

**Informal Guidelines for
Implementing Public
Education Bills
Enacted in
Regular Session**

2003

West Virginia Department of Education

FOREWORD

The West Virginia Department of Education is pleased to prepare Informal Guidelines for Implementing Public Education Bills Enacted in the Regular Session - 2003 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 - 2003 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 2003 regular session of the West Virginia Legislature.

David Stewart
State Superintendent of Schools

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House Bill 2083

Effective Date: Passed March 7, 2003; in effect ninety days from passage

Signed by Governor: April 2, 2003

Code Preference: Amends and reenacts sections §18-5-13, §18a-1-1

Title: Job Sharing in School Systems

Major Provisions:

- Relates to county boards of education generally and expanding job sharing arrangements to include employees who are not professional employees.
- Requires written agreements for job sharing arrangements.
- Requires agreements to specify which employee is eligible for insurance coverage.
- Requires certain issues be considered when entering into a job sharing agreement. Limits cost to retirement system.

1

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2083

(By Delegates Mezzatesta, Stemple and Williams)

[Passed March 7, 2003; in effect ninety days from passage.]

AN ACT to amend and reenact section thirteen, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article one, chapter eighteen-a of said code, all relating to county boards of education generally and expanding job sharing arrangements to include employees who are not professional employees; requiring written agreements for job-sharing arrangements; requiring agreements to specify which employee is eligible for insurance coverage; requiring certain issues be considered when entering into a job sharing agreement; and limiting cost to retirement system.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

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

~~The Boards~~ Each county board, subject to the provisions of this chapter and the rules of the state board, ~~have~~ has the authority:

(a) To control and manage all of the schools and school interests for all school activities and upon all school property, whether owned or leased by the county, including the authority to require that records be kept of all receipts and disbursements of all funds collected or received by any principal, teacher, student or other person in connection with the schools and school interests, any programs, activities or other endeavors of any nature operated or carried on by or in the name of the school, or any organization or body directly connected with the school, to audit the records and to conserve the funds, which shall be considered quasi-public moneys, including securing surety bonds by expenditure of board moneys;

(b) To establish schools, from preschool through high school, inclusive of vocational schools; and to establish schools, programs or both, for post high school instruction, subject to approval of the state board;

(c) To close any school which is unnecessary and to assign the pupils of the school to other schools. *Provided*, That the closing shall be officially acted upon, and teachers and service

1 personnel involved notified on or before the first Monday in
2 April, in the same manner as provided in section four of this
3 article, except in an emergency, subject to the approval of the
4 state superintendent, or under subdivision (e) of this section;

5 (d) To consolidate schools;

6 (e) To close any elementary school whose average daily
7 attendance falls below twenty pupils for two months in succession
8 and send the pupils to other schools in the district or to schools
9 in adjoining districts. If the teachers in the closed school are
10 not transferred or reassigned to other schools, they shall receive
11 one month's salary;

12 (f) (1) To provide at public expense adequate means of
13 transportation, including transportation across county lines for
14 students whose transfer from one district to another is agreed to
15 by both county boards as reflected in the minutes of their
16 respective meetings, for all children of school age who live more
17 than two miles distance from school by the nearest available road;
18 to provide at public expense, and according to such rules as the
19 board may establish, adequate means of transportation for school
20 children participating in county board-approved curricular and
21 extracurricular activities; ~~and to provide in addition thereto at~~
22 ~~public expense, by rules and within the available revenues,~~
23 ~~transportation for those within two miles distance; and to~~
24 ~~provide, at no cost to the county board and according to rules~~
25 ~~established by the board, transportation for participants in~~
26 ~~projects operated, financed, sponsored or approved by the~~
27 ~~commission on aging, all subject to the following:~~

28 (A) All costs and expenses incident in any way to
29 transportation for projects connected with the commission on aging
30 shall be borne by the commission, or the local or county chapter
31 of the commission;

32 (B) In all cases, the school buses owned by the county board
33 shall be driven or operated only by drivers regularly employed by
34 the county board;

35 (C) The county board may provide, under rules established by
36 the state board, for the certification of professional employees
37 as drivers of county board-owned vehicles with a seating capacity
38 of less than ten passengers used for the transportation of pupils
39 for school-sponsored activities other than transporting students
40 between school and home. The use of the vehicles shall be limited
41 to one for each school-sponsored activity; and

