, identify and secure needed education training, and secure employment, and that allow employers to locate available workers;

~~(10)~~ (11) Increase Increasing the integration of adult literacy, adult basic education, federal Work Force Investment Act and community and technical college programs and services to expedite the transition of adults from welfare to gainful employment, including cooperating with the State Department of Education to provide adult basic education programs on each community and technical college campus in the state where developmental education services are provided; and

~~(14)~~ (12) Establish Establishing a single point of contact for employers and potential employers to access education and training programs throughout the district.

(b) The community and technical college education consortium shall cooperate with the regional workforce investment board in the district and shall participate in any development or amendment to the regional workforce investment plan.

(c) To carry out the provisions of this section, community and technical college/career and technical education consortia planning districts are established and defined as follows:

(1) Northern Panhandle ~~Community and Technical College~~ District includes Hancock, Brooke, Ohio, Marshall and Wetzel counties.

(A) The facilitating institution is West Virginia Northern Community and Technical College.

(B) Participating institutions include West Virginia Northern Community and Technical College; John Marshall High School; Cameron High School; John D. Rockefeller IV Career Center; and other public ~~vocational career and technical schools~~ centers offering post-secondary programs.

(2) North Central West Virginia ~~Community and Technical College~~ District includes Monongalia, Marion, Preston, Taylor, Barbour, Randolph, Doddridge, Harrison, Braxton, Lewis, Calhoun, Gilmer and Upshur counties.

(A) The facilitating institution is Pierpont Community and Technical College, ~~a division of Fairmont State University~~.

(B) Participating institutions include Pierpont Community and Technical College, a division of Fairmont State University; Glenville State College; Randolph County Vocational-Technical Center; Monongalia County Technical Education Center; United Technical Center; Marion County Technical Center; Fred W. Eberly Eberle Technical Center; Calhoun Gilmer Career Center; Taylor County Technical Center; and other public vocational career and technical schools centers offering post-secondary programs.

(3) ~~Mid-Ohio Valley Community and Technical College~~ District includes Tyler, Pleasants, Ritchie, Wood, Wirt, Jackson and Roane counties.

(A) The facilitating institution is West Virginia University at Parkersburg.

~~(C)~~ (B) Participating institutions include West Virginia University at Parkersburg; ~~West Virginia Northern Community and Technical College;~~ Roane-Jackson Technical Center; ~~Gaston Caperton Center;~~ Wood County Technical Center; Mid Ohio Valley Technical Institute and other public vocational career and technical schools centers offering post-secondary programs.

(4) ~~Potomac Highlands Community and Technical College~~ District includes Tucker, Pendleton, Grant, Hardy, Mineral and Hampshire counties.

(A) The facilitating institution is Eastern West Virginia Community and Technical College.

(B) Participating institutions include Eastern West Virginia Community and Technical College; South Branch Career and Technical Center; Mineral County Technical Center; and other public vocational career and technical schools centers offering post-secondary programs.

(5) ~~Shenandoah Valley Community and Technical College~~ District includes Berkeley, Jefferson and Morgan counties.

(A) The facilitating institution is Blue Ridge Community and Technical College.

(B) Participating institutions include Blue Ridge Community and Technical College; James Rumsey Technical Institute; and other public vocational career and technical schools centers offering post-secondary programs.

(6) ~~Advantage Valley Community and Technical College~~ District includes Fayette, Kanawha, Clay, Putnam, Cabell, Mason and Wayne counties.

(A) The facilitating institution is ~~Marshall Community and Technical College~~ for Cabell, Mason and Wayne counties is Mountwest Community and Technical College. The facilitating institutions for Clay, Fayette, Kanawha and Putnam counties are Bridgemont

Community and Technical College and Kanawha Valley Community and Technical College.

~~(B) Every five years the council shall:~~

~~(i) Evaluate the progress of the Advantage Valley Consortia toward achieving the goals and benchmarks of its compact;~~

~~(ii) Evaluate the progress of each community and technical college in the district toward achieving the goals and benchmarks of its institutional compact;~~

~~(iii) Determine which community and technical college in the district would best serve the needs of the district for the following five-year period if serving as the facilitating institution; and~~

~~(iv) Designate the community and technical college selected pursuant to subparagraph (iii) of this paragraph to serve as the facilitating institution for the following five-year period.~~

~~(C) (B) Participating institutions include Marshall Mountwest Community and Technical College; the Community and Technical College at West Virginia University Institute of Technology; West Virginia State Community and Technical College; Bridgemont Community and Technical College; Kanawha Valley Community and Technical College; Carver Career and Technical Education Center; Garnet Career Center; Ben Franklin Career and Technical Center; Putnam County Vocational Career and Technical Occupational Center; Cabell County Career- Technical Technology Center; Mason County Career Center; and other public vocational career and technical schools centers offering post-secondary programs.~~

~~(7) Southern Mountains Community and Technical College District includes Lincoln, Boone, Logan, Mingo, Wyoming and McDowell counties.~~

~~(A) The facilitating institution is Southern West Virginia Community and Technical College.~~

~~(B) Participating institutions include Southern West Virginia Community and Technical College; New River Community and Technical College; Boone County Career and Technical Center; Wyoming County Vocational Career and Technical Center; Ralph R. Willis Career and Technical Center; McDowell County Career and Technology Center; Mingo County Vocation-Technical Extended Learning Center; Charles Yeager Technical Center; and other public vocational career and technical schools centers offering post-secondary programs.~~

~~(8) Southeastern Community and Technical College District includes Raleigh, Summers, Fayette, Nicholas, Webster, Pocahontas, Greenbrier, Monroe and Mercer counties.~~

~~(A) The facilitating institution is New River Community and Technical College.~~

(B) Participating institutions include New River Community and Technical College; ~~Southern West Virginia Community and Technical College; the Community and Technical College at West Virginia University Institute of Technology; Bridgemont Community and Technical College;~~ Bluefield State College; Academy of Careers and Technology; Fayette Plateau ~~Vocation-Technology Center~~ Institute of Technology; Summers County High School; Monroe County Technical Center; Mercer County Technical Education Center; Nicholas County Career and Technical Center; and other public ~~vocational career and~~ technical schools centers offering post-secondary programs.

(9) Cochairs preside over each consortium as follows:

(A) The president of the facilitating community and technical college, or his or her designee; and

(B) A career and technical education center administrator, or his or her designee, representing one of the participating institutions and selected by the consortium administrative leaders.

(d) In the role of the facilitating institution of the ~~community and technical college district consortium,~~ the college:

(1) Communicates to the Council and State Board;

(2) Facilitates the delivery of comprehensive community and technical college education in the region, which includes the seven areas of comprehensive community and technical college education delivery as required by section six of this article;

(3) Facilitates development of a statement of commitment signed by all participating institutions in the region ~~as to~~ setting forth how community and technical college education will be delivered; and

(4) Facilitates the development of a consortium compact to be submitted to the Council and State Board before July 1, 2012, and annually thereafter.

(e) Participating institutions are not subordinate to the facilitating institution but ~~will~~ shall sign the statement of commitment to participate.

(f) The Council ~~shall~~ is responsible for carrying out the following activities:

(1) ~~Maintain guidelines for community and technical college consortia development;~~ Annually evaluating the progress made in meeting the compact goals for each consortium through the development and collection of performance indicator data; and

(2) ~~Set goals for each consortium based upon legislative goals for the delivery of comprehensive community and technical college education; and~~ Providing each

consortium with a model format for developing and revising a consortium compact outlining strategies and procedures for achieving stated goals. The compact shall be submitted to the Council and State Board for their respective approvals before July 1, 2012, and annually thereafter. The Council is responsible for approving the compact components related to community and technical college education. The State Board is responsible for approving the compact components related to career and technical education. Each compact shall include implementation of seamless programs of study, the Collaborative Degree Completion Program and the West Virginia EDGE Program.

~~(3) Maintain a format for developing and revising a consortium compact outlining plans for achieving stated goals to be submitted to the council annually for approval.~~

~~(g) On or before the fifteenth day of November each year each consortium shall submit to the council for approval a compact which outlines plans for obtaining the stated goals. Each compact shall include the implementation of seamless curricula and the West Virginia EDGE, Earn a Degree, Graduate Early Program.~~

~~(h) The council annually shall evaluate the progress made in meeting the compact goals for each community and technical college consortia through the development and collection of performance indicator data.~~

ARTICLE 14. MISCELLANEOUS.

§18B-14-1. Select committee on outcomes-based funding models in higher education.

(a) The Legislature makes the following findings regarding public higher education:

(1) It is in the best interest of the citizens to have an effective and comprehensive system for the delivery of public higher education services. In order to achieve desired goals of economic growth and societal well being, it is critical that more citizens have some level of education beyond high school.

(2) In Senate Bill 595 (*Vision 2020*), enacted in 2008 regular session, state policymakers established detailed goals and objectives that state institutions are expected to work toward achieving by the year 2020. *Vision 2020* also provides mechanisms for measuring success and for holding the state systems of higher education accountable. It establishes clear-cut connections between the budget cycle, the goals and objectives and both positive and negative consequences.

(3) A variety of policy tools are available to influence and direct public higher education behavior, including organizing institutions into functional systems, creating governance structures and mechanisms designed to ensure that these systems and individual institutions focus on the public policy agenda and establishing outcomes-based goals, accountability measures and regulatory devices.

(4) While these policy tools are useful, they are not sufficient to influence institutions, students and employers to behave in ways consistent with achieving the goals and objectives of *Vision 2020* the public policy agenda. Resources appropriated to public higher education are used most effectively and efficiently when the attention of state colleges and universities is focused on meeting established priorities. This focus is developed and sustained only when the state financing policy contains a direct connection between the Legislature's power to appropriate money and desired institutional outcomes. Unlike rules which can be bent; law can be creatively interpreted; accountability requirements which can lose their effectiveness as they are filtered through layers of bureaucracy; and responsibility for implementation which is divided among agencies and, ultimately, is totally dependent upon institutional discretion, a financing policy that ties the flow of funds directly to progress on achieving established state goals and objectives commands immediate attention.

(b) It is the constitutional responsibility of the Legislature to determine how to make the best use of available resources to meet state needs and established goals; therefore, the Joint Committee on Government and Finance shall create a select committee for the two-fold purpose of making a specific and detailed analysis of outcomes-based funding models used in higher education and providing recommendations to the Legislature on incorporating one or more of these models as an effective piece of the state's financing policy.

(c) The select committee consists of the following members:

(1) The President of the Senate or designee;

(2) The Speaker of the House of Delegates or designee;

(3) The chairs of the Senate and House of Delegates Committees on Education, who shall cochair the committee;

(4) The vice chairs of the Senate and House of Delegates Committees on Education;

(5) The chairs of the Senate and House of Delegates Committees on Finance or their designees;

(6) The cochairs of the Joint Commission on Economic Development or their designees;

(7) Two members each from the Senate Committees on Finance and Education appointed by the President of the Senate; and

(8) Two members each from the House Committees on Finance and Education appointed by the Speaker of the House.

(d) The select committee shall develop a report with recommendations on implementing a state-level financing plan which includes, but is not limited to, the following items:

(1) A review of existing outcomes-based funding models for institutions and systems of higher education;

(2) Identification of the top three to five public policy objectives that are to be the focus of the financing policy;

(3) A review of outcomes-based funding models implemented in other states, including an evaluation of the degree to which these policies have succeeded in influencing institutional and system behavior;

(4) Recommendations on methods to balance the inherent need of institutions for stability with the demands of the state for services as identified in *Vision 2020* and the public policy agenda;

(5) Recommendations on methods to develop a workable balance between addressing the well-being of institutions and the success of students; and

(6) An analysis of the impact of different models on institutions with widely-differing missions, including recommendations on selecting and implementing the appropriate model for each type of institution specifically noting the impact of selected models on community and technical colleges, baccalaureate colleges and regional universities, and research universities.

(e) The committee shall commence its work before May 15, 2012, and shall deliver its report and recommendations, together with draft legislation to implement the recommendations, to the Legislative Oversight Commission on Education Accountability and the Joint Committee on Government and Finance by December 1, 2012.

Senate Bill 469

Effective Date: February 10, 2012

Signed by Governor: February 20, 2012

Code Reference: Adds §5-16-5a, §5-16-5b, §5-16D-7
Amends §5-16-3, §11-21-96, §18-9A-24

Title: Relating Generally to Other Post-Employment Benefits

Major Provisions:

- The bill specifies that the amount of the OPEB liability billed to county boards for the number of personnel authorized to be funded through the Public School Support Program (PSSP) shall be charged to the State;
- Requires the county boards to continue to report the OPEB liability for the personnel employed in excess of the number authorized to be funded through the PSSP; however, neither the State nor the county boards will be required to remit payment for any portion of the OPEB liability above the “paygo” amount, which county boards are already required to remit;
- Specifically restricts the State from subsidizing retirees premiums for employees hired on or after July 1, 2010, but allows the State to create a trust fund for the benefit of this group of employees upon retirement;
- Specifies that \$35 million of the \$45 million of personal income tax proceeds that are currently being dedicated to the payment of the unfunded liability of the Workers’ Compensation Fund be dedicated to the payment of the OPEB unfunded liability after the Workers’ Compensation liability is paid off, projected to occur in 2017;
- Specifies that the transfer of the \$35 million annually shall be made as follows: \$30 million is to be transferred periodically into the WV Retiree Health Benefit Trust Fund until the unfunded liability of the trust fund is resolved, or the year 2037, whichever date is later, and \$5 million is to be transferred annually into the Post-July 2010 Employee Trust Fund for the purpose of providing an incentive for retirees who were hired on or after July 1, 2010 to be received upon retirement;

- Requires the WVDE to transfer the appropriations under the PSSP for PEIA employer health premium costs directly to PEIA, with the county boards recording the payment in their financial statements as a contribution on their behalf;
- Requires the director of PEIA to make every effort to improve the quality of health care coverage provided, improve the health of members, and decrease costs.

ENROLLED

Senate Bill No. 469

(BY SENATORS KESSLER (MR. PRESIDENT) AND HALL,
BY REQUEST OF THE EXECUTIVE)

[Passed February 10, 2012; in effect from passage.]

AN ACT to amend and reenact §5-16-3 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto two new sections, designated §5-16-5a and §5-16-5b; to amend said code by adding thereto a new section, designated §5-16D-7; to amend and reenact §11-21-96 of said code; and to amend and reenact §18-9A-24 of said code, all relating to other post-employment benefits generally; directing the Director of the Public Employees Insurance Agency to evaluate and administer programs that ensure the long-term effectiveness of the agency; requiring the director to issue annual progress reports to the Legislature; prohibiting the Public Employees Insurance Agency Finance Board from including in the financial plans any subsidy from the Retiree Health Benefit Trust for the cost of coverage for retired employees who were hired on or after July 1, 2010; creating the Post-July 1, 2010 Employee Trust; allowing appointment of a joint committee; directing a certain amount of personal income tax into the West Virginia Retiree Health Benefit Trust Fund until Governor certifies that trust fund is fully funded or July 1, 2037, whichever date is later; directing an amount of personal income tax into the Post-July 1, 2010 Employee Trust Fund; and specifying that portions of the employer annual required contribution of county boards of education shall be billed to and be a responsibility of the state.

Be it enacted by the Legislature of West Virginia:

That §5-16-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto two new sections, designated §5-16-5a and §5-16-5b; that said code be amended by adding thereto a new section, designated §5-16D-7; that §11-21-96 of said code be amended and reenacted; and that §18-9A-24 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 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-3. Composition of Public Employees Insurance Agency; appointment, qualification, compensation and duties of Director of Agency; employees; civil service coverage.

(a) The Public Employees Insurance Agency consists of the Director, the Finance Board, the Advisory Board and any employees who may be authorized by law. The Director

shall be appointed by the Governor, with the advice and consent of the Senate, and serves at the will and pleasure of the Governor. The Director shall have at least three years' experience in health or governmental health benefit administration as his or her primary employment duty prior to appointment as director. The Director shall receive actual expenses incurred in the performance of official business. The Director shall employ any administrative, technical and clerical employees required for the proper administration of the programs provided in this article. The Director shall perform the duties that are required of him or her under the provisions of this article and is the Chief Administrative Officer of the Public Employees Insurance Agency. The Director may employ a deputy director.

(b) Except for the Director, his or her personal secretary, the Deputy Director and the Chief Financial Officer, all positions in the agency shall be included in the classified service of the civil service system pursuant to article six, chapter twenty-nine of this code.

(c) The Director is responsible for the administration and management of the Public Employees Insurance Agency as provided in this article and in connection with his or her responsibility may make all rules necessary to effectuate the provisions of this article. Nothing in section four or five of this article limits the Director's ability to manage on a day-to-day basis the group insurance plans required or authorized by this article, including, but not limited to, administrative contracting, studies, analyses and audits, eligibility determinations, utilization management provisions and incentives, provider negotiations, provider contracting and payment, designation of covered and noncovered services, offering of additional coverage options or cost containment incentives, pursuit of coordination of benefits and subrogation or any other actions which would serve to implement the plan or plans designed by the Finance Board. The Director is to function as a benefits management professional and should avoid political involvement in managing the affairs of the Public Employees Insurance Agency.

(d) The Director should make every effort to evaluate and administer programs to improve quality, improve health status of members, develop innovative payment methodologies, manage health care delivery costs, evaluate effective benefit designs, evaluate cost sharing and benefit based programs, and adopt effective industry programs that can manage the long-term effectiveness and costs for the programs at the Public Employees Insurance Agency to include, but not be limited to:

(1) Increasing generic fill rates;

(2) Managing specialty pharmacy costs;

(3) Implementing and evaluating medical home models and health care delivery;

(4) Coordinating with providers, private insurance carriers and to the extent possible Medicare to encourage the establishment of cost effective accountable care organizations;

(5) Exploring and developing advanced payment methodologies for care delivery such as case rates, capitation and other potential risk-sharing models and partial risk-sharing models for accountable care organizations and/or medical homes;

(6) Adopting measures identified by the Centers for Medicare and Medicaid Services to reduce cost and enhance quality;

(7) Evaluating the expenditures to reduce excessive use of emergency room visits, imaging services and other drivers of the agency's medical rate of inflation;

(8) Recommending cutting-edge benefit designs to the Finance Board to drive behavior and control costs for the plans;

(9) Implementing programs to encourage the use of the most efficient and high-quality providers by employees and retired employees;

(10) Identifying employees and retired employees who have multiple chronic illnesses and initiating programs to coordinate the care of these patients;

(11) Initiating steps by the agency to adjust payment by the agency for the treatment of hospital acquired infections and related events consistent with the payment policies, operational guidelines and implementation timetable established by the Centers of Medicare and Medicaid Services. The agency shall protect employees and retired employees from any adjustment in payment for hospital acquired infections; and

(12) Initiating steps by the agency to reduce the number of employees and retired employees who experience avoidable readmissions to a hospital for the same diagnosis related group illness within thirty days of being discharged by a hospital in this state or another state consistent with the payment policies, operational guidelines and implementation timetable established by the Centers of Medicare and Medicaid Services.

(e) The Director shall issue an annual progress report to the Joint Committee on Government and Finance on the implementation of any reforms initiated pursuant to this section and other initiatives developed by the agency.

§5-16-5a. Retiree premium subsidy from Retiree Health Benefit Trust for hires prior to July 1, 2010.

The Finance Board may include in its financial plans a subsidy from the Retiree Health Benefit Trust Fund created by article sixteen-d of this chapter for the cost of coverage under the major health care benefits plans, only for retired employees who were hired before July 1, 2010.

§5-16-5b. Creation of trust for retirees hired on or after July 1, 2010.

There is hereby created a special revenue account in the State Treasury, designated the Post-July 1, 2010, Employee Trust Fund, which shall be an interest-bearing account and

may be invested in accordance with the provisions of article six, chapter twelve of this code, with the interest income a proper credit to the fund. The fund shall consist of moneys appropriated by the Legislature and moneys transferred pursuant to section ninety-six, article twenty-one, chapter eleven of this code. Expenditures from the fund shall be for the purposes set forth by the Legislature in furtherance of an incentive contingent on future legislative directives for retirees who were hired on or after July 1, 2010, to be received upon their retirement. Such incentive may be determined by the Legislature in accordance with section seven, article sixteen-d of this chapter.

ARTICLE 16D. RETIREMENT HEALTH BENEFIT TRUST FUND.

§5-16D-7. Select Committee on Other Post-Employment Benefits.

(a) Pursuant to the authority contained in section one, article one, chapter four of this code, the presiding officers of each house of the Legislature may appoint a joint committee to be known as the Select Committee on Other Post-Employment Benefits to study other post-employment benefits, including the effects of the amendments to this code relating to other post-employment benefits made during the 2012 regular session of the Legislature.

(b) The Select Committee on Other Post-Employment Benefits in consultation with the Director of the Public Employees Insurance Agency and the Finance Board of the Public Employees Insurance Agency is also authorized to study and propose to the Joint Committee on Government and Finance an incentive for those retirees who were hired on or after July 1, 2010. The committee shall consider the funding available in the Post-July 1, 2010, Employee Trust Fund created pursuant to section five-b, article sixteen of this chapter.

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-96. Dedication of personal income tax proceeds.

(a) There is hereby dedicated an annual amount of \$45 million from annual collections of the tax imposed by this article for payment of the unfunded liability of the current Workers' Compensation Fund. No portion of this amount may be pledged for payment of debt service on revenue bonds issued pursuant to article two-d, chapter twenty-three of this code.

(b) Notwithstanding any other provision of this code to the contrary, beginning in January of 2006, \$45 million from collections of the tax imposed by this article shall be deposited each calendar year to the credit of the old fund created in article two-c, chapter twenty-three of this code, in accordance with the following schedule. Each calendar month, except for July, August and September each year, \$5 million shall be transferred, on or before the twenty-eighth day of the month, to the Workers' Compensation Debt Reduction Fund created in article two-d, chapter twenty-three of this code.

(c) ~~Expiration.~~ The transfers required by subsection (b) of this section shall continue to be made until the Governor certifies to the Legislature that an independent ~~actuary~~ actuarial study determined that the unfunded liability of the old fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety. ~~No transfer pursuant to this section shall be made thereafter.~~ Thereafter, an annual amount of \$35 million from annual collections of the tax imposed by this article and which were previously dedicated by this section for payment of the unfunded liability of the Workers Compensation Fund shall be dedicated for payment of the unfunded liability of the West Virginia Retiree Health Benefit Trust Fund and to provide funding for the Post-July 1, 2010, Employee Trust Fund created by section five-b, article sixteen, chapter five of this code. The \$35 million transferred pursuant to this subsection shall be transferred in accordance with the following:

(1) The annual amount of \$30 million shall be transferred into the West Virginia Retiree Health Benefit Trust Fund, by transferring \$5 million each month for the following months of each year: October, November, December, January, February and March, until the Governor certifies to the Legislature that an independent actuarial study has determined that the unfunded liability of West Virginia Retiree Health Benefit Trust Fund, as created in section two, article sixteen-d, chapter five of this code, has been provided for in its entirety or July 1, 2037, whichever date is later. No transfer into the West Virginia Retiree Health Benefit Trust Fund pursuant to this subdivision shall be made thereafter; and

(2) An annual amount of \$5 million shall be transferred into the Post-July 1, 2010, Employee Trust Fund created by section five-b, article sixteen, chapter five of this code in April of each year.

CHAPTER 18. EDUCATION.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-24. Foundation allowance for Public Employees Insurance Fund.

~~(a) Beginning the first day of July, one thousand ninety-five, and every year thereafter,~~ The allowance to the Public Employees Insurance Agency for school employees shall be made in accordance with the following: ~~The number of individuals employed by county boards of education as professional educators pursuant to section four or five-a of this article, whichever is less, plus the number of individuals employed by county boards of education as service personnel pursuant to section five or five-a of this article, whichever is less, plus the number of individuals employed by county boards as professional student support personnel pursuant to section eight of this article,~~ multiplied by the average premium rate for all county board of education employees established by the Public Employees Insurance Agency Finance Board. The average premium rate for all county board of education employees shall be incorporated into each financial plan developed by the Finance Board in accordance with section five, article sixteen, chapter five of this code. ~~Such~~ The premiums shall include any proportionate share of retirees subsidy established by the Finance Board and the difference, if any, between the

previous year's actual premium costs and the previous year's appropriation, if the actual cost was greater than the appropriation. The amount of the allowance provided in this subsection shall be paid directly to the West Virginia Public Employees Insurance Agency. Each county board shall reflect its share of the payment as revenue on its financial statements to offset its expense for the employer annual required contribution, as defined in article sixteen-d, chapter five of this code.

(b) Notwithstanding any other provision of section six, article sixteen-d, chapter five of this code to the contrary, any amount of employer annual required contribution allocated and billed to county boards on or after July 1, 2012, and any amount of the employer annual required contribution allocated and billed to the county boards prior to that date for employees who are employed as professional employees within the limits authorized by section four of this article, employees who are employed as service personnel within the limits authorized by section five of this article, and employees who are employed as professional student support personnel within the limits authorized by section eight of this article, shall be charged to the state: *Provided*, That nothing in this subsection requires any specific level of funding by the Legislature in any particular year: *Provided, however*, That charging specified amounts to the state pursuant to this section is not to be construed as creating an employer employee relationship between the State of West Virginia and any employee under the employ of a county board or as creating a liability of the state.

~~(b) (c)~~ County boards of education shall be are responsible liable for payments to the public employees insurance agency the employer annual required contribution allocated and billed to the county boards on or after July 1, 2012, and any amount of the employer annual required contribution allocated and billed to the county boards prior to that date for individuals who are employed as professional employees above and beyond those authorized by section four of this article, or five-a, whichever is less, and individuals who are employed as service personnel above and beyond those authorized by section five and five-a whichever is less of this article and individuals who are employed as professional student support personnel above and beyond those authorized by section eight of this article. For each such employee, the county board of education shall forward to the Public Employees Insurance Agency an amount equal to the average premium rate established by the finance board in accordance with subsection (a) of this section: *Provided*, That the county board shall pay the actual employer premium costs for any county board employee paid from special revenues, federal or state grants, or sources other than state general revenue or county funds.

~~(e) (d)~~ Prior to July 1, 1995, nothing in this article shall be construed to limit the ability of county boards of education to use funds appropriated to county boards of education pursuant to this article to pay employer premiums to the Public Employees Insurance Agency for employees whose positions are funded pursuant to this article. Funds appropriated to county boards of education pursuant to this article shall not be used to pay employer premiums for employees of such boards whose positions are not, or will not be within twenty months, funded by funds appropriated pursuant to this article.

Senate Bill 484

Effective Date: June 7, 2012

Signed by Governor: April 2, 2012

Code Reference: Adds §49-5D-3b, §49-5D-3c, §49-7-36

Amends §49-1-3, §49-2-17, §49-5-13, §49-5D-2, §49-5D-3, §49-5D-3a, §49-6-2, §49-6-3, §49-6-5, §49-6-6, §49-6-8, §49-6-12, §49-6A-5, §49-6D-3, §49-7-1

Repeals §49-5-21, §49-6-5a

Title: Relating Generally to Child Welfare

Major Provisions:

- The bill makes several revisions to the child abuse and neglect and juvenile proceeding section of the code, which were suggested by the Supreme Court Improvement Program Oversight Board. The purpose is to promote the safety, well-being and timely permanency of children in child abuse and neglect, family court and/or juvenile cases.
- The bill also makes necessary amendments to State code for compliance with federal law or consistency with the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings or the Rules of Juvenile Procedure.
- The new provisions require quarterly status hearings and yearly permanency hearings for any child who remains in foster care, until permanency is achieved, or until the child transitions into an adult.
- The bill defines “court appointed special advocate program” (CASA) and outlines the standards for the program.
- As a part of the CASA definition, CASA volunteers are granted immunity from civil liability to the full extent provided in the federal Volunteer Protection Act of 1997.
- The bill clarifies the multidisciplinary treatment planning process and makes distinctions between the treatment team planning process for an abuse and neglect case and the planning process for a juvenile proceeding.

- The bill restructures and reorganizes several multidisciplinary treatment team provisions and procedures. It allows any member of the team who disagrees with the recommendations of the team to inform the court of his or her objections.
- Expands the members of the multidisciplinary team in an abuse and neglect case to always include a representative from a licensed domestic violence program serving the county (not just when appropriate to a particular case or circumstances); a health care provider with pediatric and child abuse expertise, where available; a mental health professional with pediatric and child abuse expertise, where available, and an educator.
- Requires that an “appropriate school official” belong to a multidisciplinary team appointed to develop an individualized service plan for a child or family in cases involving child abuse and neglect, status offenses or delinquency.
- Requires attorneys appointed in child abuse and neglect cases to have eight hours of training annually.
- Adds the requirement that in any case in which a court decides to order a juvenile to be placed in an out-of-state facility or program, the court must set forth in the order directing the placement the reasons that the juvenile was not placed in an in-state facility or program.
- The bill provides that reasonable efforts to preserve the family is not required under a number of circumstances, including: the child or other children living in the same household have been subjected to aggravated circumstances, such as abandonment, torture, chronic abuse or sexual abuse; a parent has committed murder or malicious wounding resulting in serious bodily harm; or the parental rights to another child have been terminated involuntarily.
- Removes certain juvenile records confidentiality protections, so that the records can be disclosed to the child, to a parent whose parental rights have not been terminated, to an attorney or pursuant to an order of the court of record.
- Also removes the requirement that any report of child abuse and neglect made to child protective services be destroyed 30 years following its preparation.

ENROLLED

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 484

(SENATORS PALUMBO, LAIRD, TUCKER, EDGELL, WILLS, WELLS, KESSLER (MR. PRESIDENT), KLEMPA, JENKINS, BEACH AND YOST, *original sponsors*)

[Passed March 9, 2012; in effect ninety days from passage.]

AN ACT to repeal §49-5-21 of the Code of West Virginia, 1931, as amended; to repeal §49-6-5a of said code; to amend and reenact §49-1-3 of said code; to amend and reenact §49-2-17 of said code; to amend and reenact §49-5-13 of said code; to amend and reenact §49-5D-2, §49-5D-3 and §49-5D-3a of said code; to amend said code by adding thereto two new sections, designated §49-5D-3b and §49-5D-3c; to amend and reenact §49-6-2, §49-6-3, §49-6-5, §49-6-6, §49-6-8 and §49-6-12 of said code; to amend and reenact §49-6A-5 of said code; to amend and reenact §49-6D-3 of said code; to amend and reenact §49-7-1 of said code; and to amend said code by adding thereto a new section, designated §49-7-36, all relating generally to child welfare; defining “court appointed special advocate program”; establishing a system of assistance from funds appropriated to the Department of Health and Human Resources for facilitating the adoption or legal guardianship of children who are dependents of the department or of a child welfare agency licensed to place children for adoption; providing when a juvenile is ordered into out-of-state placement, the reasons why the juvenile was not placed in state be included in the court order; adding additional members to the multidisciplinary team; providing a process for multidisciplinary treatment planning in cases involving child abuse and neglect; providing a process for multidisciplinary treatment planning in cases involving status offense or delinquency; increasing the continuing education hours required for attorneys appointed in child abuse and neglect cases; providing that reasonable efforts to preserve the family are not required when a person is required by state or federal law to register with a sex offender registry; providing that the court may modify a dispositional order when it finds a material change of circumstances has occurred and such modification is in the child’s best interests; clarifying that the circuit court of origin has exclusive jurisdiction over placement of a child in a child abuse and neglect case; providing a process for permanency hearings and permanent placement reviews; providing that any combination of improvement periods cannot cause a child to be in foster care more than fifteen months of the most recent twenty-two months unless the court finds that it is in the child’s best interests; providing for modifications and requests for expunging of records; requiring the secretary to promulgate legislative rules; providing guidelines for unified child and family case plans; confidentiality of records; and requiring a quarterly status review hearing and yearly permanency hearings for transitioning adults.

Be it enacted by the Legislature of West Virginia:

That §49-5-21 of the Code of West Virginia, 1931, as amended, be repealed; that §49-6-5a of said code be repealed; that §49-1-3 of said code be amended and reenacted; that §49-2-17 of said code be amended and reenacted; that §49-5-13 of said code be amended and reenacted; that §49-5D-2, §49-5D-3 and §49-5D-3a of said code be amended and reenacted; that said code be amended by adding thereto two new sections, designated §49-5D-3b and §49-5D-3c; that §49-6-2, §49-6-3, §49-6-5, §49-6-6, §49-6-8 and §49-6-12 of said code be amended and reenacted; that §49-6A-5 of said code be amended and reenacted; that §49-6D-3 of said code be amended and reenacted; that §49-7-1 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §49-7-36, all to read as follows:

ARTICLE 1. PURPOSES AND DEFINITIONS.

§49-1-3. Definitions relating to abuse and neglect.

(1) "Abused child" means a child whose health or welfare is harmed or threatened by:

(A) A parent, guardian or custodian who knowingly or intentionally inflicts, attempts to inflict or knowingly allows another person to inflict, physical injury or mental or emotional injury, upon the child or another child in the home; or

(B) Sexual abuse or sexual exploitation; or

(C) The sale or attempted sale of a child by a parent, guardian or custodian in violation of section sixteen, article four, chapter forty-eight of this code; or

(D) Domestic violence as defined in section two hundred two, article twenty-seven, chapter forty-eight of this code.

In addition to its broader meaning, physical injury may include an injury to the child as a result of excessive corporal punishment.

(2) "Abusing parent" means a parent, guardian or other custodian, regardless of his or her age, whose conduct, as alleged in the petition charging child abuse or neglect, has been adjudged by the court to constitute child abuse or neglect.

(3) "Battered parent" means a parent, guardian or other custodian who has been judicially determined not to have condoned the abuse or neglect and has not been able to stop the abuse or neglect of the child or children due to being the victim of domestic violence as defined by section two hundred two, article twenty-seven, chapter forty-eight of this code, which domestic violence was perpetrated by the person or persons determined to have abused or neglected the child or children.

(4) "Child abuse and neglect" or "child abuse or neglect" means physical injury, mental or emotional injury, sexual abuse, sexual exploitation, sale or attempted sale or negligent treatment or maltreatment of a child by a parent, guardian or custodian who is

responsible for the child's welfare, under circumstances which harm or threaten the health and welfare of the child.

(5) "Child abuse and neglect services" means social services which are directed toward:

(A) Protecting and promoting the welfare of children who are abused or neglected;

(B) Identifying, preventing and remedying conditions which cause child abuse and neglect;

(C) Preventing the unnecessary removal of children from their families by identifying family problems and assisting families in resolving problems which could lead to a removal of children and a breakup of the family;

(D) In cases where children have been removed from their families, providing services to the children and the families so as to reunify such children with their families or some portion thereof;

(E) Placing children in suitable adoptive homes when reunifying the children with their families, or some portion thereof, is not possible or appropriate; and

(F) Assuring the adequate care of children who have been placed in the custody of the department or third parties.

(6) "Child advocacy center (CAC)" means a community-based organization that is a member in good standing with the West Virginia Child Abuse Network, Inc., and is working to implement the following program components:

(A) Child-appropriate/child-friendly facility: A child advocacy center provides a comfortable, private, child-friendly setting that is both physically and psychologically safe for clients.

(B) Multidisciplinary team (MDT): A multidisciplinary team for response to child abuse allegations includes representation from the following: Law enforcement; child protective services; prosecution; mental health; medical; victim advocacy; child advocacy center.

(C) Organizational capacity: A designated legal entity responsible for program and fiscal operations has been established and implements basic sound administrative practices.

(D) Cultural competency and diversity: The CAC promotes policies, practices and procedures that are culturally competent. Cultural competency is defined as the capacity to function in more than one culture, requiring the ability to appreciate, understand and interact with members of diverse populations within the local community.

(E) Forensic interviews: Forensic interviews are conducted in a manner which is of a neutral, fact-finding nature and coordinated to avoid duplicative interviewing.

(F) Medical evaluation: Specialized medical evaluation and treatment are to be made available to CAC clients as part of the team response, either at the CAC or through coordination and referral with other specialized medical providers.

(G) Therapeutic intervention: Specialized mental health services are to be made available as part of the team response, either at the CAC or through coordination and referral with other appropriate treatment providers.

(H) Victim support/advocacy: Victim support and advocacy are to be made available as part of the team response, either at the CAC or through coordination with other providers, throughout the investigation and subsequent legal proceedings.

(I) Case review: Team discussion and information sharing regarding the investigation, case status and services needed by the child and family are to occur on a routine basis.

(J) Case tracking: CACs must develop and implement a system for monitoring case progress and tracking case outcomes for team components: *Provided*, That a child advocacy center may establish a safe exchange location for children and families who have a parenting agreement or an order providing for visitation or custody of the children that require a safe exchange location.

(7) “Court appointed special advocate (CASA) program” means a community organization that screens, trains and supervises CASA volunteers to advocate for the best interests of children who are involved in abuse and neglect proceedings. Court appointed special advocate programs will be operated under the following guidelines:

(A) Standards: CASA programs shall be members in good standing with the West Virginia Court Appointed Special Advocate Association, Inc., and the National Court Appointed Special Advocates Association and adhere to all standards set forth by these entities.

(B) Organizational capacity: A designated legal entity responsible for program and fiscal operations has been established and implements basic sound administrative practice.

(C) Cultural competency and diversity: CASA programs promote policies, practices and procedures that are culturally competent. “Cultural competency” is defined as the capacity to function in more than one culture, requiring the ability to appreciate, understand and interact with members of diverse populations within the local community.

(D) Case management: CASA programs must utilize a uniform case management system to monitor case progress and track outcomes.

(E) Case review: CASA volunteers meet with CASA staff on a routine basis to discuss case status and outcomes.

