

## FOREWORD

The West Virginia Department of Education is pleased to prepare Informal Guidelines for Implementing Public Education Bills Enacted in the Regular Session - 2000 as a document to assist educators and others in understanding and implementing education bills enacted by this year's Legislature.

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

For each of the acts included in this publication, the format is as follows: effective date, date signed by the governor, code reference, topic, introduction, major new provisions, and any special notes and comments. 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 - 2000 will be of considerable value during the coming school year. Suggestions for improving this document as a service to the Department's clientele are always welcome. This document is also available on line at <http://wvde.state.wv.us> .

Please feel free to call or write if you need additional information regarding bills enacted during the 2000 regular session of the West Virginia Legislature.

David Stewart  
State Superintendent of Schools

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**HOUSE BILL 4038**

**EFFECTIVE DATE:** June 9, 2000; Passed March 9, 2000

**SIGNED BY GOVERNOR:** March 22, 2000

**CODE REFERENCE:** Amends and Reenacts §18-4-7

**TOPIC:** LOCATION OF COUNTY BOARDS OF  
EDUCATION OFFICES

**INTRODUCTION:**  
Pertains to the location of county boards of education offices.

**MAJOR NEW PROVISIONS:**

Eliminates the requirement that a county board of education locate its office within five miles of the county seat.

**ENROLLED  
H. B. 4038**

(BY DELEGATES STEMPLER, MEZZATESTA, WILLIAMS,  
SHELTON, ENNIS, ARMSTEAD, AND ANDERSON)

[Passes March 9, 2000; in effect ninety days from passage.]

AN ACT to amend and reenact section seven, article four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to county board offices; and expanding the area within a county that a board office may be located.

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

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

**ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.**

**§18-4-7. Office.**

The board shall provide a suitable office within ~~five miles of~~ the county seat for use by the superintendent and the members of the board. The board shall supply the office with janitorial service and with the necessary equipment and supplies.

**HOUSE BILL 4062**

**EFFECTIVE DATE:** Passed February 15, 2000; Effective 90 days from passage

**SIGNED BY GOVERNOR:** February 23, 2000

**CODE REFERENCE:** Amends and Reenacts §§30-1-2a, 30-1-8 and 12

**TOPIC:** PROFESSIONAL LICENSING BOARDS

**INTRODUCTION:**

Requires professional licensing boards to receive training, to propose legislative rules for complaint procedures, and to file copies of annual reports with the legislative librarian.

**ENROLLED**  
**H. B. 4062**

(BY DELEGATES DOUGLAS, VARNER, KUHN, PERDUE,  
CAPUTO, MODESITT AND WILLISON)

[Passed February 15, 2000; in effect ninety days from passage.]

AN ACT to amend and reenact sections two-a, eight and twelve, article one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the duties of professional licensing boards; orientation session; requiring legislative rules for complaint procedures; and filing of annual reports.

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

That sections two-a, eight and twelve, article one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, to read as follows:

**§30-1-2a. Required orientation session.**

(a) After the first day of April and not later than the ~~thirty-first~~ first day of ~~July~~ December of each year, the auditor shall provide at least one orientation session on relevant state law and rules governing state boards and commissions. All state agencies shall cooperate with and assist in providing the orientation session if the auditor requests.

(b) After the effective date of this section, all chairs or chief financial officers of state boards and commissions newly created by the Legislature shall attend an orientation session designed to inform the state boards and commissions of the duties and requirements imposed on state boards and commissions by state law and rules. The chair or chief financial officer of the newly created board or commission shall attend an orientation session at the earliest possible date following the creation of the board or commission.

(c) The orientation session shall include a minimum of thirty minutes of instructional time dedicated to the statutory duty of boards to investigate and resolve complaints, including procedures for investigations, administrative hearings and remedies, due process protections, and the duty to provide public access to records of the disposition of complaints, as set forth in section five of this article.

~~(c)~~(d) Topics for the orientation session may include, but are not limited to: The official conduct of members, state budgeting and financial procedures, purchasing requirements, open meetings requirements, ethics, rule-making procedures, records management, annual reports and any other topics the auditor determines to be essential in the fulfillment of the duties of the members of state boards and commissions.

~~(d)~~(e) The orientation session shall be open to any member of new or existing boards and commissions and each board or commission may approve expense reimbursement for the attendance of one or more of its members. The chair or chief financial officer of each existing board or commission shall attend an orientation session within two years following the effective date of this section.

~~(e)~~(f) No later than the ~~tenth~~ thirty-first day of ~~August~~ December of each year, the auditor shall provide to the chairs of the joint standing committee on government operations a list of the

names of board or commission members attending, together with the names of the boards and commissions represented, the orientation session or sessions offered by the auditor ~~since~~ during the previous ~~April first year~~.

~~(f)~~(g) The auditor may charge a registration fee for the orientation session to cover the cost of providing the orientation session. The fee may be paid from funds available to a board or commission.

~~(g)~~(h) Notwithstanding the member's normal rate of compensation for serving on a board, a member attending the orientation session may be reimbursed for necessary and actual expenses, as long as the member attends the complete orientation session.

~~(h)~~(i) Ex officio members who are elected or appointed state officers or employees, and members of boards or commissions that have purely advisory functions with respect to a department or agency of the state, are exempt from the requirements of this section.

**§30-1-8. Denial, suspension or revocation of a license or registration; probation; proceedings; effect of suspension or revocation; transcript; report; judicial review.**

(a) Every board referred to in this chapter is authorized to suspend or revoke the license of any person who has been convicted of a felony or who has been found to have engaged in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct. Where any person has been so convicted of a felony or has been found to have engaged in such conduct, practices or acts, every board referred to in this chapter is further authorized to enter into consent decrees, to reprimand, to enter into probation orders, to levy fines not to exceed one thousand dollars per day per violation, or any of these, singly or in combination. Each board is also authorized to assess administrative costs. Any costs which are assessed shall be placed in the special account of the board, and any fine which is levied shall be deposited in the state treasury's general revenue fund. For purposes of this section, the word "felony" means a felony or crime punishable as a felony under the laws of this state, any other state, or the United States. Every board referred to in this chapter is authorized to promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code to delineate conduct, practices or acts which, in the judgment of the board, constitute professional negligence, a willful departure from accepted standards of professional conduct or which may render an individual unqualified or unfit for licensure, registration or other authorization to practice.

(b) Notwithstanding any other provision of law to the contrary, no certificate, license, registration or authority issued under the provisions of this chapter may be suspended or revoked without a prior hearing before the board or court which issued the certificate, license, registration or authority. However, this does not apply in cases where a board is authorized to suspend or revoke a certificate, license, registration or authority prior to a hearing if the individual's continuation in practice constitutes an immediate danger to the public.

(c) In all proceedings before a board or court for the suspension or revocation of any certificate, license, registration or authority issued under the provisions of this chapter, a statement of the charges against the holder thereof and a notice of the time and place of hearing shall be served upon the person as a notice is served under section one, article two, chapter fifty-six of this code, at least thirty days prior to the hearing, and he or she may appear with witnesses and be heard in person, by counsel, or both. The board may take oral or written proof, for or against the accused, as it may deem advisable. If upon hearing the board finds that the charges are true, it may suspend or revoke

the certificate, license, registration or authority, and suspension or revocation shall take from the person all rights and privileges acquired thereby.

(d) Pursuant to the provisions of section one, article five, chapter twenty-nine-a of this code, informal disposition may also be made by the board of any contested case by stipulation, agreed settlement, consent order or default. Further, the board may suspend its decision and place a licensee found by the board to be in violation of the applicable practice on probation.

(e) Any person denied a license, certificate, registration or authority who believes the denial was in violation of this article or the article under which the license, certificate, registration or authority is authorized shall be entitled to a hearing on the action denying the license, certificate, registration or authority. Hearings under this subsection shall be in accordance with the provisions for hearings which are set forth in this section.

(f) A stenographic report of each proceeding on the denial, suspension or revocation of a certificate, license, registration or authority shall be made at the expense of the board and a transcript thereof retained in its files. The board shall make a written report of its findings, which shall constitute part of the record.

(g) All proceedings under the provisions of this section are subject to review by the supreme court of appeals.

(h) On or before the first day of July, two thousand, every board referred to in this chapter shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, which shall specify a procedure for the investigation and resolution of all complaints against persons licensed under this chapter.

**§30-1-12. Record of proceedings; register of applicants; certified copies of records prima facie evidence; report to governor and Legislature; public access.**

(a) The secretary of every board shall keep a record of its proceedings and a register of all applicants for license or registration, showing for each the date of his or her application, his or her name, age, educational and other qualifications, place of residence, whether an examination was required, whether the applicant was rejected or a certificate of license or registration granted, the date of this action, the license or registration number, all renewals of the license or registration, if required, and any suspension or revocation thereof. The books and register of the board shall be open to public inspection at all reasonable times, and the books and register, or a copy of any part thereof, certified by the secretary and attested by the seal of the board, shall be prima facie evidence of all matters recorded therein.

(b) On or before the first day of January of each year in which the Legislature meets in regular session, the board shall submit to the governor and to the Legislature a report of its transactions for the preceding two years, an itemized statement of its receipts and disbursements for that period, a full list of the names of all persons licensed or registered by it during that period, statistical reports by county of practice, by specialty if appropriate to the particular profession, and a list of any complaints which were filed against persons licensed by the board, including any action taken by the board regarding those complaints. The report shall be certified by the president and the secretary of the board, and a copy of the report shall be filed with the secretary of state and with the legislative librarian.

(c) To promote public access, the secretary of every board shall ensure that the address and telephone number of the board are included every year in the state government listings of the Charleston area telephone directory. Every board shall regularly evaluate the feasibility of adopting

additional methods of providing public access, including, but not limited to, listings in additional telephone directories, toll-free telephone numbers, facsimile and computer-based communications.

**HOUSE BILL 4078**

**EFFECTIVE DATE:** March 6, 2000

**SIGNED BY GOVERNOR:** March 8, 2000

**CODE REFERENCE(S):** New §18-2-34

**TOPIC:** HIGH SCHOOL DIPLOMAS FOR WORLD WAR I,  
WORLD WAR II, KOREAN CONFLICT,  
VIETNAM CONFLICT VETERANS

**INTRODUCTION:**

Requires the state board to provide for the awarding of 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 World War I, World War II, Korean Conflict, or Vietnam Conflict veteran.

**MAJOR PROVISIONS:**

1. The surviving veteran must have left high school prior to graduation and served in the armed forces of the United States.
2. The surviving veteran did not receive a high school diploma.
3. The surviving veteran was discharged from the armed services under honorable conditions.
4. The surviving veteran completes the application process as provided by the joint rules of the state board and the veteran's council.

**ENROLLED  
COMMITTEE SUBSTITUTE  
FOR  
H. B. 4078**

(BY MR. SPEAKER, MR. KISS, AND DELEGATES LOUISOS,  
MARTIN, GIVENS, MICHAEL, WILLIAMS AND WILLISON)

[Passed March 6, 2000; in effect from passage.]

AN ACT to amend article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-four, relating to providing high school diplomas to certain World War I, World War II, Korean Conflict and Vietnam Conflict veterans that did not graduate from high school; and rules.

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

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

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

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

(a) Notwithstanding any provision of this code to the contrary, the state board shall provide for the awarding of 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 diplomas, whichever location the veteran chooses, to any surviving World War I veteran and any World War II, Korean Conflict or Vietnam Conflict veteran who:

- (1) Left high school prior to graduation and served in the armed forces of the United States;
- (2) Did not receive a high school diploma;
- (3) Was discharged from the armed services 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 promulgate 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 high school diplomas.

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

(3) "Korean Conflict veteran" means any veteran who performed military service between

June twenty-seventh, one thousand nine hundred fifty, and January thirty-first, one thousand nine hundred fifty-five; and

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

## HOUSE BILL 4080

**EFFECTIVE DATE:** June 10, 2000  
**SIGNED BY GOVERNOR:** March 21, 2000  
**CODE REFERENCE(S):** New §12-4-15  
**TOPIC:** BANK AT SCHOOL

### **INTRODUCTION:**

Provides the opportunity for the state treasurer to conduct a program in West Virginia public schools to educate students about banking activities and to encourage savings.

### **NEW PROVISIONS:**

1. Provides that the state treasurer may conduct a program in West Virginia Public schools to educate students about banking activities and to encourage savings.
2. Provides that banking institutions under the jurisdiction of the West Virginia commissioner of banking may participate in the program by assisting the treasurer in developing and producing material for use in the schools, opening saving accounts for students at the schools, and receiving and accepting deposits at the schools.
3. Provides that the state treasurer may not implement the banking program in any school in a county unless he or she obtains permission from the county board of education and the principal of the school.
4. Provides that nothing in this section shall be construed to require any professional or service employee to perform additional duties as a result of the establishment of the banking program.

**ENROLLED**  
**H. B. 4080**

(By Delegates Thompson, White, H., Cann,  
Harrison, Capito, L. White and Angotti)  
[Passed March 10, 2000; in effect ninety days from passage.]

AN ACT to amend article four, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fifteen, relating to authorizing the state treasurer to conduct a program in the public schools on banking.

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

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

**ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.**

**§12-4-15. Bank at school.**

(a) The state treasurer may conduct a program in West Virginia public schools to educate students about banking activities and to encourage savings. Banking institutions under the jurisdiction of the West Virginia commissioner of banking may participate in the program by assisting the treasurer in developing and producing materials for use in the schools, opening savings accounts for students at the schools and receiving and accepting deposits at the schools.

(b) The state treasurer may not implement the banking program in any school in a county unless he or she obtains permission from the county board of education and the principal of the school; and

(c) Nothing in this section shall be construed to require any professional or service employee to perform additional duties as a result of the establishment of the banking program.

**HOUSE BILL 4101**

**EFFECTIVE DATE:** June 7, 2000

**SIGNED BY GOVERNOR:** March 20, 2000

**CODE REFERENCE(S):** Amends §18-7A-3

**TOPIC:** RELATING TO INTEREST RATES USED IN  
TEACHER RETIREMENT LEGISLATION

**INTRODUCTION:**

Sets the regular and refund interest rates used for teachers retirement at three percent compounded annually or a higher earnable rate if set forth in the formula established in legislative rules, series seven of the consolidated public retirement board.

**MAJOR NEW PROVISION(S):**

The regular and refund interest rates used for teachers retirement is three percent compounded annually or at a higher earnable rate if set forth in the formula established in legislative rules, series seven of the consolidated public retirement board.

## ENROLLED

### H. B. 4101

(By Delegates Jenkins, Hubbard, J. Smith, Campbell, Williams, Hall and Harrison)  
[Introduced January 20, 2000; referred to the  
Committee on Pensions and Retirement then Finance.]

AN ACT to amend and reenact section three, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to definitions of terms pertaining to interest rates used in teacher retirement legislation.

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

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

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

##### **§18-7A-3. Definitions.**

"Teacher member" means the following persons, if regularly employed for full-time service: (a) Any person employed for instructional service in the public schools of West Virginia; (b) principals; (c) public school librarians; (d) superintendents of schools and assistant county superintendents of schools; (e) any county school attendance director holding a West Virginia teacher's certificate; (f) the executive secretary of the retirement board; (g) members of the research, extension, administrative or library staffs of the public schools; (h) the state superintendent of schools, heads and assistant heads of the divisions under his supervision, or any other employee thereunder performing services of an educational nature; (i) employees of the state board of education who are performing services of an educational nature; (j) any person employed in a nonteaching capacity by the state board of education, the West Virginia board of regents [abolished], any county board of education, the state department of education or the teachers retirement board, if such person was formerly employed as a teacher in the public schools; (k) all classroom teachers, principals and educational administrators in schools under the supervision of the department of corrections, the ~~department~~ division of health or the ~~department~~ division of human services; and (l) employees of the state board of school finance, if such person was formerly employed as a teacher in the public schools.

"Nonteaching member" means any person, except a teacher member, who is regularly employed for full-time service by: (a) Any county board of education; (b) the state board of education; (c) the West Virginia board of regents [abolished]; or (d) the teachers retirement board.

"Members of the administrative staff of the public schools" means deans of instruction, deans of men, deans of women, and financial and administrative secretaries.

"Members of the extension staff of the public schools" means every agricultural agent, boys' and girls' club agent, and every member of the agricultural extension staff whose work is not primarily stenographic, clerical or secretarial.

"Retirement system" means the state teachers retirement system provided for in this article.

"Present teacher" means any person who was a teacher within the thirty-five years beginning the first day of July, one one thousand nine hundred thirty-four, and whose membership in the retirement system is currently active.

"New entrant" means a teacher who is not a present teacher.

"Regularly employed for full-time service" means employment in a regular position or job

throughout the employment term regardless of the number of hours worked or the method of pay.  
"Employment term" means employment for at least ten months, a month being defined as twenty employment days.

"Present member" means a present teacher who is a member of the retirement system.

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

"Prior service" means all service as a teacher completed prior to the first day of July, first one thousand nine hundred forty-one, and all service of a present member who was employed as a teacher, and did not contribute to a retirement account because he was legally ineligible for membership during ~~such~~ the service.

"Average final salary" means the average of the five highest fiscal year salaries earned as a member within the last fifteen fiscal years of total service credit, including military service as provided herein, or if total service is less than fifteen years, the average annual salary for the period on which contributions were made.

"Accumulated contributions" means all deposits and all deductions from the earnable compensation of a contributor minus the total of all supplemental fees deducted from his compensation.

"Regular interest" means interest at three percent compounded annually, or a higher earnable rate if ~~approved by the retirement board~~ set forth in the formula established in legislative rules, series seven of the consolidated public retirement board.

"Refund interest" means interest compounded, ~~annually at a rate of three percent~~ according to the formula established in legislative rules, series seven of the consolidated public retirement board.

"Employer" means the agency of and within the state which has employed or employs a member.

"Contributor" means a member of the retirement system who has an account in the teachers accumulation fund.

"Beneficiary" means the recipient of annuity payments made under the retirement system.

"Refund beneficiary" means the estate of a deceased contributor, or ~~such~~ a person as he shall have nominated as beneficiary of his contributions by written designation duly executed and filed with the retirement board.

"Earnable compensation" means the full compensation actually received by members for service as teachers whether or not a part of ~~such~~ the compensation is received from other funds, federal or otherwise, than those provided by the state or its subdivisions. Allowances from employers for maintenance of members shall be ~~deemed~~ considered a part of earnable compensation for such members whose allowances were approved by the teachers retirement board and contributions to the teachers retirement system were made, in accordance therewith, on or before the first day of July, one thousand nine hundred eighty.

"Annuities" means the annual retirement payments for life granted beneficiaries in accordance with this article.

"Member" means a member of the retirement system.

"Public schools" means all publicly supported schools, including normal schools, colleges and universities in this state.

"Deposit" means a voluntary payment to his account by a member.

The masculine gender shall be construed so as to include the feminine.

Age in excess of seventy years shall be ~~deemed~~ considered to be seventy years.

**HOUSE BILL 4314**

**EFFECTIVE DATE:** February 17, 2000

**SIGNED BY GOVERNOR:** February 22, 2000

**CODE REFERENCE(S):** Amends §18A-4-10c

**TOPIC:** RELATING TO PERSONAL LEAVE BANKS FOR CARE GIVERS

**INTRODUCTION:**

Broadens the definition of care giver to include a parent of a dependent child suffering from a catastrophic illness or injury.

**MAJOR NEW PROVISION(S):**

1. The definition of care giver is broadened to include a parent of a dependent child who is suffering from a catastrophic illness or injury.
2. "Catastrophic illness or injury" is defined.
3. Leave bank days used when the care giver is caring for an absent employee must be the same time period as the absent employee for whom care is being provided.

**ENROLLED  
H. B. 4314**

(BY DELEGATES FLETCHER, CALVERT, TRUMP,  
HARRISON, ARMSTEAD, ENNIS AND DAVIS)  
[Passed February 17, 2000; in effect from passage.]

AN ACT to amend and reenact section ten-c, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to school personnel; personal leave banks for care givers; and defining "catastrophic illness or injury".

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

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

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

**§18A-4-10c. Personal leave banks for care givers.**

(a) For the purposes of this section:

(1) "Care giver" means any employee of a county board of education who:

(A) Is a spouse, child or parent of any employee who meets the following qualifications:

(1) (i) He or she is an employee of the same county board of education as the care giver; and

(2) (ii) He or she currently is eligible to receive benefits from the personal leave bank

established in section ten of this article; or

(B) Is a parent of a dependent child who is suffering from a catastrophic illness or injury;

(2) "Catastrophic illness or injury" means a medical or physical condition that incapacitates a family member of the care giver and results in the care giver being required to take time off from work as defined by the rules of the board to care for the family member.

(b) A county board of education may establish a personal leave bank for care givers which is separate from any personal leave bank as defined in section ten of this article. The personal leave bank shall be operated pursuant to rules adopted by the county board which shall include, but not be limited to, the following:

(1) An employee may contribute no more than two days of personal leave per school year;

(2) The bank shall be established either jointly or separately for both professional personnel and school service personnel and shall be available to all school personnel;

(3) The rules may limit the maximum number of days used by a care giver;

(4) Where the care giver is caring for an absent employee as defined in paragraph (A), subdivision (1), subsection (a) of this section, the rules shall require that leave bank days be used only by a care giver who is absent from work during the same time period as the absent employee for whom care is being provided; and

(5) The rules shall require that the care giver is an active employee with less than five days accumulated personal leave.

(c) The use of ~~such~~ these days by the care giver for the extension of insurance coverage pursuant to section twelve, article sixteen, chapter five of this code is prohibited.

(d) Contributions shall reduce, to the extent of the contribution, the number of personal leave days to which a contributing employee is entitled by section ten of this article: *Provided*, That the employee's contribution may not reduce the number of entitled personal leave days without cause.

(e) No employee may be compelled to contribute to a personal leave bank.

**HOUSE BILL 4317**

**EFFECTIVE DATE:** July 1, 2000  
**SIGNED BY GOVERNOR:** March 24, 2000  
**CODE REFERENCE(S):** New §5-10-22f; §18-7A-26r  
**TOPIC:** MINIMUM RETIREMENT BENEFIT

**INTRODUCTION:**

Relates to a minimum monthly retirement annuity for certain retired members of the public employees retirement system and the state teachers retirement system; qualifying years of service; and exclusion of certain service credit.

**MAJOR NEW PROVISIONS:**

1. A retirant with at least twenty years of qualifying credited service as of the effective date of this section who is receiving a retirement annuity that is less than five hundred dollars per month shall receive an increase to five hundred dollars per month.
2. The minimum benefit conferred shall not be retroactive to the time of retirement and shall apply only to members who have retired prior to the effective date of this section.
3. The minimum benefit provided is subject to recommendation by the governor through delivery of an executive message to the Legislature and an appropriation by the Legislature.

**ENROLLED  
H. B. 4317**

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)  
[By Request of the Executive]  
[Passed March 11, 2000; in effect July 1, 2000.]

AN ACT to amend article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-two-f; and to amend article seven-a, chapter eighteen of said code, by adding thereto a new section, designated section twenty-six-r, all relating to a minimum monthly retirement annuity for certain retired members of the public employees retirement system and the state teachers retirement system; qualifying years of service; and exclusion of certain service credit.

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

That article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-two-f; and that article seven-a, chapter eighteen of said code be amended by adding thereto a new section, designated section twenty-six-r, 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 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.**

**§5-10-22f. Minimum benefit for certain retirants; legislative declaration; state interest and public purpose.**

The Legislature hereby finds and declares that an important state interest exists in providing a minimum retirement annuity for certain retirants (or their beneficiaries) who are credited with twenty or more years of credited service; that such program constitutes a public purpose; and that the exclusions of credited service while an elected public official or while a temporary legislative employee are reasonable and equitable exclusions for purposes of determining eligibility for such minimum benefits. For purposes of this section: (1) "Elected public official" means any member of the Legislature or any member of the legislative body of any political subdivision; and (2) "temporary legislative employee" means any employee of the clerk of the House of Delegates, the clerk of the Senate, the Legislature or a committee thereof whose employment is classified as temporary and who is employed to perform services required by the clerk of the House of Delegates, the clerk of the Senate, the Legislature or a committee thereof, as the case may be, for regular sessions, extraordinary sessions and/or interim meetings of the Legislature.

If the retirement annuity of a retirant (or, if applicable, his or her beneficiary) with at least twenty years of credited service as of the effective date of this section is less than five hundred dollars per month (including any supplemental benefits or incentives provided by this article), then the monthly retirement benefit for any such retired member (or if applicable, his or her beneficiary) shall be increased to five hundred dollars per month: *Provided*, That any year of credited service

while an elected public official or a temporary legislative employee shall not be taken into account for purposes of this section.

The payment of any minimum benefit under this section shall be in lieu of, and not in addition to, the payments of any retirement benefit or supplemental benefit or incentives otherwise provided by law: *Provided*, That the minimum benefit provided herein shall be subject to any limitations thereon under §415 of the Internal Revenue Code of 1986, as amended.

Any minimum benefit conferred herein shall not be retroactive to the time of retirement and shall apply only to members who have retired prior to the effective date of this section, or, if applicable, to beneficiaries receiving benefits under the retirement system prior to the effective date.

#### **CHAPTER 18. EDUCATION.**

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

#### **§18-7A-26r. Minimum benefit for certain retired members; legislative declaration; state interest and public purpose.**

The Legislature hereby finds and declares that an important state interest exists in providing a minimum retirement annuity for certain retired members who are credited with twenty or more years of total service; that such program constitutes a public purpose; and that the exclusion of total service for certain employees of institutions of higher education is a reasonable and equitable exclusion for purposes of determining eligibility for such minimum benefits.

If the retirement annuity of a retired member (or if applicable, a spouse thereof) with at least twenty years of total service is less than five hundred dollars per month (including any supplemental or additional benefits provided by this article), then the monthly retirement annuity for any such retired member shall be increased to five hundred dollars per month: *Provided*, That any year of service while an employee of an institution of higher education shall not be taken into account for purposes of this section if his or her salary is capped under the retirement system at four thousand eight hundred dollars per year pursuant to section fourteen-a of this article.

The payment of any minimum benefit under this section shall be in lieu of, and not in addition to, the payments of any retirement annuity or supplemental or additional benefits otherwise provided by this article: *Provided*, That the minimum benefit provided herein shall be subject to any limitations thereon under §415 of the Internal Revenue Code of 1986, as the same may be amended.

Any minimum benefit conferred herein shall not be retroactive to the time of retirement and shall apply only to members who have retired prior to the effective date of this section, or, if applicable, to beneficiaries receiving benefits under the retirement system prior to the effective date.

The minimum benefit provided herein shall be subject to a recommendation by the governor for such minimum benefit through the delivery of an executive message to the Legislature and an appropriation by the Legislature for such minimum benefit, such appropriation to be made over a continuous six-year period following the effective date of this section.

## HOUSE BILL 4324

**EFFECTIVE DATE:** Passed March 9, 2000; Effective ninety days from passage

**SIGNED BY GOVERNOR:** April 2, 2000

**CODE REFERENCE(S):** Amends §§17B-2-1, 17B-2-2, 17B-2-3, 17B-2-3a, 17B-2-5, 17B-2-6, 17B-2-7, 17B-2-8, 17B-2-11, 17B-2-12, 18-6-5, and 18-6-8

**TOPIC:** GRADUATED DRIVER'S LICENSE PROGRAM

### **INTRODUCTION:**

Provides for the implementation of a graduated driver's license program for persons under the age of eighteen years of age. The bill also updates the sections relating to time frames for new residents to obtain a driver's license, establishes a minimum thirty-day instruction period prior to skills test for adults previously unlicensed, and revises driver reciprocity provisions to reflect reciprocal agreements with other states and counties.

### **MAJOR NEW PROVISIONS:**

1. On and after the first day of January, Two Thousand One, any person under the age of eighteen whose does not possess a junior or regular driver's license may not operate a motor vehicle unless he or she has obtained a graduated driver's license in accordance with the three level graduated driver's license system (§17B-2-3a).
  - a. Provides for an individual fifteen years old or older to be issued a level one instruction permit.
  - b. Provides that an applicant sixteen years old or older cannot be issued a level two intermediate driver's license unless the applicant:
    - (1) has held the level one instruction permit conviction-free for one hundred eighty days,
    - (2) has completed a Driver's Education course approved by the State Department of Education, or
    - (3) has thirty hours of behind-the-wheel driving experience certified by a parent or legal guardian or other responsible adult over the age of twenty-one as indicated on the form prescribed by the Division of Motor Vehicles;
  - c. Provides that an applicant who reaches seventeen and has held the level two intermediate license conviction-free for the twelve month period may be issued a level three full Class E License.
2. Permits pupils who are fifteen years of age or older to enroll in drivers education and to receive instruction and practical training in the operation of a motor vehicle on the public streets and highways. Pupils will no longer be required to reach their sixteenth birthday before they complete the driver education course or have a learner's permit enroll in the course (§18-6-5).
3. Provides that any secondary school pupil sixteen years or older, but under eighteen, who has successfully completed a driver education course approved by the State Board in public, private, parochial, or denominational secondary school within the state or a similar course in a secondary school of another state, shall be exempted from submitting a sworn affidavit certified by the parent, legal guardian, or other responsible adult over the age of twenty-one that the applicant has successfully completed the minimum number of hours (30 hours) of behind-the-

wheel training (18-6-8).

**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**  
**H. B. 4324**  
(By Delegates Douglas and Warner)

[Passed March 9, 2000; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, one-a, two, three, three-a, five, six, seven, seven-b, eight, eleven and twelve, article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections five and eight, article six, chapter eighteen of said code, all relating to implementing a graduated driver's license program for persons under the age of eighteen; updating sections relating to time frames for new residents to obtain a drivers license; establishing a minimum thirty day instruction period prior to the skills test for adults previously unlicensed; and revising driver license reciprocity provisions to reflect reciprocal agreements with other states and countries.

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

That sections one, one-a, two, three, three-a, five, six, seven, seven-b, eight, eleven and twelve, article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections five and eight, article six, chapter eighteen of said code be amended and reenacted, all to read as follows:

**CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.**

**ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.**

**§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards; penalty.**

(a) No person, except those hereinafter expressly exempted, may drive any motor vehicle upon a street or highway in this state or upon any subdivision street, as used in article twenty-four, chapter eight of this code, when the use of ~~such~~ the subdivision street is generally used by the public unless the person has a valid driver's license under the provisions of this code for the type or class of vehicle being driven.

Any person licensed to operate a motor vehicle as provided in this code may exercise the privilege thereby granted as provided in this code and, except as otherwise provided by law, shall not be required to obtain any other license to exercise ~~such~~ the privilege by any county, municipality or local board or body having authority to adopt local police regulations.

(b) The division, upon issuing a driver's license, shall indicate on the license the type or general class or classes of vehicle or vehicles the licensee may operate in accordance with the provisions of this code, federal law or rule.

(c) Driver's licenses issued by the division shall be classified in the following manner:

(1) Class A, B or C license shall be issued to those persons eighteen years of age or older with two years driving experience and who have qualified for the commercial driver's license established by chapter seventeen-e of this code and the federal Commercial Motor Vehicle Safety Act of 1986, Title XII of public law 99-570 and subsequent rules, and have paid the required fee.

(2) Class D license shall be issued to those persons eighteen years and older with one year driving experience who operate motor vehicles other than those types of vehicles which require the operator to be licensed under the provisions of chapter seventeen-e of this code and federal law and rule and whose primary function or employment is the transportation of persons or property for compensation or wages and have paid the required fee. For the purposes of the regulation of the operation of a motor vehicle, wherever the term chauffeur's license is used in this code, it shall be construed to mean the Class A, B, C or D license described in this section or chapter seventeen-e of this code or federal law or rule: *Provided*, That anyone who is not required to be licensed under the provisions of chapter seventeen-e of this code and federal law or rule and who operates a motor vehicle which is registered or which is required to be registered as a Class A motor vehicle as that term is defined in section one, article ten, chapter seventeen-a of this code with a gross vehicle weight rating of less than eight thousand one pounds, is not required to obtain a Class D license.

(3) Class E license shall be issued to those persons who have qualified under the provisions of this chapter and who are not required to obtain a Class A, B, C or D license and who have paid the required fee. The Class E license may be endorsed under the provisions of section seven-b of this article for motorcycle operation. The Class E license for any person under the age of eighteen may also be endorsed with the appropriate graduated driver license level in accordance with the provisions of section three-a of this article.

(4) Class F license shall be issued to those persons who successfully complete the motorcycle examination procedure provided for by this chapter and have paid the required fee, but who do not possess a Class A, B, C and D or E driver's license.

(5) All licenses issued under this section may contain information designating the licensee as a diabetic, if the licensee requests this information on the license.

(d) No person, except those hereinafter expressly exempted, shall drive any motorcycle upon a street or highway in this state or upon any subdivision street, as used in article twenty-four, chapter eight of this code, when the use of ~~such the~~ subdivision street is generally used by the public unless the person has a valid motorcycle license or a valid license which has been endorsed under section seven-b of this article for motorcycle operation or has a valid motorcycle instruction permit.

(e) (1) A ~~nonoperator nondriver~~ identification card may be issued to any person who:

(A) Is a resident of this state in accordance with the provisions of section one-a, article three, chapter seventeen-a of this code;

(B) Does not have a valid driver's license;

(C) Has reached the age of two years. The division may also issue a ~~nonoperator nondriver~~ identification card to a person under the age of two years for good cause shown;

(D) Has paid the required fee of two dollars and fifty cents per year for each year the identification card is issued to be valid: *Provided*, That ~~such the~~ fee is not required if the applicant is sixty-five years or older or is legally blind; and

(E) Presents a birth certificate or other proof of age and identity acceptable to the division with a completed application on a form furnished by the division.

(2) The nondriver identification card shall contain the same information as a driver's license except that ~~such the~~ identification card shall be clearly marked as identification card. However, the division may issue an identification card with less information to persons under the age of sixteen. It may

be renewed on application and payment of the fee required by this section.

(A) Every identification card issued to persons who have attained their twenty-first birthday shall expire on the day of the month designated by the commissioner in which the applicant's birthday occurs in those years in which the applicant's age is evenly divisible by five. Except as provided in paragraph (B) or (C) of this subdivision, no identification card may be issued for less than three years nor more than seven years and shall be valid for a period of five years expiring in the month in which the applicant's birthday occurs and in a year in which the applicant's age is evenly divisible by five.

(B) Every identification card issued to persons who have not attained their twenty-first birthday shall expire on the day of the month designated by the commissioner in the year in which the applicant attains the age of twenty-one years.

(C) Every identification card issued to persons under the age of sixteen shall expire on the day of the month designated by the commissioner in which the applicant's birthday occurs and shall be issued for a period of two years.

(3) The identification card shall be surrendered to the division when the holder is issued a driver's license. The division may issue an identification card to an applicant whose privilege to operate a motor vehicle has been refused, canceled, suspended or revoked under the provisions of this code.

(f) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars; and upon a second or subsequent conviction, shall be fined not more than five hundred dollars, or confined in the county or regional jail not more than six months, or both.

**§17B-2-1a. Surrender of license from other state or jurisdiction prior to receipt of license from this state; examination; fees required.**

(a) The division of motor vehicles shall not issue a driver's license to a person who holds a valid license to operate a motor vehicle issued by another state or jurisdiction unless or until the applicant shall surrender to the division the foreign license, or the person has signed and submitted to the division an affidavit to the effect that the person has surrendered all valid licenses issued to him or her by other states or jurisdictions. Any surrendered license issued by any other state or jurisdiction shall be returned to the division of motor vehicles or similar agency in that state or jurisdiction together with a notice that the person who surrendered the license has been licensed in this state. It shall be unlawful for a person to possess more than one valid driver's license at any time.

(b) Every driver shall, within thirty days after taking up residence in this state, apply to the division for a driver's license as prescribed in this article. For the purposes of this chapter the presumption that a natural person is a resident of this state is based on the provisions of section one-a, article three, chapter seventeen-a of this code. The division may assign the driver's license class, type, endorsements or restrictions based on the applicant's prior licensing status, age and the type of licensing system used by the state of prior licensing.

(c) All other applicable provisions of this article relating to issuance, fees, expiration and renewal of licenses, and driver examination of applicants shall also apply to this section.

**§17B-2-2. Persons exempt from license.**

The following persons are exempt from license hereunder:

(1) Any person while operating a motor vehicle in the armed services of the United States while in the performance of his official duties;

(2) A nonresident who is at least sixteen years of age and who has in his immediate possession a valid driver's license issued to the person in the person's home state or country unless the commissioner determines the person's home state or country does not extend the same privileges to a resident of this state, may operate a motor vehicle in this state only as ~~an operator~~ a noncommercial driver for a period not to exceed ninety days in any one calendar year;

(3) A nonresident who is at least sixteen years of age, who has in ~~such~~ the person's immediate possession a valid driver's license issued to ~~such~~ the person in ~~such~~ the person's home state or country and who is employed in this state, or owns, maintains or operates a place or places of business in this state, or engages in any trade, profession or occupation in this state, in addition to the driving privileges extended under subdivision (2) of this section, unless the commissioner determines the person's home state or country does not extend the same privileges to a resident of this state, may operate a motor vehicle in this state only as ~~an operator~~ a noncommercial driver in traveling to and from ~~such~~ the person's place or places of employment, place or places of business or place or places at which ~~such~~ the person engages in ~~such~~ the trade, profession or occupation and in the discharge of the duties of ~~such~~ the person's employment, business, trade, profession or occupation if ~~such~~ the duties are such that, if performed by a resident of the state of West Virginia over the age of eighteen years of age, ~~such~~ the resident would not be required under the provisions of this chapter to obtain a Class A, B, C or D driver's license. However, this subsection shall not exempt any person who is required to obtain a West Virginia driver's license in accordance with the provisions of section one-a of this article:

(4) A nonresident who is at least eighteen years of age and who has in ~~such person's~~ his or her immediate possession a valid commercial driver's license issued to ~~such~~ the person in ~~such person's~~ his or her home state or country and which meets the requirements of the federal commercial motor vehicle act of 1986, Title XI of public law 99-570 and unless the commissioner determines the person's home state or country does not extend the same privilege to a resident of this state may operate a motor vehicle in this state either as a commercial ~~operator~~ driver subject to the age limits applicable to commercial ~~operators~~ driver in this state, or as ~~an a operator~~ a noncommercial driver subject to the limitations imposed on nonresident ~~operators~~ drivers in subdivisions (2) and (3) of this section;

(5) Any person who is a student, properly enrolled and registered in an accredited school, college or university in this state, who is at least sixteen years of age and who has in ~~such person's~~ his or her immediate possession a valid driver's license issued to ~~such~~ the person in ~~such~~ the person's home state, notwithstanding the limitations of subdivisions (2) and (3) of this section may operate a motor vehicle in this state only as ~~an operator~~ a noncommercial driver: *Provided*, That the state of which ~~such~~ the person is a resident shall extend the same privileges to residents of this state. This exemption shall be cancelled immediately when ~~such~~ the student is graduated from school, college or university or is expelled or ceases to be a student.

**§17B-2-3. What persons shall not be licensed; exceptions.**

The division ~~shall~~ may not issue any license hereunder:

(1) To any person ~~as an operator~~, who is under the age of eighteen years: *Provided*, That the division may issue a junior driver's license or on or after the first day of January, two thousand and one, a graduated driver's license, to a person under the age of eighteen years in accordance with the

provisions of section three-a of this article;

(2) To any person, as a Class A, B, C or D driver, who is under the age of eighteen years;

(3) To any person, whose license has been suspended or revoked, during ~~such the~~ suspension or revocation; ~~nor to any person whose license (other than a junior driver's license) has been revoked, except as provided in section eight, article three of this chapter;~~

(4) To any person who is an habitual drunkard or is addicted to the use of narcotic drugs;

(5) To any person, ~~as an operator or chauffeur~~, who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who has not at the time of application been restored to competency by judicial decree or released from a hospital for the mentally incompetent upon the certificate of the superintendent of the institution that the person is competent, and not then unless the commissioner is satisfied that the person is competent to operate a motor vehicle with a sufficient degree of care for the safety of persons or property;

(6) To any person who is required by this chapter to take an examination, unless the person has successfully passed the examination;

(7) To any person when the commissioner has good cause to believe that the operation of a motor vehicle on the highways by the person would be inimical to public safety or welfare.

**§17B-2-3a. Junior driver's license and graduated driver's license.**

(a) In accordance with rules established by the commissioner and with the provisions hereinafter set forth in this section, a junior driver's license may be issued to any person between the ages of sixteen and eighteen years, if the person is in compliance with section eleven, article eight, chapter eighteen of this code and is not otherwise disqualified by law. Application for a junior driver's license shall be on a form prescribed by the commissioner. A junior driver's license may be issued upon the applicant's successful completion of all examinations and driving tests required by law for the issuance of a driver's license to a person eighteen years of age or older. The commissioner may impose reasonable conditions or restrictions on the operation of a motor vehicle by a person holding a junior driver's license and the conditions or restrictions shall be printed on the license. After the thirty-first day of December, two thousand, the division shall not issue a junior driver's license to any person. However, any junior driver's license issued before the first day of January, two thousand one, unless otherwise suspended, revoked or canceled will continue to be valid, and under the same restrictions, until the licensee's eighteenth birthday.

(b) In addition to all other provisions of this chapter for which a driver's license may be revoked, suspended or canceled, whenever a person holding a junior driver's license operates a motor vehicle in violation of the conditions or restrictions set forth on the license, or has a record of two convictions for moving violations of the traffic regulations and laws of the road, which convictions have become final, the junior driver's license of the person shall be permanently revoked, with like effect as if the person had never held a junior driver's license: *Provided*, That a junior driver's license shall be revoked upon one final conviction for any offense described in section five, article three of this chapter. Under no circumstances shall such a license be revoked for convictions of offenses in violation of any regulation or law governing the standing or parking of motor vehicles.

(c) A junior driver's license shall be suspended for noncompliance with the provisions of section eleven, article eight, chapter eighteen of this code, and may be reinstated upon compliance.

(d) A person whose junior driver's license has been revoked, or has been suspended without reinstatement, shall not thereafter receive a junior driver's license, but the person, upon attaining the age of eighteen, shall be eligible, unless otherwise disqualified by law, for examination and driver testing for a regular driver's license. If a person has had his or her junior driver's license revoked for a violation pursuant to section one or two, article five-a, chapter seventeen-c of this code or any offense specified in subsection (6), section five, article three of this chapter, or has been adjudicated delinquent upon a charge which would be a crime under the provisions of section two, article five, chapter seventeen-c of this code if committed by an adult, the person shall be disqualified for examination and driver testing for a regular driver's license until that person: (1) Has attained the age of eighteen years; (2) has successfully completed the safety and treatment program provided for in section three, article five-a, chapter seventeen-c of this code; and (3) has had his or her junior driver's license revoked or suspended for the applicable statutory period of revocation or suspension or a period of time equal to the period of revocation or suspension which would have been imposed pursuant to section two of said article if the person had a regular driver's license at the time of the violation.

(e) No person shall receive a junior driver's license unless the application therefor is accompanied by a writing, duly acknowledged, consenting to the issuance of the junior driver's license and executed by ~~the parents~~ a parent of the applicant; or if only one parent is living, then by ~~such~~ the parent; or if the parents be living separate and apart, by the one to whom the custody of the applicant was awarded; or if there is a guardian entitled to the custody of the applicant, then by the guardian.

(f) Upon attaining the age of eighteen years, a person holding an unrevoked, unsuspended or reinstated junior driver's license shall be entitled to exercise all the privileges of a regular driver's license without further examination or driver testing.

(g) On and after the first day of January, two thousand one, any person under the age of eighteen who does not possess a junior or regular driver's license may not operate a motor vehicle unless he or she has obtained a graduated driver's license in accordance with the three level graduated driver's license system described in the following provisions.

(h) Any person under the age of twenty-one, regardless of class or level or licensure, who operates a motor vehicle with any measurable alcohol in his or her system is subject to the provisions of section two, article five, and section two, article five-a both of chapter seventeen-c of this code. Any person under the age of eighteen, regardless of class or licensure level, is subject to the mandatory school attendance provisions of section eleven, article eight, chapter eighteen of this code.

(i) Level One Instruction Permit. -- An applicant who is fifteen years or older meeting all other requirements prescribed in this code may be issued a level one instruction permit.

(1) Eligibility. -- The division shall not issue a level one instruction permit unless the applicant:

(A) Presents a completed application, as prescribed by the provisions of section six of this article, and which is accompanied by a writing, duly acknowledged, consenting to the issuance of the graduated driver's license and executed by a parent or guardian entitled to custody of the applicant;

(B) Presents a certified birth certificate issued by a state or other governmental entity

responsible for vital records, evidencing that the applicant meets the minimum age requirement;

(C) Passes the vision and written knowledge examination, and completes the driving under the influence awareness program, as prescribed in section seven of this article;

(D) Presents a current school enrollment form or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code; and

(E) Pays a fee of five dollars.

(2) Terms and conditions of instruction permit. -- A level one instruction permit issued under the provisions of this section is valid for a period of fourteen months and is not renewable. However, any permit holder who allows his or her permit to expire prior to successfully passing the road skills portion of the driver examination, and who has not committed any offense which requires the suspension, revocation or cancellation of the instruction permit, may reapply for a new instruction permit. The division shall immediately revoke the permit upon receipt of a second conviction for a moving violation of traffic regulations and laws of the road or violation of the terms and conditions of a level one instruction permit, which convictions have become final unless a greater penalty is required by this section or any other provision of this code. Any person whose instruction permit has been revoked is disqualified from retesting for a period of ninety days. However, after the expiration of ninety days, the person may retest if otherwise eligible. In addition to all other provisions of this code for which a driver's license may be restricted, suspended, revoked or canceled, the holder of a level one instruction permit may only operate a motor vehicle under the following conditions:

(A) Under the direct supervision of a licensed driver, twenty-one years of age or older, or a driver's education or driving school instructor who is acting in an official capacity as an instructor, who is fully alert and unimpaired, and the only other occupant of the front seat. The vehicle may be operated with no more than two additional passengers, unless the passengers are family members;

(B) Between the hours of five a.m. and eleven p.m.;

(C) All occupants must use safety belts in accordance with the provisions of section forty-nine, article fifteen, chapter seventeen-c of this code;

(D) Without any measurable blood alcohol content, in accordance with the provisions of subsection (h), section two, article five, chapter seventeen-c of this code; and

(E) Maintains current school enrollment or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code.

(j) Level Two Intermediate Driver's License. -- An applicant sixteen years of age or older, meeting all other requirements of the code, may be issued a level two intermediate driver's license.

(1) Eligibility. -- The division shall not issue a level two intermediate driver's license unless the applicant:

(A) Presents a completed application as prescribed in section six of this article;

(B) Has held the level one instruction permit conviction-free for the one hundred eighty days immediately preceding the date of application for a level two intermediate license;

(C) Has completed either a driver's education course approved by the state department of education or thirty hours of behind the wheel driving experience certified by a parent or legal guardian or other responsible adult over the age of twenty-one as indicated on the form prescribed by the division: *Provided, That nothing in this paragraph shall be construed to require any school*

or any county board of education to provide any particular number of driver's education courses or to provide driver's education training to any student;

(D) Presents a current school enrollment form or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code;

(E) Passes the road skills examination as prescribed by section seven of this article; and

(F) Pays a fee of five dollars.

(2) Terms and conditions of a level two intermediate driver's license. -- A level two intermediate driver's license issued under the provisions of this section shall expire on the day designated by the commissioner of the month in which the applicant attains the age of eighteen, or until the licensee qualifies for a level three full Class E license, whichever comes first. In addition to all other provisions of this code for which a driver's license may be restricted, suspended, revoked or canceled, the holder of a level two intermediate driver's license may only operate a motor vehicle under the following conditions:

(A) Unsupervised between the hours of five a.m. and eleven p.m.;

(B) Only under the direct supervision of a licensed driver, age twenty-one years or older, between the hours of eleven p.m. and five a.m. except when the licensee is going to or returning from:

(i) Lawful employment;

(ii) A school sanctioned activity;

(iii) A religious event; or

(iv) An emergency situation that requires the licensee to operate a motor vehicle to prevent bodily injury or death of another;

(C) All occupants shall use safety belts in accordance with the provisions of section forty-nine, article fifteen, chapter seventeen-c of this code;

(D) Operates the vehicle with no more than three passengers under the age of nineteen, unless the passengers are family members, in addition to the driver;

(E) Without any measurable blood alcohol content in accordance with the provisions of subsection (h), section two, article five, chapter seventeen-c of this code;

(F) Maintains current school enrollment or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code;

(G) Upon the first conviction for a moving traffic violation or a violation of paragraph (A), (B), (C) or (D) of subdivision one, subsection (j) of this section of the terms and conditions of a level two intermediate driver's license, the licensee shall enroll in an approved driver improvement program unless a greater penalty is required by this section or by any other provision of this code.

At the discretion of the commissioner, completion of an approved driver improvement program may be used to negate the effect of a minor traffic violation as defined by the commissioner against the one year conviction free driving criteria for early eligibility for a level three driver's license; and

(H) Upon the second conviction for a moving traffic violation or a violation of the terms and conditions of the level two intermediate driver's license, the licensee's privilege to operate a motor vehicle shall be revoked or suspended for the applicable statutory period or until the licensee's eighteenth birthday, whichever is longer unless a greater penalty is required by this section or any

other provision of this code. Any person whose driver's license has been revoked as a level two intermediate driver, upon reaching the age of eighteen years and if otherwise eligible may reapply for an instruction permit, then a driver's license in accordance with the provisions of sections five, six and seven of this article.

(k) Level Three, Full Class E License. -- The level three license is valid until the day designated by the commissioner of the month in which the licensee attains the age of twenty-one. Unless otherwise provided in this section or any other section of this code, the holder of a level three full Class E license is subject to the same terms and conditions as the holder of a regular Class E driver's license.

A level two intermediate licensee whose privilege to operate a motor vehicle has not been suspended, revoked or otherwise canceled and who meets all other requirements of the code, may be issued a level three full Class E license without further examination or road skills testing, if the licensee:

(1) has reached the age of seventeen years, and

(A) Presents a completed application as prescribed by the provisions of section six of this article;

(B) Has held the level two intermediate license conviction-free for the twelve month period immediately preceding the date of the application;

(C) Has completed any driver improvement program required under paragraph (G), subdivision (2), subsection (j) of this section; and

(D) Pays a fee of two dollars and fifty cents for each year the license is valid. An additional fee of fifty cents shall be collected to be deposited in the combined voter registration and driver's licensing fund established in section twelve, article two, chapter three of this code; or

(2) Reaches the age of eighteen years, and

(A) Presents a completed application as prescribed by the provisions of section six of this article; and

(B) Pays a fee of two dollars and fifty cents for each year the license is valid. An additional fee of fifty cents shall be collected to be deposited in the combined voter registration and driver's licensing fund established in section twelve, article two, chapter three of this code.

**§17B-2-5. Qualifications, issuance and fee for instruction permits.**

(a) Any person who is at least fifteen years of age may apply to the division for an instruction permit. However, any person who has not attained the age of eighteen shall comply with the provisions of section three-a of this article. The division may, in its discretion, after the applicant has successfully passed all parts of the examination other than the ~~driving road skills~~ test, ~~and presented documentation of compliance with the provisions of section eleven, article eight, chapter eighteen of this code~~ issue to the applicant an instruction permit which entitles the applicant while having the permit in his or her immediate possession to drive a motor vehicle upon the public highways when accompanied by a licensed driver of at least twenty-one years of age, a driver's education or driving school instructor that is acting in an official capacity as an instructor, who is alert and unimpaired or a certified division license examiner acting in an official capacity as an examiner, who is occupying a seat beside the driver. ~~except in the event the permittee is operating a motorcycle. In no event may the permittee operate a motorcycle upon a public highway until~~

reaching sixteen years of age.

(1) Any instruction permit issued to a person under the age of ~~sixteen~~ eighteen years ~~shall be issued in accordance with the provisions of section three-a of this article.~~ ~~expires sixty days after the permittee reaches sixteen years of age.~~ *Provided,* ~~That only permittees who have reached their sixteenth birthday may take the driving examination as provided in section six of this article.~~ The instruction permit may be renewed for one additional period of sixty days.

(2) Any permit issued to a person who has reached the age of ~~sixteen~~ eighteen years is valid for a period of sixty days and may be renewed within a period of sixty days without reexamination for an additional period of sixty days or a new permit issued. The fee for the instruction permit is four dollars, one dollar of which shall be paid into the state treasury and credited to the state road fund, and the other three dollars of which shall be paid into the state treasury and credited to the general fund to be appropriated to the state police for application in the enforcement of the road law.

(b) Any person sixteen years of age or older may apply to the division for a motorcycle instruction permit. On and after the first day of January, two thousand one, any person under the age of eighteen must have first completed the requirements for a level two intermediate driver's license set forth in paragraphs (B), (C) and (D), subdivision one, subsection (j), section three-a of this article, junior driver's license or driver's license before being eligible for a motorcycle instruction permit.

The division may, in its discretion, after the applicant has successfully passed all parts of the motorcycle examination other than the driving test, and presented documentation of compliance with the provisions of section eleven, article eight, chapter eighteen of this code, issue to the applicant an instruction permit which entitles the applicant while having the permit in his or her immediate possession to drive a motorcycle upon the public streets or highways for a period of ninety days, during the daylight hours between sunrise and sunset only. No holder of a motorcycle instruction permit shall operate a motorcycle while carrying any passenger on the vehicle.

A motorcycle instruction permit is not renewable, but a qualified applicant may apply for a new permit. The fee for a motorcycle instruction permit is five dollars, which shall be paid into a special fund in the state treasury known as the motorcycle license examination fund as established in section seven-c, article two of this chapter.

**§17B-2-6. Application for license or instruction permit; fee to accompany application.**

(a) Every application for an instruction permit or for a driver's license shall be made upon a form furnished by the division. Every application shall be accompanied by the proper fee and payment of ~~such~~ the fee shall entitle the an applicant under the age of eighteen to not more than three attempts to pass the road skills test. An applicant age eighteen years or older is entitled to not more than three attempts to pass the examination road skills test within a period of sixty days from the date of application; issuance of the instruction permit. ~~except that no~~ An applicant who fails either the written test or the road skills test may not be examined tested twice within a period of one week.

(b) Any applicant who has not been previously licensed must hold an instruction permit for a minimum of thirty days. For the purposes of this section, the term "previously licensed" means an applicant who has obtained at least a level two graduated license or junior driver's license issued under the provisions of this article or has obtained an equal or greater level of licensure if previously licensed in another state.

(c) Every said application shall state the full name, date of birth, sex, and residence address

of the applicant, and briefly describe the applicant, and shall state whether the applicant has theretofore been a licensed driver, and, if so, when and by what state or country, and whether any such license has ever been suspended or revoked within the five years next preceding the date of application, or whether an application has ever been refused, and, if so, the date of and reason for ~~such~~ the suspension, revocation or refusal, whether the applicant desires a notation on the drivers license indicating that the applicant is a diabetic, and such other pertinent information as the commissioner may require.

**§17B-2-7. Examination of applicants.** (a) Upon the presentment ~~by the applicant under the age of eighteen years~~ of the applicant's birth certificate, or a certified copy of the birth certificate issued by a state or other governmental entity responsible for vital records, as evidence that the applicant is of lawful age and verifiable identity, the division of motor vehicles shall examine every applicant for a license to operate a motor vehicle in this state, except as otherwise provided in this section. The examination shall include a test of the applicant's eyesight, the applicant's ability to read and understand highway signs regulating, warning, and directing traffic, the applicant's knowledge of the traffic laws of this state, and the applicant's knowledge of the effects of alcohol upon persons and the dangers of driving a motor vehicle under the influence of alcohol. The examination shall also include an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle, and any further physical and mental examination as the division of motor vehicles considers necessary to determine the applicant's fitness to operate a motor vehicle safely upon the highways.

(b) The commissioner shall propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code concerning the examination of applicants for licenses and the qualifications required of applicants, and the examination of applicants by the division shall be in accordance with the rules. The rules shall provide for the viewing of educational material or films on the medical, biological, and psychological effects of alcohol upon persons, the dangers of driving a motor vehicle while under the influence of alcohol and the criminal penalties and administrative sanctions for alcohol and drug related motor vehicle violations.

(c) After successful completion of the examination required by this section, section three-a, or section seven-b of this article, and prior to the issuance of a license pursuant to the provisions of section eight of this article, every applicant for a driver's license, junior driver's license, graduated driver's license, or motorcycle-only license shall attend a mandatory education class on the dangers and social consequences of driving a motor vehicle while under the influence of alcohol. To the extent practicable, the commissioner shall ~~utilize~~ use as lecturers at those classes persons who can relate first-hand experiences as victims or family members of victims of alcohol-related accidents or drivers who have been involved in alcohol-related accidents which caused serious bodily injury or death.