42 (D) Buses shall be used for extracurricular activities as
43 provided in this section only when the insurance provided for by
44 this section is in effect. ~~Provided, That all costs and expenses~~
45 incident in any way to transportation for projects connected with
46 the commission on aging shall be borne by the commission, or the
47 local or county chapter of the commission: ~~Provided, however, That~~
48 in all cases the school buses owned by the board of education
49 shall be driven or operated only by drivers regularly employed by
50 the board of education: ~~Provided further, That the county board~~
51 may provide, under rules established by the state board, for the
52 certification of professional employees as drivers of board-owned

1 ~~vehicles with a seating capacity of less than ten passengers used~~
2 ~~for the transportation of pupils for school-sponsored activities~~
3 ~~other than transporting students between school and home: And~~
4 ~~provided further, That the use of the vehicles shall be limited to~~
5 ~~one for each school-sponsored activity: And provided further, That~~
6 ~~buses shall be used for extracurricular activities as provided in~~
7 ~~this section only when the insurance provided for by this section~~
8 ~~is in effect;~~

9 (2) To enter into agreements with one another as reflected in
10 the minutes of their respective meetings to provide, on a
11 cooperative basis, adequate means of transportation across county
12 lines for children of school age subject to the conditions and
13 restrictions of this subsection and subsection (h) of this
14 section;

15 (g) (1) To lease school buses operated only by drivers
16 regularly employed by the county board to public and private
17 nonprofit organizations or private corporations to transport
18 school-age children to and from camps or educational activities in
19 accordance with rules established by the county board. All costs
20 and expenses incurred by or incidental to the transportation of
21 the children shall be borne by the lessee;

22 (2) To contract with any college or university or officially
23 recognized campus organizations to provide transportation for
24 college or university students, faculty or staff to and from the
25 college or university. ~~Provided, That~~ Only college and
26 university students, faculty and staff may be transported.
27 ~~pursuant to this section.~~ The contract shall include
28 consideration and compensation for bus operators, repairs and
29 other costs of service, insurance and any rules concerning student
30 behavior;

31 (h) To provide at public expense for insurance against the
32 negligence of the drivers of school buses, trucks or other
33 vehicles operated by the board; and if the transportation of
34 pupils is contracted, then the contract for the transportation
35 shall provide that the contractor shall carry insurance against
36 negligence in an amount specified by the board;

37 (i) To provide solely from county board funds for all regular
38 full-time employees of the county board all or any part of the
39 cost of a group plan or plans of insurance coverage not provided
40 or available under the West Virginia public employees insurance
41 act;

42 (j) To employ teacher aides, to provide in-service training
43 for teacher aides, the training to be in accordance with rules of
44 the state board and, in the case of service personnel assuming
45 duties as teacher aides in exceptional children programs, to
46 provide a four-clock-hour program of training prior to the
47 assignment which shall, in accordance with rules of the state
48 board, consist of training in areas specifically related to the
49 education of exceptional children;

1 (k) To establish and conduct a self-supporting dormitory for
2 the accommodation of the pupils attending a high school or
3 participating in a post high school program and of persons
4 employed to teach in the high school or post high school program;

5 (l) To employ legal counsel;

6 (m) To provide appropriate uniforms for school service
7 personnel;

8 (n) To provide at public expense and under rules as
9 established by any county board for the payment of traveling
10 expenses incurred by any person invited to appear to be
11 interviewed concerning possible employment by the county board of
12 education;

13 (o) To allow or disallow their designated employees to use
14 publicly provided carriage to travel from their residences to
15 their workplace and return: *Provided*, That the usage is subject
16 to the supervision of the county board and is directly connected
17 with and required by the nature and in the performance of the
18 employee's duties and responsibilities;

19 (p) To provide, at public expense, adequate public liability
20 insurance, including professional liability insurance for county
21 board employees;

22 (q) To enter into agreements with one another to provide, on
23 a cooperative basis, improvements to the instructional needs of
24 each ~~county-district~~. The cooperative agreements may be used to
25 employ specialists in a field of academic study or support
26 functions or services, for the academic study. The agreements are
27 subject to approval by the state board of education;

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

37 (s) To enter into agreements with one another, with the
38 approval of the state board, for the transfer and receipt of any
39 and all funds determined to be fair when students are permitted or
40 required to attend school in a county-district other than the
41 county-district of their residence; and