(F) Training: Court appointed special advocates shall serve as volunteers without compensation and shall receive training consistent with state and nationally developed standards.

~~(7)~~ (8) "Imminent danger to the physical well being of the child" means an emergency situation in which the welfare or the life of the child is threatened. Such emergency situation exists when there is reasonable cause to believe that any child in the home is or has been sexually abused or sexually exploited, or reasonable cause to believe that the following conditions threaten the health or life of any child in the home:

(A) Nonaccidental trauma inflicted by a parent, guardian, custodian, sibling or a babysitter or other caretaker;

(B) A combination of physical and other signs indicating a pattern of abuse which may be medically diagnosed as battered child syndrome;

(C) Nutritional deprivation;

(D) Abandonment by the parent, guardian or custodian;

(E) Inadequate treatment of serious illness or disease;

(F) Substantial emotional injury inflicted by a parent, guardian or custodian;

(G) Sale or attempted sale of the child by the parent, guardian or custodian; or

(H) The parent, guardian or custodian's abuse of alcohol, or drugs or other controlled substance as defined in section one hundred one, article one, chapter sixty-a of this code, has impaired his or her parenting skills to a degree as to pose an imminent risk to a child's health or safety.

~~(8)~~ (9) "Legal guardianship" means the permanent relationship between a child and caretaker, established by order of the circuit court having jurisdiction over the child, pursuant to the provisions of this chapter and chapter forty-eight of this code.

~~(9)~~ (10) "Multidisciplinary team" means a group of professionals and paraprofessionals representing a variety of disciplines who interact and coordinate their efforts to identify, diagnose and treat specific cases of child abuse and neglect. Multidisciplinary teams may include, but are not limited to, medical, educational, child care and law-enforcement personnel, social workers, psychologists and psychiatrists. Their goal is to pool their respective skills in order to formulate accurate diagnoses and to provide comprehensive coordinated treatment with continuity and followup for both parents and children. "Community team" means a multidisciplinary group which addresses the general problem of child abuse and neglect in a given community and may consist of several multidisciplinary teams with different functions.

~~(10)~~ (11) (A) "Neglected child" means a child:

(i) Whose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child's parent, guardian or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care or education, when such refusal, failure or inability is not due primarily to a lack of financial means on the part of the parent, guardian or custodian; or

(ii) Who is presently without necessary food, clothing, shelter, medical care, education or supervision because of the disappearance or absence of the child's parent or custodian;

(B) "Neglected child" does not mean a child whose education is conducted within the provisions of section one, article eight, chapter eighteen of this code.

~~(11)~~ (12) "Parent" means an individual defined has a parent by law or on the basis of a biological relationship, marriage to a person with a biological relationship, legal adoption or other recognized grounds.

~~(12)~~ (13) "Parental rights" means any and all rights and duties regarding a parent to a minor child, including, but not limited to, custodial rights and visitational rights and rights to participate in the decisions affecting a minor child.

~~(13)~~ (14) "Parenting skills" means a parent's competencies in providing physical care, protection, supervision and psychological support appropriate to a child's age and state of development.

~~(14)~~ (15) "Sexual abuse" means:

(A) As to a child who is less than sixteen years of age, any of the following acts which a parent, guardian or custodian shall engage in, attempt to engage in, or knowingly procure another person to engage in, with such child, notwithstanding the fact that the child may have willingly participated in such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct:

(i) Sexual intercourse;

(ii) Sexual intrusion; or

(iii) Sexual contact;

(B) As to a child who is sixteen years of age or older, any of the following acts which a parent, guardian or custodian shall engage in, attempt to engage in, or knowingly procure another person to engage in, with such child, notwithstanding the fact that the

child may have consented to such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct:

(i) Sexual intercourse;

(ii) Sexual intrusion; or

(iii) Sexual contact;

(C) Any conduct whereby a parent, guardian or custodian displays his or her sex organs to a child, or procures another person to display his or her sex organs to a child, for the purpose of gratifying the sexual desire of the parent, guardian or custodian, of the person making such display, or of the child, or for the purpose of affronting or alarming the child.

~~(15)~~ (16) "Sexual contact" means sexual contact as that term is defined in section one, article eight-b, chapter sixty-one of this code.

~~(16)~~ (17) "Sexual exploitation" means an act whereby:

(A) A parent, custodian or guardian, whether for financial gain or not, persuades, induces, entices or coerces a child to engage in sexually explicit conduct as that term is defined in section one, article eight-c, chapter sixty-one of this code; or

(B) A parent, guardian or custodian persuades, induces, entices or coerces a child to display his or her sex organs for the sexual gratification of the parent, guardian, custodian or a third person, or to display his or her sex organs under circumstances in which the parent, guardian or custodian knows such display is likely to be observed by others who would be affronted or alarmed.

~~(17)~~ (18) "Sexual intercourse" means sexual intercourse as that term is defined in section one, article eight-b, chapter sixty-one of this code.

~~(18)~~ (19) "Sexual intrusion" means sexual intrusion as that term is defined in section one, article eight-b, chapter sixty-one of this code.

~~(19)~~ (20) "Placement" means any temporary or permanent placement of a child who is in the custody of the state in any foster home, group home or other facility or residence.

~~(20)~~ (21) "Serious physical abuse" means bodily injury which creates a substantial risk of death ~~risk of death~~, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

~~(21)~~ (22) "Siblings" means children who have at least one biological parent in common or who have been legally adopted by the same parents or parent.

~~(22)~~ (23) "Time-limited reunification services" means individual, group and family counseling, inpatient, residential or outpatient substance abuse treatment services, mental health services, assistance to address domestic violence, services designed to provide temporary child care and therapeutic services for families, including crisis nurseries and transportation to or from any such services, provided during fifteen of the most recent twenty-two months a child has been in foster care, as determined by the earlier date of the first judicial finding that the child is subjected to abuse or neglect, or the date which is sixty days after the child is removed from home.

ARTICLE 2. STATE RESPONSIBILITIES FOR THE PROTECTION AND CARE OF CHILDREN.

§49-2-17. Subsidized adoption and legal guardianship.

(a) From funds appropriated to the Department of Health and Human Resources, the secretary shall establish a system of assistance for facilitating the adoption or legal guardianship of children. An adoption subsidy shall be available for children who are legally free for adoption and who are dependents of the department or a child welfare agency licensed to place children for adoption. A legal guardianship subsidy shall not require the surrender or termination of parental rights. For either subsidy, the children must be in special circumstances ~~either~~ because they one or more of the following conditions inhibit their adoption or legal guardianship placement:

~~(a) — Have established emotional ties with prospective adoptive parents or prospective legal guardians while in their care; or~~

~~(b) — Are not likely to be adopted or become a ward of a legal guardian by reason of one or more of the following conditions:~~

~~(1) They have a physical or mental disability;~~

~~(2) They are emotionally disturbed;~~

~~(3) They are older children;~~

~~(4) They are a part of a sibling group; or~~

~~(5) They are a member of a racial or ethnic minority.~~

~~(6) They have any combination of these conditions.~~

(b) The department shall provide assistance in the form of subsidies or other services to parents who are found and approved for adoption or legal guardianship of a child certified as eligible for subsidy by the department, but before the final decree of adoption or order of legal guardianship is entered, there must be a written agreement between the family entering into the subsidized adoption or legal guardianship and the department. Adoption or legal guardianship subsidies in individual cases may commence with the

adoption or legal guardianship placement, and will vary with the needs of the child as well as the availability of other resources to meet the child's needs. The subsidy may be for special services only, or for money payments, and either for a limited period, or for a long term, or for any combination of the foregoing. The specific financial terms of the subsidy shall be included in the agreement between the department and the adoptive parents or legal guardians. The agreement may recognize and provide for direct payment by the department of attorney's fees to an attorney representing the adoptive parent. The amount of the time-limited or long-term subsidy may in no case exceed that which would be allowable from time to time for such child under foster family care, or, in the case of a special service, the reasonable fee for the service rendered. In addition, the department shall provide either Medicaid or other health insurance coverage for any special needs child for whom there is an adoption or legal guardianship assistance agreement between the department and the adoptive parent or legal guardian and who the department determines cannot be placed with an adoptive parent or legal guardian without medical assistance because the child has special needs for medical, mental health or rehabilitative care.

~~Whenever significant emotional ties have been established between a child and his or her foster parents, and the foster parents seek to adopt the child or to become legal guardians, the child shall be certified as eligible for a subsidy conditioned upon his or her adoption or his or her becoming a ward of a legal guardian under applicable procedures by the foster parents.~~

~~(c) In all other cases,~~ After reasonable efforts have been made without the use of subsidy and no appropriate adoptive family or legal guardian has been found for the child, the department shall certify the child as eligible for a subsidy in the event of adoption or a legal guardianship: Provided, that reasonable efforts to place a child without a subsidy shall not be required if it is in the best interest of the child because of such factors as the existence of significant emotional ties developed between the child and the prospective parent or guardian while in care as a foster child.

~~(d) If the child is the dependent of a voluntary licensed child-placing agency, that agency shall present to the department evidence of significant emotional ties between the child and his foster parents~~ the inability to place the child for adoption or legal guardianship without the use of subsidy or evidence that such efforts would not be in the best interests of the child. In no event shall the value of the services and assistance provided by the department under an agreement pursuant to this section exceed the value of assistance available to foster families in similar circumstances. All records regarding subsidized adoptions or legal guardianships shall be held in confidence; however, records regarding the payment of public funds for subsidized adoptions or legal guardianships shall be available for public inspection provided they do not directly or indirectly identify any child or persons receiving funds for such child.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-13. Disposition of juvenile delinquents; appeal.

(a) In aid of disposition of juvenile delinquents, the juvenile probation officer assigned to the court shall, upon request of the court, make an investigation of the environment of the juvenile and the alternative dispositions possible. The court, upon its own motion, or upon request of counsel, may order a psychological examination of the juvenile. The report of such examination and other investigative and social reports shall not be made available to the court until after the adjudicatory hearing. Unless waived, copies of the report shall be provided to counsel for the petitioner and counsel for the juvenile no later than seventy-two hours prior to the dispositional hearing.

(b) Following the adjudication, the court shall conduct the dispositional proceeding, giving all parties an opportunity to be heard. In disposition the court shall not be limited to the relief sought in the petition and shall, in electing from the following alternatives, consider the best interests of the juvenile and the welfare of the public:

(1) Dismiss the petition;

(2) Refer the juvenile and the juvenile's parent or custodian to a community agency for needed assistance and dismiss the petition;

(3) Upon a finding that the juvenile is in need of extra-parental supervision: (A) Place the juvenile under the supervision of a probation officer of the court or of the court of the county where the juvenile has his or her usual place of abode or other person while leaving the juvenile in custody of his or her parent or custodian; and (B) prescribe a program of treatment or therapy or limit the juvenile's activities under terms which are reasonable and within the child's ability to perform, including participation in the litter control program established pursuant to section three, article fifteen-a, chapter twenty-two of this code or other appropriate programs of community service;

(4) Upon a finding that a parent or custodian is not willing or able to take custody of the juvenile, that a juvenile is not willing to reside in the custody of his or her parent or custodian or that a parent or custodian cannot provide the necessary supervision and care of the juvenile, the court may place the juvenile in temporary foster care or temporarily commit the juvenile to the department or a child welfare agency. The court order shall state that continuation in the home is contrary to the best interest of the juvenile and why; and whether or not the department made a reasonable effort to prevent the placement or that the emergency situation made such efforts unreasonable or impossible. Whenever the court transfers custody of a youth to the department, an appropriate order of financial support by the parents or guardians shall be entered in accordance with section five, article seven of this chapter and guidelines promulgated by the Supreme Court of Appeals;

(5) Upon a finding that the best interests of the juvenile or the welfare of the public require it, and upon an adjudication of delinquency pursuant to subdivision (1), section four, article one of this chapter, the court may commit the juvenile to the custody of the Director of the Division of Juvenile Services for placement in a juvenile services facility for the treatment, instruction and rehabilitation of juveniles: *Provided*, That the court

maintains discretion to consider alternative sentencing arrangements. Notwithstanding any provision of this code to the contrary, in the event that the court determines that it is in the juvenile's best interests or required by the public welfare to place the juvenile in the custody of the Division of Juvenile Services, the court shall provide the Division of Juvenile Services with access to all relevant court orders and records involving the underlying offense or offenses for which the juvenile was adjudicated delinquent, including sentencing and presentencing reports and evaluations, and provide the division with access to school records, psychological reports and evaluations, medical reports and evaluations or any other such records as may be in the court's possession as would enable the Division of Juvenile Services to better assess and determine the appropriate counseling, education and placement needs for the juvenile offender. Commitments shall not exceed the maximum term for which an adult could have been sentenced for the same offense and any such maximum allowable sentence to be served in a juvenile correctional facility may take into account any time served by the juvenile in a detention center pending adjudication, disposition or transfer. The order shall state that continuation in the home is contrary to the best interests of the juvenile and why; and whether or not the state department made a reasonable effort to prevent the placement or that the emergency situation made such efforts unreasonable or impossible; or

(6) After a hearing conducted under the procedures set out in subsections (c) and (d), section four, article five, chapter twenty-seven of this code, commit the juvenile to a mental health facility in accordance with the juvenile's treatment plan; the director of the mental health facility may release a juvenile and return him or her to the court for further disposition. The order shall state that continuation in the home is contrary to the best interests of the juvenile and why; and whether or not the state department made a reasonable effort to prevent the placement or that the emergency situation made such efforts unreasonable or impossible.

(c) In any case in which the court decides to order the juvenile placed in an out-of-state facility or program, it shall set forth in the order directing the placement the reasons the juvenile was not placed in an in-state facility or program.

~~(e)~~ (d) The disposition of the juvenile shall not be affected by the fact that the juvenile demanded a trial by jury or made a plea of denial. Any dispositional order is subject to appeal to the Supreme Court of Appeals.

~~(d)~~ (e) Following disposition, the court shall inquire whether the juvenile wishes to appeal and the response shall be transcribed; a negative response shall not be construed as a waiver. The evidence shall be transcribed as soon as practicable and made available to the juvenile or his or her counsel, if the same is requested for purposes of further proceedings. A judge may grant a stay of execution pending further proceedings.

~~(e)~~ (f) Notwithstanding any other provision of this code to the contrary, if a juvenile charged with delinquency under this chapter is transferred to adult jurisdiction and there

tried and convicted, the court may make its disposition in accordance with this section in lieu of sentencing such person as an adult.

ARTICLE 5D. MULTIDISCIPLINARY TEAMS.

§49-5D-2. Multidisciplinary investigative teams; establishment; procedures; coordination between agencies.

(a) The prosecuting attorney shall establish a multidisciplinary investigative team in each county. The multidisciplinary team shall be headed and directed by the prosecuting attorney or his or her designee and shall include as permanent members the prosecuting attorney or his or her designee, a local child protective services caseworker from the Department of Health and Human Resources; a local law-enforcement officer employed by a law-enforcement agency in the county; a child advocacy center representative, where available and, ~~where appropriate to the particular case under consideration and available;~~ a health care provider with pediatric and child abuse expertise, where available; a mental health professional with pediatric and child abuse expertise, where available; an educator and a representative from a licensed domestic violence program serving the county. The Department of Health and Human Resources and any local law-enforcement agency or agencies selected by the prosecuting attorney shall appoint their representatives to the team by submitting a written designation of the team to the prosecuting attorney of each county within thirty days of the prosecutor's request that the appointment be made. Within fifteen days of the appointment, the prosecuting attorney shall notify the chief judge of each circuit within which the county is situated of the names of the representatives so appointed. Any other person or any other appointee of an agency who may contribute to the team's efforts to assist a minor child as may be determined by the permanent members of the team may also be appointed as a member of the team by the prosecutor with notification to the chief judge.

(b) Any permanent member of the multidisciplinary investigative team shall refer all cases of accidental death of any child reported to their agency and all cases when a child dies while in the custody of the state for investigation and review by the team. The multidisciplinary investigative team shall meet at regular intervals at least once every calendar month.

(c) The investigative team shall be responsible for coordinating or cooperating in the initial and ongoing investigation of all civil and criminal allegations pertinent to cases involving child sexual assault, child sexual abuse, child abuse and neglect and shall make a recommendation to the county prosecuting attorney as to the initiation or commencement of a civil petition and/or criminal prosecution.

(d) State, county and local agencies shall provide the multidisciplinary investigative team with any information requested in writing by the team as allowable by law or upon receipt of a certified copy of the circuit court's order directing said agencies to release information in its possession relating to the child. The team shall assure that all information received and developed in connection with the provisions of this article

remains confidential. For purposes of this section, the term "confidential" shall be construed in accordance with the provisions of section one, article seven of this chapter.

49-5D-3. Multidisciplinary treatment planning process.

(a) (1) A multidisciplinary treatment planning process for cases initiated pursuant to articles five and six of this chapter shall be established within each county of the state, either separately or in conjunction with a contiguous county, by the secretary of the department with advice and assistance from the prosecutor's advisory council as set forth in section four, article four, chapter seven of this code. The Division of Juvenile Services shall establish a similar treatment planning process for delinquency cases in which the juvenile has been committed to the its custody of the director of the division, including those cases in which the juvenile has been committed for examination and diagnosis.

~~(2) Treatment teams shall assess, plan and implement a comprehensive, individualized service plan for children who are victims of abuse or neglect and their families when a judicial proceeding has been initiated involving the child or children for juveniles and their families involved in status offense or delinquency proceedings when, in a status offense proceeding, the court refers the juvenile for services pursuant to sections eleven and eleven-a, article five of this chapter and when, in a delinquency proceeding, the court is considering placing the juvenile in the department's custody or placing the juvenile out of home at the department's expense pursuant to the provisions of section thirteen of said article. In any such status offense or delinquency case, the juvenile probation officer shall notify the local office of the Department of Health and Human Resources and the Division of Juvenile Services at least five working days before the court proceeding in order to allow the multidisciplinary treatment team to convene and develop a comprehensive individualized service plan for the child: *Provided*, That such notice is not required in cases where the child is already in state custody or there exist exigent circumstances which justify taking the child immediately into custody without a judicial proceeding. In developing an individualized service plan for a child, the team shall utilize a uniform comprehensive assessment of the child. The department shall adopt a standard uniform comprehensive assessment instrument or protocol to be used by treatment teams.~~

~~(3) Prior to disposition, in each case in which a treatment planning team has been convened, the team shall advise the court as to the types of services the team has determined are needed and the type of placement, if any, which will best serve the needs of the child. If the team determines that an out-of-home placement will best serve the needs of the child, the team shall first consider placement at facilities or programs located within the state. The team may only recommend placement in an out-of-state facility if it concludes, after considering the best interests and overall needs of the child, that there are no available and suitable in-state facilities which can satisfactorily meet the specific needs of the child.~~

~~(b) Each treatment team shall be convened by the child's or family's case manager in the Department of Health and Human Resources or the Division of Juvenile Services if the juvenile has been ordered into its custody for examination and diagnosis pursuant to~~

~~section thirteen, article five of this chapter. The treatment team shall consist of the child's custodial parent or parents, guardian or guardians, other immediate family members, the attorney or attorneys representing the child, the parent or parents of the child, the child's attorney, the guardian ad litem, if any, the prosecuting attorney or his or her designee, a member of a child advocacy center when the child has been processed through the child advocacy center program(s) and, where appropriate to the particular case under consideration and available, a court-appointed special advocate, a member of a child advocacy center, an appropriate school official and any other person or an agency representative who may assist in providing recommendations for the particular needs of the child and family. The child may participate in multidisciplinary treatment team meetings if such is deemed appropriate by the multidisciplinary treatment team. For purposes of delinquency proceedings, the juvenile probation officer shall be a member of the treatment team. Any person authorized by the provisions of this chapter to convene a multidisciplinary team meeting may seek and receive an order of the circuit court setting such meeting and directing attendance. Members of the multidisciplinary team may participate in team meetings by telephone or video conferencing: *Provided*, That a member of a child advocacy center should participate in any case when appropriate to the particular case under consideration. The provisions of this section do not require a multidisciplinary team meeting to be held prior to temporarily placing a child or juvenile out-of-home under exigent circumstances or upon a court order placing a juvenile in a facility operated by the Division of Juvenile Services.~~

(b) The case manager in the Department of Health and Human Resources for the child, family or juvenile or the case manager in the Division of Juvenile Services for a juvenile shall convene a treatment team in each case when it is required pursuant to this article.

~~(3)~~ Prior to disposition, in each case in which a treatment planning team has been convened, the team shall advise the court as to the types of services the team has determined are needed and the type of placement, if any, which will best serve the needs of the child. If the team determines that an out-of-home placement will best serve the needs of the child, the team shall first consider placement with appropriate relatives then with foster care homes, facilities or programs located within the state. The team may only recommend placement in an out-of-state facility if it concludes, after considering the best interests and overall needs of the child, that there are no available and suitable in-state facilities which can satisfactorily meet the specific needs of the child.

Any person authorized by the provisions of this chapter to convene a multidisciplinary team meeting may seek and receive an order of the circuit court setting such meeting and directing attendance. Members of the multidisciplinary team may participate in team meetings by telephone or video conferencing: *Provided*, ~~That a member of a child advocacy center should participate in any case when appropriate to the particular case under consideration~~ the provisions of this subsection do not prevent the respective agencies from designating a person other than the case manager as a facilitator for treatment team meetings.

(c) The treatment team shall coordinate its activities and membership with local family resource networks and coordinate with other local and regional child and family service planning committees to assure the efficient planning and delivery of child and family services on a local and regional level.

~~(d) State, county and local agencies shall provide~~ The multidisciplinary treatment team ~~with any information requested in writing by the team as allowable by law or upon receipt of a certified copy of the circuit court's order directing said agency to release information in its possession relating to the child. The team shall assure that all information received and developed in connection with the provisions of this article remain confidential. For purposes of this section, the term "confidential" shall be construed in accordance with the provisions of section on, article seven of this chapter shall be afforded access to information in the possession of the Department of Health and Human Services, Division of Juvenile Services, law-enforcement agencies and other state, county and local agencies; and the agencies shall cooperate in the sharing of information, as may be provided in sections three(d) and six, article five-D and section one, article seven, all of chapter forty-nine, and any other relevant provision of law. Any multidisciplinary team member who acquires confidential information shall not disclose such information except as permitted by the provisions of this code or court rules.~~

~~(e) Nothing in this section may be construed to require a multidisciplinary team meeting to be held prior to temporarily placing a child out-of-home under exigent circumstances or upon a court order placing the juvenile in a juvenile facility operated by the Division of Juvenile Services.~~

§49-5D-3a. Recommendation of team to the court; hearing requirement; required findings.

(a) In any case in which a multidisciplinary treatment team develops an individualized service plan for a child or family pursuant to the provisions of ~~section three~~ of this article, the court shall review the proposed service plan to determine if implementation of the plan is in the child's best interests. If the multidisciplinary team cannot agree on a plan or if the court determines not to adopt the team's recommendations, it shall, upon motion or sua sponte, schedule and hold within ten days of such determination, and prior to the entry of an order placing the child in the custody of the department or in an out-of-home setting, a hearing to consider evidence from the team as to its rationale for the proposed service plan. If, after a hearing held pursuant to the provisions of this section, the court does not adopt the teams's recommended service plan, it shall make specific written findings as to why the team's recommended service plan was not adopted.

(b) In any case in which the court decides to order the child placed in an out-of-state facility or program it shall set forth in the order directing the placement the reasons why the child was not placed in an in-state facility or program.

(c) Any member of the multidisciplinary treatment team who disagrees with recommendations of the team may inform the court of his or her own recommendations and objections to the team's recommendations. The recommendations and objections of

the dissenting team member may be made in a hearing on the record, made in writing and served upon each team member and filed with the court and indicated in the case plan, or both made in writing and indicated in the case plan. Upon receiving objections, the court will conduct a hearing pursuant to paragraph (a) of this section.

§49-5D-3b. Multidisciplinary treatment planning process involving child abuse and neglect.

(a) Within thirty days of the initiation of a judicial proceeding pursuant to article six of this chapter, the Department of Health and Human Services shall convene a multidisciplinary treatment team to assess, plan and implement a comprehensive, individualized service plan for children who are victims of abuse or neglect and their families. The multidisciplinary team shall obtain and utilize any assessments for the children or the adult respondents that it deems necessary to assist in the development of such a plan.

(b) In a case initiated pursuant to article six of this chapter, the treatment team shall consist of the child or family's case manager in the Department of Health and Human Resources, the adult respondent or respondents, the child's parent or parents, guardians, any copetitioners, custodial relatives of the child, foster or preadoptive parents, any attorney representing an adult respondent or other member of the treatment team, the child's counsel or the guardian ad litem, the prosecuting attorney or his or her designee, a member of a child advocacy center when the child has been processed through the child advocacy center program or programs or it is otherwise appropriate that a member of the child advocacy center participate, any court-appointed special advocate assigned to a case, any other person entitled to notice and the right to be heard, an appropriate school official and any other person or agency representative who may assist in providing recommendations for the particular needs of the child and family, including domestic violence service providers. The child may participate in multidisciplinary treatment team meetings if the child's participation is deemed appropriate by the multidisciplinary treatment team. Unless otherwise ordered by the court, a party whose parental rights have been terminated and his or her attorney shall not be given notice of a multidisciplinary treatment team meeting and does not have the right to participate in any treatment team meeting.

(c) Prior to disposition in each case which a treatment planning team has been convened, the team shall advise the court as to the types of services the team has determined are needed and the type of placement, if any, which will best serve the needs of the child. If the team determines that an out-of-home placement will best serve the needs of the child, the team shall first consider placement with appropriate relatives then with foster care homes, facilities or programs located within the state. The team may only recommend placement in an out-of-state facility if it concludes, after considering the best interests and overall needs of the child, that there are no available and suitable in-state facilities which can satisfactorily meet the specific needs of the child.

(d) The multidisciplinary treatment team shall submit written reports to the court as required by the rules governing this type of proceeding or by the court, and shall meet as

often as deemed necessary but at least every three months until the case is dismissed from the docket of the court. The multidisciplinary treatment team shall be available for status conferences and hearings as required by the court.

(e) If a respondent or copetitioner admits the underlying allegations of child abuse or neglect, or both abuse and neglect, in the multidisciplinary treatment planning process, his or her statements not be used in any subsequent criminal proceeding against him or her, except for perjury or false swearing.

§49-5D-3c. Multidisciplinary treatment process for status offenders or delinquents.

(a) (1) When a juvenile is adjudicated as a status offender pursuant to section eleven-d, article five of this chapter, the Department of Health and Human Resources shall promptly convene a multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform comprehensive assessment instrument or protocol, to determine the juvenile's mental and physical condition, maturity and education level, home and family environment, rehabilitative needs and recommended service plan. Upon completion of the assessment, the treatment team shall prepare and implement a comprehensive, individualized service plan for the juvenile.

(2) When a juvenile is adjudicated as a delinquent or has been granted an improvement period pursuant to section nine, article five of this chapter, the court, either upon its own motion or motion of a party, may require the Department of Health and Human Resources to convene a multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform comprehensive assessment instrument or protocol, to determine the juvenile's mental and physical condition, maturity and education level, home and family environment, rehabilitative needs and recommended service plan. A referral to the Department of Health and Human Resources to convene a multidisciplinary treatment team and to conduct such an assessment shall be made when the court is considering placing the juvenile in the department's custody or placing the juvenile out-of-home at the department's expense pursuant to section thirteen, article five of this chapter. In any delinquency proceeding in which the court requires the Department of Health and Human Resources to convene a multidisciplinary treatment team, the probation officer shall notify the department at least fifteen working days before the court proceeding in order to allow the department sufficient time to convene and develop an individualized service plan for the juvenile.

(3) When a juvenile has been adjudicated and committed to the custody of the Director of the Division of Juvenile Services, including those cases in which the juvenile has been committed for examination and diagnosis, the Division of Juvenile Services shall promptly convene a multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform comprehensive assessment instrument or protocol, to determine the juvenile's mental and physical condition, maturity and education level, home and family environment, rehabilitative needs and recommended service plan. Upon completion of the assessment, the treatment team shall prepare and implement a comprehensive, individualized service plan for the juvenile.

(4) (A) The rules of juvenile procedure shall govern the procedure for obtaining an assessment of a juvenile, preparing an individualized service plan and submitting the plan and assessment to the court.

(B) In juvenile proceedings conducted pursuant to article five of this chapter, the treatment team shall consist of the juvenile, the juvenile's case manager in the Department of Health and Human Resources or the Division of Juvenile Services, the juvenile's parent or parents, guardian or guardians or custodial relatives, the juvenile's attorney, any attorney representing a member of the treatment team, the prosecuting attorney or his or her designee, an appropriate school official and any other person or agency representative who may assist in providing recommendations for the particular needs of the juvenile and family, including domestic violence service providers. In delinquency proceedings, the probation officer shall be a member of a treatment team. When appropriate, the juvenile case manager in the Department of Health and Human Resources and the Division of Juvenile Services shall cooperate in conducting multidisciplinary treatment team meetings when it is in the juvenile's best interest.

(C) Prior to disposition, in each case in which a treatment planning team has been convened, the team shall advise the court as to the types of services the team has determined are needed and type of placement, if any, which will best serve the needs of the child. If the team determines that an out-of-home placement will best serve the needs of the child, the team shall first consider placement at facilities or programs located within the state. The team may only recommend placement in an out-of-state facility if it concludes, after considering the best interests and overall needs of the child, that there are no available and suitable in-state facilities which can satisfactorily meet the specific needs of the child.

(D) The multidisciplinary treatment team shall submit written reports to the court as required by applicable law or by the court, shall meet with the court at least every three months, as long as the juvenile remains in the legal or physical custody of the state, and shall be available for status conferences and hearings as required by the court.

(E) In any case in which a juvenile has been placed out of his or her home except for a temporary placement in a shelter or detention center, the multidisciplinary treatment team shall cooperate with the state agency in whose custody the juvenile is placed to develop an after-care plan. The rules of juvenile procedure and section twenty, article five, chapter forty-nine of the code shall govern the development of an after-care plan for a juvenile, the submission of the plan to the court and any objection to the after-care plan.

(F) If a juvenile respondent admits the underlying allegations of the case initiated pursuant to article five, chapter forty-nine of this code in the multidisciplinary treatment planning process, his or her statements shall not be used in any juvenile or criminal proceedings against the juvenile, except for perjury or false swearing.

ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.

§49-6-2. Petition to court when child believed neglected or abused -- Right to counsel; improvement period; hearing; priority of proceeding; transcript.

(a) In any proceeding under the provisions of this article, the child, his or her or parents and his or her legally established custodian or other persons standing in loco parentis to him or her shall have the right to be represented by counsel at every stage of the proceedings and shall be informed by the court of their right to be so represented and that if they cannot pay for the services of counsel, that counsel will be appointed. Counsel of the child shall be appointed in the initial order. If the order gives physical custody of the child to the state, the initial order shall appoint counsel for the parents or, if the parents are separated or divorced, the parents or parent or other person or persons standing in loco parentis who had physical custody of the child for the majority of the time in the period immediately preceding the petition: *Provided*, That such representation shall only continue after the first appearance if the parent or other persons standing in loco parentis cannot pay for the services of counsel. Counsel for other parties shall only be appointed upon request for appointment of counsel. If the requesting parties have not retained counsel and cannot pay for the services of counsel, the court shall, by order entered of record, appoint an attorney or attorneys to represent the other party or parties and so inform the parties. Under no circumstances may the same attorney represent both the child and the other party or parties, nor shall the same attorney represent both parents or custodians. However, one attorney may represent both parents or custodians where both parents or guardians consent to this representation after the attorney fully discloses to the client the possible conflict and where the attorney assures the court that she or he is able to represent each client without impairing her or his professional judgment; however, if more than one child from a family is involved in the proceeding, one attorney may represent all the children. A parent who has been judicially determined to be battered shall be entitled to his or her own attorney. The court may allow to each attorney so appointed a fee in the same amount which appointed counsel can receive in felony cases. Effective July 1, 2012, any attorney appointed pursuant to this section shall by the first day of July, one thousand nine hundred ninety-three, and three hours per year each year thereafter, receive a minimum of three eight hours of continuing legal education training per reporting period on representation of children, child abuse and neglect procedure and practice. In addition to this requirement, after July 1, 2013, any attorney appointed to represent a child must first complete training on representation of children that is approved by the administrative office of the Supreme Court of Appeals. The Supreme Court of Appeals shall develop procedures for approval and certification of training required under this section by July 1, 2012: *Provided, however*, That where no attorney who has completed this training is available for such appointment, the court shall appoint a competent attorney with demonstrated knowledge of child welfare law to represent the parent or child. Any attorney appointed pursuant to this section shall perform all duties required as an attorney licensed to practice law in the State of West Virginia.

(b) In any proceeding brought pursuant to the provisions of this article, the court may grant any respondent an improvement period in accord with the provisions of this article. During such period, the court may require temporary custody with a responsible person

which has been found to be a fit and proper person for the temporary custody of the child or children or the state department or other agency during the improvement period. An order granting such improvement period shall require the department to prepare and submit to the court a family case plan in accordance with the provisions of section three, article six-d of this chapter.

(c) In any proceeding pursuant to the provisions of this article, the party or parties having custodial or other parental rights or responsibilities to the child shall be afforded a meaningful opportunity to be heard, including the opportunity to testify and to present and cross-examine witnesses. The petition shall not be taken as confessed. A transcript or recording shall be made of all proceedings unless waived by all parties to the proceeding. The rules of evidence shall apply. Where relevant, the court shall consider the efforts of the state department to remedy the alleged circumstances. At the conclusion of the hearing, the court shall make a determination based upon the evidence and shall make findings of fact and conclusions of law as to whether such child is abused or neglected and, if applicable, whether the parent, guardian, or custodian is a battered parent, all of which shall be incorporated into the order of the court. The findings must be based upon conditions existing at the time of the filing of the petition and proven by clear and convincing proof.

(d) Any petition filed and any proceeding held under the provisions of this article shall, to the extent practicable, be given priority over any other civil action before the court, except proceedings under article two-a, chapter forty-eight of this code and actions in which trial is in progress. Any petition filed under the provisions of this article shall be docketed immediately upon filing. Any hearing to be held at the end of an improvement period and any other hearing to be held during any proceedings under the provisions of this article shall be held as nearly as practicable on successive days and, with respect to said hearing to be held at the end of an improvement period, shall be held as close in time as possible after the end of said improvement period and shall be held within sixty days of the termination of such improvement period.

(e) Following the court's determination, it shall be inquired of the parents or custodians whether or not appeal is desired and the response transcribed. A negative response shall not be construed as a waiver. The evidence shall be transcribed and made available to the parties or their counsel as soon as practicable, if the same is required for purposes of further proceedings. If an indigent person intends to pursue further proceedings, the court reporter shall furnish a transcript of the hearing without cost to the indigent person if an affidavit is filed stating that he or she cannot pay therefor.

§49-6-3. Petition to court when child believed neglected or abused -- Temporary custody.

(a) Upon the filing of a petition, the court may order that the child alleged to be an abused or neglected child be delivered for not more than ten days into the custody of the state department or a responsible person found by the court to be a fit and proper person for the temporary care of the child pending a preliminary hearing, if it finds that:

(1) There exists imminent danger to the physical well being of the child; and

(2) There are no reasonably available alternatives to removal of the child, including, but not limited to, the provision of medical, psychiatric, psychological or homemaking services in the child's present custody: *Provided*, That where the alleged abusing person, if known, is a member of a household, the court shall not allow placement pursuant to this section of the child or children in said home unless the alleged abusing person is or has been precluded from visiting or residing in said home by judicial order. In a case where there is more than one child in the home, or in the temporary care, custody or control of the alleged offending parent, the petition shall so state, and notwithstanding the fact that the allegations of abuse or neglect may pertain to less than all of such children, each child in the home for whom relief is sought shall be made a party to the proceeding. Even though the acts of abuse or neglect alleged in the petition were not directed against a specific child who is named in the petition, the court shall order the removal of such child, pending final disposition, if it finds that there exists imminent danger to the physical well being of the child and a lack of reasonable available alternatives to removal. The initial order directing such custody shall contain an order appointing counsel and scheduling the preliminary hearing, and upon its service shall require the immediate transfer of custody of such child or children to the department or a responsible relative which may include any parent, guardian, or other custodian. The court order shall state:

(A) That continuation in the home is contrary to the best interests of the child and why; and

(B) Whether or not the department made reasonable efforts to preserve the family and prevent the placement or that the emergency situation made such efforts unreasonable or impossible. The order may also direct any party or the department to initiate or become involved in services to facilitate reunification of the family.

(b) Whether or not the court orders immediate transfer of custody as provided in subsection (a) of this section, if the facts alleged in the petition demonstrate to the court that there exists imminent danger to the child, the court may schedule a preliminary hearing giving the respondents at least five days' actual notice. If the court finds at the preliminary hearing that there are no alternatives less drastic than removal of the child and that a hearing on the petition cannot be scheduled in the interim period, the court may order that the child be delivered into the temporary custody of the department or a responsible person or agency found by the court to be a fit and proper person for the temporary care of the child for a period not exceeding sixty days: *Provided*, That the court order shall state:

(1) That continuation in the home is contrary to the best interests of the child and set forth the reasons therefor;

(2) Whether or not the department made reasonable efforts to preserve the family and to prevent the child's removal from his or her home;

(3) Whether or not the department made reasonable efforts to preserve the family and to prevent the placement or that the emergency situation made such efforts unreasonable or impossible; and

(4) What efforts should be made by the department, if any, to facilitate the child's return home: *Provided, however,* That if the court grants an improvement period as provided in section twelve of this article, the sixty-day limit upon temporary custody is waived.