**§17B-2-7b. Separate examination and endorsement for a license valid for operation of motorcycle.**

The state police shall administer a separate motorcycle examination for applicants for a license valid for operation of a motorcycle. On and after the first day of July, two thousand, the

division of motor vehicles shall administer the examination provided for in this section. Any applicant for a license valid for operation of a motorcycle shall be required to successfully complete the motorcycle examination, which is in addition to the examination administered pursuant to section seven of this article and, if under the age of eighteen, shall be required to complete the requirements for a level two intermediate driver's license set forth in paragraphs (B), (C), and (D), subdivision (1), subsection (j), section three-a of this article: *Provided*, That the commissioner may exempt an applicant for a motorcycle driver license or endorsement from all or part of the motorcycle license examination as provided in section six, article one-d of this chapter. The motorcycle examination shall test the applicant's knowledge of the operation of a motorcycle and of any traffic laws specifically relating to the operation of a motorcycle and shall include an actual demonstration of the ability to exercise ordinary and reasonable control in the operation of a motorcycle. An applicant for a license valid for the operation of only a motorcycle shall be tested as provided in this section and in section seven of this article, but need not demonstrate actual driving ability in any vehicle other than a motorcycle. The examination provided in this section shall not be made a condition upon the renewal of the license of any person under this section. For an applicant who successfully completes the motorcycle examination, upon payment of the required fee, the division shall issue a motorcycle endorsement on the driver's license of the applicant, or shall issue a special motorcycle-only license if the applicant does not possess a driver's license: *Provided*, however, That any holder of a motorcycle-only license under the age of eighteen shall be subject to the provisions of paragraphs (A), (B), (E), (F), (G) and (H), subdivision (2), subsection (j), section three-a of this article.

Every person, including those holding a valid driver's license, is required to take the examination specified in this section to obtain a motorcycle license or endorsement.

**§17B-2-8. Issuance and contents of licenses; fees.**(a) The division shall, upon payment of the required fee, issue to every applicant qualifying therefor a driver's license, which shall indicate the type or general class or classes of vehicle or vehicles the licensee may operate in accordance with this chapter or chapter seventeen-e of this code, or motorcycle-only license. Each license shall contain a coded number assigned to the licensee, the full name, date of birth, residence address, a brief description and a color photograph of the licensee and either a facsimile of the signature of the licensee or a space upon which the signature of the licensee shall be written with pen and ink immediately upon receipt of the license. No license shall be valid until it has been so signed by the licensee: *Provided*, That the commissioner may issue upon proper documentation, a duplicate or renewed valid without-photo license for resident applicants temporarily out of state. A driver's license which is valid for operation of a motorcycle shall contain a motorcycle endorsement. The division shall use such process or processes in the issuance of licenses that will, insofar as possible, prevent any alteration, counterfeiting, duplication, reproduction, forging or modification of, or the superimposition of a photograph on, such the license.

~~(b) The fee for the issuance of a Class E driver's license shall be ten dollars and fifty cents. The fee for issuance of a Class D driver's license shall be twenty-five dollars and fifty cents. Fifty cents of each such fee shall be deposited in the "combined voter registration and driver's licensing fund," established pursuant to the provisions of section twenty-two-a, article two, chapter three of this code. The one time only additional fee for adding a motorcycle endorsement to a driver's license~~

~~shall be five dollars. The fee for issuance of a motorcycle-only license shall be ten dollars. The fees for the motorcycle endorsement or motorcycle-only license shall be paid into a special fund in the state treasury known as the motorcycle safety fund as established in section seven, article one-d of this chapter.~~

~~(c) After the thirtieth day of June, one thousand nine hundred ninety-six,~~

(b) The fee for the issuance of a Class E driver's license shall be two dollars and fifty cents per year for each year ~~such~~ the license is issued to be valid. The fee for issuance of a Class D driver's license shall be six dollars and twenty-five cents per year for each year ~~such~~ the license is issued to be valid. An additional fee of fifty cents shall be collected from the applicant at the time of original issuance or each renewal and ~~such~~ the additional fee shall be deposited in the "combined voter registration and driver's licensing fund," established pursuant to the provisions of section ~~twenty-two-a [repealed]~~ twelve, article two, chapter three of this code. The one-time only additional fee for adding a motorcycle endorsement to a driver's license shall be five dollars.

The fee for issuance of a motorcycle-only license shall be two dollars and fifty cents for each year for which the motorcycle license is to be valid. The fees for the motorcycle endorsement or motorcycle-only license shall be paid into a special fund in the state treasury known as the motorcycle safety fund as established in section seven, article one-d of this chapter.

(c) On or after the first day of January, two thousand one, the fee for the issuance of either the level one or level two graduated driver's license as prescribed in section three-a of this article is five dollars.

**§17B-2-11. Duplicate permits and licenses.** In the event that an instruction permit or driver's license issued under the provisions of this chapter is lost or destroyed, or if the information contained on the license has changed, the person to whom ~~such~~ the permit or license was issued may upon making proper application and upon payment of a fee of five dollars obtain a duplicate thereof upon furnishing proof satisfactory to the division that ~~such~~ the permit or license has been lost or destroyed.

**§17B-2-12. Expiration of licenses; renewal; renewal fees.** (a) Every driver's license shall expire five years from the date of its issuance.

(b) (1) Every driver's license issued to persons who have attained their twenty-first birthday shall expire on the day of the month designated by the commissioner in which the applicant's birthday occurs in those years in which the applicant's age is evenly divisible by five. Except as provided in the following subdivisions, no driver's license may be issued for less than three years nor more than seven years and shall be valid for a period of five years, expiring in the month in which the applicant's birthday occurs and in a year in which the applicant's age is evenly divisible by five.

(2) Every driver's license issued to persons who have not attained their twenty-first birthday shall expire on the day of the month designated by the commissioner in the year in which the applicant attains the age of twenty-one years, except as provided in section three-a of this article.

(3) The driver's license of any person in the armed forces is extended for a period of six months from the date the person is separated under honorable circumstances from active duty in the armed forces.

(4) The commissioner may change the date that a driver's license expires from the last day of the month in those years specified in subdivisions (1) and (2) of this subsection to the day of the

month in which the applicant's birthday occurs in those years. If the commissioner changes the expiration date, the change may only affect new licenses and renewed licenses.

(c) A person who allows his or her driver's license to expire may apply to the division for renewal of the license. Application shall be made upon a form furnished by the division and shall be accompanied by payment of the fee required by section eight of this article plus an additional fee of five dollars. The commissioner shall determine whether the person qualifies for a renewed license and may, in the commissioner's discretion, renew any expired license without examination of the applicant.

(d) Each renewal of a driver's license shall contain a new color photograph of the licensee. By first class mail to the address last known to the division, the commissioner shall notify each person who holds a valid driver's license of the expiration date of the license. The notice shall be mailed at least thirty days prior to the expiration date of the license and shall include a renewal application form.

## **CHAPTER 18. EDUCATION.**

### **ARTICLE 6. DRIVER EDUCATION.**

#### **§18-6-5. Establishment and maintenance of driver education course; who may enroll; exemption from learner's permit requirement.**

The state superintendent shall promote and direct the establishment and maintenance of courses of instruction in driver education in secondary schools in accordance with the provisions of this article and the rules ~~and regulations~~ that the state board adopts pursuant to section four of this article. Directors, trustees or other persons having control or authority over private, parochial or denominational secondary schools, who establish and maintain ~~such the~~ courses in the schools under their control or supervision, shall comply with the rules ~~and regulations~~ that the state board adopts pursuant to section four of this article.

In the case of a pupil who will not reach his ~~sixteenth birthday~~ the age of fifteen years before ~~he completes~~ completion of the driver education course in which ~~he is~~ enrolled, instruction shall be limited to the classroom. Pupils ~~who will reach their sixteenth birthday before they complete the driver education course and those who are sixteen years~~ fifteen years of age and older shall receive instruction and practical training in the operation of motor vehicles on the public streets and highways. ~~and the pupil need not have the learner's permit required by section five, article two, chapter seventeen b of this code, if he is operating a dual control automobile and a duly appointed instructor is actually occupying a seat beside the pupil~~

#### **§18-6-8. Driver education course to be made available to all secondary school pupils prior to their graduation; exemption; application by pupil for unrestricted operator's license.**

Before any pupil is graduated from a secondary school after the first day of September, one thousand nine hundred seventy-five, he or she shall first be provided an opportunity and encouraged to successfully complete a driver education course approved by the state board in a public, private, parochial or denominational secondary school within the state. If a pupil has successfully completed a similar course in a secondary school of another state and the course is accepted by the state board as adequately meeting and complying with the course standards established by the state board, then the aforementioned requirement shall be deemed fulfilled regarding that pupil.

On or before December thirty-first, two thousand, any secondary school pupil sixteen years

of age or older, but under eighteen years of age, who has successfully completed a driver education course approved by the state board in a public, private, parochial or denominational secondary school within the state or a similar course in a secondary school of another state and accepted by the state board as adequately meeting and complying with the course standards established by the state board, shall, upon proper application and successful completion of all examination and driving tests required by law for issuance of an operator's license to a person eighteen years of age or older, be issued an operator's license without any restriction rather than the junior or probationary operator's license provided for in section three, article two, chapter seventeen-b of this code. On or after the first day of January, two thousand one, any secondary school pupil sixteen years of age or older, but under eighteen years of age, who has successfully completed a driver education course approved by the state board in a public, private, parochial or denominational secondary school within the state or a similar course in a secondary school of another state and accepted by the state board as adequately meeting and complying with the course standards established by the state board, shall be exempted from submitting a sworn affidavit certified by the parent, legal guardian, or other responsible adult over the age of twenty-one that the applicant has successfully completed the minimum number of hours of behind-the-wheel training as provided in section three-a, article two, chapter seventeen-b of the code.

**HOUSE BILL 4399**

**EFFECTIVE DATE:** July 1, 2000

**SIGNED BY GOVERNOR:** March 21, 2000

**CODE REFERENCE(S):** New §15-1B-24

**TOPIC:** STATE BOARD OF EDUCATION SUPPORT TO  
THE MOUNTAINEER CHALLENGE ACADEMY

**INTRODUCTION:**

Requires the state board of education to provide certain information and other support to the Mountaineer Challenge Academy.

**MAJOR PROVISIONS:**

The state board of education, notwithstanding any other provision in the code to the contrary, shall:

1. Include the Mountaineer Challenge Academy in the child nutrition program on the same basis as other public schools;
2. Provide the names and mailing addresses of all high school dropouts in the state to the director of the Mountaineer Challenge Academy upon request; and,
3. Provide for Mountaineer Challenge Academy graduates to participate in the adult basic education program.
4. The legislature encourages cooperation from the Mountaineer Challenge Academy for the purpose of assisting the Mountaineer Challenge Academy in achieving its mission.

**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**  
**H. B. 4399**

(By Delegates Cann, Angotti, Frederick,  
Williams, Kominar, Coleman and Perdue)  
[Passed March 11, 2000; in effect ninety days from passage.]

AN ACT to amend article one-b, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-four, relating to requiring the state board of education to provide certain information and other support to the Mountaineer Challenge Academy.

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

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

**ARTICLE 1B. NATIONAL GUARD.**

**§15-1B-24. Mountaineer Challenge Academy.**

The Mountaineer Challenge Academy, operated by the adjutant general at Camp Dawson, is hereby acknowledged to be a program of great value in meeting the educational needs of at-risk youth throughout the state. It is the sense of the Legislature that the Mountaineer Challenge Academy should enjoy the full cooperation of the executive agencies of state government in carrying out its program.

To that end, the state board of education shall, notwithstanding any other provision in this code to the contrary:

(1) Include the Mountaineer Challenge Academy in the child nutrition program on the same basis as other public schools;

(2) Provide the names and mailing addresses of all high school dropouts in the state to the director of the Mountaineer Challenge Academy upon request; and

(3) Provide for Mountaineer Challenge Academy graduates to participate in the adult basic education program.

Further cooperation with the Mountaineer Challenge Academy is encouraged by the Legislature for the purpose of assisting the Mountaineer Challenge Academy in achieving its mission.

## HOUSE BILL 4413

**EFFECTIVE DATE:** March 9, 2000

**SIGNED BY GOVERNOR:** March 17, 2000

**CODE REFERENCE(S):** Amends and Reenacts §18-2-26

**TOPIC:** MULTICOUNTY REGIONAL EDUCATIONAL  
SERVICE AGENCIES

**INTRODUCTION:**

Provides for county board members serving on regional boards to receive compensation not to exceed one hundred dollars per meeting attended.

**MAJOR NEW PROVISIONS:**

Provides for county board members serving on regional boards to receive compensation not to exceed one hundred dollars per meeting attended.

**ENROLLED**  
**H. B. 4413**

(By Delegates Mezzatesta, Williams, Paxton, Davis, Fletcher,  
Houston and Calvert)

[Passed March 9, 2000; in effect from passage.]

AN ACT to amend and reenact section twenty-six, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishing regional education service agencies; purposes; authority to implement regional services; and compensation.

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

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

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

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

(a) In order to consolidate and administer more effectively existing educational programs and services so individual districts will have more discretionary moneys for educational improvement and in order to equalize and extend educational opportunities, the state board of education shall establish multicounty regional educational service agencies for the purpose of providing high quality, cost effective educational programs and services to the county school systems, and shall make such rules as may be necessary for the effective administration and operation of the agencies. ~~Provided, That the legislative oversight commission on education accountability shall commission a comprehensive feasibility study of the regional educational service agencies which shall be completed and reported to the legislative oversight commission on education accountability no later than the tenth day of January, one thousand nine hundred ninety-five.~~

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

Technical, operational, programmatic or professional services are among the types of services appropriate for delivery on a regional

basis.

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

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

~~(e) Each regional educational service agency shall conduct a study setting forth how the following services and functions may be performed by the agency for public schools and school districts within the region without terminating the employment of personnel employed by school districts prior to the effective date of this subsection: Accounting, purchasing, food service, transportation, delivery of high cost services to low incidence student populations, audiovisual material distribution, facilities planning, federal program coordination, personnel recruiting and an integrated regional computer information system. On or before the tenth day of January, one thousand nine hundred ninety, each regional educational service agency shall submit the study to the state board of education and finance of the West Virginia Senate and House of Delegates and to the secretary of education and the arts: Provided, That in the event such study is implemented those individuals employed prior to the effective date thereof shall not have their employment terminated as a result of the study.~~

~~(f) Each regional educational service agency shall commence implementation of a uniform integrated regional computer information system as recommended by the state board of education~~

~~on or before the first day of January, one thousand nine hundred ninety-one.~~

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

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

~~(h)~~(g) A regional board ~~shall be empowered to~~ may receive and disburse funds from the state and federal governments, member

counties, gifts and grants.

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

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

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

- Network File Servers.....forty-eight hours
- Local Area Networks.....forty-eight hours
- West Virginia Education Information System.....twenty-four hours
- Computer Workstations.....three to five days
- Printers.....three to five days
- Other Peripherals.....three to five days

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

~~(l)~~(k) Pursuant to the processes and provisions of section twenty-three-a ~~{§ 18-2-23a}~~, article two, chapter eighteen of this code, each regional educational service agency shall provide coordinated professional development programs within its region to meet the professional development goals established by the state board.

(l) Notwithstanding any other provision of the code to the contrary, county board members serving on regional education service agency boards may receive compensation at a rate not to exceed one hundred dollars per meeting attended, not to exceed fifteen meetings per year. County board members serving on regional education service agency boards may be reimbursed for travel at the same rate as state employees under the rules of the travel management office of the department of administration.

## HOUSE BILL 4414

**EFFECTIVE DATE:** March 11, 2000

**SIGNED BY GOVERNOR:** March 17, 2000

**CODE REFERENCES:** Amends §18A-1-1 and §8A-2-3

**TOPIC :** HIRING OF ‘PROSPECTIVE EMPLOYABLE PROFESSIONAL PERSONNEL’

### **INTRODUCTION:**

Provides that under certain circumstances a county superintendent may, subject to approval of the county board of education and provided conditions in this section of the Code are met, employ up to 25 full-time prospective employable professional personnel each year on a reserve list at the county level. If the conditions in the Code are not met, the personnel may not be hired without approval from the State Board of Education.

### **MAJOR NEW PROVISIONS:**

1. Defines “prospective employable professional personnel” as certified professional educators who: (1) have been recruited on a reserve list of a county board; (2) have been recruited at a job fair or as a result of contact made at a job fair; (3) have not obtained regular employee status through 18A-4-7a; and (4) who have obtained a baccalaureate degree from an accredited institution within the past year.
2. A county on its own may hire prospective employable professional personnel only when the county board has (1) given the superintendent general approval to employ the personnel on the reserve list; (2) given general approval as to the form of the contract and (3) has approved the number to be hired from the reserve list.
3. With one exception, noted in 4 below, a county is eligible to hire professional personnel only if the county’s net enrollment during the current year is more than 100 students greater than the fourth year prior to the current year.
4. If a county does not meet the eligibility requirement listed in 3 above, the State Board may give the county permission to hire prospective employable professional personnel under criteria to be determined by the State Board. The criteria must include vacancies in professional positions and the need to recruit teachers in specific subject matter areas. The State Board must annually determine the number that could be hired which number cannot exceed 25 per county.
5. The State Board must annually provide the Legislative Oversight Commission on Education Accountability with a report on the number of counties participating in this program, the number

of personnel hired, the teaching fields in which they were employed, the place of residency of the personnel hired, and the Board's recommendations with respect to the entire program.

**ENROLLED**  
**H. B. 4414**

(By Delegates Mezzatesta, Williams, Paxton, Susman and Willis)  
[Passed March 11, 2000; in effect from passage.]

AN ACT to amend and reenact section one, article one, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three, article two of said chapter, all relating to county boards of education; defined terms; employment of substitute teachers; and allowing the county superintendents to hire prospective employable professional personnel.

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

That section one, article one, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section three, article two of said chapter be amended and reenacted, all to read as follows:

**ARTICLE 1. GENERAL PROVISIONS.**

**§18A-1-1. Definitions.**

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

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

(b) "Professional personnel" means persons who meet the certification and/or licensing requirements of the state, and includes the professional educator and other professional employees.

(c) "Professional educator" is synonymous with and has the same meaning as "teacher" as defined in section one, article one, chapter eighteen of this code. Professional educators shall be classified as:

(1) "Classroom teacher" -- The professional educator who has direct instructional or counseling relationship with pupils, spending the majority of his or her time in this capacity.

(2) "Principal" -- The professional educator who as agent of the board has responsibility for the supervision, management and control of a school or schools within the guidelines established by said board. The major area of such responsibility shall be the general supervision of all the schools and all school activities involving pupils, teachers and other school personnel.

(3) "Supervisor" -- The professional educator who, whether by this or other appropriate title, is responsible for working primarily in the field with professional and/or other personnel in instructional and other school improvement.

(4) "Central office administrator" -- The superintendent, associate superintendent, assistant superintendent and other professional educators, whether by these or other appropriate titles, who are charged with the administering and supervising of the whole or some assigned part of the total program of the county-wide school system.

(d) "Other professional employee" means that person from another profession who is properly licensed and is employed to serve the public schools and includes a registered professional nurse, licensed by the West Virginia board of examiners for registered professional nurses and employed

by a county board of education, who has completed either a two-year (sixty-four semester hours) or a three-year (ninety-six semester hours) nursing program.

(e) "Service personnel" means those who serve the school or schools as a whole, in a nonprofessional capacity, including such areas as secretarial, custodial, maintenance, transportation, school lunch and as aides.

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

(g) "Center for professional development" means the center created pursuant to section one, article three-a of this chapter.

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

(i) "Prospective employable professional personnel" means certified professional educators who:

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

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

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

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

## **ARTICLE 2. SCHOOL PERSONNEL.**

### **§18A-2-3. Employment of substitute teachers and prospective employable professional personnel.**

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

(b) Prospective employable professional personnel may be employed in accordance with this subsection.

(1) As an aid in recruiting teachers in the state, and notwithstanding any other provision of this code to the contrary, a superintendent of a county that meets the requirements in subdivision (3) of this subsection or obtains approval from the state board in accordance with subdivision (4) of this subsection may employ up to twenty-five full-time prospective employable professional personnel each year on a reserve list at the county level. Regular employment status for such personnel may be obtained only in accordance with the provision of section seven-a, article four of this chapter.

(2) Prior to the employment of the full-time prospective employable professional personnel on a reserve list, the superintendent shall obtain from the county board:

(A) General approval to employ the personnel on the reserve list;

(B) General approval as to the form of the contract to be used in employing the personnel; and

(C) Approval of the number of personnel to be employed from the reserve list.

(3) Unless a county is eligible under subdivision (4) of this subsection, a county is eligible to hire professional personnel in accordance with this subsection only if the county's net enrollment during the year is more than one hundred students greater than the fourth year prior to the current year.

(4) Unless a county is eligible under subdivision (3) of this subsection, a county is eligible to hire professional personnel in accordance with this subsection only if the county requests and receives approval from the state board. The state board shall determine the criteria for granting approval including, but not limited to, vacancies in professional personnel positions and the need to recruit teachers in specific subject matter areas. The state board annually shall determine the number of prospective employable professional personnel to be hired: *Provided*, That the number may not exceed twenty-five.

(5) The state board annually shall review the status of employing personnel under the provisions of this subsection, and annually shall report to the legislative oversight commission on education accountability on or before the first day of November of each year. The report shall include, but not be limited to, the following:

(A) The counties that participated in the program;

(B) The number of personnel hired;

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

(D) The venue from which personnel were employed;

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

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

**HOUSE BILL 4541**

**EFFECTIVE DATE:** June 9, 2000

**SIGNED BY GOVERNOR:** March 21, 2000

**CODE REFERENCE(S):** Amends §18-7A-24

**TOPIC:** DISPOSITION OF ACCUMULATED CONTRIBUTIONS  
UPON CESSATION OF MEMBERSHIP

**INTRODUCTION:**

Relating to the disposition of accumulated contributions in the teachers retirement system.

**MAJOR NEW PROVISIONS:**

When contributors with fewer than five years of service cease to be a member in the teacher retirement system because of absence from service as a teacher, the accumulated contributions with refund interest shall be returned.

**ENROLLED**  
**H. B. 4541**

(By Delegates Jenkins, Campbell, Williams,  
J. Smith, Harrison, Hubbard and Hall)  
[Passed March 11, 2000; in effect ninety days from passage.]

AN ACT to amend and reenact section twenty-four, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the disposition of accumulated contributions in the teacher retirement system.

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

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

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

**§18-7A-24. Disposition of accumulated contributions upon cessation of membership.**

When a contributor with fewer than five years of service ceases to be a member because of absence from service as a teacher, his or her accumulated contributions with refund interest up to and including the fiscal year in which his or her membership ceased, shall be returned to him or her, or to his or her legal representative. Five years after cessation of membership, if ~~the~~ such contributor or his or her legal representative cannot be found, his accumulated contributions with refund interest shall be forfeited to the retirement system and credited to the reserve fund.

## HOUSE BILL 4575

**EFFECTIVE DATE:** July 1, 2000

**SIGNED BY GOVERNOR:** April 5, 2000

**CODE REFERENCE(S):** New §18-7A-14b

**TOPIC:** MEMBERS' OPTION TO MAKE  
CONTRIBUTIONS FOR PERIODS OF  
TEMPORARY TOTAL DISABILITY

**INTRODUCTION:**

Permits additional contributions to the state teachers retirement system for periods of temporary total disability to be made after the member returns to work.

**MAJOR NEW PROVISIONS:**

1. Any member of the state teachers retirement system who was absent from work while receiving temporary total disability benefits may purchase credited service for a specified time period.
2. The member desiring to purchase such credited service may do so only by lump sum payment from personal funds.
3. The purchase of the service credit must be completed between July1, 2000 and June 30, 2001.
4. The member must pay his or her regular contribution and an equal amount that represents the employer's contribution, based on the salary the member was receiving immediately prior to having sustained the injury.

**ENROLLED**  
**H. B. 4575**

(By Delegates H. White, Mezzatesta,  
Jenkins, Kominar, Michael and Hubbard)  
[Passed March 11, 2000; in effect July 1, 2000.]

AN ACT to amend and reenact article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fourteen-b, relating to the state teachers retirement system; permitting members the option to purchase service credit for time periods they were absent from work and receiving temporary total disability payments; setting forth cost to purchase such service credit; establishing applicable time periods; and setting forth a window of time during which such purchase must occur.

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

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

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

**§18-7A-14b Members' option to make contributions for periods of temporary total disability.**

Any member who was absent from work while receiving temporary total disability benefits pursuant to the provisions of chapter twenty-three of this code as a result of a compensable injury received in the course of and as a result of his or her employment with the covered employer during the time period beginning the first day of January, one thousand nine hundred eighty-eight and the thirty-first day of December, one thousand nine hundred ninety-eight may purchase credited service for that time period or those time periods the member was absent from work as a result of a compensable injury and receiving temporary total disability benefits: *Provided*, That the member returned to work with his or her covered employer within one year following the cessation of temporary total disability benefits. The member desiring to purchase such credited service may do so only by lump sum payment from personal funds: *Provided, however*, That the purchase of service credit pursuant to the provisions of this section shall be completed between the time period beginning the first day of July, two thousand and ending the thirtieth day of June, two thousand one: *Provided further*, That in order to purchase such service credit, the member shall pay to the board his or her regular contribution and an equal amount that represents the employer's contribution, based on the salary the member was receiving immediately prior to having sustained such compensable injury: *And provided further*, That the member purchasing service credit under the provisions of this section may not be charged interest. The maximum number of years of service credit that may be purchased under this section shall not exceed two.

## HOUSE BILL 4578

**EFFECTIVE DATE:** June 13, 2000

**SIGNED BY GOVERNOR:** Passed March 11, 2000

**CODE REFERENCE(S):** Amends §16-3-4a

**TOPIC:** TUBERCULOSIS TESTING OF SCHOOL CHILDREN

**INTRODUCTION:**

Provides for the compulsory testing for tuberculosis for school children and school personnel.

**MAJOR NEW PROVISIONS:**

1. Eliminates the need for tuberculin testing for kindergarten and first grade pupils prior to school entry.
2. Only children transferring from a school located outside of the state need an approved tuberculin test.
3. The state Commissioner of Public Health has the authority to require testing of children who may have been exposed to tuberculosis.

**ENROLLED**

**H. B. 4578**

(By Delegates Compton, Hutchins and Leach)

[Passed March 11, 2000; in effect ninety days from passage.]

AN ACT to amend and reenact section four-a, article three, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to testing for tuberculosis of school children and personnel.

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

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

**ARTICLE 3. PREVENTION AND CONTROL OF COMMUNICABLE AND OTHER INFECTIOUS DISEASES.**

**§16-3-4a. Compulsory testing for tuberculosis of school children and school personnel; X rays required for reactors; suspension from school or employment for pupils and personnel found to have tuberculosis in a communicable stage.**

~~(a) All kindergarten pupils and all first grade pupils who have not had an approved tuberculin skin test in kindergarten and a~~ All students transferring from a school located outside this state shall furnish a certificate from a licensed physician stating that a tuberculin skin test approved by the director of the department of health has been made within four months prior to the beginning of the school year, unless such pupil has moved to this state from another state less than four months prior to starting the school year, in which event such pupil shall have such test as soon in advance of the start of the school as is reasonable, or if the school year has already started, the pupil shall take such test within one month of the time he enters school.

(b) Test results must be recorded on the certificate required by subsection (a). Positive reactors to the skin test must be immediately evaluated by a physician and, if medically indicated, X rayed, and receive periodic X rays thereafter, when medically indicated. Pupils found to have tuberculosis in a communicable stage will not be allowed to attend school until their disease has been arrested and is no longer communicable.

(c) All school personnel shall have an approved tuberculin skin test at time of employment and once every two years or more frequently if medically indicated. Positive reactors to the skin test are to be immediately referred to a physician for evaluation and indicated treatment or further studies. ~~The county health officer shall be responsible for arranging proper follow-up of school personnel and students who are unable to obtain physician evaluation for a converted tuberculin skin test.~~ School personnel found to have tuberculosis in a communicable stage shall have their employment discontinued or suspended until their disease has been arrested and is no longer communicable. School personnel who have not had the required examination will be suspended from employment until reports of examination are confirmed.

(d) ~~The county health officer shall be responsible for arranging proper follow-up of school personnel and students who are unable to obtain physician evaluation for a positive tuberculin skin test.~~

(e) The state commissioner of the bureau of public health shall have the authority to require selective testing of school children for tuberculosis when there is reason to believe that such children may have been exposed to the tuberculosis organism.

## HOUSE BILL 4674

**EFFECTIVE DATE:** March 11, 2000

**SIGNED BY GOVERNOR:** April 4, 2000

**CODE REFERENCE(S):** Amends and Reenacts §18-2E-5

**TOPIC:** HIGH QUALITY EDUCATIONAL PROGRAMS

**INTRODUCTION:**

Amends and reenacts high quality education programs and standards, efficiency standards, performance standards, and a process for improving education.

**MAJOR NEW PROVISIONS:**

1. The state board shall adopt and periodically review and update indicators of efficiency in the following areas: (A) curriculum delivery, (B) transportation, (C) facilities, (D) administrative practices, (E) personnel, and (F) utilization of RESA programs.
2. The state board may intervene immediately in the operation of the county school system with all powers, duties and responsibilities.
3. Review the standards based accountability systems currently in place to identify areas of possible improvement. The standard must be reviewed in accordance with nationally recognized standards.

**ENROLLED  
COMMITTEE SUBSTITUTE  
FOR  
H. B. 4674**

(By Delegates Armstead, Harrison, Azinger,  
Evans, Williams and Capito)

[Passed March 11, 2000; in effect from passage.]

AN ACT to amend and reenact section five, article two-e, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to high quality education programs and standards; efficiency standards and indicators; performance measures; process for improving education; education performance audits; office of education performance audits; on-site reviews; assessment and accountability; use of assessment information; accreditation and school system approval; impaired schools; intervention to correct impairments; Legislative intent; capacity; state board of education rules; creating the exemplary school accreditation standard for individual schools; and review of accountability system.

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

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

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

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

(a) *Legislative intent.* -- The purpose of this section is to establish a process for improving education that includes standards, assessment, accountability and capacity building to provide assurances that a thorough and efficient system of schools is being provided for all West Virginia public school students on an equal education opportunity basis and that the high quality standards are, at a minimum, being met.

(b) *State board rules.* -- The state board shall promulgate rules in accordance with article three-b [~~§ 29A-3B-1 et seq.~~], chapter twenty-nine-a of this code establishing a unified county improvement plan for each county board and a unified school improvement plan for each public school in this state. The state board is not required to promulgate new rules if legislative rules meeting the requirements of article three-b, chapter twenty-nine-a of this code have been filed with the office of the secretary of state before the effective date of this section.

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

- (1) Curriculum;
- (2) Workplace readiness skills;
- (3) Finance;
- (4) Transportation;
- (5) Special education;
- (6) Facilities;
- (7) Administrative practices;

- (8) Training of county board members and administrators;
- (9) Personnel qualifications;
- (10) Professional development and evaluation;
- (11) Student and school performance;
- (12) A code of conduct for students and employees; ~~and~~
- (13) Indicators of efficiency; and
- (14) ~~(13)~~ Any other such areas as determined by the state board.

(d) *Performance measures.* -- The standards shall assure that all graduates are prepared for gainful employment or for continuing postsecondary education and training and that schools and school districts are making progress in achieving the education goals of the state.

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

- (1) The acquisition of student proficiencies as indicated by student performance by grade level measured, where possible, by a uniform statewide assessment program;
- (2) School attendance rates;
- (3) Student dropout rate;
- (4) Percent of students promoted to next grade;
- (5) Graduation rate;
- (6) Average class size;
- (7) Pupil-teacher ratio and number of exceptions to ratio requested by county boards and number granted;
- (8) Number of split-grade classrooms;
- (9) Percentage of graduates who enrolled in college; the percentage of graduates who enrolled in other postsecondary education; and the percentage of graduates who become fully employed within one year of high school graduation all as reported by the graduates on the assessment form attached to their individualized student transition plan, pursuant to section eight ~~{§ 18-2E-8}~~ of this article and the percentage of graduates reporting;
- (10) Pupil-administrator ratio;
- (11) Parent involvement;
- (12) Parent, teacher and student satisfaction;
- (13) Operating expenditures per pupil;
- (14) Percentage of graduates who attain the minimum level of performance in the basic skills recognized by the state board as laying the foundation for further learning and skill development for success in college, other postsecondary education and gainful employment and the grade level distribution in which the minimum level of performance was met;
- (15) Percentage of graduates who received additional certification of their skills, competence and readiness for college, other postsecondary education or employment above the minimum foundation level of basic skills; ~~and~~
- (16) Percentage of students in secondary and middle schools who are enrolled in advanced placement or honors classes, respectively; and
- ~~(16) Effective school system participation with their assigned regional education service agency.~~

(17) Indicators of efficiency. – The state board shall, in accordance with the provisions of article three-b, chapter twenty-nine-a of this code, adopt and periodically review and update indicators of efficiency for student and school system performance and processes in the following areas:

- (A) Curriculum delivery including, but not limited to, the use of distance learning;
- (B) Transportation;
- (C) Facilities;
- (D) Administrative practices;
- (E) Personnel;
- (F) Utilization of regional education service agency programs and services, including programs and services that may be established by their assigned regional education service agency, or other regional services that may be initiated between and among participating county boards; and
- (G) Any other indicators as determined by the state board.

(e) *Assessment and accountability of school and school system performance and processes.* -- The state board shall establish by rule in accordance with the provisions of article three-b, ~~§ 29A-3B-1 et seq.~~ chapter twenty-nine-a of this code, a system of education performance audits which measures the quality of education and the preparation of students based on the standards and measures of student, school and school system performance and processes, including, but not limited to, the standards and measures set forth in subsections (c) and (d) of this section. The system of education performance audits shall assist the state board in ensuring that the standards and measures established pursuant to this section are, at a minimum, being met and that a thorough and efficient system of schools is being provided. The system of education performance audits shall include: (1) The assessment of student, school and school system performance and the processes in place in schools and school systems which enable student performance; (2) the review of school and school system unified improvement plans; and (3) the periodic, random unannounced on-site review of school and school system performance and compliance with the standards.

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

(g) *Office of education performance audits.* -- To assist the state board in the operation of the system of education performance audits and in making determinations regarding the accreditation status of schools and the approval status of school systems, the state board shall establish an office

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

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

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

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

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

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

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

(h) *On-site reviews.* -- At the direction of the state board or by weighted, random selection by the office of education performance audits, an unannounced on-site review shall be conducted by the office of education performance audits of any school or school system for purposes, including,

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

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

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

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

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

(4) Exemplary accreditation status shall be given to a school when the school's performance on the standards adopted by the state board pursuant to subsections (c) and (d) of this section substantially exceeds the minimal level which would be expected when all of the high quality education standards are being met. The state board shall propose legislative rules in accordance with

the provisions of article three-b, chapter twenty-nine-a, designated to establish standards of performance to identify exemplary schools.

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

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

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

(1) Full approval shall be given to a county board whose education system meets or exceeds all of the high quality standards for student, school and school system performance and processes adopted by the state board and whose schools have all been given full, temporary or conditional accreditation status.

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

(3) Conditional approval shall be given to a county board whose education system is below the level required for full approval, but whose unified county improvement plan meets the following criteria: (i) The plan has been revised to achieve full approval status by a date certain; (ii) the plan has been approved by the state board; and (iii) the county board is meeting the objectives and time line specified in the revised plan.

(4) Nonapproval status shall be given to a county board which fails to submit and gain approval for its unified county improvement plan or revised unified county improvement plan within

a reasonable time period as defined by the state board or fails to meet the objectives and time line of its revised unified county improvement plan or fails to achieve full approval by the date specified in the revised plan. The state board shall establish and adopt additional standards to identify school systems in which the program may be nonapproved and the state board may issue nonapproval status whenever extraordinary circumstances exist as defined by the state board. Furthermore, whenever a county board has more than a casual deficit, as defined in section one, article one of this chapter, the county board shall submit a plan to the state board specifying the county board's strategy for eliminating the casual deficit. The state board either shall approve or reject the plan. If the plan is rejected, the state board shall communicate to the county board the reason or reasons for the rejection of the plan. The county board may resubmit the plan any number of times. However, any county board that fails to submit a plan and gain approval for the plan from the state board before the end of the fiscal year after a deficit greater than a casual deficit occurred or any county board which, in the opinion of the state board, fails to comply with an approved plan may be designated as having nonapproval status. Whenever nonapproval status is given to a school system, the state board shall declare a state of emergency in the school system and shall appoint a team of improvement consultants to make recommendations within sixty days of appointment for correcting the emergency. Upon approval of the recommendations by the state board, the recommendations shall be made to the county board. If progress in correcting the emergency, as determined by the state board, is not made within six months from the time the county board receives the recommendations, the state board shall intervene in the operation of the school system to cause improvements to be made that will provide assurances that a thorough and efficient system of schools will be provided. This intervention may include, but is not limited to, the following: (i) Limiting the authority of the county superintendent and county board as to the expenditure of funds, the employment and dismissal of personnel, the establishment and operation of the school calendar, the establishment of instructional programs and rules and such other areas as may be designated by the state board by rule; (ii) taking such direct action as may be necessary to correct the emergency; and (iii) declaring that the office of the county superintendent is vacant.

(1) Notwithstanding any other provision of this section, the state board may intervene immediately in the operation of the county school system with all the powers, duties and responsibilities contained in subsection (k) of this section, if the state board finds the following:

(1) That the conditions precedent to intervention exist as provided in this section; and

(2) That delaying intervention for any period of time would not be in the best interests of the students of the county school system.

(m) (†) Capacity. -- The process for improving education includes a process for targeting resources strategically to improve the teaching and learning process. Development of unified school and school system improvement plans, pursuant to subsection (b) of this section, is intended, in part, to provide mechanisms to target resources strategically to the teaching and learning process to improve student, school and school system performance. When deficiencies are detected through the assessment and accountability processes, the revision and approval of school and school system unified improvement plans shall ensure that schools and school systems are efficiently using existing resources to correct the deficiencies. When the state board determines that schools and school systems do not have the capacity to correct deficiencies, the state board shall work with the county board to develop or secure the resources necessary to increase the capacity of schools and school systems to meet the standards and, when necessary, seek additional resources in consultation with the Legislature and the governor.

The state board shall recommend to the appropriate body including, but not limited to, the Legislature, county boards, schools and communities, methods for targeting resources strategically to eliminate deficiencies identified in the assessment and accountability processes by:

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

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

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

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

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

(6) Requesting special staff development programs from the center for professional development, higher education, regional education service agencies and county boards based on identified needs;

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

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

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

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

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

(n) Review of accountability system.

(1) The Legislature finds that the effective implementation of a standards based accountability system is an important issue for the State's public education system. In order for the State to make improvements in its standards based accountability system, it is essential to review the standards based accountability system currently in place to identify areas of possible improvements that may exist. It is the intent of the Legislature that each area of the standards based accountability system be reviewed in accordance with nationally recognized standards.

(2) The state board shall conduct a comprehensive review of the current standards based accountability system and report the findings to the legislative oversight commission on education accountability with recommendations for improvements on or before the first day of January, two thousand one. The review shall include, but not be limited to, the following:

(A) The extent to which accountability goals and strategies focus on academic performance, and the extent that other purposes are clarified in terms of coherent, specific goals to be achieved;

(B) The extent to which designated authorities are charged with the efficient governance of the accountability system;

(C) The extent to which specific responsibilities for student learning and performance are assigned to designated agents;

(D) The extent to which accountability is based on accurate measures of performance as informed by assessments that are administered equitably to all students;

\_\_\_\_\_ (E) The extent to which those responsible for governing accountability regularly report student and school performance information in useful terms and on a timely basis to school staff, students and their families, and local policymakers, and the news media;

\_\_\_\_\_ (F) The extent to which incentives are established that effectively motivate agents to improve student learning, and the extent that consequences, which could include rewards, interventions or sanctions, are predictably applied in response to performance results;

\_\_\_\_\_ (G) The extent to which agents are provided sufficient support and assistance to ensure they have the capacity necessary to help students achieve high performance standards;

\_\_\_\_\_ (H) The extent to which policy makers work to ensure that education policies, mandated programs, financial resources, and the accountability system are well aligned so that consistent messages are communicated about education goals and priorities;

\_\_\_\_\_ (I) The extent to which the accountability system has widespread support; and

\_\_\_\_\_ (J) The extent to which various established partnerships work together to support districts, schools and teachers in their efforts to improve student achievement.

~~Amendments to this section adopted by the Legislature in regular session in the year one thousand nine hundred ninety-eight shall be effective on the first day of July, one thousand nine hundred ninety-eight. (1988, 3<sup>rd</sup> Ex. Sess., c.7; 1990, 3<sup>rd</sup> Ex. Sess.,e.4;1991,c. 50; 1996, c. 112; 1998, c. 126.)~~

## HOUSE BILL 4777

<b><u>EFFECTIVE DATE:</u></b>	July 1, 2000
<b><u>SIGNED BY GOVERNOR:</u></b>	April 4, 2000
<b><u>CODE REFERENCE(S):</u></b>	Amends §18-5-39, §18A-4-8, §18A-4-8a, §18A-4-8e, §18A-4-8g, and §18A-4-15
<b><u>TOPIC:</u></b>	RELATING TO SERVICE PERSONNEL

### **INTRODUCTION:**

Provides for additional pay for service personnel by extending the years of experience and by increasing the number of college hours or comparable training for which service personnel receive additional pay. It also addresses the priority for service personnel working during the normal school year when selecting a substitute for summer school personnel, competency tests for service personnel, seniority of service personnel, employment of service personnel substitutes, leaves of absences, suspensions, time off for sickness or injury, and defines maintenance personnel.

### **MAJOR NEW PROVISION(S):**

1. When a summer employee is absent, qualified regular employees within the same classification who are not working because their employment term for the school year has ended or has not yet begun for the succeeding school year, shall be given first opportunity to substitute for the absent summer employee on a rotating and seniority basis.
2. Maintenance personnel are defined.
3. The years for which service personnel are paid the salary increment is extended from 36 years to 40 years.
4. The number of college hours or comparable training for which service personnel receive additional pay is increased to include 60 and 72 hours.
5. County boards must notify service personnel of the date and time of the one day of training prior to the competency test and the day and time of the competency test.
6. Any regular employee seniority accrued by a substitute while holding a position may not be used in the bidding process for regular positions unless the employee again attains regular employee status or has attained preferred recall status.
7. A leave of absence for service personnel must be requested in writing and, if granted, done so in writing.

8. No service personnel may be required to request or to take a leave of absence and shall not be deprived of any right or privilege of regular employment status for refusal to request or failure to take a leave of absence.
9. Regular school service personnel shall be returned to the same position held prior to any approved leave of absence or period of recovery from injury or illness.

**ENROLLED**  
**H. B. 4777**

(By Delegates Mezzatesta, Williams, Stemple, Davis, Ennis, Shelton and Romine)

[Passed March 11, 2000; in effect July 1, 2000.]

AN ACT to amend and reenact section thirty-nine, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections eight, eight-a, eight-e, eight-g and fifteen, article four, chapter eighteen-a of said code, all relating to priority for service personnel working during the normal school year when selecting a substitute for summer school personnel; increasing the number of years that service personnel receive the salary increment; increasing the number of college hours or comparable credit for which service personnel receive additional pay; competency tests for service personnel; defining maintenance personnel; seniority of substitute service personnel; employment of service personnel substitutes; leaves of absence; suspension; and time off for sickness or injury.

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

That section thirty-nine, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections eight, eight-a, eight-e, eight-g and fifteen, article four, chapter eighteen-a of said code be amended and reenacted, all to read as follows:

**CHAPTER 18. EDUCATION.**

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

**§18-5-39. Establishment of summer school programs; tuition.**

(a) Inasmuch as the present county school facilities for the most part lie dormant and unused during the summer months, and inasmuch as there are many students who are in need of remedial instruction and others who desire accelerated instruction, it is the purpose of this section to provide for the establishment of a summer school program, which is to be separate and apart from the full school term as established by each county.

(b) The board of any county has the authority to establish a summer school program utilizing the public school facilities and to charge tuition for students who attend the summer school. The tuition may not exceed in any case the actual cost of operation of the summer school program: *Provided*, That any deserving pupil whose parents, in the judgment of the board, are unable to pay the tuition, may attend the summer school program at a reduced charge or without charge. The county board shall have the authority to may determine the term and curriculum of the summer schools based upon the particular needs of the individual county. The curriculum may include, but is not limited to, remedial instruction, accelerated instruction and the teaching of manual arts. The term of the summer school program may not be established in such a manner as to interfere with the regular school term.

(c) The county boards may employ any certified teacher as teachers for this summer school program. Certified teachers employed by the county board to teach in the summer school program shall be paid an amount to be determined by the county board and shall enter into a contract of employment in such form as is prescribed by the county board: *Provided*, That teachers who teach summer courses of instruction which are offered for credit and which are taught during the regular school year shall

be paid at the same daily rate they would receive if paid in accordance with the then current minimum monthly salary in effect for teachers in that county.

(d) Any funds accruing from the tuitions shall be credited to and expended within the existing framework of the general current expense fund of the county board.

(e) Notwithstanding any other provision of this code to the contrary, the board shall fill professional positions established pursuant to the provisions of this section on the basis of certification and length of time the professional has been employed in the county's summer school program. In the event that no employee who has been previously employed in the summer school program holds a valid certification or licensure, a board shall fill the position as a classroom teaching position in accordance with section seven-a, article four, chapter eighteen-a of this code.

(f) Notwithstanding any other provision of the code to the contrary, the county board is ~~authorized to~~ may employ school service personnel to perform any related duties outside the regular school term as defined in section eight, article four, chapter eighteen-a of this code. An employee who was employed in any service personnel job or position during the previous summer shall have the option of retaining the job or position if the job or position exists during any succeeding summer. If the employee is unavailable or if the position is newly created, the position shall be filled pursuant to section eight-b, article four, chapter eighteen-a of this code. When any summer employee is absent, qualified regular employees within the same classification category who are not working because their employment term for the school year has ended or has not yet begun the succeeding school employment term, shall be given first opportunity to substitute for the absent summer employee on a rotating and seniority basis. When any summer employee who is employed in a summer position is granted a leave of absence for the summer months, the board shall give regular employment status to the employee for that summer position which shall be filled under the procedure set forth in section eight-b, article four, chapter eighteen-a of this code. The summer employee on leave of absence ~~shall have~~ has the option of returning to that summer position if the position exists the succeeding summer or whenever the position is reestablished if it were abolished. The salary of a summer employee shall be in accordance with the salary schedule of persons regularly employed in the same position in the county where employed and persons employed in those positions are entitled to all rights, privileges and benefits provided in sections five-b, eight, eight-a, ten and fourteen, article four, chapter eighteen-a of this code: *Provided*, That those persons are not entitled to a minimum employment term of two hundred days for their summer position.

(g) If a county board reduces in force the number of employees to be employed in a particular summer program or classification from the number employed in that position in previous summers, the reductions in force and priority in reemployment to that summer position shall be based upon the length of service time in the particular summer program or classification.

(h) For the purpose of this section, summer employment for service personnel includes, but is not limited to, filling jobs and positions as defined in section eight, article four, chapter eighteen-a of this code and especially established for and which are to be predominantly performed during the summer months to meet the needs of a county board.

## CHAPTER 18A. SCHOOL PERSONNEL.

### ARTICLE FOUR. SALARIES, WAGES AND OTHER BENEFITS.

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

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

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

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

(d) No service employee, without his or her agreement, may be required to report for work more than five days per week and no part of any working day may be accumulated by the employer for future work assignments, unless the employee agrees thereto.

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

(f) Custodians, aides, maintenance, office and school lunch employees required to work a daily work schedule that is interrupted, that is, who do not work a continuous period in one day, shall be paid additional compensation equal to at least one eighth of their total salary as provided by their state minimum salary and any county pay supplement, and payable entirely from county funds: *Provided*, That when engaged in duties of transporting students exclusively, aides shall not be regarded as working an interrupted schedule. Maintenance personnel are defined as personnel who hold a classification title other than in a custodial, aide, school lunch, office or transportation category as provided in section one, article one of this chapter.

(g) Upon the change in classification or upon meeting the requirements of an advanced classification of or by any employee, the employee's salary shall be made to comply with the requirements of this article, and to any county salary schedule in excess of the minimum requirements of this article, based upon the employee's advanced classification and allowable years of employment.

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

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

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

(2) "Years of employment" means the number of years which an employee classified as service personnel has been employed by a board in any position prior to or subsequent to the effective date of this section and including service in the armed forces of the United States, if the employee were employed at the time of his or her induction. For the purpose of section eight-a of this article, years

of employment shall be limited to the number of years shown and allowed under the state minimum pay scale as set forth in section eight-a of this article;

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

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

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

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

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

(8) "Aide II" means those personnel referred to in the "Aide I" classification who have completed a training program approved by the state board, or who hold a high school diploma or have received a general educational development certificate. Only personnel classified in an Aide II class title may be employed as an aide in any special education program;

(9) "Aide III" means those personnel referred to in the "Aide I" classification who hold a high school diploma or a general educational development certificate and have completed six semester hours of college credit at an institution of higher education or are employed as an aide in a special education program and have one year's experience as an aide in special education;

(10) "Aide IV" means personnel referred to in the "Aide I" classification who hold a high school diploma or a general educational development certificate and who have completed eighteen hours of state board-approved college credit at a regionally accredited institution of higher education, or who have completed fifteen hours of state board-approved college credit at a regionally accredited institution of higher education and successfully completed an in-service training program determined by the state board to be the equivalent of three hours of college credit;

(11) "Audiovisual technician" means personnel employed to perform minor maintenance on audiovisual equipment, films, supplies and the filling of requests for equipment;

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

(13) "Autism mentor" means personnel who work with autistic students and who meet standards and experience to be determined by the state board: ~~Provided, That the state board shall determine these standards and experience on or before the first day of July, one thousand nine hundred ninety-two:~~ *Provided, however,* That if any employee has held or holds an aide title and becomes employed as an autism mentor, the employee shall hold a multiclassification status that includes aide and autism mentor titles, in accordance with section eight-b of this article;

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

(15) "Bus operator" means personnel employed to operate school buses and other school transportation vehicles as provided by the state board;

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

(17) "Cabinetmaker" means personnel employed to construct cabinets, tables, bookcases and other furniture;

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

(19) "Carpenter I" means personnel classified as a carpenter's helper;

(20) "Carpenter II" means personnel classified as a journeyman carpenter;

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

(22) "Clerk I" means personnel employed to perform clerical tasks;

(23) "Clerk II" means personnel employed to perform general clerical tasks, prepare reports and tabulations and operate office machines;

(24) "Computer operator" means qualified personnel employed to operate computers;

(25) "Cook I" means personnel employed as a cook's helper;

(26) "Cook II" means personnel employed to interpret menus, to prepare and serve meals in a food service program of a school and shall include personnel who have been employed as a "Cook I" for a period of four years, if the personnel have not been elevated to this classification within that period of time;

(27) "Cook III" means personnel employed to prepare and serve meals, make reports, prepare requisitions for supplies, order equipment and repairs for a food service program of a school system;

(28) "Crew leader" means personnel employed to organize the work for a crew of maintenance employees to carry out assigned projects;

(29) "Custodian I" means personnel employed to keep buildings clean and free of refuse;

(30) "Custodian II" means personnel employed as a watchman or groundsman;

(31) "Custodian III" means personnel employed to keep buildings clean and free of refuse, to operate the heating or cooling systems and to make minor repairs;

(32) "Custodian IV" means personnel employed as head custodians. In addition to providing services as defined in "custodian III", their duties may include supervising other custodian personnel;

(33) "Director or coordinator of services" means personnel who are assigned to direct a department or division. Nothing herein in this subdivision may prohibit professional personnel or professional educators as defined in section one, article one of this chapter, from holding this class title, but professional personnel may not be defined or classified as service personnel unless the professional personnel held a service personnel title under this section prior to holding class title of "director or coordinator of services". ~~Provided, That funding for professional personnel in positions classified as directors or coordinators of services who were assigned prior to the first day of May, one thousand nine hundred ninety-four, may not be required to be redirected from service personnel categories as a result of this provision until the first day of July, on thousand nine hundred ninety-six. Thereafter, directors~~ Directors or coordinators of service positions shall be classified as either a professional personnel or service personnel position for state aid formula funding purposes and funding for directors or coordinators of service positions shall be based upon the employment status of the director or coordinator either as a professional personnel or service personnel;

- (34) "Draftsman" means personnel employed to plan, design and produce detailed architectural/engineering drawings;
- (35) "Electrician I" means personnel employed as an apprentice electrician helper or who holds an electrician helper license issued by the state fire marshal;
- (36) "Electrician II" means personnel employed as an electrician journeyman or who holds a journeyman electrician license issued by the state fire marshal;
- (37) "Electronic technician I" means personnel employed at the apprentice level to repair and maintain electronic equipment;
- (38) "Electronic technician II" means personnel employed at the journeyman level to repair and maintain electronic equipment;
- (39) "Executive secretary" means personnel employed as the county school superintendent's secretary or as a secretary who is assigned to a position characterized by significant administrative duties;
- (40) "Food services supervisor" means qualified personnel not defined as professional personnel or professional educators in section one, article one of this chapter, employed to manage and supervise a county school system's food service program. The duties would include preparing in-service training programs for cooks and food service employees, instructing personnel in the areas of quantity cooking with economy and efficiency and keeping aggregate records and reports;
- (41) "Foremen" means skilled persons employed for supervision of personnel who work in the areas of repair and maintenance of school property and equipment;
- (42) "General maintenance" means personnel employed as helpers to skilled maintenance employees and to perform minor repairs to equipment and buildings of a county school system;
- (43) "Glazier" means personnel employed to replace glass or other materials in windows and doors and to do minor carpentry tasks;
- (44) "Graphic artist" means personnel employed to prepare graphic illustrations;
- (45) "Groundsmen" means personnel employed to perform duties that relate to the appearance, repair and general care of school grounds in a county school system. Additional assignments may include the operation of a small heating plant and routine cleaning duties in buildings;
- (46) "Handyman" means personnel employed to perform routine manual tasks in any operation of the county school system;
- (47) "Heating and air conditioning mechanic I" means personnel employed at the apprentice level to install, repair and maintain heating and air conditioning plants and related electrical equipment;
- (48) "Heating and air conditioning mechanic II" means personnel employed at the journeyman level to install, repair and maintain heating and air conditioning plants and related electrical equipment;
- (49) "Heavy equipment operator" means personnel employed to operate heavy equipment;
- (50) "Inventory supervisor" means personnel who are employed to supervise or maintain operations in the receipt, storage, inventory and issuance of materials and supplies;
- (51) "Key punch operator" means qualified personnel employed to operate key punch machines or verifying machines;
- (52) "Locksmith" means personnel employed to repair and maintain locks and safes;
- (53) "Lubrication man" means personnel employed to lubricate and service gasoline or diesel-powered equipment of a county school system;
- (54) "Machinist" means personnel employed to perform machinist tasks which include the ability to operate a lathe, planer, shaper, threading machine and wheel press. These personnel should also have, the ability to work from blueprints and drawings;

(55) "Mail clerk" means personnel employed to receive, sort, dispatch, deliver or otherwise handle letters, parcels and other mail;

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

(57) "Mason" means personnel employed to perform tasks connected with brick and block laying and carpentry tasks related to such laying;

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

(59) "Mechanic assistant" means personnel employed as a mechanic apprentice and helper;

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

(61) "Office equipment repairman I" means personnel employed as an office equipment repairman apprentice or helper;

(62) "Office equipment repairman II" means personnel responsible for servicing and repairing all office machines and equipment. Personnel are responsible for parts being purchased necessary for the proper operation of a program of continuous maintenance and repair;

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

(64) "Paraprofessional" means a person certified pursuant to section two-a, article three of this chapter to perform duties in a support capacity including, but not limited to, facilitating in the instruction and direct or indirect supervision of pupils under the direction of a principal, a teacher or another designated professional educator: *Provided*, That no person employed on the effective date of this section in the position of an aide may be reduced in force or transferred to create a vacancy for the employment of a paraprofessional: *Provided, however*, That if any employee has held or holds an aide title and becomes employed as a paraprofessional, the employee shall hold a multiclassification status that includes aide and paraprofessional titles in accordance with section eight-b of this article: *Provided further*, That once an employee who holds an aide title becomes certified as a paraprofessional and is required to perform duties that may not be performed by an aide without paraprofessional certification, he or she shall receive the paraprofessional title pay grade;

(65) "Plumber I" means personnel employed as an apprentice plumber and helper;

(66) "Plumber II" means personnel employed as a journeyman plumber;

(67) "Printing operator" means personnel employed to operate duplication equipment, and as required, to cut, collate, staple, bind and shelve materials;

(68) "Printing supervisor" means personnel employed to supervise the operation of a print shop;

(69) "Programmer" means personnel employed to design and prepare programs for computer operation;

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

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

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

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

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

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

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

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

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

(79) "Truck driver" means personnel employed to operate light or heavy duty gasoline and diesel-powered vehicles;

(80) "Warehouse clerk" means personnel employed to be responsible for receiving, storing, packing and shipping goods;

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

(82) "Welder" means personnel employed to provide acetylene or electric welding services for a school system.

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

(k) Service personnel whose years of employment exceed the number of years shown and provided for under the state minimum pay scale set forth in section eight-a of this article may not be paid less

than the amount shown for the maximum years of employment shown and provided for in the classification in which he or she is employed.

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

(m) No service employee, without his or her written consent, may be reclassified by class title, nor may a service employee, without his or her written consent, be relegated to any condition of employment which would result in a reduction of his or her salary, rate of pay, compensation or benefits earned during the current fiscal year or which would result in a reduction of his or her salary, rate of pay, compensation or benefits for which he or she would qualify by continuing in the same job position and classification held during that fiscal year and subsequent years.

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

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

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

(1) The minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the "state minimum pay scale pay grade I" and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the "state minimum pay scale pay grade I" set forth in this section.