42 (t) To enter into job-sharing arrangements, as defined in
43 section one, article one, chapter eighteen-a of this code, with
44 its ~~professional-employees: *Provided*, That a job-sharing~~
45 ~~arrangement shall meet all the requirements relating to posting,~~
46 ~~qualifications and seniority, as provided for in article four,~~
47 ~~chapter eighteen-a of this code: *Provided*, however, That,~~
48 ~~notwithstanding any provisions of this code or legislative rule~~
49 ~~and specifically the provisions of article fifteen, chapter five~~

1 ~~of this code to the contrary, a county board which enters into a~~
2 ~~job-sharing arrangement wherein two or more professional employees~~
3 ~~voluntarily share an authorized full-time position shall provide~~
4 ~~the mutually agreed upon employee coverage but shall not offer~~
5 ~~insurance coverage to more than one of the job-sharing employees,~~
6 ~~including any group plan or group plans available under the state~~
7 ~~public employees insurance act: *Provided further, That all*~~
8 ~~employees involved in the job-sharing agreement meet the~~
9 ~~requirements of subdivision (4), section two, article sixteen,~~
10 ~~chapter five of this code.~~

10 subject to the following provisions:

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

14 (2) Notwithstanding any provisions of this code or
15 legislative rule and specifically the provisions of article
16 sixteen, chapter five of this code to the contrary, a county board
17 which enters into a job-sharing arrangement in which two or more
18 employees voluntarily share an authorized full-time position shall
19 provide the mutually agreed upon employee coverage but shall not
20 offer insurance coverage to more than one of the job-sharing
21 employees, including any group plan or group plans available under
22 the state public employees insurance act;

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

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

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

40 "Quasi-public funds" as used in this section means any money
41 received by any principal, teacher, student or other person for
42 the benefit of the school system as a result of curricular or
43 noncurricular activities.

44 Each county board shall expend under rules it establishes for
45 each child an amount not to exceed the proportion of all school
46 funds of the district that each child would be entitled to receive
47 if all the funds were distributed equally among all the children
48 of school age in the district upon a per capita basis.

49 **CHAPTER 18A. SCHOOL PERSONNEL.**

50 **ARTICLE 1. GENERAL PROVISIONS.**

51 **§18A-1-1. Definitions.**

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

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

11 (b) "Professional personnel" means persons who meet the
12 certification requirements of the state, licensing requirements of
13 the state or both and includes the professional educator and other
14 professional employees;

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

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

22 (2) "*Principal*" ~~The means a~~ professional educator who, as
23 agent of the county board, has responsibility for the supervision,
24 management and control of a school or schools within the
25 guidelines established by ~~said the county~~ board. The major area
26 of ~~such the~~ responsibility shall be the general supervision of all
27 the schools and all school activities involving pupils, teachers
28 and other school personnel;

29 (3) "*Supervisor*" ~~The means a~~ professional educator who,
30 whether by this or other appropriate title, is responsible for
31 working primarily in the field with professional and other
32 personnel in instructional and other school improvement. ~~;~~ and

33 (4) "*Central office administrator*" ~~The means a~~
34 superintendent, associate superintendent, assistant superintendent
35 and other professional educators, whether by these or other
36 appropriate titles, who are charged with the administering and
37 supervising of the whole or some assigned part of the total
38 program of the countywide school system;

39 (d) "Other professional employee" means that person from
40 another profession who is properly licensed and is employed to
41 serve the public schools and includes a registered professional
42 nurse, licensed by the West Virginia board of examiners for
43 registered professional nurses and employed by a county board of
44 education, who has completed either a two-year (sixty-four
45 semester hours) or a three-year (ninety-six semester hours)
46 nursing program;

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

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

1 chapter;

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

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

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

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

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

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

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

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

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

House Bill 2556

Effective Date: Passed March 5, 2003; in effect ninety days from passage

Signed by Governor: March 17, 2003

Code Preference: Enacts a New Section §33-2-15a

Title: Flood Insurance Information

Major Provisions:

- Requires the insurance commissioner to provide annual information to all state and local governmental entities and nonprofit organizations to make them aware of the following:
 - The penalties that can be incurred in the form of a reduction in Federal Emergency Management Agency (FEMA) disaster relief funds as a result of the failure to purchase adequate flood insurance on all property located in identified flood hazard areas;
 - The magnitude of risk exposure and potential financial loss that could result from these penalties; and
 - The availability of low-cost, flood insurance through the National Flood Insurance Program (NFIP).