(c) If a child or children shall, in the presence of a child protective service worker, be in an emergency situation which constitutes an imminent danger to the physical well being of the child or children, as that phrase is defined in section three, article one of this chapter, and if such worker has probable cause to believe that the child or children will suffer additional child abuse or neglect or will be removed from the county before a petition can be filed and temporary custody can be ordered, the worker may, prior to the filing of a petition, take the child or children into his or her custody without a court order: *Provided,* That after taking custody of such child or children prior to the filing of a petition, the worker shall forthwith appear before a circuit judge or a juvenile referee of the county wherein custody was taken, or if no such judge or referee be available, before a circuit judge or a juvenile referee of an adjoining county, and shall immediately apply for an order ratifying the emergency custody of the child pending the filing of a petition. The circuit court of every county in the state shall appoint at least one of the magistrates of the county to act as a juvenile referee, who shall serve at the will and pleasure of the appointing court, and who shall perform the functions prescribed for such position by the provisions of this subsection. The parents, guardians or custodians of the child or children may be present at the time and place of application for an order ratifying custody, and if at the time the child or children are taken into custody by the worker, the worker knows which judge or referee is to receive the application, the worker shall so inform the parents, guardians or custodians. The application for emergency custody may be on forms prescribed by the Supreme Court of Appeals or prepared by the prosecuting attorney or the applicant, and shall set forth facts from which it may be determined that the probable cause described above in this subsection exists. Upon such sworn testimony or other evidence as the judge or referee deems sufficient, the judge or referee may order the emergency taking by the worker to be ratified. If appropriate under the circumstances, the order may include authorization for an examination as provided for in subsection (b), section four of this article. If a referee issues such an order, the referee shall by telephonic communication have such order orally confirmed by a circuit judge of the circuit or an adjoining circuit who shall on the next judicial day enter an order of confirmation. If the emergency taking is ratified by the judge or referee, emergency custody of the child or children shall be vested in the department until the expiration of the next two judicial days, at which time any such child taken into emergency custody shall be returned to the custody of his or her parent or guardian or custodian unless a petition has been filed and custody of the child has been transferred under the provisions of section three of this article.

(d) For purposes of the court's consideration of temporary custody pursuant to the provisions of subsection (a) or (b) of this section, the department is not required to make reasonable efforts to preserve the family if the court determines:

(1) The parent has subjected the child, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent to aggravated circumstances which include, but are not limited to, abandonment, torture, chronic abuse and sexual abuse;

(2) The parent has:

(A) Committed murder of the child's other parent, guardian or custodian, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;

(B) Committed voluntary manslaughter of the child's other parent, guardian or custodian, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;

(C) Attempted or conspired to commit such a murder or voluntary manslaughter or been an accessory before or after the fact to either such crime;

(D) Committed unlawful or malicious wounding that results in serious bodily injury to the child, the child's other parent, guardian or custodian, to another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;

(E) Committed sexual assault or sexual abuse of the child, the child's other parent, guardian or custodian, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent; or

(F) Has been required by state or federal law to register with a sex offender registry; or

(3) The parental rights of the parent to another child have been terminated involuntarily.

§49-6-5. Disposition of neglected or abused children.

(a) Following a determination pursuant to section two of this article wherein the court finds a child to be abused or neglected, the department shall file with the court a copy of the child's case plan, including the permanency plan for the child. The term case plan means a written document that includes, where applicable, the requirements of the family case plan as provided for in section three, article six-d of this chapter and that also includes at least the following: A description of the type of home or institution in which the child is to be placed, including a discussion of the appropriateness of the placement and how the agency which is responsible for the child plans to assure that the child receives proper care and that services are provided to the parents, child and foster parents in order to improve the conditions in the parent(s) home; facilitate return of the

child to his or her own home or the permanent placement of the child; and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child. The term "permanency plan" refers to that part of the case plan which is designed to achieve a permanent home for the child in the least restrictive setting available. The plan must document efforts to ensure that the child is returned home within approximate time lines for reunification as set out in the plan. Reasonable efforts to place a child for adoption or with a legal guardian may be made at the same time reasonable efforts are made to prevent removal or to make it possible for a child to safely return home. If reunification is not the permanency plan for the child, the plan must state why reunification is not appropriate and detail the alternative placement for the child to include approximate time lines for when such placement is expected to become a permanent placement. This case plan shall serve as the family case plan for parents of abused or neglected children. Copies of the child's case plan shall be sent to the child's attorney and parent, guardian or custodian or their counsel at least five days prior to the dispositional hearing. The court shall forthwith proceed to disposition giving both the petitioner and respondents an opportunity to be heard. The court shall give precedence to dispositions in the following sequence:

- (1) Dismiss the petition;
- (2) Refer the child, the abusing parent, the battered parent or other family members to a community agency for needed assistance and dismiss the petition;
- (3) Return the child to his or her own home under supervision of the department;
- (4) Order terms of supervision calculated to assist the child and any abusing parent or battered parent or parents or custodian which prescribe the manner of supervision and care of the child and which are within the ability of any parent or parents or custodian to perform;
- (5) Upon a finding that the abusing parent or battered parent or parents are presently unwilling or unable to provide adequately for the child's needs, commit the child temporarily to the custody of the state department, a licensed private child welfare agency or a suitable person who may be appointed guardian by the court. The court order shall state:
 - (A) That continuation in the home is contrary to the best interests of the child and why;
 - (B) Whether or not the department has made reasonable efforts, with the child's health and safety being the paramount concern, to preserve the family, or some portion thereof, and to prevent or eliminate the need for removing the child from the child's home and to make it possible for the child to safely return home;
 - (C) What efforts were made or that the emergency situation made such efforts unreasonable or impossible; and

(D) The specific circumstances of the situation which made such efforts unreasonable if services were not offered by the department. The court order shall also determine under what circumstances the child's commitment to the department shall continue. Considerations pertinent to the determination include whether the child should:

(i) Be continued in foster care for a specified period;

(ii) Be considered for adoption;

(iii) Be considered for legal guardianship;

(iv) Be considered for permanent placement with a fit and willing relative; or

(v) Be placed in another planned permanent living arrangement, but only in cases where the department has documented to the circuit court a compelling reason for determining that it would not be in the best interests of the child to follow one of the options set forth in subparagraphs (i), (ii), (iii) or (iv) of this paragraph. The court may order services to meet the special needs of the child. Whenever the court transfers custody of a youth to the department, an appropriate order of financial support by the parents or guardians shall be entered in accordance with section five, article seven of this chapter; or

(6) Upon a finding that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future and, when necessary for the welfare of the child, terminate the parental, custodial and guardianship rights and responsibilities of the abusing parent and commit the child to the permanent sole custody of the nonabusing parent, if there be one, or, if not, to either the permanent guardianship of the department or a licensed child welfare agency. The court may award sole custody of the child to a nonabusing battered parent. If the court shall so find, then in fixing its dispositional order the court shall consider the following factors:

(A) The child's need for continuity of care and caretakers;

(B) The amount of time required for the child to be integrated into a stable and permanent home environment; and

(C) Other factors as the court considers necessary and proper. Notwithstanding any other provision of this article, the court shall give consideration to the wishes of a child fourteen years of age or older or otherwise of an age of discretion as determined by the court regarding the permanent termination of parental rights. No adoption of a child shall take place until all proceedings for termination of parental rights under this article and appeals thereof are final. In determining whether or not parental rights should be terminated, the court shall consider the efforts made by the department to provide remedial and reunification services to the parent. The court order shall state:

(i) That continuation in the home is not in the best interest of the child and why;

(ii) Why reunification is not in the best interests of the child;

(iii) Whether or not the department made reasonable efforts, with the child's health and safety being the paramount concern, to preserve the family, or some portion thereof, and to prevent the placement or to eliminate the need for removing the child from the child's home and to make it possible for the child to safely return home, or that the emergency situation made such efforts unreasonable or impossible; and

(iv) Whether or not the department made reasonable efforts to preserve and reunify the family, or some portion thereof, including a description of what efforts were made or that such efforts were unreasonable due to specific circumstances.

(7) For purposes of the court's consideration of the disposition custody of a child pursuant to the provisions of this subsection, the department is not required to make reasonable efforts to preserve the family if the court determines:

(A) The parent has subjected the child, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent to aggravated circumstances which include, but are not limited to, abandonment, torture, chronic abuse and sexual abuse;

(B) The parent has:

(i) Committed murder of the child's other parent, guardian or custodian, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent;

(ii) Committed voluntary manslaughter of the child's other parent, guardian or custodian, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;

(iii) Attempted or conspired to commit such a murder or voluntary manslaughter or been an accessory before or after the fact to either such crime;

(iv) Committed a felonious assault that results in serious bodily injury to the child, the child's other parent, guardian or custodian, to another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent; or

(v) Committed sexual assault or sexual abuse of the child, the child's other parent, guardian or custodian, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent; or

(vi) Has been required by state or federal law to register with a sex offender registry; or

(C) The parental rights of the parent to another child have been terminated involuntarily; or

(D) A parent has been required by state or federal law to register with a sex offender registry, and the court has determined in consideration of the nature and circumstances surrounding the prior charges against that parent, that the child's interests would not be promoted by a preservation of the family.

(b) As used in this section, "no reasonable likelihood that conditions of neglect or abuse can be substantially corrected" shall mean that, based upon the evidence before the court, the abusing adult or adults have demonstrated an inadequate capacity to solve the problems of abuse or neglect on their own or with help. Such conditions shall be considered to exist in the following circumstances, which shall not be exclusive:

(1) The abusing parent or parents have habitually abused or are addicted to alcohol, controlled substances or drugs, to the extent that proper parenting skills have been seriously impaired and such person or persons have not responded to or followed through the recommended and appropriate treatment which could have improved the capacity for adequate parental functioning;

(2) The abusing parent or parents have willfully refused or are presently unwilling to cooperate in the development of a reasonable family case plan designed to lead to the child's return to their care, custody and control;

(3) The abusing parent or parents have not responded to or followed through with a reasonable family case plan or other rehabilitative efforts of social, medical, mental health or other rehabilitative agencies designed to reduce or prevent the abuse or neglect of the child, as evidenced by the continuation or insubstantial diminution of conditions which threatened the health, welfare or life of the child;

(4) The abusing parent or parents have abandoned the child;

(5) The abusing parent or parents have repeatedly or seriously injured the child physically or emotionally, or have sexually abused or sexually exploited the child, and the degree of family stress and the potential for further abuse and neglect are so great as to preclude the use of resources to mitigate or resolve family problems or assist the abusing parent or parents in fulfilling their responsibilities to the child;

(6) The abusing parent or parents have incurred emotional illness, mental illness or mental deficiency of such duration or nature as to render such parent or parents incapable of exercising proper parenting skills or sufficiently improving the adequacy of such skills; or

(7) The battered parent's parenting skills have been seriously impaired and said person has willfully refused or is presently unwilling or unable to cooperate in the development

of a reasonable treatment plan or has not adequately responded to or followed through with the recommended and appropriate treatment plan.

(c) The court may, as an alternative disposition, allow the parents or custodians an improvement period not to exceed six months. During this period the court shall require the parent to rectify the conditions upon which the determination was based. The court may order the child to be placed with the parents, or any person found to be a fit and proper person, for the temporary care of the child during the period. At the end of the period, the court shall hold a hearing to determine whether the conditions have been adequately improved and at the conclusion of the hearing shall make a further dispositional order in accordance with this section.

§49-6-6. Modification of dispositional orders.

(a) Upon motion of a child, a child's parent or custodian or the state department alleging a change of circumstances requiring a different disposition, the court shall conduct a hearing pursuant to section two of this article and may modify a dispositional order if the court finds by clear and convincing evidence a material change of circumstances and that such modification is in the child's best interests: *Provided*, That a dispositional order pursuant to subdivision (6), subsection (a) of section five shall not be modified after the child has been adopted, except as provided in subsections (b) and (c) of this section. Adequate and timely notice of any motion for modification shall be given to the child's counsel, counsel for the child's parent or custodian, and to the state department and any person entitled to notice and the right to be heard. The circuit court of origin has exclusive jurisdiction over placement of the child, and such placement shall not be disrupted or delayed by any administrative process of the department.

(b) If the child is removed or relinquished from an adoptive home or other permanent placement after the case has been dismissed, any party with notice thereof and the receiving agency shall promptly report the matter to the circuit court of origin, the department and the child's counsel, and the court shall schedule a permanency hearing within sixty days of the report to the circuit court, with notice given to any appropriate parties and persons entitled to notice and the right to be heard. The department shall convene a multidisciplinary treatment team meeting within thirty days of the receipt of notice of permanent placement disruption.

(c) If a child has not been adopted, the child or department may move the court to place the child with a parent or custodian whose rights have been terminated and/or restore such parent's or guardian's rights. Under these circumstances, the court may order such placement and/or restoration of a parent's or guardian's rights if it finds by clear and convincing evidence a material change of circumstances and that such placement and/or restoration is in the child's best interests.

§49-6-8. ~~Foster care review; annual reports to the court.~~ Permanency hearing and permanent placement review.

(a) If the court finds, pursuant to any provision of this article, that the department is not required to make reasonable efforts to preserve the family, then, notwithstanding any

other provision, a permanency hearing must be held within thirty days following the entry of the court order so finding, and a permanent placement review hearing must be conducted at least once every three calendar months thereafter until a permanent placement is achieved.

~~(a)~~ (b) If, twelve months after receipt by the department or its authorized agent of physical custody of a child either by a court ordered placement or by a voluntary agreement, the department has not placed a child in an adoptive home or placed the child with a natural parent or placed the child in legal guardianship or permanently placed the child with a fit and willing relative, ~~the department shall file with the court a petition for review of the case~~ the court shall hold a permanency hearing. The department shall also file a report with the court ~~a report~~ detailing the efforts that have been made to place the child in a permanent home and copies of the child's case plan, including the permanency plan as defined in section five, article six of this chapter. Copies of the report shall be sent to the ~~child's attorney and be made available to the child's parent(s) or guardian parties and all persons entitled to notice and the right to be heard~~. The court shall schedule a hearing ~~in chambers~~, giving notice and the right to be present to: The child's attorney; the child, if twelve years of age or older; the child's parents; the child's guardians; the child's foster parents; any preadoptive parent or any relative providing care for the child; any person entitled to notice and the right to be heard; and such other persons as the court may, in its discretion, direct. The child's presence may be waived by the child's attorney at the request of the child or if the child would suffer emotional harm. The purpose of the hearing is to review the child's case, to determine whether and under what conditions the child's commitment to the department shall continue and to determine what efforts are necessary to provide the child with a permanent home. In the case of a child who will not be returned to his or her parent, the court shall consider in-state and out-of-state placement options, and, if the court considers an out-of-state placement, the court shall determine whether such placement is in the best interests of the child; in the case of a child who has attained sixteen years of age, the court shall determine the services needed to assist the child to make the transition from foster care to independent living. In any case in which the court decides to order the child placed in an out-of-state facility or program it shall set forth in the order directing the placement the reasons why the child was not placed in an in-state facility or program. At the conclusion of the hearing the court shall, in accordance with the best interests of the child, enter an ~~appropriate order of disposition~~ containing all such appropriate findings. The court order shall state: (1) Whether or not the department made reasonable efforts to preserve the family and to prevent out-of-home placement or that the specific situation made such effort unreasonable; (2) whether or not the department made reasonable efforts to finalize the permanency plan for the child; and (3) identify services required to meet the child's needs: ~~Provided, That the department is not required to make reasonable efforts to preserve the family if the court determines any of the conditions set for in subdivision 7), subsection (a), section five of this article exist~~ The court shall possess continuing jurisdiction over cases reviewed under this section for so long as a child remains in temporary foster care or, when a child is returned to his or her natural parents subject to conditions imposed by the court, for so long as the conditions are effective.

~~(b)~~ (c) The state department court shall file a supplementary petition for review with the ~~court~~ conduct another permanency hearing within twelve months and ~~every twelve months~~ thereafter for ~~every~~ each child ~~that~~ who remains in the physical or legal custody of the state department until the child is placed in an adoptive home or returned to his or her parents or placed in legal guardianship or permanently placed with a fit and willing relative.

~~(c)~~ (d) The state department shall annually report to the court the current status of the placements of children in permanent care and custody of the state department who have not been adopted.

~~(d)~~ (e) The state department shall file a report with the court in any case where any child in the temporary or permanent custody of the state receives more than three placements in one year no later than thirty days after the third placement. This report shall be provided to all parties and ~~their counsel~~ persons entitled to notice and the right to be heard. Upon motion by any party, the court shall review these placements and determine what efforts are necessary to provide the child with a ~~stable foster or temporary~~ permanent home: *Provided*, That no report shall be provided to any parent or parent's attorney whose parental rights have been terminated pursuant to this article.

~~(e)~~ (f) The state department shall notify, in writing, the court, the child, if over the age of twelve, the child's attorney, the parents and the parents' attorney forty-eight hours prior to the move if this is a planned move, or within forty-eight hours of the next business day after the move if this is an emergency move, except where such notification would endanger the child or the foster family. This notice shall not be required in any case where the child is in imminent danger in the child's current placement. The location of the child need not be disclosed, but the purpose of the move should be. This requirement is not waived by placement of the child in a home or other residence maintained by a private provider. No notice shall be provided pursuant to this provision to any parent or parent's attorney whose parental rights have been terminated pursuant to this article.

~~(f)~~ (g) Nothing in this article precludes any party from petitioning the court for review of the child's case at any time. The court shall grant such petition upon a showing that there is a change in circumstance or needs of the child that warrants court review.

(h) Any foster parent, preadoptive parent or relative providing care for the child shall be given notice of and the right to be heard at the permanency hearing provided in this section.

§49-6-12. Improvement period in cases of child neglect or abuse.

(a) A court may grant a respondent an improvement period of a period not to exceed three months prior to making a finding that a child is abused or neglected pursuant to section two of this article only when:

- (1) The respondent files a written motion requesting the improvement period;
 - (2) The respondent demonstrates, by clear and convincing evidence, that the respondent is likely to fully participate in the improvement period and the court further makes a finding, on the record, of the terms of the improvement period;
 - (3) In the order granting the improvement period, the court (A) orders that a hearing be held to review the matter within sixty days of the granting of the improvement period; or (B) orders that a hearing be held to review the matter within ninety days of the granting of the improvement period and that the department submit a report as to the respondents progress in the improvement period within sixty days of the order granting the improvement period; and
 - (4) The order granting the improvement period requires the department to prepare and submit to the court an individualized family case plan in accordance with the provisions of section three, article six-d of this chapter;
- (b) After finding that a child is an abused or neglected child pursuant to section two of this article, a court may grant a respondent an improvement period of a period not to exceed six months when:
- (1) The respondent files a written motion requesting the improvement period;
 - (2) The respondent demonstrates, by clear and convincing evidence, that the respondent is likely to fully participate in the improvement period and the court further makes a finding, on the record, of the terms of the improvement period;
 - (3) In the order granting the improvement period, the court (A) orders that a hearing be held to review the matter within sixty days of the granting of the improvement period; or (B) orders that a hearing be held to review the matter within ninety days of the granting of the improvement period and that the department submit a report as to the respondent's progress in the improvement period within sixty days of the order granting the improvement period;
 - (4) Since the initiation of the proceeding, the respondent has not previously been granted any improvement period or the respondent demonstrates that since the initial improvement period, the respondent has experienced a substantial change in circumstances. Further, the respondent shall demonstrate that due to that change in circumstances the respondent is likely to fully participate in a further improvement period; and
 - (5) The order granting the improvement period requires the department to prepare and submit to the court an individualized family case plan in accordance with the provisions of section three, article six-d of this chapter.

(c) The court may grant an improvement period not to exceed six months as a disposition pursuant to section five of this article when:

(1) The respondent moves in writing for the improvement period;

(2) The respondent demonstrates, by clear and convincing evidence, that the respondent is likely to fully participate in the improvement period and the court further makes a finding, on the record, of the terms of the improvement period;

(3) In the order granting the improvement period, the court: (A) Orders that a hearing be held to review the matter within sixty days of the granting of the improvement period; or (B) Orders that a hearing be held to review the matter within ninety days of the granting of the improvement period and that the department submit a report as to the respondent's progress in the improvement period within sixty days of the order granting the improvement period;

(4) Since the initiation of the proceeding, the respondent has not previously been granted any improvement period or the respondent demonstrates that since the initial improvement period, the respondent has experienced a substantial change in circumstances. Further, the respondent shall demonstrate that due to that change in circumstances, the respondent is likely to fully participate in the improvement period; and

(5) The order granting the improvement period shall require the department to prepare and submit to the court an individualized family case plan in accordance with the provisions of section three, article six-d of this chapter.

(d) When any improvement period is granted to a respondent pursuant to the provisions of this section, the respondent shall be responsible for the initiation and completion of all terms of the improvement period. The court may order the state department to pay expenses associated with the services provided during the improvement period when the respondent has demonstrated that he or she is unable to bear such expenses.

(e) When any improvement period is granted to a respondent pursuant to the provisions of this section, the respondent shall execute a release of all medical information regarding that respondent, including, but not limited to, information provided by mental health and substance abuse professionals and facilities. Such release shall be accepted by any such professional or facility regardless of whether the release conforms to any standard required by that facility.

(f) When any respondent is granted an improvement period pursuant to the provisions of this article, the department shall monitor the progress of such person in the improvement period. When the respondent fails to participate in any service mandated by the improvement period, the state department shall initiate action to inform the court of that failure. When the department demonstrates that the respondent has failed to participate

in any provision of the improvement period, the court shall forthwith terminate the improvement period.

(g) A court may extend any improvement period granted pursuant to subsections (b) or (c) of this section for a period not to exceed three months when the court finds that the respondent has substantially complied with the terms of the improvement period; that the continuation of the improvement period will not substantially impair the ability of the department to permanently place the child; and that such extension is otherwise consistent with the best interest of the child.

(h) Upon the motion by any party, the court shall terminate any improvement period granted pursuant to this section when the court finds that respondent has failed to fully participate in the terms of the improvement period.

(i) This section may not be construed to prohibit a court from ordering a respondent to participate in services designed to reunify a family or to relieve the department of any duty to make reasonable efforts to reunify a family required by state or federal law.

(j) Any hearing scheduled pursuant to the provisions of this section may be continued only for good cause upon a written motion properly served on all parties. When a court grants such continuance, the court shall enter an order granting the continuance which shall specify a future date when the hearing will be held.

(k) Any hearing to be held at the end of an improvement period shall be held as nearly as practicable on successive days and shall be held as close in time as possible after the end of said improvement period and shall be held no later than sixty days of the termination of such improvement period.

(l) Notwithstanding any other provision of this section, no combination of any improvement periods or extensions thereto may cause a child to be in foster care more than fifteen months of the most recent twenty-two months, unless the court finds compelling circumstances by clear and convincing evidence that it is in the child's best interests to extend the time limits contained in this paragraph.

ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED OF BEING ABUSED OR NEGLECTED.

§49-6A-5. Reporting procedures.

(a) Reports of child abuse and neglect pursuant to this article shall be made immediately by telephone to the local state department child protective service agency and shall be followed by a written report within forty-eight hours if so requested by the receiving agency. The state department shall establish and maintain a twenty-four hour, seven-day-a-week telephone number to receive such calls reporting suspected or known child abuse or neglect.

(b) A copy of any report of serious physical abuse, sexual abuse or assault shall be forwarded by the department to the appropriate law-enforcement agency, the prosecuting attorney or the coroner or medical examiner's office. All reports under this article shall be confidential and ~~unless there are pending proceedings with regard thereto shall be destroyed thirty years following their preparation.~~ Reports of known or suspected institutional child abuse or neglect shall be made and received as all other reports made pursuant to this article.

ARTICLE 6D. WEST VIRGINIA CHILD PROTECTIVE SERVICES ACT.

§49-6D-3. Family case plans for parents as abused or neglected children. Unified child and family case plans.

(a) The Department of Health and Human Resources shall develop a unified child and family case plan for every family wherein a person has been referred to the department after being allowed an improvement period under the provisions of section twelve, article six of this chapter or where the child is placed in foster care. The case plan must be filed within sixty days of the child coming into foster care or within thirty days of the inception of the improvement period, whichever occurs first. The department may also prepare a family case plan for any person who voluntarily seeks child abuse and neglect services from the department, or who is referred to the department by another public agency or private organization. ~~The family case plan is clearly set forth an organized, realistic method of identifying family problems and the logical steps to be used in resolving or lessening those problems. Every family case plan prepared by the department shall contain the following:~~ The case plan provisions shall comply with federal law and the rules of procedure for child abuse and neglect proceedings.

~~(1) A listing of specific, measurable, realistic goals to be achieved;~~

~~(2) An arrangement of goals into an order of priority;~~

~~(3) A listing of the problems that will be addressed by each goal;~~

~~(4) A specific description of how the assigned caseworker or caseworkers and the abusing parent, guardian or custodian will achieve each goal;~~

~~(5) A description of the departmental and community resources to be used in implementing the proposed actions and services;~~

~~(6) A list of the services, included time-limited reunification services as defined in section three, article one of this chapter, which will be provided;~~

~~(7) Time targets for the achievement of goals or portions of goals;~~

~~(8) An assignment of tasks to the abusing or neglecting parent, guardian or custodian, to the caseworker or caseworkers and to other participants in the planning process;~~

~~(9) A designation of when and how often tasks will be performed; and~~

~~(10) The safety of the placement of the child and plans for returning the child safely home.~~

~~(b) In cases where the family has been referred to the department by a court under the provisions of this chapter, and further action before the court is pending, the family case plan described in subsection (a) of this section shall be furnished to the court within thirty days after the entry of the order referring the case to the department, and shall be available to counsel for the parent, guardian or custodian and counsel for the child or children. The department shall encourage participation in the development of the family case plan by the parent, guardian or custodian, and, if the child is above the age of twelve years and the child's participation is otherwise appropriate, by the child. It shall be the duty of counsel for the participants to participate in the development of the family case plan. The department shall convene a multidisciplinary treatment team, which shall develop the case plan. Parents, guardians or custodians shall participate fully in the development of the case plan, and the child shall also fully participate if sufficiently mature and the child's participation is otherwise appropriate. The family case plan may be modified from time to time by the department to allow for flexibility in goal development, and in each such case the modifications shall be submitted to the court in writing. Reasonable efforts to place a child for adoption or with a legal guardian may be made at the same time as reasonable efforts are being made to prevent removal or to make it possible for a child to return safely home. The court shall examine the proposed case plan or any modification thereof, and upon a finding by the court that the plan or modified plan can be easily communicated, explained and discussed so as to make the participants accountable and able to understand the reasons for any success or failure under the plan, the court shall inform the participants of the probable action of the court if goals are met or not met.~~

~~(c) (1) In addition to the family case plan provided for under the provisions of subsection (b) of this section, the department shall prepare, as an appendix to the family case plan an expanded "work's case plan". As utilized by the department under the provisions of this section, the worker's case plan shall consist of the following: In furtherance of the provisions of this article, the department shall, within the limits of available funds, establish programs and services for the following purposes:~~

~~(A) All of the information contained in the family case plan described in subsection © of this section~~

~~(B) A prognosis for each of the goals projected in the family case plan, assessing the capacity of the parent, guardian or custodian to achieve the goal and whether available treatment services are likely to have the desired outcome;~~

~~(C) A listing of the criteria to be used to assess the degree to which each goal is attained;~~

~~(D) A description of when and how the department will decide when and how well each goal has been attained;~~

~~(E) If possible, a listing of alternative methods and specific services which the caseworker or caseworkers may consider using if the original plan does not work; and~~

~~(F) A listing of criteria to be used in determining when the family case plan should be terminated.~~

~~(2) Because the nature of the information contained in the worker's case plan described in subdivision (1) of this subsection may, in some cases, be construed to be negative with respect to the probability of change, or may be viewed as a caseworker's attempt to impose personal values into the situation, or may raise barriers of hostility and resistance between the caseworker and the family members, the worker's case plan shall not be made available to the court or to persons outside of the department, but shall be used by the department for the purpose of confirming the effectiveness of the family case plan or for determining that changes in the family case plan need to be made.~~

~~(d) In furtherance of the provisions of this article, the department shall, within the limits of available funds, establish programs and services for the following purposes:~~

~~(1) For the development and establishment of training programs for professional and paraprofessional personnel in the fields of medicine, law, education, social work and other relevant fields who are engaged in, or intend to work in, the field of the prevention, identification and treatment of child abuse and neglect; and training programs for children, and for persons responsible for the welfare of children, in methods of protecting children from child abuse and neglect;~~

~~(2) For the establishment and maintenance of centers, serving defined geographic areas, staffed by multidisciplinary teams and community teams of personnel trained in the prevention, identification and treatment of child abuse and neglect cases, to provide a broad range of services related to child abuse and neglect, including direct support and supervision of satellite centers and attention homes, as well as providing advice and consultation to individuals, agencies and organizations which request such services;~~

~~(3) For furnishing services of multidisciplinary teams and community teams, trained in the prevention, identification and treatment of child abuse and neglect cases, on a consulting basis to small communities where such services are not available;~~

~~(4) For other innovative programs and projects that show promise of successfully identifying, preventing or remedying the causes of child abuse and neglect, including, but not limited to, programs and services designed to improve and maintain parenting skills, programs and projects for parent self help, and for prevention and treatment of drug-related child abuse and neglect; and~~

(5) Assisting public agencies or nonprofit private organizations or combinations thereof in making applications for grants from, or in entering into contracts with, the Secretary of the federal Department of Health and Human Services for demonstration programs and projects designed to identify, prevent and treat child abuse and neglect.

~~(e)~~ (d) Agencies, organizations and programs funded to carry out the purposes of this section shall be structured so as to comply with any applicable federal law, any regulation of the federal Department of Health and Human Services or the secretary thereof, and any final comprehensive plan of the federal advisory board on child abuse and neglect. In funding organizations, the department shall, to the extent feasible, ensure that parental organizations combating child abuse and neglect receive preferential treatment.

ARTICLE 7. GENERAL PROVISIONS.

§49-7-1. Confidentiality of records.

(a) Except as otherwise provided in this chapter or by order of the court, all records and information concerning a child or juvenile which are maintained by the Division of Juvenile Services, the Department of Health and Human Resources, a child agency or facility, court or law-enforcement agency shall be kept confidential and shall not be released or disclosed to anyone, including any federal or state agency.

(b) Notwithstanding the provisions of subsection (a) of this section or any other provision of this code to the contrary, records concerning a child or juvenile, except adoption records, ~~juvenile court records~~ and records disclosing the identity of a person making a complaint of child abuse or neglect shall be made available:

(1) Where otherwise authorized by this chapter;

(2) To:

(A) The child;

(B) A parent whose parental rights have not been terminated; or

(C) The attorney of the child or parent;

(3) With the written consent of the child or of someone authorized to act on the child's behalf; or

(4) Pursuant to an order of a court of record: *Provided*, That the court shall review such record or records for relevancy and materiality to the issues in the proceeding and safety, and may issue an order to limit the examination and use of the records or any part thereof.

(c) In addition to those persons or entities to whom information may be disclosed under subsection (b) of this section, information related to child abuse or neglect proceedings, except information relating to the identity of the person reporting or making a complaint of child abuse or neglect, shall be made available, upon request, to:

(1) Federal, state or local government entities, or any agent of such entities, including law-enforcement agencies and prosecuting attorneys, having a need for such information in order to carry out its responsibilities under law to protect children from abuse and neglect;

(2) The child fatality review team;

(3) Child abuse citizen review panels;

(4) Multidisciplinary investigative and treatment teams; or

(5) A grand jury, circuit court or family ~~law-master~~ court, upon a finding that information in the records is necessary for the determination of an issue before the grand jury, circuit court or family ~~law-master~~ court.

(d) In the event of a child fatality or near fatality due to child abuse and neglect, information relating to such fatality or near fatality shall be made public by the Department of Health and Human Resources and to the entities described in subsection (c) of this section, all under the circumstances described in that subsection: *Provided*, That information released by the Department of Health and Human Resources pursuant to this subsection shall not include the identity of a person reporting or making a complaint of child abuse or neglect. For purposes of this subsection, “near fatality” means any medical condition of the child which is certified by the attending physician to be life threatening.

(e) Except in juvenile proceedings which are transferred to criminal proceedings, law-enforcement records and files concerning a child or juvenile shall be kept separate from the records and files of adults and not included within the court files. Law-enforcement records and files concerning a child or juvenile shall only be open to inspection pursuant to the provisions of sections seventeen and eighteen, article five of this chapter.

(f) Any person who willfully violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or confined in the county or regional jail for not more than six months, or be both fined and confined. A person convicted of violating the provisions of this section shall also be liable for damages in the amount of \$300 or actual damages, whichever is greater.

(g) Notwithstanding the provisions of this section, or any other provision of this code to the contrary, the name and identity of any juvenile adjudicated or convicted of a violent or felonious crime shall be made available to the public.

§49-7-36. Quarterly status review and yearly permanency hearings.

(a) For each child who remains in foster care as a result of a juvenile proceeding or as a result of a child abuse and neglect proceeding, the circuit court with the assistance of the multidisciplinary treatment team shall conduct quarterly status reviews in order to determine the safety of the child, the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to and safety maintained in the home or placed for adoption or legal guardianship. Quarterly status reviews shall commence three months after the entry of the placement order. The permanency hearing provided for in subsection (c) of this section may be considered a quarterly status review.

(b) For each transitioning adult as that term is defined in §49-2B-2(x) who remains in foster care, the circuit court shall conduct status review hearings as described in subsection (a) of this section once every three months until permanency is achieved.

(c) For each child or transitioning adult who continues to remain in foster care, the circuit court shall conduct a permanency hearing no later than twelve months after the date the child or transitioning adult is considered to have entered foster care, and at least once every twelve months thereafter until permanency is achieved. For purposes of permanency planning for transitioning adults, the circuit court shall make factual findings and conclusions of law as to whether the department made reasonable efforts to finalize a permanency plan to prepare a transitioning adult for emancipation or independence or another approved permanency option such as, but not limited to, adoption or legal guardianship pursuant to the West Virginia Guardianship and Conservatorship Act.

(d) Nothing in this section shall be construed to abrogate the responsibilities of the circuit court from conducting required hearings as provided in other provisions of this code, procedural court rules, or setting required hearings at the same time.

Senate Bill 611

Effective Date: June 8, 2012

Signed by Governor: April 2, 2012

Code Reference: Adds §18-21-1, §18-21-2, §18-21-3, and §18-21-4

Title: Special Community-Based Pilot Demonstration Project to Improve Outcomes for At- Risk Youth

Major Provisions:

- Requires the Secretary of Health and Human Services to create a four-year Community-Based Pilot Demonstration Project to improve outcomes for at risk youth in West Virginia.
- Permits the Secretary of the Department of Health and Human Services (DHHR), to select a community-based organization to establish the pilot project, if funds are available.
- Defines At-risk youth as all children between birth and 17 years of age and young adults between the ages of 18 and 21 who are low income, receiving benefits from DHHR, legally under the jurisdiction of the DHHR, or in custody of the West Virginia Division of Juvenile Services, the selected county-s juvenile court/probation department or the selected county's alternative school system program.
- Specifies that the designated community-based organization shall operate the special pilot project under the direction of the Secretary of DHHR and shall work in collaboration with the State Superintendent of Schools, county school superintendent, Executive Director of the Workforce Investment Division, Executive Director of the West Virginia Vocational Rehabilitation Services, the local juvenile court system, the Chancellor of the Higher Education Policy Commission, the president of the local Community and Technical College System, and four-year college or university, the Director of the West Virginia Division of Juvenile Services, the local mental/behavior health organizations and other governmental and community-based organizations and partner agencies to serve as a clearing house to coordinate comprehensive youth and family services.

ENROLLED

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 611

(SENATORS KESSLER (MR. PRESIDENT), MINARD, BROWNING, STOLLINGS, KLEMPA,
FOSTER AND UNGER, *original sponsors*)

[Passed March 10, 2012; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18-21-1, §18-21-2, §18-21-3 and §18-21-4, all relating to developing a special community-based pilot demonstration project to help at-risk youth in West Virginia; defining "at risk"; creating a Community-Based Pilot Demonstration Project to Improve Outcomes for At-Risk Youth in West Virginia; permitting the Secretary of the West Virginia Department of Health and Human Resources to select a community-based organization to establish a Community-Based Pilot Demonstration Project to Improve Outcomes for At-Risk Youth if funds are available; setting forth duties and goals of the community-based organization; requiring the secretary and the director of the community-based organization to make status reports to the Legislature; and setting forth other duties of the Department of Health and Human Resources.

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 article, designated §18-21-1, §18-21-2, §18-21-3 and §18-21-4, all to read as follows:

ARTICLE 21. SPECIAL COMMUNITY-BASED PILOT DEMONSTRATION PROJECT TO IMPROVE OUTCOMES FOR AT-RISK YOUTH.

§18-21-1. Definition of "at-risk youth".

As used in this article "at-risk youth" means all children between birth and seventeen and young adults between the ages of eighteen and twenty-one who are low income, receiving benefits from the West Virginia Department of Health and Human Resources, legally under the jurisdiction of the Department of Health and Human Resources or in custody of the West Virginia Division of Juvenile Services, the selected county's juvenile court/probation department or the selected county's alternative school system program.

§18-21-2. Creation of a Special Community-Based Pilot Demonstration Project to Improve Outcomes for At-Risk Youth.