**STATE MINIMUM PAY SCALE PAY GRADE I**

	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>	<b>G</b>	<b>H</b>
0	1,100	1,120	1,160	1,210	1,260	1,320	1,350	1,420
1	1,127	1,147	1,187	1,237	1,287	1,347	1,377	1,447
2	1,154	1,174	1,214	1,264	1,314	1,374	1,404	1,474
3	1,181	1,201	1,241	1,291	1,341	1,401	1,431	1,501
4	1,208	1,228	1,268	1,318	1,368	1,428	1,458	1,528
5	1,235	1,255	1,295	1,345	1,395	1,455	1,485	1,555
6	1,262	1,282	1,322	1,372	1,422	1,482	1,512	1,582
7	1,289	1,309	1,349	1,399	1,449	1,509	1,539	1,609
8	1,316	1,336	1,376	1,426	1,476	1,536	1,566	1,636
9	1,343	1,363	1,403	1,453	1,503	1,563	1,593	1,663
10	1,370	1,390	1,430	1,480	1,530	1,590	1,620	1,690
11	1,397	1,417	1,457	1,507	1,557	1,617	1,647	1,717
12	1,424	1,444	1,484	1,534	1,584	1,644	1,674	1,744
13	1,451	1,471	1,511	1,561	1,611	1,671	1,701	1,771
14	1,478	1,498	1,538	1,588	1,638	1,698	1,728	1,798
15	1,505	1,525	1,565	1,615	1,665	1,725	1,755	1,825
16	1,532	1,552	1,592	1,642	1,692	1,752	1,782	1,852
17	1,559	1,579	1,619	1,669	1,719	1,779	1,809	1,879
18	1,586	1,606	1,646	1,696	1,746	1,806	1,836	1,906
19	1,613	1,633	1,673	1,723	1,773	1,833	1,863	1,933
20	1,640	1,660	1,700	1,750	1,800	1,860	1,890	1,960
21	1,667	1,687	1,727	1,777	1,827	1,887	1,917	1,987
22	1,694	1,714	1,754	1,804	1,854	1,914	1,944	2,014
23	1,721	1,741	1,781	1,831	1,881	1,941	1,971	2,041
24	1,748	1,768	1,808	1,858	1,908	1,968	1,998	2,068
25	1,775	1,795	1,835	1,885	1,935	1,995	2,025	2,095
26	1,802	1,822	1,862	1,912	1,962	2,022	2,052	2,122
27	1,829	1,849	1,889	1,939	1,989	2,049	2,079	2,149
28	1,856	1,876	1,916	1,966	2,016	2,076	2,106	2,176
29	1,883	1,903	1,943	1,993	2,043	2,103	2,133	2,203
30	1,910	1,930	1,970	2,020	2,070	2,130	2,160	2,230
31	1,937	1,957	1,997	2,047	2,097	2,157	2,187	2,257
32	1,964	1,984	2,024	2,074	2,124	2,184	2,214	2,284
33	1,991	2,011	2,051	2,101	2,151	2,211	2,241	2,311
34	2,018	2,038	2,078	2,128	2,178	2,238	2,268	2,338
35	2,045	2,065	2,105	2,155	2,205	2,265	2,295	2,365
36	2,072	2,092	2,132	2,182	2,232	2,292	2,322	2,392

Subject to a recommendation by the governor for a pay raise through the delivery of an executive message to the Legislature and an appropriation by the Legislature for a pay raise, effective the first day of July, one thousand nine hundred ninety-nine and 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 “state minimum pay scale pay grade II” and the minimum monthly pay for each service employee whose employment is for a period of three and

one-half hours or less a day shall be at least one-half the amount indicated in the “state minimum pay scale pay grade II” set forth in this section.

**STATE MINIMUM PAY SCALE PAY GRADE II**

Years of Employment	Pay Grade							
	A	B	C	D	E	F	G	H
0	1,160	1,180	1,220	1,270	1,320	1,380	1,410	1,480
1	1,188	1,208	1,248	1,298	1,348	1,408	1,438	1,508
2	1,216	1,236	1,276	1,326	1,376	1,436	1,466	1,536
3	1,244	1,264	1,304	1,354	1,404	1,464	1,494	1,564
4	1,272	1,292	1,332	1,382	1,432	1,492	1,522	1,592
5	1,300	1,320	1,360	1,410	1,460	1,520	1,550	1,620
6	1,328	1,348	1,388	1,438	1,488	1,548	1,578	1,648
7	1,356	1,376	1,416	1,466	1,516	1,576	1,606	1,676
8	1,384	1,404	1,444	1,494	1,544	1,604	1,634	1,704
9	1,412	1,432	1,472	1,522	1,572	1,632	1,662	1,732
10	1,440	1,460	1,500	1,550	1,600	1,660	1,690	1,760
11	1,468	1,488	1,528	1,578	1,628	1,688	1,718	1,788
12	1,496	1,516	1,556	1,606	1,656	1,716	1,746	1,816
13	1,524	1,544	1,584	1,634	1,684	1,744	1,774	1,844
14	1,552	1,572	1,612	1,662	1,712	1,772	1,802	1,872
15	1,580	1,600	1,640	1,690	1,740	1,800	1,830	1,900
16	1,608	1,628	1,668	1,718	1,768	1,828	1,858	1,928
17	1,636	1,656	1,696	1,746	1,796	1,856	1,886	1,956
18	1,664	1,684	1,724	1,774	1,824	1,884	1,914	1,984
19	1,692	1,712	1,752	1,802	1,852	1,912	1,942	2,012
20	1,720	1,740	1,780	1,830	1,880	1,940	1,970	2,040
21	1,748	1,768	1,808	1,858	1,908	1,968	1,998	2,068
22	1,776	1,796	1,836	1,886	1,936	1,996	2,026	2,096
23	1,804	1,824	1,864	1,914	1,964	2,024	2,054	2,124
24	1,832	1,852	1,892	1,942	1,992	2,052	2,082	2,152
25	1,860	1,880	1,920	1,970	2,020	2,080	2,110	2,180
26	1,888	1,908	1,948	1,998	2,048	2,108	2,138	2,208
27	1,916	1,936	1,976	2,026	2,076	2,136	2,166	2,236
28	1,944	1,964	2,004	2,054	2,104	2,164	2,194	2,264
29	1,972	1,992	2,032	2,082	2,132	2,192	2,222	2,292
30	2,000	2,020	2,060	2,110	2,160	2,220	2,250	2,320
31	2,028	2,048	2,088	2,138	2,188	2,248	2,278	2,348
32	2,056	2,076	2,116	2,166	2,216	2,276	2,306	2,376
33	2,084	2,104	2,144	2,194	2,244	2,304	2,334	2,404
34	2,112	2,132	2,172	2,222	2,272	2,332	2,362	2,432
35	2,140	2,160	2,200	2,250	2,300	2,360	2,390	2,460
36	2,168	2,188	2,228	2,278	2,328	2,388	2,418	2,488

If “state minimum pay scale pay grade II” becomes effective on the first day of July, one thousand nine hundred ninety-nine, and the governor recommends a pay raise through the delivery

of an executive message to the Legislature and the Legislature appropriates money for a pay raise, the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the “state minimum pay scale pay grade III” and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the “state minimum pay scale pay grade III” set forth in this section.

**STATE MINIMUM PAY SCALE PAY GRADE III**

	Pay Grade							
	A	B	C	D	E	F	G	H
0	1,220	1,240	1,280	1,330	1,380	1,440	1,470	1,540
1	1,249	1,269	1,309	1,359	1,409	1,469	1,499	1,569
2	1,278	1,298	1,338	1,388	1,438	1,498	1,528	1,598
3	1,307	1,327	1,367	1,417	1,467	1,527	1,557	1,627
4	1,336	1,356	1,396	1,446	1,496	1,556	1,586	1,656
5	1,365	1,385	1,425	1,475	1,525	1,585	1,615	1,685
6	1,394	1,414	1,454	1,504	1,554	1,614	1,644	1,714
7	1,423	1,443	1,483	1,533	1,583	1,643	1,673	1,743
8	1,452	1,472	1,512	1,562	1,612	1,672	1,702	1,772
9	1,481	1,501	1,541	1,591	1,641	1,701	1,731	1,801
10	1,510	1,530	1,570	1,620	1,670	1,730	1,760	1,830
11	1,539	1,559	1,599	1,649	1,699	1,759	1,789	1,859
12	1,568	1,588	1,628	1,678	1,728	1,788	1,818	1,888
13	1,597	1,617	1,657	1,707	1,757	1,817	1,847	1,917
14	1,626	1,646	1,686	1,736	1,786	1,846	1,876	1,946
15	1,655	1,675	1,715	1,765	1,815	1,875	1,905	1,975
16	1,684	1,704	1,744	1,794	1,844	1,904	1,934	2,004
17	1,713	1,733	1,773	1,823	1,873	1,933	1,963	2,033
18	1,742	1,762	1,802	1,852	1,902	1,962	1,992	2,062
19	1,771	1,791	1,831	1,881	1,931	1,991	2,021	2,091
20	1,800	1,820	1,860	1,910	1,960	2,020	2,050	2,120
21	1,829	1,849	1,889	1,939	1,989	2,049	2,079	2,149
22	1,858	1,878	1,918	1,968	2,018	2,078	2,108	2,178
23	1,887	1,907	1,947	1,997	2,047	2,107	2,137	2,207
24	1,916	1,936	1,976	2,026	2,076	2,136	2,166	2,236
25	1,945	1,965	2,005	2,055	2,105	2,165	2,195	2,265
26	1,974	1,994	2,034	2,084	2,134	2,194	2,224	2,294
27	2,003	2,023	2,063	2,113	2,163	2,223	2,253	2,323
28	2,032	2,052	2,092	2,142	2,192	2,252	2,282	2,352
29	2,061	2,081	2,121	2,171	2,221	2,281	2,311	2,381
30	2,090	2,110	2,150	2,200	2,250	2,310	2,340	2,410
31	2,119	2,139	2,179	2,229	2,279	2,339	2,369	2,439
32	2,148	2,168	2,208	2,258	2,308	2,368	2,398	2,468
33	2,177	2,197	2,237	2,287	2,337	2,397	2,427	2,497
34	2,206	2,226	2,266	2,316	2,366	2,426	2,456	2,526

35	2,235	2,255	2,295	2,345	2,395	2,455	2,485	2,555
36	2,264	2,284	2,324	2,374	2,424	2,484	2,514	2,584
37	2,293	2,313	2,353	2,403	2,453	2,513	2,543	2,613
38	2,322	2,342	2,382	2,432	2,482	2,542	2,572	2,642
39	2,351	2,371	2,411	2,461	2,511	2,571	2,601	2,671
40	2,380	2,400	2,440	2,490	2,540	2,600	2,630	2,700

**CLASS TITLE**

**PAY GRADE**

Accountant I . . . . .	D
Accountant II . . . . .	E
Accountant III . . . . .	F
Aide I . . . . .	A
Aide II . . . . .	B
Aide III . . . . .	C
Aide IV . . . . .	D
Audiovisual Technician . . . . .	C
Auditor . . . . .	G
Autism Mentor . . . . .	E
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
Locksmith	G
Lubrication Man	C
Machinist	F
Mail Clerk	D
Maintenance Clerk	C
Mason	G
Mechanic	F
Mechanic Assistant	E
Office Equipment Repairman I	F
Office Equipment Repairman II	G
Painter	E
Paraprofessional	F
Plumber I	E
Plumber II	G
Printing Operator	B
Printing Supervisor	D
Programmer	H
Roofing/Sheet Metal Mechanic	F
Sanitation Plant Operator	F
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

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

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

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

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

(C) 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; ~~and~~

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

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

(F) 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.

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

(5) 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.

(6) 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.

(7) 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.

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

(9) The minimum pay for any service personnel employees engaged in the removal of asbestos material or related duties required for asbestos removal shall be their regular total daily rate of pay and no less than an additional three dollars per hour or no less than five dollars per hour for service personnel supervising asbestos removal responsibilities for each hour these employees are involved in asbestos related duties. Related duties required for asbestos removal include, but are not limited to, travel, preparation of the work site, removal of asbestos decontamination of the work site, placing and removal of equipment and removal of structures from the site. If any member of an

asbestos crew is engaged in asbestos related duties outside of the employee's regular employment county, the daily rate of pay shall be no less than the minimum amount as established in the employee's regular employment county for asbestos removal and an additional thirty dollars per each day the employee is engaged in asbestos removal and related duties. The additional pay for asbestos removal and related duties shall be payable entirely from county funds. Before service personnel employees may be utilized in the removal of asbestos material or related duties, they shall have completed a federal Environmental Protection Act-approved training program and be licensed. The employer shall provide all necessary protective equipment and maintain all records required by the Environmental Protection Act.

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

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

(a) The state board of education shall develop and cause to be made available competency tests for all of the classification titles defined in section eight and listed in section eight-a of this article for service personnel. Each classification title defined and listed shall be considered a separate classification category of employment for service personnel and shall have a separate competency test, except for those class titles having Roman numeral designations, which shall be considered a single classification of employment and shall have a single competency test. The cafeteria manager class title shall be included in the same classification category as cooks and shall have the same competency test. The executive secretary class title shall be included in the same classification category as secretaries and shall have the same competency test. The classification titles of chief mechanic, mechanic and assistant mechanic shall be included in one classification title and shall have the same competency test.

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

(c) The competency test shall consist of an objective written and/or performance test: *Provided*, That applicants shall have the opportunity of taking the written test orally if requested. Oral tests shall be recorded mechanically and kept on file. Persons administering the oral test shall not know the applicant personally. The performance test for all classifications and categories other than bus operator shall be administered by a vocational school which serves the county board of education. A standard passing score shall be established by the state department of education for each test and shall be used by county boards of education. The subject matter of each competency test shall be 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 shall be designed in such a manner that achieving a passing grade will not require knowledge and skill in excess of the requirements of the definitions of the classification titles. Achieving a passing score shall

conclusively demonstrate the qualification of an applicant for a classification title. Once an employee passes the competency test of a classification title, the applicant shall be fully qualified to fill vacancies in that classification category of employment as provided in section eight-b of this article and shall not be required to take the competency test again.

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

(e) Competency tests shall be administered to applicants in a uniform manner under uniform testing conditions. County boards of education are responsible for scheduling competency tests ~~and 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 of education shall not utilize 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 shall be excused from work to take the competency test without loss of pay.

(g) A minimum of one day of appropriate inservice training shall be provided employees to assist them in preparing to take the competency tests.

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

(i) 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 shall be considered qualified for the classification title even though that employee no longer holds that classification.

(j) The requirements of this section shall not be construed to alter the definitions of class titles as provided in section eight of this article nor the procedure and requirements of section eight-b of this article.

~~The testing procedures of this section shall be implemented effective the first day of July, one thousand nine hundred ninety-one.~~

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

~~The seniority for service personnel shall be determined in the following manner:~~

(a) Seniority accumulation for a regular school service employee begins on the date the employee enters upon regular employment duties pursuant to a contract as provided in section five, article two of this chapter and continues until the employee's employment as a regular employee is severed with the county board. Seniority shall not cease to accumulate when an employee is absent without pay as authorized by the county board or the absence is due to illness or other reasons over which the employee has no control as authorized by the county board. Seniority accumulation for a substitute employee shall begin upon the date the employee enters upon the duties of a substitute as provided in section fifteen of this article, after executing with the board a contract of employment as provided in section five, article two of this chapter. The seniority of a substitute employee, once established, shall continue until the employee enters into the duties of a regular employment contract as provided in section five, article two of this chapter or employment as a substitute with the county board is severed. Seniority of a regular or substitute employee shall continue to accumulate except during the time when an employee is willfully absent from employment duties because of a concerted work stoppage or strike or is suspended without pay.

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

reduction in force, an employee with the least seniority within a particular classification category shall be properly released and placed on the preferred recall list. The particular classification title held by an employee within the classification category shall not be taken into consideration when implementing a reduction in force.

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

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

The county board shall establish the number of calendar days between the date the employee left the class title or category of employment in question and the date of return to the class title or classification category of employment. This number of days shall be added to the employee's initial seniority date to establish a new beginning seniority date within the class title or classification category. The employee shall then be considered as having held uninterrupted service within the class title or classification category from the newly established seniority date. The seniority of an employee who has had a break in the accumulation of seniority as a result of being willfully absent from employment duties because of a concerted work stoppage or strike shall be calculated in the same manner.

(e) A substitute school service employee shall acquire regular employment status and seniority if the employee receives a position pursuant to subsections (2) and (5), section fifteen of this article: *Provided*, That a substitute employee who accumulates regular employee seniority while holding a position acquired pursuant to said subsections shall simultaneously accumulate substitute seniority; *Provided, further*, That upon termination of a leave of absence or a suspension, the employee shall return to the status previously held. If the employee returns to substitute status, the employee shall retain any regular employee seniority accrued, however, this seniority may not be used in the bidding process for regular positions unless the employee again attains regular employee status or has attained preferred recall status. County boards shall not be prohibited from providing any benefits of regular employment for substitute employees, but the benefits shall not include regular employee status and seniority.

(f) If two or more employees accumulate identical seniority, the priority shall be determined by a random selection system established by the employees and approved by the county board. A board shall conduct the random selection within thirty days upon the employees establishing an identical seniority date. All employees with an identical seniority date within the same class title or classification category shall participate in the random selection. As long as the affected employees hold identical seniority within the same classification category, the initial random selection conducted by the board shall be permanent for the duration of the employment within the same classification category of the employees by the board. This random selection priority applies to the filling of vacancies and to the reduction in force of school service personnel: *Provided*, That if another employee or employees subsequently acquire seniority identical to the employees involved in the original random selection, a second random selection shall be held within thirty days to determine the seniority ranking of the new employee or employees within the group. The priority

between the employees who participated in the original random selection shall remain the same. The second random selection shall be performed by placing numbered pieces of paper equal to the number of employees with identical seniority in a container. The employees who were not involved in the original random selection shall draw a number from the container which will determine their seniority within the group as a whole. This process will be repeated if additional employees subsequently acquire identical seniority. The same process shall be utilized if additional employees are subsequently discovered to have the same seniority as the original group of employees but who did not participate in the original random selection through oversight or mistake.

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

(h) Seniority acquired as a substitute and as a regular employee shall be calculated separately and shall not be combined for any purpose. Seniority acquired within different classification categories shall be calculated separately: *Provided*, That when a school service employee makes application for a position outside of the classification category currently held, if the vacancy is not filled by an applicant within the classification category of the vacancy, the applicant shall combine all regular employment seniority acquired for the purposes of bidding on the position.

(i) School service personnel who hold multi-classification titles shall accrue seniority in each classification category of employment which the employee holds and shall be considered an employee of each classification category contained within his or her multi-classification title. Multi-classified employees are subject to reduction in force in any category of employment contained within their multi-classification title based upon the seniority accumulated within that category of employment: *Provided*, That if a multi-classified employee is reduced in force in one classification category, the employee shall retain employment in any of the other classification categories that he or she holds within his multi-classification title. In that case, the county board shall delete the appropriate classification title or classification category from the contract of the multi-classified employee.

(j) When applying to fill a vacancy outside the classification categories held by the multi-classified employee, seniority acquired simultaneously in different classification categories shall be calculated as if accrued in one classification category only.

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

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

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

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

(2) To fill the position of a regular service employee ~~on~~ who requests a leave of absence ~~from the county board in writing and who is granted the leave in writing by the county board~~: *Provided*, That if ~~such~~ the leave of absence is to extend beyond thirty days, the board, within twenty working days from the commencement of the leave of absence, shall give regular employee status to a person hired to fill the position. The person employed on a regular basis shall be selected under the procedure set forth in section eight-b of this article. The substitute shall hold the position and regular employee status only until the regular employee returns to the position and the substitute shall have and shall

be accorded all rights, privileges and benefits pertaining to ~~such~~ the position: *Provided, however,* That if a regular or substitute employee fills a vacancy that is related to a leave of absence in any manner as provided herein in this section, upon termination of the leave of absence ~~such~~ the employee shall be returned to his or her original ~~position;~~ position: *Provided further,* That no service person may be required to request or to take a leave of absence: *And provided further,* That no service person shall be deprived of any right or privilege of regular employment status for refusal to request or failure to take a leave of absence;

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

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

(5) To fill the vacancy created by a regular employee's suspension: *Provided,* That if the suspension is for more than thirty working days the substitute service employee shall be assigned to fill the vacancy on a regular basis and shall have and be accorded all rights, privileges and benefits pertaining to ~~such~~ the position until the termination by the county board becomes final. If the suspended employee is not returned to his or her job, the board shall fill the vacancy under the procedures set out in section eight-b of this article and section five, article two of this chapter; and

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

(b) Substitutes shall be assigned in the following manner: A substitute with the greatest length of service time, that is, from the date he or she began his or her assigned duties as a substitute in that particular category of employment, shall be given priority in accepting the assignment throughout the period of the regular employee's absence or until the vacancy is filled on a regular basis under the procedures set out in section eight-b of this article. All substitutes shall be employed on a rotating basis according to the length of their service time until each substitute has had an opportunity to perform similar assignments: *Provided,* That if there are regular service employees employed in the same building or working station as the absent employee and who are employed in the same classification category of employment, the regular employees shall be first offered the opportunity to fill the position of the absent employee on a rotating and seniority basis with the substitute then filling the regular employee's position. A regular employee assigned to fill the position of an absent employee shall be given the opportunity to hold that position throughout ~~such~~ the absence.

(c) Regular school service personnel shall be returned by the county board of education to the same position held prior to any approved leave of absence or period of recovery from injury or illness. The school service personnel shall retain all rights, privileges and benefits which had accrued at the time of the absence or accrued under any other provision of law during the absence and shall have all rights, privileges and benefits generally accorded school service employees at the time of return to work.

(d) The salary of a substitute service employee shall be based upon his or her years of employment as defined in section eight of this article and as provided in the state minimum pay scale set forth in

section eight-a of this article and shall be in accordance with the salary schedule of persons regularly employed in the same position in the county in which he or she is employed.

(e) Before any substitute service employee enters upon his or her duties, he or she shall execute with the county board a written contract as provided in section five, article two of this chapter.

(f) To establish a uniform system of providing a fair and equitable opportunity for substitutes to enter upon their duties for the first time, the following method shall be used: The initial order of assigning newly employed substitutes shall be determined by a random selection system established by the affected substitute employees and approved by the county board. This initial priority order shall be in effect only until the substitute service personnel have entered upon their duties for the first time.

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

## **HOUSE BILL 4784**

**EFFECTIVE DATE:** March 11, 2000

**SIGNED BY GOVERNOR:** March 31, 2000

**CODE REFERENCES:** New § 18B-10-7b

**TOPIC:** FEES AND OTHER MONEY COLLECTED AT  
STATE INSTITUTIONS OF HIGHER  
EDUCATION. TUITION WAIVERS FOR HIGH  
SCHOOL GRADUATES IN FOSTER CARE

**INTRODUCTION:**

Provides for the tuition waivers for high school graduates in foster care.

**MAJOR NEW PROVISIONS:**

1. Addition of a new section that relates to state institutions of higher education, tuition fees, financial assistance, tuition waivers for high school graduates in foster care and eligibility requirement and limitations.
2. Requires the development of an application.
3. Requires a definition of guidelines for students return to state for waiver award eligibility.
4. Requires an implementation process be determined which will utilize the eligible specification in the new section.

**ENROLLED**

**H. B. 4784**

(By Delegates Armstead, Harrison, Anderson, Romine,  
Calvert, Houston and Shelton)

[Passed March 11, 2000; in effect from passage.]

AN ACT to amend article ten, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven-b, relating to state institutions of higher education; tuition; fees; financial assistance; tuition waivers for high school graduates in foster care; and eligibility requirements and limitations.

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

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

**ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.**

**§18B-10-7b. Tuition waivers for high school graduates in foster care.**

The governing boards shall make provision for institutions under their respective jurisdictions to award a tuition and fee waiver for undergraduate courses at state institutions of higher education for any student, beginning with incoming freshmen in the Fall, two thousand, semester or term, who graduate from high school or pass the GED examination while in the legal custody of the state department of health and human resources. The student must be in foster care or other residential care for at least one year prior to the waiver award. If the foster care or other residential care is provided in another state, the student must first be returned to this state for waiver award eligibility.

**To be eligible for a waiver award, a student must first: (1) Apply to and be accepted at the institution; and (2) apply for other student financial assistance, other than student loans, in compliance with federal financial aid rules, including the federal Pell grant.**

Waiver renewal is contingent upon the student continuing to meet the academic progress standards established by the institution.

The waiver provided by this section for each eligible student may be used for no more than four years of undergraduate study. An initial waiver must be granted within two years of graduation from high school or passing the GED examination.

The waiver may only be used after other sources of financial aid that are dedicated solely to tuition and fees are exhausted.

Any award under this section is in addition to the number of fee waivers permitted in sections five and six of this article for undergraduate, graduate and professional schools.

No student who is enrolled in an institution of higher education as of the effective date of this section is eligible for a waiver award under the provisions of this section.

The governing boards may establish any limitations on the provisions of this section as they consider proper.

## HOUSE BILL 4785

**EFFECTIVE DATE:** June 9, 2000

**SIGNED BY GOVERNOR:** March 17, 2000

**CODE REFERENCE(S):** Amends and Reenacts §18-29-11

**TOPIC:** COMPILATION AND DISSEMINATION OF  
DATA

### **INTRODUCTION:**

Provides for the education employees grievance board to provide each governing board and employee organization a statewide quarterly report summarizing matters decided by the hearing examiners.

### **MAJOR NEW PROVISIONS:**

The report specifies:

1. The number of grievances against the county board appealed to level four identifying each grievance by subject matter;
2. The number of grievances against the county board which were granted identifying each grievance by the docket number, date of decision, and subject matter;
3. The number of grievances against the county board which were denied identifying each grievance by the docket number, date of decision, and subject matter, and
4. The number of grievances against the county board which were disposed of identifying each grievance by disposition, docket number, date of decision, and subject matter.

**ENROLLED**

**H. B. 4785**

(By Delegates Susman, Hubbard, Romine, Pethtel,  
Yeager, Fletcher and Houston)

[Passed March 9, 2000; in effect ninety days from passage.]

AN ACT to amend and reenact section eleven, article twenty-nine, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public education; grievance; procedure; compilation and dissemination of data; report; and specifications.

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

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

**ARTICLE 29. GRIEVANCE PROCEDURE.**

**§18-29-11. Compilation and dissemination of data.**

In addition to such other data as may be required under the provisions of this article, ~~beginning with the quarter ending the first day of October, one thousand nine hundred ninety-two~~ the education employees grievance board shall provide each governing board and employee organization, within thirty days of the end of each quarter, a statewide quarterly report summarizing matters decided by the hearing examiners during the preceding quarter. Each report shall set forth any information deemed to be helpful in providing an overview of grievance-related issues. ~~Provided:~~ In addition to such other data as may be required under the provisions of this article, the education employees grievance board shall annually provide each county board of education, within thirty days of the end of each school year, a report specifying:

(1) The number of grievances against the county board which, during the school year, were appealed to level four, identifying each grievance by subject matter;

(2) The number of grievances against the county board which, during the school year, were granted, identifying each grievance by docket number, date of decision, and subject matter.

(3) The number of grievances against the county board which, during the school year, were denied, identifying each grievance by docket number, date of decision, and subject matter.

(4) The number of grievances against the county board which, during the school year, were otherwise disposed of, identifying each grievance by disposition, docket number, date of decision, and subject matter.

Nothing contained ~~in either the quarterly or annual report may shall~~ breach the confidentiality of a grievant or other person, nor ~~shall may~~ any matter be disclosed if the disclosure may violate any provision of law. In each quarterly report, †The grievance board shall make an effort to provide information applicable to particular counties, institutions or governing boards, as may be appropriate. Each report quarterly and annual report sent by the grievance board to a governing board shall then be distributed to each member of the governing board so that the governing board may monitor the significant personnel-related matters which came before the grievance board and thereby ascertain whether any personnel policies need to be reviewed, revised or enforced.

Each quarterly report shall be incorporated into the annual report required by section five of this article, which shall also be distributed to each governing board and employee organization.

**HOUSE BILL 4787**

**EFFECTIVE DATE:** Passed March 9, 2000; in effect 90 days from passage

**SIGNED BY GOVERNOR:** March 17, 2000

**CODE REFERENCED(S):** Amends and Reenacts §18-9E-3.

**TOPIC:** FLOORING IN PUBLIC SCHOOLS

**INTRODUCTION:**

Requires review of all floor covering used in public schools for proper application whether it is in a newly constructed building or as a replacement of existing floor covering.

**ENROLLED**

**H. B. 4787**

(By Delegates Mezzatesta and Williams)

[Passed March 9, 2000; in effect ninety days from passage.]

AN ACT to amend and reenact section three, article nine-e, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the school building authority; air quality; radon testing; mitigation; rules; heating, ventilating and air-conditioning; design and construction of new schools; investigation; and authorizing the use of any appropriate floor covering in public school buildings.

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

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

**ARTICLE 9E. AIR QUALITY IN NEW SCHOOLS ACT.**

**§18-9E-3. Air quality in new schools.**

(a) In an effort to create well ventilated school environments, and notwithstanding any other provision of this code to the contrary, any new school building designed and constructed in the state by a county board, ~~after the first day of July, one thousand nine hundred ninety eight~~ regardless of the funding source, shall be designed and constructed in compliance with the current standards of the American society of heating, refrigerating and air conditioning engineers handbook (ASHRAE), the national fire protection association code (NFPA) and the code of the building officials and code administrators (BOCA).

(b) Upon notice from the school building authority that a new public school building is occupied, the division of health shall perform radon testing in the school within the first year after occupancy and at least every five years thereafter. The county school board shall provide such reasonable assistance to the division of health as may be necessary to perform the radon testing. The radon testing shall include all major student occupied areas at or below grade level. If it is determined that radon is present in amounts greater than the amount determined to be acceptable by the rules promulgated by the school building authority, pursuant to subsection (d) of this section, any industry accepted mitigation technique shall be utilized to reduce the radon level to the level or below the level determined acceptable by the school building authority.

(c) If the school building authority determines that it is feasible to test for radon prior to the construction of a school building, the school building authority may cause preconstruction site testing for radon to be performed.

(d) The school building authority shall promulgate rules pursuant to article three-a, ~~§§ 29A-3A-1 et seq.~~ chapter twenty-nine-a of this code to assure that any new school building designed after the effective date of this article is designed and constructed in accordance with the current ASHRAE, NFPA and BOCA standards. The school building authority shall promulgate rules, pursuant to article three-a, chapter twenty-nine-a of this code that establish standards for safe levels of radon for public school buildings. ~~The school building authority shall submit the rules for approval to the legislative oversight commission on education accountability on or before the first day of July, one thousand nine hundred ninety nine.~~ The rules shall include the requirement that county boards submit all new school designs to the school building authority for review and approval for

compliance with current education standards and design efficiencies prior to preparation of final bid documents.

(e) The state board shall promulgate rules, pursuant to article three-b, [~~§ 29A-3B-1 et seq.~~], chapter twenty-nine-a of this code, in consultation with the division of health, that ~~minimize~~ authorize the use of ~~carpeting any appropriate floor covering~~ in public school buildings, based on user needs and performance specifications of the carpeting. The state board shall submit the rules to the legislative oversight commission on education accountability on or before the first day of July, ~~one thousand, nine-hundred, ninety-nine~~ two thousand.

## SENATE BILL 133

<b><u>EFFECTIVE DATE:</u></b>	Passed March 10, 2000; Effective 90 days from passage
<b><u>SIGNED BY GOVERNOR:</u></b>	April 3, 2000
<b><u>CODE REFERENCE(S):</u></b>	Amends and reenacts §§61-8A-1, 2, 3, 4, 5
<b><u>TOPIC:</u></b>	REGARDING THE DISTRIBUTING AND DISPLAYING OF OBSCENE MATERIALS TO MINORS

### **INTRODUCTION:**

This act amends the definitions section of the code, identifies the penalties for individuals who display or distribute obscene materials to minors, presents the defenses and exceptions to the act and defines penalties for involving minors in the production of obscene matter.

### **MAJOR PROVISIONS:**

1. Adds technology related terms to the definition section.
2. Provides conditions for a defense to a prosecution.
3. States new exemptions from criminal liability.
4. Establishes guidelines for felony conviction and sets fine and sentence maximums.

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR

**Senate Bill No. 133**

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

[Passed March 10, 2000; in effect ninety days from passage.]

AN ACT to repeal sections six and seven, article eight-a, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two, three, four and five of said article, all relating to the distribution and display of obscene matter to minors; defining terms; creating felony for distributing, offering to distribute or displaying obscene matter to a minor; creating felony for distributing or displaying obscene matter to a minor with intent to seduce; establishing defenses; establishing exemptions from criminal liability; creating felony for using a minor in certain circumstances: and providing penalties.

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

That sections six and seven, article eight-a, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, two, three, four, and five of said article be amended and reenacted, all to read as follows:

**ARTICLE 8A. PREPARATION, DISTRIBUTION OR DISPLAY OF OBSCENE MATTER TO MINORS.**

**§61-8A-1. Definitions.**

When used in this article, the following words, and any variations thereof required by the context, shall have the meaning ascribed to them in this section:

(a) "Adult" means a person eighteen years of age or older.

(b) "Computer network" means the interconnection of hardware or wireless communication lines with a computer through remote terminals, or a complex consisting of two or more interconnected computers.

(c) "Display" means to show, exhibit or expose matter, in a manner visible to general or invited public, including minors. As used in this article, display shall include the placing or exhibiting of matter on or in a billboard, viewing screen, theater, marquee, newsstand, display rack, window, showcase, display case or similar public place.

(1) (d) "Distribute" means to transfer possession, of transport, transmit, sell or rent, whether with or without consideration.

(2) (e) "Employee" means any individual who renders personal services in the course of a business, who receives compensation therefor at a fixed rate and who has no financial interest in the ownership or operation of the business other than his salary or wages.

(3) "Exhibit" means to display or offer for viewing, whether with or without consideration.

(f) "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks.

\_\_\_\_\_ (g) “Knowledge of the character of the matter” means having awareness of or notice of the overall sexual content and character of matter as depicting, representing, or describing obscene matter.

\_\_\_\_\_ (4) “Knowingly” means to have knowledge or to be aware of the content or character of obscene matter.

\_\_\_\_\_ (5) (h) “Matter” means any visual, audio, or physical item, article, production transmission, publication, exhibition, or live performance, or reproduction thereof, including any two or three dimensional visual or written material, film, picture, drawing, video, graphic, or computer generated or reproduced image; or any book, magazine, newspaper or other visual or written material; or any motion picture or other pictorial representation; or any statue or other figure; or any recording, transcription, or mechanical, chemical, or electrical reproduction; or any other articles, video laser disc, computer hardware and software, or computer generated images or message recording, transcription, or object, or any public or commercial live exhibition performed for consideration or before an audience of one or more. ~~book, magazine, newspaper, or other printed or written material, or any picture, drawing or photograph, motion picture, or other visual representation, or any statue or other figure, or live conduct, or any recording, transcription or mechanical, chemical or electrical reproduction, or any other articles, equipment, machines or materials~~

\_\_\_\_\_ (6) (i) “Minor” means any individual an unemancipated person under the age of eighteen years of age.

\_\_\_\_\_ (7) (j) “Obscene matter” means matter that:

\_\_\_\_\_ (1) An average person, applying contemporary adult community standards, would find, taken as a whole, appeals to the prurient interest, is intended to appeal to the prurient interest, or is pandered to a prurient interest;

\_\_\_\_\_ (2) An average person, applying community standards, would find depicts or describes, in a patently offensive way, sexually explicit conduct; and

\_\_\_\_\_ (3) A reasonable person would find, taken as a whole, lacks serious literary, artistic, political or scientific value. to the average individual, applying contemporary state standards, matter which:

\_\_\_\_\_ (a) Considered as a whole, appeals to the prurient interests;

\_\_\_\_\_ (b) Depicts or describes in a patently offensive manner ultimate sexual acts, both normal and perverted, actual or simulated, masturbation, sodomy, fellatio, cunnilingus, bestiality, sadism, excretory functions or lewd exhibition of the genitals; and

\_\_\_\_\_ (c) Considered as a whole lacks serious literary, artistic, political or scientific value.

\_\_\_\_\_ (k) “Parent” includes a biological or adoptive parent, legal guardian or legal custodian.

\_\_\_\_\_ (8) (l) “Person” means any individual adult, partnership, firm, association, corporation or other legal entity.

\_\_\_\_\_ (9) “Prepare” means to produce, publish or print

\_\_\_\_\_ (10) “Public display” means the placing of material on or in a billboard, viewing screen, theatre, marquee, newsstand, display rack, window, showcase, display case, or similar public place so that the material within the meaning of “obscene matter” is easily visible from a public thoroughfare, from the property of others or from commercial or business premises generally open to minors at the time of such placing.

### **§61-8A-2. Distribution and display to minor of obscene matter; penalties; defenses.**

\_\_\_\_\_ If any person knowingly sends or causes to be sent or brings or causes to be brought into this State for distribution, exhibition, or public display, or in this State prepares, distributes, exhibits or makes a public display or offers to prepare, distributes, exhibits or makes a public display or offers

~~to prepare, distribute, exhibit, or make a public display, or has in his possession with the intent to distribute, exhibit, or make a public display of any obscene matter to a minor, he shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars or imprisoned in the county jail not more than six months or both fined and imprisoned. A person convicted of a second or subsequent offense under this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned in the county jail not more than one year or both fined and imprisoned.~~

(a) Any adult, with knowledge of the character of the matter, who knowingly and intentionally distributes, offers to distribute, or displays to a minor any obscene matter, is guilty of a felony and, upon conviction thereof, shall be fined not more than twenty-five thousand dollars, or confined in a state correctional facility for not more than five years, or both.

(b) It is a defense to a prosecution under the provisions of this section that the obscene matter:

(1) Was displayed in an area from which minors are physically excluded and the matter so located cannot be viewed by a minor from nonrestricted areas; or

(2) Was covered by a device, commonly known as a "blinder rack," such that the lower two thirds of the cover of the material is not exposed to view; or

(3) Was enclosed in an opaque wrapper such that the lower two thirds of the cover of the material is not exposed to view; or

(4) Was displayed or distributed after taking reasonable steps to receive, obtain or check adult identification card, such as a driver's license or other technically or reasonably feasible means of verification of age; or

(c) It is a defense to an alleged violation under this section that a parent had taken reasonable steps to limit the minor's access to the obscene matter.

### **§61-8A-3. Exemptions from criminal liability.**

~~No employee shall be guilty of a violation of this article when such employee is a projectionist, ticket taker, usher, or when such employee distributes, prepares or exhibits displays obscene matter while acting within the scope of his regular employment.~~

The criminal provisions of section two of this article do not apply to:

(a) A bona fide school, in the presentation of local or state approved curriculum;

(b) A public library, or museum, which is displaying or distributing any obscene matter to a minor only when the minor was accompanied by his or her parent;

(c) A licensed medical or mental health care provider, or judicial or law-enforcement officer, during the course of medical, psychiatric, or psychological treatment or judicial or law-enforcement activities; or

(d) A person who did not know or have reason to know, and could not reasonably have learned, that the person to whom the obscene matter was distributed or displayed was a minor and who took reasonable measures to ascertain the identity and age of the minor;

(e) A person who routinely distributes obscene matter by the use of telephone, computer network or the internet and who distributes such matter to any minor under the age of eighteen years after the person has taken reasonable measures to prevent access by minors to the obscene matter;  
or

(f) A radio or television station, cable television service or other telecommunications service regulated by the federal communications commission.

### **§61-8A-4. Use of obscene matter with intent to seduce minor.**

~~Any person who distributes or exhibits obscene matter, or possesses obscene matter with the intent to distribute or exhibit the same in the course of his business, is presumed to do so with knowledge of its content or character.~~

~~Any adult, having knowledge of the character of the matter, who knows that a person is a minor and distributes, offers to distribute or displays by any means any obscene matter to the minor, and such distribution, offer to distribute, or display is undertaken with the intent or for the purpose of facilitating the sexual seduction or abuse of the minor, is guilty of a felony and, upon conviction thereof, shall be fined not more than twenty-five thousand dollars, or confined in a state correctional facility for not more than five years, or both. For a second and each subsequent commission of such offense, such person is guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars or confined in a state correctional facility for not more than ten years, or both.~~

**§61-8A-5. Employment or use of minor to produce obscene matter or assist in doing sexually explicit conduct; penalties.**

~~No person shall be guilty of distributing or exhibiting obscene matter to a minor when such person has reasonable cause to believe that the minor involved was eighteen years of age or more and such minor exhibited to such person a driver's license, draft card or other official or apparently official document purporting to establish that such minor was eighteen years of age or more.~~

~~Any adult who, with knowledge that a person is a minor or who fails to exercise reasonable care in ascertaining the age of a minor, hires, employs or uses such minor to produce obscene matter or to do or assist in doing any sexually explicit conduct, is guilty of a felony and, upon conviction thereof, shall be fined not more than fifty thousand dollars, or confined in a state correctional facility for not more than ten years, or both.~~

## **SENATE BILL 153**

**EFFECTIVE DATE:** Passed March 8, 2000; effective 90 days from passage

**SIGNED BY GOVERNOR:** March 16, 2000

**CODE REFERENCE(S):** Amends and reenacts §61-3C-3 and §61-3C-7

**TOPIC:** AMENDS AND REVISES DEFINITIONS AND PUNISHMENTS FOR COMPUTER CRIME AND ABUSES

**INTRODUCTION:**

Defines computer contaminants and identifies certain actions that would introduce a computer contaminant into a computer or computer network as either a misdemeanor or felony offense.

**MAJOR PROVISIONS:**

1. Defines “computer contaminant.”
2. Determines misdemeanor and felony offenses and punishments.

**ENROLLED  
COMMITTEE SUBSTITUTE  
FOR  
Senate Bill No. 153  
(SENATOR SPROUSE, original sponsor)**

[Passed March 8, 2000; in effect ninety days from passage.]

AN ACT to amend and reenact sections three and seven, article three-c, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishing criminal penalties for the introduction of computer contaminants; defining terms; and making certain technical revisions.

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

That sections three and seven, article three-c, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 3C. WEST VIRGINIA COMPUTER CRIME AND ABUSE ACT.**

**§61-3C-3. Definitions.**

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

(a) "Access" means to instruct, communicate with, store data in, retrieve data from, intercept data from, or otherwise make use of any computer, computer network, computer program, computer software, computer data or other computer resources.

(b) "Authorization" means the express or implied consent given by a person to another to access or use said person's computer, computer network, computer program, computer software, computer system, password, identifying code or personal identification number.

(c) "Computer" means an electronic, magnetic, optical, electrochemical or other high speed data processing device performing logical, arithmetic or storage functions, and includes any data storage facility or communication facility directly related to or operating in conjunction with such device. The term "computer" includes any connected or directly related device, equipment or facility which enables the computer to store, retrieve or communicate computer programs, computer data or the results of computer operations to or from a person, another computer or another device, but such term does not include an automated typewriter or typesetter, a portable hand-held calculator or other similar device.

(d) "Computer contaminant" means any set of computer instructions that are designed to damage or destroy information within a computer, computer system or computer network without the intent or permission of the owner of the information. They include, but are not limited to, a group of computer instructions commonly called viruses or worms that are self-replicating or self-propagating and are designed to contaminate other computer programs or computer data, consume computer resources, or damage or destroy the normal operation of the computer.

(e) "Computer data" means any representation of knowledge, facts, concepts, instruction, or other information computed, classified, processed, transmitted, received, retrieved, originated, stored, manifested, measured, detected, recorded, reproduced, handled or utilized by a computer, computer

network, computer program or computer software, and may be in any medium, including, but not limited to, computer print-outs, microfilm, microfiche, magnetic storage media, optical storage media, punch paper tape or punch cards, or it may be stored internally in read-only memory or random access memory of a computer or any other peripheral device.

(f) "Computer network" means a set of connected devices and communication facilities, including more than one computer, with the capability to transmit computer data among them through such communication facilities.

(g) "Computer operations" means arithmetic, logical, storage, display, monitoring or retrieval functions or any combination thereof, and includes, but is not limited to, communication with, storage of data in or to, or retrieval of data from any device and the human manual manipulation of electronic magnetic impulses. A "computer operation" for a particular computer shall also mean any function for which that computer was designed.

(h) "Computer program" means an ordered set of computer data representing instructions or statements, in a form readable by a computer, which controls, directs, or otherwise influences the functioning of a computer or computer network.

(i) "Computer software" means a set of computer programs, procedures and associated documentation concerned with computer data or with the operation of a computer, computer program or computer network.

(j) "Computer services" means computer access time, computer data processing, or computer data storage, and the computer data processed or stored in connection therewith.

(k) "Computer supplies" means punch cards, paper tape, magnetic tape, magnetic disks or diskettes, optical disks or diskettes, disk or diskette packs, paper, microfilm and any other tangible input, output or storage medium used in connection with a computer, computer network, computer data, computer software or computer program.

(l) "Computer resources" includes, but is not limited to, information retrieval; computer data processing, transmission and storage; and any other functions performed, in whole or in part, by the use of a computer, computer network, computer software or computer program.

(m) "Owner" means any person who owns or leases or is a licensee of a computer, computer network, computer data, computer program, computer software, computer resources or computer supplies.

(n) "Person" means any natural person, general partnership, limited partnership, trust, association, corporation, joint venture or any state, county or municipal government and any subdivision, branch, department or agency thereof.

(o) "Property" includes:

(1) Real property;  
(2) Computers and computer networks;  
(3) Financial instruments, computer data, computer programs, computer software and all other personal property regardless of whether they are:

(i) Tangible or intangible;

(ii) In a format readable by humans or by a computer;

(iii) In transit between computers or within a computer network or between any devices which comprise a computer; or

(iv) Located on any paper or in any device on which it is stored by a computer or by a human; and

(4) Computer services.

(p) "Value" means having any potential to provide any direct or indirect gain or advantage to any person.

(q) "Financial instrument" includes, but is not limited to, any check, draft, warrant, money order, note, certificate of deposit, letter of credit, bill of exchange, credit or debit card, transaction authorization mechanism, marketable security or any computerized representation thereof.

(r) "Value of property or computer services" shall be: (1) The market value of the property or computer services at the time of a violation of this article; or (2) if the property or computer services are unrecoverable, damaged, or destroyed as a result of a violation of section six or seven of this article, the cost of reproducing or replacing the property or computer services at the time of the violation.

**§61-3C-7. Alteration, destruction, etc., of computer equipment.**

(a) Misdemeanor offenses. -- Any person who knowingly, willfully and without authorization, directly or indirectly, tampers with, deletes, alters, damages or destroys or attempts to tamper with, delete, alter, damage or destroy any computer, computer network, computer software, computer resources, computer program or computer data or who knowingly introduces, directly or indirectly, a computer contaminant into any computer, computer program or computer network which results in a loss of value of property or computer services up to one thousand dollars, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or confined in the county or regional jail not more than six months, or both.

(b) Felony offenses. -- Any person who knowingly, willfully and without authorization, directly or indirectly, damages or destroys or attempts to damage or destroy any computer, computer network, computer software, computer resources, computer program or computer data by knowingly introducing, directly or indirectly, a computer contaminant into any computer, computer program or computer network which results in a loss of value of property or computer services more than one thousand dollars is guilty of a felony and, upon conviction thereof, shall be fined not less than two hundred dollars and not more than ten thousand dollars or confined in a state correctional facility not more than ten years, or both, or, in the discretion of the court, be fined not less than two hundred nor more than one thousand dollars and confined in the county or regional jail not more than one year.

**SENATE BILL 175**

**EFFECTIVE DATE:** In effect from passage

**SIGNED BY GOVERNOR:** April 5, 2000

**CODE REFERENCE(S):** New §§12-8; 12-8-1, 12-8-2, 12-8-3, 12-8-4, 12-8-5, 12-8-6, 12-8-7, 12-8-8, 12-8-9, 12-8-10, 12-8-11, 12-8-12, 12-8-13, 12-8-14, 12-8-15, 12-8-16

**TOPIC:** PENSION LIABILITY REDEMPTION

**INTRODUCTION:**

Provides for the redemption of the previous liability of the state consisting of the unfunded actuarial accrued liability of certain pension systems through the issuance of bonds.

**MAJOR NEW PROVISIONS:**

1. The unfunded actuarial accrued liability of each pension system, which is a previous liability of the state, may be redeemed through the issuance of bonds authorized by the governor as provided by a resolution adopted by the legislature.
2. The terms, method of issuance, manner of sale, and the amount of the bond issue are established.
3. The Department of Administration and the State Treasurer have the authority to employ special counsel to carry out the provisions of this article.
4. The pension liability redemption fund is established into which shall be deposited any and all amounts appropriated by the Legislature or funds from any other source whatsoever which are made available by law for the purpose of making pension liability redemption payments.

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

**Senate Bill No. 175**

(SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,  
BY REQUEST OF THE EXECUTIVE, *original sponsors*)

[Passed March 11, 2000; in effect from passage.]

AN ACT to amend chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eight, relating to the West Virginia pension liability redemption act; providing for declaration of policy, legislative findings, legislative intent and scope of provisions; providing for definitions; providing for the redemption of the previous liability of the state consisting of the unfunded actuarial accrued liability of certain pension systems through the issuance of bonds for such purpose; providing for the issuance of such bonds and for the determination of the unfunded actuarial accrued liability; requiring adoption of resolution by Legislature authorizing the issuance of bonds; providing for the method of bond issuance and the manner of sale of bonds; providing for the authority of the department of administration to select, employ and compensate counsel, underwriters, advisors, consultants and agents to carry out the purposes of this article; providing for the authority of the state treasurer to select, employ and compensate special counsel to advise the state treasurer; providing authority to enter into contracts with obligation holders; providing for the terms and provisions of bonds, trust indentures and other agreements; providing for the redemption of the previous liability of the state, which is the unfunded actuarial accrued liability, with proceeds of the sale of bonds; providing for investment planning for the assets of the pension systems after deposit of the bond proceeds; providing for payment of costs of issuing bonds and review committee to review and approve same; limiting amount of bonds that may be issued; creating the pension liability redemption fund; providing for pension liability redemption payments; providing for refunding bonds; providing for state pledges and covenants relating to bonds; providing for legal remedies of obligation holders; providing that bonds are negotiable instruments; providing that bonds are legal investments in the state; providing that bonds and the income therefrom are exempt from taxation in the state; providing for supersedure; requiring a judicial determination prior to the issuance of bonds; and providing for severability of provisions of this article.

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

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

**ARTICLE 8. PENSION LIABILITY REDEMPTION.**

**§12-8-1. Short title.**

This article shall be known and may be cited as the pension liability redemption act.

**§12-8-2. Declaration of policy; legislative findings; legislative intent.**

The Legislature finds and declares that:

(a) The Legislature has established a number of pension systems, including the death, disability and retirement fund of the department of public safety established in article two, chapter fifteen of this code; the judges' retirement system established in article nine, chapter fifty-one of this code; and the teachers retirement system established in article seven-a, chapter eighteen of this code, each of which is a trust for the benefit of the participating public employees.

(b) The supreme court of appeals of West Virginia has ruled that the Legislature is obligated to fund these pension systems on an actuarially sound basis and that pension system obligations are legitimate debts of the state.

(c) As a result of financial distress that occurred in the state during the 1980s, the death, disability and retirement fund of the department of public safety, the judges' retirement system and the teachers retirement system each has a significant unfunded actuarial accrued liability which is being amortized over a term of years ending no later than two thousand thirty-four through annual appropriations in addition to amounts appropriated annually for the normal cost contribution to these pension systems. (d) The supreme court of appeals has ruled that the unfunded actuarial accrued liability of pension systems is a public debt of the state that must be repaid.

(e) The unfunded actuarial accrued liability of each pension system is a previous liability of the state. The supreme court of appeals has held that the Legislature may choose to redeem a previous liability of the state through the issuance of bonds.

(f) This article provides for the redemption of the unfunded actuarial accrued liability of each pension system, which is a previous liability of the state, through the issuance of bonds for the purpose of: (i) Providing for the safety and soundness of the pension systems; and (ii) redeeming each such previous liability of the pension systems in order to realize savings over the remaining term of the amortization schedules of the unfunded actuarial accrued liabilities and thereby achieve budgetary savings.

**§12-8-3. Definitions.**

As used in this article, unless the context clearly requires a different meaning:

(1) "Bonds" means bonds, notes, refunding notes and bonds, or other obligations of the state issued by the governor pursuant to this article.

(2) "Consolidated public retirement board" means the board created to administer all public retirement plans in this state under article ten-d of chapter five of this code and any board or agency that succeeds to the powers and duties of the consolidated public retirement board.

(3) "Costs" include, but are not limited to, amounts necessary to fund any capitalized interest funds and any reserve funds, any costs relating to the issuance and determination of the validity of the bonds, fees for obtaining bond insurance, credit enhancements or liquidity facilities, administrative costs, fees incurred pursuant to subsection (f), section five of this article and costs attributable to the agreements described in section six of this article.

(4) "Death, disability and retirement fund" means the death, disability and retirement fund of the department of public safety created by article two, chapter fifteen of this code.

(5) "Department of administration" means the department established pursuant to article one, chapter five-a of this code and any board or agency that succeeds to the powers and duties of the department of administration.

(6) "Executive order" means an executive order issued by the governor to authorize the issuance of bonds as provided in this article.

(7) "Investment management board" means the board established under article six, chapter twelve of this code, and any board or agency that succeeds to the powers and duties of the investment management board.

(8) "Judges' retirement system" means the judicial retirement system created under article nine, chapter fifty-one of this code.

(9) "Obligation holders" means any holder or owner of any bond, any trustee or other fiduciary for any such holder, or any provider of a letter of credit, policy of bond insurance, surety, or other credit enhancement or liquidity facility or swap relating to any bond.

(10) "Pension liability redemption fund" means the special account in the state treasury created pursuant to subsection (a), section eight of this article.

(11) "Pension liability redemption payments" means: (a) The principal of, premium, if any, and interest on any outstanding bonds issued pursuant to this article; and (b) any other amounts required to be paid pursuant to the terms of any outstanding bonds, any indenture authorized pursuant to this article and any other agreement entered into between the governor and any obligation holder.

(12) "Pension systems" means the judges' retirement system, the death, disability and retirement fund and the teachers retirement fund.

(13) "Refund" or "refunding" means the issuance and sale of bonds the proceeds of which are used or are to be used for the payment, defeasance or redemption of outstanding bonds upon or prior to maturity.

(14) "Refunding bonds" means bonds issued for the payment, defeasance or redemption of outstanding bonds upon or prior to maturity.

(15) "Teachers retirement system" means the retirement system established in article seven-a, chapter eighteen of this code.

(16) "True interest cost" means the interest rate that, when compounded at time intervals consistent with the structure of the bond issue and used to discount the payments of principal of and interest on the bonds, causes such discounted principal and interest payments to equal the purchase price of the bonds. To ensure that the costs of issuance of the bonds are included in the true interest cost, the costs of issuance shall be deducted from the purchase price of the bonds before calculating the interest rate.

(17) "Normal cost" means the value of benefits accruing for the current valuation year under the actuarial cost method.

(18) "Actuarial cost method" means a mathematical process in which the cost of benefits projected to be paid after a period of active employment has ended is allocated over the period of active employment during which such benefits are earned.

(19) "Unfunded actuarial accrued liability" means the aggregate of the unfunded actuarial accrued liabilities of the pension systems, with the unfunded actuarial accrued liability of each

pension system being calculated in an actuarial valuation report provided by the consolidated public retirement board to the department of administration pursuant to section four of this article.

**§12-8-4. Issuance of bonds; determination of unfunded actuarial accrued liability.**

(a) Notwithstanding any other provision of this code and pursuant to section four, article ten of the constitution of West Virginia, the governor shall have the power, as provided by this article, to issue the bonds authorized in this section at a time or times as provided by a resolution adopted by the legislature to redeem a previous liability of the state by funding all or a portion of the unfunded actuarial accrued liability, such bonds to be payable from and secured by moneys deposited in the pension liability redemption fund. Any bonds issued pursuant to this article, other than refunding bonds, shall be issued no later than five years after the date of issuance of the judicial determination referred to in section fifteen of this article.

(b) The aggregate principal amount of bonds issued pursuant to the provisions of this article is limited to no more than the lesser of the following: (1) The principal amount necessary, after deduction of costs, underwriter's discount and original issue discount, if any, to fund not in excess of one hundred percent of the unfunded actuarial accrued liability of the death, disability and retirement fund of the department of public safety established in article two, chapter fifteen of this code, one hundred percent of the unfunded actuarial accrued liability of the judges' retirement system established in article nine, chapter fifty-one of this code, and ninety-five percent of the unfunded actuarial accrued liability of the teachers retirement system established in article seven-a, chapter eighteen of this code, as certified by the consolidated public retirement board to the department of administration pursuant to subsection (e) of this section; or (2) three billion nine hundred million dollars; but in no event shall the aggregate principal amount of bonds issue exceed the principal amount necessary, after deduction of costs, underwriter's discount and original issue discount, if any, to fund not in excess of the total unfunded actuarial accrued liability, as certified by the consolidated public retirement board to the department of administration pursuant to subsection (e) of this section.

(c) The costs of issuance, excluding fees for bond insurance, credit enhancements and liquidity facilities, plus underwriter's discount and any other costs associated with the issuance shall not exceed, in the aggregate, the sum of one percent of the aggregate principal amount of bonds issued. All such costs shall be subject to the review and approval of a majority of the members of a review committee. The review committee shall consist of two members appointed by the governor from a list of three persons submitted by the president of the Senate; two members appointed by the governor from a list of three persons submitted by the speaker of the House of Delegates; the state treasurer; and four persons having skill and experience in bond issuance, appointed by the Governor.