House Bill 2879

Effective Date: Passed March 8, 2003; in effect ninety days from passage

Signed by Governor: March 27, 2003

Code Preference: Amends and reenacts section §5-28-4

Title: Continuation of the Commission of the Commission of the Holocaust Education

Major Provisions:

- This bill continues the West Virginia Commission on Holocaust Education until July 1, 2009.

House Bill 2910

Effective Date: Passed March 6, 2003, in effect ninety days from passage

Signed by Governor: March 10, 2003

Code Preference: Enacts New Sections §15-3A-1 through 6

Title: Amber Alert Plan

Major Provisions:

- Provides for public alerts to be broadcast, when agreed upon by law enforcement officers, to alert the public to the abduction of a child aged seventeen or younger.

1 **ENROLLED**
2 COMMITTEE SUBSTITUTE
3 FOR

4 **H. B. 2910**

5 (By Delegates Mahan, Stalnaker, Long, Craig and Trump)
6
7

8 [Passed March 6, 2003; in effect ninety days from passage.]
9

10 AN ACT to amend chapter fifteen of the code of West Virginia, one
11 thousand nine hundred thirty-one, as amended, by adding
12 thereto a new article, designated article three-a, relating
13 to the establishment of an "Amber alert" system to be
14 utilized to rapidly disseminate information with regard to
15 abducted children.

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

17 That chapter fifteen of the code of West Virginia, one
18 thousand nine hundred thirty-one, as amended, be amended by adding
19 thereto a new article, designated article three-a, to read as
20 follows:

21 **ARTICLE 3A. AMBER ALERT PLAN.**

22 **§15-3A-1. Short title.**

23 This article shall be known and may be cited as "Amber's
24 Plan".

25 **§15-3A-2. Findings and determinations relative to "Amber's Plan".**

26 (a) The Legislature finds and determines that:

27 (1) Public alerts can be one of the most effective tools in
28 combating child abductions;

29 (2) Law-enforcement officers and other professionals
30 specializing in the field of abducted and missing children agree
31 that the most critical moments in the search for an abducted child
32 are the first few hours immediately following the abduction,
33 asserting that if a child is not found within two to four hours,
34 it is unlikely that child will be found alive;

35 (3) The rapid dissemination of information, including a
36 description of the abducted child, details of the abduction,
37 abductor and vehicle involved, to the citizens of the affected
38 community and region is, therefore, critical;

39 (4) Alerted to an abduction, the citizenry become an
40 extensive network of eyes and ears serving to assist law
41 enforcement in quickly locating and safely recovering the child;
42 and

43 (5) The most effective method of immediately notifying the
44 public of a child abduction is through the broadcast media.

45 (b) The Legislature declares that given the successes other
46 states and regions have experienced in using broadcast media
47 alerts to quickly locate and safely recover abducted children, it
48 is altogether fitting and proper, and within the public interest,
49 to establish such a program for West Virginia.

50 **§15-3A-3. Establishment of "Amber's Plan".**

51 (a) The secretary of the department of military affairs and
52 public safety shall establish "Amber's Plan", a program
53 authorizing the broadcast media, upon notice from the state

1 police, to transmit an emergency alert to inform the public of a
2 child abduction. The program shall be a voluntary, cooperative
3 effort between state and local law-enforcement agencies and the
4 broadcast media.

5 (b) The secretary shall notify the broadcast media serving
6 the state of West Virginia of the establishment of "Amber's Plan"
7 and invite their voluntary participation.

8 **§15-3A-4. Activation of Amber alert.**

9 The following criteria shall be met before the state police
10 activate the Amber alert:

11 (1) The child is believed to be abducted;

12 (2) The child is seventeen years of age or younger;

13 (3) The child may be in danger of death or serious bodily
14 injury; and

15 (4) There is sufficient information available to indicate
16 that an Amber alert would assist in locating the child.

17 **§15-3A-5. Notice to participating media; broadcast of alert.**

18 (a) The participating media shall voluntarily agree, upon
19 notice from the state police, to transmit emergency alerts to
20 inform the public of a child abduction that has occurred within
21 their broadcast service regions.

22 (b) The alerts shall be read after a distinctive sound tone
23 and a statement notifying that the broadcast is an abducted child
24 alert. The alerts shall be broadcast as often as possible,
25 pursuant to guidelines established by the West Virginia
26 Broadcasters' Association, for the first three hours. After the
27 initial three hours, the alert shall be rebroadcast at such
28 intervals as the investigating authority, the state police and the
29 participating media deem appropriate.