Effective July 1, 2012, and if funds are available, the Secretary of the West Virginia Department of Health and Human Resources shall select a community-based organization to establish a special Community-Based Pilot Demonstration Project to

Improve Outcomes for At-Risk Youth in a specified community for a duration of four years. The project will identify, implement and document best practices that can be replicated in other communities. The designated community-based organization shall operate the special pilot project under the direction of the Secretary of the Department of Health and Human Resources and shall work in collaboration with the State School Superintendent, local county school superintendent, Executive Director of the President of the Community and Technical College System, the closest community and technical college and four-year college or university, State Workforce Investment Division, Executive Director of the West Virginia Vocational Rehabilitation Services, the local juvenile court system, the local workforce investment board, the Chancellor of the Higher Education Policy Commission, the Director of West Virginia Division of Juvenile Services, the local mental/behavior health organizations and other governmental and community-based organizations.

§18-21-3. Secretary of Department of Health and Human Resources responsibilities.

The Secretary of the West Virginia Department of Health and Human Resources shall:

(1) Identify a county with the most at-risk youth, that also has adequate facilities and community leadership, to run a community-based pilot program that brings together both state and local organizations, to work collaboratively to provide comprehensive, intense wrap-around services to at-risk youth and their families in a seamless coordinated system; and

(2) Identify the challenges confronting the most at-risk youth and their families and make specific recommendations to the pilot program administrators to improve the outcomes for these youths; specifically, to reduce the number of abuse and neglect cases to reduce the number of youth in out-of-home and out-of-state placements; to reduce high school drop-out rates, to reduce substance abuse among youth including smoking, reduce teen pregnancies, to reduce juvenile delinquency and to reduce the number of juvenile delinquents and youth aging out of foster care that eventually enter into the adult criminal justice system.

(3) Document best practices which can be replicated in other counties.

(4) Establish base line and goals for each performance measure in conjunction with the director of the community-based organization operating the pilot project.

(5) Beginning in January 2013, on or before the first day of the regular session of the Legislature, and each year thereafter, the Secretary of Department of Health and Human Resources along with the director of the community-based organization operating the pilot program shall make a status report to the Legislative Oversight Committee on Health and Human Resources Accountability.

§18-21-4. Organization and goals of the Community-Based Pilot Demonstration Program.

(a) The pilot program shall be operated by a local community-based organization under the direction the Secretary of the West Virginia Department of Health and Human Resources, and in collaboration with the State School Superintendent, county school superintendent, Executive Director of the State Workforce Investment Division, Executive Director of WV Vocational Rehabilitation Services, the local juvenile court system, the Chancellor of the Higher Education Policy Commission, President of the Community and Technical College System, president of the local community and technical college and four-year college or university, the Director of the West Virginia Division of Juvenile Services, the local mental/behavior health organizations and other governmental and community-based organizations and partner agencies to serve as a clearing house to coordinate comprehensive youth and family services. The pilot project shall be housed within the community and will be directed by a local community-based nonprofit organization.

(b) The pilot project shall operate out of a centrally located building to coordinate services to youth and their families in the selected county from birth to seventeen years of age who are referred by the Department of Health and Human Resources.

(c) The goal of the pilot program is to improve outcomes for at-risk youth as measured by the following metrics:

(1) Early childhood development:

(A) Increase in the number of mothers receiving early prenatal care;

(B) Increase in number of mothers participating in the Right From the Start Program;

(C) Increase in the number of children screened by birth to three year-old program for early development delays;

(D) Increase in the number of three year-olds enrolled in Head Start;

(E) Increase in the number of four year-olds enrolled in: (2) Preschool youth and teen measures:

(A) Decrease in school truancy;

(B) Decrease in truancy hearings;

(C) Decrease in school suspensions;

(D) Decrease in school expulsions;

(E) Decrease in high school dropouts at a select school;

(F) Increase in the number of youth participating in a mentoring program;

(G) Increase in academic performance for select students;

(H) Increase in number of youth participating in summer employment;

(I) Increase in number of youth entering postsecondary education or job.

(3) Parent Measures:

(A) Increase in the number of individuals registered at the WorkForce West Virginia Center;

(B) Increase in the number of individuals enrolled in job training;

(C) Increase in the number of individuals completing job training with a certification or credential;

(D) Increase in the number of individuals placed in employment; and

(E) Increase in number of children enrolled in the CHIP program.

Senate Bill 646

Effective Date: March 9, 2012

Signed by Governor: April 3, 2012

Code Reference: Adds §18-2-6b

Title: Requiring State Board of Education Study GED Issues

Major Provisions:

- The bill requires an examination of the impact of the changes made by the GED Testing Service:
 - (1) Analysis of research done in West Virginia by the American Council on Education;
 - (2) Determination of the current and future costs to the state to provide free GED examinations; and,
 - (3) Recommendations for statutory or rule changes to achieve the following goals:
 - (A) Reducing or controlling escalating costs of administering the GED examination; and
 - (B) Retaining paper and pencil testing for those individuals who request it; or
 - (C) Eliminating or reducing significantly the difficulty for individuals who are not comfortable or proficient in taking online examinations.

- The State Board shall report its findings, conclusions and recommendations no later than July 1, 2012.

ENROLLED

Senate Bill No. 646

(BY SENATORS LAIRD, PLYMALE, FOSTER, MILLER AND STOLLINGS)

[Passed March 9, 2012; in effect from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-6b, relating to the General Educational Development Diploma (GED); making legislative findings; setting forth legislative intent; and requiring the State Board of Education to study GED issues and make a report with recommendations by a certain date.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-2-6b, to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-6b. General Educational Development (GED) diploma; legislative findings and intent; examination costs; testing materials and procedures; report required.

(a) The Legislature makes the following findings related to the General Educational Development (GED) examination:

(1) The GED examination is an instrument for success that can keep a student from dropping out of school and can transform the future for both school age and adult individuals who attain a GED diploma. One in every seven Americans with a high school credential has received the GED, as well as one in every twenty college students. For those who have not graduated from high school, attaining a GED diploma greatly increases their employment opportunities and earning potential.

(2) While West Virginia's average per-capita income has increased over the past ten years as the state's economy has held steady or grown slightly, most other states have shown declines. Despite these positive changes, West Virginia still ranks as one of the five poorest states in the nation. Additionally, many counties within the state fall far below the state average; therefore, the current cost of the GED examination is difficult for many citizens to afford without help, and significant cost increases will make the GED examination cost prohibitive.

(3) In addition to the cost factor, large areas of West Virginia are without broadband Internet access or without adequate broadband Internet access speeds, which results in diminished opportunities for rural residents to participate in the rapidly unfolding digital revolution compared to their nonrural neighbors. Citizens living in these areas have few opportunities to become adept in computer technology. Therefore, most such citizens,

especially adults seeking to earn a GED years after leaving the public school system, are not proficient or even comfortable using the Internet.

(4) Individuals who may benefit most from earning a GED diploma are those who lack many of the skills needed to secure employment or to function successfully in an age dependent upon technology. Because such individuals also lack the financial resources to obtain those needed skills, if the GED is unattainable they are likely to remain in a state of poverty.

(b) It is the intent of the Legislature to make the GED diploma available to the widest possible range of state residents who have not achieved a high school diploma. To that end, an examination of the following issues is required:

(1) The impact on prospective GED test takers of the proposed changes in the design and delivery of the qualifying examination made by the American Council on Education (ACE) in 2011;

(2) The impact of the increase in costs per individual tested; and

(3) The alternatives available to reduce costs and to retain the option of pen and paper testing for those who desire it.

(c) The State Board shall perform an exhaustive study of the issues surrounding administration of the GED examination in the state including, but not limited to, the following:

(1) Analysis of research, pilot testing, or both, that was done in West Virginia by the American Council on Education prior to its decision to eliminate pen and paper examinations, along with the justifications offered for eliminating this type of examination as a possible option;

(2) Determination of the current and future costs to the state to provide GED examinations free of charge to eligible individuals; and

(3) Recommendations for statutory or rule changes to achieve the following goals:

(A) Reducing or controlling escalating costs of administering the GED examinations; and

(B) Retaining paper and pen testing for those individuals who request or require it; or

(C) Eliminating or reducing significantly the difficulty for individuals who are not comfortable or proficient in taking online examinations.

(d) The State Board shall complete its work and report its findings, conclusions and recommendations, together with drafts of any legislation or rule changes necessary to

effectuate the recommendations, to the Legislative Oversight Commission on Education Accountability no later than July 1, 2012.

Senate Bill 661

Effective Date: July 1, 2012

Signed by Governor: April 2, 2012

Code Reference: Amends §21A-10-11

Title: Authorizing Workforce WV Provide Data to Certain Governmental Entities

Major Provisions:

- Requires all higher education governing boards to design interfaces allowing WVNET access to databases of institutions under their jurisdiction.
- Requires WVNET to generate reports as outlined in §18B-1D-8 and §18B-1D-10 of state code.
- Allows for privacy protection of data shared by governing boards.
- Allows for the revocation of eligibility for a state institution to participate in any state financial aid program set forth in §18C for failure to comply with the data access components as defined.
- Allows the commissioner to provide the data that are obtained with those agencies of state government responsible for economic and community development; early childhood, primary, secondary, post-secondary and vocational education; the West Virginia P-20 longitudinal data system established pursuant to section ten, article one-d, chapter eighteen-b of this code; and vocational rehabilitation, employment and training, including, but not limited to, the administration of the Perkins Act and the Job Training and Partnership Act;

ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 661

(SENATORS PLYMALE, BROWNING AND STOLLINGS, *original sponsors*)

[Passed March 10, 2012; to take effect July 1, 2012.]

AN ACT to amend and reenact §21A-10-11 of the Code of West Virginia, 1931, as amended, relating to authorizing the Executive Director or Commissioner of Workforce West Virginia to provide data to certain governmental entities; changing the threshold of certain levels of compensation to be reported for certain data purposes by employers to the Executive Director or the Commissioner of Workforce West Virginia; and changing a designated recipient of the data to attain consistency with prior amendments to code.

Be it enacted by the Legislature of West Virginia:

That §21A-10-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. GENERAL PROVISIONS.

§21A-10-11. Reporting requirements and required information; use of information; libel and slander actions prohibited.

(a) Each employer, including labor organizations as defined in subsection (i) of this section, shall, quarterly, submit certified reports on or before the last day of the month next following the calendar quarter, on forms to be prescribed by the commissioner. The reports shall contain:

(1) The employer's assigned unemployment compensation registration number, the employer's name and the address at which the employer's payroll records are maintained;

(2) Each employee's Social Security account number, name and the gross wages paid to each employee, which shall include the first ~~eight thousand dollars~~ \$12,000 of remuneration and all amounts in excess of that amount, notwithstanding subdivision (1), subsection (b), section twenty-eight, article one-a of this chapter;

(3) The total gross wages paid within the quarter for employment, which includes money wages and the cash value of other remuneration, and shall include the first ~~eight thousand dollars~~ \$12,000 of remuneration paid to each employee and all amounts in excess of that amount, notwithstanding subdivision (1), subsection (b), section twenty-eight, article one-a of this chapter; and

(4) Other information that is reasonably connected with the administration of this chapter.

(b) Information obtained may not be published or be open to public inspection to reveal the identity of the employing unit or the individual.

(c) Notwithstanding the provisions of subsection (b) of this section, the commissioner may provide information obtained to the following governmental entities for purposes consistent with state and federal laws:

(1) The United States Department of Agriculture;

(2) The state agency responsible for enforcement of the Medicaid program under Title XIX of the Social Security Act;

(3) The United States Department of Health and Human Services or any state or federal program operating and approved under Title I, Title II, Title X, Title XIV or Title XVI of the Social Security Act;

(4) Those agencies of state government responsible for economic and community development; early childhood, primary, secondary, postsecondary and vocational education; the West Virginia P-20 longitudinal data system established pursuant to section ten, article one-d, chapter eighteen-b of this code; and vocational rehabilitation, employment and training, including, but not limited to, the administration of the Perkins Act and the Job Training and Partnership Workforce Investment Act;

(5) The Tax Division, but only for the purposes of collection and enforcement;

(6) The Division of Labor for purposes of enforcing the wage bond and the contractor licensing provisions of chapter twenty-one of this code;

(7) Any agency of this or any other state, or any federal agency, charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices;

(8) Any claimant for benefits or any other interested party to the extent necessary for the proper presentation or defense of a claim; and

~~(9) The workers' compensation commission for purposes of collection and enforcement: Provided, That the workers' compensation commission shall provide similar information to the bureau of employment programs. The Insurance Commissioner for purposes of its workers compensation regulatory duties.~~

(d) The agencies or organizations which receive information under subsection (c) of this section shall agree that the information shall remain confidential as not to reveal the

identity of the employing unit or the individual consistent with the provisions of this chapter.

(e) The commissioner may, before furnishing any information permitted under this section, require that those who request the information shall reimburse the Bureau of Employment Programs for any cost associated for furnishing the information.

(f) The commissioner may refuse to provide any information requested under this section if the agency or organization making the request does not certify that it will comply with the state and federal law protecting the confidentiality of the information.

(g) A person who violates the confidentiality provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$20 nor more than \$200 or confined in a county or regional jail not longer than ninety days, or both.

(h) ~~No~~ An action for slander or libel, either criminal or civil, ~~shall~~ may not be predicated upon information furnished by any employer or any employee to the commissioner in connection with the administration of any of the provisions of this chapter.

(i) For purposes of subsection (a) of this section, the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work. It includes any entity, also known as a hiring hall, which is used by the organization and an employer to carry out requirements described in 29 U. S. C. §158(f)(3) of an agreement between the organization and the employer.

Senate Bill 678

Effective Date: March 10, 2012

Signed by Governor: March 21, 2012

Code Reference: N/A

Title: Making Supplementary Appropriations from State Fund,
General Revenue, to Various Accounts

Major Provisions:

- Among other appropriations, made a supplemental appropriation of \$209,171 to the WVDE to distribute an additional state aid allocation to Gilmer County Schools for the current year to correct a tax assessment error made by the county assessor.

ENROLLED

Senate Bill No. 678

(BY SENATORS PREZIOSO, D. FACEMIRE, CHAFIN, EDGELL, GREEN, HELMICK, LAIRD, McCABE, MILLER, PLYMALE, STOLLINGS, UNGER, WELLS, YOST, BOLEY, HALL AND SYPOLT)

[Passed March 10, 2012; in effect from passage.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Agriculture, fund 0131, fiscal year 2012, organization 1400, to the Department of Administration, Division of Finance, fund 0203, fiscal year 2012, organization 0209, to the Department of Administration, Public Defender Services, fund 0226, fiscal year 2012, organization 0221, to the Department of Commerce, Division of Forestry, fund 0250, fiscal year 2012, organization 0305, to the Department of Commerce, Division of Natural Resources, fund 0265, fiscal year 2012, organization 0310, to the Department of Education, State Department of Education, fund 0313, fiscal year 2012, organization 0402, to the Department of Education and the Arts, Division of Culture and History, fund 0293, fiscal year 2012, organization 0432, to the Department of Environmental Protection, Division of Environmental Protection, fund 0273, fiscal year 2012, organization 0313, to the Department of Health and Human Resources, Division of Health - Central Office, fund 0407, fiscal year 2012, organization 0506, to the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2012, organization 0506, to the Department of Health and Human Resources, Division of Human Services, fund 0403, fiscal year 2012, organization 0511, to the Department of Military Affairs and Public Safety, Division of Corrections - Correctional Units, fund 0450, fiscal year 2012, organization 0608, to the Department of Veterans' Assistance, Department of Veterans' Assistance, fund 0456, fiscal year 2012, organization 0613, to Higher Education, West Virginia Council for Community and Technical College Education- Control Account, fund 0596, fiscal year 2012, organization 0420, and to Higher Education, Higher Education Policy Commission - Administration - Control Account, fund 0589, fiscal year 2012, organization 0441, by supplementing and amending the appropriations for the fiscal year ending June 30, 2012.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Documents on January 11, 2012, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2011, and further included the estimate of revenues for the fiscal year 2012, less net appropriation balances forwarded and regular appropriations for the fiscal year 2012; and

WHEREAS, It appears from the Executive Budget Document Statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the

State Treasury which is available for appropriation during the fiscal year ending June 30, 2012; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2012, to fund 0131, fiscal year 2012, organization 1400, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

EXECUTIVE

10--Department of Agriculture
(WV Code Chapter 19)
Fund 0131 FY 2012 Org 1400

Activity	General Revenue Fund
13a Capital Outlay, Repairs and 13b Equipment - Surplus (R). 677	\$ 1,000,000
Any unexpended balance remaining in the above appropriation for Capital Outlay, Repairs and Equipment - Surplus (fund 0131, activity 677) at the close of fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.	
And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 0203, fiscal year 2012, organization 0209, be supplemented and amended by adding a new item of appropriation as follows:	

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF ADMINISTRATION

20--Division of Finance
(WV Code Chapter 5A)
Fund 0203 FY 2012 Org 0209

Activity	General Revenue Fund
5a Enterprise Resource Planning 5b System - Surplus. 872	\$30,400,000
The above appropriation for Enterprise Resource Planning System - Surplus (activity 872) shall be transferred to the West Virginia Enterprise Resource Planning Board, fund 9080, organization 0947.	
And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 0226, fiscal year 2012, organization 0221, be supplemented and amended by increasing an existing item of appropriation as follows:	

TITLE II--APPROPRIATIONS.
Section 1. Appropriations from General Revenue.
DEPARTMENT OF ADMINISTRATION
27-Public Defender Services
(WV Code Chapter 29)
Fund 0226 FY 2012 Org 0221

Activity	General Revenue Fund
6 Appointed Counsel Fees - Surplus (R). . 435	\$13,000,000
Any unexpended balance remaining in the above appropriation for the Appointed Counsel Fees - Surplus (fund 0226, activity 435) at the close of fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.	
And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 0250, fiscal year 2012, organization 0305, be supplemented and amended by increasing an existing item of appropriation as follows:	

TITLE II--APPROPRIATIONS.
Section 1. Appropriations from General Revenue.
DEPARTMENT OF COMMERCE
34-Division of Forestry
(WV Code Chapter 19)
Fund 0250 FY 2012 Org 0305

Activity	General Revenue Fund
4 Unclassified - Surplus (R). 097	\$ 375,000
Any unexpended balance remaining in the above appropriation for Unclassified - Surplus (fund 0250, activity 097) at the close of fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.	
And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 0265, fiscal year 2012, organization 0310, be supplemented and amended by adding a new item of appropriation as follows:	

TITLE II--APPROPRIATIONS.
Section 1. Appropriations from General Revenue.
DEPARTMENT OF COMMERCE
39-Division of Natural Resources
(WV Code Chapter 20)
Fund 0265 FY 2012 Org 0310

Activity	General Revenue Fund
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6a Canaan Valley Resort State Park
 6b Operating - Surplus (R). 710 \$ 2,000,000
 Any unexpended balance remaining in the above appropriation for Canaan Valley Resort State Park Operating - Surplus (fund 0265, activity 710) at the close of fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.
 And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 0313, fiscal year 2012, organization 0402, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.
Section 1. Appropriations from General Revenue.
DEPARTMENT OF EDUCATION
48--State Department of Education
 (WV Code Chapters 18 and 18A)
 Fund 0313 FY 2012 Org 0402

	General Revenue Fund
3a Tax Assessment Errors - Surplus. . . 065	\$ 209,171

And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 0293, fiscal year 2012, organization 0432, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.
Section 1. Appropriations from General Revenue.
DEPARTMENT OF EDUCATION AND THE ARTS
55--Division of Culture and History
 (WV Code Chapter 29)
 Fund 0293 FY 2012 Org 0432

	General Revenue Fund
4a Capital Improvements - Surplus (R). . . 661	\$ 304,000

Any unexpended balance remaining in the above appropriation for Capital Improvements - Surplus (fund 0293, activity 661) at the close of fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.
 And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 0273, fiscal year 2012, organization 0313, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.
Section 1. Appropriations from General Revenue.
DEPARTMENT OF ENVIRONMENTAL PROTECTION
60--Division of Environmental Protection
 (WV Code Chapter 22)
 Fund 0273 FY 2012 Org 0313

Activity	General Revenue Fund
6 Unclassified - Surplus. 097	\$ 1,300,000

The above appropriation for Unclassified - Surplus (activity 097) shall be transferred to the Underground Storage Tank Insurance Fund, fund 3218, organization 0313.
And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 0407, fiscal year 2012, organization 0506, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.
Section 1. Appropriations from General Revenue.
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
*63--Division of Health -
Central Office*
(WV Code Chapter 16)
Fund 0407 FY 2012 Org 0506

Activity	General Revenue Fund
5 Unclassified - Surplus. 097	\$ 36,545

And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 0525, fiscal year 2012, organization 0506, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.
Section 1. Appropriations from General Revenue.
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
64--Consolidated Medical Service Fund
(WV Code Chapter 16)
Fund 0525 FY 2012 Org 0506

Activity	General Revenue Fund
9a Capital Outlay, Repairs and 9b Equipment - Surplus (R). 677	\$ 6,000,000

Any unexpended balance remaining in the above appropriation for Capital Outlay, Repairs and Equipment - Surplus (fund 0525, activity 677) at the close of fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.
And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 0403, fiscal year 2012, organization 0511, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II--APPROPRIATIONS.
Section 1. Appropriations from General Revenue.
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

67--Division of Human Services
(WV Code Chapters 9, 48 and 49)
Fund 0403 FY 2012 Org 0511

Activity	General Revenue Fund
4 Unclassified - Surplus. 097	\$ 313,455
9 Social Services - Surplus. 082	\$8,673,484
27 Medical Services - Surplus (R). . . . 633	\$13,144,112

The above appropriation for Unclassified - Surplus (activity 097) shall be transferred to the West Virginia Works Separate State Two-Parent Program Fund, fund 5468, organization 0511.

Any unexpended balance remaining in the above appropriation for Medical Services - Surplus (fund 0403, activity 633) at the close of fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 0450, fiscal year 2012, organization 0608, be supplemented and amended by adding new items of appropriation as follows:

TITLE II--APPROPRIATIONS.
Section 1. Appropriations from General Revenue.
DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

*74-Division of Corrections -
Correctional Units*
(WV Code Chapters 25, 28, 49 and 62)
Fund 0450 FY 2012 Org 0608

Activity	General Revenue Fund
3a Payments to Counties and/or Regional	
3b Jails - Surplus (R). 348	\$ 9,000,000
3c Payments for Voluntary Inmate	
3d Placement - Surplus (R). 592	\$ 1,500,000
3e Capital Improvements - Surplus (R). . 661	\$ 5,500,000
3f Capital Outlay, Repairs and	
3g Equipment - Surplus (R). 677	\$ 5,000,000
3h Operational Expenses - Surplus. . . . 779	\$ 5,439,629

Any unexpended balances remaining in the above appropriations for Payments to Counties and/or Regional Jails - Surplus (fund 0450, activity 348), Payments for Voluntary Inmate Placement - Surplus (fund 0450, activity 592), Capital Improvements - Surplus (fund 0450, activity 661), and Capital Outlay, Repairs and Equipment - Surplus (fund 0450, activity 677) at the close of fiscal year 2012 are hereby reappropriated for expenditure during the fiscal year 2013.

And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 0456, fiscal year 2012, organization 0613, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.
Section 1. Appropriations from General Revenue.
DEPARTMENT OF VETERANS' ASSISTANCE
91-Department of Veterans' Assistance
 (WV Code Chapter 9A)
 Fund 0456 FY 2012 Org 0613

Activity	General Revenue Fund
9a Veterans Bonus - Surplus (R). . . . 344	\$ 1,000,000
Any unexpended balance remaining in the above appropriation for Veterans Bonus - Surplus (fund 0456, activity 344) at the close of fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.	

And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 0596, fiscal year 2012, organization 0420, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.
Section 1. Appropriations from General Revenue.
HIGHER EDUCATION
*94-West Virginia Council for
 Community and Technical College Education -
 Control Account*
 (WV Code Chapter 18B)
 Fund 0596 FY 2012 Org 0420

Activity	General Revenue Fund
18a Capital Improvements - Surplus (R). . . 661	\$ 2,700,000
Any unexpended balance remaining in the above appropriation for Capital Improvements - Surplus (fund 0596, activity 661) at the close of fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.	

And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 0589, fiscal year 2012, organization 0441, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II -- APPROPRIATIONS.
Section 1. Appropriations from General Revenue.
HIGHER EDUCATION
*95-Higher Education Policy Commission -
 Administration -
 Control Account*

(WV Code Chapter 18B)
Fund 0589 FY 2012 Org 0441

Activity	General Revenue Fund
1 Unclassified - Surplus (R). 097	\$ 3,000,000

Any unexpended balance remaining in the above appropriation for Unclassified - Surplus (fund 0589, activity 097) at the close of fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

The purpose of this supplemental appropriation bill is to supplement, amend, increase and add items of appropriations in the aforesaid accounts for the designated spending units for expenditure during the fiscal year 2012.

House Bill 4072

Effective Date: June 8, 2012

Signed by Governor: March 30, 2012

Code Reference: Amends §18-5-4

Title: Eliminating Requirement for County Boards of Education to Meet on the First Monday of July

Major Provisions:

- Eliminates the requirement that county boards of education meet on the first Monday of July every year.

ENROLLED

H. B. 4072

(By Delegates M. Poling and Paxton)

[Passed March 10, 2012; in effect ninety days from passage.]

AN ACT to amend and reenact §18-5-4 of the Code of West Virginia, 1931, as amended, relating to eliminating requirement for county boards of education to meet on the first Monday of July in years in which there is not a biennial primary election.

Be it enacted by the Legislature of West Virginia:

That §18-5-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-4. Meetings; employment and assignment of teachers; budget hearing; compensation of members; affiliation with state and national associations.

(a) The county board shall meet ~~on the first Monday in July, and~~ upon the dates provided by law, ~~for the laying of levies,~~ and at any other times the county board fixes upon its records. Subject to adequate public notice, nothing in this section prohibits the county board from conducting regular meetings in facilities within the county other than the county board office. At any meeting as authorized in this section and in compliance with the provisions of chapter eighteen-a of this code, the county board may employ qualified teachers, or those who will qualify by the time they enter upon their duties, necessary to fill existing or anticipated vacancies for the current or next ensuing school year. Meetings of the county board shall be held in compliance with the provisions of chapter eighteen-a of this code for purposes relating to the assignment, transfer, termination and dismissal of teachers and other school employees.

(b) Special meetings may be called by the president or any three members, but no business may be transacted other than that designated in the call.

(c) In addition, a public hearing shall be held concerning the preliminary operating budget for the next fiscal year not fewer than ten days after the budget has been made available to the public for inspection and within a reasonable time prior to the submission of the budget to the state board for approval. Reasonable time shall be granted at the hearing to any person who wishes to speak regarding any part of the budget. Notice of the hearing shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code.

(d) A majority of the members of the county board ~~constitutes~~ is the quorum necessary for the transaction of official business.

(e) Board members may receive compensation at a rate not to exceed \$160 per meeting attended, but they may not receive pay for more than fifty meetings in any one fiscal year. Board members who serve on an administrative council of a multicounty vocational center also may receive compensation for attending up to twelve meetings of the council at the same rate as for meetings of the county board. Meetings of the council are not counted as board meetings for purposes of determining the limit on compensable board meetings.

(f) Members also shall be paid, upon the presentation of an itemized sworn statement, for all necessary traveling expenses, including all authorized meetings, incurred on official business, at the order of the county board.

(g) When, by a majority vote of its members, a county board considers it a matter of public interest, the county board may join the West Virginia School Board Association and the National School Board Association and may pay the dues prescribed by the associations and approved by action of the respective county boards. Membership dues and actual traveling expenses incurred by board members for attending meetings of the West Virginia School Board Association may be paid by their respective county boards out of funds available to meet actual expenses of the members, but no allowance may be made except upon sworn itemized statements.

House Bill 4101

Effective Date: June 8, 2012

Signed by Governor: April 2, 2012

Code Reference: Amends §18A-3-1 and 18A-3-2a

Title: Authorizing Teacher-in-Residence Programs for Certain Prospective Teachers in Lieu of Student Teaching

Major Provisions:

- Establishes a teacher-in-residence programs which would allow an institution of higher education to create a program option in conjunction with a county which would allow candidates to complete their student teaching experience as the teacher of record in cases where significant teacher shortages exist. The candidate would be eligible for a permit, prior to obtaining a bachelor's degree, would receive a stipend that was a minimum of 65% of the salary of the beginning teacher and would also be eligible for liability insurance coverage.
- During the program, the prospective teacher is to be treated as a student enrolled in the higher education's teacher preparation program and not a regularly employed teacher of the county.
- However, the prospective teacher is to be included on the county board's certified list of employee's eligible for state funding, and the prospective teacher is to be covered by the county board's liability insurance.
- The salary and benefit allowance received for the position under the Public School Support Program may be used only for program support, which is to include the stipend paid to the prospective teacher.

ENROLLED

Committee Substitute
for

H. B. 4101

(By Delegates Perry, Shaver, D. Campbell, Lawrence,
Pethel, Armstead, Duke, Savilla, Sigler, Paxton and M. Poling)

[Passed March 10, 2012; in effect ninety days from passage.]

AN ACT to amend and reenact §18A-3-1 and 18A-3-2a of the code of West Virginia, 1931, as amended, all relating to teacher preparation and certification; authorizing teacher-in-residence programs for certain prospective teachers in lieu of student teaching; defining teacher-in-residence programs and providing minimum requirements; providing use of certain funds for program support and student stipend; specifying formula for calculating stipend; creating teacher-in-residence permit and specifying conditions; authorizing counties with comprehensive induction programs to use consistent structure for supervision and training of student teachers; conforming sections to other provisions of law; removing duplicative and obsolete language; and making technical corrections throughout.

Be it enacted by the Legislature of West Virginia:

That §18A-3-1 and 18A-3-2a of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

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

§18A-3-1. Teacher preparation programs; program approval and standards; authority to issue teaching certificates.

(a) The education of professional educators in the state is under the general direction and control of the state board after consultation with the Secretary of Education and the Arts and the Chancellor for Higher Education who shall represent the interests of educator preparation programs within the institutions of higher education in this state as ~~those institutions are~~ defined in section two, article one, chapter eighteen-b of this code.

The education of professional educators in the state includes all programs leading to certification to teach or serve in the public schools ~~including~~. The programs include the following:

(1) ~~These Programs~~ in all institutions of higher education, including student teaching and teacher-in-residence programs as provided in this section;

(2) Beginning teacher internship and induction programs;

(3) ~~The Granting of~~ West Virginia certification to persons who received their preparation to teach outside the boundaries of this state, except as provided in subsection (b) of this section;

(4) ~~Any~~ Alternative preparation programs in this state leading to certification, including programs established pursuant to the provisions of section one-a of this article and programs which are in effect on the effective date of this section; and

(5) ~~Any~~ Continuing professional education, professional development and in-service training programs for professional educators employed in the public schools in the state.

(b) ~~The state board~~, After consultation with the Secretary of Education and the Arts and the Chancellor for Higher Education, the state board shall adopt standards for the education of professional educators in the state and for awarding certificates valid in the public schools of this state. The standards ~~shall~~ include, but are not limited to the following:

(1) A provision for the study of multicultural education. As used in this section, multicultural education means the study of the pluralistic nature of American society including its values, institutions, organizations, groups, status positions and social roles;

(2) A provision for the study of classroom management techniques, including methods of effective management of disruptive behavior ~~which shall include~~ including societal factors and their impact on student behavior; and

(3) ~~Subject to the provisions of section ten of this article~~, A teacher from another state shall be awarded a teaching certificate for a comparable grade level and subject area valid in the public schools of this state, subject to section ten of this article, if he or she has met the following requirements:

(A) Holds a valid teaching certificate or a certificate of eligibility issued by another state;

(B) Has graduated from an educator preparation program at a regionally accredited institution of higher education;

(C) Possesses the minimum of a bachelor's degree; and

(D) Meets all of the requirements of the state for full certification except employment.

(c) The state board may enter into an agreement with county boards for the use of the public schools in order to give prospective teachers the teaching experience needed to demonstrate competence as a prerequisite to certification to teach in the West Virginia public schools, ~~the state board may enter into an agreement with county boards for the use of the public schools.~~

(d) An agreement established pursuant to subsection (c) of this section shall recognize student teaching as a joint responsibility of the educator preparation institution and the cooperating public schools and shall include The agreement shall include the following items:

(1) The minimum qualifications for the employment of public school teachers selected as supervising teachers, including the requirement that field-based and clinical experiences be supervised by a teacher fully certified in the state in which that teacher is supervising;

(2) The remuneration to be paid to public school teachers by the state board, in addition to their contractual salaries, for supervising student teachers;

(3) Minimum standards to guarantee the adequacy of the facilities and program of the public school selected for student teaching;

(4) Assurance that the student teacher, under the direction and supervision of the supervising teacher, shall exercise the authority of a substitute teacher; and

(5) A provision requiring any higher education institution with an educator preparation program to document that the student teacher's field-based and clinical experiences include participation and instruction with multicultural, at-risk and exceptional children at each programmatic level for which the student teacher seeks certification;

(6) A provision authorizing a school or school district that has implemented a comprehensive beginning teacher induction program, to enter into an agreement that provides for the training and supervision of student teachers consistent with the educational objectives of this subsection by using an alternate structure implemented for the support, supervision and mentoring of beginning teachers. The agreement is in lieu of any specific provisions of this subsection and is subject to the approval of the state board.

(e) *Teacher-in-residence programs.* --

(1) In lieu of the provisions of subsections (c) and (d) of this section and subject to approval of the state board, an institution of higher education with a program for the education of professional educators in the state approved by the state board may enter into an agreement with county boards for the use of teacher-in-residence programs in the public schools.

(2) A "teacher-in-residence program" means an intensively supervised and mentored residency program for prospective teachers during their senior year that refines their professional practice skills and helps them gain the teaching experience needed to demonstrate competence as a prerequisite to certification to teach in the West Virginia public schools.

(3) The authorization for the higher education institution and the county board to implement a teacher-in-residence program is subject to state board approval. The provisions of the agreement include, but are not limited to, the following items:

(A) A requirement that the prospective teacher in a teacher-in-residence program shall have completed the content area preparation courses and shall have passed the appropriate basic skills and subject matter test or tests required by the state board for teachers to become certified in the area for which licensure is sought;

(B) A requirement that the teacher-in-residence serve only in a teaching position in the county which has been posted and for which no other teacher fully certified for the position has been employed;

(C) Specifics regarding the program of instruction for the teacher-in-residence setting forth the responsibilities for supervision and mentoring by the higher education institution's educator preparation program, the school principal, and peer teachers and mentors, and the responsibilities for the formal instruction or professional development necessary for the teacher-in-residence to perfect his or her professional practice skills. The program also may include other instructional items as considered appropriate.

(D) A requirement that the teacher-in-residence hold a teacher-in-residence permit qualifying the individual to teach in his or her assigned position as the teacher of record;

(E) A requirement that the salary and benefit costs for the position to which the teacher-in-residence is assigned shall be used only for program support and to pay a stipend to the teacher-in-residence as specified in the agreement, subject to the following:

(i) The teacher-in-residence is a student enrolled in the teacher preparation program of the institution of higher education and is not a regularly employed employee of the county board;

(ii) The teacher in residence is included on the certified list of employees of the county eligible for state aid funding the same as an employee of the county at the appropriate level based on their permit and level of experience;

(iii) All state aid funding due to the county board for the teacher-in-residence shall be used only in accordance with the agreement with the institution of higher education for support of the program as provided in the agreement, including costs associated with instruction and supervision as set forth in paragraph (C) of this subdivision;

(iv) The teacher-in-residence is provided the same liability insurance coverage as other employees; and

(v) All state aid funding due to the county for the teacher- in-residence and not required for support of the program shall be paid as a stipend to the teacher-in-residence;

Provided, That the stipend paid to the teacher-in-residence shall be no less than sixty-five percent of all state aid funding due the county for the teacher-in-residence.

(4) Other provisions that may be required by the state board.

~~(e) (f)~~ Beginning the fall, two thousand six — two thousand seven academic term In lieu of the student teaching experience in a public school setting required by this section, an institution of higher education may provide an alternate student teaching experience in a nonpublic school setting if the institution of higher education meets the following criteria:

- (1) Complies with the provisions of this section;
- (2) Has a state board approved educator preparation program; and
- (3) Enters into an agreement pursuant to subdivisions ~~(f)~~ (g) and ~~(g)~~ (h) of this section.

~~(f)~~ (g) At the discretion of the higher education institution, an agreement for an alternate student teaching experience between an institution of higher education and a nonpublic school shall require ~~that either~~ one of the following:

(1) The student teacher shall complete at least one half of the clinical experience in a public school; or

(2) The educator preparation program shall include a requirement that any student performing student teaching in a nonpublic school shall complete at least the following:

(A) At least two hundred clock hours of field-based training in a public school; and

(B) A course, which is a component of the institution's state board approved educator preparation program, that provides ~~to prospective teachers~~ information that is to prospective teachers equivalent to the teaching experience needed to demonstrate competence as a prerequisite to certification to teach in the public schools in West Virginia. The course also shall include instruction on at least the following elements:

- (i) State board policy and provisions of this code governing public education;
- (ii) Requirements for federal and state accountability, including the mandatory reporting of child abuse;
- (iii) Federal and state mandated curriculum and assessment requirements, including multicultural education, safe schools and student code of conduct;
- (iv) Federal and state regulations for the instruction of exceptional students as defined by the Individuals with Disabilities Education Act, 20 U.S.C. §1400 *et seq.*; and
- (v) Varied approaches for effective instruction for students who are at-risk; 2

~~(g)~~ (h) In addition to the requirements set forth in subsection ~~(f)~~ (g) of this section, an agreement for an alternate student teaching experience between an institution of higher education and a nonpublic school shall include the following:

(1) ~~Require~~ A requirement that the higher education institution with an educator preparation program shall document that the student teacher's field-based and clinical experiences include participation and instruction with multicultural, at-risk and exceptional children at each programmatic level for which the student teacher seeks certification; and

~~(2) Include~~ The minimum qualifications for the employment of school teachers selected as supervising teachers, including the requirement that field-based and clinical experiences be supervised by a teacher fully certified in the state in which that teacher is supervising.