(d) The limitation on the aggregate principal amount of bonds provided in this section shall not preclude the issuance of bonds from time to time or in one or more series.

(e) No later than ten days after receipt of a request from the department of administration, the consolidated public retirement board shall provide the department of administration with a certified statement of the amount of each pension system's unfunded actuarial accrued liability calculated in an actuarial valuation report that establishes the amount of the unfunded actuarial accrued liability as of a date specified by the department of administration, based upon each pension system's most recent actuarial valuation.

(f) No later than fifteen days after receipt of a request from the governor, the department of administration shall provide the governor with a certification of the maximum aggregate principal amount of bonds that may be issued at that time pursuant to subsection (b) of this section.

**§12-8-5. Method of bond issuance; manner of sale of bonds; authority of department of administration.**

(a) The governor may, by executive message, request the Legislature prepare and consider a resolution authorizing the issuance of bonds described in section four of this article. The executive message shall specify the maximum costs associated with the issue. Upon the adoption of a resolution by the Legislature authorizing the issuance of the bonds in the amount and upon the terms specified in the resolution, the bonds shall be authorized by an executive order issued by the governor. The executive order shall be received by the secretary of state and filed in the state register pursuant to section three, article two, chapter twenty-nine-a of this code. The governor, either in the executive order authorizing the issuance of the bonds or by the execution and delivery by the governor of a trust indenture or agreement authorized in such executive order, shall stipulate the form of the bonds, whether the bonds are to be issued in one or more series, the date or dates of issue, the time or times of maturity, which shall not exceed the longest remaining term of the current amortization schedules for the unfunded actuarial accrued liability, the rate or rates of interest payable on the bonds, which may be at fixed rates or variable rates and which interest may be current interest or may accrue, the denomination or denominations in which the bonds are issued, the conversion or registration privileges applicable to some or all of the bonds, the sources and medium of payment and place or places of payment, the terms of redemption, any privileges of exchangeability or interchangeability applicable to the bonds, and the entitlement of obligation holders to priorities of payment or security in the amounts deposited in the pension liability redemption fund. Bonds shall be signed by the governor and attested by the secretary of state, by either manual or facsimile signatures. The governor shall not sign the bonds unless he shall first make a written finding, which shall be transmitted to the state treasurer, the secretary of state, the speaker of the House of Delegates and the president of the Senate, that: (i) The true interest cost of the bonds is at least thirty basis points less than the assumed actuarial interest rate used to calculate the unfunded actuarial accrued liability; and (ii) that the issuance of the bonds will not in any manner cause a down grade or reduction in the state's general obligation credit rating by standard bond rating agencies.

(b) The bonds may be sold at public or private sale at a price or prices determined by the governor. The governor is authorized to enter into any agreements necessary or desirable to effectuate the purposes of this section, including agreements to sell bonds to any person and to comply with the laws of any jurisdiction relating thereto.

(c) The governor, in the executive order authorizing the issuance of bonds or by the execution and delivery by the governor of a trust indenture or agreement authorized in such executive order, may covenant as to the use and disposition of or pledge of funds made available for pension liability redemption payments or any reserve funds established pursuant to such executive order or established pursuant to any indenture authorized by such executive order. All costs may be paid by or upon the order of the governor from amounts received from the proceeds of the bonds and from amounts received pursuant to section eight of this article.

(d) Bonds may be issued by the governor upon resolution adopted by the Legislature authorizing the same.

(e) Neither the governor, the secretary of state, nor any other person executing or attesting the bonds or any agreement authorized in this article shall be personally liable with respect to payment of any pension liability redemption payments.

(f) Notwithstanding any other provision of this code, and subject to the approval of the review committee, the department of administration, in the department's discretion: (i) Shall select, employ and compensate one or more persons or firms to serve as bond counsel or cobond counsel who shall be responsible for the issuance of a final approving opinion regarding the legality of the bonds issued pursuant to this article; (ii) may select, employ and compensate one or more persons or firms to serve as underwriter or counderwriter for any issuance of bonds pursuant to this article; and (iii) may select, employ and compensate one or more fiduciaries, financial advisors and experts, other legal counsel, placement agents, appraisers, actuaries and such other advisors, consultants and agents as may be necessary to effectuate the purposes of this article. Notwithstanding the provisions of article three, chapter five of this code, bond counsel may represent the state in court, render advice and provide other legal services as may be requested by the governor or the department of administration regarding any bond issuance pursuant to this article and all other matters relating to the bonds.

(g) Notwithstanding any other provision of this code, and subject to the approval of the review committee, the state treasurer, in the state treasurer's discretion shall select, employ and compensate an independent person or firm to serve as special counsel to the state treasurer to advise the state treasurer with respect to the state treasurer's duties pursuant to this article.

**§12-8-6. Contracts with obligation holders; provisions of bonds and trust indentures and other agreements.**

(a) The governor may enter into contracts with obligation holders and the governor shall have the authority to comply fully with the terms and provisions of any contracts made with obligation holders.

(b) In addition and not in limitation to the other provisions of this section, in connection with any bonds issued pursuant to this article, the governor may enter into: (i) Commitments to purchase or sell bonds and bond purchase or sale agreements; (ii) agreements providing for credit enhancement or liquidity, including revolving credit agreements, agreements establishing lines of credit or letters of credit, insurance contracts, surety bonds and reimbursement agreements; (iii) agreements to manage interest rate exposure and the return on investments, including interest rate exchange agreements, interest rate cap, collar, corridor, ceiling and floor agreements, option, rate spread or similar exposure agreements, float agreements and forward agreements; (iv) stock exchange listing agreements; and (v) any other commitments, contracts or agreements approved by the governor.

(c) The governor may covenant as to the bonds to be issued and as to the issuance of such bonds, in escrow or otherwise, provide for the replacement of lost, destroyed or mutilated bonds, covenant against extending the time for the payment of bonds or interest thereon and covenant for the redemption of bonds and provide the terms and conditions of such redemption.

(d) Except as otherwise provided in any executive order or in this article, the terms of the executive order and of this article in effect on the date the bonds are issued shall constitute a contract between the state and obligation holders. Any representation, warranty or covenant made by the governor in the executive order, any indenture of trust or trust agreement authorized by the executive order, any bond or any other contract entered into pursuant to this article with any obligation holder shall be a representation, warranty or covenant made by the state.

(e) The governor may vest in the obligation holders, or any portion of them, the right to enforce the payment of the bonds or agreements authorized in this article or any covenants securing or relating to the bonds or such agreements. The governor may prescribe the procedure, if any, by which the terms of any contract with obligation holders may be supplemented, amended or abrogated, prescribe which supplements or amendments will require the consent of obligation holders and the portion of obligation holders required to effect such consent and prescribe the manner in which such consent may be given.

**§12-8-7. Proceeds from the sale of bonds.**

(a) The proceeds from the sale of bonds, other than refunding bonds, issued pursuant to this article, after payment of any costs payable at time of issuance of such bonds, shall be paid to the consolidated public retirement board to redeem the unfunded actuarial accrued liability, which is a previous liability of the state, by funding the amount of the unfunded actuarial accrued liability provided for by such bonds.

(b) From time to time when requested by the department of administration, the investment management board shall prepare and submit to the governor, the speaker of the House of Delegates, the president of the Senate and the department of administration the short-term and long-term investment strategies that the investment management board intends to follow for investment of the plan assets of the pension systems, as adjusted by the deposit of the proceeds of bonds issued pursuant to this article.

(c) Commencing with the fiscal year following the fiscal year during which a series of bonds is issued under this article and the proceeds thereof are deposited into the applicable pension systems, annual appropriations by the state into the teachers retirement pension system required under other provisions of this code shall equal the amount necessary to pay the normal cost and the scheduled payment of the remaining unfunded actuarial accrued liability, if any, of such pension system: *Provided*, That if such amount in any one fiscal year is less than the members' required contributions to such plan, as expressed as a percentage of members' payroll, the state shall deposit into the pension liability redemption fund an amount expressed as a percentage of members' payroll, representing the difference between what the state contributes to such plan, expressed as a percentage of members' payroll, and what the members contribute to the plan, expressed as a percent of members' payroll.

**§12-8-8. Creation of pension liability redemption fund; disbursements to pay pension liability redemption payments.**

(a) There is hereby created a special account in the state treasury to be administered by the state treasurer, which shall be designated and known as the "pension liability redemption fund", into which shall be deposited any and all amounts appropriated by the Legislature or funds from any other source whatsoever which are made available by law for the purpose of making pension liability

redemption payments. All funds deposited to the credit of the pension liability redemption fund shall be held in a separate account and all money belonging to the fund shall be deposited in the state treasury to the credit of the pension liability redemption fund.

(b) On or before the first day of November of each year, the department of administration shall certify to the governor and the state treasurer and deliver to the speaker of the House of Delegates and the president of the Senate a certification as to the amount of pension liability redemption payments to be appropriated for the next fiscal year in order to pay in full when due all pension liability redemption payments that will become due during the next fiscal year. Such certification shall include the amount and due date of each such pension liability redemption payment. All moneys appropriated by the Legislature in accordance with a certification made pursuant to this subsection shall be deposited into the pension liability redemption fund.

(c) The state treasurer shall pay to the trustee under the trust indenture or agreement executed by the governor all pension liability redemption payments as and when due. Such payments shall be transferred by electronic funds transfer, unless some other manner of funds transfer is specified by the governor. No payments shall be required for bonds that are defeased or bonds for which a deposit sufficient to provide for all payments on the bonds has been made.

(d) There shall be created within the pension liability redemption fund a subaccount into which there shall be deposited annually by the legislature an amount not greater than the aggregate amount certified by each system's actuary to represent the difference between the pension liability redemption payments and the annual amortization payments on the unfunded actuarial accrued liability that would have been due for such fiscal year had the bonds issued pursuant to this article not been issued. Upon resolution passed by the Legislature, the governor shall use funds on deposit in the subaccount in the amount and upon the terms specified in the resolution: (1) To reduce any remaining unfunded actuarial accrued liability; or (2) to provide for the early retirement of the bonds if possible.

#### **§12-8-9. Refunding bonds.**

Subject to the provisions of the outstanding bonds issued under this article and subject to the provisions of this article, the governor shall have the power to refund any outstanding bonds, whether the obligation refunded represents principal or interest, in whole or in part, at any time.

Refunding bonds shall mature at such time or times, which shall not exceed the longest original term of the bonds as issued, as the governor shall determine by executive order issued by the governor, which executive order shall be received by the secretary of state and filed in the state register pursuant to section three, article two, chapter twenty-nine-a of this code.

#### **§12-8-10. State pledges and covenants.**

(a) The state of West Virginia covenants and agrees with the obligation holders, and the indenture shall so state, that the bonds issued pursuant to this article are issued to redeem a previous liability of the state and shall therefore constitute a direct and general obligation of the state of West Virginia; that the pension liability redemption payments will be included in each budget along with all other amounts for payment and discharge of the principal of and interest on state debt; that the full faith and credit of the state is hereby pledged to secure the payment of the principal of and interest on the bonds; and that annual state taxes shall be collected in an amount sufficient to pay the

pension liability redemption payments as they become due and payable from the pension liability redemption fund.

(b) The state hereby pledges and covenants with the obligation holders, and the indenture shall so state, that the state will not limit or alter the rights, powers or duties vested in any state official, or that state official's successors or assigns, and the obligation holders in a way that will inhibit any state official, or that state official's successors or assigns, from carrying out such state official's rights, powers or duties under this article, nor limit or alter the rights, powers or duties of any state official, or that state official's successors or assigns, in any manner which would jeopardize the interest of any obligation holder, or inhibit or prevent performance or fulfillment by any state official, or that state official's successors or assigns, with respect to the terms of any agreement made with any obligation holder pursuant to section six of this article.

(c) The state hereby pledges and covenants with the obligation holders, and the indenture shall so state, that, while any of the bonds are outstanding, should any increase of existing benefits or the creation of new benefits under any of the pension systems, other than an increase in benefits or new benefits effected by operation of law in effect on the effective date of this article, cause any additional unfunded actuarial accrued liability in any of the pension systems (calculated in an actuarially sound manner) during any fiscal year, such additional unfunded actuarial accrued liability of that pension system will be fully amortized over no more than the five consecutive fiscal years following the date the increase in benefits or new benefits become effective.

(d) The state hereby pledges and covenants with the obligation holders, and the indenture shall so state, that, while any of the bonds are outstanding, should any additional unfunded actuarial accrued liability in any of the pension systems (calculated in an actuarially sound manner) occur during any fiscal year due to changes in actuarial assumptions, changes in investment performance or increases in benefits or additional benefits occurring by operation of law in effect on the effective date of this article, and such additional unfunded actuarial accrued liability persists for a period of five consecutive fiscal years, the governor shall submit to the Legislature a plan to fund such additional unfunded actuarial accrued liability over a reasonable period.

**§12-8-11. Legal remedies of obligation holders.**

Any obligation holder, except to the extent that the rights given by this article may be restricted by the executive order authorizing the issuance of the bonds or by the trust indenture or agreement authorized in such executive order, may by civil action, mandamus or other proceeding, protect and enforce any rights granted under the laws of this state, granted under this article, or granted by the executive order or by the trust indenture or agreement authorized in such executive order, and may enforce and compel the performance of all duties required by this article, by the executive order or by the trust indenture or agreement authorized in such executive order.

**§12-8-12. Nature of bonds; legal investments.**

(a) The bonds issued under the provisions of this article shall be and have all the qualities of negotiable instruments under the uniform commercial code of this state and shall not be invalid for any irregularity or defect in the proceedings for the issuance thereof and shall be incontestable in the hands of bona fide purchasers or holders thereof for value.

(b) Notwithstanding any other provision of this code, the bonds issued pursuant to this article are securities in which all public officers and bodies of this state, including the investment management board, all municipalities and other political subdivisions of this state, all insurance companies and associations and other persons carrying on an insurance business, including domestic for life and domestic not for life insurance companies, all banks, trust companies, societies for savings, building and loan associations, savings and loan associations, deposit guarantee associations and investment companies, all administrators, guardians, executors, trustees and other fiduciaries and all other persons whatsoever who are authorized to invest in bonds or other obligations of the state may properly and legally invest funds, including capital, in their control or belonging to them.

**§12-8-13. Exemption from taxation.**

All bonds issued under the provisions of this article and the income therefrom shall be exempt from taxation by the state of West Virginia, or by any county, school district or municipality thereof, except inheritance, estate and transfer taxes.

**§12-8-14. Supersedure.**

It is the intent of the Legislature that in the event of any conflict or inconsistency between the provisions of this article and any other law, to the extent of the conflict or inconsistency, the provisions of this article shall be enforced and the provisions of the other law shall be of no effect.

**§12-8-15. Judicial determination.**

No bonds shall be issued under this article until a determination has been rendered by the supreme court of appeals that the issuance of the bonds and the provisions of this article are in compliance with the constitution of West Virginia.

**§12-8-16. Severability.**

If any section, subsection, subdivision, subparagraph, sentence or clause of this article is adjudged to be unconstitutional or invalid, such adjudication shall not affect the validity of the remaining portions of this article and, to this end, the provisions of this article are hereby declared to be severable.

**SENATE BILL 189**

**EFFECTIVE DATE:** June 7, 2000

**SIGNED BY GOVERNOR:** March 22, 2000

**CODE REFERENCE(S):** Amends and Reenacts §18-8-1

**TOPIC:** REQUIREMENTS FOR HOME SCHOOL INSTRUCTION; STUDY ON HOME SCHOOL INSTRUCTION; COLLECTING DATA ON HOME SCHOOL INSTRUCTION

**INTRODUCTION:**

Waives for the person providing home instruction the requirement of a formal education of at least four years higher than the most academically advanced child being home schooled for the school year 2000-2001 only. Further, it requires the legislative oversight commission on education accountability to conduct a study of the effects of the home instruction exemption on the students being instructed in the home.

**MAJOR PROVISIONS:**

1. Waives for the person providing home instruction the requirement of a formal education of at least four years higher than the most academically advanced child being home schooled for the school year 2000-2001 only.
2. Requires the legislative oversight commission on education accountability (LOCEA) to conduct a study on the effects of the home instruction exemption on the students being home schooled.
3. Requires the LOCEA study to include:
  - the effects that a home instructor’s education attainment level has on the academic abilities of the child instructed;
  - collection of data relating to students who are instructed under the home school exception including assessment test scores or performance on other assessment mechanisms, the number of students instructed under the home school exemption, the grade level at which the students are being instructed, and the age of the students.
4. Requires the LOCEA study to be completed by December 1, 2000.

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

**Senate Bill No. 189**

(SENATORS MITCHELL, HUNTER AND BALL, *original sponsors*)

[Passed March 9, 2000; in effect ninety days from passage.]

AN ACT to amend and reenact section one, article eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requirements for home school instruction; study on home school instruction; and collecting data on home school instruction.

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

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

**ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.**

**§18-8-1. Commencement and termination of compulsory school attendance; exemptions.**

Compulsory school attendance shall begin with the school year in which the sixth birthday is reached prior to the first day of September of such year or upon enrolling in a publicly supported kindergarten program and continue to the sixteenth birthday.

Exemption from the foregoing requirements of compulsory public school attendance shall be made on behalf of any child for the following causes or conditions, each such cause or condition being subject to confirmation by the attendance authority of the county:

*Exemption A. Instruction in a private, parochial or other approved school.* -- Such instruction shall be in a school approved by the county board of education and for a time equal to the school term of the county for the year. In all such schools it shall be the duty of the principal or other person in control, upon the request of the county superintendent of schools, to furnish to the county board of education such information and records as may be required with respect to attendance, instruction and progress of pupils enrolled between the entrance age and sixteen years;

*Exemption B. Instruction in home or other approved place.* -- (a) Such instruction shall be in the home of such child or children or at some other place approved by the county board of education and for a time equal to the school term of the county. If such request for home instruction is denied by the county board of education, good and reasonable justification for such denial must be furnished in writing to the applicant by the county board of education. The instruction in such cases shall be conducted by a person or persons who, in the judgment of the county superintendent and county board of education, are qualified to give instruction in subjects required to be taught in the free elementary schools of the state. It shall be the duty of the person or persons providing the instruction, upon request of the county superintendent, to furnish to the county board of education such information and records as may be required from time to time with respect to attendance, instruction and progress of pupils enrolled between the entrance age and sixteen years receiving such

instruction. The state department of education shall develop guidelines for the home schooling of special education students including alternative assessment measures to assure that satisfactory academic progress is achieved.

(b) Notwithstanding the provisions of subsection (a) of this Exemption B, the person or persons providing home instruction meet the requirements for Exemption B when the conditions of this subsection are met: *Provided*, That the county superintendent shall have the right to seek from the circuit court of the county an order denying the home instruction, which order may be granted upon a showing of clear and convincing evidence that the child will suffer educational neglect or that there are other compelling reasons to deny home instruction.

(1) The person or persons providing home instruction present to the county superintendent or county board of education a notice of intent to provide home instruction and the name and address of any child of compulsory school age to be instructed: *Provided*, That if a child is enrolled in a public school, notice of intent to provide home instruction shall be given at least two weeks prior to withdrawing such child from public school;

(2) The person or persons providing home instruction submit satisfactory evidence of: (i) A high school diploma or equivalent; and (ii) formal education at least four years higher than the most academically advanced child for whom the instruction will be provided; *Provided, That during the school year two thousand - two thousand one only, the requirement of a formal education at least four years higher than the most academically advanced child is waived;*

(3) The person or persons providing home instruction outline a plan of instruction for the ensuing school year; and

(4) The person or persons providing home instruction shall annually obtain an academic assessment of the child for the previous school year. This shall be satisfied in one of the following ways:

(i) Any child receiving home instruction annually takes a standardized test, to be administered at a public school in the county where the child resides, or administered by a licensed psychologist or other person authorized by the publisher of the test, or administered by a person authorized by the county superintendent or county board of education. The child shall be administered a test which has been normed by the test publisher on that child's age or grade group. In no event may the child's parent or legal guardian administer the test. Where a test is administered outside of a public school, the child's parent or legal guardian shall pay the cost of administering the test. The public school or other qualified person shall administer to children of compulsory school age the comprehensive test of basic skills, the California achievement test, the Stanford achievement test or the Iowa tests of basic skills, achievement and proficiency, or an individual standardized achievement test that is nationally normed and provides statistical results which test will be selected by the public school, or other person administering the test, in the subjects of language, reading, social studies, science and mathematics and shall be administered under standardized conditions as set forth by the published instructions of the selected test. No test shall be administered if the publication date is more than ten years from the date of the administration of the test. Each child's test results shall be reported as a national percentile for each of the five subjects tested. Each child's test results shall be made available on or before the thirtieth day of June of the school year in which the test is to be administered to the person or persons providing home instruction, the child's parent

or legal guardian and the county superintendent. Upon request of a duly authorized representative of the West Virginia department of education, each child's test results shall be furnished by the person or persons providing home instruction, or by the child's parent or legal guardian, to the state superintendent of schools. Upon notification that the mean of the child's test results for any single year has fallen below the fortieth percentile, the county board of education shall notify the parents or legal guardian of said child, in writing, of the services available to assist in the assessment of the child's eligibility for special education services: *Provided*, That the identification of a disability shall not preclude the continuation of home schooling.

If the mean of the child's test results for any single year for language, reading, social studies, science and mathematics fall below the fortieth percentile on the selected tests, then the person or persons providing home instruction shall initiate a remedial program to foster achievement above that level and the student shall show improvement. If, after two calendar years, the mean of the child's test results fall below the fortieth percentile level, home instruction shall no longer satisfy the compulsory school attendance requirement exemption; or

(ii) The county superintendent is provided with a written narrative indicating that a portfolio of samples of the child's work has been reviewed and that the child's academic progress for the year is in accordance with the child's abilities. This narrative shall be prepared by a certified teacher or other person mutually agreed upon by the parent or legal guardian and the county superintendent. It shall be submitted on or before the thirtieth day of June of the school year covered by the portfolio. The parent or legal guardian shall be responsible for payment of fees charged for the narrative; or

(iii) Evidence of an alternative academic assessment of the child's proficiency mutually agreed upon by the parent or legal guardian and the county superintendent is submitted to the county superintendent by the thirtieth day of June of the school year being assessed. The parent or legal guardian shall be responsible for payment of fees charged for the assessment.

(c) The superintendent or a designee shall offer such assistance, including textbooks, other teaching materials and available resources, as may assist the person or persons providing home instruction subject to their availability. Any child receiving home instruction may, upon approval of the county board of education, exercise the option to attend any class offered by the county board of education as the person or persons providing home instruction may deem appropriate subject to normal registration and attendance requirements.

(d) The legislative oversight commission on education accountability shall conduct a study on the effects of the home instruction exemption on the students being instructed in the home. The study shall include, but is not limited to, the effects that a home instructor's education attainment level has on the academic abilities of the child instructed. As part of the study, the legislative oversight commission on education accountability shall collect data relating to students who are instructed under the home school exemption, including, but not limited to, assessment test scores or performance on other assessment mechanisms, the number of students who are instructed under the home school exemption, the grade level at which the students are being instructed and the age of the students: *Provided*, That the names of the students shall not be collected. The legislative oversight commission shall collect the data and complete the study on or before the first day of December, two thousand.

*Exemption C. Physical or mental incapacity.* -- Physical or mental incapacity shall consist of incapacity for school attendance and the performance of school work. In all cases of prolonged absence from school due to incapacity of the child to attend, the written statement of a licensed physician or authorized school nurse shall be required under the provisions of this article: *Provided*, That in all cases incapacity shall be narrowly defined and in no case shall the provisions of this article allow for the exclusion of the mentally, physically, emotionally or behaviorally handicapped child otherwise entitled to a free appropriate education;

*Exemption D. Residence more than two miles from school or school bus route.* -- The distance of residence from a school, or school bus route providing free transportation, shall be reckoned by the shortest practicable road or path, which contemplates travel through fields by right of permission from the landholders or their agents. It shall be the duty of the county board of education, subject to written consent of landholders, or their agents, to provide and maintain safe foot bridges across streams off the public highways where such are required for the safety and welfare of pupils whose mode of travel from home to school or to school bus route must necessarily be other than along the public highway in order for said road or path to be not over two miles from home to school or to school bus providing free transportation;

*Exemption E. Hazardous conditions.* -- Conditions rendering school attendance impossible or hazardous to the life, health or safety of the child;

*Exemption F. High school graduation.* -- Such exemption shall consist of regular graduation from a standard senior high school;

*Exemption G. Granting work permits.* -- The county superintendent may, after due investigation, grant work permits to youths under sixteen years of age, subject to state and federal labor laws and regulations: *Provided*, That a work permit may not be granted on behalf of any youth who has not completed the eighth grade of school;

*Exemption H. Serious illness or death in the immediate family of the pupil.* -- It is expected that the county attendance director will ascertain the facts in all cases of such absences about which information is inadequate and report same to the county superintendent of schools;

*Exemption I. Destitution in the home.* -- Exemption based on a condition of extreme destitution in the home may be granted only upon the written recommendation of the county attendance director to the county superintendent following careful investigation of the case. A copy of the report confirming such condition and school exemption shall be placed with the county director of public assistance. This enactment contemplates every reasonable effort that may properly be taken on the part of both school and public assistance authorities for the relief of home conditions officially recognized as being so destitute as to deprive children of the privilege of school attendance. Exemption for this cause shall not be allowed when such destitution is relieved through public or private means;

*Exemption J. Church ordinances; observances of regular church ordinances.* -- The county board of education may approve exemption for religious instruction upon written request of the person having legal or actual charge of a child or children: *Provided*, That such exemption shall be subject to the rules prescribed by the county superintendent and approved by the county board of education;

*Exemption K. Alternative private, parochial, church or religious school instruction.* -- In lieu of the provisions of Exemption A herein above, exemption shall be made for any child attending any private school, parochial school, church school, school operated by a religious order or other nonpublic school which elects to comply with the provisions of article twenty-eight, chapter eighteen of the code of West Virginia.

The completion of the eighth grade shall not exempt any child under sixteen years of age from the compulsory attendance provision of this article: *Provided*, That there is a public high school or other public school of advanced grades or a school bus providing free transportation to any such school, the route of which is within two miles of the child's home by the shortest practicable route or path as hereinbefore specified under Exemption D of this section.

**SENATE BILL 211**

**EFFECTIVE DATE:** June 9, 2000

**SIGNED BY GOVERNOR:** March 29, 2000

**CODE REFERENCE(S):** Amends §18-7A-28

**TOPIC:** OPTIONS TO BENEFICIARIES; CHANGE OF CERTAIN OPTIONS BECAUSE OF DIVORCE OR ANNULMENT; LIMITATION ON RECALCULATED MONTHLY BENEFITS

**INTRODUCTION:**

Permits a divorced member to name a new spouse as joint annuitant.

**MAJOR NEW PROVISIONS:**

Upon remarriage, a retirant may name the new spouse as an annuitant for any of the survivorship retirement benefit options.

**ENROLLED  
COMMITTEE SUBSTITUTE  
FOR**

**Senate Bill No. 211**

(SENATORS PLYMALE, FANNING, WALKER,  
SPOUSE, JACKSON, EDGELL, MCCABE, SNYDER, ROSS, BOWMAN, HUNTER, MINARD, MCKENZIE  
AND REDD, *original sponsors*)

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[Passed March 11, 2000; in effect ninety days from passage.]

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AN ACT to amend and reenact section twenty-eight, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the state teachers retirement system; and providing for the rights of members to name annuitants.

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

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

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

**§18-7A-28. Options to beneficiaries; change of certain options because of divorce or annulment; limitation on recalculated monthly benefits.**

The retirement board is hereby authorized to offer plans, optional with the beneficiary, for the payment of allowances due such beneficiary for retirement, withdrawal or prior service pensions under the retirement system. No plans shall be offered, however, which are not approved by competent actuaries.

When a beneficiary and his or her spouse have been approved for a retirement plan which provides for them a joint life annuity, and their marriage is subsequently dissolved, the board shall permit such beneficiary to convert to the maximum life annuity plan approved by the board: *Provided*, That the beneficiary shall furnish to the board proof of entry of a final decree of divorce or annulment: *Provided, however*, That a beneficiary who qualifies for the change of retirement plans afforded by this section shall be permitted only one such change: *Provided further*, That the recalculated monthly benefits, independently of increases granted by law after the beneficiary's retirement, shall not exceed the monthly benefits which would have been applicable under the maximum life annuity plan at the time the beneficiary retired; and with such recalculation to be effective on the first day of the month following submission to the board by the beneficiary of proof of entry of a final decree of divorce or annulment.

Upon remarriage, a retirant may name the new spouse as an annuitant for any of the survivorship retirement benefit options offered by the provisions of this section: *Provided*, That the beneficiary shall furnish to the retirement board satisfactory proof of the marriage: *Provided, however*, That the retirant certifies under penalty of perjury that no qualified domestic relations order that would restrict such a designation is in effect: *Provided further*, That no cause or action against the board may then arise or be maintained on the basis of having permitted the retirant to name a new spouse as

annuitant for any of the survivorship retirement benefit options. The value of the new survivorship annuity shall be the actuarial equivalent of the retirant's benefit prospectively in effect at the time the new annuity is elected.

**SENATE BILL 215**

**EFFECTIVE DATE:** June 9, 2000

**SIGNED BY GOVERNOR:** March 11, 2000

**CODE REFERENCE(S):** New §18-7A-23a  
Amends §5-10-23

**TOPIC:** TERMINAL PAYMENTS/BENEFITS

**INTRODUCTION:**

Returns any remaining employee contributions to a deceased member's named beneficiary or estate.

**MAJOR NEW PROVISIONS:**

In no case may the plan retain any amount of the accumulated employee contributions remaining in the member's account except interest earned on the same accumulated employee contributions.

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
COMMITTEE SUBSTITUTE  
FOR

**Senate Bill No. 215**

(SENATORS PLYMALE, FANNING, WALKER,  
SPOUSE, JACKSON, EDGELL, MCCABE, SNYDER, ROSS, MINARD AND DAWSON, *original*  
*sponsors*)

[Passed March 11, 2000; in effect ninety days from passage.]

AN ACT to amend and reenact section twenty-three, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article seven-a, chapter eighteen of said code by adding thereto a new section, designated section twenty-three-a, all relating to the public employees retirement system and the teachers' retirement system; and providing for terminal benefit payments and the return of any remaining employee contributions.

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

That section twenty-three, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article seven-a, chapter eighteen of said code be amended by adding thereto a new section, designated section twenty-three-a, 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 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.**

**§5-10-23. Terminal payment.**

For the purposes of this section, the term "accumulated net benefit" means the aggregate amount of all benefits paid to or on behalf of a member. This includes, without limitation: (a) Benefits paid to the member as an annuity; (b) any lump sum distributions paid to the member or to any other person on account of the member's rights to benefits from the plan; (c) survivor benefits paid to any person or persons on account of the member's rights to benefits from the plan; and (d) any other distributions on account of the member's rights to benefits from the plan whether they are paid in the nature of a refund of contributions, interest on contributions, lump sum distributions, or annuity type benefits. The amounts counted will be the amounts actually paid without regard to any optional form of any annuity benefit.

For the purposes of this section, the term "accumulated employee contributions" means all money the member has contributed to the plan, whether the form of the contribution was after tax deductions from wages, before tax deductions from wages, direct remittance by the member to repay contributions and interest previously distributed and direct remittance by the member to pay imputed contributions for periods which were not subject to contributions but may be counted for benefit

purposes under the plan. The term accumulated employee contributions does not include any amount credited under the provisions of the plan as interest on member contributions.

For the purposes of this section, the term "member's account" means the excess of the accumulated employee contributions over the accumulated net benefit payments at any point in time and the term "member" includes retirant. This section provides for the payment of the balance in the member's account in the event that all claims to benefits payable to, or on behalf of, a member expire before his or her member account has been fully exhausted. The expiration of such rights to benefits would be on the occasion of the death of the member and any and all beneficiaries who might have a claim to regular benefit payments under the plan, for any form of benefit. Without limitation, this would include the demise of beneficiaries of survivor annuities and beneficiaries of any lump sum distributions.

In the event a retirant dies before he has received in straight life annuity payments an aggregate amount equal to his accumulated contributions standing to his credit in the members deposit fund at the time of his retirement, the difference between his said accumulated contributions and the said aggregate amount of straight life annuity payments received by him that all claims to benefit payable to, or on behalf of, a member expire, and the accumulated employee contributions exceed his or her accumulated net benefit payments, the balance in the member's account shall be paid to such the person or persons as he shall have the member has nominated by written designation duly executed and filed with the board of trustees. If there be no such designated person or persons surviving the said retirant member such difference, the excess of the accumulated employee contributions over the accumulated net benefit, if any, shall be paid to his or her estate. In no case shall any benefits be paid under this section on account of the death of a retirant if he was receiving an annuity under option A or B provided for in section twenty-four [§5-10-24] hereof. (1961, c. 118.) may the plan retain any amount of the accumulated employee contributions remaining the member's account, but it shall retain interest earned on the same accumulated employee contributions in the instance of a member's or beneficiary's post-retirement death.

#### **CHAPTER 18. EDUCATION.**

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

##### **§18-7A-23a. Terminal benefits.**

For the purposes of this section, the term "accumulated net benefit" means the aggregate amount of all benefits paid to or on behalf of a member. This includes, without limitation: (a) Benefits paid to the member as an annuity; (b) any lump sum distributions paid to the member or to any other person on account of the member's rights to benefits from the plan; (c) survivor benefits paid to any person or persons on account of the member's rights to benefits from the plan; and (d) any other distributions on account of the member's rights to benefits from the plan whether they are paid in the nature of a refund of contributions, interest on contributions, lump sum distributions, or annuity type benefits. The amounts counted will be the amounts actually paid without regard to any optional form of any annuity benefit.

For the purposes of this section, the term "accumulated employee contributions" means all money the member has contributed to the plan, whether the form of the contribution was after tax deductions from wages, before tax deductions from wages, direct remittance by the member to repay contributions and interest previously distributed and direct remittance by the member to pay imputed contributions for period which were not subject to contributions but may be counted for benefit

purposes under the plan. The term accumulated employee contributions does not include any amount credited under the provisions of the plan as interest on member contributions.

For the purposes of this section, the term "member's account" means the excess of the accumulated employee contributions over the accumulated net benefit payments at any point in time and the term "member" includes each individual who has contributed, or will contribute in the future, to the teachers retirement system, including each retirant. This section provides for the payment of the balance in the member's account to paid in the manner described herein in the event that all claims to benefits payable to, or on behalf of, a member expire before his or her member account has been fully exhausted. The expiration of such rights to benefits would be on the occasion of the death of the member and any and all beneficiaries who might have a claim to regular benefit payments under the plan, for any form of benefit. Without limitation, this would include the demise of beneficiaries of survivor annuities and beneficiaries of any lump sum distributions.

In the event that all claims to benefits payable to, or on behalf of, a member expire, and the accumulated employee contributions exceed his or her accumulated net benefit payments, the balance in the member's account shall be paid to the person or persons as the member has nominated by written designation duly executed and filed with the board of trustees. If there be no designated person or persons surviving the member, the excess of the accumulated employee contributions over the accumulated net benefit, if any, shall be paid to his or her estate. In no case may the plan retain any amount of the accumulated employee contributions remaining in the member's account, but it shall retain interest earned on the same accumulated employee contributions in the instance of a member's or beneficiary's post-retirement death.

## SENATE BILL 505

**EFFECTIVE DATE:** June 1, 2000

**SIGNED BY THE GOVERNOR:** April 3, 2000

**CODE REFERENCE(S):** New §18-10A-12a

**TOPIC:** WORKERS' COMPENSATION COVERAGE FOR CLIENTS OF THE DIVISION OF REHABILITATION SERVICES PARTICIPATING IN UNPAID WORK-BASED TRAINING PROGRAMS

### **INTRODUCTION:**

Creates a structure that allows rehabilitation clients to receive workers' compensation coverage when participating in unpaid work-based training programs.

### **MAJOR PROVISIONS:**

1. Provides compensation coverage for clients of the division of rehabilitation services participating in unpaid work-based training programs, requiring annual report to the division of rehabilitation services.
2. Designates the division of rehabilitation services and the participating entity as the employers.
3. Provides participating entities with immunity from liability to the division of workers' compensation.
4. Establishes a wage rate for purpose of providing minimum benefits to employers and employees subject to workers' compensation coverage.

**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**  
**Senate Bill No. 505**  
(SENATOR UNGER, *original sponsor*)

[Passed March 11, 2000; to take effect June 1, 2000.]

AN ACT to amend article ten-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve-a; and to amend article twelve, chapter thirty-one-b of said code by adding thereto a new section, designated section one thousand two hundred seven, all relating to workers' compensation; workers' compensation coverage for clients of the division of rehabilitation services participating in unpaid work-based training programs; requiring annual report to the division of rehabilitation services; designating division of rehabilitation services and the participating entity as the employers; providing participating entities with immunity from liability to the division of workers' compensation; establishing wage rate for purpose of providing minimum benefits to employers and employees subject to workers' compensation coverage; providing equivalent workers compensation treatment for the members of limited liability companies; and providing that members and managers of limited liability companies may elect to include or exclude coverage under workers' compensation and pay premiums as partners in a partnership; providing transition elections.

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

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

**CHAPTER 18. EDUCATION.**

**ARTICLE 10A. REHABILITATION SERVICES.**

**§18-10A-12a. Workers' compensation for clients participating in unpaid work-based training programs.**

(a) The workers' compensation division shall create a classification and calculate a base premium tax rate for clients of the division of rehabilitation services participating in unpaid work-based training programs within integrated community-based settings. The workers' compensation division shall report to the division of rehabilitation services:

(1) The amount of the base premium tax rate for the class; and

(2) The hourly wages per client to be used to provide the minimum weekly benefits required by section six, article four, chapter twenty-three of this code.

(b) The base premium tax rate reported annually to the division of rehabilitation services by the workers' compensation division shall not be effective until the first day of July, and shall remain in effect through the last day of the next June.

(c) The division of rehabilitation services and the participating entity shall be considered the joint employers of record of the clients while the clients are participating in unpaid work-based

training programs in integrated community-based settings: *Provided*, That the participating entity shall not be held responsible for any liability due the workers' compensation division. Such clients shall be considered to be paid the amount of wages sufficient to provide the minimum workers' compensation weekly benefits required by section six, article four of chapter twenty-three of this code.

**CHAPTER 31B. UNIFORM LIMITED LIABILITY COMPANY ACT.**

**ARTICLE 12. MISCELLANEOUS PROVISIONS.**

**§31B-12-1207. Equality of workers' compensation treatment.**

Members of limited liability companies which are treated as partnerships for federal income tax purposes may elect to forego coverage under workers' compensation in the same manner as partners in a partnership pursuant to the provisions of section 1a, article two, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and any member not electing to forego coverage, shall be subject to the calculation of premium on the member as provided for partners in a partnership in section one-b, article two, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended. Any limited liability company excluding any member from workers compensation coverage or computing premiums on such member as a partner prior to the effective date of this section is deemed to have made an effective election in accordance with the provisions of this section for all periods until such limited liability company modifies the election.

**SENATE BILL 577**

**EFFECTIVE DATE:** July 1, 2000

**SIGNED BY GOVERNOR:** April 4, 2000

**CODE REFERENCE(S):** Amends and Reenacts §§9-9-2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19, 20 and 21

**TOPIC:** WEST VIRGINIA WORKS PROGRAM

**INTRODUCTION:**

Adds new definitions for “education and training” and “work.”

**MAJOR NEW PROVISIONS:**

1. The definition for “education and training” has been changed to mean any hours spent regularly attending and preparing for classes in any approved course of schooling or training, including job training, high school equivalency, literacy, English as second language or vocational or postsecondary education program, including 2-year and 4-year programs.
2. The term “work” has been changed to mean unsubsidized employment, subsidized employment, work experience, community or personal development, and education and training.
3. The change in definition for “work” permits families receiving public assistance to count education and training toward meeting the work participation requirements in order to receive any form of cash assistance.

**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**  
**Senate Bill No. 577**  
(SENATOR WALKER, *original sponsor*)

[Passed March 11, 2000; in effect ninety days from passage.]

AN ACT to amend and reenact sections two, three, four, five, six, seven, eight, nine, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, nineteen and twenty, article nine, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twenty-one, all relating to the West Virginia works act; amending legislative findings; amending and adding definitions; deleting obsolete provisions; specifically authorizing payment for support services; increasing certain cash assistance to specified at-risk families; providing that certain activities satisfy the article's work requirement; conforming specific requirements to federal law; requiring implementation of a plan to use educational resources of the state for the benefit of program participants; mandating that support services be provided to assist participants in meeting work requirements; clarifying existing provisions; increasing the allowable amount of diversionary assistance; authorizing public-private partnerships to provide family health insurance to former participants; providing for confidentiality of certain records; and establishing a rainy day fund for the program.

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

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

**ARTICLE 9. WEST VIRGINIA WORKS PROGRAM.**

**§9-9-2. Legislative findings; purpose.**

(a) The Legislature hereby finds and declares that:

(1) The entitlement of any person to receive federal-state cash assistance is hereby discontinued;

(2) At-risk families are capable of becoming self-supporting;

(3) A reformed assistance program should both expect and assist a parent and caretaker-relatives in at-risk families to support their dependent children and children for which they are caretakers;

(4) Every parent or caretaker-relative can exhibit responsible patterns of behavior so as to be a positive role model;

(5) Every parent or caretaker-relative who receives cash assistance has a responsibility to participate in an activity to help them prepare for, obtain and maintain gainful employment;

(6) For a parent or caretaker-relative who receives cash assistance and for whom full-time work is not feasible, participation in some activity is expected to further himself or herself, his or her family or his or her community;

(7) The state should promote the value of work and the capabilities of individuals;

(8) Job development efforts should enhance the employment opportunities of participants;

(9) Education is the key to achieving and maintaining life-long self-sufficiency; and

(10) A reformed assistance program should be structured to achieve a clear set of outcomes; deliver services in an expedient, effective and efficient manner; and maximize community support for participants. After five years, there is expected to be a decrease in the following: (i) The number of persons receiving public assistance; and (ii) the amount of time an individual remains on public assistance.

(b) The goals of the program are to achieve more efficient and effective use of public assistance funds; reduce dependency on public programs by promoting self-sufficiency; and structure the assistance programs to emphasize employment and personal responsibility. The program is to be evaluated on the increase in employment rates in the program areas; the completion of educational and training programs; the increased compliance in preventive health activities, including immunizations; and a decrease in the case-load of the department.

### **§9-9-3. Definitions.**

In addition to the rules for the construction of statutes in section ten, article two, chapter two of this code and the words and terms defined in section two, article one of this chapter, unless a different meaning appears from the context:

(a) "At-risk family" means a group of persons living in the same household, living below the federally designated poverty level, lacking the resources to become self-supporting and consisting of a dependent minor child or children living with a parent, stepparent or caretaker-relative; an "at-risk family" may include an unmarried minor parent and his or her dependent child or children who live in an adult-supervised setting;

(b) "Beneficiary" or "participant" means any parent or caretaker-relative in an at-risk family who receives cash assistance for himself or herself and family members;

(c) "Cash assistance" means temporary assistance for needy families;

(d) "Challenge" means any fact, circumstance or situation that prevents a person from becoming self-sufficient or from seeking, obtaining or maintaining employment of any kind, including physical or mental disabilities, lack of education, testing, training, counseling, child care arrangements, transportation, medical treatment or substance abuse treatment;

(e) "Community or personal development" means activities designed or intended to eliminate challenges to participation in self-sufficiency activities. These activities are to provide community benefit and enhance personal responsibility, including, but not limited to, classes or counseling for learning life skills or parenting, dependent care, job readiness, volunteer work, participation in sheltered workshops or substance abuse treatment;

(f) "Department" means the state department of health and human resources;

(g) "Education and training" means any hours spent regularly attending and preparing for classes in any approved course of schooling or training, including job training, high school equivalency, literacy, English as a second language or vocational or post-secondary program, including two-year and four-year programs;

(h) "Income" means money received by any member of an at-risk family which can be used at the discretion of the household to meet its basic needs: *Provided*, That income does not include:

- (1) Supplemental security income paid to any member or members of the at-risk family;
- (2) Earnings of minor children;
- (3) Payments received from earned income tax credit or tax refunds;
- (4) Earnings deposited in an individual development account approved by the department;

or

(5) Any moneys specifically excluded from countable income by federal law;

(i) "Personal responsibility contract" means a written agreement entered into by the department and a beneficiary which establishes the responsibilities and obligations of the beneficiary;

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

(k) "Subsidized employment" means employment with earnings provided by an employer who receives a subsidy from the department for the creation and maintenance of the employment position;

(l) "Support services" includes, but is not limited to, the following services: Child care; medicaid; transportation assistance; information and referral; resource development services which includes assisting families to receive child support enforcement and supplemental security income; family support services which includes parenting, budgeting and family planning; relocation assistance; and mentoring services;

(m) "Unsubsidized employment" means employment with earnings provided by an employer who does not receive a subsidy from the department for the creation and maintenance of the employment position;

(n) "Work" means unsubsidized employment, subsidized employment, work experience, community or personal development, and education and training; and

(o) "Work experience" means unpaid structured work activities that are provided in an environment where performance expectations are similar to those existing in unsubsidized employment and which provide training in occupational areas that can realistically be expected to lead to unsubsidized employment.

#### **§9-9-4. Authorization for program.**

(a) The secretary shall conduct the West Virginia works program in accordance with this article and any applicable regulations promulgated by the secretary of the federal department of health and human services in accordance with federal block-grant funding or similar federal funding stream. This program shall be implemented to replace welfare assistance programs for at-risk families in accordance with this article and within federal requirements; to coordinate the transfer of all applicable state programs into the temporary assistance to needy families West Virginia works program; to expend only the funds appropriated by the Legislature to establish and operate the program or any other funds available to the program pursuant to any other provisions of the code or rules; to establish administrative due process procedures for revocation or termination proceedings; and to implement any other procedures necessary to accomplish the purpose of this article.

(b) The West Virginia works program authorized pursuant to this act does not create an entitlement to that program or any services offered within that program, unless entitlement is

created pursuant to a federal law or regulation. The West Virginia works program, and each component of that program established by this act or the expansion of any component established pursuant to federal law or regulation, is subject to the annual appropriation of funds by the Legislature.

(c) Copies of all rules proposed by the secretary shall also be filed with the legislative oversight commission on health and human resources accountability established pursuant to article twenty-nine-e, chapter sixteen of this code.

**§9-9-5. West Virginia works program fund.**

There is hereby continued a special account within the state treasury to be known as the "West Virginia Works Program Fund". Expenditures from the fund shall be used exclusively to meet the necessary expenditures of the program, including wage reimbursements to participating employers, temporary assistance to needy families, payments for support services, employment-related child care payments, transportation expenses and administrative costs directly associated with the operation of the program. Moneys paid into the account shall be from specific annual appropriations of funds by the Legislature.

**§9-9-6. Program participation.**

(a) Unless otherwise noted in this article, all adult recipients of cash assistance shall participate in the West Virginia works program in accordance with the provisions of this article. The level of participation, services to be delivered and work requirements shall be defined within the terms of the personal responsibility contract and through rules established by the secretary.

(b) To the extent funding permits, any individual exempt under the provisions of section eight of this article may participate in the activities and programs offered through the West Virginia works program.

(c) Support services other than cash assistance through the works program may be provided to at-risk families to eliminate the need for cash assistance.

(d) Cash assistance through the works program may be provided to an at-risk family if the combined family income, as defined in subsection (h), section three of this article, is below the income and asset test levels established by the department: *Provided*, That any adult member of an at-risk family who receives supplemental security income shall be excluded from the benefit group: *Provided, however*, That an at-risk family that includes a married man and woman and dependent children of either one or both may receive an additional cash assistance benefit in the amount of one hundred dollars: *Provided further*, That an at-risk family shall receive an additional cash assistance benefit in the amount of fifty dollars regardless of the amount of child support collected in a month on behalf of a child or children of the at-risk family, as allowed by federal law.

**§9-9-7. Work requirements.**

(a) Unless otherwise exempted by the provisions of section eight of this article, the West Virginia works program shall require that anyone who possesses a high school diploma, or its equivalent, or anyone who is of the age of twenty years or more, to work or attend an educational or training program for at least the minimum number of hours per week required by federal law under the work participation rate requirements for all families in order to receive any form of cash assistance. Participation in any education or training activity, as defined in section three of this article, shall be counted toward satisfaction of the work requirement imposed by this section to the extent permissible under federal law and regulation: *Provided*, That the participant

demonstrates adequate progress toward completion of the program: *Provided, however,* That participants who are enrolled in post-secondary courses leading to a two- or four-year degree may be required to engage in no more than ten hours per week of federally defined work activities, unless the department certifies that allowing education to count toward required work activities would affect the state's ability to meet federal work participation rates. In accordance with federal law or regulation, the work, education and training requirements of this section are waived for any qualifying participant with a child under six years of age if the participant is unable to obtain appropriate and available child care services. In order for any participant to receive cash assistance, he or she shall enter into a personal responsibility contract pursuant to the provisions of section nine of this article.

(b) The department and representatives of all college and university systems of West Virginia shall develop and implement a plan to utilize and expand the programs available at the state's community and technical colleges, colleges and universities to assist beneficiaries or participants who are enrolled or wish to become enrolled in two and four-year degree programs of post-secondary education to meet the work requirements of this section.

(c) The secretary shall ensure that all necessary support services are made available to participants in order to assist them in meeting the work requirement imposed by this section, including participation in education and training programs.

#### **§9-9-8. Exemptions.**

Participants exempt from the work requirements of the works program pursuant to the provisions of this section nevertheless are required to enter into a personal responsibility contract. The secretary shall establish by rule categories of persons exempt, but only from the work requirements of the program. The categories shall include, but are not limited to, the following:

- (a) A parent caring for a dependent child with a life-threatening illness;
- (b) Individuals over the age of sixty years;
- (c) Full-time students who are less than twenty years of age and are pursuing a high school diploma or its equivalent;
- (d) Persons with a physical or mental incapacity or persons suffering from a temporary debilitating injury lasting more than thirty days, as defined by the secretary;
- (e) Relatives providing in-home care for an individual who would otherwise be institutionalized; and
- (f) Any female beneficiary who is eighteen years of age or older, for a period of twelve months upon the birth of her first child while receiving cash assistance and for a period of six months upon the birth of any additional child: *Provided,* That any period of exemption from the work requirement may include the last trimester of her pregnancy.

#### **§9-9-9. Personal responsibility contract.**

(a) Every eligible adult beneficiary shall participate in a program orientation and the development, and subsequent revisions, of a personal responsibility contract. The contract shall be defined based on the assessed goals and challenges of the participant:

- (1) If the participant has a recent attachment to the work force, the contract shall include provisions regarding required job search activities, identified support services, level of benefits requested and time limitation.

(2) If the participant does not have a recent attachment to the work force, the contract shall identify the evaluation or testing activities, or job training activities necessary prior to job search activities, identified support services, benefits requested and time limitation.

(3) If it is determined that the participant is not able to obtain or maintain gainful employment, the contract shall contain appropriate provisions defining the activities that benefit the participant, his or her family or his or her community.

(4) The participant's contract shall include the following requirements: That the participant develop and maintain, with the appropriate health care provider, a schedule of preventive care for his or her dependent child or children, including routine examinations and immunizations; assurance of school attendance for school-age children under his or her care; assurance of properly supervised child care, including after-school care; and establishment of paternity or active pursuit of child support, or both, if applicable and if considered necessary; and nutrition or other counseling, parenting or family-planning classes.

(5) If the participant must overcome challenges prior to employment, the contract shall include a list of the identified challenges and an individualized plan for overcoming them.

(6) If the participant is a teenage parent, he or she may work, but the contract shall include the requirements that the participant:

(A) Remain in an educational activity to complete high school, obtain a general equivalency diploma or obtain vocational training and make satisfactory scholastic progress;

(B) Attend parenting classes or participate in a mentorship program, or both, if appropriate; and

(C) Live at home with his or her parent or guardian or in some other adult-supervised arrangements if he or she is an unemancipated minor.

(7) If the participant is under the age of twenty years and does not have a high school diploma or its equivalent, the contract shall include requirements to participate in mandatory education or training which, if the participant is unemployed, may include a return to high school, with satisfactory scholastic progress required.

(b) In order to receive cash assistance, the participant shall enter into a personal responsibility contract. If the participant refuses to sign the personal responsibility contract, the participant and family members are ineligible to receive cash assistance: *Provided*, That a participant who alleges that the terms of a personal responsibility contract are inappropriate based on his or her individual circumstances may request and shall be provided a fair and impartial hearing in accordance with administrative procedures established by the department and due process of law. A participant who signs a personal responsibility contract, or complies with a personal responsibility contract, does not waive his or her right to request and receive a hearing under this subsection.

(c) Personal responsibility contracts shall be drafted by the department on a case-by-case basis; take into consideration the individual circumstances of each beneficiary; reviewed and reevaluated periodically, but not less than on an annual basis; and, in the discretion of the department, amended or extended on a periodic basis.

**§9-9-11. Breach of contract; notice; sanctions.**

(a) The department may refuse to extend or renew a personal responsibility contract and the benefits received by the beneficiary, or may terminate an existing contract and benefits, if it finds any of the following:

(1) Fraud or deception by the beneficiary in applying for or receiving program benefits;

(2) A substantial breach by the beneficiary of the requirements and obligations set forth in the personal responsibility contract; or

(3) A violation by the beneficiary of any provision of the personal responsibility contract, this article, or any rule promulgated by the secretary pursuant to this article.

(b) In the event the department determines that a personal responsibility contract or the benefits received by the beneficiary are subject to revocation or termination, written notice of the revocation or termination, and the reason for the revocation or termination, shall be deposited in the United States mail, postage prepaid and addressed to the beneficiary at his or her last known address at least thirteen days prior to the termination or revocation. The notice shall state the action being taken by the department and grant to the beneficiary a reasonable opportunity to be heard at a fair and impartial hearing before the department in accordance with administrative procedures established by the department and due process of law.

(c) In any hearing conducted pursuant to the provisions of this section, the beneficiary has the burden of proving that his or her benefits were improperly terminated and shall bear his or her own costs, including attorneys fees.

(d) The secretary shall determine by rule what constitutes de minimis violations and those violations subject to sanctions and maximum penalties. In the event the department finds that a beneficiary has violated any provision of this article, of his or her personal responsibility contract or any applicable department rule, the department shall impose sanctions against the beneficiary as follows:

(1) For the first violation, a one-third reduction of benefits for three months;

(2) For the second violation, a two-thirds reduction of benefits for three months; and

(3) For the third violation, a total termination of benefits for a minimum period of six months.

(e) For any sanction imposed pursuant to subsection (d) of this section, if the beneficiary corrects the violation or otherwise comes into compliance within thirteen days of the date of the notice of the sanction, the reduction in benefits shall not be imposed, but the violation shall count in determining the level of sanction to be imposed for any future violation. Once a reduction in benefits is in effect, it shall remain in effect for the designated time period: *Provided*, That if a participant incurs a subsequent sanction before the sanction for a previous violation has expired, the sanctions shall run concurrently: *Provided, however*, That if a third violation occurs before the period for a previous sanction has expired, benefits shall be terminated and may not be reinstated until the six-month termination period has expired and the violation which resulted in the third sanction has been either corrected or excused.

#### **§9-9-12. Diversionary assistance allowance in lieu of monthly cash assistance.**

(a) In order to encourage at-risk families not to apply for ongoing monthly cash assistance from the state, the secretary may issue one-time diversionary assistance allowances to families in an amount not to exceed the equivalent of four months of cash assistance in order to enable the families to become immediately self-supporting.

(b) The secretary shall establish by rule the standards to be considered in making diversionary assistance allowances.

(c) Nothing in this section may be construed to require that the department or any assistance issued pursuant to this section be subject to any of the provisions of chapter thirty-one or chapter forty-six-a of this code.

#### **§9-9-13. Subsidized employment.**

(a) To the extent that resources are available, an employer may be paid a subsidy by the department to employ a parent or caretaker-relative of an at-risk family if the employer agrees to hire the works program participant at the end of the subsidized period. If the employer does not hire the participant at the end of the subsidized period, the program shall not use that employer for subsidized employment for the next twelve months.

(b) If the department determines that an employer has demonstrated a pattern of discharging employees hired pursuant to the provisions of this section subsequent to the expiration of the subsidized period without good cause, the employer shall no longer be eligible for participation in the subsidized employment program for a period to be determined by the department.

**§9-9-14. Transitional assistance.**

The West Virginia works program may provide transitional assistance in the form of supportive services and allow at-risk families to retain a portion of their cash assistance when their earnings are below the federal poverty guideline, if considered appropriate by the secretary.

**§9-9-15. Interagency coordination.**

The Legislature encourages the development of a system of coordinated services, shared information and streamlined application procedures between the program and the other agencies within the department to implement the provisions of this article. The secretary shall require the coordination of activities between the program and the following agencies:

(a) The child support enforcement division for the purpose of establishing paternity, promoting cooperation in the pursuit of child support, encouraging noncustodial parents to get job search assistance and determining eligibility for cash assistance and support services;

(b) The bureau of public health for the purpose of determining appropriate immunization schedules, delivery systems and verification procedures; and

(c) The bureau of medical services for the purpose of reporting eligibility for medical assistance and transitional benefits.

The secretary may require the coordination of procedures and services with any other agency he or she considers necessary to implement this program: *Provided,* That all agencies coordinating services with the department shall, when provided with access to department records or information, abide by state and federal confidentiality requirements including the provisions of section twenty of this article.

The secretary shall propose any rules, including emergency rules, necessary for the coordination of various agency activities in the implementation of this section.

**§9-9-16. Intergovernmental coordination.**

The commissioner of the bureau of employment programs and the superintendent of the department of education shall assist the secretary in the establishment of the West Virginia works program. Prior to implementation of this program, each department shall address in its respective plan the method in which its resources will be devoted to facilitate the identification of or delivery of services for participants and shall coordinate its respective programs with the department in the provision of services to participants and their families. Each county board of education shall designate a person to coordinate with the local department of health and human resources office the board's services to participant families and that person shall work to achieve coordination at the local level.

The secretary and the superintendent shall develop a plan for program implementation to occur with the use of existing state facilities and county transportation systems within the project areas whenever practicable. This agreement shall include, but not be limited to, the use of buildings, grounds and buses. Whenever possible, the supportive services, education and training programs should be offered at the existing school facilities.

The commissioner shall give priority to participants of the works program within the various programs of the bureau of employment programs. The secretary and the commissioner shall develop reporting and monitoring mechanisms between their respective agencies.

**§9-9-17. Public-private partnerships.**

The secretary may enter into agreements with any private, nonprofit, charitable or religious organizations to promote the development of the community support services necessary for the effective implementation of this program, including cooperative arrangements with private employers of former program participants for the purpose of obtaining and maintaining employer-based family health insurance coverage for former participants and their spouses and dependent children through direct payments to the employers out of funds appropriated for the cooperative agreements.

**§9-9-19. Legislative oversight.**

The legislative oversight commission on health and human resources accountability is charged with immediate and ongoing oversight of the program created by this article. This commission shall study, review and examine the work of the program, the department and its staff; study, review and examine all rules proposed by the department; and monitor the development and implementation of the West Virginia works program. The commission shall review and make recommendations to the Legislature and the legislative rule-making review committee regarding any plan, policy or rule proposed by the secretary, the department or the program.

**§9-9-20. Confidentiality, fines and penalties.**

(a) Except as otherwise provided in this code or rules, all records and information of the department regarding any beneficiary or beneficiary's family members, including food stamps, child support and medicaid records, are confidential and shall not be released, except under the following circumstances:

(1) If permissible under state or federal rules or regulations;

(2) Upon the express written consent of the beneficiary or his or her legally authorized representative;

(3) Pursuant to an order of any court of record of this state or the United States based upon a finding that the information is sufficiently relevant to a proceeding before the court to outweigh the importance of maintaining the confidentiality established by this section: *Provided*, That all confidential records and information presented to the court shall after review be sealed by the clerk and shall not be open to any person except upon order of the court upon good cause being shown for the confidential records and information to be opened; or

(4) To a department or division of the state or other entity, pursuant to the terms of an interagency or other agreement: *Provided*, That any agreement specifically references this section and extends its requirements for confidentiality to the other entity receiving the records or information, its agents and employees.

(b) Any person who knowingly and willfully releases or causes to be released the confidential records and information described in this section, except under the specific circumstances enumerated in this section, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars or confined in the county or regional jail for not more than six months, or both.

**§9-9-21. Temporary assistance for needy families rainy day fund.**

There is hereby established in the state treasury a special fund designated as the "temporary assistance for needy families rainy day fund" into which the secretary shall cause to be initially deposited the amount of thirty-six million dollars in federal block grant moneys. The purpose of this fund is to serve as a safety net for the program established in this article and it shall be used for continued support of the program in the event of reduced federal funding, economic downturn, natural disaster or other event which depletes the program's funds or makes them otherwise unavailable, if determined by the secretary to be necessary and appropriate under the circumstances.

**SENATE BILL 565**

**EFFECTIVE DATE:** March 11, 2000

**SIGNED BY GOVERNOR:** April 5, 2000

**CODE REFERENCE(S):** Revises and Amends §5-16B-1, 2, 3, 4, 5, 6 and §9-4A-2b

**TOPIC:** WV CHILDREN'S HEALTH INSURANCE PLAN

**INTRODUCTION:**

Provides for WV Children's Health Insurance Plan to move to the Department of Administration; adds definitions; gives authority for transfer of personnel, equipment, and funds; expands availability of insurance coverage.

**MAJOR NEW PROVISIONS:**

1. This act moves the administration of the West Virginia Children's Health Insurance Plan (WVCHIP) from the Department of Health and Human Resources to the Department of Administration.
2. It allows for the transfer of program funds, personnel and equipment to the Department of Administration.
3. It allows primary care centers and other health care providers to accept applications and for applications to be transferred electronically for processing.
4. It provides for children a 50 percent increase in the eligibility guidelines with small co-payments. A family of four may now earn up to \$34,000 for year and qualify for the program.
5. It allows for examination of the possibility of extending coverage to families and exploration of options for employers buy-ins.

**ENROLLED  
COMMITTEE SUBSTITUTE  
FOR**

**Senate Bill No. 565**

(SENATORS WALKER AND PREZIOSO, *original sponsors*)

\_\_\_\_\_  
[Passed March 11, 2000; in effect from passage.]  
\_\_\_\_\_

A BILL to repeal section three, article four-a, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, three, four, five and six, article sixteen-b, chapter five of said code; and to amend and reenact section two-b, article four-a, chapter nine of said code, all relating to ~~moving the children's health insurance program from the department of health and human resources to the department of administration; combining all eligible children into one program; and enlarging the eligibility group~~ the children's health insurance program; creating the agency within the department of administration; adding certain definitions; authority to transfer personnel, equipment and funds; and expanding availability of insurance coverage to certain eligible children.

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

That section three, article four-a, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one, two, three, four, five and six, article sixteen-b, chapter five of said code be amended and reenacted; and that section two-b, article four-a, chapter nine 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 16B. WEST VIRGINIA CHILDREN'S HEALTH INSURANCE PROGRAM.**

**§5-16B-1. Expansion of health care coverage to children; creation of program; legislative directives.**

(a) It is the intent of the Legislature to expand access to health services for eligible children and to pay for this coverage by using private, state and federal funds to purchase those services or purchase insurance coverage for those services. To achieve this intention, the West Virginia children's health insurance program is hereby created. The program shall be administered by the ~~division of children's health insurance agency~~ within the bureau for medical services of the department of health and human resources department of administration in accordance with the provisions of this article and the applicable provisions of Title XXI of the Social Security Act of 1997. Participation in the program may be made available to families of eligible children, subject to eligibility criteria and processes to be established, which shall not create an entitlement to coverage in any person. Nothing in this article may be construed to require any appropriation of state general revenue funds for the payment of any benefit provided for in this article. In the event that this article conflicts with the requirements of federal law, federal law ~~shall~~ governs.

(b) In developing a children's health insurance program that operates with the highest degree of simplicity and governmental efficiency, the board shall avoid duplicating functions available in existing agencies and may enter into interagency agreements for the performance of specific tasks or duties at a specific or maximum contract price.

(c) In developing benefit plans, the board may consider any cost savings, administrative efficiency or other benefit to be gained by considering existing contracts for services with state health plans and negotiating modifications of those contracts to meet the needs of the program.

(d) Upon the transfer of the functions of the children's health insurance program from the department of health and human resources to the children's health insurance agency within the department of administration, the secretary of the department of health and human resources and the secretary of the department of administration, acting jointly, are empowered to authorize and shall authorize such transfers of program funds including, but not limited to, the West Virginia children's health fund created in section seven of this article and associated investment accounts; and transfers of children's health insurance program personnel and equipment, as are necessary, to facilitate an orderly transfer of the functions of the children's health insurance program. Authority to make transfers pursuant to this subsection expires on the thirty-first day of December, two thousand.

(e) In order to enroll as many eligible children as possible in the program created by this article and to expedite the effective date of their health insurance coverage, the board shall develop and implement a plan whereby applications for enrollment may be taken at any primary care center or other health care provider, as determined by the director, and transmitted electronically to the program's offices for eligibility screening and other necessary processing. The board may use any funds available to it in the development and implementation of the plan, including grant funds or other private or public moneys.

#### **§5-16B-2. Definitions.**

As used in this article, unless the context clearly requires a different meaning:

(a) ~~"Board"~~ "Agency" means the children's health insurance policy board agency within the department of administration;

(b) ~~"Director"~~ means the director of the children's health program; ~~"Board"~~ means the children's health insurance program board;

(c) ~~"Division"~~ means the division of children's health created within the bureau for medical services in the department of health and human resources; ~~"Director"~~ means the director of the children's health insurance agency;

(d) "Essential community health service provider" means a health care provider that:

(1) Has historically served medically needy or medically indigent patients and demonstrates a commitment to serve low-income and medically indigent populations which ~~make up~~ constitute a significant portion of its patient population or, in the case of a sole community provider, serves medically indigent patients within its medical capability; and

(2) Either waives service fees or charges fees based on a sliding scale and does not restrict access or services because of a client's financial limitations. Essential community health service provider includes, including but is not limited to, community mental health centers, school health clinics, primary care centers, pediatric health clinics or rural health clinics.

(e) "Program" means the West Virginia children's health insurance program.

#### **§5-16B-3. Reporting requirements.**

(a) ~~Annually~~ on the first day of January, ~~one thousand nine hundred ninety-nine and annually thereafter~~, the director shall report to the governor and the Legislature regarding the number of children enrolled in the program or programs; the average annual cost per child per program; ~~the number of children enrolled in the Medicaid program, pursuant to Title XIX of the Social Security Act, the public employees insurance agency and private sector insurance programs~~; the estimated number of remaining uninsured children; and ~~the effectiveness of the outreach activities for the previous year.~~ The report shall include any information that can be obtained regarding the prior insurance and health status of the children enrolled in programs created pursuant to this article. ~~Beginning with the second annual report, the director~~ The report shall include information regarding the cost, quality and effectiveness of the health care delivered to enrollees of this program; satisfaction surveys; and health status improvement indicators. The ~~board~~ agency, in conjunction with other state health and insurance agencies, shall develop indicators designed to measure the quality and effectiveness of children's health programs, which information shall be included in the annual report.

(b) On a quarterly basis, the director shall provide reports to the legislative oversight commission on health and human resources accountability on the number of children served, including the number of newly enrolled children for the reporting period and current projections for future enrollees; outreach efforts and programs; statistical profiles of the families served and health status indicators of covered children; the average annual cost of coverage per child; the total cost of children served by provider type, service type and contract type; outcome measures for children served; reductions in uncompensated care; performance with respect to the financial plan; and any other information as the legislative oversight commission on health and human resources accountability may require.

(c) ~~The director shall report initial statistical information on the children's health program to the legislative oversight commission on health and human resources accountability. The report shall include, by not be limited to, the number of uninsured children eligible for the program, statistical information regarding the families of eligible children, and the projected average annual cost of coverage per child.~~

**§5-16B-4. Children's health policy board created; qualifications and removal of members; powers; duties; meetings; and compensation.**

(a) There is hereby created the West Virginia children's health insurance board, which shall consist of the director of the public employees insurance agency, the secretary of the department of health and human resources, or his or her designee, and ~~five~~ six citizen members appointed by the governor, one of whom shall represent children's interests and one of whom shall be a certified public accountant, to assume the duties of the office immediately upon appointment, pending the advice and consent of the Senate. A member of the Senate, as appointed by the Senate president and a member of the House of Delegates, as appointed by the speaker of the House of Delegates, shall serve as nonvoting members. Of the five citizen members first appointed, one shall serve one year, two shall serve two years and two shall serve three years. All future subsequent appointments shall be for terms of three years, except that an appointment to fill a vacancy shall be for the unexpired term only: Provided, That the citizen member to be appointed upon the reenactment of this section during the regular session of the Legislature, two thousand, shall serve a term which corresponds to the term of the member initially appointed to serve one year. Three of the citizen members shall have at least a

bachelor's degree and experience in the administration or design of public or private employee or group benefit programs and the children's representative shall have experience that demonstrates knowledge in the health, educational and social needs of children. No more than three citizen members may be members of the same political party and no board member shall represent or have a pecuniary interest in an entity reasonably expected to compete for contracts under this article. Members of the board shall assume the duties of the office immediately upon appointment ~~and shall hold an initial meeting not later than the thirtieth day of June, one thousand nine hundred ninety-eight. The members shall elect a chairperson. The director of the agency shall serve as the chairperson of the board.~~ 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. Vacancies in the board shall be filled in the same manner as the original appointment.

(b) The purpose of the board is to develop plans for health services or health insurance that are specific to the needs of children and to bring fiscal stability to this program through development of an annual financial plan designed in accordance with the provisions of this article.

(c) Notwithstanding any other provisions of this code to the contrary, any insurance benefits offered as a part of the programs designed by the board are exempt from the minimum benefits and coverage requirements of articles fifteen and sixteen, chapter thirty-three of this code.

(d) The board may consider adopting the maximum period of continuous eligibility permitted by applicable federal law, regardless of changes in a family's economic status, so long as other group insurance does not become available to a covered child.

(e) The board shall meet at the time and place as specified by the call of the chairperson or upon the written request to the chairperson by at least two members. Notice of each meeting shall be given in writing to each member by the chairperson at least three days in advance of the meeting. Four voting members shall constitute a quorum.

(f) For each day or portion of a day spent in the discharge of duties pursuant to this article, the board shall pay each of its citizen members the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties.

**§5-16B-5. Director of the children's health insurance program; qualifications; powers and duties.**

(a) ~~A division~~ An agency director shall be appointed by the governor, with the advice and consent of the Senate, and shall be responsible for the implementation, administration and management of the children's health insurance program created under this article. The director shall have at least a bachelor's degree and a minimum of three years' experience in health insurance administration.

(b) The director shall employ any administrative, technical and clerical employees ~~as that~~ that are required for the proper administration of the program and for the work of the board. He or she shall present recommendations and alternatives for the design of the ~~initial and~~ annual plans and other actions undertaken by the board in furtherance of this article.

(c) The director, ~~under the supervision of the board,~~ is responsible for the administration and management of the program and ~~shall have~~ has the power and authority to make all rules necessary to effectuate the provisions of this article. Nothing in this article ~~shall limit the~~

~~director's ability may be construed as limiting the director's otherwise lawful authority to manage the program on a day-to-day basis.~~

(d) The director has exclusive authority to execute any contracts ~~as that~~ are necessary to effectuate the provisions of this article: *Provided*, That the board shall approve all contracts for the provision of services or insurance coverage under the program. The provisions of article three, chapter five-a of this code, relating to the division of ~~purchasing~~ purchaseing of the department of finance and administration, shall not apply to any contracts for any health insurance coverage, health services, or professional services authorized to be executed under the provisions of this article: *Provided, however*, That before entering into any contract the director shall invite competitive bids from all qualified entities and shall deal directly with those entities in presenting specifications and receiving quotations for bid purposes. The director shall award those contracts on a competitive basis taking into account the experience of the offering agency, corporation, insurance company or service organization. Before any proposal to provide benefits or coverage under the plan is selected, the offering agency, corporation, insurance company or service organization shall provide assurances of utilization of essential community health service providers to the greatest extent practicable. In evaluating these factors, the director may employ the services of independent, professional consultants. The director shall then award the contracts on a competitive basis.

(e) The director shall issue requests for proposals on a regional or statewide basis from essential community health service providers for defined portions of services under the children's health insurance plan regionally or statewide; and shall, to the greatest extent practicable, either contract directly with, or require participating providers to contract with, essential community health service providers to provide the services under the plan.

(f) Subject to the advice and consent of the board, the director may require reinsurance of primary contracts, as contemplated in the provisions of sections fifteen and fifteen-a, article four, chapter thirty-three of this code.

#### **§5-16B-6. Financial plans requirements.**

(a) *Benefit plan design.* -- All financial plans required by this section shall establish: (1) The design of a benefit plan or plans; (2) the maximum levels of reimbursement to categories of health care providers; (3) any cost containment measures for implementation during the applicable fiscal year; and (4) the types and levels of cost to families of covered children. To the extent compatible with simplicity of administration, fiscal stability and other goals of the program established in this article, the financial plans may provide for different levels of costs based on ability to pay.

~~(b) *Initial plan.* -- For presentation to the board at the first meeting, the governor shall prepare: (1) A statement of goals and objectives of the children's health program; and (2) an estimate of the total amount of general and special revenues available to fund the program for the fiscal year ending on the thirtieth day of June, one thousand nine hundred ninety-nine. The initial plan is subject to the following guidelines:~~

~~(1) The board shall establish a target date for implementation of the program during the state fiscal year one thousand nine hundred ninety-nine and may offer the same benefit package as that offered to children of state employees insured through the public employees insurance agency.~~

~~(2) During state fiscal year one thousand nine hundred ninety-nine, benefits under this program shall be made available to children ages six through eighteen whose custodial parents or~~

~~guardians have an income equal to or less than one hundred fifty percent of the federal poverty level as determined according to eligibility standards and other criteria approved by the board.~~

~~(3) All program costs, including the administration of the program and incurred but unreported claims, shall not exceed eighty-five percent of the funding available to the program for the state fiscal year one thousand nine hundred ninety-nine.~~

~~(4) The board shall afford interested and affected persons an opportunity to offer comment on the plan at a public meeting of the board and, in developing any proposed plan under this article, shall solicit comments in writing from interested and affected persons.~~

~~(e)(b) Actuary requirements. -- Beginning with state fiscal year two thousand, Any~~ financial plan, or modifications, approved or proposed by the board shall be submitted to and reviewed by an actuary before final approval. The financial plan shall be submitted to the governor and the Legislature with the actuary's written professional opinion that all estimated program and administrative costs of the agency under the plan, including incurred but unreported claims, will not exceed ninety percent of the funding available to the program for the fiscal year for which the plan is proposed and that the financial plan allows for no more than thirty days of accounts payable to be carried over into the next fiscal year. This actuarial requirement is in addition to any requirement imposed by Title XXI of the Social Security Act of 1997.

~~(d)(c) Subsequent Annual plans. -- The board shall review implementation of its initial or~~ current financial plan in light of actual experience and shall prepare an annual financial plan for ~~each~~ fiscal year ~~two thousand and each fiscal year thereafter~~ during which the board remains in existence. For each fiscal year, the governor shall provide an estimate of requested appropriations and total funding available to the board no later than the ~~first day of July~~ fifteenth day of October preceding the fiscal year. The board shall afford interested and affected persons an opportunity to offer comment on the plan at a public meeting of the board and, in developing any proposed plan under this article, shall solicit comments in writing from interested and affected persons. The board shall submit its final, approved financial plan, subject to the actuarial ~~and public hearing~~ requirements of this article, to the governor and to the Legislature no later than the first day of January preceding the fiscal year. The financial plan for a fiscal year becomes effective and shall be implemented by the director on the first day of July of ~~such that~~ fiscal year. Annual plans developed pursuant to this subsection are subject to the provisions of subsections (a) and ~~(e)~~ (b) of this section and the following guidelines:

(1) The aggregate actuarial value of the plan established as the benchmark plan should be considered as a targeted maximum or limitation in developing the benefits package;

(2) All estimated program and administrative costs, including incurred but not reported claims, shall not exceed ninety percent of the funding available to the program for the applicable fiscal year; and

(3) The state's interest in achieving health care services for all its children at less than two hundred percent of the federal poverty level guideline shall take precedence over enhancing the benefits available under this program.

~~(e)(d)~~ The provisions of chapter twenty-nine-a of this code do not apply to the preparation, approval and implementation of the financial plans required by this section.

~~(f)(e)~~ The board shall meet no less than once each quarter to review implementation of its current financial plan and, using actuarial data, shall make those modifications to the plan that are necessary to ensure its fiscal stability and effectiveness of service. The board may not

increase the types and levels of cost to families of covered children during its quarterly review except in the event of a true emergency. The board may not expand the population of children to whom the program is made available except in its annual plan: Provided, That upon the effective date of this article, the board may expand coverage to any child eligible under the provisions of Title XXI of the Social Security Act of 1997: Provided, however, That the board shall implement cost-sharing provisions for children who may qualify for such expanded coverage and whose family income exceeds one hundred fifty percent of the federal poverty guideline. Such cost-sharing provisions may be imposed through any one or a combination of the following: enrollment fees, premiums, copayments and deductibles.

~~(g)~~(f) The board may develop and implement programs that provide for family coverage and/or employer subsidies within the limits authorized by the provisions of Title XXI of the Social Security Act of 1997 or the federal regulations promulgated thereunder: Provided, That any family health insurance coverage offered by or through the program shall be structured so that the board assumes no financial risk: Provided, however, That families covered by any insurance offered by or through the program shall be subject to cost-sharing provisions which may include, without limitation, enrollment fees, premiums, copayments and/or deductibles, as determined by the board, which shall be based on ability to pay: Provided further, That enrollment fees or premiums, if imposed, may be paid, in whole or in part, through employer subsidies or other private funds or public funds, subject to availability, all as allowed by applicable state and federal law.

(g) For any fiscal year in which legislative appropriations differ from the governor's estimate of general and special revenues available to the agency, the board shall, within thirty days after passage of the budget bill, make any modifications to the plan necessary to ensure that the total financial requirements of the agency for the current fiscal year are met.

## **CHAPTER 9. HUMAN SERVICES.**

### **ARTICLE 4A. MEDICAID UNCOMPENSATED CARE FUND.**

#### **§9-4A-2b. Expansion of coverage to children and terminally ill.**

(a) It is the intent of the Legislature that steps be taken to expand coverage to children and the terminally ill and to pay for this coverage by fully utilizing federal funds. To achieve this intention, the department of health and human resources shall undertake the following:

(1) The department shall provide a streamlined application form, which shall be no longer than two pages, for all families applying for medical coverage for children under any of the programs set forth in this section; and

(2) The department shall provide the option of hospice care to terminally ill West Virginians who otherwise qualify for medicaid. The department shall provide quarterly reports to the legislative oversight commission on health and human resources accountability created pursuant to section four, article twenty-nine-e, chapter sixteen of this code regarding the program provided for in this subdivision. The report shall include, but not be limited to, the total number, by age, of newly eligible clients served, the average annual cost of coverage per client and the total cost, by provider type, to serve all clients.

(3) The department shall accelerate the medicaid option for coverage of medicaid to all West Virginia children whose family income is below one hundred percent of the federal poverty ~~level~~ guideline. The department shall provide quarterly reports to the legislative oversight commission on health and human resources accountability regarding the program acceleration

provided for in this subdivision. The report shall include, but not be limited to, the number of newly eligible clients, by age, served as a result of the acceleration, the average annual cost of coverage per client and the total cost of all clients served by provider type.

~~4) Effective the first day of July, one thousand nine hundred ninety-eight, the department shall expand medicaid coverage for only those West Virginia children below the age of six years whose family income is below one hundred fifty percent of the federal poverty level. This program will be known as the Title XXI-Medicaid program and administered in accordance with the applicable provisions contained in Titles XIX and XXI of the Social Security Act. The department shall coordinate the eligibility determination, outreach efforts, purchasing strategies, service delivery system and reporting requirements with the Title XXI program created pursuant to provisions of article sixteen-b, chapter five of this code.~~

(b) Notwithstanding the provisions of section two-a of this article, the accruing interest in the medical services trust fund may be utilized to pay for the programs specified in ~~subdivisions subsection (2) and (3) of subsection (a)~~ of this section: *Provided*, That to the extent the accrued interest is not sufficient to fully fund the specified programs, the disproportionate share hospital funds paid into the medical services trust fund after the thirtieth day of June, one thousand nine hundred ninety-four, may be applied to cover the cost of the specified programs.

(c) Annually on the first day of January, ~~one thousand nine hundred ninety-five and annually thereafter~~, the department shall report to the governor and to the Legislature information regarding the number of children and elderly covered by the programs in subdivisions (2) and (3) of subsection (a), the cost of services by type of service provided, a cost-benefit analysis of the acceleration and expansion on other insurers and the reduction of uncompensated care in hospitals as a result of the programs.

~~(d) On the first day of January, one thousand nine hundred ninety-nine, and annually thereafter, the department shall report to the governor and to the Legislature information regarding the number of children enrolled in the Title XIX-Medicaid program as a result of implementation of the provisions of subdivision (4), subsection (a) of this section; the number of children enrolled in the new Title XXI-Medicaid program; the estimated number of children eligible for enrollment in either program; the cost of services by type of service provided in both programs; an analysis of the impact of the programs on other insurers; and the reduction of uncompensated care in hospitals as a result of the programs. The annual report filed by the department shall also include information relating to any proposed expansion of the population to be served under the state's medicaid program, other than the expansions specifically authorized in this section. The department may not expand the population to be served until sixty days following the filing of the report required in this subsection. The department shall make quarterly reports to the legislative oversight commission on health and human resources accountability, established pursuant to section four, article twenty-nine-e, chapter sixteen of this code regarding the development, implementation and monitoring of the program.~~

**SENATE BILL 584**

**EFFECTIVE DATE:** Passes March 11, 2000; effective July 1, 2000.

**SIGNED BY GOVERNOR:** April 4, 2000

**CODE REFERENCE(S):** New §18-2E-9

**TOPIC:** CREATES THE WEST VIRGINIA VIRTUAL SCHOOL  
TO OFFER CONTENT AND COURSES VIA THE  
INTERNET AND OTHER TECHNOLOGIES

**INTRODUCTION:**

Provides for the creation of a virtual school within the West Virginia Department of Education to provide high quality content and course offerings via the Internet and other technologies. The act specifies duties and functions to operate the virtual school and stipulates reporting to the Legislative Oversight Commission on Education Accountability.

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

**Senate Bill No. 584**

(SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,  
BY REQUEST OF THE EXECUTIVE)

[Passed March 11, 2000; to take effect July 1, 2000.]

AN ACT to amend article two-e, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine, relating to the creation of the West Virginia virtual school within the department of education to offer high quality educational courses via internet technology to students who are not advantageously located with respect to schools; setting forth findings; providing for appointment and powers and duties of director; and requiring report on progress to legislative oversight commission on education accountability by a certain date.

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

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

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

**§18-2E-9. West Virginia Virtual School.**

(a) Findings: -- The Legislature finds that:

(1) West Virginia schools have improved and expanded internet access which enables schools to offer courses through the internet and other new and developing technologies;

(2) Current technology is available to provide students with more resources for learning and new and developing technologies offer even more promise for expanded learning opportunities;

(3) A number of states and other jurisdictions have developed internet-based instruction which is available currently and which is being used by schools in this state;

(4) To educate better the students of West Virginia, more course and class offerings can be made available through technology, especially to students who are geographically disadvantaged;

(5) Virtual learning enables students to learn from remote sites, learn at times other than the normal school day and learn at a different pace and gives students access to courses that would not be available in their area;

(6) There is a need to assure that internet-based courses and courses offered through new and developing technologies are of high quality; and

(7) The state and county school systems can benefit from the purchasing power the state can offer.

(b) The Legislature hereby creates the West Virginia virtual school. The West Virginia virtual school shall be located within the office of technology and information systems within the West Virginia department of education.

(c) The state superintendent of schools shall appoint the director of the West Virginia Virtual School with the approval of the state board.

(d) The director of the West Virginia virtual school has the following powers and duties:

(1) To contract with providers for courses and other services;

(2) To review courses and courseware and make determinations and recommendations relative to the cost and quality of the courses and the alignment with the instructional goals and objectives of the state board;

(3) To develop policy recommendations for consideration by the state board, which may include, but not be limited to, the following:

(A) Hardware and software considerations for the offering of courses on the internet or other developing technologies;

(B) Standards of teachers and other school employees who are engaged in the activities surrounding the offering of courses on the internet or other developing technologies;

(C) Sharing of resources with other agencies of government, both within and outside West Virginia, to facilitate the offering of courses on the internet or other developing technologies;

(D) Methods for including courses offered on the internet or through other developing technologies in alternative education programs;

(E) Methods for making courses offered on the internet or through other developing technologies available for students receiving home instruction;

(F) Methods for brokering the courses offered on the internet or through other developing technologies;

(G) Methods for applying for grants;

(H) Methods for employing persons who are the most familiar with the instructional goals and objectives to develop the courses to be offered on the internet and through other developing technologies; and

(I) Proper funding models that address all areas of funding including, but not limited to, which county, if any, may include a student receiving courses on the internet or through other developing technologies in enrollment and who, if anyone, is required to pay for the courses offered on the internet or through other developing technologies; and

(4) Any other powers and duties necessary to address the findings of the Legislature in subsection (a) of this section.

(e) The West Virginia department of education shall report the progress of the West Virginia virtual school to the legislative oversight commission on education accountability on or before the first day of September, two thousand.

## SENATE BILL 653

**EFFECTIVE DATE:** June 19, 2000

**SIGNED BY GOVERNOR:** April 5, 2000

**CODE REFERENCE(S):** New: §18B-1-1a, 3, 6; §18B-1A-1, 2, 3, 4, 5, 6, 7, 8; §18-1B-3, 4, 5, 6, 7, 8, 9; §18B-1C-1, 2; §18B-2A-1, 2, 3, 4; §18-3A-1, 2, 3, 4, 5; §18B-3C-1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12; §18B-3F-1, 2, 3; §18B-4-2, 8; §18B-6-1, 1a, 2a, 3a, 4a; §18B-14-8, 9

Revised: §5A-3-48; §12-3-11; §18B-1-1d, 2

**TOPIC:** HIGHER EDUCATION: GOVERNANCE BILLS FOR POSTSECONDARY EDUCATION, INSTITUTIONAL PLANNING, ALLOCATION RESOURCES, ACCOUNTABILITY, COMMUNITY AND TECHNICAL COLLEGE EDUCATION

### **INTRODUCTION:**

This bill restructures and refocuses the state's system of Higher Education to achieve the public agenda and goals for postsecondary education. Restructuring includes replacing the current two higher education boards with a nine-member Policy Commission; creating a governing board for each institution; and, creating an institutional board of advisors for community colleges linked to 4 year schools. Refocusing includes developing measurable benchmarks and indicators to determine annual progress and to determine the allocation of new dollars based on performance.

This bill establishes a separate community and technical college system 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. It encourages traditional and nontraditional students and adult learners to participate for lifelong learning. It serves as an instrument for economic development and has independence and flexibility to respond quickly to changing needs.

### **MAJOR PROVISIONS:**

1. A Higher Education Policy Commission comprised of nine members replaces the Board of Trustees and the Board of Directors. An interim Higher Education Governing Board will be appointed by the Governor to serve a one year transition period until the Higher Education

Policy Commission assumes its duties on July 1, 2001. The Policy Commission will focus primarily on policy issues and allocate new dollars based on institutions performance relative to institutional compacts approved by the Commission.

2. Creates governing boards for each higher education institution.
3. Establishes a 15-member institution board of advisors for regional college campuses and administratively linked community colleges and a 12-member institutional board of advisors for university, state colleges and freestanding community and technical colleges.
4. Establishes goals for improving higher education in the state.
6. Expands the availability of graduate education to include: more access to master's programs and a focus on courses that enhance the skills of teachers in their subject areas.
7. Sets forth a process to establish, over a six-year period, a system of independently accredited community and technical colleges serving every region of the state. This will be accomplished through three types of community and technical colleges: freestanding; administratively linked, but independently accredited; and components. The four year facilities have one year to prove they can achieve the same "essential conditions" by maintaining their community college components.
8. The community and technical colleges are to be well articulated with the public schools and four year colleges; make maximum use of shared facilities, faculty, staff, equipment and other resources; serve as an instrument of economic development and respond quickly to changing needs.
9. Reconstitutes the Joint Commission for Vocational-Technical-Occupational Education with a nine-member commission.
10. Establishes three state advisory councils: A council of students; council of faculty; and a council of classified employees.
11. Establishes a statewide taskforce to study teacher quality, preparation, supply and demand, and professional development.

**ENROLLED**

**Senate Bill No. 653**

(Originating in the Committee on Education)

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[Passed March 19, 2000; in effect ninety days from passage.]

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AN ACT to amend and reenact section forty-eight, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section eleven, article three, chapter twelve of said code; to amend and reenact sections one-a, one-d, two, three and six, article one, chapter eighteen-b of said code; to amend said chapter by adding thereto five new articles, designated articles one-a, one-b, one-c, two-a, and three-f; to amend and reenact section one, article two of said chapter; to amend and reenact section one, article three of said chapter; to amend and reenact articles three-a and three-c of said chapter; to amend and reenact section two, article four of said chapter; to amend said article by adding thereto a new section, designated section eight; to amend and reenact sections three and four, article five of said chapter; to amend and reenact section one, article six of said chapter; to amend said article by adding thereto four new sections, designated sections one-a, two-a, three-a and four-a; to amend and reenact section one, article seven of said chapter; to amend and reenact section two, article nine of said chapter; to amend and reenact sections one, two and eight, article ten of said chapter; and to amend article fourteen of said chapter by adding thereto two new sections, designated sections eight and nine, all relating to education; public education; post-secondary education; colleges, universities and community and technical colleges; rules; motor vehicle and travel rules; governance; administration; goals for post-secondary education; purposes; intents; findings; retirement and separation incentives; transfers; eliminating the pilot flexibility initiative; defined terms; compact with higher education; institutional compacts; peer institutions; legislative financing goals; financing; allocations, appropriations and expenditures; institutional operating budget; graduate education; contrary provisions; repealing inconsistent and obsolete sections; higher education policy commission; public policy agenda; appointments; composition of commission and boards; terms and qualifications of commission and board members; vacancies; eligibility for reappointment; oath of office; removal from office; meetings, expenses and compensation; powers and duties; chancellor for higher education; vice chancellors; institutional presidents and provosts; compensation; evaluation; transition year; accountability; report cards; statewide master plan; transition oversight and implementation; legislative oversight commission on education accountability; higher education interim governing board; board of trustees; board of directors; institutional boards of governors; supervision; capital investments and projects; joint commission for vocational-technical-occupational education; duties and responsibilities of the joint commission; essential conditions for community and technical colleges; responsibility districts and areas; programs; district consortia committees; process for achieving independently accredited community and technical colleges; increasing flexibility for community and technical colleges; shared facilities and resources; relationship between administratively linked community and technical colleges and sponsoring institutions;

community and technical college services in the responsibility areas of Marshall university, West Virginia state college and West Virginia university institute of technology; implementation board; continuing services; West Virginia anatomical board; purchase and acquisition; institutional boards of advisors; state advisory council of faculty; state advisory council of students; state advisory council of classified employees; personnel and faculty; classified and nonclassified employees; seniority; classified employee salary schedule and classification systems; maximum percentage of nonclassified employees; enrollment; tuition and fees; higher education resource fee; revenue bonds; statewide task force on teacher quality; and statewide task force on student financial aid.

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

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

#### **CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.**

#### **ARTICLE 3. PURCHASING DIVISION.**

#### **§5A-3-48. Travel rules; exceptions.**

(a) The secretary of administration shall promulgate rules relating to the ownership, purchase, use, storage, maintenance and repair of all motor vehicles and aircraft owned by the state of West Virginia and in the possession of any department, institution or agency thereof: *Provided*, That the provisions of sections forty-eight through fifty-three, inclusive, of this article do not apply to the division of highways of the department of transportation, the West Virginia state police of the department of military affairs and public safety, the division of natural resources, the division of forestry, the department of agriculture, the higher education policy commission and the higher education governing boards and their institutions: *Provided, however*, That the higher education governing boards and their institutions shall report annually to the chancellor for higher education and the legislative oversight commission on education accountability in a form and manner as required by the chancellor for higher education. Such report shall include at least the following: The number of vehicles purchased and the purchase price, the number of donated vehicles and the cost of lease agreements on leased vehicles.

(b) If, in the judgment of the secretary of administration, economy or convenience indicate the expediency thereof, the secretary may require all vehicles and the aircraft subject to regulation by this article, or those he or she may designate, to be kept in garages and other places of storage and to be made available in a manner and under the terms necessary for the official use of any departments, institutions, agencies, officers, agents and employees of the state as designated by the secretary in rules promulgated pursuant to this section. The secretary may administer the travel regulations promulgated by the governor in accordance with section eleven, article three, chapter twelve of this code, unless otherwise determined by the governor.

## **CHAPTER 12. PUBLIC MONEYS AND SECURITIES.**

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

#### **§12-3-11. Travel expenses; rules to be promulgated concerning same; dues to voluntary organizations; recruitment expenses for higher education policy commission and West Virginia higher education governing boards; moving expenses of employees of higher education policy commission and West Virginia higher education governing boards.**

The governor shall promulgate rules concerning out-of-state travel by state officials and employees, except those in the legislative and judicial branches of the state government and except for the attorney general, auditor, secretary of state, treasurer, board of investments, commissioner of agriculture and their employees, the higher education policy commission and the higher education governing boards and institutions under their jurisdiction. The Legislature, the supreme court of appeals and the attorney general, auditor, secretary of state, treasurer, board of investments, commissioner of agriculture, the higher education policy commission and the higher education governing boards shall promulgate rules concerning out-of-state travel for their respective branches and departments of state government. Copies of such rules shall be filed with the auditor and the secretary of state. It shall be unlawful for the auditor to issue a warrant in payment of any claim for out-of-state travel expenses incurred by a state officer or employee unless such claim meets all the requirements of the rules so filed.

Payment for dues or membership in annual or other voluntary organizations shall be made from the proper item or appropriation after an itemized schedule of such organizations, together with the amount of such dues or membership, has been submitted to the budget director and approved by the governor.

It shall be lawful for the higher education policy commission or a higher education governing board to authorize the payment of traveling expenses incurred by any person invited to visit the campus of any state institution of higher education or any other facility under control of the board to be interviewed concerning his or her possible employment by the board or agent thereof.

It shall be lawful for the higher education policy commission or a higher education governing board to authorize payment of: (1) All or part of the reasonable expense incurred by a person newly employed by the board in moving his or her household furniture, effects and immediate family to his or her place of employment; and (2) all or part of the reasonable expense incurred by an employee of the board in moving his or her household furniture, effects and immediate family as a result of a reassignment of the employee which is considered desirable, advantageous to and in the best interest of the state: *Provided*, That no part of the moving expenses of any one such employee shall be paid more frequently than once in twelve months.

## **CHAPTER 18B. HIGHER EDUCATION.**

## **ARTICLE 1. GOVERNANCE.**

### **§18B-1-1a. Goals for post-secondary education.**

(a) Findings. -- The Legislature finds that post-secondary education is vital to the future of West Virginia. For the state to realize its considerable potential in the twenty-first century, it must have a system for the delivery of post-secondary education which is competitive in the changing national and global environment, is affordable within the fiscal constraints of the state and for the state's residents to participate and has the capacity to deliver the programs and services necessary to meet regional and statewide needs.

(1) West Virginia leads a national trend toward an aging population wherein a declining percentage of working-age adults will be expected to support a growing percentage of retirees. Public school enrollments statewide have declined and will continue to do so for the foreseeable future with a few notable exceptions in growing areas of the state. As the state works to expand and diversify its economy, it is vitally important that young people entering the workforce from our education systems have the knowledge and skills to succeed in the economy of the twenty-first century. It is equally important, however, that working-age adults who are the large majority of the current and potential workforce also possess the requisite knowledge and skills and the ability to continue learning throughout their lifetimes. The reality for West Virginia is that its future rests not only on how well its youth are educated, but also on how well it educates its entire population of any age.

(2) Post-secondary education is changing throughout the nation. Place-bound adults, employers and communities are demanding education and student services that are accessible at any time, at any place and at any pace. Institutions are seizing the opportunity to provide academic content and support services on a global scale by designing new courseware, increasing information technology-based delivery, increasing access to library and other information resources and developing new methods to assess student competency rather than "seat time" as the basis for recognizing learning, allocating resources and ensuring accountability. In this changing environment, the state must take into account the continuing decline in the public school-age population, the limits of its fiscal resources and the imperative need to serve the educational needs of working-age adults. West Virginia cannot afford to finance quality higher education systems that aspire to offer a full array of programs while competing among themselves for a dwindling pool of traditional applicants. The competitive position of the state and its institutions will depend fundamentally on its capacity to reinforce the quality and differentiation of its institutions through policies that encourage focus and collaboration.

(3) The current accountability system is exceptionally complicated and largely defines accountability in terms of institutional procedures. It also is not well equipped to address cross-cutting issues such as regional economic and workforce development, community and technical college services, collaboration with the public schools to improve quality and student participation rates, access to graduate education and other broad issues of state interest. Severe fiscal constraints require West Virginia to make maximum use of existing assets to meet new demands. New investments must be targeted to those initiatives designed to enhance and reorient existing capacity, provide incentives for collaboration and focus on the new demands. It must have a single accountability point for developing, building consensus around and sustaining attention to the public policy agenda and for allocating resources consistent with this policy agenda.

(4) The state should make the best use of the expertise that private institutions of higher education can offer and recognize the importance of their contributions to the economic, social and cultural well-being of their communities.

(5) The system of public higher education should be open and accessible to all persons, including persons with disabilities and other persons with special needs.

(b) Compact with higher education. -- In pursuance of these findings, it is the intent of the Legislature to engage higher education in a statewide compact for the future of West Virginia, as provided in article one-a of this chapter, that focuses on a public policy agenda that includes, but is not limited to, the following:

(1) Diversifying and expanding the economy of the state;

(2) Increasing the competitiveness of the state's workforce and the availability of professional expertise by increasing the number of college degrees produced to the level of the national average and significantly improving the level of adult functional literacy; and

(3) Creating a system of higher education that is equipped to succeed at producing these results.

(c) Elements of the compact with higher education. -- It is the intent of the Legislature that the compact with higher education include the following elements:

(1) A step-by-step process, as provided in articles one-b and three-c of this chapter, which will enable the state to achieve its public policy agenda through a system of higher education equipped to assist in producing the needed results. This process includes, but is not limited to, separate institutional compacts with state institutions of higher education that describe changes in institutional missions in the areas of research, graduate education, admission standards, community and technical college education and geographical areas of responsibility to accomplish the following:

(A) A capacity within higher education to conduct research to enhance West Virginia in the eyes of the larger economic and educational community and to provide a basis for West Virginia's improved capacity to compete in the new economy through research oriented to state needs;

(B) Access to stable and continuing graduate level programs in every region of the state, particularly in teacher education related to teaching within a subject area to improve teacher quality;

(C) Universities and colleges that have focused missions, their own points of distinction and quality and strong links with the educational, economic and social revitalization of their regions and the state of West Virginia;

(D) Greater access and capacity to deliver technical education, workforce development and other higher education services to place-bound adults thus improving the general levels of post-secondary educational attainment and literacy;

(E) Independently accredited community and technical colleges in every region of the state, to the extent possible, that: (i) Assess regional needs; (ii) ensure access to comprehensive community and technical college and workforce development services within each of their respective regions; (iii) convene and act as a catalyst for local action in collaboration with regional leaders, employers and other educational institutions; (iv) provide and, as necessary, broker educational services; (v) provide necessary student services; (vi) fulfill such other aspects of the community and technical college mission and general provisions for community and technical colleges as provided for in article three-c of this chapter; and (vii) make maximum use

of existing infrastructure and resources within their regions to increase access, including, but not limited to, vocational technical centers, schools, libraries, industrial parks and work sites.

(2) Providing additional resources, subject to availability and appropriation by the Legislature, as provided in article one-a of this chapter, to make the state institutions of higher education more competitive with their peers, assist them in accomplishing the elements of the public policy agenda and ensure the continuity of academic programs and services to students.

(3) Establishing a process for the allocation of additional resources which focuses on achieving the elements of the public policy agenda and streamlines accountability for the step-by-step progress toward achieving these elements within a reasonable time frame as provided in article one-a of this chapter.

(4) Providing additional flexibility to the state institutions of higher education by making permanent the exceptions granted to higher education relating to travel rules and vehicles pursuant to sections forty-eight through fifty-three, inclusive, article three, chapter five-a of this code and section eleven, article three, chapter twelve of this code.

(5) Revising the higher education governance structure to make it more responsive to state and regional needs.

(c) *General goals for post-secondary education.* -- In pursuance of the findings and the development of institutional compacts with higher education for the future of West Virginia pursuant to article one-a of this chapter, it is the intent of the Legislature to establish general goals for post-secondary education and to have the commission report the progress toward achieving these goals in the higher education report card required pursuant to section eight, article one-b of this chapter and, where applicable, made a part of the institutional compacts. The Legislature establishes the general goals as follows:

(1) The overall focus of education is on a lifelong process which is to be as seamless as possible at all levels and is to encourage citizens of all ages to increase their knowledge and skills. Efforts in pursuit of this goal include, but are not limited to, the following:

(A) Collaboration, coordination and interaction between public and post-secondary education to: (i) Improve the quality of public education, particularly with respect to ensuring that the needs of public schools for teachers and administrators is met; (ii) inform public school students, their parents and teachers of the academic preparation that students need to be prepared adequately to succeed in their selected fields of study and career plans; and (iii) improve instructional programs in the public schools so that the students enrolling in post-secondary education are adequately prepared;

(B) Collaboration, coordination and interaction between public and post-secondary education, the governor's council on literacy and the governor's workforce investment office to promote the effective and efficient utilization of workforce investment and other funds to: (i) Provide greatly improved access to information and services for individuals and employers on education and training programs, financial assistance, labor markets and job placement; (ii) increase awareness among the state's citizens of the opportunities available to them to improve their basic literacy, workforce and post-secondary skills and credentials; and (iii) help improve their motivation to take advantage of available opportunities by making the system more seamless and user friendly;

(C) Collaboration, coordination and interaction between public and post-secondary education on the development of seamless curriculum in technical preparation programs of study between the secondary and post-secondary levels; and

(D) Opportunities for advanced high school students to obtain college credit prior to high school graduation.

(2) The number of degrees produced per capita by West Virginia institutions of higher education is at the national average. Efforts in pursuit of this goal include, but are not limited to, the following:

(A) Collaboration, coordination and interaction between public and post-secondary education, the governor's council on literacy and the governor's workforce investment office to promote to individuals of all ages the benefits of increased post-secondary educational attainment;

(B) Assistance in overcoming the financial barriers to post-secondary education for both traditional and nontraditional students;

(C) An environment within post-secondary education that is student-friendly and that encourages and assists students in the completion of degree requirements within a reasonable time frame. The environment also should expand participation for the increasingly diverse student population;

(D) A spirit of entrepreneurship and flexibility within post-secondary education that is responsive to the needs of the current workforce and other nontraditional students for upgrading and retraining college-level skills; and

(E) The expanded use of technology for instructional delivery and distance learning.

(3) All West Virginians, whether traditional or nontraditional students, displaced workers or those currently employed, have access to post-secondary educational opportunities through their community and technical colleges, colleges and universities which: (i) Are relevant and affordable; (ii) allow them to gain transferrable credits and associate or higher level degrees; (iii) provide quality technical education and skill training; and (iv) are responsive to business, industry, labor and community needs.

(4) State institutions of higher education prepare students to practice good citizenship and to compete in a global economy in which good jobs require an advanced level of education and skills which far surpasses former requirements. Efforts in pursuit of this goal include, but are not limited to, the following:

(A) The development of entrepreneurial skills through programs such as the rural entrepreneurship through action learning (REAL) program which include practical experience in market analysis, business plan development and operations;

(B) Elements of citizenship development are included across the curriculum in core areas, including practical applications such as community service, civic involvement and participation in charitable organizations and in the many opportunities for the responsible exercise of citizenship that higher education institutions provide;

(C) Students are provided opportunities for internships, externships, work study and other methods to increase their knowledge and skills through practical application in a work environment;

(D) College graduates meet or exceed national and international standards for skill levels in reading, oral and written communications, mathematics, critical thinking, science and technology, research and human relations;

(E) College graduates meet or exceed national and international standards for performance in their fields through national accreditation of programs and through outcomes assessment of graduates; and

(F) Admission and exit standards for students, professional staff development, program assessment and evaluation and other incentives are used to improve teaching and learning.

(5) State institutions of higher education exceed peer institutions in other states in measures of institutional productivity and administrative efficiency. Efforts in pursuit of this goal include, but are not limited to:

(A) The establishment of systematic ongoing mechanisms for each state institution of higher education to set goals, to measure the extent to which those goals are met and to use the results of quantitative evaluation processes to improve institutional effectiveness;

(B) The combination and use of resources, technology and faculty to their maximum potential in a way that makes West Virginia higher education more productive than its peer institutions in other states while maintaining educational quality; and

(C) The use of systemic program review to determine how much duplication is necessary to maintain geographic access and to eliminate unnecessary duplication.

(6) Post-secondary education enhances state efforts to diversify and expand the economy of the state. Efforts in pursuit of this goal include, but are not limited to, the following:

(A) The focus of resources on programs and courses which offer the greatest opportunities for students and the greatest opportunity for job creation and retention in the state;

(B) The focus of resources on programs supportive of West Virginia employment opportunities and the emerging high-technology industries;

(C) Closer linkages among higher education and business, labor, government and community and economic development organizations; and

(D) Clarification of institutional missions and shifting of resources to programs which meet the current and future workforce needs of the state.

(7) Faculty, staff and administrators are compensated on a competitive level with peer institutions to attract and keep quality personnel at state institutions of higher education.

(8) The tuition and fee levels for in-state students are competitive with those of peer institutions and the tuition and fee levels for out-of-state students are set at a level which at the least covers the full cost of instruction.

**§18B-1-1d. Retirement and separation incentives.**

(a) Notwithstanding any other provisions of this code to the contrary, each state institution of higher education may include in its strategic plan, pursuant to section one-c of this article, policies that offer various incentives for voluntary, early or phased retirement of employees or voluntary separation from employment when necessary to implement programmatic changes effectively pursuant to the findings, directives, goals and objectives of this article: *Provided*, That such incentives for voluntary, early or phased retirement of employees or voluntary separation from employment must be submitted by the governing board to the legislative joint committee on pensions and retirement and approved before such policies are adopted as part of the institution's strategic plan.

(b) Effective the first day of July, two thousand one, each state institution of higher education may implement, under its institutional compact, created pursuant to section two, article one-a of this chapter, policies that offer various incentives for voluntary, early or phased retirement of employees, or voluntary separation from employment, when necessary to implement programmatic changes effectively: *Provided*, That the institution shall meet all the requirements, including the requirement for obtaining legislative approval, set forth in this section.

(c) The policies may include the following provisions:

(1) Payment of a lump sum to an employee to resign or retire;

(2) Continuation of full salary to an employee for a predetermined period of time prior to the employee's resignation or retirement and a reduction in the employee's hours of employment during the predetermined period of time;

(3) Continuation of insurance coverage pursuant to the provisions of article sixteen, chapter five of this code for a predetermined period;

(4) Continuation of full employer contributions to an employee's retirement plan during a phased retirement period; and

(5) That an employee retiring pursuant to an early or phased retirement plan may begin collecting an annuity from the employee's retirement plan prior to the statutorily designated retirement date without terminating his or her service with the institution.

(d) No incentive provided for in this section shall be granted except in furtherance of programmatic changes undertaken pursuant to the findings, directives, goals and objectives set forth in this article.

(e) No incentive proposed by an institution pursuant to this section shall become a part of the institution's approved strategic plan or institutional compact or be implemented without approval of the legislative joint committee on pensions and retirement.

Any costs associated with any incentive adopted or implemented in accordance with this section shall be borne entirely by the institutions and no incentive shall be granted that imposes costs on the retirement systems of the state or the public employees insurance agency unless those costs are paid entirely by the institutions.

(f) The Legislature further finds and declares that there is a compelling state interest in restricting the availability and application of these incentives to individual employees determined by the institutions to be in furtherance of the aims of this section and nothing herein shall be interpreted as granting a right or entitlement of any such incentive to any individual or group of individuals. Any employee granted incentives shall be ineligible for reemployment by the institutions during or after the negotiated period of his or her incentive concludes, including contract employment in excess of five thousand dollars per fiscal year.

(g) The West Virginia network for educational telecomputing may utilize the incentives contained in any policy approved by the legislative joint committee on pensions and retirement pursuant to this section.

#### **§18B-1-2. Definitions.**

The following words when used in this chapter and chapter eighteen-c of this code have the meaning hereinafter ascribed to them unless the context clearly indicates a different meaning:

(a) For the transition year beginning on the first day of July, two thousand, and ending on the thirtieth day of June, two thousand one, only, "governing board" or "board" means the higher education interim governing board created pursuant to article one-c of this chapter; and, beginning on the first day of July, two thousand one, "governing board" or "board" means the institutional board of governors of West Virginia university, Marshall university, the West Virginia school of osteopathic medicine, Bluefield state college, Concord college, eastern West Virginia community and technical college, Fairmont state college, Glenville state college, Shepherd college, southern West Virginia community and technical college, West Liberty state college, West Virginia northern community and technical college and West Virginia state

college, whichever is applicable within the context of the institution or institutions referred to in this chapter or in other provisions of law;

(b) Beginning on the first day of July, two thousand one, "governing boards" or "boards" means the institutional boards of governors created pursuant to subsection (b), section one, article two-a of this chapter;

(c) "Freestanding community and technical colleges" means southern West Virginia community and technical college, West Virginia northern community and technical college and eastern West Virginia community and technical college, which shall not be operated as branches or off-campus locations of any other state institution of higher education;

(d) "Community college" or "community colleges" means community and technical college or colleges as those terms are defined in this section;

(e) "Community and technical college", in the singular or plural, means the freestanding community and technical colleges and other state institutions of higher education which have defined community and technical college responsibility districts and programs in accordance with the provisions of sections four and six, article three-c of this chapter;

(f) "Community and technical college education" means the programs, faculty, administration and funding associated with the mission of community and technical colleges as provided in article three-c of this chapter.

(g) "Essential conditions" means those conditions which shall be met by community and technical colleges as provided in section three, article three-c of this chapter;

(h) "Higher education institution" means any institution as defined by Sections 401(f), (g) and (h) of the federal Higher Education Facilities Act of 1963, as amended;

(i) "Higher education policy commission" or "commission" means the commission created pursuant to section one, article one-b of this chapter;

(j) "chancellor" means the chief executive officer of the higher education policy commission employed pursuant to section five, article one-b of this chapter;

(k) "Institutional operating budget" or "operating budget" for any fiscal year means an institution's total unrestricted education and general funding from all sources in a prior fiscal year, including, but not limited to, tuition and fees and legislative appropriation, and any adjustments to that funding as approved by the commission based on comparisons with peer institutions or to reflect consistent components of peer operating budgets;

(l) "Post-secondary vocational education programs" means any college-level course or program beyond the high school level provided through an institution of higher education under the jurisdiction of a governing board which results in or may result in the awarding of a two-year associate degree.

(m) "Rule" or "rules" means a regulation, standard, policy or interpretation of general application and future effect;

(n) For the purposes of this chapter and chapter eighteen-c of this code, "senior administrator" means the vice chancellor for administration employed by the chancellor in accordance with section two, article four of this chapter. The vice chancellor for administration shall assume all the powers and duties that are assigned by law to the senior administrator;

(o) "State college" means Bluefield state college, Concord college, Fairmont state college, Glenville state college, Shepherd college, West Liberty state college or West Virginia state college;

\_\_\_\_\_ (p) "State institution of higher education" means any university, college or community and technical college under the direct or indirect jurisdiction of a governing board as that term is defined in this section;

\_\_\_\_\_ (q) "Regional campus" means West Virginia university at Parkersburg, Potomac state college of West Virginia university, and West Virginia university institute of technology. Each regional campus shall adopt separate strategic plans required by section one-c of this article;

\_\_\_\_\_ (r) The advisory board previously appointed for the West Virginia graduate college shall be known as the "board of visitors" and shall provide guidance to the Marshall university graduate college;

\_\_\_\_\_ (s) "Institutional compact" means a compact between a state institution of higher education and the commission, as described in section two article one-a of this chapter.

\_\_\_\_\_ (t) "Peer institutions", "peer group" or "peers" means public institutions of higher education used for comparison purposes and selected by the commission pursuant to section three, article one-a of this chapter;

\_\_\_\_\_ (u) "Administratively linked community and technical college" means a community and technical college created pursuant to section eight, article three-c of this chapter;

\_\_\_\_\_ (v) "Sponsoring institution" means the state institution of higher education that maintains an administrative link to a community and technical college pursuant to section eight, article three-c of this chapter;

\_\_\_\_\_ (w) "Collaboration" means entering into an agreement with one or more providers of education services in order to enhance the scope, quality, or efficiency of education services;

\_\_\_\_\_ (x) "Broker" or the act of "brokering" means serving as an agent on behalf of students, employers, communities or responsibility areas to obtain education services not offered by a sponsoring institution. These services include courses, degree programs or other services contracted through an agreement with a provider of education services either in-state or out-of-state; and

\_\_\_\_\_ (y) "Joint commission for vocational-technical-occupational education" or "joint commission" means the commission established pursuant to article three-a of this chapter.

**§18B-1-3. Transfer of powers, duties, property, obligations, etc., of prior governing boards to the higher education interim governing board.**

(a) All powers, duties and authorities transferred to the board of regents pursuant to former provisions of chapter eighteen of this code and transferred to the board of trustees and board of directors which were created as the governing boards pursuant to the former provisions of this chapter and all powers, duties and authorities of the board of trustees and board of directors, to the extent they are in effect on the effective date of this section, are hereby transferred to the interim governing board created in article one-c of this chapter and shall be exercised and performed by the interim governing board as such powers, duties and authorities may apply to the institutions under its jurisdiction.