~~(h)~~ (i) The state superintendent may issue certificates as provided in section two-a of this article to graduates of educator preparation programs and alternative educator preparation programs approved by the state board. The certificates are issued in accordance with this section and rules adopted by the state board after consultation with the Secretary of Education and the Arts and the Chancellor for Higher Education.

(1) A certificate to teach may be granted only to ~~any~~ a person who ~~is~~ meets the following criteria:

(A) Is a citizen of the United States, except as provided in subdivision (2) of this subsection;

(B) Is of good moral character;

(C) Is physically, mentally and emotionally qualified to perform the duties of a teacher; and

(D) Is at least eighteen years of age on or before ~~the first day of~~ October 1, of the year in which his or her certificate is issued.

(2) A permit to teach in the public schools of this state may be granted to a person who is an exchange teacher from a foreign country, or an alien person who meets the requirements to teach.

(j) In consultation with the Secretary of Education and the Arts and the Chancellor for Higher Education, institutions of higher education approved for educator preparation may cooperate with each other, with the center for professional development and with one or more county boards to organize and operate centers to provide selected phases of the educator preparation program. The phases include, but are not limited to the following:

- (1) Student teaching and teacher-in-residence programs;
- (2) Beginning teacher internship and induction programs;
- (3) Instruction in methodology; and
- (4) Seminar programs for college students, teachers with provisional certification, professional support team members and supervising teachers.

By mutual agreement, the institutions of higher education, the center for professional development and county boards may ~~by mutual agreement~~ budget and expend funds to operate the centers through payments to the appropriate fiscal office of the participating institutions, the center for professional development and the county boards.

~~(j)~~ (k) The provisions of this section do not require discontinuation of an existing student teacher training center or school which meets the standards of the state board.

~~(k)~~ (l) All institutions of higher education approved for educator preparation in the ~~one thousand nine hundred sixty-two — sixty-three~~ 1962-63 school year shall continue to hold that distinction so long as they meet the minimum standards for educator preparation. Nothing in this section infringes upon the rights granted to any institution by charter given according to law previous to the adoption of this code.

~~(l) Notwithstanding any other provision of this section, nor any other provision of rule, law or this code to the contrary, an institution of higher education may enter into an agreement with a nonpublic school:~~

- ~~(1) For the purposes of this section regarding student teaching;~~
- ~~(2) For the spring, two thousand six academic term only;~~
- ~~(3) If the institution is approved for educator preparation by the state board; and~~
- ~~(4) If the institution had entered into the agreement for that academic term prior to the effective date of this section.~~

~~(m) As used in this section:~~

(m) Definitions. -- For the purposes of this section, the following words have the meanings ascribed to them unless the context clearly indicates a different meaning:

(1) "Nonpublic school" means a private school, parochial school, church school, school operated by a religious order or other nonpublic school that elects to meet the following conditions:

- (A) Comply with the provisions of article twenty-eight, chapter eighteen of this code;

(B) Participate on a voluntary basis in a state operated or state sponsored program provided to such this type schools pursuant to this section; and

(C) Comply with the provisions of this section;

(2) "At-risk" means ~~having a student who has~~ the potential for academic failure, including, but not limited to, the risk of dropping out of school, involvement in delinquent activity or poverty as indicated by free or reduced lunch status; and

(3) Exceptional child" or "exceptional children" has the meaning ascribed to these terms pursuant to section one, article twenty, chapter eighteen of this code, but, as used in this section, the terms do does not include gifted students.

§18A-3-2a. Authority of state superintendent to issue certificates; kinds of certificates. Certificates valid in the public schools that may be issued by the state superintendent.

In accordance with state board of ~~education~~ rules for the education of professional educators adopted after ~~consultation with the secretary of education and the arts,~~ pursuant to section one of this article and subject to the limitations and conditions of that section, the state superintendent of ~~schools~~ may issue the following certificates valid in the public schools of the state: **Provided**, That a certificate shall not be issued to any person who is not a citizen of the United States, is not of good moral character and physically, mentally and emotionally qualified to perform the duties for which the certification would be granted and who has not attained the age of eighteen years on or before the first day of October of the year in which the certificate is issued: **Provided, however**, That an exchange teacher from a foreign country or an alien person who meets the requirements to teach may be granted a permit to teach within the public schools of the state.

~~Certificates authorized to be issued include:~~

(a) Professional teaching certificates. --

(1) A professional teaching certificate for teaching in the public schools may be issued to a person who meets the following conditions:

(A) Has Holds at least a bachelor's degree from an accredited institution of higher education in this state, and

(i) Has completed a program for the education of teachers which meets the requirements approved by the state board of ~~education~~; or

(ii) Has met equivalent standards at institutions in other states and has passed appropriate state board approved basic skills and subject matter tests or has completed three years of successful experience within the last seven years in the area for which licensure is being sought; or

(B) ~~Has~~ Holds at least a bachelor's degree in a discipline taught in the public schools from an accredited institution of higher education, and

(i) Has passed appropriate state board approved basic skills and subject matter tests; or

(ii) Has completed three years of successful experience within the last seven years in the area for which licensure is being sought; and

(I) Has completed an alternative program for teacher education approved by the state board and,

(II) Is recommended for a certificate by the chairperson of the professional support team of the person's alternative program or the state superintendent based on documentation submitted. in accordance with the provisions of sections one-a and one-b of this article relating to the program, or

(III) Is recommended by the state superintendent based on documentation submitted.

(2) The certificate shall be endorsed to indicate the grade level or levels or areas of specialization in which the person is certified to teach or to serve in the public schools.

(3) The initial professional certificate shall be is issued provisionally for a period of three years from the date of issuance and;

(A) The certificate may be converted to a professional certificate valid for five years subject to successful completion of a beginning teacher internship or induction program, if applicable; or

(B) The certificate may be renewed subject to rules adopted by the state board.

(b) Alternative program teacher certificate. -- An alternative program teacher certificate may be issued to a candidate who is enrolled in an alternative program for the education of teachers in accordance with the provisions of section one-a of this article. (1) The certificate is valid only for the alternative program position in which the candidate is employed and is subject to enrollment in the program.

(2) The certificate is valid for one year and may be renewed for each of the following two consecutive years only.

2(c) Professional administrative certificate. --

(1) A professional administrative certificate, endorsed for serving in the public schools, with specific endorsement as a principal, vocational administrator, supervisor of instructions or superintendent, may be issued to a person who has completed requirements all to be approved by the state board as follows:

(A) For a master's degree Holds at least a master's degree from an institution of higher education accredited to offer a master's degree; and

(i) Has successfully completed an approved program for administrative certification, developed by the state board of education in cooperation with the governing boards of the university of West Virginia system and the state college system chancellor for higher education, and

(ii) Has successfully completed education and training in evaluation skills through the center for professional development, or equivalent education and training in evaluation skills approved by the state board, and

(iii) Possesses three years of management level experience; **Provided, that**

(2) Anyone having received a certificate during the period from the thirtieth day of August, one thousand nine hundred ninety, until the effective date of this bill without having met the above requirements shall complete those requirements within five years after the effective date of this bill: **Provided, however,** That Any person serving in the position of dean of students on the effective date of this section shall not be June 4, 1992, is not required to hold a professional administrative certificate.

(3) Beginning the first day of September, one thousand nine hundred ninety-two, The initial professional administrative certificate shall be is issued provisionally for a period of five years. This certificate may be converted to a professional administrative certificate valid for five years or renewed, subject to the regulations of the state board.

(3) (d) Paraprofessional certificate. -- A paraprofessional certificate may be issued to a person who meets the following conditions:

(1) Has completed thirty-six semester hours of post-secondary education or its equivalent in subjects directly related to performance of the job, all approved by the state board; and ~~can~~

(2) Demonstrates the proficiencies to perform duties as required of a paraprofessional as defined in section eight, article four of this chapter.

(4) (e) Other certificates; permits. --

(1) Other certificates and permits may be issued, subject to the approval of the state board, to persons who do not qualify for the professional or paraprofessional certificate.

(2) ~~Such~~ A certificates or permits shall may not be given permanent status and a persons holding such one of these credentials shall meet renewal requirements provided by law and by regulation, unless the state board declares certain of these certificates to be the equivalent of the professional certificate.

(3) Within the category of other certificates and permits, the state superintendent may issue certificates for persons to serve in the public schools as athletic coaches or coaches of other extracurricular activities ~~coaches~~, whose duties may include the supervision of students, subject to the following limitations:

(A) ~~Such~~ The person shall be ~~is~~ employed under a contract with the county board of education.

~~(i) which~~ The contract specifies the duties to be performed, ~~which~~ specifies a rate of pay that is equivalent to the rate of pay for professional educators in the district who accept similar duties as extra duty assignments, and ~~which~~ provides for liability insurance associated with the activity; and **Provided**, ~~That such~~

~~(ii)~~ The persons holding this certificate shall ~~is~~ not be considered an employees of the board for salary and benefit purposes other than as specified in the contract;

(B) A currently employed certified professional educator has not applied for the position; and

(C) ~~such~~ The person completes an orientation program designed and approved in accordance with state board rules ~~which shall be adopted no later than the first day of January, one thousand nine hundred ninety one.~~

(f) Teacher-In-Residence Permit. --

(1) A teacher-in-residence permit may be issued to a candidate who is enrolled in a teacher-in-residence program in accordance with an agreement between an institution of higher education and a county board. The agreement is developed pursuant to subsection (f), section one of this article and requires approval by the state board.

(2) The permit is valid only for the teacher-in-residence program position in which the candidate is enrolled and is subject to enrollment in the program. The permit is valid for no more than one school year and may not be renewed.

House Bill 4119

Effective Date: June 7, 2012

Signed by Governor: March 20, 2012

Code Reference: Adds §18A-2-1a

Amends §18-1-1

Title: Providing a Definition for an Athletic Director who is
Employed by a County Board of Education

Major Provisions:

- Provides a definition for athletic director, and establishes the responsibilities and scope of work.
- Does not establish licensing requirements.

ENROLLED

H. B. 4119

(By Delegates Perry and Lawrence)

[Introduced January 18, 2012; referred to the
Committee on Education.]

[Passed March 9, 2012; in effect ninety days from passage.]

AN ACT to amend and reenact §18-1-1 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §18A-2-1a, all relating to providing definition of school athletic director; authorizing employment in the public schools of the state under certain conditions; and designating responsibilities of the position.

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; and that said code be amended by adding thereto a new section, designated §18A-2-1a, 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 have the meanings ascribed to them unless the context clearly indicates a different meaning:

- (a) "School" means the students and 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 a county board of education;
- (e) "State superintendent" means the state superintendent of free Schools;
- (f) "County superintendent" or "superintendent" means a county superintendent of schools;

(g) “Teacher” means a teacher, supervisor, principal, superintendent, public school librarian or any other person regularly employed for instructional purposes in a public school in this state;

(h) “Service person” or “service personnel,” whether singular or plural, means any nonteaching school employee who is not included in the 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 state board for the benefit of students;

(j) “Regular full-time employee” means any person employed by a county board 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) “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; and

(p) “Athletic director” means a person employed by a county board to work in a school’s athletic program pursuant to section one-a, article two, chapter eighteen-a of this code.

CHAPTER 18A. SCHOOL PERSONNEL.

§18A-2-1a. Employment of other personnel.

A county board is authorized to employ athletic directors to work in the public schools under the supervision of a school principal and in accordance with the rules of the county board.

(a) The athletic director is responsible for planning, management, operation and evaluation of the athletic program for the school or schools to which he or she is assigned.

(b) The responsibilities of an athletic director may include, but are not limited to the following:

(1) Supervising athletic games;

(2) Overseeing the athletic budget;

(3) Hiring game officials;

(4) Scheduling athletic contests;

(5) Knowing and upholding all county, West Virginia Secondary Schools Activities Commission (WVSSAC) and league rules;

(6) Maintaining proper records as required by West Virginia Secondary Schools Activities Commission (WVSSAC) for school participation;

(7) Scheduling transportation for athletic teams;

(8) Preparing and verifying athletic eligibility lists;

(9) Supervising coaches and, if appropriately certified, observing and evaluating coaches;

(10) Securing all needed personnel for basic athletic event operations;

(11) Procuring and caring for athletic equipment; and

(12) Performing other duties involving athletics as assigned by the principal or as a part of a county job description for athletic directors.

House Bill 4122

Effective Date: May 31, 2012

Signed by Governor: March 12, 2012

Code Reference: Adds §18A-3-12
Amends §18A-3-1a, §18A-3-1b

Title: Relating to Alternative Programs for Teacher Education

Major Provisions:

- Provides a definition of “approved education provider,” which includes an entity that is affiliated with an institution of higher education.
- Modifies the definition of “critical need and shortage”.
- Substantially allows for a more flexible delivery of the required coursework for the alternative route; the instruction may be equivalent to the 18 hours of coursework.
- Deletes the requirement that positions filled by individuals on an alternative route have to be reposted.
- Creates an alternative route for prospective teachers of American Sign Language.
- Identifies that the coursework offered by the institutions of higher education be eligible for the Technology Integration Specialist Advanced Credential.

ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 4122

(By Delegates Perry, Shaver, Campbell, Lawrence, Pethtel, Armstead, Duke, Savilla,
Sigler, Paxton and M. Poling)

[Passed March 2, 2012; in effect ninety days from passage.]

AN ACT to amend and reenact §18A-3-1a and §18A-3-1b of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §18A-3-12, all relating to alternative programs for teacher education; providing definitions; including entity affiliated with approved teacher education programs to be a partner in offering programs; defining approved education provider; modifying definition of area of critical need and shortage; generally reorganizing section, updating terms and eliminating duplicative language; modifying alternative program teacher certificate requirements; eliminating requirement to post position of alternative program teacher each year prior to rehiring; authorizing alternative methods of instructional delivery and candidate supervision and modifying existing methods; modifying professional support team provisions; modifying reporting and recommendation requirements; requiring certain legislative rules; and requiring teacher education programs to cooperate with the state board to ensure that certain assistance is provided to help students pursuing a teaching degree and certified teachers attain the required hours to earn a Technology Integration Specialist Advanced Credential.

Be it enacted by the Legislature of West Virginia:

That §18A-3-1a and §18A-3-1b 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-3-12, all to read as follows:

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

§18A-3-1a. Alternative programs for the education of teachers; legislative rules required.

~~(a) By the fifteenth day of August, two thousand five, the state board, after consultation with the Secretary of Education and the Arts, shall promulgate rules in accordance with the provisions of article three-b, chapter twenty-nine-a of this code for the approval and operation of teacher education programs which are an alternative to the regular college or university programs for the education of teachers.~~

(a) *Definitions.* -- For the purposes of this section, the following terms have the meaning ascribed to them, unless the context in which a term is used clearly requires a different meaning:

(1) “Alternative program teacher certificate” means a certificate issued for one year to a candidate who does not meet the standard educational requirements for teacher certification;

(2) “Approved education provider” means a partnership between one or more schools, school districts or regional educational service agencies and an institution of higher education in this state with a regionally accredited program for the education of professional educators approved by the state board or an entity affiliated with such an institution’s approved program, that has submitted to the state board a plan and agreement between the organizations for the delivery of an alternative program in accordance with this section, and the state board has approved the plan and agreement; and

(3) “Area of critical need and shortage” means an opening in an established, existing or newly-created position which has been posted at least two times in accordance with section seven-a, article four of this chapter and for which no fully-qualified applicant has been employed.

(b) *Establishment of alternative teacher education programs.* -- After consultation with the Secretary of Education and the Arts and the Chancellor of the Higher Education Policy Commission, the state board shall promulgate a legislative rule or rules in accordance with article three-b, chapter twenty-nine-a of this code to implement the provisions of this section. The proposed rule or rules shall be submitted to the Legislative Oversight Commission on Education Accountability for review prior to adoption. The rule or rules shall include, but are not limited to, the following issues:

(1) Separate procedures for the approval and operation of each of the alternative teacher education programs as provided in this section:

(A) These programs are an alternative to the regular college or university programs for the education of teachers and may only be offered by approved education providers; and

(B) Each program is separate from other programs established by this section;

(2) Procedures for approving an approved education provider as defined in this section. Approval is required prior to implementation the provider’s program leading to certification to teach in the public schools of this state;

(3) An alternative program teacher may not be employed in a school, school district or regional educational service agency unless the school, school district or regional educational service agency is a part of a partnership that qualifies as an approved education provider as defined in subsection (a) of this section;

(4) Provisions for setting tuition charges to offset program costs;

(5) The recommendation to rehire an alternative education program teacher, is subject to satisfactory progress in the applicable alternative education program by the holder of the alternative program certificate; and

(6) When making decisions affecting the hiring of a teacher authorized to teach under an alternative program certificate as provided in this section, a county board shall give preference to applicants who hold a valid West Virginia professional teaching certificate.

(c) Alternative teacher education program. --

(1) To participate in an approved alternative teacher education program, the candidate must hold an alternative program teacher certificate issued by the state superintendent and endorsed for the instructional field in which the candidate seeks certification. ~~An alternative program teacher certificate is a certificate issued for one year to a candidate who does not meet the standard educational requirements for certification.~~

(2) The certificate may be renewed ~~no more than two times~~ twice and no individual may hold an alternative program teacher certificate for a period exceeding three years. The alternative program teacher certificate ~~shall be considered~~ is equivalent to a professional teaching certificate for the purpose of ~~the issuance of~~ issuing a continuing contract.

(3) To be eligible for an alternative program teacher certificate, an applicant shall meet the following criteria:

(4) (A) Possess at least a bachelor's degree from a regionally accredited institution of higher education in a discipline taught in the public schools.

(2) (B) ~~Pass an appropriate state board approved~~ the same basic skills and subject matter test ~~or tests required by the state board for traditional program candidates to become certified~~ in the area for which licensure is being sought;

(3) (C) ~~Be a citizen of the~~ Hold United States citizenship; be of good moral character and ~~be~~ physically, mentally and emotionally qualified to perform the duties of a teacher; ~~and have attained~~

(D) Attain the age of eighteen years on or before October 1 of the year in which the alternative program teacher certificate is issued;

(4) (E) ~~Have been offered~~ Receive a formal offer of employment in an area of critical need and shortage ~~by from a county board superintendent; in an area of critical need and shortage;~~ and

(5) (F) Qualify for employment following a criminal history check pursuant to section ten of this article;

(G) In the case of an applicant pursuing certification to teach American Sign Language, in lieu of paragraphs (A) and (B) of this subdivision, the applicant shall possess at least a bachelor's degree from a regionally accredited institution of higher education and pass an appropriate state board approved test or tests demonstrating the applicant's proficiency in American Sign Language; and

(H) In the case of applicants who have at least four years of experience in the subject field and are pursuing certification to teach in selected vocational and technical areas, in lieu of paragraphs (A) and (B) of this subdivision, the applicant shall pass an appropriate state board approved test or tests demonstrating the applicant's proficiency in the basic skills and occupational content areas.

~~(4) Persons~~ A person who ~~satisfy~~ satisfies the requirements set forth in ~~subdivisions (1) through (5)~~ subdivision (3) of this subsection shall be granted a formal document ~~which will enable them~~ authorizing him or her to work in a public school in West Virginia.

~~(5) (b) The rules adopted by the board shall include provisions for the approval of alternative teacher education programs which may be offered by schools, school districts, consortia of schools, or regional educational service agency and for the setting of tuition charges to offset the program costs. An approved alternative teacher education program shall be in effect for a school, school district, consortium of schools or regional educational service agency before an alternative program teacher may be employed in that school, school district, consortium of schools or regional educational service agency. An approved alternative program shall provide~~ provides essential knowledge and skills to alternative program teachers through the following phases of training:

~~(4) (A) Instruction.~~ -- The alternative preparation program shall provide a minimum of eighteen semester hours of instruction in the areas of student assessment; development and learning; curriculum; classroom management; the use of educational computers and other technology; and special education and diversity. All programs shall contain a minimum of three semester hours of instruction in special education and diversity out of the minimum eighteen required semester hours. Subject to the approval of the state board, an approved education provider may provide instruction equivalent to the eighteen semester hours required by this paragraph through nontraditional methods, including, but not limited to, methods such as a series of modules covering the various topics, electronically delivered instruction, summer sessions, professional development and job-embedded mentoring.

~~(2) (B) Phase I.~~ -- Phase I shall ~~consist~~ consists of a period of intensive, on-the-job supervision by an assigned mentor and the school administrator for a period of not ~~less fewer~~ fewer than two weeks and ~~no more than four weeks~~. The assigned mentor shall meet the requirements for a beginning teacher internship mentor set forth in section two-b of this article and shall be paid the stipend authorized pursuant to that section. ~~During this time, the teacher~~ The state board shall provide, in its rule for the approval and operation of this program, requirements for the frequency and duration of time periods for the person holding an alternative certificate to observe in the classroom of the mentor. The

person holding an alternative certificate shall be observed daily by the mentor or the school administrator during this phase. This phase ~~shall include~~ includes an orientation to the policies, organization and curriculum of the employing district. The alternative program teacher shall ~~begin to~~ receive formal instruction in those areas listed in ~~subdivision (1) paragraph (A) of this subsection~~ subdivision.

~~(3) (C) Phase II.~~ -- Phase II ~~shall consist~~ consists of a period of intensive, on-the-job supervision beginning the first day following the completion of Phase I and continuing for a period of at least ten weeks. During Phase II, the alternative program teacher ~~shall be~~ is visited and critiqued ~~no less than~~ at least one time per week by members of a professional support team, ~~as defined in subsection (c) subdivision (6) of this section~~ subdivision, and shall be ~~is~~ observed and formally evaluated by the appropriately certified members of the team at the end of five weeks and again ~~at the end of ten weeks by the appropriately certified members of the team~~ at five-week intervals until the completion of this phase. At the end of the ~~ten-week period~~ completion of this phase, the alternative program teacher shall receive a formal ~~written progress report from the chairperson of the support team~~ evaluation by the principal. The alternative program teacher shall continue to receive formal instruction in those areas listed ~~above under~~ in paragraph (A), subdivision (1) of this subsection subdivision.

~~(4) (D) Phase III.~~ -- Phase III ~~shall consist~~ consists of an additional period of continued supervision and evaluation of no ~~less~~ fewer than twenty weeks duration. The professional support team ~~will determine~~ determines the requirements of this phase, ~~with~~ but those requirements shall include at least one formal evaluation ~~being~~ conducted at the completion of the phase by the principal. The alternative program teacher shall continue to receive formal instruction in those areas listed ~~above under~~ in paragraph (A) subdivision (1) of this subsection subdivision, and ~~receive~~ shall be given opportunities to observe the teaching of experienced colleagues.

~~(e) (6) Professional support team.~~ --

(A) Training and supervision of alternative program teachers shall be are provided by a professional support team comprised of a school principal, or his or her designee, an experienced classroom teacher who satisfies the requirements for mentor for the Beginning Educator Internship ~~as specified in~~ pursuant to section two-b of this article, ~~a college or university education faculty member~~ a representative of the institution of higher education that is a part of the partnership that qualifies as an approved education provider as defined in subsection (a) of this section or an entity affiliated with that institution, and a curriculum supervisor or other central office administrator with certification and training relevant to the training and supervision of the alternative program candidate.

(B) Districts or schools which do not employ curriculum supervisors or have been unable to establish a relationship with a college or university shall provide for comparable expertise on the team.

(C) The school principal, or his or her designee, shall serve serves as chairperson of the team.

(D) The duration of each of the three phases of the program specified in paragraphs (B), (C) and (D), subdivision (5) of this subsection, in excess of the minimum durations provided in those paragraphs, shall be determined by the professional support team within guidelines provided by the state board in its rule for the approval and operation of this program.

(E) In addition to other duties assigned to it under this section and section one-b of this article, the professional support team approved education provider shall submit a written evaluation of the alternative program teacher to the county superintendent. The written evaluation shall be in a form specified by the county superintendent and submitted on a date specified by the county superintendent that is prior to the first Monday of May. The evaluation shall report the progress of the alternative program teacher toward meeting the academic and performance requirements of the program.

~~(d)~~ (F) The training for professional support team members shall may be coordinated and provided by the Center for Professional Development in coordination with the school district, consortium of schools, regional educational service agency, and institution of higher education approved education provider or any combination of these agencies as set forth in the plan approved by the state board pursuant to subsection (e) subdivision (8) of this subsection.

(7) In lieu of and as an alternative to the professional support team specified in subdivision (6) of this subsection and its specific duties throughout the program phases as set forth in subdivision (5) of this section, a school or school district that has implemented a comprehensive beginning teacher induction program may, subject to the approval of the state board, provide for the training and supervision of alternative program teachers using a structure consistent with the structure implemented for the support, supervision and mentoring of beginning teachers: *Provided*, That all final decisions on the progress of the alternative program teacher and recommendations upon program completion shall rest with the principal.

~~(e)~~ (8) A school, school district, consortium of schools, or regional educational service agency An approved education provider seeking to employ approval for an alternative certification program teacher must shall submit a plan to the state board and receive approval.

(A) No alternative certification program may be implemented prior to receiving state board approval.

(B) Each plan shall describe how the proposed training program will accomplish the key elements of an alternative program for the education of teachers as set forth in this section. Each school, school district, consortium of schools or regional educational

~~service agency shall show evidence in its plan of having sought joint sponsorship of their training program with institutions of higher education.~~

~~(f) The state board shall promulgate a rule in accordance with article three-b, chapter twenty-nine-a of this code for the approval and operation of alternative education programs to prepare highly qualified special education teachers that~~

(d) Alternative highly qualified special education teacher education program. --

(1) These programs are separate from the programs established under the other provisions of this section and are applicable only to teachers who have at least a bachelor's degree in a program for the preparation of teachers from a regionally accredited institution of higher education.

(2) These programs are subject to the other provisions of this section only to the extent specifically provided in the rule.

(3) These programs may be an alternative to the regular college and university programs for the education of special education teachers and also may address the content area preparation of certified special education teachers.

(4) The programs shall incorporate professional development to the maximum extent possible to help teachers who are currently certified in special education to obtain the required content area preparation.

(5) Participation in an alternative education program pursuant to this subsection ~~shall~~ may not affect any rights, privileges or benefits to which the participant otherwise would otherwise be entitled as a regular employee nor does it and may not alter any rights, privileges or benefits of participants on continuing contract status. ~~The state board shall report to the Legislative Oversight Commission on Education Accountability on the programs authorized under this subsection during the July, 2005, interim meetings or as soon thereafter as practical prior to implementation of the programs.~~

~~(g) The state board shall promulgate a rule in accordance with article three-b, chapter twenty-nine-a of this code for the approval and operation of alternative education programs to prepare highly qualified special education teachers that~~

(e) Additional alternative education program to prepare highly qualified special education teachers. --

(1) These programs are separate from the programs established under the other provisions of this section and are applicable only to persons who hold a bachelor's degree from a regionally accredited institution of higher education.

(2) These programs are subject to the other provisions of this section only to the extent specifically provided ~~for~~ in this the rule.

~~(3) These programs may be an alternative to the regular college and university programs for the education of special education teachers and also may address the content area preparation of such these persons. The state board shall report to the Legislative Oversight Commission on Education Accountability on the programs authorized under this subsection during the July, 2005, interim meetings or as soon thereafter as practical prior to implementation of the programs.~~

~~(h) For the purposes of this section, "area of critical need and shortage" means an opening in an established, existing or newly created position which has been posted in accordance with the provisions of section seven-a, article four of this chapter, and for which no fully qualified applicant has been employed.~~

~~(i) The recommendation to rehire an alternative education program teacher pursuant to section eight-a, article two of this chapter is subject to the position being posted and no fully qualified applicant being employed: *Provided*, That this provision does not apply to teachers who hold a valid West Virginia professional teaching certificate and who are employed under a program operated pursuant to subsection (f).~~

~~(j) When making decisions affecting the hiring of an alternative program teacher under the provisions of this section, a county board shall give preference to applicants who hold a valid West Virginia professional teaching certificate.~~

§18A-3-1b. Recommendation for certification of alternative program teachers.

At the conclusion of an alternative teacher education program, the ~~principal chairperson of the professional support team,~~ approved education provider shall prepare a comprehensive evaluation report on the alternative program teacher's performance. This report shall be submitted directly to the State Superintendent of Schools and shall contain a recommendation as to whether or not a professional certificate should be issued to the alternative program teacher. The report shall be made on standard forms developed by the State Superintendent.

The comprehensive evaluation report shall include one of the following recommendations:

(1) Approved: Recommends issuance of a professional certificate;

(2) Insufficient: Recommends that a professional certificate not be issued but that the candidate be allowed to seek reentry on one or more occasions in the future into an approved alternative teacher education program; or

(3) Disapproved: Recommends that a professional certificate not be issued and that the candidate not be allowed to enter into another approved alternative teacher education program in this state, but shall not be prohibited from pursuing teacher certification through other approved programs for the education of teachers in this state.

The ~~chairperson of the professional support team~~ approved education provider shall provide the alternative program teacher with a copy of the alternative program teacher's written evaluation report and certification recommendation before submitting it to the state superintendent. If the alternative program teacher disagrees with the ~~chairperson's provider's~~ recommendation, the alternative program teacher may, within fifteen days of receipt, request an appeal in accordance with the certification appeals process established by the State Board of Education.

§18A-3-12. Technology integration specialists.

The Legislature finds that technology integration specialists are becoming more crucial as technology plays a continuously increasing role in the education of students. In order to address the need for more technology integration specialists, the teacher preparation programs in this state shall cooperate with the state board to ensure that:

(1) A portion of the technology integration hours required to apply for the Advanced Credential endorsed for Technology Integration Specialist is offered at each teacher preparation program while students are still working toward their teaching degree;

(2) Teacher education program students are aware of the option of attaining a Technology Integration Specialist Advanced Credential and Temporary Authorization early enough so that they can take advantage of the hours offered; and

(3) Alternative education programs are established by the teacher preparation programs to assist teachers who have already received their teaching certification attain the required hours necessary to earn a Technology Integration Specialist Advanced Credential. These alternative education programs are separate from programs required to be established by section one-a of this article.

House Bill 4125

Effective Date: June 4, 2012

Signed by Governor: March 15, 2012

Code Reference: Amends §18-9F-9

Title: Correcting Date for Schools to Send Notice to Parents
Alerting Them to the Existence of the School's Crisis
Response Plan

Major Provisions:

- Amends the language in the existing statute that now requires schools to send notices to parents and guardians about the school's crisis response plan annually, starting no later than August 1, 2013.

ENROLLED

Committee Substitute
for

H. B. 4125

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

[Passed March 6, 2012; in effect ninety days from passage.]

AN ACT to amend and reenact §18-9F-9 of the Code of West Virginia, 1931, as amended, relating to modifying when the requirement for schools to annually send notices to parents and guardians about the school's crisis response plan and their ability to review a redacted copy becomes effective.

Be it enacted by the Legislature of West Virginia:

That §18-9F-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9F. SCHOOL ACCESS SAFETY ACT.

§18-9F-9. Crisis Response Plan.

(a) The state board in conjunction with the Division of Homeland Security and Emergency Management shall promulgate by December 31, 2011, a legislative rule in accordance with article three-b, chapter twenty-nine-a of this code, and if necessary may promulgate an emergency rule in accordance with said article, for the establishment of an up-to-date, school specific crisis response plan at every school in the state. In developing the rule, the state board shall consider plans currently being developed as part of the safe schools initiative currently underway by the School Building Authority and the Division of Homeland Security and Emergency Management. In addition, those portions of a school's access safety plan created pursuant to section three of this article may be used as a portion of the school's school specific crisis response plan if there are any overlapping requirements. The rule shall provide for at least the following:

(1) A model school crisis response plan for use by each school in the state, including a uniform template which shall be used by each school to file the plan, including at least the following information, in a secure electronic system identified by the Division of Homeland Security and Emergency Management:

(A) The school employee in charge during a crisis and a designated substitute;

(B) A communication plan to be used during a crisis;

(C) Protocols for responding to immediate physical harm of students, faculty or staff and to traumatic events, including the period after the events have concluded;

(D) Disaster and emergency procedures to respond to earthquakes, fire, flood, other natural disasters, explosions or other events or conditions in which death or serious injury is likely;

(E) Crisis procedures for safe entrance to and exit from the school by students, parents, and employees, including an evacuation and lock down plan; and

(F) Policies and procedures for enforcing school discipline and maintaining a safe and orderly environment during the crisis.

(2) A requirement that each school's school specific crisis response plan shall be in place and filed with that school's county board, and included in a secure electronic system identified by the Division of Homeland Security and Emergency Management, no later than August 1, 2013, or soon after completion by the school, whichever occurs first;

(3) The necessary safeguards to protect information contained in each school specific crisis response plan that may be considered protected critical infrastructure information, law enforcement sensitive information or for official use only. These safeguards must have the approval the Division of Homeland Security and Emergency Management. County boards shall provide the same necessary safeguards for the information in the plan;

(4) The annual review and necessary update of the model plan and uniform template by state board in conjunction with the Division of Homeland Security and Emergency Management by December 31 of each year after 2011;

(5) The development by each school of a school specific crisis response plan by using the state board's model plan as an example and with consultation from local social services agencies, local first response agencies including police, fire, emergency medical services (EMS), emergency management and any other local entities that the school's crisis response planning team determines should be consulted;

(6) Procedures for the annual review and update if necessary by each school of its school specific crisis response planning plan. Each school shall file either an updated crisis response plan or a memorandum stating that no update to the crisis response plan was necessary with its county board and the Division of Homeland Security and Emergency Management no later than August 1 of each year after 2013.

(7) Procedures for each school within the state to form a crisis response planning team, which team may consist of the school's Local School Improvement Council or a separate team consisting of the principal, two teachers, one service person and two parents of children attending the school. In addition the school may include on the team one member of the county board, a school counselor, a member from local law-enforcement

authorities, the local county emergency services director and one student in grade ten or higher if the school has those grades;

(8) Procedures for informing and training school personnel on any actions required of them to effectuate the school's school specific crisis response plan;

(9) A model template for redacted copies of the school crisis response plan for the public inspection and for the release and notice to parents of information related to the plan; and

(10) Procedures for non public schools to establish, file and update school crisis response plans consistent with subdivision (1) subsection (a) of this section.

(b) The county board shall keep the current crisis response plan of each school in the county on file and, unless otherwise provided for, provide a copy of each school's crisis response plan to each local emergency response agency that has a role in the plan. Local emergency response agencies that maintain a copy of the plan shall provide the necessary safeguards for the information in the plan established pursuant to the state board rule promulgated pursuant to subsection (a) of this section. Upon request, a redacted copy of a school crisis response plan shall be made available for inspection by the public with any information removed that is necessary for compliance with the necessary safeguards. ~~Starting with the 2012-2013 school year,~~ Following the filing of its school specific crisis response plan with the county board pursuant to subdivision (2), subsection (a) of this section, each school shall annually send notice home to all parents and guardians of students at the school alerting the parents and guardians to the existence of the ~~crisis response~~ plan and the ability to review a redacted copy at the offices of the county board.

House Bill 4236

Effective Date: June 8, 2012

Signed by Governor: March 30, 2012

Code Reference: Adds §18A-3C-1, §18A-3C-2 and §18A-3C-3

Amends §18A-2-12

Title: Relating to Exclusions from the Definition of Professional Personnel for Evaluation Purposes

Major Provisions:

- The Bill is to amend and reenact §18A-2-12 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §18A-3C-1, §18A-3C-2 and §18A-3C-3, all relating to:
 - Establishing a new system of performance evaluations of classroom teachers, principals and assistant principals;
 - Exclusions from the definition of professional personnel for certain evaluation purposes;
 - Providing findings, purposes, definitions and intent of new provisions;
 - Providing for phased implementation and legislative oversight;
 - Requiring state board rules and submissions of draft rules to legislative oversight commission;
 - Providing minimum provisions of evaluation processes for teachers and principals and specific percentages of evaluation score to be based standards and student performance;
 - Providing for evaluations to serve certain purposes, including plans of improvement and personnel actions for unsatisfactory performance;
 - Requiring certain employee training prior to implementation of new evaluation processes;
 - Providing intent of new comprehensive system of support;
 - Requiring the state board to publish guidelines for county boards on design and implementation of comprehensive system of support;
 - Restricting certain funding subject to adoption of comprehensive system plan by county that is verified by

- state board as meeting certain requirements; and
- Specifying contents of plan; and providing for transition of appropriations to support execution of plans and use of funds.

ENROLLED

COMMITTEE SUBSTITUTE
FOR

H. B. 4236

(By Mr. Speaker, (Mr. Thompson) and Delegate Armstead)
[By Request of the Executive]

[Passed March 10, 2012; in effect ninety days from passage.]

AN ACT to amend and reenact §18A-2-12 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §18A-3C-1, §18A-3C-2 and §18A-3C-3, all relating to establishing a new system of performance evaluations of classroom teachers, principals and assistant principals; exclusions from the definition of professional personnel for certain evaluation purposes; providing findings, purposes, definitions and intent of new provisions; providing for phased implementation and legislative oversight; requiring state board rules and submissions of draft rules to legislative oversight commission; providing minimum provisions of evaluation processes for teachers and principals and specific percentages of evaluation score to be based standards and student performance; providing for evaluations to serve certain purposes, including plans of improvement and personnel actions for unsatisfactory performance; requiring certain employee training prior to implementation of new evaluation processes; providing intent of new comprehensive system of support; requiring the state board to publish guidelines for county boards on design and implementation of comprehensive system of support; restricting certain funding subject to adoption of comprehensive system plan by county that is verified by state board as meeting certain requirements; specifying contents of plan; and providing for transition of appropriations to support execution of plans and use of funds.