(b) Title to all property previously transferred to or vested in the board of trustees and the board of directors and property vested in either of the boards separately, formerly existing under the provisions of chapter eighteen-b of this code, are hereby transferred to the interim governing board created in article one-c of this chapter. Property transferred to or vested in the board of trustees and board of directors shall include: (1) All property vested in the board of governors of West Virginia university and transferred to and vested in the West Virginia board of regents; (2) all property acquired in the name of the state board of control or the West Virginia board of

education and used by or for the state colleges and universities and transferred to and vested in the West Virginia board of regents; (3) all property acquired in the name of the state commission on higher education and transferred to and vested in the West Virginia board of regents; and (4) all property acquired in the name of the board of regents and transferred to and vested in the respective board of trustees and board of directors.

(c) Each valid agreement and obligation previously transferred to or vested in the board of trustees and board of directors formerly existing under the provisions of chapter eighteen-b of this code is hereby transferred to the interim governing board as those agreements and obligations may apply to the institutions under its jurisdiction. Valid agreements and obligations transferred to the board of trustees and board of directors shall include: (1) Each valid agreement and obligation of the board of governors of West Virginia university transferred to and deemed the agreement and obligation of the West Virginia board of regents; (2) each valid agreement and obligation of the state board of education with respect to the state colleges and universities transferred to and deemed the agreement and obligation of the West Virginia board of regents; (3) each valid agreement and obligation of the state commission on higher education transferred to and deemed the agreement and obligation of the West Virginia board of regents; and (4) each valid agreement and obligation of the board of regents transferred to and deemed the agreement and obligation of the respective board of trustees and board of directors.

(d) All orders, resolutions and rules adopted or promulgated by the respective board of trustees and board of directors and in effect immediately prior to the first day of July, two thousand, are hereby transferred to the interim governing board and shall continue in effect and shall be deemed the orders, resolutions and rules of the interim governing board until rescinded, revised, altered or amended by the commission in the manner and to the extent authorized and permitted by law. Such orders, resolutions and rules shall include: (1) Those adopted or promulgated by the board of governors of West Virginia university and in effect immediately prior to the first day of July, one thousand nine hundred sixty-nine, unless and until rescinded, revised, altered or amended by the board of regents in the manner and to the extent authorized and permitted by law; (2) those respecting state colleges and universities adopted or promulgated by the West Virginia board of education and in effect immediately prior to the first day of July, one thousand nine hundred sixty-nine, unless and until rescinded, revised, altered or amended by the board of regents in the manner and to the extent authorized and permitted by law; (3) those adopted or promulgated by the state commission on higher education and in effect immediately prior to the first day of July, one thousand nine hundred sixty-nine, unless and until rescinded, revised, altered or amended by the board of regents in the manner and to the extent authorized and permitted by law; and (4) those adopted or promulgated by the board of regents prior to the first day of July, one thousand nine hundred eighty-nine, unless and until rescinded, revised, altered or amended by the respective board of trustees or board of directors in the manner and to the extent authorized and permitted by law.

(e) As to any title, agreement, obligation, order, resolution, rule or any other matter about which there is some uncertainty, misunderstanding or question, the matter shall be summarized in writing and sent to the commission which shall make a determination regarding such matter within thirty days of receipt thereof.

(f) Rules or provisions of law which refer to other provisions of law which were repealed, rendered inoperative or superseded by the provisions of this section shall remain in full force and effect to such extent as may still be applicable to higher education and may be so interpreted.

Such references include, but are not limited to, references to sections and prior enactments of article twenty-six, chapter eighteen of this code and code provisions relating to retirement, health insurance, grievance procedures, purchasing, student loans and savings plans. Any determination which needs to be made regarding applicability of any provision of law shall first be made by the commission.

**§18B-1-6. Rulemaking.**

Effective the first day of July, two thousand one, the chancellor for higher education is hereby empowered to promulgate, adopt, amend or repeal rules, subject to the approval of the education policy commission, in accordance with the provisions of article three-a, chapter twenty-nine-a of this code, as he or she may deem necessary and convenient to ensure the full implementation of his or her powers and duties. The chancellor shall file a copy of any rule he or she proposes to promulgate, adopt, amend or repeal under the authority of this article with the legislative oversight commission on education accountability created in said article three-a, chapter twenty-nine-a of this code.

Nothing in this section may be construed to apply to any rule promulgated or adopted by a state institution of higher education.

**ARTICLE 1A. COMPACT WITH HIGHER EDUCATION FOR THE FUTURE OF WEST VIRGINIA.**

**§18B-1A-1. Purpose of article; legislative findings and intent.**

*Purpose.* -- The purpose of this article is to establish a compact with higher education for the future of West Virginia. The Legislature recognizes both the progress achieved thus far through the higher education strategic planning process established pursuant to section one-c, article one of this chapter, and the shortfalls. West Virginia long has recognized the value of education and, on a per capita income basis, invests more to support education than most other states. Based on its findings, the Legislature recognizes that because of a combination of state and national demographic and economic factors and emerging changes in higher education delivery systems, it is in the best interests of both the state and the state's higher education system to begin a process that will strengthen their capacity, over the long term, to provide the services of higher education so valued by the citizens of the state and so essential to the state's economic vitality. The compact with higher education for the future of West Virginia is intended to encourage continued progress toward achieving the state's goals for higher education and to provide incentives for change. The changes include strengthening the capacity of the higher education system and institutions to serve regional and state needs and responding to the challenges of growing national and global competition in higher education delivery systems. It is the intent of the Legislature that legislative appropriations for higher education for fiscal year two thousand two and thereafter will be made in accordance with this article and the strategies, policies, timelines and benchmarks for accomplishing the goals of the compact over a six-year period: *Provided,* That nothing in this article requires any specific level of appropriation by the Legislature.

**§18B-1A-2. Institutional compacts with state institutions of higher education; establishment and review process.**

(a) Each institution of higher education shall prepare an institutional compact for submission to the commission. When the process herein provided is completed, the institutional compacts shall form the agreement between the institutions of higher education and the commission and, ultimately, between the institutions of higher education and the people of West Virginia on how

the institutions will use their resources to address the intent of the Legislature and the goals set forth in section one-a, article one of this chapter. The compacts shall contain the following:

(1) A step-by-step process to accomplish the intent of the Legislature and the goals set forth in section one-a, article one of this chapter as organized by the commission. The step-by-step process shall be delineated by objectives and shall set forth a timeline for achieving the objectives which shall, where applicable, include benchmarks to measure institutional progress as defined in subsection (e) of this section.

(2) A determination of the mission of the institution which specifically addresses changes, as applicable, in the areas of research, graduate education, baccalaureate education, revised admission requirements, community and technical colleges and such other areas as the commission determines appropriate. In the determination of mission, the institutions and the commission shall consider the report completed by the national center for higher education management systems pursuant to the legislative study as provided in section seven, article three of this chapter;

(3) A plan which is calculated to make any changes in institutional mission and structure within a six-year period;

(4) A statement of the geographic areas of responsibility, where applicable, for each goal to be accomplished as provided in subsection (d) of this section;

(5) A detailed statement of how the compact is aligned with and will be implemented in conjunction with the master plan of the institution;

(6) Such other items, requirements or initiatives, required by the commission, designed to accomplish the intent of the Legislature and the goals set forth in section one-a, article one of this chapter or other public policy goals established by the commission.

(b) Each institutional compact shall be updated annually and shall follow the same general guidelines contained in subsection (a) of this section.

(c) Development and updating of the institutional compacts shall be subject to the following:

(1) The ultimate responsibility for developing and updating the institutional compacts at the institutional level resides with the institutional board of advisors or the institutional board of governors, as appropriate;

(2) The ultimate responsibility for developing and adopting the final version of the institutional compacts resides with the commission;

(3) The initial institutional compacts shall be submitted to the commission by the institutions on or before the first day of February, two thousand one, and the annual updates shall be submitted on or before the first day of February of each succeeding year;

(4) The commission shall review the initial institutional compacts and the annual updates and either shall adopt the institutional compact or return it with specific comments for change or improvement. The commission shall continue this process as long as it considers advisable;

(5) By the first day of May of each year, if the institutional compact of any institution as presented by that institution is not adopted by the commission, then the commission is empowered and directed to develop and adopt the institutional compact for the institution and the institution shall be bound by the compact so adopted; and

(6) The commission shall, as far as practicable, establish uniform processes and forms for the development and submission of the institutional compacts. As a part of this function, the commission shall organize the statements of legislative intent and goals contained in section one-

a, article one of this chapter in a manner that facilitates the purposes of this subdivision and the purposes of this section.

(d) The commission shall assign geographic areas of responsibility to the state institutions of higher education as a part of their institutional compacts to ensure that all areas of the state are provided necessary programs and services to achieve the public policy agenda. The benchmarks established in the institutional compacts shall include measures of programs and services by geographic area throughout the assigned geographic area of responsibility.

(e) The compacts shall contain benchmarks used to determine progress toward meeting the goals established in the compacts. The benchmarks shall meet the following criteria:

(1) They shall be as objective as possible;

(2) They shall be directly linked to the goals in the compacts;

(3) They shall be measured by the indicators described in subsection (f) of this section; and

(4) Where applicable, they shall be used to measure progress in geographic areas of responsibility.

(f) The commission shall establish indicators which measure the degree to which the goals and objectives set forth in section one-a, article one of this chapter, are being addressed and met. The benchmarks established in subsection (e) of this section shall be measured by the indicators. The commission shall, on or before the first day of January, two thousand one, file with the legislative oversight commission on education accountability, legislative rules pursuant to article three-a, chapter twenty-nine-a of this code, that set forth at the least the following:

(1) The indicators to be used to measure the degree to which the goals and objectives are being met.

(2) Uniform definitions for the various data elements to be used in establishing the indicators; and

(3) Guidelines for the collection and reporting of data.

(g) The commission shall approve the master plans developed by the institutional boards of governors and the institutional boards of advisors pursuant to subsection (b), section four, article two-a of this chapter and subsection (k), section one, article six of this chapter.

### **§18B-1A-3. Peer institutions.**

(a) The commission shall select not fewer than ten peer institutions for each state institution of higher education in West Virginia, including, but not limited to, independently accredited community and technical colleges.

(b) The peer institutions shall be selected from among institutions throughout the United States and not solely from the states that are members of the southern regional education board.

(c) The peer institutions, as selected by the commission, shall be used as benchmarks for comparison purposes only and are not intended to reflect funding goals for West Virginia institutions of higher education. Such a use is inappropriate since institutions selected as peers for a state institution may be located in an area of high per capita income or have their funding subject to other factors that make its use unrealistic for setting funding goals in West Virginia. The peer institutions shall be used for comparison in the following areas:

(1) To determine adjustments to base operating budgets as described in section five of this article;

(2) To determine comparable levels of tuition;

(3) To determine comparable faculty and staff teaching requirements and other workloads; and

(4) For such other purposes as the law may require or the commission may find useful or necessary.

(d) The commission shall contract with a national, independent education consulting firm to assist in the unbiased selection of peer institutions for each West Virginia institution. The commission shall select peer institutions for each institution through an open, deliberative, objective process and in consultation with the institutional boards of governors, intended to achieve broad understanding of the basis for this selection in the higher education community and the Legislature. Final peer selection is subject to the review of the legislative oversight commission on education accountability. In selecting peer institutions, the commission shall use criteria such as, but not limited to:

(1) Institutional mission;

(2) Institutional size related to full-time equivalent students;

(3) The proportions of full-time and part-time students;

(4) The level of academic programs, including, but not limited to, number of degrees granted at the associate, baccalaureate, masters, doctoral and first-professional level;

(5) The characteristics of academic programs such as health sciences, professional, technical or liberal arts and sciences; and

(6) The level of research funding from federal competitive funding sources.

(e) Subject to the review of the legislative oversight commission on education accountability, the commission shall review and make necessary adjustments to peer institutions at least every six years or as necessary based on changes in institutional missions as approved in institutional compacts or in changes at peer institutions.

(f) Nothing herein shall be construed to prevent the commission from using the same peers or peer groups for more than one institution of higher education.

**§18B-1A-4. Legislative financing goals.**

(a) The Legislature recognizes that the higher education goals set forth in section one-a, article one of this chapter are of utmost importance. The Legislature further recognizes that meeting the goals may require the appropriation of funds above the current operating budgets of the institutions.

(b) It is, therefore, the desire of the Legislature to increase funding annually for higher education at a rate not less than the annual percentage increase in the overall general revenue budget.

(c) If the commission determines that appropriations are insufficient to fund the requirements of the institutional compacts, the commission first shall consider extending the length of the compacts or otherwise modifying the compacts to allow the institutions to achieve the benchmarks in the compacts. If modifications to the institutional compacts are not sufficient to allow the institutions to meet their benchmarks, the commission shall recommend to the Legislature methods of making the higher education system more efficient. The methods may include, but are not limited to, the following:

(1) Administrative efficiencies;

(2) Consolidation of services;

(3) Elimination of programs;

(4) Consolidating institutions; and

(5) Closing institutions.

**§18B-1A-5. Financing; institutional operating budgets, additional funding.**

(a) Budget request and appropriations. -- The commission has the responsibility to develop a budget for the state system of higher education and submit a budget request to the governor before the first day of September, beginning in two thousand, and for each fiscal year thereafter. The budget request specifically shall include the amount of the institutional operating budgets, as defined in section two, article one of this chapter, required for all state institutions of higher education. The budget appropriation for the state system of higher education under this chapter and other provisions of the law shall consist of separate control accounts or institutional control accounts, or some combination of such accounts, for appropriation of institutional operating budgets and other funds. The commission is responsible for allocating state appropriations to supplement institutional operating budgets in accordance with this section. In addition to the institutional operating budget and incentive funding, however, the commission also is responsible for allocating funds that are appropriated to it for other purposes: *Provided, That, in order to determine institutional allocations, it is the responsibility of the institutions and their respective institutional boards of governors or advisors, as appropriate, to provide to the commission documentation on institutional progress toward mission enhancement, preliminary peer comparison calculations, performance of increased productivity and academic quality and measurable attainment in fulfilling state priorities as set forth in this article. The documentation shall be provided to the commission no later than the first day of October each year for commission review and verification.*

(b) Legislative Funding Priorities. --

(1) The Legislature recognizes the current resource allocation model has not moved all state institutions equitably towards comparable peer funding levels. This formula has left West Virginia institutions at a competitive disadvantage to their national peers.

(2) The Legislature acknowledges that the resource allocation model used to comply with Senate Bill 547, passed during the legislative session of one thousand nine hundred ninety-five, alleviated some of the disparity that exists among state institutions' operating budgets, but left significant differences between the institutions and their national peers.

(3) The Legislature recognizes that a system of independently-accredited community and technical colleges is essential to the economic vitality of the state.

(4) The Legislature places great importance on achieving the priority goals outlined in the public policy agenda and believes the state institutions of higher education should play a vital role in facilitating the attainment of these goals.

(5) The Legislature also believes it is imperative that the state make progress on narrowing the peer inequity while balancing the need for sustaining the quality of our institutions.

(6) It is the charge of the commission to allocate all funds appropriated in excess of the fiscal year two thousand one general revenue appropriations in alignment with the legislative funding priorities listed below. The commission shall consider the priorities and assign a percentage of the total appropriation of new funds to each priority.

(A) Peer equity. -- Funds appropriated for this purpose increase the level of the institutional operating budget for state institutions of higher education comparable to their peer institutions. The allocation shall provide, subject to the availability of funds and legislative appropriations, for a systematic adjustment of the institutional operating budgets to move all institutions' funding in the direction of levels comparable with their peers. Institutional allocations shall be calculated as follows:

(i) A calculation shall be made of the deficiency in per student funding of each institution in comparison with the mean per student funding of the peer institutions as defined by the commission pursuant to section three of this article;

(ii) For all institutions that are deficient in comparison with peer institutions, the amounts of the deficiencies shall be totaled;

(iii) A ratio of the amount of the deficiency for an institution divided by the total amounts of deficiency for all West Virginia institutions shall be established for each institution; and

(iv) The allocation to each institution shall be calculated by multiplying the ratio by the total amount of money in the account.

(B) *Independently accredited community and technical colleges development.* -- Funds appropriated for this purpose will ensure a smooth transition, where required, from "component" community and technical colleges to independently accredited community and technical colleges as defined in section two, article one of this chapter. Appropriations for this purpose are only to be allocated to those institutions having approved compacts with the commission that expressly include the transition of their component community colleges to independently accredited status and have demonstrated measurable progress towards this goal. By the first day of July, two thousand seven, or when all required community and technical colleges are independently accredited, whichever first occurs, funds for this purpose shall be allocated to the incentives for institutional contributions to state priorities: *Provided*, That if the commission determines that payments from the account to the institutions should continue beyond the first day of July, two thousand seven, it shall request an extension from the Legislature;

(C) *Research challenge.* -- Funds appropriated for this purpose shall assist public colleges and universities in West Virginia to compete on a national and international basis by providing incentives to increase their capacity to compete successfully for research funding. The Legislature intends for institutions to collaborate in the development and execution of research projects to the extent practicable and to target research to the needs of the state as established in the public policy agenda and linked to the future competitiveness of this state.

(i) The commission shall develop criteria for awarding grants to institutions under this account, which may include, but are not limited to, the following:

(I) Grants to be used to match externally funded, peer-reviewed research;

(II) Grants to be used to match funds for strategic institutional investments in faculty and other resources to increase research capacity;

(ii) The grants shall be distributed as follows:

(I) Forty percent of the moneys shall be distributed at the discretion of the commission, but with particular emphasis on start-up money for new research efforts; and

(II) The balance of the moneys shall be distributed to each public college and university in the same percentage that the research funds received by that public college or university bears to the total research funds received by all public colleges and universities in the state for the previous year.

(iii) The commission may establish an advisory council consisting of nationally prominent researchers and scientists, including representatives from outside the state, to assist in developing the criteria for awarding grants under this account.

(iv) For the purposes of making the distributions from this account, the commission shall establish the definition for research, research funds and any other terms as may be necessary to implement this subdivision; and

(D) Incentives for institutional contributions to state priorities. -- Funds appropriated for this purpose provide incentives to institutions which demonstrate success toward advancing the goals of the public policy agenda as set forth in section one-a, article one of this chapter and to provide incentives for mission enhancement as set forth in section two of this article.

(E) Sustained Quality Support. -- The commission shall provide additional operating funds to institutions with approved compacts. The commission shall allocate these funds on an equal percentage basis to all institutions: *Provided*, That the commission may delay distribution of these funds to any institution which does not demonstrate measurable progress towards the goals provided in its compact with the commission.

(c) Allocations to institutional operating budgets. -- For the purposes of this subsection, the commission shall establish by rule pursuant to subsection (f), section two of this article the method for measuring the progress of each institution towards meeting the benchmarks of its institutional compact.

(d) Allocation of appropriations to the institutions. -- Appropriations in this section shall be allocated to the state institutions of higher education in the following manner:

(1) For the fiscal year two thousand two, appropriations above the fiscal year two thousand two institutional operating budget shall be allocated only to institutions with approved compacts, pursuant to this article;

(2) For the fiscal year two thousand three, and each fiscal year thereafter, appropriations from the funds shall be allocated only to institutions with approved compacts, pursuant to section two of this article and which also have achieved their annual benchmarks for accomplishing the goals of their compacts, as approved by the commission: *Provided*, That if an institution has not achieved all of its annual benchmarks, the commission may distribute a portion of the funds to the institution based on its progress as the commission determines appropriate: *Provided, however*, That the commission shall establish by rule pursuant to subsection (f), section two, of this article the method for measuring the progress of each institution toward meeting the benchmarks of its institutional compact;

(e) Nothing in this section shall be construed in a manner that limits the appropriation or collection of fees necessary to effectuate the operation and purpose of the commission.

#### **§18B-1A-6. Graduate education.**

(a) Intent. -- It is the intent of the Legislature to address the need for high quality graduate education programs to be available throughout the state.

(b) Findings. -- The Legislature makes the following findings:

(1) Since West Virginia ranks below its competitor states in graduate degree production, particularly in the areas that are important to the state's competitive position in the new economy of the twenty-first century, there is a considerable need for greater access to graduate education, especially at the master's degree level;

(2) There is a significant disparity in access to part-time graduate degree programs among the different regions of the state and part-time graduate enrollments are heavily concentrated in the counties immediately surrounding Marshall university and West Virginia university;

(3) There is a particular need for increased access to graduate programs linked directly to the revitalization of the regional economies of the state; and

(4) There is a particular need for improved quality and accessibility of pre-service and in-service programs for teachers in subject matter fields.

(c) In order to meet the need for graduate education, the commission shall be responsible for accomplishing the following:

(1) Ensuring that West Virginia university and Marshall university expand access to master's degree programs throughout West Virginia, with a strong emphasis on collaboration with the baccalaureate colleges and community and technical colleges in each region;

(2) Ensuring that any institution providing a master's degree program under the provisions of this section provides a meaningful, coherent program by offering courses in such a way that students, including place-bound adults, have ample opportunity to complete a degree in a reasonable period of time;

(3) Focusing on providing courses that enhance the professional skills of teachers in their subject areas; and

(4) Ensuring that programs are offered in the most cost-effective manner to expand access throughout the region and the state.

(d) Concord college, Fairmont state college, Shepherd college, West Liberty state college and West Virginia state college shall meet the need for graduate education in their regions by following the procedures outlined below with each step building upon the foundation of the step before it:

(1) The institutions shall develop as graduate centers for their regions to broker access to graduate programs by contracting with accredited colleges and universities in and out of the state. These programs shall be related directly to each region's education and economic needs.

(2) If the graduate education needs of the region have not been met through brokering, then the institutions may begin collaborative programs with other institutions leading to the granting of master's degrees in selected areas that are demonstrated to be related directly to the needs of their regions and that draw on faculty strengths. An institution may continue to offer collaborative programs aimed at meeting the documented needs with the approval of the commission or, if a sustained need still exists, the institution may move to the next level.

(3) If the graduate education needs of the region have not been met through brokering and collaborative programs, the institution may explore the option of beginning its own graduate-level program leading to the granting of a master's degree. The institution may begin its own master's degree program only if it can meet the following conditions as determined by the commission:

(A) Demonstrate that the institution has successfully completed each of the steps required before exploring development of its own master's degree program;

(B) Provide evidence based on experience gained in the brokering and collaborative arrangements that a sustained demand exists for the program;

(C) Demonstrate that the baccalaureate institution has the capacity to provide the program;

(D) Demonstrate that the core mission of the baccalaureate institution will not be impaired by offering the graduate program;

(E) Provide evidence that the graduate program has a reasonable expectation of being accredited;

(F) Demonstrate that the need documented in subdivision (B) of this subsection is not currently being met by any other state institution of higher education; and

(G) Such other conditions as the commission may determine.

(e) There is an urgent need for master's degree programs for teachers in disciplines or subject areas, such as mathematics, science, history, literature, foreign languages and the arts. Currently, master's-level courses in education that are offered in the regions served by the state universities

are primarily in areas such as guidance and counseling, administration, special education and other disciplines unrelated to teaching in subject areas. If the commission determines that this need is not being met or can not be met in a region through the procedure established in subsection (d) of this section, then the graduate center in that region may plan one master's degree program in education focused on teaching in subject area fields. No institution may begin a graduate program under the provisions of this section until the program has been reviewed and approved by the commission. The commission shall approve only those programs, as authorized by this subsection, that emphasize serving the needs of teachers and schools in the colleges' immediate regions. In determining whether a program should be approved, the commission also shall rely upon the recommendations of the statewide task force on teacher quality provided for in section eight, article fourteen of this chapter.

(f) The commission shall review all graduate programs being offered under the provisions of this section and, using the criteria established for program startup in subsection (c) of this section, determine which programs should be discontinued.

(g) At least annually, the governing boards shall evaluate graduate programs developed pursuant to the provisions of this section and report to the commission on the following:

(1) The number of programs being offered and the courses offered within each program;

(2) The disciplines in which programs are being offered;

(3) The locations and times at which courses are offered;

(4) The number of students enrolled in the program; and

(5) The number of students who have obtained master's degrees through each program.

The governing boards shall provide the commission with any additional information the commission requests in order to make a determination on the viability of a program.

(h) In developing any graduate program under the provisions of this section, institutions shall consider delivering courses at times and places convenient to adult students who are employed full time. Institutions shall place an emphasis on extended degree programs, distance learning and off-campus centers which utilize the cost-effective nature of extending existing university capacity to serve the state rather than duplicating the core university capacity and incurring the increased cost of developing master's degree programs at other institutions throughout the state.

(i) Brokering institutions shall invite proposals from other public institutions of higher education for service provision prior to contracting with other institutions: *Provided*, That if institutions propose providing graduate programs in service areas other than in their responsibility district, the institution seeking to establish a program shall work through the district's lead institution in providing those services.

(j) In addition to the approval required by the commission, authorization for any institution to offer a master's degree program under the provisions of this section is subject to the formal approval processes established by the governing boards.

#### **§18B-1A-7. Contrary provisions.**

Effective the first day of July, two thousand, the provisions of this article shall supersede any provision of this code to the contrary.

#### **§18B-1A-8. Sections repealed.**

(a) On the effective date of this section, sections three-a and four, article three of this chapter relating to community and technical colleges are repealed.

(b) Effective the first day of July, two thousand, section two-b, article five of this chapter, relating to resource allocation policy relief, is repealed.

(c) Effective the first day of July, two thousand, section two-c, article five of this chapter, relating to a review of resource allocation model and policies, is repealed.

(d) Effective the first day of July, two thousand, section five, article six of this chapter, relating to the creation of advisory council on federal resources, is repealed.

(e) Effective the thirtieth day of June, two thousand one, section eight, article one of this chapter, relating to the powers and duties of the governing boards generally, is repealed.

(f) Effective the thirtieth day of June, two thousand one, section eight-a, article one of this chapter, relating to higher education accountability, is repealed.

(g) Effective the first day of July, two thousand, section six, article three of this chapter, relating to increasing flexibility for freestanding community and technical colleges, is repealed.

(h) Effective the thirtieth day of June, two thousand one, section one-b, article one of this chapter, relating to implementation of findings, directives, goals and objectives, is repealed.

(i) Effective the thirtieth day of June, two thousand one, section one-c, article one of this chapter, relating to strategically focusing resources to maximize opportunity, is repealed.

(j) Effective the first day of July, two thousand, section five, article one of this chapter, relating to placing governing boards under the department of education and the arts, is repealed.

(k) Effective the first day of July, two thousand, section six, article six of this chapter, relating to the University of West Virginia anatomical board, is repealed.

(l) Effective the thirtieth day of June, two thousand one, section one, article five of this chapter, relating to appropriations, is repealed.

(m) Effective the thirtieth day of June, two thousand one, section two, article five of this chapter, relating to resource allocation model and policies, is repealed.

(n) Effective the thirtieth day of June, two thousand, section two, article six of this chapter, relating to advisory councils of faculty, is repealed.

(o) Effective the thirtieth day of June, two thousand, section three, article six of this chapter, relating to advisory councils of students, is repealed.

(p) Effective the thirtieth day of June, two thousand, section four, article six of this chapter, relating to advisory councils of classified employees, is repealed.

## **ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.**

### **§18B-1B-1. Higher education policy commission established; development of public policy agenda.**

There is hereby created the “higher education policy commission”, hereinafter referred to as the “commission”, which is responsible for developing, gaining consensus around and overseeing the implementation of a public policy agenda. It is the intent of the Legislature that the commission be responsible for development and articulation of the public policy agenda for higher education and other statewide issues pursuant to section one-a, article one of this chapter. All matters of governance not specifically assigned to the commission by law are the duty and responsibility of the governing board or boards.

### **§18B-1B-2. Composition of commission; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.**

(a) The commission is comprised of nine members, all of whom are entitled to vote. One is the secretary of education and the arts, ex officio. One is the state superintendent of schools: *Provided*, That if the state superintendent of schools desires not to serve, the state board of

education shall submit to the governor the names of three nominees, which may include members of the state board of education. The governor shall select from the nominees a member to serve on the commission. The three nominees shall be persons who are knowledgeable in the area of public education policy, are able to represent the state board of education and who understand and are committed to achieving the goals and objectives as set forth in the institutional compacts and in section one-a, article one of this chapter.

(b) The other seven members of the commission shall be citizens of the state, appointed by the governor, by and with the advice and consent of the Senate: *Provided*, That prior to appointment, the governor shall interview each candidate to assure that the person selected understands and is committed to achieving the goals and objectives as set forth in the institutional compacts and in section one-a, article one of this chapter. The governor shall invite the president of the Senate, the speaker of the House of Delegates, the chairs of the Senate and House of Delegates committees on finance and education and such other legislative leaders as the governor may determine to participate in interviewing potential candidates. Each member appointed to the commission by the governor shall represent the public interest and shall be committed to the legislative intent and goals set forth in section one-a, article one of this chapter.

(c) The governor may not appoint any person to be a member of the commission who is an officer, employee or member of an advisory board of any state college or university, an officer or member of any political party executive committee, the holder of any other public office or public employment under the government of this state or any of its political subdivisions or an appointee or employee of any governing board or an immediate family member of any employee under the jurisdiction of the commission or any governing board. Of the members appointed by the governor from the public at large, no more than four thereof shall belong to the same political party and at least two shall be appointed from each congressional district.

(d) The governor shall appoint seven members to the commission on the first day of July, two thousand, or as soon thereafter as is practicable and the original terms of all members shall commence on the first day of July, two thousand.

(e) The terms of the members appointed by the governor shall be for overlapping terms of four years, except, of the original appointments, one shall be appointed to a term of one year, two shall be appointed to a term of two years, two shall be appointed to a term of three years and two shall be appointed to a term of four years. Each subsequent appointment which is not for the purpose of filling a vacancy in an unexpired term shall be for a term of four years.

(f) The governor shall appoint a member to fill any vacancy among the seven members of the commission appointed by the governor, by and with the advice and consent of the Senate, which member appointed to fill such vacancy shall serve for the unexpired term of the vacating member. The governor shall fill the vacancy within thirty days of the occurrence of the vacancy.

(g) No member appointed by the governor shall be eligible to serve more than two consecutive terms.

(h) Before exercising any authority or performing any duties as a member of the commission, each member shall qualify as such by taking and subscribing to the oath of office prescribed by section five, article IV of the constitution of West Virginia and the certificate thereof shall be filed with the secretary of state.

(i) No member of the commission appointed by the governor may be removed from office by the governor except for official misconduct, incompetence, neglect of duty or gross

immorality, and then only in the manner prescribed by law for the removal of the state elective officers by the governor.

**§18B-1B-3. Meetings and compensation.**

(a) The secretary of education and the arts shall call the initial meeting of the commission and preside until a chairperson is selected. Thereafter, the commission shall meet as needed at the time and place specified by the call of the chairperson.

(b) The commission shall hold an annual meeting each June for the purpose of electing officers for the next fiscal year. At the annual meeting, the commission shall elect from its members appointed by the governor a chairperson and other officers as it may consider necessary or desirable: *Provided*, That the initial meeting for the purpose of selecting the first chairperson and other officers shall be held during July, two thousand, or as soon thereafter as practicable. All officers shall be elected from the citizen appointees. The chairperson and other officers shall be elected for a one-year term commencing on the first day of July following the annual meeting and ending on the thirtieth day of June of the following year: *Provided, however*, That the terms of officers elected in July, two thousand, begin upon election and end on the thirtieth day of June, two thousand one. The chairperson of the board may serve no more than two consecutive terms as chair.

(c) Members of the commission shall be reimbursed for actual and necessary expenses incident to the performance of their duties upon presentation of an itemized sworn statement thereof. The foregoing reimbursement for actual and necessary expenses shall be paid from appropriations made by the Legislature to the commission.

(d) A majority of the members constitutes a quorum for conducting the business of the commission.

**§18B-1B-4. Powers and duties of higher education policy commission.**

(a) The primary responsibility of the commission is to develop, establish and implement policy that will achieve the goals and objectives found in section one-a, article one of this chapter. To that end, the commission has the following powers and duties:

(1) Develop, oversee and advance the public policy agenda to address major challenges facing the state, including, but not limited to, the goals and objectives found in section one-a, article one of this chapter and including specifically those goals and objectives pertaining to the compacts created pursuant to section two, article one-a of this chapter and to develop and implement the master plan described in section ten of this article for the purpose of accomplishing the mandates of this section;

(2) Develop, oversee and advance the implementation of a financing policy for higher education in West Virginia. The policy shall meet the following criteria:

(A) Provide an adequate level of education and general funding for institutions pursuant to section five, article one-a of this chapter;

(B) Serve to maintain institutional assets, including, but not limited to, human and physical resources and deferred maintenance; and

(C) Invest and provide incentives for achieving the priority goals in the public policy agenda, including, but not limited to, those found in section one-a, article one of this chapter;

(3) Create a policy leadership structure capable of the following actions:

(A) Developing, building public consensus around and sustaining attention to a long-range public policy agenda. In developing the agenda, the commission shall seek input from the Legislature and the governor and specifically from the state board of education and local school

districts in order to create the necessary linkages to assure smooth, effective and seamless movement of students through the public education and post-secondary education systems and to ensure that the needs of public school courses and programs can be fulfilled by the graduates produced and the programs offered;

(B) Ensuring that the governing boards carry out their duty effectively to govern the individual institutions of higher education; and

(C) Holding the higher education institutions and the higher education system as a whole accountable for accomplishing their missions and implementing the provisions of the compacts;

(4) Develop and adopt each institutional compact;

(5) Review and adopt the annual updates of the institutional compacts;

(6) Review the progress of community and technical colleges in every region of West Virginia; such review includes, but is not limited to, evaluating and reporting annually to the legislative oversight commission on education accountability on the step-by-step implementation required in article three-c of this chapter;

(7) Serve as the accountability point for the governor for implementation of the public policy agenda and for the Legislature by maintaining a close working relationship with the legislative leadership and the legislative oversight commission on education accountability;

(8) Promulgate legislative rules pursuant to article three-a, chapter twenty-nine-a to fulfill the purposes of section five, article one-a of this chapter;

(9) Establish and implement a peer group for each public institution of higher education in the state as described in section three, article one-a of this chapter;

(10) Establish and implement the benchmarks and performance indicators necessary to measure institutional achievement towards state policy priorities and institutional missions;

(11) In January, two thousand one, and annually thereafter, report to the Legislature and to the legislative oversight commission on education accountability during the January interim meetings, on a date and at a time and location to be determined by the president of the Senate and the speaker of the House of Delegates. The report shall address at least the following:

(A) The performance of the system of higher education during the previous fiscal year, including, but not limited to, progress in meeting goals stated in the compacts and progress of the institutions and the higher education system as a whole in meeting the goals and objectives set forth in section one-a, article one of this chapter;

(B) An analysis of enrollment data collected pursuant to subsection (i), section one, article ten of this chapter and recommendations for any changes necessary to assure access to high-quality, high-demand education programs for West Virginia residents;

(C) The priorities established for capital investment needs pursuant to subdivision (12) of this subsection and the justification for such priority; and

(D) Recommendations of the commission for statutory changes needed to further the goals and objectives set forth in section one-a, article one of this chapter;

(12) Establish a formal process for identifying needs for capital investments and for determining priorities for these investments;

(13) On or before the first day of October, two thousand, develop, establish and implement guidelines for institutions to follow concerning extensive capital projects. The guidelines shall provide a process for developing capital projects, including, but not limited to, the notification by an institution to the commission of any proposed capital project which has the potential to exceed

one million dollars in cost. No such project may be pursued by an institution without the approval of the commission;

(14) Draw upon the expertise available within the governor's workforce investment office and the West Virginia development office as a resource in the area of workforce development and training;

(15) Acquire legal services as are considered necessary, including representation of the commission, its institutions, employees and officers before any court or administrative body, notwithstanding any other provision of this code to the contrary. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the commission may, but is not required to, call upon the attorney general for legal assistance and representation as provided by law;

(16) Employ a chancellor for higher education pursuant to section five of this article;

(17) Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the commission;

(18) Provide suitable offices in Charleston for the chancellor, vice chancellors and other staff;

(19) Conduct a study of the faculty tenure system as administered by the governing boards with specific attention to the role of community service and other criteria for achieving tenured status. The commission shall make a report of its findings and recommendations to the legislative oversight commission on education accountability by the first day of July, two thousand one;

(20) Advise and consent in the appointment of the presidents of the institutions of higher education pursuant to section six of this article. The role of the commission in approving an institutional president is to assure through personal interview that the person selected understands and is committed to achieving the goals and objectives as set forth in the institutional compact and in section one-a, article one of this chapter;

(21) Approve the total compensation package from all sources for institutional presidents, as proposed by the governing boards. The governing boards must obtain approval from the commission of the total compensation package both when institutional presidents are employed initially and afterward when any change is made in the amount of the total compensation package;

(22) Establish and implement the policy of the state to assure that parents and students have sufficient information at the earliest possible age on which to base academic decisions about what is required for students to be successful in college, other post-secondary education and careers related, as far as possible, to results from current assessment tools in use in West Virginia;

(23) Approve and implement a uniform standard, as developed by the chancellor, to determine which students shall be placed in remedial or developmental courses. The standard shall be aligned with college admission tests and assessment tools used in West Virginia and shall be applied uniformly by the governing boards throughout the public higher education system. The chancellor shall develop a clear, concise explanation of the standard which the governing boards shall communicate to the state board of education and the state superintendent of schools;

(24) Review and approve or disapprove capital projects as described in subdivision (12), subsection (a) of this section;

(25) Develop and implement an oversight plan to manage system-wide technology such as the following:

(A) Expanding distance learning and technology networks to enhance teaching and learning, promote access to quality educational offerings with minimum duplication of effort,

increase the delivery of instruction to nontraditional students, provide services to business and industry and increase the management capabilities of the higher education system; and

(B) Reviewing courses and programs offered within the state by nonstate public or private institutions of higher education;

(26) Establish and implement policies and procedures to ensure that students may transfer and apply toward the requirements for a bachelor's degree the maximum number of credits earned at any regionally accredited in-state or out-of-state community and technical college with as few requirements to repeat courses or to incur additional costs as is consistent with sound academic policy;

(27) Establish and implement policies and procedures to ensure that students may transfer and apply toward the requirements for a degree the maximum number of credits earned at any regionally accredited in-state or out-of-state higher education institution with as few requirements to repeat courses or to incur additional costs as is consistent with sound academic policy;

(28) Establish and implement policies and procedures to ensure that students may transfer and apply toward the requirements for a master's degree the maximum number of credits earned at any regionally accredited in-state or out-of-state higher education institution with as few requirements to repeat courses or to incur additional costs as is consistent with sound academic policy;

(29) Establish and implement policies and programs, in cooperation with the institutions of higher education, through which students who have gained knowledge and skills through employment, participation in education and training at vocational schools or other education institutions, or internet-based education programs, may demonstrate by competency-based assessment that they have the necessary knowledge and skills to be granted academic credit or advanced placement standing toward the requirements of an associate degree or a bachelor's degree at a state institution of higher education;

(30) Seek out and attend regional, national and international meetings and forums on education and workforce development related topics, as in the commission's discretion is critical for the performance of their duties as members, for the purpose of keeping abreast of education trends and policies to aid it in developing the policies for this state to meet the established education goals and objectives pursuant to section one-a, article one of this chapter;

(31) Develop, establish and implement guidelines for higher education governing boards and institutions to follow when considering capital projects. The guidelines shall include, but not be limited to, the following:

(A) That the governing boards and institutions not approve or promote projects that give competitive advantage to new private sector projects over existing West Virginia businesses, unless the commission determines such private sector projects are in the best interest of the students, the institution and the community to be served; and

(B) That the governing boards and institutions not approve or promote projects involving private sector businesses which would have the effect of reducing property taxes on existing properties or avoiding, in whole or in part, the full amount of taxes which would be due on newly developed or future properties.

The commission shall determine whether the guidelines developed pursuant to this subdivision should apply to any project which a governing board and institution alleges to have been planned on or before the effective date of this section. In making the determination, the

commission shall be guided by the best interests of the students, the institution and the community to be served.

(32) Certify to the Legislature, on or before the first day of February, two thousand one, the priority funding percentages and other information needed to complete the allocation of funds in section five, article one-a of this chapter;

(33) Consider and submit to the appropriate agencies of the executive and legislative branches of state government, a single budget for higher education that reflects recommended appropriations: *Provided*, That on the first day of January, two thousand one, and annually thereafter, the commission shall submit the proposed institutional allocations based on each institution's progress toward meeting the goals of its institutional compact;

(34) Initiate a full review and analysis of all student fees charged by state institutions of higher education and make recommendations to the legislative oversight commission on education accountability no later than the second day of January, two thousand two. The final report shall contain findings of fact and recommendations for proposed legislation to condense, simplify and streamline the fee schedule and the use of fees or other money collected by state institutions of higher education;

(35) The commission has the authority to assess institutions for the payment of expenses of the commission or for the funding of statewide higher education services, obligations or initiatives; and

(36) Promulgate rules allocating reimbursement of appropriations, if made available by the Legislature, to institutions of higher education for qualifying non-capital expenditures incurred in the provision of services to students with physical, learning or severe sensory disabilities.

(b) In addition to the powers and duties listed in subsection (a) of this section, the commission has the following general powers and duties related to its role in developing, articulating and overseeing the implementation of the public policy agenda:

(1) Planning and policy leadership including a distinct and visible role in setting the state's policy agenda and in serving as an agent of change;

(2) Policy analysis and research focused on issues affecting the system as a whole or a geographical region thereof;

(3) Development and implementation of institutional mission definitions including use of incentive money to influence institutional behavior in ways that are consistent with public priorities;

(4) Academic program review and approval including the use of institutional missions as a template to judge the appropriateness of both new and existing programs and the authority to implement needed changes;

(5) Development of budget and allocation of resources, including reviewing and approving institutional operating and capital budgets and distributing incentive and performance-based funding;

(6) Administration of state and federal student aid programs;

(7) Acting as the agent to receive and disburse public funds when a governmental entity requires designation of a statewide higher education agency for this purpose;

(8) Development, establishment and implementation of information, assessment and accountability systems including maintenance of statewide data systems that facilitate long-term planning and accurate measurement of strategic outcomes and performance indicators;

(9) Developing, establishing and implementing policies for licensing and oversight for both public and private degree-granting and nondegree granting institutions that provide post-secondary education courses or programs in the state;

(10) Development, implementation and oversight of statewide and region-wide projects and initiatives such as those using funds from federal categorical programs or those using incentive and performance-based funding from any source; and

(11) Quality assurance that intersects with all other duties of the commission particularly in the areas of planning, policy analysis, program review and approval, budgeting and information and accountability systems.

(c) In addition to the powers and duties provided for in subsections (a) and (b) of this section and any other powers and duties as may be assigned to it by law, the commission has such other powers and duties as may be necessary or expedient to accomplish the purposes of this article.

(d) The commission is authorized to withdraw specific powers of any institutional governing board for a period not to exceed two years if the commission makes a determination that:

(1) The governing board has failed for two consecutive years to develop an institutional compact as required in article one of this chapter;

(2) The commission has received information, substantiated by independent audit, of significant mismanagement or failure to carry out the powers and duties of the institutional board of governors according to state law; or

(3) Other circumstances which, in the view of the commission, severely limit the capacity of the institutional board of governors to carry out its duties and responsibilities.

(4) The period of withdrawal of specific powers may not exceed two years during which time the commission is authorized to take steps necessary to reestablish the conditions for restoration of sound, stable and responsible institutional governance.

(e) Notwithstanding the provisions of section six, article one-a of this chapter, the commission shall undertake a study of the most effective and efficient strategies and policies to address the findings and intent of that section.

(1) The issues addressed by this study shall include, but not be limited to:

(A) Strategies to ensure access to graduate education;

(B) The development of state colleges as regional graduate centers with authority to broker access to graduate programs in their responsibility areas;

(C) The process by which state colleges obtain authorization to grant graduate degrees;

(D) The relationship of regional graduate centers at state colleges to graduate programs offered within those regions by state universities; and

(E) Other issues related to initiatives to meet each region's need and enhance the quality and competitiveness of graduate programs offered and/or brokered by West Virginia state colleges and universities.

(2) The commission shall report the findings of this study along with the recommendations for legislative actions, if any, to address these findings and the intent of this section, to the legislative oversight commission on education accountability by the first day of January, two thousand one.

**§18B-1B-5. Employment of chancellor for higher education; office; powers and duties generally; employment of vice chancellors.**

(a) The commission, created pursuant to section one of this article, shall employ a chancellor for higher education who shall be the chief executive officer of the commission and who shall serve at its will and pleasure. The vice chancellor for administration shall serve as the interim chancellor until a chancellor is employed.

(b) The commission shall set the qualifications for the position of chancellor and shall conduct a thorough nationwide search for qualified candidates. A qualified candidate is one who meets at least the following criteria:

(1) Possesses an excellent academic and administrative background;

(2) Demonstrates strong communication skills;

(3) Has significant experience and an established national reputation as a professional in the field of higher education;

(4) Is free of institutional or regional biases; and

(5) Holds or retains no other administrative position within the system of higher education while employed as chancellor.

(c) The chancellor shall be compensated on a basis in excess of, but not to exceed twenty percent greater than, the base salary of any president of a state institution of higher education or the administrative head of a governing board.

(d) With the approval of the commission, the chancellor may employ a vice chancellor for health sciences who shall serve at the will and pleasure of the chancellor. The vice chancellor for health sciences shall coordinate the West Virginia university school of medicine, the Marshall university school of medicine, and the West Virginia school of osteopathic medicine and also shall provide assistance to the governing boards on matters related to medical education and health sciences. The vice chancellor for health sciences shall perform all duties assigned by the chancellor, the commission and state law. In the case of a vacancy in the office of vice chancellor of health sciences, the duties assigned to this office by law are the responsibility of the chancellor or a designee;

(e) With the approval of the commission, the chancellor shall employ a vice chancellor for community and technical college education and workforce development who serves at the will and pleasure of the chancellor. The duties of this position include the general supervision of the joint commission for vocational-technical-occupational education, as provided in article three-a of this chapter, and such other duties as assigned. Any reference in this code to the vice chancellor for community and technical colleges means the vice chancellor for community and technical college education and workforce development, which vice chancellor for community and technical colleges shall become the vice chancellor for community and technical college education and workforce development. It is the duty and responsibility of the vice chancellor for community and technical college education and workforce development to:

(1) Provide assistance to the commission, the chancellor and the governing boards on matters related to community and technical college education;

(2) Advise, assist and consult regularly with the institutional presidents; institutional boards of governors or boards of advisors, as appropriate; and district consortia committees of the state institutions of higher education involved in community and technical college education; and

(3) Perform all duties assigned by the chancellor, the commission and state law.

(f) With the approval of the commission, the chancellor shall employ a vice chancellor for administration pursuant to section two, article four of this chapter;

(g) With the approval of the commission, the chancellor shall employ a vice chancellor for state colleges who shall serve at the will and pleasure of the chancellor. It is the duty and responsibility of the vice chancellor for state colleges to:

(1) Provide assistance to the commission, the chancellor and the state colleges and freestanding community and technical colleges on matters related to or of interest and concern to these institutions;

(2) Advise, assist and consult regularly with the institutional presidents and institutional boards of governors of each state college or freestanding community and technical college;

(3) Serve as an advocate and spokesperson for the state colleges and community and technical colleges to represent them and to make their interests, views and issues known to the chancellor, the commission and governmental agencies;

(4) Perform all duties assigned by the chancellor, the commission and state law; and

(5) Establish such guidelines as believed appropriate to restrict the use of public funds by the state colleges and freestanding community and technical colleges for influencing public policy development.

In addition, the vice chancellor for state colleges has the responsibility and the duty to provide staff assistance to the institutional presidents and governing boards to the extent practicable;

(h) Apart from the offices of the vice chancellors as set forth in this section and section two, article four of this chapter, the chancellor shall determine the organization and staffing positions within the office that are necessary to carry out his or her powers and duties and may employ necessary staff;

(i) The chancellor may enter into agreements with any state agency or political subdivision of the state, any state higher education institution or any other person or entity to enlist staff assistance to implement the powers and duties assigned by the commission or by state law;

(j) The chancellor shall be responsible for the day-to-day operations of the commission and shall have the following responsibilities:

(1) To carry out policy and program directives of the commission;

(2) To develop and submit annual reports on the implementation plan to achieve the goals and objectives set forth in section one-a, article one of this chapter and in the institutional compacts;

(3) To prepare and submit to the commission for its approval the proposed budget of the commission including the offices of the chancellor and the vice chancellors;

(4) Effective the first day of July, two thousand one, and under the direction of the commission, to promulgate rules for higher education, as set forth in article three-a, chapter twenty-nine-a of this code.

(5) Effective the first day of July, two thousand one, and under the direction of the commission, to:

(A) provide technical assistance, when requested, to the governing boards in the development of rules;

(B) Review rules and approve rules of the governing boards for filing with the office of the vice chancellor for administration;

(C) Determine when a joint rule among the governing boards is necessary or required by law and, in those instances and in consultation with the governing boards, promulgate the joint rule;

(D) Ensure that all the requirements are met for promulgating rules as set forth in article three-a, chapter twenty-nine-a of this code: *Provided*, That nothing in said chapter shall be construed to require the approval and filing of institution rules except for approval by the chancellor and filing in the office of the vice chancellor as provided herein; and

(E) Establish a process for the transition from the rules promulgated by the previous board of trustees, board of directors and the interim governing board to new rules filed by the chancellor, subject to approval of the policy commission. Until new rules are filed, the existing rules of said boards shall remain in effect and applicable to the respective state institutions of higher education. The chancellor shall review all new rules filed to replace the existing rules of the said boards and determine their proper classification as legislative, procedural or interpretive, notwithstanding the classification of the existing rule or a classification established for a specific rule by this code prior to the effective date of this section. The chancellor shall strictly and uniformly apply the definitions of rule, legislative rule, interpretive rule and procedural rule set forth in section two, article one, chapter twenty-nine-a of this code and unless specifically mandated by an act of the Legislature following the effective date of this section, may not require the filing, as rules, of regulations relating solely to the internal management of the commission, governing boards and institutions under their jurisdiction. The chancellor shall be responsible for ensuring that any policy which is required to be uniform across the institutions is applied in a uniform manner;

(6) To perform all other duties and responsibilities assigned by the commission or by state law.

(k) The chancellor shall be reimbursed for all actual and necessary expenses incurred in the performance of all assigned duties and responsibilities;

(l) The chancellor is the primary advocate for higher education and, with the commission, advises the Legislature on matters of higher education in West Virginia. As the primary advocate for higher education, the chancellor shall work closely with the legislative oversight commission on education accountability and with the elected leadership of the state to ensure that they are fully informed about higher education issues and that the commission fully understands the goals for higher education that the Legislature has established by law;

(m) The chancellor may design and develop for consideration by the commission new statewide or regional initiatives in accordance with the goals set forth in section one-a, article one of this chapter and the public policy agenda articulated by the commission.

(n) The chancellor shall work closely with members of the state board of education and with the state superintendent of schools to assure that the following goals are met:

(1) Development and implementation of a seamless kindergarten-through-college system of education; and

(2) Appropriate coordination of missions and programs. To further the goals of cooperation and coordination between the commission and the state board of education, the chancellor shall serve as an ex officio, nonvoting member of the state board of education.

**§18B-1B-6. Appointment of institutional presidents; evaluation.**

(a) *Appointment of institutional presidents.* -- Effective on the first day of July, two thousand, appointment of presidents of the public institutions of higher education shall be made as follows:

(1) Subject to the approval of the commission, the appropriate governing board of the institution shall appoint a president for Bluefield state college, Concord college, eastern West Virginia community and technical college, Fairmont state college, Glenville state college,

Marshall university, Shepherd college, southern West Virginia community and technical college, West Liberty state college, West Virginia northern community and technical college, West Virginia school of osteopathic medicine, West Virginia state college and West Virginia university;

(2) Subject to the approval of the appropriate governing board and to the provisions of article three-c of this chapter, the president of the appropriate institution shall appoint the president of the regional campuses of West Virginia university and of the community and technical colleges which remain linked administratively to a sponsoring institution. The presidents

of such regional campuses and community and technical colleges shall serve at the will and pleasure of the institutional president. The president of the sponsoring institution shall appoint a president for the administratively linked community and technical college at the appropriate time as outlined in the institutional compact and approved by the commission.

(3) Subject to the approval of the commission and to the provisions of articles three-c and three-f of this chapter, the president of the appropriate institution shall appoint the provost in those cases where the community and technical college remains as a component of another institution. The provost shall serve at the will and pleasure of the president of the employing institution.

(b) Incumbent heads of institutions. -- Any president of a public institution of higher education in office on the first day of July, two thousand, shall continue in office subject to state law: *Provided*, That the provost of an administratively linked community and technical college in office on the thirtieth day of June, two thousand one, may become the president of that community and technical college on the first day of July, two thousand one, with the approval of the governing board of the institution and subject to the consent of the commission. The presidents shall continue in office subject to state law and subject to the will and pleasure of the appropriate governing board or employing institution.

(c) Evaluation of institutional presidents. -- The governing boards shall conduct written performance evaluations of each institution's president: *Provided*, That the presidents of regional campuses shall be evaluated by the president of West Virginia university and the presidents of administratively linked community and technical colleges shall be evaluated by the president of the employing institution. Evaluations shall be done in every fourth year of employment as president, recognizing unique characteristics of the institution and utilizing institutional personnel, institutional boards of advisors as appropriate, staff of the appropriate governing board and persons knowledgeable in higher education matters who are not otherwise employed by a governing board. A part of the evaluation shall be a determination of the success of the institution in meeting the requirements of its institutional compact.

**§18B-1B-7. Duties of higher education policy commission during transition year.**

During the transition year beginning on the first day of July, two thousand, and ending on the thirtieth day of June, two thousand one, the following is the intent of the Legislature:

(a) The higher education interim governing board, established in article one-c of this chapter, is the governing agency for public higher education in West Virginia;

(b) The chancellor for higher education shall provide to the governing board adequate and appropriate staff assistance to carry out its duties and responsibilities as assigned by law;

(c) The commission has the power and authority to require the interim governing board to transfer from accounts under the control of the interim governing board such sums as the commission believes appropriate for the proper performance of its duties and responsibilities;

(d) The commission shall focus its attention first on organizing itself to carry out its duties and responsibilities, including, but not limited to, establishing a search and screening process to identify candidates and to employ a chancellor;

(e) The commission shall focus its attention second on the following policy areas, but may consider others as appropriate:

(1) Developing legislative rules as required by law;

(2) Researching and developing the elements of the finance plan required by section five, article one-a of this chapter;

(3) Developing guidelines to be used by institutional boards of governors in employing institutional presidents;

(4) Developing a statewide master plan pursuant to section nine of this article;

(5) Developing and approving the institutional compacts as provided in section two, article one-a of this chapter;

(6) Developing a plan to provide on-going education and training opportunities to members of institutional boards of governors and institutional boards of advisors, including, but not limited to, exploring the possibility of obtaining private funds to bring members together for orientation, education and leadership training prior to the first day of July, two thousand one;

(7) Establishing a peer group for each public institution of higher education in the state as provided in section three, article one-a of this chapter; and

(8) Developing the elements of the higher education report card to be used to report institutional and system progress on meeting the goals and objectives of the institutional compacts and of section one-a, article one of this chapter; and

(f) On or before the first day of January, two thousand one, the commission shall certify to the governor, the president of the Senate and the speaker of the House of Delegates draft legislation which will accomplish the transfer on the first day of July, two thousand one, of all powers, duties, property, obligations, contracts, rules, orders, resolutions or any other matters which should be transferred or vested in the commission, the governing boards or any other agency. In the event the Legislature does not enact legislation which accomplishes the recommended transfers or vesting, effective the first day of July, two thousand one, all such matters are transferred to and vested in the commission and the commission is hereby authorized and directed to delegate such matters as is consistent with assigned powers and duties in section four of this article and section four, article two-a of this chapter. In the event of a dispute between or among the commission and the governing boards as to the proper delegation of these matters, the decision of the commission shall control.

**§18B-1B-8. Higher education accountability; institutional and statewide report cards.**

Effective on the first day of July, two thousand one:

(a) The commission is directed to make information available to parents, students, faculty, staff, state policymakers and the general public on the quality and performance of public higher education. This information shall be consistent and comparable between and among the state institutions of higher education and, if applicable, comparable with information from peer institutions in the region and the nation.

(b) On or before the first day of July, two thousand one, the chancellor shall review policy series sixteen, related to the higher education report card, of the rules of the board of trustees and board of directors and determine whether a new rule should be adopted providing for the collection, analysis and dissemination of data and information on the performance of the state

institutions of higher education, including health sciences education, in relation to the findings, directives, goals and objectives set forth in section one-a, article one of this chapter, the institutional compacts and in comparison to their peers. The rules shall provide the legislative oversight commission on education accountability with full and accurate information while minimizing the institutional burden of recordkeeping and reporting. The rules shall include uniform definitions for the various indicators of student and institutional performance and guidelines for the collection and reporting of data and the preparation, printing and distribution of report cards under this section. The report card forms shall provide for brief, concise reporting in nontechnical language of required information. Any technical or explanatory material which a governing board wishes to include shall be contained in a separate appendix available for a reasonable fee to the general public upon request.

(c) The president or chief executive officer of each public college, university or community and technical college shall prepare and submit annually all requested data to the commission at the time established by the commission.

The commission shall prepare report cards for institutions under their jurisdiction and in accordance with the guidelines set forth in this section and rules promulgated under this section.

(d) The higher education central office staff under the direction of the vice chancellor for administration shall provide technical assistance to each institution and governing board in data collection and reporting and is responsible for assembling the statewide report card from information submitted by each governing board. The statewide report card shall include the data for each institution for each separately listed, applicable indicator and the aggregate of the data for all public institutions of higher education. The statewide report card shall be prepared using actual institutional, state, regional and national data, as applicable and available, indicating the present performance of the individual institutions, the governing boards and the state system of higher education. The report card also shall include goals and trends for the institutions and the higher education system and shall include all the information required either by statute or by rule as authorized in subsection (b) of this section. Statewide report cards shall be based upon information for the current school year or for the most recent school year for which the information is available, in which case such year shall be clearly footnoted.