Be it enacted by the Legislature of West Virginia:

That §18A-2-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new article, designated §18A-3C-1, §18A-3C-2 and §18A-3C-3, all to read as follows:

ARTICLE 2. SCHOOL PERSONNEL.

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

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

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

(c) For purposes of this section, "professional personnel", "professional" or "professionals", means professional personnel as defined in section one, article one of this chapter, but does not include classroom teachers, principals and assistant principals subject to the evaluation processes established pursuant to the provisions of section two, article three-c of this chapter when the school at which these professional personnel are employed is selected to participate in those evaluation processes as part of the multi-step implementation leading to full statewide implementation by school year 2013-2014.

(d) In developing the professional personnel performance evaluation system, and amendments thereto, the state board shall consult with the Center for Professional Development created in article three-a of this chapter. The center shall participate actively with the state board in developing written standards for evaluation which clearly specify satisfactory performance and the criteria to be used to determine whether the performance of each professional meets ~~such~~ those standards.

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

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

(2) The frequency and duration of the evaluations, which shall be on a regular basis and of such frequency and duration as to insure the collection of a sufficient amount of data from which reliable conclusions and findings may be drawn. ~~Provided, That~~ For school personnel with five or more years of experience, who have not received an unsatisfactory rating, evaluations shall be conducted no more than once every three years unless the principal determines an evaluation for a particular school employee is needed more frequently. ~~Provided however, That~~ Until the school or school system at which they are employed is subject to the provisions of article three-c of this chapter, for classroom teachers with five or more years of experience who have not received an unsatisfactory rating, an evaluation shall be conducted or professional growth and development plan required only when the principal determines it ~~to be~~ is necessary for a particular classroom teacher, or when a classroom teacher exercises the option of being evaluated at more frequent intervals;

(3) The evaluation shall serve the following purposes:

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

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

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

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

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

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

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

(g) No person may evaluate professional personnel for the purposes of this section unless the person has an administrative certificate issued by the state superintendent and has successfully completed education and training in evaluation skills through the center for professional development, or equivalent education training approved by the state board, which will enable the person to make fair, professional, and credible evaluations of the personnel whom the person is responsible for evaluating. After July 1, 1994, no person may be issued an administrative certificate or have an administrative certificate renewed unless the state board determines that the person has successfully completed education and training in evaluation skills through the center for professional development, or equivalent education and training approved by the state board.

(h) Any professional whose performance evaluation includes a written improvement plan shall be given an opportunity to improve his or her performance through the implementation of the plan. If the next performance evaluation shows that the professional is now performing satisfactorily, no further action may be taken concerning the original performance evaluation. If the evaluation shows that the professional is still not performing satisfactorily, the evaluator either shall make additional recommendations

for improvement or may recommend the dismissal of the professional in accordance with the provisions of section eight of this article.

(i) Lesson plans are intended to serve as a daily guide for teachers and substitutes for the orderly presentation of the curriculum. Lesson plans may not be used as a substitute for observations by an administrator in the performance evaluation process. A classroom teacher, as defined in section one, article one of this chapter, may not be required to post his or her lesson plans on the Internet or otherwise make them available to students and parents or to include in his or her lesson plans any of the following:

(1) Teach and reteach strategies;

(2) Write to learn activities;

(3) Cultural diversity;

(4) Color coding; or

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

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

(k) Nothing in this section may be construed to prohibit classroom teachers from voluntarily posting material on the Internet. Nothing in article three-c of this chapter may be construed to negate the provisions of subsections (i) and (j) of this section.

ARTICLE 3C. IMPROVING TEACHING AND LEARNING.

§18A-3C-1. Findings; purposes and definition.

(a) The Legislature makes the following findings:

(1) Processes set forth in this article for evaluation, teacher induction and professional growth is not intended to make up for substandard initial preparation of teachers, but instead is intended to build on a solid foundation created by the teacher preparation programs. Therefore, the Legislature expects the teacher preparation programs to graduate teachers who can perform at a level that increases student achievement. The Legislature expects that the processes set forth in this article will allow a teacher to excel beyond that level in the classroom;

(2) The comprehensive system of support provided for in this article should be implemented in a way that, as compared with the beginning teacher internship system, much more effectively provides for the professional growth of teachers;

(3) In order for the comprehensive system of support to much more effectively provide for professional growth for teachers, funding should be greatly increased over and above what has been provided for the beginning teacher internship system; and

(4) Although the quality of the teacher in the classroom is extremely important to the academic achievement of students, students cannot learn if they are not in the classroom. Therefore, attending school on a regular basis is of utmost importance to the academic success of students.

(b) The purpose of this article is to create a comprehensive infrastructure that routinely supports a continuous process for improving teaching and learning. Its focus is on developing strong teaching and school leadership, without which effective learning does not occur. The general components of this infrastructure include the following:

(1) High-quality teacher preparation, induction and evaluation;

(2) Universal support for emerging teachers including comprehensive new teacher induction and support for student teachers, teachers teaching in assignments for which they have less than a full professional credential and teacher candidates pursuing certification through an alternative route;

(3) Evaluation of the performance of teachers and leaders in demonstrating high quality professional practice, leadership and collaboration and the resulting growth in student learning;

(4) Focused improvement in teaching and learning through the use of evaluation data to inform the delivery of professional development and additional supports to improve teaching based on the evaluation results and to inform the need for improvements in teacher preparation programs; and

(5) The creation of a leadership culture that seeks and builds powerful alliances among all stakeholders focused on continuous growth in student learning.

(c) For purposes of this article “professional personnel” includes classroom teachers, assistant principals and principals as defined in section one, article one chapter eighteen-a of this code.

§18A-3C-2. Performance evaluations of professional personnel.

(a) The intent of the Legislature is to allow for a multi-step statewide implementation of performance evaluations for professional personnel pursuant to this section consistent with sound educational practices and resources available resulting in full state-wide implementation by no later than the school year 2013-2014. Beginning with the schools included in the evaluation processes for professional personnel piloted by the Department of Education during the 2011-2012 school year, additional schools or school systems shall be subject to the provisions of this article in accordance with a plan established by the state board to achieve full statewide implementation by no later than

the school year 2013-2014. For schools and school systems subject to the provisions of this article, the provisions of this article shall govern when they are in conflict with other provisions of this chapter and chapter eighteen of this code. Specifically, the provisions of this article govern for the performance evaluation of classroom teachers, principals and assistant principals employed in these schools and school systems. To the extent that this article conflicts with the provisions of section twelve, article two of this chapter relating to professional personnel performance evaluations, this article shall govern. The state board shall submit a report on its plan for the phased implementation of this article to the Legislative Oversight Commission on Education Accountability at the Commission's July interim meeting in each year of the phased implementation. The report shall include an update on the implementation of this article including, but not limited to the evaluation process and a list of the schools and school systems subject to the provisions of this article. To assist the Legislative Oversight Commission on Education Accountability in monitoring the implementation of this article, the state board shall report to the Commission upon its request throughout the implementation process, including but not limited to, reports on the results of surveys of teachers and principals on the implementation and use of the new evaluation system, the adequacy of the professional development given to employees on the purposes, instruments and procedures of the evaluation process, the time consumed by the evaluation process and the various tasks required for employees of different levels of experience, the aggregate results of the evaluations and any recommendations for changes in the process or other aspects of the duties of affected employees to improve the focus on the core mission of schools of teaching and learning.

(b) Before July 1, 2013, the state board shall adopt a legislative rule in accordance with article three-b, chapter twenty-nine-a of this code, for evaluating the performance of each professional person each year. The state board shall submit a draft of the proposed rule to the Legislative Oversight Commission on Education Accountability by February 15, 2013, and a final draft proposed rule prior to adoption. The rule shall provide for performance evaluations of professional personnel to be conducted in accordance with this section in each school and school system beginning with the 2013-14 school year.

(c) (1) The process adopted by the state board for evaluating the performance of classroom teachers shall incorporate at least the following:

(A) Alignment with the West Virginia professional teaching standards adopted by the state board that establish the foundation for educator preparation, teacher assessment and professional development throughout the state;

(B) Employment of the professional teaching standards to provide explicit and extensive measures of the work of teaching and what teachers must know and be able to do and provide evaluative measures of educator performance;

(C) The use of two pieces of evidence at two points in time over the instructional term to demonstrate student learning as an indicator of educator performance; and

(D) The use of school's school-wide student learning growth as measured by the state-wide summative assessment as an evaluative measure of all educators employed in the school.

(2) Eighty percent of the evaluation shall be based on an appraisal of the educator's ability to perform the critical standard elements of the professional teaching standards. The appraisal shall include conferences with the evaluator reinforced through observation. Fifteen percent of the evaluation shall be based on evidence of the learning of the students assigned to the educator in accordance with paragraph (C), subdivision (1) of this subsection, and five percent of the evaluation shall be based on student learning growth measured by the school-wide score on the state summative assessment in accordance with paragraph (D), subdivision (1) of this subsection.

(d) (1) The process adopted by the state board for evaluating the performance of principals and assistant principals shall include at least the following:

(A) Alignment with the West Virginia professional leadership standards adopted by the state board establishing the responsibility of principals for the collective success of their school including the learning, growth and achievement of students, staff and self;

(B) Employment of the professional leadership standards to provide explicit and extensive measures of the work of school leadership focused on the continuous improvement of teaching and learning. The process shall include conferences and goal setting with the superintendent or his or her designee and the use of a survey of stakeholders to assist in identifying the needs and establishing the goals for the school and the principal. The survey shall be distributed to at least the following stakeholders: Students, parents, teachers and service personnel. The evaluative measures shall include the use of data, evidence and artifacts to confirm the principal's performance on achieving the goals established by the principal and superintendent;

(C) The use of two pieces of evidence at two points in time over the instructional term to demonstrate the growth in student learning at the school; and

(D) The use of the school's school-wide student learning growth as measured by the state-wide summative assessment as an evaluative measure of all educators employed in the school.

(2) Eighty percent of the evaluation shall be based on an appraisal of the principal's or the assistant principal's ability to perform the critical standard elements of the professional leadership standards and achieve the goals established for the principal and the school. Fifteen percent of the evaluation shall be based on evidence of the learning of the students assigned to the school in accordance with paragraph (C), subdivision (1) of this subsection, and five percent of the evaluation shall be based on student learning growth measured by the school-wide score on the state summative assessment in accordance with paragraph (D), subdivision (1) of this subsection.

(e) Evaluations of the performance of professional personnel shall serve the following purposes:

(1) Serve as a basis for the improvement of the performance of the professional personnel in their assigned duties;

(2) Serve as the basis for providing professional development specifically targeted on the area or areas identified through the evaluation process as needing improvement. If possible, this targeted professional development should be delivered at the school-site using collaborative processes, mentoring or coaching or other approaches that maximize use of the instructional setting;

(3) Serve as the basis for establishing priorities for the provision of county-level professional development when aggregate evaluation data from the county's schools indicates an area or areas of needed improvement;

(4) Serve as a basis for informing the teacher preparation programs in this state of an area or areas of needed improvement in the programs, or informing a specific program of needed improvement, when state-level aggregate evaluation data indicates that beginning teachers who have graduated from the program have specific weaknesses;

(5) Provide an indicator of level of performance of the professional personnel;

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

(7) Serve as documentation for a dismissal on the grounds of unsatisfactory performance.

(f) The rule adopted by the state board shall include standards for performance of professional personnel and the criteria to be used to determine whether their performance meets the standards. The rule also shall include guidance on best practices for providing time within the school day for teachers subject to performance evaluations under this section to participate in the collaborative mentoring or coaching and planning processes necessary for execution of the performance evaluation process and achieving advanced levels of performance.

(g) The rule adopted by the state board shall include provisions for written improvement plans when necessary to improve the performance of the professional personnel. The written improvement plan shall be specific as to what improvements are needed in the performance of the professional personnel and shall clearly set forth recommendations for improvements including recommendations for additional education and training of professionals subject to recertification. Professional personnel whose performance evaluation includes a written improvement plan shall be given an opportunity to improve his or her performance through the implementation of the plan.

(h) A professional person whose performance is considered to be unsatisfactory shall be given written notice of his or her deficiencies. A written improvement plan to correct these deficiencies shall be developed by the employing county board and the employee. The professional person shall be given a reasonable period of time, not exceeding twelve months, to accomplish the requirements of the improvement plan and shall receive a written statement of the resources and assistance available for the purposes of correcting the deficiencies. If the next performance evaluation shows that the professional is now performing satisfactorily, no further action may be taken concerning the original performance evaluation. If the evaluation shows that the professional is still not performing satisfactorily, the evaluator either shall make additional written recommendations for improvement or may recommend the dismissal of the professional personnel in accordance with the provisions of section eight, article two of this chapter.

(i) No person may evaluate professional personnel for the purposes of this section unless the person has an administrative certificate issued by the state superintendent and has successfully completed education and training in evaluation skills through the center for professional development, or equivalent education training approved by the state board, which will enable the person to make fair, professional, and credible evaluations of the personnel whom the person is responsible for evaluating.

(j) Prior to implementation of the evaluation process pursuant to this section at a school, each affected employee shall be given training to ensure that the employees have a full understanding of the purposes, instruments and procedures used in evaluating their performance. Thereafter, this training shall be held annually at the beginning of the employment term.

§18A-3C-3. Comprehensive system for teacher induction and professional growth.

(a) The intent of the Legislature is to allow for a multistep statewide implementation of a comprehensive system of support for building professional practice of beginning teachers, specifically those on the initial and intermediate progressions, consistent with sound educational practices and resources available. In this regard, it is the intent of the Legislature that the transition of schools and school systems to a comprehensive system of support that includes support for improved professional performance targeted on deficiencies identified through the evaluation process will be implemented concurrent with the first year that a school or system receives final evaluation results from the performance evaluation process pursuant to section two of this article. Further, because of significant variability among the counties, not only in the size of their teaching force, distribution of facilities and available resources, but also because of their varying needs, the Legislature intends for the implementation of this section to be accomplished in a manner that provides adequate flexibility to the counties to design and implement a comprehensive system of support for improving professional performance that best achieves the goals of this section within the county. Finally, because of the critical importance of ensuring that all teachers perform at the accomplished level or higher in the delivery of instruction that at least meets the West Virginia professional teaching standards and because achieving this objective at a minimum entails providing

assistance to address the needs as indicated by the data informed results of annual performance evaluations, including the self-assessed needs of the teachers themselves, the Legislature expects the highest priority for county, regional and state professional development will be on meeting these needs and that the transition to a comprehensive system of support for improving professional practice will reflect substantial redirection of existing professional development resources toward this highest priority.

(b) On or before July 1, 2012, the state board shall publish guidelines on the design and implementation of a comprehensive system of support for improving professional practice. The purpose of the guidelines is to assist the county board with the design and implementation of a system that best achieves the goals of this section within the county. The guidelines may include examples of best practices and resources available to county boards to assist them with the design and implementation of a comprehensive system.

(c) For schools and school systems subject to the provisions of this article, the provisions of this article govern when they are in conflict with section two-b, article three of this chapter relating to beginning teacher internships, or in conflict with other provisions of this chapter and chapter eighteen of this code. (d) Effective for the school year beginning July 1, 2013, and thereafter, a county board is not eligible to receive state funding appropriated for the purposes of this section or any other provision of law related to beginning teacher internships and mentor teachers unless it has adopted a plan for implementation of a comprehensive system of support for improving professional practice, the plan has been verified by the state board as meeting the requirements of this section and the county is implementing the plan. The plan shall address the following:

(1) The manner in which the county will provide the strong school-based support and supervision that will assist beginning teachers in developing instructional and management strategies, procedural and policy expertise, and other professional practices they need to be successful in the classroom and perform at the accomplished level. Nothing in this subdivision prohibits a school or school system that was granted an exception or waiver from section two-c, article three of this chapter prior to the effective date of this section from continuing implementation of the program in accordance with the exception or waiver;

(2) The manner in which the county in cooperation with the teacher preparation programs in this state will provide strong school-based support and assistance necessary to make student teaching a productive learning experience;

(3) The manner in which the county will use the data from the educator performance evaluation system to serve as the basis for providing professional development specifically targeted on the area or areas identified through the evaluation process as needing improvement. If possible, this targeted professional development should be delivered at the school-site using collaborative processes, mentoring or coaching or other approaches that maximize use of the instructional setting;

(4) The manner in which the county will use the data from the educator performance evaluation system to serve as the basis for establishing priorities for the provision of county-level professional development when aggregate evaluation data from the county's schools indicates an area or areas of needed improvement;

(5) If a county uses master teachers, mentors, academic coaches or any other approaches using individual employees to provide support, supervision or other professional development or training to other employees for the purpose of improving their professional practice, the manner in which the county will select each of these individual employees based on demonstrated superior performance and competence as well as the manner in which the county will coordinate support for these employees: *Provided*, That the employment of persons for these positions shall adhere to the posting and other provisions of section seven-a, article four of this chapter utilizing subsection (c) of said section seven-a to judge the qualifications of the applicants. If the duties of the position are to provide mentoring to an individual teacher at only one school, then priority shall be given to applicants employed at the school at which those duties will be performed;

(6) The manner in which the county will use local resources available including, but not limited to, funds for professional development and academic coaches, to focus on the priority professional development goals of this section;

(7) The manner in which the county will adjust its scheduling, use of substitutes, collaborative planning time, calendar or other measures as may be necessary to provide sufficient time for professional personnel to accomplish the goals of this section as set forth in the county's plan; and

(8) The manner in which the county will monitor and evaluate the effectiveness of implementation and outcomes of the county system of support for improving professional practice.

(e) Effective the school year beginning July 1, 2013, and thereafter, appropriations for beginning teacher mentors and any new appropriation which may be made for the purposes of this section shall be expended by county boards only to accomplish the activities as set forth in their county plan pursuant to this section. Effective the school year beginning July 1, 2013, and thereafter, no specific level of compensation is guaranteed for any employee service or employment as a mentor and such service or employment is not subject to the provisions of this code governing extra duty contracts except as provided in subdivision (5), subsection (c) of this section.

(f) The Legislative Oversight Commission on Education Accountability shall review the progress of the implementation of this article and may make any recommendations it considers necessary to the Legislature during the 2013 regular legislative session.

House Bill 4263

Effective Date: March 10, 2012

Signed by Governor: March 30, 2012

Code Reference: Adds §5A-3-57

Title: The West Virginia Buy American Act

Major Provisions:

- Requires the State Purchasing Division and the Division of Labor to jointly convene a task force to study the use of American-made construction materials and manufactured goods in the various aspects of the construction and maintenance of public buildings and public works projects of the state and its political subdivisions.
- Specifies that the task force is to consist of the following representatives:
 - An architect, an engineer and a contractor, each designated by his or her respective licensing board;
 - One representative of the largest organization representing West Virginia manufacturers;
 - One representative each from the Division of Highways, the School Building Authority, the Water Development Authority, the General Services Division and the Higher Education Policy Commission;
 - Four labor representatives chosen by the largest labor organization in the state.
- Specifies that the study shall include, but not be limited to:
 - The need to maintain a list of all suppliers qualified to provide construction materials and manufactured goods produced in the United States;
 - The percentage of domestically produced construction materials and manufactured goods to be included in a construction project to qualify it as built with American made construction materials and manufactured goods; and,
 - Possible changes to the bidding process, including waiver requirements.

- Requires that the directors of the Purchasing Division and the Division of Labor report to the Joint Committee on Government and Finance by December 31, 2012 on the task force's findings.

ENROLLED

COMMITTEE SUBSTITUTE
FOR

H. B. 4263

(By Delegates Barker, Caputo, Martin,
Hamilton, Butcher and Stowers)

[Passed March 10, 2012; in effect from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto, a new section, designated §5A-3-57, relating to creating a “Buy American Task Force”; setting forth legislative findings; declaring state policy; requiring the Purchasing Division and the Division of Labor to convene a task force to study the use of American made construction materials and goods; setting forth the membership of the task force; specifying areas of study; and requiring report to Legislature by December 31, 2012.

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 §5A-3-57, to read as follows:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-57. Buy American task force; study; report.

(a) Findings. -- The Legislature finds that:

(1) The production of iron, steel, manufactured goods, coal and timber provides jobs and family income to many individuals in this state and, in turn, the jobs and family incomes of millions of persons in the United States;

(2) The taxes paid to the state and its political subdivisions by employers and employees engaged in the production and sale of iron, steel, manufactured goods, coal and timber are a large source of public revenues for West Virginia;

(3) The economy and general welfare of West Virginia and its people and the economy and general welfare of the United States are inseparably linked to the preservation and development of manufacturing, harvesting and mineral extraction industries in this state, as well as all the other states of this nation;

(4) The state’s taxpayer dollars are better spent if reinvested with its individual and employer taxpayers in order to foster job retention and growth, particularly within the manufacturing, harvesting and mineral extraction sectors, and to ensure a broad and healthy tax base for future investments vital to the state’s infrastructure; and

(5) West Virginia's procurement policies should reflect the state's and the nation's principles ensuring that the products of those companies and workers who abide by workplace safety and environmental laws, rules and regulations should be rewarded with a commonsense preference in government contracting.

(b) Declaration of policy. -- It is the policy of West Virginia that the state and its political subdivisions should aid and promote the economy of this state and the United States by requiring a preference for the procurement of iron, steel, manufactured goods, coal and timber produced in the United States in all contracts for the construction, reconstruction, repair, improvement or maintenance of public buildings and public works projects.

(c) The Purchasing Division and the Division of Labor shall jointly convene the task force created in subsection (d) of this section to study the use of American-made construction materials and manufactured goods in the various aspects of the construction and maintenance of public buildings and public works projects of the state and its political subdivisions which are funded in part by state grants, state loans or state appropriations.

(d) A task force is hereby created to assist the divisions with this study. The task force shall consist of:

(1) An architect, an engineer and a contractor, each designated by his or her respective licensing board;

(2) One representative of the largest organization representing West Virginia manufacturers;

(3) One representative each from the Division of Highways, the School Building Authority, the Water Development Authority, the General Services Division and the Higher Education Policy Commission; and

(4) Four labor representatives chosen by the largest labor organization in the state.

(e) The study shall include, but not be limited to:

(1) The need to maintain a list of all suppliers qualified to provide construction materials and manufactured goods produced in the United States;

(2) The percentage of domestically produced construction materials and manufactured goods to be included in a construction project to qualify it as built with American made construction materials and manufactured goods; and

(3) Possible changes to the bid process, including waiver requirements.

(e) The directors of the Purchasing Division and the Division of Labor shall report the Joint Committee on Government and Finance, by December 31, 2012, on the task force's findings on the best methods of promoting the American production of iron, steel,

manufactured goods, coal and timber and creating jobs through a buy American mandate, as well as the burdens and benefits of such mandate on the construction industry in West Virginia and the state's public building and public works projects.

House Bill 4299

Effective Date: March 6, 2012

Signed by Governor: March 15, 2012

Code Reference: Amends §18-5-13

Title: Authorizing a County Board of Education to Use the Services of a Bus Operator from Another County in Certain Circumstances

Major Provisions:

- Authorizes a county board of education to use bus operators regularly employed by another county board to operate school buses leased to other entities if bus operators from the owning county board are unavailable.

ENROLLED

H. B. 4299

(By Mr. Speaker, (Mr. Thompson) and Delegate Armstead)
[By Request of the Executive]

[Passed March 6, 2012; in effect from passage.]

AN ACT to amend and reenact §18-5-13 of the Code of West Virginia, 1931, as amended, relating to authorizing a county board of education to use the services of a bus operator from another county in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §18-5-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

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

Subject to the provisions of this chapter and the rules of the state board, each county board may:

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

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

(A) Any principal, teacher, student or other person in connection with the schools and school interests;

(B) Any program, activity or other endeavor of any nature operated or conducted by or in the name of the school; and

(C) 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) Auditing the records and conserving the funds, including securing surety bonds by expending 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) Establish:

(1) Schools, from preschool through high school;

(2) Vocational schools; and

(3) Schools and programs for post-high school instruction, subject to approval of the state board;

(c) Close any school:

(1) Which is unnecessary and assign the students to other schools. The closing shall 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 of the county board action not later than the first Monday in April. The board shall provide notice in the same manner as set forth in section four of this article; or

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

(d) Consolidate schools;

(e) Close any elementary school whose average daily attendance falls below twenty students for two consecutive months. 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) Provide transportation according to rules established by the county board, as follows:

(1) To provide at public expense adequate means of transportation:

(A) For all children of school age who live more than two miles distance from school by the nearest available road;

(B) For school children participating in county board-approved curricular and extracurricular activities;

(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 of each participating county board and is subject to the provisions of subsection (h) of this section; and

(D) Within available revenues, for students within two miles distance of the school; and

(2) To provide transportation for participants in projects operated, financed, sponsored or approved by the Bureau of Senior Services. This transportation shall be provided at no cost to the county board. All costs and expenses incident in any way to this transportation shall be borne by the bureau or the local or county affiliate of the bureau;

(3) Any school bus owned by the county board may be operated only by a bus operator regularly employed by the county board, except as provided in subsection (g) of this section;

(4) Pursuant to rules established by the state board, the county board may provide for professional employees to be certified to drive county board-owned vehicles that have a seating capacity of fewer than ten passengers. These employees may use the vehicles to transport students for school-sponsored activities, but may not use the vehicles to transport students between school and home. Not more than one of these vehicles may be used for any school-sponsored activity;

(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 coverage required by this section is in effect;

(g) Lease school buses pursuant to rules established by the county board.

(1) Leased buses may be operated only by bus operators regularly employed by the county board, except that these buses may be operated by bus operators regularly employed by another county board in this state if bus operators from the owning county are unavailable.

(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 and private corporations to transport school-age children for camps or educational activities;

(B) Any college, university or officially recognized campus organization for transporting students, faculty and staff to and from the college or university. Only college and university students, faculty and staff may be transported pursuant to this paragraph. The lease shall include provisions for:

(i) Compensation for bus operators;

(ii) Consideration for insurance coverage, repairs and other costs of service; 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 negligence of the drivers of school buses, trucks or other vehicles operated by the county board. 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;

(l) Provide 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) Employ teacher aides; to provide in-service training for the aides pursuant to rules established by the state board; and, prior to 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 in areas specifically related to the education of exceptional children;

(k) Establish and operate a self-supporting dormitory for:

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

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

(l) At the county board's discretion, employ, contract with or otherwise engage legal counsel in lieu of 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) Provide appropriate uniforms for school service personnel;

(n) Provide at public expense for 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) Allow designated employees to use publicly provided carriage to travel from their residences to their workplace and return. The use:

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

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

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

(q) Enter into cooperative agreements with other county boards to provide 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 field. The agreements are subject to approval by the state board;

(r) Provide information about vocational and higher education opportunities to exceptional students. 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 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) Enter into agreements with other county boards for the transfer and receipt of any 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) Enter into job-sharing arrangements, as defined in section one, article one, chapter eighteen-a of this 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 code;

(2) Notwithstanding any contrary provision of this code or legislative rule and specifically the provisions of article sixteen, chapter five of this code, a county board that enters into a job-sharing arrangement:

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

(B) May not provide insurance benefits of any type to more than one of the job-sharing employees, including any group plan available under the State Public Employees Insurance 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 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 code; and

(5) When entering into a job-sharing agreement, the county board and the participating employees shall consider issues such as retirement benefits, termination of the job-sharing agreement and any other issue the parties consider appropriate. Any provision in the agreement relating to retirement benefits 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

(u) 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.

House Bill 4433

Effective Date: June 7, 2012

Signed by Governor: March 20, 2012

Code Reference: Amends §18-2-34

Title: Modifying the Criteria for Awarding High School Diplomas to Certain Veterans

Major Provisions:

- Removes all reference to veterans of World War I
- Updates language to change Korean Conflict to Korean War
- Removes the provision that veterans of the Korean War or the Vietnam Conflict had to have been attending school prior to immediately enlisting in the armed services. The same criteria for awarding the diploma now applies to veterans of World War II, Korea and Vietnam

ENROLLED

COMMITTEE SUBSTITUTE
FOR

H. B. 4433

(By Delegates Williams, Ashley, Cann, Fern, Iaquina, Perry, R. Phillips, Pino, Shaver and Varner)

[Passed March 9, 2012; in effect ninety days from passage.]

A BILL to amend and reenact §18-2-34 the Code of West Virginia, 1931, as amended, relating to modifying the criteria for awarding high school diplomas to certain veterans.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. STATE BOARD OF EDUCATION.

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

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

(1) Left school prior to graduation and served in the Armed Forces of the United States; ~~Provided, That a veteran of the Korean Conflict or the Vietnam Conflict must have been attending high school at the time he or she left prior to graduating and served in the armed forces of the United States;~~

(2) Did not receive a high school diploma;

(3) Was discharged from the armed forces under honorable conditions; and

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

(b) The state board and the veterans' council, created in article one, chapter nine-a of this code, shall jointly propose rules for the identification of eligible veterans and for ~~the~~

awarding of high school diplomas. The rules shall provide for an application process and the credentials required to receive the a high school diplomas.

(c) A diploma shall be awarded by the county board in the county in which the veteran resides or in the county in which the veteran would have received his or her diploma, whichever location the veteran chooses.

(e) (d) For purposes of this section:

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

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

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

(2) (1) "World War II veteran" means any veteran who performed wartime service between September 16, 1940, and December 31, 1946;

(3) (2) "Korean Conflict War veteran" means any veteran who performed military service between June 27, 1950, and January 31, 1955; ~~and~~

(4) (3) "Vietnam Conflict veteran" means any veteran who performed military service between February 28, 1961, and May 7, 1975.

House Bill 4493

Effective Date: May 28, 2012
Signed by Governor: March 9, 2012
Code Reference: Amends §2-2-1a
Title: Establishing Special Memorial Days for Certain Military Veterans

Major Provisions:

- The bill adds the following dates as special memorial days and requires the Governor to declare, by proclamation, that:
 - o The week in which December 7 falls to be a special memorial week, to be known as Pearl Harbor and Military Appreciation week, honoring all West Virginians who fought in World War II and all other military conflicts. The bill also directs the State Department of Education to implement a program involving activities in which students shall participate that recognizes the contributions West Virginians have made to their country through service in the United States military.
 - o March 30 as a special memorial day to be known as Vietnam Veteran Recognition Day honoring all West Virginians who served in the United State Armed Forces in the Republic of Vietnam during the period beginning February 28, 1961 and ending May 7, 1975;
 - o August 7 as a special memorial day, to be known as Purple Heart Recognition Day, honoring all West Virginians who, while serving in the United States Armed Forces, have been wounded or killed in action; and,
 - o July 27 as a special memorial day to be known as Korean War Veteran Recognition Day honoring all West Virginians who served in the United States Armed Forces in the Korean War.

ENROLLED

COMMITTEE SUBSTITUTE
FOR

H. B. 4493

(By Delegates Ashley, Anderson, Iaquina, White,
Azinger, Armstead, Paxton, Boggs and Pasdon)

[Passed February 29, 2012 ; in effect 90 days from passage.]

AN ACT to amend and reenact §2-2-1a of the Code of West Virginia, 1931, as amended, relating to establishing special memorial observances for military veterans; observing the week in which December 7 falls as a special memorial week to be known as Pearl Harbor and Military Appreciation Week; directing the State Department of Education to implement a program involving students which recognizes the contributions made by West Virginians in the United States military; declaring March 30 as a special memorial day to be known as Vietnam Veteran Recognition Day; declaring August 7 as a special memorial day to be known as Purple Heart Recognition Day; and declaring July 27 as a special memorial day to be known as Korean War Veteran Recognition Day.

Be it enacted by the Legislature of West Virginia:

That §2-2-1a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

§2-2-1a. Special memorial days.

(a) The Governor shall, by proclamation, declare the week beginning with the Sunday before Thanksgiving as a special memorial week to be known as Native American Indian Heritage Week.

(b) The first Tuesday after the first Monday of November is designated Susan B. Anthony Day and shall only be a legal holiday in all years ending in an even number. The Governor shall annually issue a proclamation calling on all schools, civic organizations, government departments and citizens to undertake activities on the designated day and surrounding days to pay tribute to the accomplishments of Susan B. Anthony in securing the civil and political rights of all Americans, including securing equal voting rights for women.

(c) The Governor shall, by proclamation, declare the week during which December 7 as a falls to be a special memorial week, to be known as Pearl Harbor Day and Military

Appreciation week, honoring all West Virginians who fought in World War II and all other military conflicts and shall encourage all municipalities in the state to do the same. The State Department of Education is directed to implement a program involving activities in which students shall participate which shall recognize the contributions West Virginians have made to their country through service in the United States military.

(d) The Governor shall, by proclamation, declare March 30 as a special memorial day to be known as Vietnam Veteran Recognition Day honoring all West Virginians who served in the United States Armed Forces in the Republic of Vietnam during the period beginning February 28, 1961 and ending May 7, 1975, and shall encourage all counties and municipalities in the state to do the same.

(e) The Governor shall, by proclamation, declare August 7 as a special memorial day, to be known as Purple Heart Recognition Day, honoring all West Virginians who, while serving in the United States Armed Forces, have been wounded or killed in action and shall encourage all municipalities and counties in the state to do the same.

(f) The Governor shall, by proclamation, declare July 27 as a special memorial day to be known as Korean War Veteran Recognition Day honoring all West Virginians who served in the United States Armed Forces in the Korean War, and shall encourage all counties and municipalities in the state to do the same.

House Bill 4523

Effective Date: June 5, 2012

Signed by Governor: March 15, 2012

Code Reference: Amends §48-18-125

Title: Reporting the Employment and Income of Independent Contractors

Major Provisions:

- The bill requires all employers to report the employment of independent contractors, when payment for services is \$2,500 or more, by mailing the required information, to the Bureau for Child Support enforcement.
- The information shall be reported within 14 days of the earlier of first making payments that in the aggregate equal or exceed \$2,500 in any year, or entering into a contract with an independent contractor providing for payments that in the aggregate equal or exceed \$2,500 in any year.
- “Independent Contractor” is defined as an individual who is not an employee of the employer and who receives compensation or executes a contract for services performed for that employer. Independent contractor, however, does not include a direct seller as defined in 26 U.S.C. §3508(b)(2).

ENROLLED

H. B. 4523

(By Delegates Poore, Moore, Mahan, Guthrie,
Wells, Michael, Frazier, White and Miley)

[Passed March 7, 2012; in effect ninety days from passage.]

AN ACT to amend and reenact §48-18-125 of the Code of West Virginia, 1931, as amended, relating to the Bureau for Child Support enforcement; reporting employment and income; providing definition of independent contractor; and reporting income of an independent contractor if the contract for services is over \$2500.

Be it enacted by the Legislature of West Virginia:

That §48-18-125 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.

§48-18-125. Employment and income reporting.

(a) For purposes of this section:

(1) "Employee" means an individual who is an "employee" for purposes of federal income tax withholding, as defined in 26 U.S.C. §3401;

(2) "Employer" means the person or entity for whom an individual performs or performed any service of whatever nature and who has control of the payment of the individual's wages for performance of the service or services, as defined in 26 U.S.C. §3401;

(3) "Independent Contractor" means an individual who is not an employee of the employer and who receives compensation or executes a contract for services performed for that employer. Independent contractor does not include a direct seller as defined in 26 U. S. C. §3508(b)(2).

~~(3)~~ (4) An individual is considered a "new hire" on the first day in which that individual performs services for remuneration and on which an employer begins to withhold amounts for income tax purposes.

(b) Except as provided in subsections (c) and (d) of this section, all employers doing business in the state shall report to the Bureau for Child Support enforcement:

(1) The hiring of any person who resides or works in this state to whom the employer anticipates paying earnings; ~~and~~

(2) The rehiring or return to work of any employee or independent contractor who resides or works in this state-; and

(3) The contracting for services in the state with an independent contractor when payment for the services is \$2500 or more. Payment for the services shall be reported within fourteen days of the earlier of first making payments that in the aggregate equal or exceed \$2500 in any year or contracts with an independent contractor providing for payments that in the aggregate equal or exceed \$2500 in any year.

(c) Employers are not required to report the hiring, rehiring or return to work of any person who is an employee or independent contractor of a federal or state agency performing intelligence or counterintelligence functions if the head of the agency has determined that reporting could endanger the safety of the employee or independent contractor or compromise an ongoing investigation or intelligence mission.

(d) An employer that has employees or independent contractors in states other than this state and that transmits reports magnetically or electronically is not required to report to the Bureau for Child Support enforcement the hiring, rehiring or return to work of any employee or independent contractor if the employer has filed with the secretary of the federal department of health and human services, as required by 42 U.S.C. §653A, a written designation of another state in which it has employees or independent contractors as the reporting state.

(e) Employers shall report by mailing the required information to the Bureau for Child Support enforcement ~~a copy of the employee's W-4 form; however, an employer or~~ may transmit the information through another means if approved in writing by the Bureau for Child Support enforcement prior to the transmittal. The report shall include the employee's or independent contractor's name, address and social security number, start date, the employer's name and address, any different address of the payroll office and the employer's federal tax identification number. The employer may report other information, such as date of birth or income information, if desired.

(f) Employers shall submit a report within fourteen days of the date of the hiring, rehiring or return to work of the employee or independent contractor. However, if the employer transmits the reports magnetically or electronically by two monthly submissions, the reports shall be submitted not less than twelve days nor more than sixteen days apart.

(g) An employer shall provide to the Bureau for Child Support enforcement, upon its written request, information regarding an obligor's employment, wages or salary, medical insurance, start date and location of employment.

(h) Any employer who fails to report in accordance with the provisions of this section shall be assessed a civil penalty of no more than \$25 per failure. If the failure to report is the result of a conspiracy between the employer and the employee or independent contractor not to supply the required report or to supply a false or incomplete report, the employer shall be assessed a civil penalty of no more than \$500.

(i) Employers required to report under this section may assess each employee or independent contractor reported \$1 for the administrative costs of reporting.

(j) Uses for the new hire information include, but are not limited to, the following:

(1) The state directory of new hires shall furnish the information to the national directory of new hires;

(2) The Bureau for Child Support enforcement shall use information received pursuant to this section to locate individuals for purposes of establishing paternity and of establishing, modifying and enforcing child support obligations and may disclose the information to any agent of the agency that is under contract with the bureau to carry out those purposes;

(3) State agencies responsible for administering a program specified in 42 U.S.C. §1320b-7(b) shall have access to information reported by employers for purposes of verifying eligibility for the program; and

(4) The Bureau of Employment Programs and the Workers' Compensation Commission shall have access to information reported by employers for purposes of administering employment security and Workers' Compensation Programs.

House Bill 4542

Effective Date: July 1, 2012

Signed by Governor: April 2, 2012

Code Reference: Amends §21A-5-7

Title: Relating to Unemployment Compensation Benefits

Major Provisions:

- Denies relief to a contributory or reimbursable employer from benefit charges to their accounts if an overpayment of benefits established after July 1, 2012 is the result of the employer's failure, or the failure of a third part agent acting on the employer's behalf, to provide requested information timely or to adequately allow the Bureau of Employment Programs to accurately determine a claimant's eligibility for benefits when the claim for benefits is initially filed.

ENROLLED

H. B. 4542

(By Delegates White, T. Campbell, Varner and Williams)

[Requested by the Department of Commerce]

[Passed March 10, 2012; in effect July 1, 2012.]

AN ACT to amend and reenact §21A-5-7 of the Code of West Virginia, 1931, as amended, all relating to unemployment compensation benefits; preventing contributory employers from being relieved of benefit charges to their accounts if an overpayment of benefits is the result of the employer's or an employer's agent's failure to provide requested information to the agency timely or to adequately; and providing definitions.

Be it enacted by the Legislature of West Virginia:

That §21A-5-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-7. Joint and separate accounts.

(1) The commissioner shall maintain a separate account for each employer, and shall credit ~~his~~ the employer's account with all contributions ~~paid by him prior to July first, one thousand nine hundred sixty-one. On or after July first, one thousand nine hundred sixty-one, the commissioner shall maintain a separate account for each employer, and shall credit said employer's account with all contributions of such employer in excess of seven tenths of one percent of taxable wages; and on or after July first, one thousand nine hundred seventy-one, the commissioner shall maintain a separate account for each employer, and shall credit said employer's account with all contributions of such employer in excess of four tenths of one percent of taxable wages~~ of the employer in excess of four tenths of one percent of taxable wages: *Provided*, That any adjustment made in any employer's account after the computation date shall ~~may~~ not be used in the computation of the balance of an employer until the next following computation date: *Provided, however*, That nothing in this chapter shall ~~be construed to grant grants~~ grant an employer or individual in his, her or its service prior claims or rights to the amounts paid by him, her or its into the fund, either on his, her or its behalf or on behalf of ~~such~~ the individuals. The account of any employer which has been inactive for a period of four consecutive calendar years shall be terminated for all purposes.

(2) Benefits paid to an eligible individual for regular and extended total or partial unemployment beginning after the effective date of this article shall be charged to the account of the last employer with whom he or she has been employed as much as thirty working days, whether or not ~~such~~ the days are consecutive: *Provided*, That no

employer's account ~~shall~~ may be charged with benefits paid to any individual who has been separated from a noncovered employing unit in which he or she was employed as much as thirty days, whether or not ~~such~~ the days are consecutive: *Provided, however,* That no employer's account ~~shall~~ may be charged with more than fifty percent of the benefits paid to an eligible individual as extended benefits under the provisions of article six-a of this chapter: *Provided further,* That state and local government employers shall be charged with one hundred percent of the benefits paid to an eligible individual as extended benefits. ~~Beginning on July one, one thousand nine hundred, eighty-four,~~ Benefits paid to an individual are to be charged to the accounts of his or her employers in the base period, the amount of ~~such~~ the charges, chargeable to the account of ~~such~~ each employer, to be that portion of the total benefits paid ~~such~~ the individual as the wages paid him or her by ~~such~~ the employer in the base period are to the total wages paid him or her during his or her base period for insured work by all his or her employers in the base period. For the purposes of this section, no base period employer's account ~~shall~~ may be charged for benefits paid under this chapter to a former employee, ~~provided such~~ if the base period employer furnishes separation information within fourteen days from the date the notice was mailed or delivered, which results in a disqualification under the provision set forth in subsection one, section three, article six, or subsection two, section three, article six of this chapter or would have resulted in a disqualification under ~~such~~ that subsection except for a subsequent period of covered employment by another employing unit. Further, no contributory base period employer's experience rating account ~~shall~~ may be charged for benefits paid under this chapter to an individual who has been continuously employed by that employer on a part-time basis, if the part-time employment continues while the individual is separated from other employment and is otherwise eligible for benefits. One half of extended benefits paid to an individual ~~after July one, one thousand nine hundred eighty four, and subsequent years~~ are to be charged to the accounts of his or her employers, except state and local government employers, in the base period in the same manner provided for the charging of regular benefits. ~~Effective the first day of January, one thousand nine hundred eighty-eight,~~ The entire state share of extended benefits paid to an individual shall be charged to the accounts of his or her base period employers. The provisions of this section permitting the noncharging of contributory employers' accounts have no application to benefit charges imposed upon reimbursable employers.

(3) The commissioner shall, ~~for each year hereafter,~~ classify employers in accordance with their actual experience in the payment of contributions on their own behalf and with respect to benefits charged against their accounts, with a view of fixing ~~such~~ the contribution rates as will reflect such experiences. For the purpose of fixing ~~such~~ the contribution rates for each calendar year, the books of the department shall be closed on July 31 of the preceding calendar year, and any contributions ~~thereafter~~ paid after that, as well as benefits ~~thereafter~~ paid after that with respect to compensable weeks ending on or before June 30 of the preceding calendar year, ~~shall~~ may not be taken into account until the next annual date for fixing contribution rates: *Provided,* That if an employer has failed to furnish to the commissioner on or before July 31 of ~~such~~ the preceding calendar year the wage information for all past periods necessary for the computation of the contribution rate, ~~such~~ the employer's rate shall be, if it is

immediately prior to ~~such that~~ July 31, less than three and three-tenths percent, increased to three and three-tenths percent: *Provided, however,* That any payment made or any information necessary for the computation of a reduced rate furnished on or before the termination of an extension of time for ~~such the~~ payment or reporting of ~~such~~ information granted pursuant to a regulation rule of the commissioner authorizing ~~such an~~ extension, shall be taken into account for the purposes of fixing contribution rates: *Provided further,* That when the time for filing any report or making any payment required hereunder falls on Saturday, Sunday, or a legal holiday, the due date ~~shall be deemed to be~~ is the next succeeding business day: *And provided further,* That whenever, through mistake or inadvertence, erroneous credits or charges are found to have been made to or against the reserved account of any employer, the rate shall be adjusted as of January 1 of the calendar year in which ~~such the~~ mistake or inadvertence is discovered, but payments, made under any rate assigned prior to January 1 of ~~such that~~ year, ~~shall are not be deemed to be~~ erroneously collected.

(4) The commissioner may prescribe ~~regulations~~ rules for the establishment, maintenance and dissolution of joint accounts by two or more employers, and shall, in accordance with ~~such regulations~~ the rules and upon application by two or more employers to establish ~~such an a~~ joint account, or to merge their several individual accounts in a joint account, maintain ~~such a~~ joint account as if it ~~constituted is~~ a single employer's account.

(5) State and local government employers ~~are hereby authorized to~~ may enter into joint accounts and to maintain ~~such the~~ joint account or accounts as if it or they ~~constituted are~~ a single employer's account or accounts.

(6) Effective on and after July 1, ~~1981~~ 2012, if an employer has failed to furnish to the commissioner on or before August 31 of ~~one thousand nine hundred eighty, and each year thereafter, with the exception of one thousand nine hundred eighty-one, which due date shall be September thirty, one thousand nine hundred eighty-one,~~ the wage information for all past periods necessary for the computation of the contribution rate, ~~such the~~ employer's rate shall be, if it is immediately prior to July 1, ~~one thousand nine hundred eighty-one,~~ less than seven and five-tenths percent, increased to seven and five-tenths percent.

(7) Effective July 1, 2012, a contributory employer's account shall not be relieved of charges relating to a payment from the Fund if the department determines that:

(A) The erroneous payment was made because the employer, or an agent of the employer, was at fault for failing to respond timely or adequately to the request of the agency for information relating to the claim for compensation; and

(B) the employer or agent has established a pattern of failing to respond timely or adequately to such requests.

(8) For purposes of this section:

(A) “Erroneous payment” means a payment that but for the failure by the employer or the employer’s agent with respect to the claim for unemployment compensation would not have been made.

(B) “Pattern of failing” means repeated documented failure on the part of the employer or the agent of the employer to respond as requested in this section, taking into consideration the number of instances of failure in relation to the total volume of requests by the agency to the employer or the employer’s agent as described in this section.

House Bill 4549

Effective Date: July 1, 2012

Signed by Governor: April 2, 2012

Code Reference: Amends §21A-10-7

Title: Penalties for Filing False Unemployment Compensation Claims

Major Provisions:

- Imposes a penalty of 20% of the amount of the erroneous payment to be attached to the amount of the liability to be repaid by the benefit recipient for any payment of benefits determined to be obtained by the recipient's fraudulent statements or actions.
- The bill specifies that the first 75% of the penalty collected from the benefit recipient shall be deposited in the state's Unemployment Trust Fund and the remaining 25% shall be deposited in a special administrative account to be used for increased integrity activities to identify and recover erroneous payments of benefits created by fraudulent activities of benefit recipients.

ENROLLED

H. B. 4549

(By Delegates White, T. Campbell, Varner and Williams)

(By request of the Department of Commerce)

[Passed March 10, 2012; in effect July 1, 2012.]

AN ACT to amend and reenact §21A-10-7 of the Code of West Virginia, 1931, as amended, relating to imposing a monetary penalty on unemployment compensation recipients for obtaining benefits through the use of fraudulent statements or actions; specifying disposition of the penalties collected; and providing that penalty amounts may not be used to offset future benefit payments to recipients.

Be it enacted by the Legislature of West Virginia:

That §21A-10-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. GENERAL PROVISIONS.

§21A-10-7. False representations; penalties.

(a) A person who makes a false statement or representation knowing it to be false or who knowingly fails to disclose a material fact in order to obtain or attempt to obtain or increase a benefit, either for himself, herself or another, under this chapter, or under an employment security law of any other state or of the federal government for either of which jurisdictions this state is acting as an agent, ~~shall be~~ is guilty of a misdemeanor, and, upon conviction, ~~shall be~~ is punished by a fine of not less than \$100 nor more than \$1,000, or by ~~imprisonment~~ confinement in jail for not longer than thirty days, or both, and by full repayment of all benefits obtained fraudulently. Each false statement or representation, or failure to disclose a material fact, ~~shall constitute~~ is a separate offense.

(b) After July 1, 2012, a penalty of twenty percent of the amount of the erroneous payment attaches to the amount of the liability to be repaid by the benefit recipient for any payment of benefits determined to be obtained by the recipient's fraudulent statements or actions. The first seventy-five percent of the penalty collected from the benefit recipient shall be deposited in the state's Unemployment Trust Fund with the remaining twenty-five percent of the penalty collected to be deposited in a special administrative account to be used for increased integrity activities to identify and recover erroneous payments of benefits created by fraudulent activities of benefit recipients. Penalty amounts established due to fraudulent activities of benefit recipients may not be used to offset future benefits payable to benefit recipients.

House Bill 4583

Effective Date: March 5, 2012

Signed by Governor: March 15, 2012

Code Reference: Amends §18A-2-2, §18A-2-6, §18A-2-7, §18A-2-8a and §18A-4-7a

Title: Changing Certain Deadlines Associated with the Termination, Resignation and Transfer of School Personnel

Major Provisions:

- The deadlines for certain employment actions taken by county board of education were altered by this bill. The new deadlines are:
- On or before March 1 a teacher or service employee may initiate termination of a continuing contract by written resignation, to take effect at the close of the school year. *West Virginia Code §§ 18A-2-2(c)(1)(B) or 18A-2-6.*
- Before March 1 a service employee's continuing contract may be terminated by a majority vote of the full membership of the board, to take effect at the close of the school year (as in a reduction-in-force). *West Virginia Code §18A-2-6.* (See the statute for notice and hearing requirements that precede the vote.) Note: The corresponding deadline for teachers is "on or before" March 1. See below.
- On or before March 1 a teacher's continuing contract may be terminated by a majority vote of the full membership of the board, to take effect at the close of the school year (as in a reduction-in-force). *West Virginia Code §18A-2-2(c)(1)(A).* Note: The corresponding deadline for service employees is "before" March 1. See above.
- On or before March 1 the superintendent must provide written notice to professional and service employees who are being considered for transfer. *West Virginia Code § 18A-2-7(a).* The hearing on the proposed transfer shall be held on or before April 15.

- On or before April 15 the board must conduct a hearing for any employee who has requested one regarding his or her proposed transfer, and the superintendent must furnish the board with a written list of teachers and other employees to be considered for transfer for the ensuing school year. *West Virginia Code § 18A-2-7(a) and (b)*.
- On or before April 15 the superintendent, at a board meeting, must provide the board with a written list of all probationary teachers and service personnel that the superintendent recommends to be rehired for the ensuing school year. The board must act upon the superintendent's recommendations at the same meeting. *West Virginia Code § 18A-2-8a*.
- A classroom teacher who gives written notice to the county board on or before January 15 of the school year of his or her retirement from employment with the board at the conclusion of the school year shall be paid \$500 from the Early Notification of Retirement line item established for the Department of Education for this purpose, subject to appropriation by the Legislature. *West Virginia Code §18A-2-2(g)(1)*.
- After the twentieth day prior to the beginning of the instructional term, no person employed and assigned to a professional position may transfer to another professional position in the county during that instructional term unless the person holding that position does not have valid certification. The provisions of this subsection do not apply to the filling of a position vacated by virtue of resignation or retirement that became effective on or before the twentieth day prior to the beginning of the instructional term, but not posted until after that date. The county superintendent shall notify the state board of each transfer of a person employed in a professional position to another professional position after the twentieth day prior to the beginning of the instructional term. *West Virginia Code §18A-4-7a(l)*.

ENROLLED

H. B. 4583

(By Delegates M. Poling, Shaver, Caputo, Moye,
Perry, Michael, Sumner and Duke)

[Passed March 5, 2012; in effect from passage.]

AN ACT to amend and reenact §18A-2-2, §18A-2-6, §18A-2-7 and §18A-2-8a of the Code of West Virginia, 1931, as amended; and to amend and reenact §18A-4-7a of said code, all relating to school personnel; changing certain deadlines pertaining to termination of a continuing contract, resignation, retirement, transfer and rehiring of probationary employees; changing the number of days prior to the beginning of the instructional term for limiting the transfer of certain employees; and restricting application of certain provisions pertaining to limiting the transfer of certain employees.

Be it enacted by the Legislature of West Virginia:

That §18A-2-2, §18A-2-6, §18A-2-7 and §18A-2-8a of the code of West Virginia, 1931, as amended, be amended and reenacted; and that §18A-4-7a of said code be amended and reenacted, 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; written notice bonus for teachers and professional personnel.

(a) Before entering upon their duties, all teachers shall execute a contract with their county boards, which shall state the salary to be paid and shall be in the form prescribed by the state superintendent. Each contract shall be signed by the teacher and by the president and secretary of the county board and shall be filed, together with the certificate of the teacher, by the secretary of the office of the county board: *Provided*, That when necessary to facilitate the employment of employable professional personnel and prospective and recent graduates of teacher education programs who have not yet attained certification, the contract may be signed upon the condition that the certificate is issued to the employee prior to the beginning of the employment term in which the employee enters upon his or her duties.

(b) Each teacher's contract, under this section, shall be designated as a probationary or continuing contract. A probationary teacher's contract 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. 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 a bachelor's degree and the county board enter into a new contract of employment, it shall be a continuing contract, subject to the following:

(1) Any teacher holding a valid certificate with less than a bachelor's degree who is employed in a county beyond the three-year probationary period shall upon qualifying for the professional certificate based upon a bachelor's degree, if reemployed, be granted continuing contract status; and

(2) 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 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:

(A) By a majority vote of the full membership of the county board on or before ~~February 4~~ March 1 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 on the termination issue; or

(B) By written resignation of the teacher on or before ~~February 4~~ March 1 to initiate termination of a continuing contract;

(2) The termination shall take effect at the close of the school year in which the contract is terminated;

(3) The contract may be terminated at any time by mutual consent of the school board and the teacher;

(4) This section does not affect the powers of the school board to suspend or dismiss a principal or teacher pursuant to section eight of this article;

(5) 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 1984-1985 shall remain in full force and effect;

(6) A continuing contract does 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 may not be included on the list. In case of dismissal for lack of need, a dismissed teacher shall be placed upon a preferred list in the order of their length of service with that board. No teacher may be employed by the board until each qualified teacher upon the preferred list, in order, has been offered the opportunity for reemployment in a position for which he or she is qualified, not including a teacher who has accepted a teaching position elsewhere. The reemployment shall be upon a teacher's preexisting continuing contract and 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 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 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 doing so by personal illness or other just cause or unless released from his or her contract by the board, or who violates any lawful provision of the contract, is disqualified to teach in any other public school in the state for a period of the next ensuing school year and the State Department of Education or board may hold all papers and credentials of the teacher on file for a period of one year for the violation: *Provided*, That marriage of a teacher is not 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 or request a leave of absence, the resignation or leave of absence to become effective on or before July 15 of the same year and after completion of the employment term, may do so at any time during the school year by written notification of the resignation or leave of absence and any notification received by a county board shall automatically extend the teacher's public employee insurance coverage until August 31 of the same year.

(g) (1) A classroom teacher who gives written notice to the county board on or before ~~December 4~~ January 15 of the school year of his or her retirement from employment with the board at the conclusion of the school year shall be paid \$500 from the Early Notification of Retirement line item established for the Department of Education for this purpose, subject to appropriation by the Legislature. If the appropriations to the Department of Education for this purpose are insufficient to compensate all applicable teachers, the Department of 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.

(2) The position of a classroom teacher providing written notice of retirement pursuant to this subsection may be considered vacant and the county board may immediately post the position as an opening to be filled at the conclusion of the school year. If a teacher has been hired to fill the position of a retiring classroom teacher prior to the start of the next school year, the retiring classroom teacher is disqualified from continuing his or her employment in that position. However, the retiring classroom teacher may be permitted to continue his or her employment in that position and forfeit the early retirement notification payment if, after giving notice of retirement in accordance with this subsection, he or she becomes subject to a significant unforeseen financial hardship, including a hardship caused by the death or illness of an immediate family member or loss of employment of a spouse. Other significant unforeseen financial hardships shall be determined by the county superintendent on a case-by-case basis. This subsection does not prohibit a county school board from eliminating the position of a retiring classroom teacher.

§18A-2-6. Continuing contract status for service personnel; termination.

After three years of acceptable employment, each service personnel employee who enters into a new contract of employment with the board shall be granted continuing contract status: *Provided*, That a service personnel employee 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 employment is during the next succeeding school year or immediately following an approved leave of absence extending no more than one year. The continuing contract of any such employee shall remain in full force and effect except as modified by mutual consent of the school board and the employee, unless and until terminated with written notice, stating cause or causes, to the employee, by a majority vote of the full membership of the board before ~~February 4~~ March 1 of the then current year, or by written resignation of the employee on or before that date. The affected employee has the right of a hearing before the board, if requested, before final action is taken by the board upon the termination of such employment.

Those employees who have completed three years of acceptable employment as of the effective date of this legislation shall be granted continuing contract status.

§18A-2-7. Assignment, transfer, promotion, demotion, suspension and recommendation of dismissal of school personnel by superintendent; preliminary notice of transfer; hearing on the transfer; proof required.

(a) The superintendent, subject only to approval of the board, may assign, transfer, promote, demote or suspend school personnel and recommend their dismissal pursuant to provisions of this chapter. However, an employee shall be notified in writing by the superintendent on or before ~~February 4~~ March 1 if he or she is being considered for transfer or to be transferred. Only those employees whose consideration for transfer or

intended transfer is based upon known or expected circumstances which will require the transfer of employees shall be considered for transfer or intended for transfer and the notification shall be limited to only those employees. Any teacher or employee who desires to protest the proposed transfer may request in writing a statement of the reasons for the proposed transfer. The statement of reasons shall be delivered to the teacher or employee within ten days of the receipt of the request. Within ten days of the receipt of the statement of the reasons, the teacher or employee may make written demand upon the superintendent for a hearing on the proposed transfer before the county board of education. The hearing on the proposed transfer shall be held on or before ~~March 15~~ April 15. At the hearing, the reasons for the proposed transfer must be shown.

(b) The superintendent at a meeting of the board on or before ~~March 15~~ April 15 shall furnish in writing to the board a list of teachers and other employees to be considered for transfer and subsequent assignment for the next ensuing school year. An employee who was not provided notice and an opportunity for a hearing pursuant to subsection (a) of this section may not be included on the list. All other teachers and employees not so listed shall be considered as reassigned to the positions or jobs held at the time of this meeting. The list of those recommended for transfer shall be included in the minute record of the meeting and all those so listed shall be notified in writing, which notice shall be delivered in writing, by certified mail, return receipt requested, to the persons' last known addresses within ten days following the board meeting, of their having been so recommended for transfer and subsequent assignment and the reasons therefor.

(c) The superintendent's authority to suspend school personnel shall be temporary only pending a hearing upon charges filed by the superintendent with the board of education and the period of suspension may not exceed thirty days unless extended by order of the board.

(d) The provisions of this section respecting hearing upon notice of transfer is not applicable in emergency situations where the school building becomes damaged or destroyed through an unforeseeable act and which act necessitates a transfer of the school personnel because of the aforementioned condition of the building.

§18A-2-8a. Notice to probationary personnel of rehiring or nonrehiring; hearing. The superintendent at a meeting of the board on or before ~~March 15~~ April 15 of each year shall provide in writing to the board a list of all probationary teachers that he or she recommends to be rehired for the next ensuing school year. The board shall act upon the superintendent's recommendations at that meeting in accordance with section one of this article. The board at this same meeting shall also act upon the retention of other probationary employees as provided in sections two and five of this article. Any such probationary teacher or other probationary employee who is not rehired by the board at that meeting shall be notified in writing, by certified mail, return receipt requested, to such persons' last known addresses within ten days following said board meeting, of their not having been rehired or not having been recommended for rehiring.

Any probationary teacher who receives notice that he or she has not been recommended for rehiring or other probationary employee who has not been reemployed may within ten days after receiving the written notice request a statement of the reasons for not having been rehired and may request a hearing before the board. The hearing shall be held at the next regularly scheduled board of education meeting or a special meeting of the board called within thirty days of the request for hearing. At the hearing, the reasons for the nonrehiring must be shown.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

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

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

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

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

(1) Appropriate certification, licensure or both;

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

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

(4) Academic achievement;

(5) Relevant specialized training;

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

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

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

(1) Appropriate certification, licensure or both;

- (2) Total amount of teaching experience;
- (3) The existence of teaching experience in the required certification area;
- (4) Degree level in the required certification area;
- (5) Specialized training directly related to the performance of the job as stated in the job description;
- (6) Receiving an overall rating of satisfactory in the previous two evaluations conducted pursuant to section twelve, article two of this chapter; and

(7) Seniority.

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

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

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

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

(l) Employment for a full employment term shall equal one year of seniority, but no employee may accrue more than one year of seniority during any given fiscal year. Employment for less than the full employment term shall be prorated. A random

selection system established by the employees and approved by the board shall be used to determine the priority if two or more employees accumulate identical seniority: *Provided*, That when two or more principals have accumulated identical seniority, decisions on reductions in force shall be based on qualifications.

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

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

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

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

(4) If, prior to August 1, of the year a reduction in force is approved, the reason for any particular reduction in force no longer exists as determined by the county board in its sole and exclusive judgment, the board shall rescind the reduction in force or transfer and shall notify the released employee in writing of his or her right to be restored to his or her position of employment. Within five days of being so notified, the released employee shall notify the board, in writing, of his or her intent to resume his or her position of employment or the right to be restored shall terminate. Notwithstanding any other provision of this subdivision, if there is another employee on the preferred recall list with proper certification and higher seniority, that person shall be placed in the position restored as a result of the reduction in force being rescinded.

(k) For the purpose of this article, all positions which meet the definition of "classroom teacher" as defined in section one, article one of this chapter shall be lateral positions. For all other professional positions, the county board of education shall adopt a policy by October 31, 1993, and may modify the policy thereafter as necessary, which defines which positions shall be lateral positions. The board shall submit a copy of its policy to the state board within thirty days of adoption or any modification, and the state board shall compile a report and submit the report to the Legislative Oversight Commission on Education Accountability by December 31, 1993, and by that date in any succeeding year in which any county board submits a modification of its policy relating to lateral positions. In adopting the policy, the board shall give consideration to the rank of each

position in terms of title; nature of responsibilities; salary level; certification, licensure or both; and days in the period of employment.

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

(1) The person may apply for any posted, vacant positions with the successful applicant assuming the position at the beginning of the next instructional term;

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

(3) The county board, upon recommendation of the superintendent may fill a position before the next instructional term when it is determined to be in the best interest of the students. ~~: Provided, That~~ The county superintendent shall notify the state board of each transfer of a person employed in a professional position to another professional position after the ~~fifth~~ twentieth day prior to the beginning of the instructional term; and

(4) The provisions of this subsection do not apply to the filling of a position vacated because of resignation or retirement that became effective on or before the twentieth day prior to the beginning of the instructional term, but not posted until after that date; and

(5) The Legislature finds that it is not in the best interest of the students particularly in the elementary grades to have multiple teachers for any one grade level or course during the instructional term. It is the intent of the Legislature that the filling of positions through transfers of personnel from one professional position to another after the ~~fifth~~ twentieth day prior to the beginning of the instructional term should be kept to a minimum.

(m) All professional 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. As to any professional position opening within the area where they had previously been employed or to any lateral area for which they have certification, licensure or both, the employee shall be recalled on the basis of seniority if no regular, full-time professional personnel, or those returning from leaves of absence with greater seniority, are qualified, apply for and accept the position.

(n) Before position openings that are known or expected to extend for twenty consecutive employment days or longer for professional personnel may be filled by the board, the board shall be required to notify all qualified professional personnel on the preferred list and give them an opportunity to apply, but failure to apply shall not cause the employee to forfeit any right to recall. The notice shall be sent by certified mail to the

last known address of the employee, and it shall be the duty of each professional personnel to notify the board of continued availability annually, of any change in address or of any change in certification, licensure or both.

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

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

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

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

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

(D) 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; and

(E) 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;

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

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

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

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

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

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

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

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

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

(s) The county board shall compile, update annually on July 1 and make available by electronic or other means to all employees a list of all professional personnel employed by the county, their areas of certification and their seniority.

House Bill 4655

Effective Date: March 10, 2012

Signed by Governor: April 2, 2012

Code Reference: Amends §18A-4-8e

Title: Relating to School Service Personnel Certification

Major Provisions:

- The bill changes the revocation or denial of a school bus operator certification procedure from a hearing examiner due process to a review panel due process method.
- The State Superintendent of School may now revoke any bus operator's certificate only after 10 days' notice and upon proper evidence, and only for five specified causes:
 - (i) intemperance, untruthfulness, cruelty or immorality;
 - (ii) conviction of or guilty plea or plea of no contest to a felony charge;
 - (iii) conviction of or guilty plea or plea of no contest to any charge involving sexual misconduct with a minor or a student.
 - (iv) just and sufficient cause for revocation as specified by State Board of Education rule; and
 - (v) using fraudulent, unapproved or insufficient credit to obtain the certificate.
- However, revocation of a bus operator's certificate for reasons (i), (iv) and (v) may occur only if there is a rational nexus between the employee's conduct and the performance of the job.
- Moreover, in cases where the employing county board disciplined a bus operator's misconduct with a sanction less than dismissal, as well as in those cases where a bus operator is meeting or has met an improvement plan, the employee's certificate may be revoked by the State Superintendent only upon proof by "clear and convincing evidence" that the bus operator committed one of the offenses (i) through (v), above, and that the offense rendered the

bus operator “unfit to operate a bus.”

- The bill requires the State Superintendent to appoint a review panel to conduct hearings and make recommendations regarding the revocation or denial bus operator certificates. After consulting with employee organizations, the State Board of Education must adopt a policy regulating the review panel’s membership, appointment, governing principles and meeting schedule.
- Requires county superintendents to report to the State Superintendent of Schools any bus operator known to have acted in a manner that would warrant the revocation of his or her certificate.
- The State Superintendent retains the power to recall and make corrections to any bus operator certificate granted through error, oversight or misinformation.

ENROLLED

H. B. 4655

(By Delegates M. Poling and Paxton)

[Passed March 10, 2012; in effect from passage.]

AN ACT to amend and reenact §18A-4-8e of the Code of West Virginia, 1931, as amended, relating to school service personnel certification; establishing criteria for certain certificate issuance, denial and revocation; establishing certification review panel; requiring reporting of certain acts; providing for certificate recall and correction under certain circumstance; and requiring State Board rule.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8e. Competency testing for service personnel; and recertification testing for bus operators.

(a) The State Board of Education shall develop and make available competency tests for all of the classification titles defined in section eight of this article and listed in section eight-a of this article for service personnel. Each classification title defined and listed is considered a separate classification category of employment for service personnel and has a separate competency test, except for those class titles having Roman numeral designations, which are considered a single classification of employment and have a single competency test.

(1) The cafeteria manager class title is included in the same classification category as cooks and has the same competency test.

(2) The executive secretary class title is included in the same classification category as secretaries and has the same competency test.

(3) The classification titles of chief mechanic, mechanic and assistant mechanic are included in one classification title and have the same competency test.

(b) The purpose of these tests is to provide county boards a uniform means of determining whether school service personnel who do not hold a classification title in a particular category of employment meet the definition of the classification title in another category of employment as defined in section eight of this article. Competency tests may

not be used to evaluate employees who hold the classification title in the category of their employment.

(c) The competency test consists of an objective written or performance test, or both. Applicants may take the written test orally if requested. Oral tests are recorded mechanically and kept on file. The oral test is administered by persons who do not know the applicant personally.

(1) The performance test for all classifications and categories other than bus operator is administered by an employee of the county board or an employee of a multicounty vocational school that serves the county at a location designated by the superintendent and approved by the board. The location may be a vocational school that serves the county.

(2) A standard passing score is established by the state Department of Education for each test and is used by county boards.

(3) The subject matter of each competency test is commensurate with the requirements of the definitions of the classification titles as provided in section eight of this article. The subject matter of each competency test is designed in such a manner that achieving a passing grade does not require knowledge and skill in excess of the requirements of the definitions of the classification titles. Achieving a passing score conclusively demonstrates the qualification of an applicant for a classification title.

(4) Once an employee passes the competency test of a classification title, the applicant is fully qualified to fill vacancies in that classification category of employment as provided in section eight-b of this article and may not be required to take the competency test again.

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

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

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

(g) A minimum of one day of appropriate in-service training is provided to employees to assist them in preparing to take the competency tests.

(h) Competency tests are used to determine the qualification of new applicants seeking initial employment in a particular classification title as either a regular or substitute employee.

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

(j) The requirements of this section do not alter the definitions of class titles as provided in section eight of this article or the procedure and requirements of section eight-b of this article.

(k) Notwithstanding any other provision of this code to the contrary and notwithstanding any rules of the School Board concerning school bus operator certification ~~in effect of the effective date of this section~~, the certification test for school bus operators shall be required as follows, and school bus operators ~~shall~~ may not be required to take the certification test more frequently:

(1) For substitute school bus operators and for school bus operators with regular employee status but on a probationary contract, the certification test shall be administered annually;

(2) For school bus operators with regular employee status and continuing contract status, the certification test shall be administered triennially; and

(3) For substitute school bus operators who are retired from a county board and who at the time of retirement had ten years of experience as a regular full-time bus operator, the certification test shall be administered triennially.

(4) School bus operator certificate. —

(A) A school bus operator certificate may be issued to a person who has attained the age of twenty-one, completed the required training set forth in State Board rule, and met the physical requirements and other criteria to operate a school bus set forth in State Board rule.

(B) The State Superintendent may, after ten days' notice and upon proper evidence, revoke the certificate of any bus operator for any of the following causes:

(i) Intemperance, untruthfulness, cruelty or immorality;

(ii) Conviction of or guilty plea or plea of no contest to a felony charge;

(iii) Conviction of or guilty plea or plea of no contest to any charge involving sexual misconduct with a minor or a student;

(iv) Just and sufficient cause for revocation as specified by State Board rule; and

(v) Using fraudulent, unapproved or insufficient credit to obtain the certificates.

(vi) Of the causes for certificate revocation listed in this paragraph (B), the following causes constitute grounds for revocation only if there is a rational nexus between the conduct of the bus operator and the performance of the job:

(I) Intemperance, untruthfulness, cruelty or immorality;

(II) Just and sufficient cause for revocation as specified by State Board rule; and

(III) Using fraudulent, unapproved or insufficient credit to obtain the certificate.

(C) The certificate of a bus operator may not be revoked for either of the following unless it can be proven by clear and convincing evidence that the bus operator has committed one of the offenses listed in this subsection and his or her actions render him or her unfit to operate a school bus:

(i) Any matter for which the bus operator was disciplined, less than dismissal, by the employing county board; or

(ii) Any matter for which the bus operator is meeting or has met an improvement plan determined by the county board.

(D) The State Superintendent shall designate a review panel to conduct hearings on certificate revocations or denials and make recommendations for action by the State Superintendent. The State Board, after consultation with employee organizations representing school service personnel, shall promulgate a rule to establish the review panel membership and composition, method of appointment, governing principles and meeting schedule.

(E) It is the duty of any county superintendent who knows of any acts on the part of a bus operator for which a certificate may be revoked in accordance with this section to report the same, together with all the facts and evidence, to the State Superintendent for such action as in the State Superintendent's judgment may be proper.

(F) If a certificate has been granted through an error, oversight or misinformation, the State Superintendent may recall the certificate and make such corrections as will conform to the requirements of law and State Board rules.

(5) The State Board shall promulgate in accordance with article three-b, chapter twenty-nine-a of this code, revised rules in compliance with this subsection.

SENATE CONCURRENT RESOLUTION NO. 33

(By Senators Wells, Plymale, Beach, Browning, Edgell, Foster, Laird, Stollings,
Barnes and Boley)

[Originating in the Committee on Education]

Requesting the Joint Committee on Government and Finance conduct a study of multiple topics all related to health, nutrition and wellness programs in public schools, including fitness requirements, nutrition in school meals and the inclusion of West Virginia food products in school meals.

Whereas, The Legislature recognizes the rising burden on our citizens, society and health care system related to the current childhood obesity crisis; and

Whereas, The Legislature recognizes the importance of fitness and nutrition to the health and well-being of our students; and

Whereas, It is found that, currently, many West Virginia students eat two meals a day at school, constituting a large portion of their daily caloric intake; and

Whereas, The Legislature further recognizes the crucial role that fresh produce plays in meeting the nutritional needs of our students; and

Whereas, The Legislature recognizes the importance of strengthening our local food systems for regional economic development; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature hereby requests the Joint Committee on Government and Finance to conduct a study of multiple topics all related to health, nutrition and wellness programs in public schools, including fitness requirements, nutrition in school meals and the inclusion of West Virginia food products in school meals; and, be it

Further Resolved, That the Joint Committee on Government and Finance is hereby requested to study the following:

- (1) The success of Cabell County schools which have adopted an innovative approach to preparing school meals, and the possibility of adopting this approach statewide;
- (2) The current nutritional requirements and purchasing agreements in West Virginia's school meal programs;
- (3) The current required levels of physical education in public schools; and

(4) The current percentage of food sourced from West Virginia growers and producers in school meals, and the possibility of instituting a requirement with regard to this percentage; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2013, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

SENATE CONCURRENT RESOLUTION NO. 57

(By Senators Plymale, Browning, Edgell, Foster, Laird, Stollings, Tucker, Wills, Boley and Wells)

[Originating in the Committee on Education]

Requesting the Joint Committee on Government and Finance conduct a study on the efficacy of the state's cooperative purchasing process, including comparison to other state processes, and determine whether or not it would be beneficial to increase flexibility within the process.