(e) The statewide report card shall be completed and disseminated with copies to the legislative oversight commission on education accountability prior to the first day of January of each year.

(f) For a reasonable fee, the chancellor shall make copies of the report cards available to any individual requesting them.

#### **§18B-1B-9. Statewide master plan.**

(a) The commission shall develop a master plan for higher education for the state.

(b) The plan shall be developed on or before the first day of July, two thousand one, and shall be communicated to the legislative oversight commission on education accountability.

(c) The master plan shall include, but not be limited to, the following:

(1) A detailed demonstration of how the master plan will be used to meet the goals and objectives outlined in section one-a, article one of this chapter;

(2) A well-developed set of goals, as set forth in section one-a, article one of this chapter, outlining missions, degree offerings, resource requirements, physical plant needs, personnel needs, enrollment levels and other planning determinants and projections for public higher

education and other matters necessary in such a plan to assure that the needs of the state for a quality system of higher education are addressed; and

(3) A plan for involving and collaborating with the state board of education, the public and private institutions of higher education and other education providers to assure that a comprehensive system of education is developed for West Virginia.

(d) The master plan for higher education for the state shall be established for periods of not less than three nor more than six years and shall be revised periodically as necessary.

## **ARTICLE 1C. TRANSITION IMPLEMENTATION.**

### **§18B-1C-1. Transition oversight.**

(a) The legislative oversight commission on education accountability is charged with responsibility to monitor and oversee implementation of the policy changes required by this act.

(b) The responsibilities of the commission include, but are not limited to, the following:

(1) Reviewing the overall progress of the commission and institutions in implementing the provisions of this act;

(2) Reviewing the implementation of financing policy including:

(A) Monitoring the process for selecting peer institutions as provided for in section three, article one-a of this chapter;

(B) Monitoring the process for determining the institutional operating budgets pursuant to section five, article one-a of this chapter;

(3) Monitoring the development of indicators and benchmarks as provided for in section two, article one-a of this chapter;

(4) Monitoring the development of the institutional compacts pursuant to section two, article one-a of this chapter and the statewide master plan required in section nine, article one-b of this chapter; and

(5) Subject to the provisions of section eight, article three-c of this chapter, evaluating the existing community and technical college programs and services at each of the community and technical colleges and determining the effectiveness of the indicated manner to accomplish the essential conditions at each institution. Notwithstanding the provisions of section eight, article three-c of this chapter, the team shall determine if the goals of section one-a, article one of this chapter are being met under the current structure;

(c) The provisions of this section expire the thirtieth day of June, two thousand one.

### **§18B-1C-2. Higher education interim governing board.**

(a) For the transition year beginning on the first day of July, two thousand, and ending on the thirtieth day of June, two thousand one, there is hereby established the higher education interim governing board, hereinafter referred to as the “interim governing board”, to serve as the governing board for public higher education in West Virginia. The interim governing board shall have such powers and duties pursuant to section eight, article one of this chapter, as may be necessary to carry out their responsibilities under this section.

(b) The interim governing board is comprised of nine persons, appointed by the governor, with the advice and consent of the Senate. Nothing herein shall prohibit a person from serving concurrently on the interim governing board and an institutional board of advisors.

(c) The interim governing board shall be appointed as soon as possible after the passage of this act and shall continue its duties until the thirtieth day of June, two thousand one. Appointments to the board shall be made so that members may begin their work no later than the first day of July, two thousand. (d) Any person appointed to a position on the board shall

have governing experience in higher education, be knowledgeable on education matters and represent the public interest.

(e) The members shall elect a chairman.

(f) The board shall meet as needed at the time and place specified by the call of the chairperson or a majority of the members.

(g) The intent and purposes of the interim governing board are:

(1) To serve and act as the governing board for state institutions of higher education and to ensure a smooth, efficient transition to a new governing structure to be effective the first day of July, two thousand one;

(2) To initiate the implementation of this act and to inform the governor and the Legislature of the implementation status and of any areas in which further executive or legislative action may be necessary;

(3) To advise and assist the commission on implementation of the act in a manner which achieves the intent, purposes and goals of the act;

(4) To resolve, or seek appropriate remedy of, errors, omissions, oversights or conflicts relative to implementation of the act; and

(5) To take such other action within their scope of authority as may be necessary to provide for the smooth transition in the governance of the higher education system.

(h) Members of the board shall be reimbursed for actual and necessary expenses incident to the performance of their duties upon presentation of an itemized sworn statement thereof. The reimbursement shall be paid from legislative appropriations and other funds available to the board.

(i) A majority of the members constitutes a quorum for conducting the business of the board.

(j) On the first day of July, two thousand, there is transferred to the interim governing board, all powers, duties, property, obligations, contracts, rules, orders, resolutions or any other matters which were vested in the prior boards of trustees, directors or both.

(k) The provisions of this section expire on the thirtieth day of June, two thousand one.

## **ARTICLE 2. UNIVERSITY OF WEST VIRGINIA BOARD OF TRUSTEES.**

### **§18B-2-1. Composition of board; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.**

(a) The board of trustees shall consist of seventeen persons, of whom one shall be the chancellor of the board of directors of the state college system, ex officio, who shall not be entitled to vote; one shall be the state superintendent of schools, ex officio, who shall not be entitled to vote; one shall be the chairman of the advisory council of students, ex officio, who shall be entitled to vote; one shall be the chairman of the advisory council of faculty, ex officio, who shall be entitled to vote; and one shall be the chairman of the advisory council of classified employees, ex officio, who shall be entitled to vote. The other twelve trustees shall be citizens of the state, appointed by the governor, by and with the advice and consent of the Senate.

Each of the trustees appointed to the board by the governor shall represent the public interest and shall be especially qualified in the field of higher education by virtue of the person's knowledge, learning, experience or interest in the field.

Except for the ex officio trustees, no person shall be eligible for appointment to membership on the board of trustees who is an officer, employee or member of an advisory board of any state college or university, an officer or member of any political party executive committee, the holder

of any other public office or public employment under the government of this state or any of its political subdivisions or an appointee or employee of the board of trustees or the board of directors: *Provided*, That if there are no ethical restrictions under state or federal law, a federal employee may serve as a member of the board of trustees. Of the twelve trustees appointed by the governor from the public at large, not more than six thereof shall belong to the same political party and at least two trustees shall be appointed from each congressional district.

Except as provided in this section, no other person may be appointed to the board.

(b) The governor shall appoint twelve trustees as soon after the first day of July, one thousand nine hundred eighty-nine, as is practicable and the original terms of all trustees shall commence on that date.

The terms of the trustees appointed by the governor shall be for overlapping terms of six years, except, of the original appointments, four shall be appointed to terms of two years, four shall be appointed to terms of four years and four shall be appointed to terms of six years. Each subsequent appointment which is not for the purpose of filling a vacancy in an unexpired term shall be for a term of six years.

The governor shall appoint a trustee to fill any vacancy among the twelve trustees appointed by the governor, by and with the advice and consent of the Senate, which trustee appointed to fill such vacancy shall serve for the unexpired term of the vacating trustee. The governor shall fill the vacancy within sixty days of the occurrence of the vacancy.

All trustees appointed by the governor shall be eligible for reappointment: *Provided*, That a person who has served as a trustee or director during all or any part of two consecutive terms shall be ineligible to serve as a trustee or director for a period of three years immediately following the second of the two consecutive terms.

The chairman of the advisory council of students, ex officio; the chairman of the advisory council of faculty, ex officio; and the chairman of the advisory council of classified employees, ex officio, shall serve the terms for which they were elected by their respective advisory councils. These members shall be eligible to succeed themselves.

(c) Before exercising any authority or performing any duties as a trustee, each trustee shall qualify as such by taking and subscribing to the oath of office prescribed by section five, article IV of the constitution of West Virginia and the certificate thereof shall be filed with the secretary of state.

(d) No trustee appointed by the governor shall be removed from office by the governor except for official misconduct, incompetence, neglect of duty or gross immorality and then only in the manner prescribed by law for the removal of the state elective officers by the governor.

(e) The board of trustees is abolished the thirtieth day of June, two thousand.

(f) On the first day of July, two thousand, there is transferred to the interim governing board, all powers, duties, property, obligations, contracts, rules, orders, resolutions or any other matters which were vested in the prior boards of trustees, directors or both.

## **ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.**

### **§18B-2A-1. Composition of boards; terms and qualifications of members; vacancies; eligibility for reappointment.**

(a) Effective the thirtieth day of June, two thousand one, the institutional boards of advisors at Bluefield state college, Concord college, eastern West Virginia community and technical college, Fairmont state college, Glenville state college, Marshall university, Shepherd college, southern West Virginia community and technical college, West Liberty state college, West Virginia

northern community and technical college, the West Virginia school of osteopathic medicine, West Virginia state college and West Virginia university are abolished.

(b) Effective the first day of July, two thousand one, an institutional board of governors is established at each of the following institutions: Bluefield state college, Concord college, eastern West Virginia community and technical college, Fairmont state college, Glenville state college, Marshall university, Shepherd college, southern West Virginia community and technical college, West Liberty state college, West Virginia northern community and technical college, the West Virginia school of osteopathic medicine, West Virginia state college and West Virginia university. Each institutional board of governors shall consist of twelve persons: *Provided*, That the institutional boards of governors for Marshall university and West Virginia university shall consist of fifteen persons. Each institutional board of governors shall include:

(1) A full-time member of the faculty with the rank of instructor or above duly elected by the faculty;

(2) A member of the student body in good academic standing, enrolled for college credit work and duly elected by the student body;

(3) A member of the institutional classified staff duly elected by the classified staff; and

(4) Nine lay members appointed by the governor by and with the advice and consent of the Senate pursuant to section one-a, article six of this chapter: *Provided*, That for the institutional boards of governors at Marshall university and West Virginia university, twelve lay members shall be appointed by the governor by and with the advice and consent of the Senate pursuant to section one-a, article six of this chapter: *Provided, however*, That, of the appointed lay members, the governor shall appoint one superintendent of a county board of education from the area served by the institution: *Provided further*, That in making the initial appointments to the institutional boards of governors, the governor shall appoint, except in the case of death, resignation or failure to be confirmed by the Senate, those persons who are lay members of the institutional boards of advisors for those institutions named in subsection (a) on the thirtieth day of June, two thousand one, and appointed pursuant to section one-a, article six of this chapter.

(c) Of the nine members appointed by the governor, no more than five may be of the same political party: *Provided*, That of the twelve members appointed by the governor to the governing boards of Marshall university and West Virginia university, no more than seven may be of the same political party. At least six of the members shall be residents of the state: *Provided, however*, That of the twelve members appointed by the governor to the governing boards of Marshall university and West Virginia university, at least eight of the members shall be residents of the state. The student member shall serve for a term of one year. The term beginning in July, two thousand, shall end on the thirtieth day of June, two thousand one. The term beginning in July, two thousand one, shall end on the thirtieth day of June, two thousand two. Thereafter, the term shall begin on the first day of July. The faculty member and the classified staff member shall serve for a term of two years. The term beginning in July, two thousand, shall end on the thirtieth day of June, two thousand one, and the term beginning in July, two thousand one, shall end on the thirtieth day of June, two thousand three. Thereafter, the term shall begin on the first day of July. The appointed lay citizen members shall serve terms of four years each. All members shall be eligible to succeed themselves for no more than one additional term. A vacancy in an unexpired term of a member shall be filled for the unexpired term within thirty days of the occurrence of the vacancy in the same manner as the original appointment or election. Except in the case of a vacancy, all elections shall be held and all appointments shall be made no later than the thirtieth

day of June preceding the commencement of the term, except the election of officers for the term beginning in July, two thousand one shall be made that July. Each institutional board of governors shall elect one of its appointed lay members to be chairperson in June of each year. No member may serve as chairperson for more than two consecutive years.

(d) The appointed members of the institutional boards of governors shall serve staggered terms. Of the initial appointments by the governor to each of the institutional boards of governors, two shall be appointed for terms of one year, two shall be appointed for terms of two years, two shall be appointed for terms of three years and three shall be appointed for terms of four years: *Provided*, That for the initial appointments to the governing boards of Marshall university and West Virginia university, three shall be appointed for terms of one year, three shall be appointed for terms of two years, three shall be appointed for terms of three years and three shall be appointed for terms of four years. After the initial appointments, all appointees shall serve for terms of four years.

(e) No person shall be eligible for appointment to membership on an institutional board of governors who is an officer, employee or member of any other institutional board of governors, a member of an institutional board of advisors of any public institution of higher education, an employee of any institution of higher education, an officer or member of any political party executive committee, the holder of any other public office or public employment under the government of this state or any of its political subdivisions or a member of the commission: *Provided*, That this subsection shall not be construed to prevent the faculty, classified staff, student representative or superintendent of a county board of education from being members of the governing boards.

(f) Before exercising any authority or performing any duties as a member of a governing board, each member shall qualify as such by taking and subscribing to the oath of office prescribed by section five, article IV of the constitution of West Virginia and the certificate thereof shall be filed with the secretary of state.

(g) No member of a governing board appointed by the governor may be removed from office by the governor except for official misconduct, incompetence, neglect of duty or gross immorality and then only in the manner prescribed by law for the removal of the state elective officers by the governor.

(h) The president of the institution shall make available resources of the institution for conducting the business of its institutional board of governors. The members of the institutional board of governors shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties under this article upon presentation of an itemized sworn statement of their expenses. All expenses incurred by the institutional board of governors and the institution under this section shall be paid from funds allocated to the institution for that purpose.

#### **§18B-2A-2. Meetings.**

(a) The boards of governors shall hold at least six meetings in every fiscal year, including an annual meeting each June: *Provided*, That an annual meeting for the purpose of selecting the first chairperson and other officers shall be held during July, two thousand one. The president of the appropriate institution shall call the first meeting of the institutional board of governors in July, two thousand one, or as soon thereafter as practicable and preside until officers are elected. Officers elected in July, two thousand one, shall begin their terms upon election and shall serve until the thirtieth day of June the following year. Of the twelve voting members of the boards of

governors, seven shall constitute a quorum: *Provided*, That of the fifteen voting members of each of the boards of governors for the state universities, eight shall constitute a quorum. A majority vote of the quorum shall be necessary to pass upon matters before the institutional board of governors.

(b) The boards of governors may set aside time as they consider appropriate to afford administrators, faculty, students and classified staff an opportunity to discuss issues affecting these groups.

**§18B-2A-3. Supervision of governing boards; promulgation of rules.**

(a) For the transition year beginning on the first day of July, two thousand and ending on the thirtieth day of June, two thousand one, the interim governing board is subject to the supervision of the secretary of education and the arts. Rules adopted by the governing board are subject to approval by the secretary of education and the arts.

(b) Effective the first day of July, two thousand one, and thereafter, the governing boards are subject to the supervision of the chancellor. The chancellor is responsible for the coordination of policies and purposes of the governing boards and shall provide for and facilitate sufficient interaction among the governing boards and between the governing boards and the state board of education to meet the goals and objectives provided for in the compacts and in section one-a, article one of this chapter.

(c) The governing boards and the state board of education shall provide any and all information requested by the chancellor in a timely manner.

**§18B-2A-4. Powers and duties of governing boards generally.**

Effective the first day of July, two thousand one, each governing board shall separately have the following powers and duties:

(a) Determine, control, supervise and manage the financial, business and education policies and affairs of the state institutions of higher education under its jurisdiction;

(b) Develop a master plan for the institutions under its jurisdiction; except the administratively linked community and technical colleges shall develop their master plans subject to the provisions of section one, article six of this chapter. The ultimate responsibility for developing and updating the master plans at the institutional level resides with the institutional board of governors or board of advisors, as applicable, but the ultimate responsibility for approving the final version of the institutional master plans, including periodic updates, resides with the commission. Each master plan shall include, but not be limited to, the following:

(1) A detailed demonstration of how the master plan will be used to meet the goals and objectives of the institutional compact;

(2) A well-developed set of goals outlining missions, degree offerings, resource requirements, physical plant needs, personnel needs, enrollment levels and other planning determinates and projections necessary in such a plan to assure that the needs of the institution's area of responsibility for a quality system of higher education are addressed;

(3) Documentation of the involvement of the commission, institutional constituency groups, clientele of the institution and the general public in the development of all segments of the institutional master plan.

The plan shall be established for periods of not less than three nor more than six years and shall be revised periodically as necessary, including the addition or deletion of degree programs as, in the discretion of the appropriate governing board, may be necessary.

- (c) Prescribe for the state institutions of higher education under its jurisdiction, in accordance with its master plan and the compact for each institution, specific functions and responsibilities to meet the higher education needs of its area of responsibility and to avoid unnecessary duplication;
- (d) Direct the preparation of a budget request for the state institutions of higher education under its jurisdiction, such request to relate directly to missions, goals and projections as found in the institutional master plans and the institutional compacts;
- (e) Consider, revise and submit to the commission a budget request on behalf of the state institutions of higher education under its jurisdiction;
- (f) Review, at least every five years, all academic programs offered at the state institutions of higher education under its jurisdiction. The review shall address the viability, adequacy and necessity of the programs in relation to its institutional master plan, the institutional compact and the education and workforce needs of its responsibility district. As a part of the review, each governing board shall require the institutions under its jurisdiction to conduct periodic studies of its graduates and their employers to determine placement patterns and the effectiveness of the education experience. Where appropriate, these studies should coincide with the studies required of many academic disciplines by their accrediting bodies.
- (g) The governing boards also shall ensure that the sequence and availability of academic programs and courses offered by the institutions under their jurisdiction is such that students have the maximum opportunity to complete programs in the time frame normally associated with program completion. Each governing board also is responsible to see that the needs of nontraditional college-age students are appropriately addressed and, to the extent it is possible for the individual governing board to control, to assure core coursework completed at state institutions of higher education under its jurisdiction is transferable to any other state institution of higher education for credit with the grade earned.
- (h) Subject to the provisions of article one-b of this chapter, the appropriate governing board has the exclusive authority to approve the teacher education programs offered in the institution under its control. In order to permit graduates of teacher education programs to receive a degree from a nationally accredited program and in order to prevent expensive duplication of program accreditation, the chancellor may select and utilize one nationally recognized teacher education program accreditation standard as the appropriate standard for program evaluation.
- (i) Utilize faculty, students and classified staff in institutional-level planning and decision making when those groups are affected.
- (j) Administer a system for the management of personnel matters, including, but not limited to, personnel classification, compensation, and discipline for employees of the institutions under their jurisdiction, subject to the provisions of state and federal law: *Provided*, That the chancellor may promulgate a new uniform rule for the purpose of standardizing, as much as possible, the administration of personnel matters among the institutions of higher education;
- (k) Administer a system for the hearing of employee grievances and appeals therefrom as prescribed by article twenty-nine, chapter eighteen of this code so that aggrieved parties may be assured of timely and objective review: *Provided*, That after the first day of July, two thousand, the procedure established in article twenty-nine, chapter eighteen of this code shall be the exclusive mechanism for hearing employee grievances and appeals.
- (l) Solicit and utilize or expend voluntary support, including financial contributions and support services, for the state institutions of higher education under its jurisdiction;

(m) Appoint a president or other administrative head for the institutions of higher education under its jurisdiction subject to the provisions of section six, article one-b of this chapter.

(n) Conduct written performance evaluations of each institution's president pursuant to section six, article one-b of this chapter;

(o) Submit to the commission no later than the first day of November of each year an annual report of the performance of the institutions of higher education under its jurisdiction during the previous fiscal year as compared to stated goals in its master plan and institutional compact.

(p) Enter into contracts or consortium agreements with the public schools, private schools or private industry to provide technical, vocational, college preparatory, remedial and customized training courses at locations either on campuses of the public institution of higher education or at off-campus locations in the institution's responsibility district. To accomplish this goal, the boards are permitted to share resources among the various groups in the community.

(q) Delegate, with prescribed standards and limitations, the part of its power and control over the business affairs of a particular state institution of higher education under its jurisdiction to the president or other administrative head of the state institution of higher education in any case where it considers the delegation necessary and prudent in order to enable the institution to function in a proper and expeditious manner and to meet the requirements of its institutional compact. If a governing board elects to delegate any of its power and control under the provisions of this subsection, it shall notify the chancellor. Any such delegation of power and control may be rescinded by the appropriate governing board or the chancellor at any time, in whole or in part.

(r) Unless changed by the interim governing board or the chancellor, the governing boards shall continue to abide by existing rules setting forth standards for acceptance of advanced placement credit for their respective institutions. Individual departments at institutions of higher education may, upon approval of the institutional faculty senate, require higher scores on the advanced placement test than scores designated by the appropriate governing board when the credit is to be used toward meeting a requirement of the core curriculum for a major in that department.

(s) Each governing board, or its designee, shall consult, cooperate and work with the state treasurer and the state auditor to update as necessary and maintain an efficient and cost-effective system for the financial management and expenditure of special revenue and appropriated state funds at the institutions under its jurisdiction that ensures that properly submitted requests for payment be paid on or before due date, but in any event, within fifteen days of receipt in the state auditor's office.

(t) The governing boards in consultation with the chancellor and the secretary of the department of administration shall develop, update as necessary and maintain a plan to administer a consistent method of conducting personnel transactions, including, but not limited to, hiring, dismissal, promotions and transfers at the institutions under their jurisdiction. Each such personnel transaction shall be accompanied by the appropriate standardized system or forms which will be submitted to the respective governing board and the department of finance and administration.

(u) Notwithstanding any other provision of this code to the contrary, the governing boards shall have the authority to transfer funds from any account specifically appropriated for their use to any corresponding line item in a general revenue account at any agency or institution under their jurisdiction as long as such transferred funds are used for the purposes appropriated. The governing boards also shall have the authority to transfer funds from appropriated special revenue accounts for capital improvements under their jurisdiction to special revenue accounts at agencies

or institutions under their jurisdiction as long as such transferred funds are used for the purposes appropriated; and

(v) Notwithstanding any other provision of this code to the contrary, the governing boards may acquire legal services as are considered necessary, including representation of the governing boards, their institutions, employees and officers before any court or administrative body. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the governing boards may, but are not required to, call upon the attorney general for legal assistance and representation as provided by law.

### **ARTICLE 3. BOARD OF DIRECTORS OF THE STATE COLLEGE SYSTEM.**

#### **§18B-3-1. Composition of board; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.**

(a) The board of directors of the state college system shall consist of sixteen persons, of whom one shall be the chancellor of the university of West Virginia board of trustees, ex officio, who shall not be entitled to vote; one shall be the state superintendent of schools, ex officio, who shall not be entitled to vote; one shall be the chair of the joint commission for vocational-technical-occupational education, ex officio, who shall not be entitled to vote; one shall be the chairman of the advisory council of students, ex officio, who shall be entitled to vote; one shall be the chairman of the advisory council of faculty, ex officio, who shall be entitled to vote; and one shall be the chairman of the advisory council of classified employees, ex officio, who shall be entitled to vote. The other ten directors shall be citizens of the state, appointed by the governor, by and with the advice and consent of the Senate. On or after the tenth day of March, one thousand nine hundred ninety-six, the board shall be reconstituted and all terms of members appointed by the governor prior to the tenth day of March, one thousand nine hundred ninety-six, shall expire upon the appointment by the governor of all the directors required to be appointed by this section. The governor shall make appointments required by this section no later than the fifteenth day of March, one thousand nine hundred ninety-six.

Each of the directors appointed to the board by the governor shall represent the public interest and shall be especially qualified in the field of higher education by virtue of the person's knowledge, learning, experience or interest in the field. The relative enrollments of baccalaureate and community and technical students in the state college system shall be considered by the governor when making such appointments and the governor shall use his or her best efforts to achieve a balance among the members who reflect the various interests, goals and concerns reflected by the relative enrollments.

Except for the ex officio directors, no person shall be eligible for appointment to membership on the board of directors who is an officer, employee or member of an advisory board of any state college or university, an officer or member of any political party executive committee, the holder of any other public office or public employment under the government of this state or any of its political subdivisions, or an appointee or employee of the board of trustees or board of directors: *Provided*, That if there are no ethical restrictions under state or federal law, a federal employee may serve as a member of the board of directors. Of the ten directors appointed by the governor from the public at large, not more than five thereof shall belong to the same political party and at least three directors of the board shall be appointed from each congressional district.

Except as provided in this section, no other person may be appointed to the board.

(b) The governor shall appoint ten directors as soon after the tenth day of March, one thousand nine hundred ninety-six, as is practicable and the original terms of all directors shall commence on

that date. The terms of the directors appointed by the governor shall be for overlapping terms of six years, except, of the original appointments, three shall be appointed to terms of two years, three shall be appointed to terms of four years and four shall be appointed to terms of six years. Each subsequent appointment which is not for the purpose of filling a vacancy in an unexpired term shall be appointed to a term of six years.

The governor shall appoint a director to fill any vacancy among the ten directors appointed by the governor, by and with the advice and consent of the Senate, which director appointed to fill such vacancy shall serve for the unexpired term of the vacating director. The governor shall fill the vacancy within sixty days of the occurrence of the vacancy.

All directors appointed by the governor shall be eligible for reappointment: *Provided*, That a person who serves as a director or trustee during all or any part of two consecutive terms beginning after the first day of March, one thousand nine hundred ninety-six, shall be ineligible to serve as a director for a period of three years immediately following the second of the two consecutive terms.

The chairman of the advisory council of students, ex officio; the chairman of the advisory council of faculty, ex officio; and the chairman of the advisory council of classified employees, ex officio, shall serve the terms for which they were elected by their respective advisory councils. These members shall be eligible to succeed themselves.

(c) Before exercising any authority or performing any duties as a director, each director shall qualify as such by taking and subscribing to the oath of office prescribed by section five, article IV of the constitution of West Virginia and the certificate thereof shall be filed with the secretary of state.

(d) No director appointed by the governor shall be removed from office by the governor except for official misconduct, incompetence, neglect of duty or gross immorality and then only in the manner prescribed by law for the removal by the governor of the state elective officers.

(e) The board of directors is abolished the thirtieth day of June, two thousand.

(f) On the first day of July, two thousand, there is transferred to the interim governing board all powers, duties, property, obligations, contracts, rules, orders, resolutions or any other matters which were vested in the prior boards of trustees, directors or both.

### **ARTICLE 3A. WEST VIRGINIA JOINT COMMISSION FOR VOCATIONAL-TECHNICAL-OCCUPATIONAL EDUCATION.**

#### **§18B-3A-1. Joint commission continued; jurisdiction of higher education policy commission.**

The West Virginia joint commission for vocational-technical-occupational education, hereinafter referred to in this article as the joint commission, is hereby continued. The joint commission is subject to the jurisdiction of the commission established in article one-b of this chapter and is subject to the supervision of the chancellor and the vice chancellor for community and technical college education and workforce development.

#### **§18B-3A-2. Legislative findings and intent.**

The Legislature finds that the goals for post-secondary education set forth in section one-a, article one of this chapter include a finding that West Virginia's future rests not only on how well its youth are educated, but also on how well it educates its entire population at any age and that the state must take into account the imperative need to serve the education needs of working-age adults. These findings further note that the state should make the best use of the expertise that private institutions of higher education, vocational and technical programs and private proprietary

schools can offer and recognize the importance of their contributions to the economic, social and cultural well-being of their communities.

The Legislature further finds that certain goals focus on the need to serve better both traditional and nontraditional students and adults. Among these goals is one which states that the overall focus of education is on a lifelong process which is to be as seamless as possible at all levels and is to encourage citizens of all ages to increase their knowledge and skills. These goals also emphasize the need for cooperation and collaboration at all levels in education, training and workforce development to achieve the state's public policy agenda.

The Legislature further finds that certain acts to streamline accountability, to make maximum use of existing assets to meet new demands and target new funding to initiatives designed to enhance and reorient existing capacity, to provide incentives for brokering and collaboration and to focus on new demands now require that many of the responsibilities originally charged to the joint commission be reexamined.

Therefore, the intent of the Legislature in amending and reenacting this article is to reorient the mission, role and responsibilities of the joint commission consistent with and supportive of the mission, role and responsibilities of the commission, the goals for post-secondary education and accountability for achieving the state's public policy agenda.

**§18B-3A-3. Appointment, composition and terms of joint commission; meetings; expenses.**

(a) The joint commission is comprised of nine persons, seven of whom are appointed by the governor, with the advice and consent of the Senate. The vice chancellor for community and technical college education and workforce development and the assistant superintendent for technical and adult education of the state department of education shall serve as ex officio, nonvoting members of the joint commission. On or after the effective date of this section, the joint commission shall be reconstituted and all terms of members appointed by the governor prior to the effective date of this section, shall expire upon the appointment by the governor of all the members required to be appointed by this section.

The seven members appointed by the governor shall represent the interests of the business, labor and employer communities and demonstrate knowledge of the workforce needs of the various areas of the state. No person who is employed by an institution of higher education and no person who is engaged in providing, or employed by a person or company whose primary function is to provide workforce development services and activities, is eligible to serve on the joint commission. No provider of education services, workforce development services or related activities may serve on the joint commission. The governor shall appoint three members from each congressional district. Not more than four of the members may be from the same political party.

(b) Members of the joint commission shall serve for terms of four years, except that of the original appointments, one member shall be appointed for one year; two members shall be appointed for two years; two members shall be appointed for three years; and two members shall be appointed for four years. No member may serve more than two consecutive full terms nor may any member be appointed to a term which results in the member serving more than eight consecutive years.

(c) The vice chancellor for community and technical college education and workforce development shall call the initial meeting of the commission and preside until a chairperson is selected. The members shall elect a chairperson from among the persons appointed by the governor. The joint commission shall meet at least quarterly and may meet more often at the call

of the chairperson. One such meeting shall be a public forum for the discussion of the goals and standards for vocational education in the state. Members of the joint commission shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties under this article upon presentation of an itemized sworn statement of their expenses, except that members of the commission who are employees of the state shall be reimbursed by their employing agency.

**§18B-3A-4. Definitions.**

As used in this article:

(a) "Secondary vocational-technical-occupational education" means any course or program at the high school level that results in, or may result in, a high school diploma or its equivalent, under the jurisdiction of the state board of education.

(b) "Post-secondary vocational-technical-occupational education" means any course or program beyond the high school level that results in, or may result in, the awarding of a two-year associate degree, certificate or other credential from an institution under the jurisdiction of a governing board or other public or private education provider.

(c) "Adult basic education" means adult basic skills education designed to improve the basic literacy needs of adults, including information processing skills, communication skills and computational skills, leading to a high school equivalency diploma, under the jurisdiction of the state board of education.

**§18B-3A-5. Duties and responsibilities.**

The joint commission has the duties and responsibilities set forth in the provisions of section two, article two-b, chapter eighteen of this code and in addition shall:

(a) Advise and assist the state board of education and the commission on state plans for secondary and post-secondary vocational-technical-occupational and adult basic education, including, but not limited to:

(1) Policies to strengthen vocational-technical-occupational and adult basic education;

(2) Programs and methods to assist in the improvement, modernization and expanded delivery of vocational-technical-occupational and adult basic education programs;

(3) The distribution of federal vocational education funding provided under the Carl D. Perkins Vocational and Technical Education Act of 1998, PL 105-332, with an emphasis on the distribution of financial assistance among secondary and post-secondary vocational-technical-occupational and adult basic education programs to help meet the public policy agenda;

(4) Collaboration, cooperation and interaction among all secondary and post-secondary vocational-technical-occupational and adult basic education programs in the state, including the programs assisted under the federal Carl D. Perkins Vocational and Technical Education Act of 1998, PL 105-332 and the Workforce Investment Act, to promote the development of seamless curriculum and the elimination of duplicative programs;

(5) Coordination of the delivery of vocational-technical-occupational and adult basic education in a manner designed to make the most effective use of available public funds to increase accessibility for students; and

(6) Encouraging through articulation the most efficient utilization of available resources, both public and private, to meet the needs of vocational-technical-occupational and adult basic education students.

(b) Analyze and report to the commission on the distribution of spending for vocational-technical-occupational and adult basic education in the state and on the availability of vocational-technical-occupational and adult basic education activities and services within the state.

(c) Promote the delivery of vocational-technical-occupational and adult basic education programs in the state which emphasize the involvement of business and labor organizations.

(d) Promote public participation in the provision of vocational-technical-occupational and adult basic education at the local level, with an emphasis on programs which involve the participation of local employers and labor organizations.

(e) Promote equal access to quality vocational-technical-occupational and adult basic education programs to handicapped and disadvantaged individuals, adults who are in need of training and retraining, individuals who are single parents or homemakers, individuals participating in programs designed to eliminate sexual bias and stereotyping in vocational-technical-occupational education, and criminal offenders serving in correctional institutions.

(f) Assist the commission, the chancellor, the vice chancellor for community and technical college education and workforce development and those institutions delivering community and technical college education, as defined in section two, article one, of this chapter in the successful and efficient development, coordination and delivery of community and technical college programs and services in the state.

(g) Under the supervision of the chancellor and the vice chancellor for community and technical college education and workforce development, the joint commission has the following additional powers and duties:

(1) To oversee the step-by-step implementation of the comprehensive community and technical college system of education provided in article three-c of this chapter;

(2) To interview nominees for appointment as community and technical college presidents or provosts and make recommendations to the chancellor, or in the case of a provost, to the institutional president;

(3) To review and make recommendations to the commission for the approval of the institutional compacts for the community and technical colleges;

(4) To make recommendations to the commission for approval of the administration and distribution of the independently-accredited community and technical college development account;

(5) To ensure coordination among the community and technical colleges and other state-level, regional and local workforce entities, including, but not limited to, the human resource investment council and the West Virginia literacy council;

(6) To assist the community and technical colleges in establishing and promoting links with employers and labor in the geographic areas for which each of the community and technical colleges is responsible;

(7) To develop alliances among the community and technical colleges for resource sharing, joint development of courses and courseware, sharing of expertise and staff development;

(8) To provide a point for resolving issues relating to transfer and articulation between and among community and technical colleges, state colleges and universities and to advise the commission on these issues;

(9) To assist the commission in developing a statewide system of community and technical college programs and services to place-bound adults and employers in every region of West

Virginia for competency-based certification of knowledge and skills, including a statewide competency-based associate degree program; and

(10) To review and make recommendations to the commission for the approval of the institutional master plans for the community and technical colleges.

### **ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.**

#### **§18B-3C-1. Legislative findings.**

(a) Findings. -- The Legislature hereby finds:

(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.

(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:

(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.

(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.

(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 thirteen, subsection (a), section four, article one-b of this chapter.

#### **§18B-3C-2. Purposes of article.**

The general purposes of this article are the following:

(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; that encourages traditional and nontraditional students and adult learners to pursue a life-time of learning; that serves as an instrument of economic development; and that has the independence and flexibility to respond quickly to changing needs;

(b) To charge the respective governing boards with providing community and technical college education at state institutions of higher education under their jurisdiction that has the

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;

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

(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;

(e) To establish responsibility districts for each of the community and technical colleges to ensure accountability that the full range of community and technical education programs and services is provided in all areas of the state;

(f) To define the full range of programs and services that every 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-3. Essential conditions for community and technical college programs and services.**

The Legislature hereby establishes the following essential conditions for community and technical college programs and services:

(a) Independent accreditation by the commission on institutions of higher education of the north central association of colleges and schools (NCA) reflecting external validation that academic programs, services, faculty, governance, financing and other policies are aligned with the community and technical college mission of the institution;

(b) A full range of community and technical college services offered as specified in section six of this article;

(c) Programmatic approval consistent with the provisions of section nine of this article;

(d) A fee structure competitive with its peer institutions;

(e) Basic services, some of which may be obtained under contract with existing institutions in the region. These basic services shall include, but are not limited to, the following:

(1) Student services, including, but not limited to, advising, academic counseling, financial aid and provision of the first line of academic mentoring and mediation;

(2) Instructional support services;

(3) Access to information and library services;

(4) Physical space in which courses can be offered;

(5) Access to necessary technology for students, faculty and mentors;

(6) Monitoring and assessment; and

(7) Administrative services, including, but not limited to, registration, fee collection and bookstore and other services for the distribution of learning materials;

(f) A president who is the chief academic and administrative officer of the community and technical college appointed and serving pursuant to the terms of section six, article one-b of this chapter;

(g) An institutional board of governors or an institutional board of advisors appointed and serving as required by law;

(h) A full-time core faculty, complemented by persons engaged through contract or other arrangements, including college and university faculty, to teach community college courses and qualified business, industry and labor persons engaged as adjunct faculty in technical areas;

(i) A faculty personnel policy, formally established to be separate and distinct from that of other institutions, which includes, but is not limited to, appointment, promotion, workload and, if appropriate, tenure pursuant to section nine of this article. These policies shall be appropriate for the community and technical college mission and may not be linked to the policies of any other institution;

(j) Community and technical colleges designed and operating as open-provider centers with the authority and flexibility to draw on the resources of the best and most appropriate provider to ensure that community and technical college services are available and delivered in the region in a highly responsive manner. A community and technical college may contract with other institutions and providers as necessary to obtain the academic programs and resources to complement those available through a sponsoring college, where applicable, in order to meet the region's needs.

(k) Separately identified state funding allocations for each of the community and technical colleges. The president of the community and technical college has full budgetary authority for the entity, subject to accountability to its governing board, including authority to retain all tuition and fees generated by the community and technical college for use to carry out its mission.

**§18B-3C-4. Responsibility districts.**

(a) Each community and technical college is hereby assigned a responsibility district within which it is responsible for providing the full array of community and technical college programs and services as defined in section six of this article. The programs and services shall address the public policy agenda, compact elements and goals for post-secondary education established in section one-a, article one of this chapter as they relate to community and technical colleges, and other goals which may be established by the commission. The responsibility districts shall be comprised of contiguous areas of the state which have similar economic, industrial, educational, community and employment characteristics to facilitate specialization in mission and programming. For the purposes of initial implementation and organization, the districts shall be comprised as follows and assigned to the designated community and technical colleges:

(1) West Virginia northern community and technical college - Ohio, Brooke, Hancock, Marshall, Tyler and Wetzel counties;

(2) West Virginia university at Parkersburg - Wood, Jackson, Pleasants, Ritchie, Roane, Tyler and Wirt counties;

(3) Southern West Virginia community and technical college - Logan, Boone, Lincoln, McDowell, Mingo, Raleigh and Wyoming counties;

(4) Bluefield state community and technical college - Mercer, Greenbrier, McDowell, Monroe, Pocahontas, Raleigh and Summers counties;

(5) Glenville state community and technical college - Gilmer, Barbour, Braxton, Calhoun, Clay, Lewis, Nicholas, Roane, Upshur and Webster counties;

(6) Fairmont state community and technical college - Marion, Doddridge, Harrison, Monongalia, Preston, Randolph, Taylor and Barbour counties;

(7) Shepherd community and technical college - Jefferson, Berkeley, Grant and Morgan counties;



provisions of section nine of this article. The president and institutional board of advisors shall seek assistance from and utilize a district consortium committee in fulfilling this responsibility.

(c) Independently accredited community and technical colleges will serve as higher education centers for their regions by brokering with colleges, universities and other providers, in state and out of state to ensure the coordinated access of students, employers, and other clients to needed programs and services.

**§18B-3C-7. District consortia committees.**

(a) The president or provost of each community and technical college shall form a district consortium committee which shall include representatives, distributed geographically to the extent practicable, of the major community and technical college branches, vocational-technical centers, comprehensive high schools, four-year colleges and universities, community service or cultural organizations, economic development organizations, business, industry, labor, elected public officials and employment and training programs and offices within the district. The consortium committee shall be chaired by the president or provost, or his or her designee, and shall advise and assist the president or provost with the following:

(1) 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) 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 development of a unified effort 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 reviewing and revising curricula to ensure that the workforce needs are met, developing new programs and phasing out or modifying existing programs as appropriate to meet such needs, streamlining procedures for designing and implementing customized training programs and accomplishing such other complements of a quality comprehensive community and technical college;

(5) Increasing the integration of secondary and post-secondary curriculum and programs that are targeted to meet regional labor market needs, including implementation of a comprehensive school-to-work transition system that accomplishes the following:

(A) Helps students focus on career objectives;

(B) Establishes cooperative programs and student internships with business and industry;

(C) Builds upon current programs such as high schools that work, tech prep associate degree programs, registered apprenticeships and rural entrepreneurship through action learning; and

(D) Addresses the needs of at-risk students and school dropouts;

(6) Planning and implementation of integrated professional development activities for secondary and post-secondary faculty, staff and administrators and other consortium partners throughout the district;

(7) 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) Performance assessment of 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 coursework in which they already possess competency;

(9) Cooperating with workforce development investment councils in establishing 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 employers to locate available workers;

(10) Increasing the integration of adult literacy, adult basic education, federal workforce investment act and community and technical college programs and services to expedite the transition of adults from welfare to gainful employment; and

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

**§18B-3C-8. Process for achieving independently-accredited community and technical colleges.**

(a) Over a six-year period beginning the first day of July, two thousand one, West Virginia shall move from having "component" community and technical colleges to having a statewide network of independently-accredited community and technical colleges serving every region of the state. This section does not apply to the freestanding community and technical colleges, West Virginia university at Parkersburg and Potomac state college of West Virginia university.

(b) To be eligible for funds appropriated to develop independently accredited community and technical colleges, a state institution of higher education shall demonstrate the following:

(1) That it has as a part of its institutional compact approved by the commission a step-by-step plan with measurable benchmarks for developing an independently accredited community and technical college that meets the essential conditions set forth in section three of this article, except as limited in subdivisions (1),(2) and (4), subsection (c), of this section;

(2) That it is able to offer evidence annually to the satisfaction of the commission that it is making progress toward accomplishing the benchmarks established in its institutional compact for developing an independently accredited community and technical college; and

(3) That it has submitted an expenditure schedule approved by the commission which sets forth a proposed plan of expenditures for funds allocated to it from the fund.

(c) The following are recommended strategies for moving from the current arrangement of "component" community and technical colleges to the legislatively mandated statewide network of independently accredited community and technical colleges serving every region of the state. The Legislature recognizes that there may be other means to achieve this ultimate objective; however, it is the intent of the Legislature that the move from the current arrangement of "component" community and technical colleges to the legislatively mandated statewide network of independently accredited community and technical colleges serving every region of the state shall be accomplished. The following recommendations are designed to reflect significant variations among regions and the potential impacts on the sponsoring institutions.

(1) *Marshall university community and technical college, West Virginia state community and technical college and West Virginia university institute of technology.* -- The status of these institutions shall be determined pursuant to the provisions of article three-f of this chapter.

(2) *Bluefield state community and technical college.* -- Bluefield state community and technical college, including the Lewisburg center, should retain its relationship as a component of Bluefield state college. The president and the institutional board of governors of Bluefield state college are accountable to the commission for ensuring that the full range of community and technical college services is available throughout the region and that the community and technical college adheres, as nearly as possible, to the essential conditions pursuant to section three of this article with the possible exception of independent accreditation.

(3) *Center for higher education and workforce development at Beckley.* -- The president of Bluefield state college and the institutional board of advisors are responsible, according to a plan approved by the commission, for the step-by-step implementation of a new independently accredited community and technical college administratively linked to Bluefield state college, known as the center for higher education and workforce development, which adheres to the essential conditions pursuant to section three of this article. As an independently accredited community and technical college, the center also shall serve as higher education center for its region by brokering with other colleges, universities and other providers, in-state and out-of-state,

both public and private, to ensure the coordinated access of students, employers, and other clients to needed programs and services. The new community and technical college shall serve Raleigh, Summers and Fayette counties and be headquartered in Beckley. The commission shall appoint an institutional board of advisors for the center at Beckley which is separate from the institutional board of advisors of Bluefield state college but may have some overlap in membership to facilitate coordination. In addition, the president of the center shall appoint a district consortium committee to advise the president on a comprehensive assessment of the needs in the region, on coordinating efforts with regional labor market information systems, and on other areas as provided for in section seven of this article relating to the duties of district consortia committees. The center shall facilitate the planning and development of a unified effort involving multiple providers and facilities, including, but not limited to, Concord college, the college of West Virginia, Marshall university, West Virginia university, West Virginia university institute of technology and other entities to meet the documented workforce development needs in the region: *Provided*, That nothing in this subdivision prohibits or limits any existing, or the continuation of any existing affiliation between the college of West Virginia, West Virginia university institute of technology and West Virginia university. The center for higher education and workforce development at Beckley shall also provide the facilities and support services for other public and private institutions delivering courses, programs and services in Beckley. The objective would be to assure students and employers in the area that there would be coordination and efficient use of resources among the separate programs and facilities, existing and planned, in the Beckley area. If, at a future time, the commission believes it appropriate, it may recommend to the Legislature that the Beckley institution be created as a freestanding institution.

(4) *Glenville state community and technical college.* -- Glenville state community and technical college, including the centers in Nicholas, Lewis and Roane counties, should retain its relationship as a component of Glenville state college. The president of Glenville state college and the governing board are accountable to the commission for ensuring that the full range of community and technical college services is available throughout the region and that the community and technical college adheres as nearly as possible to the essential conditions pursuant to section three of this article, with the possible exception of independent accreditation.

(5) *Fairmont state community and technical college.* -- Fairmont state community and technical college should be an independently accredited community and technical college serving Marion, Doddridge, Barbour, Harrison, Monongalia, Preston, Randolph and Taylor counties. The community and technical college is developed on the base of the existing component community and technical college of Fairmont state college. Subject to the provisions of section eight of this article, the president and the governing board of Fairmont state college are responsible, according to a plan approved by the commission, for step-by-step implementation of the independently accredited community and technical college which adheres to the essential conditions pursuant to section three of this article. Subject to the provisions of section eight of this article, the community and technical college will remain administratively linked to Fairmont state college. Nothing herein shall be construed to require Fairmont state college to discontinue any associate degree program in areas of particular institutional strength which are closely articulated to their baccalaureate programs and missions or which are of a high-cost nature and can best be provided in direct coordination with a baccalaureate institution.

(6) *Shepherd community and technical college.* - Shepherd community and technical college should become an independently accredited community and technical college. It should serve

Jefferson, Berkeley and Morgan counties. The new community and technical college is developed on the base of the existing component community and technical college of Shepherd college. Subject to the provisions of section eight of this article, the president and the governing board of Shepherd college are responsible, according to a plan approved by the commission, for step-by-step implementation of the new independently accredited community and technical college which adheres to the essential conditions pursuant to section three of this article. Subject to the provisions of section eight of this article, the community and technical college will remain administratively linked to Shepherd college. Nothing herein shall be construed to require Shepherd college to discontinue any associate degree program in areas of particular institutional strength which are closely articulated to their baccalaureate programs and missions or which are of a high-cost nature and can best be provided in direct coordination with a baccalaureate institution.

**§18B-3C-9. Increasing flexibility for community and technical colleges.**

(a) Notwithstanding any rules or procedures of the governing boards to the contrary, the community and technical colleges have the authority and the duty to:

(1) Incorporate the most effective and efficient use of technology in accessing and delivering courses and programs in order to make the best use of available resources and to control costs;

(2) Incorporate a model to offer occupational program curricula in smaller modules to accommodate specific student and employer needs and to gain sufficient flexibility in formatting courses;

(3) Serve as a facilitator for education programs from outside delivery sources to meet the needs of the residents and employers of the district; and

(4) Employ faculty in the most effective manner to serve the core mission of the community and technical college.

(A) To that end, the freestanding community and technical colleges may employ faculty for an indefinite period without a grant of tenure and shall work toward a staffing goal of no more than twenty percent of the faculty holding tenure or being tenure-track employees: *Provided*, That tenured faculty employed by the freestanding community and technical colleges before the first day of July one thousand nine hundred ninety-nine, shall not be affected by this provision.

(B) All community and technical colleges, other than those set forth in paragraph (A) of this subdivision, may employ faculty for an indefinite period without a grant of tenure. The immediate goal is to use this provision as a tool to assist the community and technical colleges in meeting the essential conditions provided for in section three of this article and in gaining independent accreditation status. The ultimate goal is to provide the flexibility community and technical colleges need to meet the needs of the state by working toward having no more than twenty percent of the core faculty holding tenure or being tenure-track employees: *Provided*, That tenured faculty employed by community and technical colleges other than freestanding community and technical colleges on the effective date of this section may not be affected by this provision: *Provided, however*, That tenure shall not be denied to a faculty member solely as a result of change in employing institution necessitated by the change to independently accredited community and technical colleges.

(b) The governing boards shall adopt a model of program approval for the community and technical colleges that permits occupational programs to be customized to meet needs without requiring approval by any governing board or other agency of government and, furthermore, that

incorporates a post-audit review of such programs on a three-year cycle to determine the effectiveness of such programs in meeting district needs.

(c) The interim governing board or the chancellor shall promulgate rules to implement the provisions of this section and shall file these rules for review and approval with the chancellor no later than the first day of December, two thousand.

**§18B-3C-10. Free-standing community and technical colleges; tuition and fees.**

(a) During the transition year, beginning the first day of July, two thousand, and ending the thirtieth day of June, two thousand one, the appropriate governing board may fix tuition and establish and set such other fees to be charged students at community and technical colleges as it considers appropriate and shall pay such tuition and fees collected into a revolving fund for the partial or full support, including the making of capital improvements, of any community and technical college. Funds collected at any such community and technical college may be used only for the benefit of that community and technical college. The appropriate governing board also may establish special fees for such purposes as, including, but not limited to, health services, student activities, student recreation, athletics or any other extracurricular purposes. Such special fees shall be paid into special funds in the state treasury and used only for the purposes for which collected.

(b) Beginning on the first day of July, two thousand one, the appropriate governing board may fix tuition and establish and set such other fees to be charged students at community and technical colleges as it considers appropriate, subject to the provisions of subdivision (2) of this subsection.

(1) As used in this subsection, “appropriate governing board” means:

(A) The governing board of the institution, in the case of a free-standing community and technical college;

(B) The governing boards of Glenville state college and Bluefield state college, respectively, in the cases of Glenville community and technical college and Bluefield community and technical college; and

(C) The institutional board of advisors in all other cases.

(2) The appropriate governing board, in consultation with the joint commission, also may establish special fees for such purposes as, including, but not limited to, health services, student activities, student recreation, athletics or any other extracurricular purposes: *Provided*, That the joint commission shall determine which fees, if any, do not apply to the entire student population and to which students such fees do not apply. Such special fees may be used only for the purposes for which collected.

(3) A community and technical college may contract with any other state institution of higher education for the participation of its students in programs, activities or services of the other institution and for the use of such fees collected.

(c) All tuition and fee charges in the total aggregate shall comply with the terms of the institutions compact approved by the commission based on peer comparisons or cost of instruction as set forth in the goals for post-secondary education pursuant to section one-a, article one of this chapter.

**§18B-3C-11. Shared facilities and resources; memoranda of agreements; and joint administrative boards.**

(a) To the maximum extent feasible, community and technical colleges shall be developed as multisite institutions utilizing existing facilities, including cooperative use of existing vocational education institutes and centers, offering services on the campuses of existing baccalaureate and graduate institutions, at work sites in collaboration with employers and other appropriate venues.

Subject to the limitation of subdivision (13), subsection (a), section four, article one-b of this chapter, new public capital investment in physical facilities shall be kept to a minimum. All community and technical colleges shall have missions encompassing the full range of services and programs.

(b) The governing boards may accept federal grants and funds from county boards of education, other local governmental bodies, corporations or persons. The governing boards may enter into memoranda of understanding agreements with such governmental bodies, corporations or persons for the use or acceptance of local facilities and for the acceptance of grants or contributions toward the cost of the acquisition or construction of such facilities. Such local governmental bodies may convey capital improvements, or lease the same without monetary consideration, to the governing boards for the use by the community and technical college and the governing boards may accept such facilities, or the use or lease thereof, and grants or contributions for such purposes from such governmental bodies, the federal government or any corporation or person. In addition, the various education agencies shall establish cooperative relationships to utilize existing community and technical colleges and programs, public school vocational centers and other existing facilities to serve the identified needs within the community and technical college district.

(c) To facilitate the administration, operation and financing of programs in shared facilities of any institution of public higher education and a county board or boards of education, the affected president and county board or boards of education may appoint a joint administrative board consisting of such membership and possessing such delegated authorities as the respective boards consider necessary and prudent for the operation of such shared facilities. Such joint administrative boards, as an example, may consist of five members appointed as follows: The county board of education appoints two members; the president appoints two members; and one at-large member, who shall chair the joint administrative board, is appointed by mutual agreement of the board and the president. When two or more county boards of education are participating in such shared program, such county board appointments would be made by mutual agreement of each of the participating county boards. Members would serve for staggered terms of three years. With respect to initial appointments, one member appointed by the county board or boards of education and one member appointed by the governing board would serve for one year, one member appointed by the county board or boards of education and one member appointed by the governing board would serve for two years and the at-large member would serve for three years. Subsequent appointments should be for three years. A member would not serve more than two consecutive terms. Members would be reimbursed for reasonable and necessary expenses actually incurred in the performance of its duties as board members from funds allocated to the shared facility, except that members who are employed by a board of education, governing board or state institution of higher education would be reimbursed by their employer.

**§18B-3C-12. Relationship between administratively linked community and technical colleges and sponsoring institutions.**

(a) Intent and Purposes. --

(1) It is the intent of the Legislature to establish community and technical colleges in every region of the state of West Virginia that, as far as possible, meet the essential conditions of section three of this article.

(2) The Legislature finds that, in order to increase efficiency, reduce costs and, generally, to facilitate the effective transition from community and technical colleges which are components of existing institutions of higher education to community and technical colleges which meet, as far

as possible, the essential conditions, it is appropriate to maintain an administrative link between the community and technical colleges and the sponsoring institution.

(3) This section defines the relationship between the community and technical colleges and its sponsoring institution.

(b) Where independently accredited community and technical colleges are linked administratively to a sponsoring state college or university in order to ensure efficient use of limited resources, the following conditions shall apply:

(1) The community and technical college shall be accredited separately from the sponsoring institution;

(2) All state funding allocations for the community and technical college shall be transferred directly to the community and technical college. The sponsoring institution may charge fees for administrative overhead costs subject to a schedule approved by the commission.

(3) Policies shall be formally established to ensure the separation of academic and faculty personnel policies of the community and technical college from those of the sponsoring institution. These policies include, but are not limited to, appointment, promotion, workload and, if appropriate, tenure.

(c) The sponsoring institution which is administratively linked to a community and technical college shall provide the following services:

(1) Personnel management;

(2) Recordkeeping;

(3) Payroll;

(4) Accounting;

(5) Legal services;

(6) Registration;

(7) Student aid;

(8) Student records; and

(9) Such other services as determined to be necessary and appropriate by the commission.

(d) Subject to the approval of the appropriate governing board, the president of the sponsoring institution, pursuant to the terms of section six, article one-b of this chapter, shall appoint the presidents of the community and technical college, who shall serve at the will and pleasure of the institutional president. Subject to the provisions of section six, article one-b of this chapter, the appropriate governing board shall appoint the president of the sponsoring institution.

(e) The governing board and the president of the sponsoring institution shall be responsible for the step-by-step development of the community and technical college and for compliance with the essential conditions, all as required by this article.

(f) The president of the sponsoring institution shall have such responsibilities, powers and duties in the development of the community and technical college and in compliance with the essential conditions, as directed by the governing board or as are necessary for the proper implementation of the provisions of this act.

(g) Notwithstanding any other provision of the code to the contrary, the commission shall take necessary steps to ensure that institutional bonded indebtedness is secure and that administratively linked community and technical colleges assume their fair share of any institutional debt acquired while they were part of the baccalaureate institution.

(h) The community and technical college is encouraged to secure academic services from the sponsoring institution when it is in the best interests of the students to be served, the community and technical college and the sponsoring institution. In determining whether or not to secure

services from the sponsoring institution, the community and technical college shall consider the following:

(1) The cost of the academic services;

(2) The quality of the academic services;

(3) The availability, both as to time and place, of the academic services; and

(4) Such other considerations as the community and technical college finds appropriate taking into account the best interests of the students to be served, the community and technical college, and the sponsoring institution: *Provided*, That nothing in this article shall be construed to prohibit any state institution of higher education from purchasing or brokering remedial and/or developmental courses from a community and technical college.

**ARTICLE 3F. COMMUNITY AND TECHNICAL COLLEGE SERVICES IN THE RESPONSIBILITY AREAS OF MARSHALL UNIVERSITY, WEST VIRGINIA STATE COLLEGE AND WEST VIRGINIA UNIVERSITY INSTITUTE OF TECHNOLOGY.**

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

(a) *Legislative Intent.* -- It is the intent of the Legislature to enhance community and technical college services in the responsibility areas of Marshall university, West Virginia state college and West Virginia university institute of technology through the delivery of community and technical college services that meet the goals of section six, article three-c of this chapter and are delivered pursuant to the essential conditions of section three, article three-c of this chapter. It is further the intent of the Legislature to make maximum use of existing institutions in the region and to focus on the benefits available to the Kanawha valley and to the state of providing quality community and technical college education.

(b) *Findings.* -- The Legislature finds the following:

(1) That the Kanawha valley is an area of the state that is under-served for community and technical college education and that deserves more convenient access to higher education opportunities, including access to workforce development programs; and

(2) That, in order to satisfy the growing needs of the Kanawha valley region for access to quality higher education programs, the delivery of community and technical college services in the Kanawha valley must meet the goals for comprehensive community and technical college education described in section two, article three-c of this chapter and must meet the essential conditions for a comprehensive community and technical college education as described in section three, article three-c of this chapter.

**§18B-3F-2. Implementation board established.**

(a) There is established an implementation board appointed by the commission to insure the step-by-step implementation of the legislative intent contained in section one of this article.

(b) The implementation board shall be comprised of nine members, including the president of Marshall university, or a designee; the president of West Virginia state college, or a designee; the president of West Virginia university institute of technology, or a designee; and six lay persons, three from the responsibility area of Marshall university and three from the responsibility areas of West Virginia state college and West Virginia university institute of technology.

(c) The implementation board shall develop a plan, to be recommended to the commission, for the most effective and efficient method to deliver comprehensive community and technical college education to the citizens and employers of the responsibility areas of Marshall university, West Virginia state college and West Virginia university institute of technology.

The plan shall include, but not be limited to:

(1) A determination of the most appropriate manner to achieve the goals set forth in section one-a, article one of this chapter;

(2) The relative strengths of the existing institutions of higher education in the responsibility areas;

(3) The impact of the status of West Virginia state college as an historically black institution of higher education and as an eighteen hundred and ninety land grant institution; and

(4) A determination of the appropriate relationship among the existing public institutions of higher education in the responsibility areas.

(d) The commission shall be responsible for, and shall have the authority to implement, an appropriate system, based upon the recommendations of the implementation board or such other plan as the commission determines to be appropriate to meet the essential conditions for effective community and technical college education as provided for in section three, article three-c of this chapter.

(e) If, in the opinion of the commission, implementation of an appropriate plan can not be accomplished without statutory change, then, on or before the fifteenth day of January, two thousand one, the commission shall certify to the governor, the president of the Senate and the speaker of the House of Delegates draft legislation to accomplish the goals of this section and section one-a, article one of this chapter.

(f) The commission is responsible for promoting the effective delivery of community and technical college education programs and services in the responsibility areas of Marshall university community and technical college, West Virginia state community and technical college and West Virginia university institute of technology community and technical college.

**§18B-3F-3. Continuing community and technical services of existing institutions.**

Subject to change by the commission through the process for the establishment of institutional compacts defined in section two, article one-a of this chapter, nothing in this article may be construed to require Marshall university, West Virginia state College or West Virginia Institute of Technology to discontinue any associate degree program in areas of particular institutional strength which are closely articulated to their baccalaureate programs and missions or which are of a high cost nature and can best be provided in direct coordination with a baccalaureate institution.

**ARTICLE 4. GENERAL ADMINISTRATION.**

**§18B-4-2. Employment of vice chancellor for administration; office; powers and duties generally.**

(a) With the approval of the commission, the chancellor for higher education shall employ the vice chancellor for administration who shall serve at the will and pleasure of the chancellor. Any reference in this chapter or chapter eighteen-c of this code to the senior administrator means the vice chancellor of administration, which senior administrator shall become the vice chancellor of administration and also shall serve as interim chancellor for higher education until a chancellor is employed pursuant to section five, article one-b of this chapter.

(b) The vice chancellor for administration has a ministerial duty, in consultation with and under direction of the chancellor, to perform such functions, tasks and duties as may be necessary to carry out the policy directives of the commission and such other duties as may be prescribed by law.

(c) The vice chancellor for administration may employ and discharge, and shall supervise, such professional, administrative, clerical and other employees as may be necessary to these duties and shall delineate staff responsibilities as considered desirable and appropriate. The vice chancellor

for administration shall fix the compensation and emoluments of such employees: *Provided*, That those employees whose job duties meet criteria listed in the system of job classifications as stated in article nine of this chapter shall be accorded the job title, compensation and rights established in the article as well as all other rights and privileges accorded classified employees by the provisions of this code.

(d) Effective on the first day of July, two thousand, the office of the senior administrator and all personnel employed on the thirtieth day of June, two thousand, within the higher education central office, the West Virginia network for educational telecomputing, and the offices of the chancellor of the board of trustees and the chancellor of the board of directors, shall be transferred to the jurisdiction of the chancellor for higher education: *Provided*, That prior to the first day of October, two thousand, no employee shall be terminated or have his or her salary and benefit levels reduced as the sole result of the governance reorganization that becomes effective on the first day of July, two thousand.

(e) The vice chancellor for administration shall follow state and national education trends and gather data on higher education needs.

(f) The vice chancellor for administration, in accordance with established guidelines and in consultation with and under the direction of the chancellor, shall administer, oversee or monitor all state and federal student assistance and support programs administered on the state level, including those provided for in chapter eighteen-c of this code.

(g) The vice chancellor for administration has a fiduciary responsibility to administer the tuition and registration fee capital improvement revenue bond accounts of the governing boards.

(h) The vice chancellor for administration shall administer the purchasing system or systems of the commission, the office of the chancellor, and the governing boards: *Provided*, That the chancellor may delegate authority for the purchasing systems or portions thereof to the institution presidents.

(i) The vice chancellor for administration is responsible for the management of the West Virginia network for educational telecomputing (WVNET). The vice chancellor for administration shall establish a computer advisory board, which shall be representative of higher education and other users of the West Virginia Network for Educational Telecomputing as the chancellor for higher education determines appropriate. It is the responsibility of the computer advisory board to recommend to the chancellor policies for a statewide shared computer system.

(j) The central office, under the direction of the vice chancellor for administration, shall provide necessary staff support to the commission and the office of the chancellor.

(k) Effective on the first day of July, two thousand, the vice chancellor for administration may administer any program or service authorized or required to be performed by the board of trustees or the board of directors on the thirtieth day of June, two thousand, and not specifically assigned to another agency. In addition, the vice chancellor for administration may administer any program or service authorized or required to be performed by the commission or the chancellor for higher education, but not assigned specifically to the commission or the chancellor. Such program or service may include, but shall not be limited to, telecommunications activities and other programs and services provided for under grants and contracts from federal and other external funding sources.

**§18B-4-8. West Virginia Anatomical Board; powers and duties relating to anatomical gifts; requisition of bodies; autopsies; transportation of bodies; expenses of preservation; bond required; offenses and penalties.**

(a) There is hereby established the "West Virginia anatomical board" which consists of the following four members: (1) The dean of the school of dentistry, West Virginia university; (2) the chairperson of the department of anatomy, West Virginia university; (3) the chairperson of the department of anatomy, school of medicine, Marshall university; and (4) the dean of the school of medicine, West Virginia school of osteopathic medicine.

(b) The board shall have authority to appoint such officers, employees and agents as may be necessary to carry out the purposes for which the board is organized. It shall keep a full and complete record of its transactions, showing, among other things, every dead human body coming under its authority, giving name, sex, age, date of death, place from which received and when and from whom received, which record shall be open at all times to the inspection of the attorney general and any prosecuting attorney in the state.

(c) The board shall be responsible for making requisition for, receiving and making disposition of the dead human bodies for the scientific uses and purposes of reputable education institutions, within the state and elsewhere, having medical, osteopathy, dentistry or nursing schools. The board shall have full power to establish rules for its own government and for the requisition, use, disposition and control of such bodies as may come under its authority by way of gift, pursuant to this section or pursuant to section four, article nineteen, chapter sixteen of this code.

(d) All dead human bodies which may come under the charge or control of any mortician, any officer or agent of the department of welfare or of any county commission or municipality, or any superintendent, officer or agent having the supervision of any prison, morgue, hospital or other public institution in this state and which may be required to be buried at public expense, shall be subject to the requisition of the board as provided in this section. No such body shall be delivered to the board if any person related to the deceased by blood or marriage shall make a statement in writing to that effect and shall claim such body for burial or shall make affidavit that the relative is unable to bear the expense of burial and desires that the deceased be buried at public expense. This statement and affidavit may be filed by any such relative with the person having charge and control of the body of the person so claimed, either before or after the death of such person.

(e) No autopsy shall be performed on any unclaimed body without the written permission of the board, except upon the proper order of a duly authorized law-enforcement officer.

(f) It shall be the duty of any person who has charge or control of any unclaimed body, subject to requisition by the board, to give notice to the board of that fact by telephone or telegraph within twenty-four hours after such body comes under that person's control. Thereafter, such person shall hold the body subject to the order of the board for at least twenty-four hours after the sending of such notice. If the board makes requisition for the body within the twenty-four hour period, it shall be delivered, pursuant to the order of the board, to the board or its authorized agent for transportation to any education institution which the board considers to be in bona fide need of the body and able to adequately control, use and dispose of the body. The board shall make suitable arrangements for the transportation of any body, or part or parts of any body, which may come under its authority to the education institution. All expenses incurred in connection with the preservation, delivery and transportation of any body delivered pursuant to the order of the board shall be paid by the education institution receiving the body.

(g) No dead body shall be received or requisitioned by the board until the members of the board have filed a bond with the clerk of the circuit court of Kanawha County in a penalty of one thousand dollars, with good security, signed by a responsible person or persons, or by some surety company authorized to do business in this state, or have proved to the clerk that they are covered by a suitable bond in at least that amount, conditioned for the faithful performance of their duties.

(h) Any person who shall neglect, refuse or fail to perform any duty required by this section relating to the board shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars or by imprisonment in the county or regional jail for not more than ten days or by both such fine and imprisonment. Any person who fails to give the required notice that that person has charge of an unclaimed body subject to requisition by the board shall also be personally liable for all burial expenses, if such body was buried at public expense, to the public agency that paid for the burial.

**ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.**

**§18B-5-3. Authority to contract for programs, services and facilities.**

The governing boards and the commission are authorized and empowered to enter into contracts and expend funds for programs, services and facilities provided by public and private education institutions, associations, boards, agencies, consortia, corporations, partnerships, individuals and local, state and federal governmental bodies within and outside of West Virginia in order that maximum higher education opportunities of high quality may be provided to the citizens of the state in the most economical manner: *Provided*, That in no event may a contract for such services and facilities be entered into unless the commission or the governing boards have determined that such services and facilities are necessary and that such services and facilities would be at a savings to the state.

Notwithstanding the provisions of this section, nothing herein contained shall supersede the responsibility and respective duties of the secretary of administration and the director of the purchasing division of such department for the execution and approval of the contracts entered into under this article and such contracts shall be in complete conformity with the provisions of articles three and five, chapter five-a of this code.

**§18B-5-4. Purchase or acquisition of materials, supplies, equipment and printing.**

(a) The commission and each governing board, through the vice chancellor for administration shall purchase or acquire all materials, supplies, equipment and printing required for that governing board or the commission, as appropriate, and the state institutions of higher education under their jurisdiction. The commission shall adopt rules governing and controlling acquisitions and purchases in accordance with the provisions of this section. Such rules shall assure that the governing boards: (1) Do not preclude any person from participating and making sales thereof to the governing board or to the higher education commission except as otherwise provided in section five of this article: *Provided*, That the providing of consultant services such as strategic planning services will not preclude or inhibit the governing boards or the commission from considering any qualified bid or response for delivery of a product or a commodity because of the rendering of those consultant services; (2) shall establish and prescribe specifications, in all proper cases, for materials, supplies, equipment and printing to be purchased; (3) shall adopt and prescribe such purchase order, requisition or other forms as may be required; (4) shall negotiate for and make purchases and acquisitions in such quantities, at such times and under contract, in the open market or through other accepted methods of governmental purchasing as may be practicable in accordance with general law; (5) shall advertise for bids on all purchases exceeding fifteen thousand dollars, to purchase by means of sealed bids and competitive bidding or to effect advantageous purchases through other accepted governmental methods and practices: *Provided, however*, That for printing services, bids shall be advertised by written notification of such bids to any print shop, affiliated with an institution of higher education and operated by classified employees, on all purchases exceeding five thousand dollars; (6) shall post notices of all acquisitions and purchases for which competitive bids are being solicited in the purchasing office

of the specified institution involved in the purchase, at least two weeks prior to making such purchases and ensure that the notice is available to the public during business hours; (7) shall provide for purchasing in the open market; (8) shall make provision for vendor notification of bid solicitation and emergency purchasing; and (9) provide that competitive bids are not required for purchases of one thousand dollars or less.

(b) The commission or each governing board, through the vice chancellor for administration may issue a check in advance to a company supplying postage meters for postage used by that board, the commission and by the state institutions of higher education under their jurisdiction.

(c) When a purchase is to be made by bid, any or all bids may be rejected. However, all purchases based on advertised bid requests shall be awarded to the lowest responsible bidder taking into consideration the qualities of the articles to be supplied, their conformity with specifications, their suitability to the requirements of the governing boards, the commission and delivery terms: *Provided*, That the preference for resident vendors as provided in section thirty-seven, article three, chapter five-a of this code shall apply to the competitive bids made pursuant to this section.

(d) The governing boards and the commission shall maintain a purchase file, which shall be a public record and open for public inspection. After the award of the order or contract, the governing boards and the commission shall indicate upon the successful bid that it was the successful bid and shall further indicate why bids are rejected and, if the mathematical low vendor is not awarded the order or contract, the reason therefor. No records in the purchase file shall be destroyed without the written consent of the legislative auditor. Those files in which the original documentation has been held for at least one year and in which the original documents have been reproduced and archived on microfilm or other equivalent method of duplication may be destroyed without the written consent of the legislative auditor. All files, no matter the storage method, shall be open for inspection by the legislative auditor upon request.

(e) The commission also shall adopt rules to prescribe qualifications to be met by any person who is to be employed as a buyer pursuant to this section. These rules shall require that no person may be employed as a buyer unless that person, at the time of employment, either is: (1) A graduate of an accredited college or university; or (2) has at least four years' experience in purchasing for any unit of government or for any business, commercial or industrial enterprise. Any person making purchases and acquisitions pursuant to this section shall execute a bond in the penalty of fifty thousand dollars, payable to the state of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety thereon, in form prescribed by the attorney general and conditioned upon the faithful performance of all duties in accordance with sections four through eight of this article and the rules of the interim governing board and the commission. In lieu of separate bonds for such buyers, a blanket surety bond may be obtained. Any such bond or bonds shall be filed with the secretary of state. The cost of any such bond or bonds shall be paid from funds appropriated to the applicable governing board or commission.

(f) All purchases and acquisitions shall be made in consideration and within limits of available appropriations and funds and in accordance with applicable provisions of article two, chapter five-a of this code, relating to expenditure schedules and quarterly allotments of funds.

(g) The governing boards and the commission may make requisitions upon the auditor for a sum to be known as an advance allowance account, in no case to exceed five percent of the total of the appropriations for the governing board or the commission, and the auditor shall draw a warrant upon the treasurer for such accounts; and all such advance allowance accounts shall be

accounted for by the applicable governing board or commission once every thirty days or more often if required by the state auditor.

(h) Contracts entered into pursuant to this section shall be signed by the applicable governing board or the commission in the name of the state and shall be approved as to form by the attorney general: *Provided*, That a contract in which the total does not exceed five thousand dollars and for which the attorney general has not responded within fifteen days of presentation of the contract, the contract shall be deemed approved: *Provided, however*, That a contract or a change order for that contract which in total does not exceed fifteen thousand dollars and which uses terms and conditions or standardized forms previously approved by the attorney general and does not make substantive changes in the terms and conditions of the contract does not require approval by the attorney general: *Provided further*, That the attorney general shall make a list of those changes which he or she deems to be substantive and the list, and any changes thereto, shall be published in the state register. A contract that exceeds fifteen thousand dollars shall be filed with the state auditor: *And provided further*, That upon request, the governing boards or the commission shall make all contracts available for inspection by the state auditor. The governing board or the commission, as appropriate shall prescribe the amount of deposit or bond to be submitted with a bid or contract, if any, and the amount of deposit or bond to be given for the faithful performance of a contract. If the governing board or the commission purchases or contracts for materials, supplies, equipment and printing contrary to the provisions of sections four through seven of this article or the rules pursuant thereto, such purchase or contract shall be void and of no effect.

(i) Any governing board or the commission, as appropriate, may request the director of purchases to make available, from time to time, the facilities and services of that department to the governing boards or the commission in the purchase and acquisition of materials, supplies, equipment and printing and the director of purchases shall cooperate with that governing board or the commission, as appropriate, in all such purchases and acquisitions upon such request.

(j) Each governing board or the commission, as appropriate, shall permit private institutions of higher education to join as purchasers on purchase contracts for materials, supplies and equipment entered into by that governing board or the commission. Any private school desiring to join as purchasers on such purchase contracts shall file with that governing board or the commission an affidavit signed by the president of the institution of higher education or a designee requesting that it be authorized to join as purchaser on purchase contracts of that governing board or the commission, as appropriate, and agreeing that it will be bound by such terms and conditions as that governing board or the commission may prescribe and that it will be responsible for payment directly to the vendor under each purchase contract.

(k) Notwithstanding any other provision of this code to the contrary, the governing boards and the commission, as appropriate, may make purchases from the federal government or from federal government contracts if the materials, supplies, equipment or printing to be purchased is available from the federal government or from a federal contract and purchasing from the federal government or from a federal government contract would be the most financially advantageous manner of making the purchase.

(l) An independent performance audit of all purchasing functions and duties which are performed at any institution of higher education shall be performed each fiscal year. The joint committee on government and finance shall conduct the performance audit and the governing boards and the commission, as appropriate, shall be responsible for paying the cost of the audit from funds appropriated to the governing boards or the commission.

(m) The governing boards shall require each institution under their respective jurisdictions to notify and inform every vendor doing business with that institution of the provisions of section fifty-four, article three, chapter five-a of this code, also known as the "prompt pay act of 1990".

(n) Consultant services, such as strategic planning services, may not preclude or inhibit the governing boards or the commission from considering any qualified bid or response for delivery of a product or a commodity because of the rendering of those consultant services.

## **ARTICLE 6. ADVISORY BOARDS.**

### **§18B-6-1. Institutional boards of advisors for regional campuses and administratively linked community and technical colleges.**

(a) Effective the first day of July, two thousand, there is established at each regional campus and administratively-linked community and technical college, excluding centers and branches thereof, an institutional board of advisors: *Provided*, That the institutional board of advisors shall not be appointed for administratively linked community and technical colleges until provided for in their compact.

(1) For the transition year beginning on the first day of July, two thousand, through the thirtieth day of June, two thousand one, only, the lay members of the institutional board of advisors established for each of the regional campuses of West Virginia university are appointed by the president of the respective institution. Effective the first day of July, two thousand one, the lay members of the institutional boards of advisors for the regional campuses are appointed by the institutional board of governors.

(2) The lay members of the institutional board of advisors established for the administratively linked community and technical colleges are appointed by the joint commission.

(b) The board of advisors consists of fifteen members, including a full-time member of the faculty with the rank of instructor or above duly elected by the faculty; a member of the student body in good academic standing, enrolled for college credit work and duly elected by the student body; a member of the institutional classified staff duly elected by the classified staff; and twelve lay persons appointed pursuant to subsection (a) of this section who have demonstrated a sincere interest in and concern for the welfare of that institution and who are representative of the population of its responsibility district and fields of study. At least eight of the twelve lay persons appointed shall be residents of the state. Of the lay members who are residents of the state, at least two shall be alumni of the institution and no more than a simple majority may be of the same political party.

(c) The student member shall serve for a term of one year beginning upon appointment in July, two thousand, and ending on the thirtieth day of April, two thousand one. Thereafter the term shall begin on the first day of May. The faculty member and the classified staff member shall serve for a term of two years beginning upon appointment in July, two thousand, and ending on the thirtieth day of April, two thousand two. Thereafter the term shall begin on the first day of May; and the twelve lay members shall serve terms of four years each beginning upon appointment in July, two thousand. Thereafter the term shall begin on the first day of May. All members are eligible to succeed themselves for no more than one additional term. A vacancy in an unexpired term of a member shall be filled for the remainder of the unexpired term within thirty days of the occurrence thereof in the same manner as the original appointment or election. Except in the case of a vacancy, all elections shall be held and all appointments shall be made no later than the thirtieth day of April preceding the commencement of the term.

(d) Each board of advisors shall hold a regular meeting at least quarterly, commencing in May of each year. Additional meetings may be held upon the call of the chairperson, president of the institution or upon the written request of at least five members. A majority of the members constitutes a quorum for conducting the business of the board of advisors.

(e) One of the twelve lay members shall be elected as chairperson by the board of advisors in May of each year: *Provided*, That the chairperson elected in two thousand shall be elected in July. No member may serve as chairperson for more than two consecutive years.

(f) The president of the institution shall make available resources of the institution for conducting the business of the board of advisors. The members of the board of advisors shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties under this section upon presentation of an itemized sworn statement thereof. All expenses incurred by the boards of advisors and the institutions under this section shall be paid from funds allocated to the institutions for that purpose.

(g) The board of advisors shall review, prior to the submission by the president to its governing board, all proposals of the institution in the areas of mission, academic programs, budget, capital facilities and such other matters as requested by the president of the institution or its governing board or otherwise assigned to it by law. The board of advisors shall comment on each such proposal in writing, with such recommendations for concurrence therein or revision or rejection thereof as it considers proper. The written comments and recommendations shall accompany the proposal to the governing board and the governing board shall include the comments and recommendations in its consideration of and action on the proposal. The governing board shall promptly acknowledge receipt of the comments and recommendations and shall notify the board of advisors in writing of any action taken thereon.

(h) The board of advisors shall review, prior to their implementation by the president, all proposals regarding institution-wide personnel policies. The board of advisors may comment on the proposals in writing.

(i) The board of advisors shall provide advice and assistance to the president in establishing closer connections between higher education and business, labor, government, community and economic development organizations to give students greater opportunities to experience the world of work, such as business and community service internships, apprenticeships and cooperative programs; to communicate better and serve the current workforce and workforce development needs of their service area, including the needs of nontraditional students for college-level skills upgrading and retraining and the needs of employers for specific programs of limited duration; and to assess the performance of the institution's graduates and assist in job placement.

(j) Upon the occurrence of a vacancy in the office of president of the institution, the board of advisors shall serve as a search and screening committee for candidates to fill the vacancy under guidelines established by the commission pursuant to the provisions of section six, article one-b of this chapter. When serving as a search and screening committee, the board of advisors and its governing board are each authorized to appoint up to three additional persons to serve on the committee as long as the search and screening process is in effect. The three additional appointees of the board of advisors shall be faculty members of the institution. Only for the purposes of the search and screening process, the additional members shall possess the same powers and rights as the regular members of the board of advisors, including reimbursement for all reasonable and necessary expenses actually incurred. Following the search and screening process, the committee shall submit the names of at least three candidates to the president of the

sponsoring institution for consideration and appointment. If the president rejects all candidates submitted, the committee shall submit the names of at least three additional candidates and this process shall be repeated until the president appoints one of the candidates submitted. The governing board shall provide all necessary staff assistance to the board of advisors in its role as a search and screening committee.

(k) The boards of advisors shall develop a master plan for each administratively linked community and technical college. The ultimate responsibility for developing and updating the master plans at the institutional level resides with the institutional board of advisors, but the ultimate responsibility for approving the final version of the institutional master plans, including periodic updates, resides with the commission. The plan shall include, but not be limited to, the following:

(1) A detailed demonstration of how the master plan will be used to meet the goals and objectives of the institutional compact;

(2) A well-developed set of goals outlining missions, degree offerings, resource requirements, physical plant needs, personnel needs, enrollment levels and other planning determinates and projections necessary in such a plan to assure that the needs of the institution's area of responsibility for a quality system of higher education are addressed;

(3) Documentation of the involvement of the commission, institutional constituency groups, clientele of the institution, and the general public in the development of all segments of the institutional master plan.

The plan shall be established for periods of not less than three nor more than six years and shall be revised periodically as necessary, including recommendations on the addition or deletion of degree programs as, in the discretion of the board of advisors, may be necessary.

**§18B-6-1a. Institutional boards of advisors for universities, state colleges and free-standing community and technical colleges.**

(a) For the transition year beginning on the first day of July, two thousand, through the thirtieth day of June, two thousand one, only, there is established at the following state institutions of higher education, excluding centers and branches thereof, an institutional board of advisors: Bluefield state college, Concord college, eastern West Virginia community and technical college, Fairmont state college, Glenville state college, Marshall university, Shepherd college, southern West Virginia community and technical college, West Liberty state college, West Virginia northern community and technical college, the West Virginia school of osteopathic medicine, West Virginia state college and West Virginia university.

(b) The boards of advisors are established as follows:

(1) Each institutional board of advisors shall consist of twelve persons: *Provided*, That the institutional boards of advisors for Marshall university and West Virginia university shall consist of fifteen persons. Each board of advisors shall include:

(A) A full-time member of the faculty with the rank of instructor or above duly elected by the faculty;

(B) A member of the student body in good academic standing, enrolled for college credit work and duly elected by the student body;

(C) A member of the institutional classified staff duly elected by the classified staff; and

(D) Nine lay members appointed by the governor, by and with the advice and consent of the Senate: *Provided*, That for the institutional boards of advisors at Marshall university and West Virginia university, the governor shall appoint twelve members, by and with the advice and consent of the Senate: *Provided, however*, That, of the appointed lay members, the governor shall

appoint one superintendent of a county board of education from the area served by the institution: *Provided further*, That in making the initial appointments only, the governor shall endeavor to make appointments from a pool of those persons who, on the thirtieth day of June, two thousand, are members of the board of trustees and the board of directors.

(2) Of the nine members appointed by the governor, no more than five may be of the same political party: *Provided*, That for the appointed members of the institutional boards of advisors of Marshall university and West Virginia university, no more than seven may be of the same political party. At least six of the members shall be residents of the state: *Provided, however*, That for the appointed members of the institutional boards of advisors of Marshall university and West Virginia university, at least eight of the members shall be residents of the state. All members shall serve for a term of one year. A vacancy in an unexpired term of a member shall be filled for the unexpired term within thirty days of the occurrence of the vacancy in the same manner as the original appointment or election. Except in the case of a vacancy, all elections shall be held and all appointments shall be made no later than the thirtieth day of June preceding the commencement of the term: *Provided further*, That election of officers for the term beginning in July, two thousand, shall be made in July. Each board of advisors shall elect one of its appointed lay members to be chairperson.

(3) Each board of advisors shall hold a regular meeting at least quarterly, commencing in July, two thousand. Additional meetings may be held upon the call of the chairperson or upon the written request of at least four members: *Provided*, That for the institutional boards of advisors of Marshall university and West Virginia university, additional meetings may be held upon the call of the chairperson or upon the written request of at least five members. A majority of the members constitutes a quorum for conducting the business of the board of advisors.

(4) The president of the institution shall make available resources of the institution for conducting the business of the board of advisors. The members of the board of advisors shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties under this section upon presentation of an itemized sworn statement thereof. All expenses incurred by the board of advisors and the institution under this section shall be paid from funds allocated to the institution for that purpose.

(5) The board of advisors shall review, prior to the submission by the president to its governing board, all proposals of the institution in the areas of mission, academic programs, budget, capital facilities and such other matters as requested by the president of the institution or its governing board or otherwise assigned to it by law. The board of advisors shall comment on each such proposal in writing, with such recommendations for concurrence therein or revision or rejection thereof as it considers proper. The written comments and recommendations shall accompany the proposal to the governing board and the governing board shall include the comments and recommendations in its consideration of and action on the proposal. The governing board shall promptly acknowledge receipt of the comments and recommendations and shall notify the board of advisors in writing of any action taken thereon.

(6) The board of advisors shall review, prior to their implementation by the president, all proposals regarding institution-wide personnel policies. The board of advisors may comment on the proposals in writing.

(7) The board of advisors shall provide advice and assistance to the president in establishing closer connections between higher education and business, labor, government, community and economic development organizations to give students greater opportunities to experience the world of work, such as business and community service internships,

apprenticeships and cooperative programs; to communicate better and serve the current workforce and workforce development needs of their service area, including the needs of nontraditional students for college-level skills upgrading and retraining and the needs of employers for specific programs of limited duration; and to assess the performance of the institution's graduates and assist in job placement.

(8) Upon the occurrence of a vacancy in the office of president of the institution, the board of advisors serves as a search and screening committee for candidates to fill the vacancy under guidelines established by its governing board. When serving as a search and screening committee, the board of advisors and its governing board are each authorized to appoint up to three additional persons to serve on the committee as long as the search and screening process is in effect. The three additional appointees of the board of advisors shall be faculty members of the institution. Only for the purposes of the search and screening process, the additional members shall possess the same powers and rights as the regular members of the board of advisors, including reimbursement for all reasonable and necessary expenses actually incurred. Following the search and screening process, the committee shall submit the names of at least three candidates to the governing board for consideration and appointment. If the governing board rejects all candidates submitted, the committee shall submit the names of at least three additional candidates and this process shall be repeated until the governing board appoints one of the candidates submitted. The governing board shall provide all necessary staff assistance to the board of advisors in its role as a search and screening committee.

(c) The institutional boards of advisors created under this section have the following additional duties:

(1) The responsibility to develop the institutional compacts for their respective institutions under the guidance and direction of the commission pursuant to section two, article one-a of this chapter.

(2) The authority to participate in any orientation or leadership training or education opportunities provided or arranged by the commission.

**§18B-6-2a. State advisory council of faculty.**

(a) Effective the first day of July, two thousand, there is hereby established the state advisory council of faculty. For the purposes of this section, the state advisory council of faculty shall be referred to as the "council".

(b) During the month of April of each odd-numbered year, beginning in the year two thousand one, each president or other administrative head of a state institution of higher education, including, but not limited to, Potomac state college of West Virginia university, West Virginia university at Parkersburg, West Virginia university institute of technology, Robert C. Byrd health sciences Charleston division of West Virginia university and the Marshall university graduate college, at the direction of the council and in accordance with procedures established by the council, shall convene a meeting or otherwise institute a balloting process to elect one faculty to serve on the institutional board of governors or the institutional board of advisors, as applicable. Terms of the members of the council shall be for two years and shall begin on the first day of July of each odd-numbered year. Members of the council shall be eligible to succeed themselves. Each person so elected shall be a member of the statewide advisory council of faculty.

(c) The council shall meet at least once each quarter. One of the quarterly meetings shall be during the month of July, at which meeting the council shall elect a chairperson: *Provided*, That the chairperson shall serve no more than two consecutive terms as chair. No member may

vote by proxy at the election. In the event of a tie in the last vote taken for such election, a member authorized by the council shall select the chairperson by lot from the names of those persons tied. Immediately following the election of a chairperson, the council shall elect, in the manner prescribed by this section for the election of a chairperson, a member of the council to preside over meetings of the council in the chairperson's absence. Should the chairperson vacate the position, the council shall meet and elect a new chairperson to fill the unexpired term within thirty days following the vacancy.

(d) The council, through its chairperson and in any appropriate manner, shall communicate to the commission, through the chancellor, matters of higher education in which the faculty members may have an interest.

(e) The commission shall meet annually between the months of October and December with the council to discuss matters of higher education in which the faculty members or the commission may have an interest.

(f) Members of the council shall serve without compensation, but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of their official duties from funds allocated to the state institution of higher education served.

(g) The council shall cause to be prepared minutes of its meetings, which minutes shall be available, upon request, to any faculty member of a state institution of higher education represented on the council.

**§18B-6-3a. State advisory council of students.**

(a) Effective the first day of July, two thousand, there is hereby established the state advisory council of students. For the purposes of this section, the state advisory council of students shall be referred to as the "council".

(b) During the month of April of each year, beginning in the year two thousand one, each student government organization at each state institution of higher education, including, but not limited to, Potomac state college of West Virginia university, West Virginia university at Parkersburg, West Virginia university institute of technology, Robert C. Byrd health sciences Charleston division of West Virginia university and the Marshall university graduate college, at the direction of the council and in accordance with procedures established by the council, shall elect a student, who may be the elected head or president of the organization, to serve on the institutional board of governors or the institutional board of advisors, as applicable. Terms of the members of the council shall be for one year and shall begin on the first day of July of each year. Members of the council shall be eligible to succeed themselves. Each person so elected shall be a member of the statewide advisory council of students.

(c) The council shall meet at least once each quarter. One of the quarterly meetings shall be during the month of July, at which meeting the council shall elect a chairperson. No member may vote by proxy at the election. In the event of a tie in the last vote taken for such election, a member authorized by the council shall select the chairperson by lot from the names of those persons tied. Immediately following the election of a chairperson, the council shall elect, in the manner prescribed by this section for the election of a chairperson, a member of the council to preside over meetings of the council in the chairperson's absence. Should the chairperson vacate the position, the council shall meet and elect a new chairperson to fill the unexpired term within thirty days following the vacancy.

(d) The council, through its chairperson and in any appropriate manner, shall communicate to the commission, through the chancellor, matters of higher education in which the student members may have an interest.

(e) The commission shall meet annually, between the months of October and December, with the council to discuss matters of higher education in which the student members or the commission may have an interest.

(f) Members of the council shall serve without compensation, but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of their official duties from funds allocated to the state institution of higher education served.

(g) The council shall cause to be prepared minutes of its meetings, which minutes shall be available, upon request, to any student of a state institution of higher education represented on the council.

**§18B-6-4a. State advisory councils of classified employees.**

(a) Effective the first day of July, two thousand, there is hereby established the state advisory council of classified employees. For the purposes of this section, the state advisory council of classified employees shall be referred to as the "council".

(b) During the month of April of each odd-numbered year, beginning in the year two thousand one, each president or other administrative head of a state institution of higher education, including, but not limited to, Potomac state college of West Virginia university, West Virginia university at Parkersburg, West Virginia university institute of technology, Robert C. Byrd health sciences Charleston division of West Virginia university and the Marshall university graduate college, at the direction of the council and in accordance with procedures established by the council, shall convene a meeting or otherwise institute a balloting process to elect one classified employee to serve on the institutional board of governors or the institutional board of advisors. Terms of the members of each council shall be for two years and shall begin on the first day of July of each odd-numbered year and members of the council shall be eligible to succeed themselves. Each person so elected shall be a member of the statewide advisory council of classified employees.

(c) The council of classified employees shall meet at least once each quarter. One of the quarterly meetings shall be during the month of July, at which meeting the council shall elect a chairperson: *Provided*, That the chair shall serve no more than two consecutive terms as chair. No member may vote by proxy at the election. In the event of a tie in the last vote taken for such election, a member authorized by the council shall select the chairperson by lot from the names of those persons tied. Immediately following the election of a chairperson, the council shall elect, in the manner prescribed by this section for the election of a chairperson, a member of the council to preside over meetings of the council in the chairperson's absence. Should the chairperson vacate the position, the council shall meet and elect a new chairperson to fill the unexpired term within thirty days following the vacancy.

(d) The council, through its chairperson and in any appropriate manner, shall communicate to the commission, through the chancellor, matters of higher education in which the classified employees may have an interest.

(e) The commission shall meet annually, between the months of October and December, with the council to discuss matters of higher education in which the classified employees or the commission may have an interest.

(f) Members of the council shall serve without compensation, but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of their official duties from funds allocated to the state institution of higher education served.

(g) The council shall cause to be prepared minutes of its meetings, which minutes shall be available, upon request, to any classified employee of a state institution of higher education represented on the council.

## **ARTICLE 7. PERSONNEL GENERALLY.**

### **§18B-7-1. Seniority for full-time classified personnel; seniority to be observed in reducing work force; preferred recall list; renewal of listing; notice of vacancies.**

(a) Definitions for terms used in this section are in accordance with those provided in section two, article nine of this chapter except that the provisions of this section shall apply only to classified employees whose employment, if continued, accumulates to a minimum total of one thousand forty hours during a calendar year and extends over at least nine months of a calendar year: *Provided*, That this section also applies to any classified employee who is involuntarily transferred to a position in nonclassified status for which he or she did not apply: *Provided, however*, That any classified employee involuntarily transferred to a position in nonclassified status may only exercise the rights set out in this section for positions equivalent to or lower than the last job class the employee held.

(b) All decisions by the appropriate governing board, the commission or its agents at state institutions of higher education concerning reductions in work force of full-time classified personnel, whether by temporary furlough or permanent termination, shall be made in accordance with this section. For layoffs by classification for reason of lack of funds or work, or abolition of position or material changes in duties or organization and for recall of employees laid off, consideration shall be given to an employee's seniority as measured by permanent employment in the service of the state system of higher education. In the event that the institution wishes to lay off a more senior employee, the institution shall demonstrate that the senior employee cannot perform any other job duties held by less senior employees of that institution in the same job class or any other equivalent or lower job class for which the senior employee is qualified: *Provided*, That if an employee refuses to accept a position in a lower job class, the employee shall retain all rights of recall provided in this section. If two or more employees accumulate identical seniority, the priority shall be determined by a random selection system established by the employees and approved by the institution.

(c) Any employee laid off during a furlough or reduction in work force shall be placed upon a preferred recall list and shall be recalled to employment by the institution on the basis of seniority. An employee's listing with an institution shall remain active for a period of one calendar year from the date of termination or furlough or from the date of the most recent renewal. If an employee fails to renew the listing with the institution, the employee's name may be removed from the list. An employee placed upon the preferred list shall be recalled to any position opening by the institution within the classifications in which the employee had previously been employed or to any lateral position for which the employee is qualified. An employee on the preferred recall list shall not forfeit the right to recall by the institution if compelling reasons require the employee to refuse an offer of reemployment by the institution.

The institution shall notify all employees maintaining active listings on the preferred recall list of all position openings that from time to time exist. The notice shall be sent by certified mail to the last known address of the employee. It is the duty of each employee listed to notify the institution of any change in address and to timely renew the listing with the institution. No position openings shall be filled by the institution, whether temporary or permanent, until all employees on the preferred recall list have been properly notified of existing vacancies and have been given an opportunity to accept reemployment.

(d) A nonexempt classified employee, including a nonexempt employee who has not accumulated a minimum total of one thousand forty hours during the calendar year or whose contract does not extend over at least nine months of a calendar year, who meets the minimum qualifications for a nonexempt job opening at the institution where the employee is currently employed, whether the job is a lateral transfer or a promotion, and applies for the job shall be transferred or promoted before a new person is hired unless the hiring is affected by mandates in affirmative action plans or the requirements of Public Law 101-336, the Americans With Disabilities Act. If more than one qualified, nonexempt classified employee applies, the best-qualified nonexempt classified employee shall be awarded the position. In instances where the classified employees are equally qualified, the nonexempt classified employee with the greatest amount of continuous seniority at that state institution of higher education shall be awarded the position. A nonexempt classified employee is one to whom the provisions of the federal Fair Labor Standards Act, as amended, apply.

(e) In addition to any other information required, any application for personnel governed by the provisions of this section shall include the applicant's social security number.

## **ARTICLE 9. CLASSIFIED EMPLOYEE SALARY SCHEDULE AND CLASSIFICATION SYSTEM.**

### **§18B-9-2. Definitions.**

As used in this article:

(a) "Classified employee or employee" means any regular full-time or regular part-time employee of a governing board or the commission, including all employees of the West Virginia network for educational telecomputing and employees at the higher education central office of the commission, who hold a position that is assigned a particular job title and pay grade in accordance with the personnel classification system established by this section or governing board policy and shall include all employees of the West Virginia network for educational telecomputing;

(b) "Nonclassified employee" means an individual who is responsible for policy formation at the department or institutional level, or reports directly to the president, or is in a position considered critical to the institution by the president pursuant to policies adopted by the governing board: *Provided*, That the percentage of personnel placed in the category of "nonclassified" at any given institution shall not exceed ten percent of the total number of employees of that institution who are eligible for membership in any state retirement system of the state of West Virginia or other retirement plan authorized by the state: *Provided, however*, That an additional ten percent of the total number of employees of that institution as defined in this subsection may be placed in the category of "nonclassified" if they are in a position considered critical to the institution by the president. Final approval of such placement shall be with the appropriate governing board;

(c) "Job description" means the specific listing of duties and responsibilities as determined by the appropriate governing board and associated with a particular job title;

(d) "Job title" means the name of the position or job as defined by the appropriate governing board;

(e) "Merit increases and salary adjustments" means the amount of additional salary increase allowed on a merit basis or to rectify salary inequities or accommodate competitive market conditions in accordance with rules established by the interim governing board or the commission;

(f) "Pay grade" means the number assigned by the appropriate governing board to a particular job title and refers to the vertical column heading of the salary schedule established in section three of this article;

(g) "Personnel classification system" means the process of job categorization adopted by the appropriate governing board by which job title, job description, pay grade and placement on the salary schedule are determined;

(h) "Salary" means the amount of compensation paid through the state treasury per annum to a classified employee;

(i) "Schedule" or "salary schedule" means the grid of annual salary figures established in section three of this article; and

(j) "Years of experience" means the number of years a person has been an employee of the state of West Virginia and refers to the horizontal column heading of the salary schedule established in section three of this article. For the purpose of placement on the salary schedule pursuant to said section, employment for nine months or more shall equal one year of experience, but no classified employee may accrue more than one year of experience during any given fiscal year. Employment for less than full time or less than nine months during any fiscal year shall be prorated. For the purpose of determining the amount of annual salary increase pursuant to subsection (b), section five of this article, employment for less than twelve months during any fiscal year shall be prorated. In accordance with rules established by the interim governing board or the commission, a classified employee may be granted additional years of experience not to exceed the actual number of years of prior, relevant work or experience at accredited institutions of higher education other than state institutions of higher education.

#### **ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.**

##### **§18B-10-1. Enrollment, tuition and other fees at education institutions; refund of fees.**

(a) Each governing board shall fix tuition and other fees for each school term for the different classes or categories of students enrolling at each state institution of higher education under its jurisdiction and may include among such fees any one or more of the following: (1) Health service fees; (2) infirmary fees; (3) student activities, recreational, athletic and extracurricular fees, which fees may be used to finance a students' attorney to perform legal services for students in civil matters at such institutions: *Provided*, That such legal services shall be limited to only those types of cases, programs or services approved by the administrative head of such institution where such legal services are to be performed; and (4) graduate center fees and branch college fees, or either, if the establishment and operations of graduate centers or branch colleges are otherwise authorized by law. All fees collected at any graduate center or at any branch college shall be paid into special funds and shall be used solely for the maintenance and operation of the graduate center or branch college at which they were collected: *Provided, however*, That the governing boards shall use the median of the average tuition and required fees at similarly classified institutions in member states of the southern regional education board as a goal in establishing tuition and required fee levels for residents at state institutions of higher education under their jurisdiction: *Provided further*, That the governing boards shall use the actual instructional cost as the same shall be determined in accordance with commission rule, in establishing nonresident undergraduate fees, with the goal of having tuition and fees cover the actual cost by fiscal year one thousand nine hundred ninety-six: *And provided further*, That effective the first day of July, two thousand one, tuition and fees for nonresident, undergraduate students shall, at a minimum, cover actual instructional costs: *And provided further*, That students enrolled in undergraduate courses offered at off-campus locations shall pay an off-campus instruction fee and shall not pay the athletic fee and the student activity fee. The off-campus instruction fee shall be used solely for the support of off-campus courses offered by

the institution. Off-campus locations for each institution shall be defined by the appropriate governing board. The schedule of all fees, and any changes therein, shall be entered in the minutes of the meeting of the appropriate governing board, and the board shall file with the legislative auditor a certified copy of such schedule and changes.

(b) In addition to the fees mentioned in the preceding paragraph, each governing board may impose and collect a student union building fee. All such building fees collected at an institution shall be paid into a special student union building fund for such institution, which is hereby created in the state treasury, and shall be used only for the construction, operation and maintenance of a student union building or a combination student union and dining hall building or for the payment of the principal of and interest on any bond issued to finance part or all of the construction of a student union building or a combination student union and dining hall building or the renovation of an existing structure for use as a student union building or a combination student union and dining hall building, all as more fully provided in section ten of this article. Any moneys in such funds not needed immediately for such purposes may be invested in any such bonds or other securities as are now or hereafter authorized as proper investments for state funds.

(c) The boards shall establish the rates to be charged full-time students enrolled during a regular academic term. For fee purposes, a full-time undergraduate student is one enrolled for twelve or more credit hours in a regular term, and a full-time graduate student is one enrolled for nine or more credit hours in a regular term. Undergraduate students taking fewer than twelve credit hours in a regular term shall have their fees reduced pro rata based upon one twelfth of the full-time rate per credit hour, and graduate students taking fewer than nine credit hours in a regular term shall have their fees reduced pro rata based upon one ninth of the full-time rate per credit hour.

Fees for students enrolled in summer terms or other nontraditional time periods shall be prorated based upon the number of credit hours for which the student enrolls in accordance with the above provisions.

(d) All fees are due and payable by the student upon enrollment and registration for classes except as provided for in this subsection:

(1) The governing boards shall permit fee payments to be made in up to three installments over the course of the academic term: *Provided*, That all fees must be paid prior to the awarding of course credit at the end of the academic term.

(2) The governing boards also shall authorize the acceptance of credit cards or other payment methods which may be generally available to students for the payment of fees: *Provided*, That the governing boards may charge the students for the reasonable and customary charges incurred in accepting credit cards and other methods of payment.

(3) If a governing board determines that any student was adversely, financially affected by a legal work stoppage that commenced on or after the first day of January, one thousand nine hundred ninety-three, it may allow the student an additional six months to pay the fees for any academic term: *Provided*, That the governing board shall determine if a student was adversely, financially affected on a case-by-case basis.

(e) On or before the first day of July, two thousand one, the chancellor for higher education shall review policy series twenty-two of the governing boards, related to assessment, payment and refund of fees and determine whether a new rule should be adopted regarding the refund of any fees upon the voluntary or involuntary withdrawal from classes of any student. The rules shall comply with all applicable state and federal laws and shall be uniformly applied throughout the system.

(f) In addition to the fees mentioned in the preceding subsections, each governing board may impose, collect and distribute a fee to be used to finance a nonprofit, student-controlled public interest research group: *Provided*, That the students at such institution demonstrate support for the increased fee in a manner and method established by that institution's elected student government: *Provided, however*, That such fees shall not be used to finance litigation against the institution.

(g) Any proposed fee increase which would become effective during the transition year beginning on the first day of July, two thousand, and ending on the thirtieth day of June, two thousand one, and which has been approved by the governing board, shall then be submitted by the governing board to the secretary for education and the arts for approval. Such approval shall be granted only upon the certification that such institution requesting a fee increase is in compliance with the strategic plans required to be submitted, pursuant to section one-b, article one of this chapter. Notice, in the form of a report, shall be provided by the chancellor to the legislative oversight commission on education accountability describing such fee increases and showing how such increases compare with the average tuition and fees charged at comparable peer institutions in member states of the southern regional education board. Effective the first day of July, two thousand one, tuition and fees rates shall be determined in accordance with subsection (h), subsection (i) and subsection (j) of this section.

(h) Effective the first day of July, two thousand one, institutions shall retain tuition and fee revenues not pledged for bonded indebtedness or other purposes in accordance with a revised tuition policy adopted by the respective governing boards and approved by the commission. The revised tuition policy shall:

- (1) Provide a basis for establishing nonresident tuition and fees;
- (2) Allow institutions to charge different tuition and fees for different programs; and
- (3) Establish methodology, where applicable, to ensure that, within the appropriate time period under the compact, community and technical college tuition rates for community and technical college students in all independently accredited community and technical colleges will be commensurate with the tuition and fees charged by their peer institutions.

(i) No penalty shall be imposed by the commission upon any institution based upon the number of nonresidents who attend the institution unless the commission determines that admission of nonresidents to any institution or program of study within the institution is impeding unreasonably the ability of the resident students to attend the institution or participate in the programs of the institution. The institutions shall report annually to the commission on the numbers of out-of-state residents and such other enrollment information as the commission may request.

(j) No governing board may increase tuition and fees more than four percent nor increase tuition and fees to more than one hundred percent of the tuition and fees of peer institutions, as determined by the commission, without the approval of the commission.

**§18B-10-2. Higher education resource fee.**

In addition to the fees specifically provided for in section one of this article, all students enrolled for credit at a state institution of higher education shall pay a higher education resource fee. The commission shall fix the fee rates for the various institutions and classes of students under its jurisdiction and may from time to time change these rates. The amount of the fee charged at each institution shall be prorated for part-time students. The fee imposed by this section is in addition to the maximum fees allowed to be collected under the provision of section one of this article and

is not limited thereby. Refunds of such fee may be made in the same manner as any other fee collected at state institutions of higher education.

Ninety percent of the total fees collected at each institution pursuant to this section shall be deposited in a special fund in the state treasury for the institution at which the fees are collected and may be used by the institution for libraries and library supplies, including books, periodicals, subscriptions and audiovisual materials, instructional equipment and materials; and for the improvement in quality and scope of student services. Up to ten percent of the fee collections shall be deposited in a special fund and expended or allocated by the commission to meet general operating expenses of the commission or to fund statewide programs: *Provided*, That the board shall, to the maximum extent practicable, offset the impact, if any, on financially needy students of any potential fee increases under this section by allocating an appropriate amount of such fee revenue to the state scholarship program to be expended in accordance with the provisions of article five, chapter eighteen-c of this code.

The commission shall, on or before the first day of July of each year, provide the legislative auditor with a report of the projected fee collections for the board and each of its institutions and the expenditures proposed for such fee.

**§18B-10-8. Collection; disposition and use of additional registration fee; creation of special capital improvements funds; revenue bonds.**

(a) In addition to all other fees imposed by the commission, there is hereby imposed and the commission is hereby directed to provide for the collection of an additional registration fee from all students enrolled in any state institution of higher education under its jurisdiction in the amounts hereinafter provided.

For full-time students at each state institution of higher education, the additional registration fee shall be fifty dollars per semester. The commission has authority to increase such additional registration fee at institutions of higher education under its jurisdiction for students who are nonresidents of this state. For all part-time students and for all summer school students, the commission shall impose and collect such fee in proportion to, but not exceeding, that paid by full-time students.

The fee imposed by this section is in addition to the maximum fees allowed to be collected under the provision of section one of this article and may not be limited thereby. Refunds of such fee may be made in the same manner as any other fee collected at state institutions of higher education.

(b) There is created in the state treasury a state system special capital improvements fund into which shall be paid all proceeds of the additional registration fees collected from students at all state institutions of higher education pursuant to this section to be expended by the commission for the payment of the principal of or interest on any revenue bonds issued by the board of regents or the succeeding governing boards for which such registration fees were pledged prior to the enactment of this section.

(c) The commission may make expenditures from any of the special capital improvements funds established in this section to finance, in whole or in part, together with any federal, state or other grants or contributions, any one or more of the following projects: (1) The acquisition of land or any rights or interest therein; (2) the construction or acquisition of new buildings; (3) the renovation or construction of additions to existing buildings; (4) the acquisition of furnishings and equipment for any such buildings; and (5) the construction or acquisition of any other capital improvements or capital educational facilities at such state institutions of higher education, including any roads, utilities or other properties, real or personal, or for other purposes necessary,

appurtenant or incidental to the construction, acquisition, financing and placing in operation of such buildings, capital improvements or capital educational facilities.

The commission, in its discretion, may use the moneys in such special capital improvements funds to finance the costs of the above purposes on a cash basis, or may from time to time issue revenue bonds of the state as provided in this section to finance all or part of such purposes and pledge all or any part of the moneys in such special funds for the payment of the principal of and interest on such revenue bonds, and for reserves therefor. Any pledge of such special funds for such revenue bonds shall be a prior and superior charge on such special funds over the use of any of the moneys in such funds to pay for the cost of any of such purposes on a cash basis: *Provided*, That any expenditures from such special funds, other than for the retirement of revenue bonds, may only be made by the commission to meet the cost of a predetermined capital improvements program for one or more of the state institutions of higher education, in such order of priority as was agreed upon by the commission and presented to the governor for inclusion in the annual budget bill, and only with the approval of the Legislature as indicated by direct appropriation for the purpose.

Such revenue bonds may be authorized and issued from time to time by the commission to finance, in whole or in part, the purposes provided in this section in an aggregate principal amount not exceeding the amount which the commission determines can be paid as to both principal and interest and reasonable margins for a reserve therefor from the moneys in such special funds.

The issuance of such revenue bonds shall be authorized by a resolution adopted by the commission, and such revenue bonds shall bear such date or dates, mature at such time or times not exceeding forty years from their respective dates; be in such form either coupon or registered, with such exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places, within or without the state; be subject to such terms of prior redemption at such prices not exceeding one hundred five per centum of the principal amount thereof; and shall have such other terms and provisions as determined by the commission. Such revenue bonds shall be signed by the governor and by the chancellor of the commission authorizing the issuance thereof, under the great seal of the state, attested by the secretary of state, and the coupons attached thereto shall bear the facsimile signature of the chancellor of the commission. Such revenue bonds shall be sold in such manner as the commission determines is for the best interests of the state.

The commission may enter into trust agreements with banks or trust companies, within or without the state, and in such trust agreements or the resolutions authorizing the issuance of such bonds may enter into valid and legally binding covenants with the holders of such revenue bonds as to the custody, safeguarding and disposition of the proceeds of such revenue bonds, the moneys in such special funds, sinking funds, reserve funds, or any other moneys or funds; as to the rank and priority, if any, of different issues of revenue bonds by the commission under the provisions of this section; as to the maintenance or revision of the amounts of such additional registration fees, and the terms and conditions, if any, under which such additional registration fees may be reduced; and as to any other matters or provisions which are deemed necessary and advisable by the commission in the best interests of the state and to enhance the marketability of such revenue bonds.

After the issuance of any of such revenue bonds, the additional registration fees at the state institutions of higher education may not be reduced as long as any of such revenue bonds are outstanding and unpaid except under such terms, provisions and conditions as shall be contained

in the resolution, trust agreement or other proceedings under which such revenue bonds were issued.

Such revenue bonds shall be and constitute negotiable instruments under the uniform commercial code of this state; shall, together with the interest thereon, be exempt from all taxation by the state of West Virginia, or by any county, school district, municipality or political subdivision thereof; and such revenue bonds may not be deemed to be obligations or debts of the state, and the credit or taxing power of the state may not be pledged therefor, but such revenue bonds shall be payable only from the revenue pledged therefor as provided in this section.

Additional revenue bonds may be issued by the commission pursuant to this section and financed by additional revenues or funds dedicated from other sources. It is the intent of the Legislature to authorize over a five year period from the effective date of this section additional sources of revenue and funds to effect such funding for capital improvement.

Funding of system-wide and campus-specific revenue bonds under any other section of this code is hereby continued and authorized pursuant to the terms of this section. Revenues of any state institution of higher education pledged to the repayment of any bonds issued pursuant to this code shall remain the responsibility of that institution.

## **ARTICLE 14. MISCELLANEOUS.**

### **§18B-14-8. Statewide task force on teacher quality.**

(a) There is hereby created a statewide task force on teacher quality to address issues which shall include, but not be limited to, the following:

(1) Need to strengthen teacher education in subject area fields by addressing the quality and regional accessibility of pre-service and in-service programs at both the baccalaureate and graduate degree levels;

(2) Need to address teacher salaries;

(3) Need to determine the appropriate supply of teachers to meet future demand;

(4) Need to determine the most effective method of staff development for teachers; and

(5) Need to address methods to prepare teachers to integrate technology effectively in the classroom, including the following:

(i) The resources necessary for teacher education programs to prepare teachers for the technology demands of the classroom environment;

(ii) The opportunities and resources for professional development experiences in technology; and

(6) Need to study methods to extend programs such as the Benedum collaborative model of teacher education at West Virginia university to other geographic areas of the state.

(b) The task force shall be chaired by the chancellor for higher education or a designee and shall be comprised of twenty-one members selected as follows: Eight members to be appointed by the governor; five members to be appointed by the state board of education; five members to be appointed by the governing boards; one member to be selected by the West Virginia professional teachers standards commission from among their membership; one member representing private institutions of higher education selected by the West Virginia association of independent colleges, inc.; and the secretary of education and the arts or a designee. Of the eight members to be appointed by the governor, two shall be representatives of statewide teacher organizations and of the six members to be appointed by the state board of education, at least three shall be classroom teachers and at least one shall be selected from among the membership of the state board of education.

(c) Appointments to the task force shall be made so that members may begin their work no later than the first day of July, two thousand.

(d) The task force shall report on its progress to the legislative oversight commission on education accountability and the commission. The initial progress report shall be made in October, two thousand, and, additionally, in each quarter thereafter until the work of the task force is completed.

(e) The task force shall complete its work and make a final report to the legislative oversight commission on education accountability and the commission no later than the first day of November, two thousand one. The final report shall contain findings of fact, recommendations and strategies for implementing recommended changes.

### **§18B-14-9. Statewide task force on student financial aid.**

(a) There is hereby created a statewide task force on student financial aid to address issues which shall include, but not be limited to, the following:

(1) The impact of the full range of student aid and prepaid admission programs including federal, state and institutional programs;

(2) The interrelationships of the various programs;

(3) The feasibility and effectiveness of grants versus loans; and

(4) A longitudinal study detailing the amount of money spent for student aid in West Virginia over the past fifteen years, or, if data for a full fifteen years is not available, for the longest time period possible; the number of students served; and the number of those students who have remained in the state.

(b) The task force shall be chaired by the chancellor for higher education or a designee and shall be comprised of fourteen members selected as follows: Six members selected by the governing boards; two members representing private institutions of higher education selected by the West Virginia association of independent colleges, inc.; four members selected by the state board of education; the state treasurer or a designee; and the secretary of education and the arts or a designee.

(c) Appointments to the task force shall be made so that members may begin their work no later than the first day of July, two thousand.

(d) The task force shall make an initial progress report to the legislative oversight commission on education accountability and the commission by the first day of December, two thousand, and shall report quarterly thereafter until the work of the task force is completed.

(e) The task force shall complete its work and make a final report to the legislative oversight commission on education accountability and the commission no later than the first day of October, two thousand one. The final report shall contain findings of fact, recommendations and strategies for implementing recommended changes.