Whereas, The Education Efficiency Audit of West Virginia's Primary and Secondary Education System recognizes unique aspects that make purchases by the West Virginia Department of Education (WVDE) a hindrance; and

Whereas, The same audit declares that the State procurement system provides neither adequate nor timely procurement services for certain operations; and

Whereas, West Virginia Code §5A-3-19 authorizes the Director of the Department of Administration, Division of Purchasing, to allow agencies to participate in consortium for the purchases of commodities or services with other public bodies if available and financially advantageous; and

Whereas, Despite the authority to do so, the Department of Administration has determined that WVDE cannot use educational consortiums products and services without going through a Request for Proposal (RFP) or bid process, thereby creating a process that can take several months; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature hereby requests the Joint Committee on Government and Finance to conduct a study on the efficacy of the state's cooperative purchasing process, including comparison to other state processes, and determine whether or not it would be beneficial to increase flexibility within the process; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2013, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

SENATE CONCURRENT RESOLUTION NO. 95

(By Senators Plymale, Beach, Chafin, Edgell, Laird, Stollings, Tucker, Wills and Boley)

[Originating in the Committee on Education]

Requesting the Joint Committee on Government and Finance to authorize a study regarding whether the state's laws regulating harassment in schools provide the constitutionally required safeguards to student expression.

Whereas, The State of West Virginia has an interest in ensuring that all students are safe at school; and

Whereas, The laws governing student behavior in West Virginia must apply equally and fairly to all students; and

Whereas, The Supreme Court of the United States requires government to safeguard the First Amendment right of persons in schools to engage in expression; and

Whereas, Laws that regulate harassment sometimes have the effect of restricting, punishing, or discouraging student expression even when such expression does not cause a material and substantial disruption of the educational environment of the school; therefore be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to authorize a study regarding whether the state's laws regulating harassment in schools provide the constitutionally required safeguards to student expression; and be it

Further resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2013, on its findings, conclusions and recommendation, together with drafts of any legislation necessary to effectuate its recommendations; and be it

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

SENATE CONCURRENT RESOLUTION NO. 96

(By Senators Plymale, Wells, Beach, Chafin, Edgell, Laird, Stollings, Tucker, Wills and Boley)

Recognizing the Deaf or Hard of Hearing Student's Bill of Rights.

Whereas, Several states and state agencies in the nation have adopted a Deaf or Hard of Hearing Student's Bill of Rights in some form; and

Whereas, Hearing loss impacts one of the most basic of human needs: the ability to communicate with other human beings; and

Whereas, Many individuals who are deaf or hard of hearing use sign systems as their communication mode, and often American Sign Language (ASL) is their primary language; and

Whereas, "Communication Mode or Language" means one or more of the following systems or methods of communication applicable to the deaf and hard of hearing: American Sign Language; English-based manual or sign systems; oral, aural, or speech-based training; or any other communication mode or language which a student or his or her parents or guardians choose to utilize; and

Whereas, Other individuals who are deaf or hard of hearing express and receive language orally and aurally, with or without visual signs or cues; and

Whereas, Typically, young children who are deaf or hard of hearing lack significant English language skills; and

Whereas, It is essential for the well-being and growth of students who are deaf or hard of hearing that educational programs recognize the unique nature of hearing loss and ensure that all students who are deaf or hard of hearing have appropriate, ongoing and fully accessible educational opportunities in all settings; and

Whereas, There are more than 450 students who are deaf or hard of hearing in the State of West Virginia in grades kindergarten through twelfth; and

Whereas, A very small percentage of these students matriculate to post-secondary education after graduating from high school; and

Whereas, Many individuals who are deaf or hard of hearing remain unemployed after completing school due to communication barriers; and

Whereas, Students who are deaf or hard of hearing require specialized instruction, services, equipment, and materials; and

Whereas, Significant barriers to education and employment exist for individuals who are deaf or hard of hearing in our current education system and must be addressed; and

Whereas, Each student's unique communication mode must be respected, utilized, and developed to an appropriate level of proficiency; and

Whereas, A student who is deaf or hard of hearing must have an education in which teachers of the deaf and hard of hearing and the interpreter are proficient in the primary language mode of the student; and

Whereas, Each teacher of the deaf and hard of hearing must be appropriately trained in this area of exceptionality and be sensitive to the cultural and linguistic needs of students who are deaf or hard of hearing; and

Whereas, A student who is deaf or hard of hearing must receive an education in which teachers of the deaf and hard of hearing, psychologists, speech therapists, evaluators, administrators and other special education personnel understand the unique nature of hearing loss and are specifically trained to understand the student's needs; and

Whereas, A student who is deaf or hard of hearing must be assessed using tools which accurately evaluate aptitude, achievement level or such other factors as the tool is intended to measure. Any assessment must be delivered and administered in the student's native language, must not be discriminatory, and must provide a qualified interpreter for its duration; and

Whereas, The Individual Education Plan (IEP) Team for a student who is deaf or hard of hearing must consider opportunities for direct communication with peers who are approximately the same age and ability level and in the student's language and communication modes; and

Whereas, The IEP Team must consider providing related services and program options that give the deaf or hard of hearing student an appropriate and equal opportunity for communication access; and

Whereas, In considering a student's specific communication needs, and especially the importance of clear communication, the IEP team must emphasize the acquisition of the language or communication mode chosen for or by the student, including sign, speech or another mode; and

Whereas, Language acquisition must be prioritized through: Using the student's individual communication mode or language; providing the opportunity to interact with peers who have similar cognitive and language abilities; providing the opportunity for interaction with deaf or hard of hearing adult models who use the same or similar communication mode or language as the student; providing direct language access by teachers of the deaf and hard of hearing, interpreters and other specialists who are proficient in the student's primary communication mode or language; and providing

accessible academic instruction, school services and extracurricular activities in the student's communication mode or language; and

Whereas, A student who is deaf or hard of hearing must have access to professional personnel with whom he or she can communicate directly in his or her language and communication modes; and

Whereas, A student who is deaf or hard of hearing and his or her parents or guardians must be given the opportunity to participate fully in the educational planning, which includes having access to all relevant information; and

Whereas, A student who is deaf or hard of hearing must have programs in which he or she has direct and appropriate access to a full spectrum of educational and vocational training programs, including, but not limited to, recess, lunch and extracurricular social and athletic activities; and

Whereas, A student who is deaf or hard of hearing must be provided appropriate assistive technology, and students, teachers and other school personnel must be trained in its use; and

Whereas, A student who is deaf or hard of hearing must be educated in classrooms where sound levels meet the Acoustical Society of America (ASA) guidelines for reducing room noise and the signal-to-noise ratio through the use of materials such as acoustical tiles; and

Whereas, A student who is deaf or hard of hearing and uses hearing aids or cochlear implants must have daily monitoring of external components conducted by trained staff; and

Whereas, A student who is deaf or hard of hearing must have opportunities for interaction with deaf and hard of hearing role models and exposure to deaf culture; and

Whereas, To ensure a free and appropriate public education for a student who is deaf or hard of hearing, as required by the Individuals with Disabilities Education Act (IDEA), the IEP team must ensure that: All the educational options available to the student at the time his or her IEP is prepared are fully explained to the parents or guardians and the student in the student's communication mode or language; and the student is not denied the opportunity for instruction or extra curricular activities in a particular communication mode or language solely because the child has some hearing, his or her parents or guardians are not fluent in his or her communication mode, or the student has previous experience with some other communication mode or language; and

Whereas, All teachers, interpreters and other school personnel who work with students who are deaf or hard of hearing must be provided opportunities to receive professional development in their specialized fields, which must include educational strategies, interpreting skills and technology; and

Whereas, Due to the unique communication needs of students who are deaf or hard of hearing, consideration must be given to the provision of services, programs or shared resources across county lines; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature hereby recognizes the Deaf or Hard of Hearing Student's Bill of Rights; and, be it

Further Resolved, That a copy of this resolution be sent to the West Virginia Commission for the Deaf and Hard of Hearing and all other appropriate organizations.

SENATE CONCURRENT RESOLUTION NO. 97

(By Senators Plymale, Wells, Beach, Chafin, Edgell, Laird, Stollings, Tucker, Wills and Boley)

[Originating in the Committee on Education]

Requesting the Joint Committee on Government and Finance to conduct a study regarding the impact of truancy on students, schools and society and strategies to address truancy and improve school attendance by truant students.

Whereas, Education is a fundamental constitutional right in West Virginia; and

Whereas, Research shows that the factors contributing to truancy stem from the realms of home, family and community; school; and personal psychological characteristics; and

Whereas, Absenteeism is proven to be one of the highest predictors of school failure and that the student will eventually drop out of school; and

Whereas, Each year nearly 7000 West Virginia students leave school prior to achieving a high school diploma; and

Whereas, Truancy is a risk factor for serious juvenile delinquency and adult crime; and

Whereas, Children who are truant are more likely to be involved with illegal drugs; and

Whereas, The maximum number of unexcused absences allowed by West Virginia Code is five; and

Whereas, Truancy negatively affects the entire learning process; and

Whereas, The negative impact of truancy on society is extensive, and includes such outcomes as increased crime, low standards of living, low property values, lack of skilled workforce, and cyclical and generational devaluing of education attainment, to name only a few; and

Whereas, At least 75% of high school dropouts are eventually incarcerated; and

Whereas, At least 75% of all prison inmates in the state are high school dropouts; and

Whereas, More than 80% of prison inmates are functionally illiterate; and

Whereas, It is estimated that the 2008 class of high school dropouts will cost the state \$1.7 billion in lost wages over their lifetimes; and

Whereas, Each class of high school dropouts costs the state \$55 million in health care costs over the students' lifetimes; and

Whereas, Being present at the workplace is an integral component of fulfilling the responsibilities of employment; and

Whereas, Employers often have strict attendance policies and both reward employees who adhere to the policies and discipline those who do not; and

Whereas, Schools should prepare students for the demands of the adult world, such as the expectation of employers that employees faithfully and reliably attend work; and

Whereas, Magistrate and Circuit Courts in West Virginia have initiated various effective anti-truancy strategies and programs in recent years; and

Whereas, Historically, interventions have begun in the middle grades, which ignores the foundation of a student's education; and

Whereas, The most effective strategies begin at the elementary school level, involve efforts from both schools and families, include meaningful incentives for good attendance and consequences for poor attendance, and involve participation from community sources such as law enforcement, mental health workers, mentors, and social service providers; and

Whereas, The Legislature should explore effective truancy interventions; and

Whereas, Interventions to explore should include, but not be limited to, implementation of policies that promote school attendance through rewards for good attendance and consequences for poor attendance; promotion of attendance incentive programs; and modification of available consequences and penalties for parents whose children are truant; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to conduct a study regarding the impact of truancy on students, schools and society and strategies to address truancy and improve school attendance by truant students; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2013, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

SENATE CONCURRENT RESOLUTION NO. 98

(By Senators Plymale, Wells, Beach, Chafin, Edgell, Laird, Stollings, Tucker, Wills
and Boley)

[Originating in the Committee on Education]

Requesting the Joint Committee on Government and Finance to conduct a study on the results and recommendations of the Education Efficiency Audit of West Virginia's Primary and Secondary Education System (Public Works, 2012) to determine which recommendations presented within may move the state toward receiving the highest return on the educational dollars spent while producing the best possible outcomes for its students.

Whereas, The Education Efficiency Audit of West Virginia's Primary and Secondary Education System uses an array of techniques to identify issues, research possible solutions to determine best practices and develop recommendations designed to identify opportunities for savings and eliminate duplication of effort; and

Whereas, The same audit finds that West Virginia ranks eighth in the nation in education expenditures relative to income; and

Whereas, The U.S. Department of Commerce finds that West Virginia ranks seventh nationally in salaries, exclusive of benefit payments, relative to the State's income levels; and

Whereas, Despite the funds expended, West Virginia students score below the national average on twenty-one of the twenty-four indicators of student performance as reported by the National Assessment of Educational Progress; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature hereby requests the Joint Committee on Government and Finance to conduct a study on the results and recommendations of the Education Efficiency Audit of West Virginia's Primary and Secondary Education System (Public Works, 2012) to determine which recommendations presented within may move the state toward receiving the highest return on the educational dollars spent while producing the best possible outcomes for its students; and, be it

Further resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2013, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and be it

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

HOUSE CONCURRENT RESOLUTION NO. 77

(By Delegates Hamilton, Reynolds, Mr. Speaker, Mr. Thompson, Anderson, Andes, Armstead, Ashley, Azinger, Barill, Barker, Boggs, Border, Brown, Butcher, D. Campbell, T. Campbell, Cann, Canterbury, Caputo, Carmichael, Cowles, Craig, Crosier, Diserio, Doyle, Duke, Ellem, Ellington, Evans, Ferns, Ferro, Fleischauer, Fragale, Frazier, Gearheart, Givens, Guthrie, Hall, Hartman, Hatfield, Householder, Howell, Hunt, Iaquina, Ireland, Jones, Lane, Lawrence, Longstreth, Mahan, Manchin, Manypenny, Marcum, Marshall, Martin, Michael, Miley, C. Miller, J. Miller, Moore, Morgan, Moye, Nelson, O'Neal, Overinton, Pasdon, Paxton, Perdue, Perry, Pethel, L. Phillips, R. Phillips, Pino, D. Poling, M. Poling, Poore, Rodighiero, Romine, Rowan, Savilla, Shaver, Sigler, Skaff, Smith, Snuffer, Sobonya, Staggers, Stephens, Storch, Stowers, Sumner, Swartzmiller, Talbott, Varner, Walker, Walters, Wells, White and Williams)

Declaring that the month of September be proclaimed as Take Pride in America Month beginning with September, 2012.

WHEREAS, We need a resurgence of patriotism to keep alive the vision our forefathers had, upon which our country was founded; and

WHEREAS, We need not only a time to celebrate but also to reflect on the values and principles which has made America a great nation; and

WHEREAS, To guarantee the continued remembrance and gratitude of freedom for all future generations, we urge schools and teachers to challenge their students by conducting programs to teach the truths of patriotism so our children can say "I'm proud to be an American" with conviction, understanding and pride; and

WHEREAS, With heartfelt thanks we embrace the men and women of all branches of our Armed Forces who made possible the liberty we enjoy today and are still ever vigilant in protecting that liberty; and

WHEREAS, Through this resolution, we encourage all West Virginia citizens to join us every September as we "Take Pride in America", to renew their allegiance to our country and participate and use their talents to take part in our wonderful heritage; therefore, be it

Resolved by the Legislature of West Virginia:

That the month of September be proclaimed as Take Pride in America Month beginning with September, 2012

HOUSE CONCURRENT RESOLUTION NO 102.

(By Delegates Perry, Barill, Paxton, Pethtel,
Shaver, Armstead, Duke and Savilla)

Requesting the Joint Committee on Government and Finance to conduct a study regarding the impact of truancy on students, schools and society, and strategies to address truancy and improve school attendance by truant students.

WHEREAS, Education is a fundamental constitutional right in West Virginia; and

WHEREAS, Research shows that the factors contributing to truancy stem from the realms of home, family and community; school; and personal psychological characteristics; and

WHEREAS, Absenteeism is proven to be one of the highest predictors of school failure and that the student will eventually drop out of school; and

WHEREAS, Each year nearly 7000 West Virginia students leave school prior to achieving a high school diploma; and

WHEREAS, Truancy is a risk factor for serious juvenile delinquency and adult crime; and

WHEREAS, Children who are truant are more likely to be involved with illegal drugs; and

WHEREAS, The maximum number of unexcused absences allowed by West Virginia Code is five; and

WHEREAS, Truancy negatively affects the entire learning process; and

WHEREAS, The negative impact of truancy on society is extensive, and includes such outcomes as increased crime, low standards of living, low property values, lack of skilled workforce, and cyclical and generational devaluing of education attainment, to name only a few; and

WHEREAS, At least 75% of high school dropouts are eventually incarcerated; and

WHEREAS, At least 75% of all prison inmates in the state are high school dropouts; and

WHEREAS, More than 80% of prison inmates are functionally illiterate; and

WHEREAS, It is estimated that the 2008 class of high school dropouts will cost the state \$1.7 billion in lost wages over their lifetimes; and

WHEREAS, Each class of high school dropouts will cost the state \$55 million in health care costs over the students' lifetimes; and

WHEREAS, Being present at the workplace is an integral component of fulfilling the responsibilities of employment; and

WHEREAS, Employers often have strict attendance policies and both reward employees who adhere to the policies and discipline those who do not; and

WHEREAS, Schools should prepare students for the demands of the adult world, such as the expectation of employers that employees faithfully and reliably attend work; and

WHEREAS, Magistrate and Circuit Courts in West Virginia have initiated various effective anti-truancy strategies and programs in recent years; and

WHEREAS, Historically, interventions have begun in the middle grades, which ignores and destroys the foundation of a student's education; and

WHEREAS, The most effective strategies begin at the elementary school level, involve efforts from both schools and families, include meaningful incentives for good attendance and consequences for poor attendance, and involve participation from community sources such as law enforcement, mental health workers, mentors, and social service providers; and

WHEREAS, The Legislature should explore effective truancy interventions; and

WHEREAS, Interventions to explore should include, but not be limited to, implementation of policies that promote school attendance through rewards for good attendance and consequences for poor attendance; promotion of attendance incentive programs; modification of available consequences and penalties for parents whose children are truant; and therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to conduct a study regarding the impact of truancy on students, schools and society, and strategies to address truancy and improve school attendance by truant students; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the Legislature, on the first day of the regular session, 2013, on its findings, conclusions and recommendations together with drafts of any legislation to effectuate its recommendations; and, be it

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

HOUSE CONCURRENT RESOLUTION NO. 104

(By Delegates M. Poling and Paxton)

Recognizing the Deaf or Hard of Hearing Student's Bill of Rights.

WHEREAS, Several states and state agencies in the nation have adopted a Deaf or Hard of Hearing Student's Bill of Rights in some form; and

WHEREAS, Hearing loss impacts one of the most basic of human needs: the ability to communicate with other human beings; and

WHEREAS, Many individuals who are deaf or hard of hearing use sign systems as their communication mode, and often American Sign Language (ASL) is their primary language; and

WHEREAS, "Communication Mode or Language" means one or more of the following systems or methods of communication applicable to the deaf and hard of hearing: American Sign Language; English-based manual or sign systems; oral, aural, or speech-based training; or any other communication mode or language which a student or his or her parents or guardians choose to utilize; and

WHEREAS, Other individuals who are deaf or hard of hearing express and receive language orally and aurally, with or without visual signs or cues; and

WHEREAS, Typically, young children who are deaf or hard of hearing lack significant English language skills; and

WHEREAS, It is essential for the well-being and growth of students who are deaf or hard of hearing that educational programs recognize the unique nature of hearing loss and ensure that all students who are deaf or hard of hearing have appropriate, ongoing and fully accessible educational opportunities in all settings; and

WHEREAS, There are more than 450 students who are deaf or hard of hearing in the State of West Virginia in grades kindergarten through twelfth; and

WHEREAS, A very small percentage of these students matriculate to post-secondary education after graduating from high school; and

WHEREAS, Many individuals who are deaf or hard of hearing remain unemployed after completing school due to communication barriers; and

WHEREAS, Students who are deaf or hard of hearing require specialized instruction, services, equipment, and materials; and

WHEREAS, Significant barriers to education and employment exist for individuals who are deaf or hard of hearing in our current education system and must be addressed; and

WHEREAS, Each student's unique communication mode must be respected, utilized, and developed to an appropriate level of proficiency; and

WHEREAS, A student who is deaf or hard of hearing must have an education in which teachers of the deaf and hard of hearing and the interpreter are proficient in the primary language mode of the student; and

WHEREAS, Each teacher of the deaf and hard of hearing must be appropriately trained in this area of exceptionality and be sensitive to the cultural and linguistic needs of students who are deaf or hard of hearing; and

WHEREAS, A student who is deaf or hard of hearing must receive an education in which teachers of the deaf and hard of hearing, psychologists, speech therapists, evaluators, administrators and other special education personnel understand the unique nature of hearing loss and are specifically trained to understand the student's needs; and

WHEREAS, A student who is deaf or hard of hearing must be assessed using tools which accurately evaluate aptitude, achievement level or such other factors as the tool is intended to measure. Any assessment must be delivered and administered in the student's native language, must not be discriminatory, and must provide a qualified interpreter for its duration; and

WHEREAS, The Individual Education Plan (IEP) Team for a student who is deaf or hard of hearing must consider opportunities for direct communication with peers who are approximately the same age and ability level and in the student's language and communication modes; and

WHEREAS, The IEP Team must consider providing related services and program options that give the deaf or hard of hearing student an appropriate and equal opportunity for communication access; and

WHEREAS, In considering a student's specific communication needs, and especially the importance of clear communication, the IEP team must emphasize the acquisition of the language or communication mode chosen for or by the student, including sign, speech or another mode; and

WHEREAS, Language acquisition must be prioritized through: Using the student's individual communication mode or language; providing the opportunity to interact with peers who have similar cognitive and language abilities; providing the opportunity for interaction with deaf or hard of hearing adult models who use the same or similar communication mode or language as the student; providing direct language access by teachers of the deaf and hard of hearing, interpreters and other specialists who are proficient in the student's primary communication mode or language; and providing accessible academic instruction, school services and extracurricular activities in the student's communication mode or language; and

WHEREAS, A student who is deaf or hard of hearing must have access to professional personnel with whom he or she can communicate directly in his or her language and communication modes; and

WHEREAS, A student who is deaf or hard of hearing and his or her parents or guardians must be given the opportunity to participate fully in the educational planning, which includes having access to all relevant information; and

WHEREAS, A student who is deaf or hard of hearing must have programs in which he or she has direct and appropriate access to a full spectrum of educational and vocational training programs, including, but not limited to, recess, lunch and extracurricular social and athletic activities; and

WHEREAS, A student who is deaf or hard of hearing must be provided appropriate assistive technology, and students, teachers and other school personnel must be trained in its use; and

WHEREAS, A student who is deaf or hard of hearing must be educated in classrooms where sound levels meet the Acoustical Society of America (ASA) guidelines for reducing room noise and the signal-to-noise ratio through the use of materials such as acoustical tiles; and

WHEREAS, A student who is deaf or hard of hearing and uses hearing aids or cochlear implants must have daily monitoring of external components conducted by trained staff; and

WHEREAS, A student who is deaf or hard of hearing must have opportunities for interaction with deaf and hard of hearing role models and exposure to deaf culture; and

WHEREAS, To ensure a free and appropriate public education for a student who is deaf or hard of hearing, as required by the Individuals with Disabilities Education Act (IDEA), the IEP team must ensure that: All the educational options available to the student at the time his or her IEP is prepared are fully explained to the parents or guardians and the student in the student's communication mode or language; and the student is not denied the opportunity for instruction or extra curricular activities in a particular communication mode or language solely because the child has some hearing, his or her parents or guardians are not fluent in his or her communication mode, or the student has previous experience with some other communication mode or language; and

WHEREAS, All teachers, interpreters and other school personnel who work with students who are deaf or hard of hearing must be provided opportunities to receive professional development in their specialized fields, which must include educational strategies, interpreting skills and technology; and

WHEREAS, Due to the unique communication needs of students who are deaf or hard of hearing, consideration must be given to the provision of services, programs or shared resources across county lines; and therefore, be it
Resolved by the Legislature of West Virginia:

That the Deaf or Hard of Hearing Student's Bill of Rights is hereby recognized; and, be it

Further Resolved, That a copy of this resolution be sent to the West Virginia Commission for the Deaf and Hard of Hearing, and all other appropriate organizations.

HOUSE CONCURRENT RESOLUTION NO. 107

(By Delegate Lawrence)

Requesting the Joint Committee on Government and Finance to conduct a study regarding the implementation of reproductive health education in West Virginia public schools.

WHEREAS, West Virginia was the only state in the nation to show an increase in teen births for girls ages 15-17 from 2007-2009, which increase was seventeen percent; and

WHEREAS, West Virginia tax payers spent approximately \$67 million on costs associated with teen pregnancy in 2008; and

WHEREAS, Students who gave birth within four years of starting high school represents 32.8% of dropouts; and

WHEREAS, Current West Virginia Board of Education Policy 2520.5 Next Generation Health Content Standards and Objectives are medically accurate and allow health teachers to address reproductive health; and

WHEREAS, Implementation of these health content standards and objectives is locally controlled; and

WHEREAS, The West Virginia Department of Education is initiating efforts to address teen pregnancy; and

WHEREAS, The State Superintendent of Schools has articulated the need for a holistic approach to teen pregnancy prevention through positive youth asset development; and

WHEREAS, West Virginia educators cited a need for professional development regarding reproductive health issues in a recent survey; and

WHEREAS, The School Health Profiles developed by the Division of Adolescent and School Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention assist state and local education and health agencies in monitoring and assessing characteristics of school health education; and

WHEREAS, The West Virginia Department of Education is currently collecting the School Health Profiles Study to compare the status of health education programs from 2010 to 2012; and

WHEREAS, Health educators in West Virginia will be offered reproductive health education training by the West Virginia Department of Education, Office of Healthy Schools; and

WHEREAS, Data from School Health Profiles can be used to improve school health programs; and

WHEREAS, The Legislature should explore effective teen pregnancy interventions; and

WHEREAS, Interventions to explore should include, but not be limited to, an examination of: Distinguishing content standards and objectives that reflect a stronger impact on student knowledge; the variance in effectiveness of delivering the high school health education course to students over multiple years versus in a single year, as well as variance in class period duration; and any success in teen pregnancy prevention which could be attributed to certain programs, instructional materials, or student support services such as those provided by mentors or guidance counselors, that are used in counties with lower incidences of teen pregnancy; and therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to conduct a study regarding the implementation of reproductive health education in West Virginia public schools; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the Legislature, on the first day of the regular session, 2013, on its findings, conclusions and recommendations together with drafts of any legislation to effectuate its recommendations; and, be it

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

HOUSE CONCURRENT RESOLUTION NO. 128

(By Delegates M. Poling, Paxton, Barill, D. Campbell,
Caputo, Crosier, Lawrence, Marcum, Moye, Perry,
Pethel, Shaver, Smith, Duke, Sumner, Armstead,
Ellington, Gearheart, Rowan and Sigler)
[Originating in the Committee on Education]

(March 8, 2011)

Requesting the Joint Committee on Government and Finance to study the feasibility and benefits of requiring that an automated external defibrillator be placed in every public school in the state.

Whereas, The American Heart Association estimates that approximately 250,000 Americans die each year from sudden cardiac arrest and almost ninety-five percent die before receiving treatment at a hospital; and

Whereas, Immediate attention is critical for someone in cardiac arrest as their chance for survival decreases by nearly ten percent for every minute that passes without treatment; and

Whereas, The American Heart Association estimates that up to twenty-five percent of the deaths each year that result from cardiac arrest could have been prevented if treatment had been initiated immediately and a defibrillator had been available; and

Whereas, The only definitive treatment for Sudden Cardiac Arrest is a defibrillation shock; and

Whereas, An automated external defibrillator is a computerized portable device that talks the user through lifesaving steps to deliver an electrical impulse that can bring a dying heart back to a normal rhythm during an incident of cardiac arrest; and

Whereas, The number of reports of student athletes who die of sudden cardiac arrest continues to increase and has caused a number of states, including Ohio, Massachusetts, Tennessee, and Texas, to require public schools to have automated external defibrillators on site; and

Whereas, Automated external defibrillators are designed for use by virtually anyone with minimal training and in many cases, a simple course including CPR and AED training is all that is required; and

Whereas, The American Heart Association offers the Heartsaver AED course, which can be completed in less than four hours; and

Whereas, As a result of its easy-to-use design, an automated external defibrillator has very low risk of misuse and does not allow use on any person not experiencing cardiac arrest; and

Whereas, Mobile automated external defibrillators would best be placed in student health areas or with a school nurse, in cafeterias, common areas, auditoriums, or gymnasiums, near a fire extinguisher, with a security officer, or any place where they are easily visible and easily accessible; and

Whereas, Young people die from cardiac arrest on public school and college campuses every year, and according to the Mid American Heart Institute, 5,000 to 7,000 children and adolescents die from sudden cardiac arrest in the United States annually; and

Whereas, Most of these deaths could have been prevented with prompt difibrillation; and

Whereas, Anyone can be a victim of sudden cardiac arrest, even young and seemingly healthy people; and therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the feasibility and benefits of requiring that an automated external defibrillator be placed in every public school in the state; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the Legislature, on the first day of the regular session, 2013, on its findings, conclusions and recommendations together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

HOUSE CONCURRENT RESOLUTION NO. 129

(By Delegates M. Poling, Paxton, Barill, D. Campbell,
Caputo, Crosier, Lawrence, Marcum, Moye, Perry,
Pethel, Shaver, Smith, Duke, Sumner, Armstead,
Ellington, Gearheart, Rowan and Sigler)
[Originating in the Committee on Education]

(March 8, 2011)

Requesting the Joint Committee on Government and Finance study interscholastic student athlete safety issues relating to the development of emergency action plans that would enhance the protection of student athlete's health and safety in girls and boys interscholastic athletic practices and games in the state of West Virginia.

Whereas, It is of the utmost importance that the West Virginia Department of Education protect the health and safety of their student athletes during all practices and games; and

Whereas, Without attention to this protection, students are more likely to face unnecessary injuries and tragic deaths; and

Whereas, The need for such attention has been made abundantly clear through the collection of information detailing the exposure student athletes face in the participation of interscholastic athletic events; and

Whereas, Injuries such as concussion, heat illness, and cardiac arrest present a significant threat to the lifetime health and wellness of student athletes; and

Whereas, In order to provide protection to student athletes, schools are encouraged to have professionals such as athletic trainers at competitive athletic practices and games; and

Whereas, The states of Arkansas, North Carolina and Texas have passed legislation requiring that school districts develop and implement emergency plans to ensure that the best care is provided to student athletes throughout the state; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study interscholastic student athlete safety issues relating to the development of emergency action plans that would enhance the protection of student athlete's health and safety in girls and boys interscholastic athletic practices and games in the state of West Virginia; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2013, on its findings, conclusions and

recommendations, together with drafts of any legislation necessary to effectuate any recommendations; and, be it

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

HOUSE CONCURRENT RESOLUTION NO. 130

(By Delegates M. Poling, Paxton, Barill, D. Campbell, Caputo, Crosier, Lawrence, Marcum, Moye, Perry, Pethtel, Shaver, Smith, Duke, Sumner, Armstead, Ellington, Gearheart, Rowan and Sigler)

[Originating in the Committee on Education]

(March 8, 2011)

Requesting the Joint Committee on Government and Finance to study whether the state's laws regulating harassment in schools provide the constitutionally required safeguards to student expression.

WHEREAS, The State of West Virginia has an interest in ensuring that all students are safe at school; and

WHEREAS, The laws governing student behavior in West Virginia must apply equally and fairly to all students; and

WHEREAS, The Supreme Court of the United States requires government to safeguard the First Amendment right of persons in schools to engage in expression; and

WHEREAS, Laws that regulate harassment sometimes have the effect of restricting, punishing, or discouraging student expression even when such expression does not cause a material and substantial disruption of the educational environment of the school; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is requested to study whether the state's laws regulating harassment in schools provide the constitutionally required safeguards to student expression; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2013, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

HOUSE CONCURRENT RESOLUTION NO. 135

(By Delegates M. Poling, Paxton, Barill, D. Campbell, Craig, Lawrence, Moye, Perry, Pethel, Shaver, Smith, Duke, Sumner, Ellington, Gearheart, Pasdon, Rowan, Savilla and Sigler)

[Originating in the Committee on Education]

(March 9, 2012)

Requesting the Joint Committee on Government and Finance to study the Education Efficiency Audit of West Virginia's Primary and Secondary Education System conducted by Public Works LLC to determine areas for improved efficiency in the delivery of education.

Whereas, Public Works LLC, submitted a report to the Governor on January 3, 2012, entitled Education Efficiency Audit of West Virginia's Primary and Secondary Education System; and

Whereas, The audit describes 56 findings and recommendations in state-level functional areas including administration, facilities, human resources, transportation, ancillary services, and regional coordination; and

Whereas, The audit summarizes the recommendations found at the local and regional levels through the examination of three school systems and one RESA that may have implications for statewide consideration and should be further considered; and

Whereas, A study of the results and recommendations of the audit and its estimates of potential cost savings could result in substantial improvements in the efficiency of providing education in the state; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the Education Efficiency Audit of West Virginia's Primary and Secondary Education System conducted by Public Works LLC to determine areas for improved efficiency in the delivery of education; and be it

Further Resolved, That the Joint Committee on Government and Finance is requested to report to the regular session of the Legislature, 2013, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and be it

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

HOUSE CONCURRENT RESOLUTION NO. 136

(By Delegates M. Poling, Paxton, Barill, D. Campbell, Craig, Lawrence, Moye, Perry, Pethtel, Shaver, Smith, Duke, Sumner, Ellington, Gearheart, Pasdon, Rowan, Savilla and Sigler)

[Originating in the Committee on Education]

(March 9, 2012)

Requesting the Joint Committee on Government and Finance to study the effects of the provisions enacted at the 2007 regular legislative session that use assumed values for the calculation of the Public School Support Plan calculation of local share and that may impose a reduction in state aid on school systems based on the results of an assessment to sales ratio study for the county.

Whereas, The fundamental principle underlying West Virginia's Public School Support Plan is to employ a series of calculations to estimate the full costs of providing for the delivery of the required educational program in each county school system, and then apportion the responsibility for funding them between the state and the county board. The county board's share, called local share in the Public School Support Plan, has been calculated for many years on the basis of each county's certificates of valuation and these provisions are set forth in WV Code §18-9A-11(a). The state's share, called basic state aid, is the amount remaining for each county board after deducting its local share; and

Whereas, This approach to financing public schools has resulted in West Virginia's Public School Support Plan being rated for many years as one of the most equitable in the nation because it accounts fully for the differences in property wealth among the different county school systems, using the actual certificates of valuation to determine the amount of money that a county board of education is capable of raising as its required contribution to funding its schools, with the state contributing basic state aid to fund the balance that the county board is not capable of raising; and

Whereas, It is extremely important under this approach that the assessed valuations of a county's property accurately reflect 60% of the true market value of property in the county because when they are too low, the state share of funding for education is higher than it would otherwise need to be; and

Whereas, Effective July 1, 2013, the provisions for calculating each county's local share will no longer use the assessor's certificates of valuation of each county, but will use an assumed value for local share determined in accordance with WV Code §11-1C-5b, enacted at the 2007 regular legislative session, and these assumed values for each county will be reported to the State Board on or before December 1 of each year and will be the county's local share; and

Whereas, Among the provisions of §11-1C-5b are provisions requiring the Tax Commissioner to use an assessment to sales ratio study based on information submitted by the county's assessor as the sole indicator of whether the assessments of property are within 10% of the constitutionally required 60%, and if the results of this sole study indicate that a county's assessed valuations are more than 10% below 60%, to increase them to what they would be assumed to be at 60% based on the study for the purposes of the local share calculation. This assumed amount would be the county's local share even though it may not accurately reflect the amount of money that the county is capable of raising for the funding of its schools; and

Whereas, The 2007 legislation also enacted WV Code §18-9A-2a, which provides for an 8% increase in the local share responsibility of a county board at any time when the median ratio of the assessed values to actual selling prices in the assessment ratio study applicable to the preceding fiscal year indicates that the county is not assessing property at least at 54% of market value, and an 8% increase in local share means a corresponding 8% decrease in basic state aid; and

Whereas, The several effects of eliminating the use of actual certificates of valuation for calculating the local share responsibility of county boards and, instead, using assumed values and, in some cases, also imposing a penalty solely on the basis of the results of an assessment to sales ratio study may include the following:

(1) Unlike the method presently in effect of using an estimate of local share in preparing the executive budget and then recalculating local share based on the certificates of valuation when they become available on or before March 3rd each year, the use of assumed local share values calculated on December 1 each year will not ensure that each county's local share accurately reflects the amount of money it is capable of contributing to funding its schools. For example, if a county's assumed local share is higher than its certificates of valuation, it will not be able to raise the money for its schools that is assumed to be its local share and its state aid will also be lower. Or in the alternative, if a county board's assumed local share is lower than its certificates of valuation, it is capable of raising more than that and its state aid will also be higher than needed;

(2) The impact of this imprecision in the calculation of local share is to create inequities from year to year as different counties are winners or losers depending on how close their assumed local share is to their actual ability to raise the funds. Being a winner or a loser in different years can cause instability in the board's ability to predict future budgets. Further, when the state total of assumed local share is too low, the loss of routine reconciliation of a December budget estimate with the actual certificates of valuation on March 3rd, eliminates the ability of the state to redirect any unneeded state aid to other uses; and

(3) The assessment to sales ratio study, although a useful tool for the Tax Commissioner to gauge the assessment practices, is only one of several tools used to do so and, because it relies on self reported data and depends upon the number of

representative sales in a county, is not a reliable sole measure. The use of this instrument to, first increase a county board's assumed local share as may be indicated by the study's results, and then to impose an additional 8% increase in its local share calculation causing an 8% decrease in state aid, has the potential of putting a school system in serious financial stress based on governmental functions over which it has no control or ability to affect. These adjustments and penalties could be the result of an occasional variance in a single study in a single year or it could be a consequence of the small numbers of property sales in a county that makes reliable assessment to sales studies difficult to produce over a number of years; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the effects of the provisions enacted at the 2007 regular legislative session that use assumed values for the calculation of the Public School Support Plan calculation of local share and impose a reduction in state aid on school systems based on the results of an assessment to sales ratio study for the county; and be it

Further Resolved, That included in the study on the effects of these provisions should be the effects on the efficient use of state funding for school systems from using assumed values for local share rather than the actual certificates of valuation of the assessors, the effects on funding equity among the counties from using assumed values for local share rather than the actual certificates of valuation of the assessors, the effects on the stability of budgeting for county boards of education from using assumed values for local share rather than the actual certificates of valuation of the assessors, and the effects of imposing a financial penalty on county boards of education based on a single measure of the performance of other governmental functions over which they have no control; and be it

Further Resolved, That the Joint Committee on Government and Finance is requested to report to the regular session of the Legislature, 2013, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and be it

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



Jorea M. Marple, Ed.D.
State Superintendent of Schools