30 (c) The alerts shall include a description of the child, such
31 details of the abduction and abductor as may be known, and such
32 other information as the state police may deem pertinent and
33 appropriate. The state police shall in a timely manner update the
34 broadcast media with new information when appropriate concerning
35 the abduction.

36 (d) The alerts also shall provide information concerning how
37 those members of the public who have information relating to the
38 abduction may contact the state police or other appropriate law-
39 enforcement agency.

40 (e) Concurrent with the notice provided to the broadcast
41 media, the state police shall also notify the department of
42 transportation, the division of highways and the West Virginia
43 turnpike commission of the "Amber Alert" so that the department
44 and the affected authorities may, if possible, through the use of
45 their variable message signs, inform the motoring public that an
46 "Amber Alert" is in progress and may provide information relating
47 to the abduction and how motorists may report any information they
48 have to the state police or other appropriate law-enforcement
49 agency.

50 (f) The alerts shall terminate upon notice from the state
51 police.

52 (g) The secretary, with the assistance of the participating
53 broadcast media, shall develop and undertake a campaign to inform

1 law-enforcement agencies about "Amber's Plan" and the emergency
2 alert program established under this article.
3 **§15-3A-6. Guidelines; procedural rules.**
4 The secretary may adopt guidelines and procedural rules to
5 effectuate the purposes of this article.

House Bill 2953

Effective Date: Passed March 16, 2003; in effect from passage

Signed by Governor: April 2, 2003

Code Reference: Amends and reenacts sections §18-30-6 and §36-8-13

Title: Relating to West Virginia prepaid tuition trust

Major Provisions:

- Effective March 8, 2003, the prepaid tuition plan is closed to new contracts until the Legislature authorizes the plan to reopen. Existing contracts will not be affected.
- Creates a prepaid tuition trust escrow account to guarantee payment of prepaid tuition plan contracts.
- If an unfunded liability exists in the prepaid tuition trust fund, not more than \$500,000 will be transferred from the unclaimed property trust fund each year in accordance with the actuarial determination.
- If money in the prepaid tuition trust fund is insufficient to cover the amount needed to meet current obligations, money will be withdrawn from the prepaid tuition trust escrow account.
- When the prepaid tuition trust fund has been closed and all moneys paid, the account will be closed and any remaining money transferred to the general revenue fund.

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**SECOND
ENROLLMENT
H. B. 2953**

(By Delegates Michael, Mezzatesta and Doyle)

[Amended and Again Passed March 16, 2003, as a Result of the
Objections of the Governor; in Effect From Passage.]

10 AN ACT to amend and reenact section six, article thirty, chapter
11 eighteen of the code of West Virginia, one thousand nine hundred
12 thirty-one, as amended; and to amend and reenact section thirteen,
13 article eight, chapter thirty-six of said code, all relating to the
14 administration of the prepaid tuition plan of the West Virginia
15 college prepaid tuition and savings program; clarifying how moneys
16 in the prepaid tuition trust fund are processed when the plan is
17 terminated; closing the prepaid tuition plan to new contracts until
18 further legislative authorization; continuing the plan as to
19 current contract owners; providing for accrual of investment
20 earnings; continuing annual evaluation of actuarial soundness of
21 the prepaid tuition trust fund; requiring annual reports by the
22 chairman of the prepaid tuition trust fund; establishing a
23 mechanism to eliminate any actuarially projected unfunded liability
24 in the prepaid tuition trust fund over a fixed period with funds
25 from the unclaimed property trust fund in an amount not to exceed
26 five hundred thousand dollars annually; creating the prepaid
27 tuition trust escrow account and establishing purposes therefor;
28 providing for the investment and use of the money in the prepaid
29 tuition trust escrow account; providing for the transfer of funds
30 in the unclaimed property trust fund to the prepaid tuition trust
31 escrow account and to the general revenue fund; and providing for
32 the disposition of funds in the prepaid tuition trust escrow
33 account upon closure of the prepaid tuition trust fund.

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

35 That section six, article thirty, chapter eighteen of the code of
36 West Virginia, one thousand nine hundred thirty-one, as amended, be
37 amended and reenacted; and that section thirteen, article eight,
38 chapter thirty-six of said code, be amended and reenacted, all to
39 read as follows:

40 **CHAPTER 18. EDUCATION.**

41 **ARTICLE 30. WEST VIRGINIA COLLEGE PREPAID TUITION AND SAVINGS**
42 **PROGRAM ACT.**

43 **§18-30-6. West Virginia prepaid tuition trust.**

44 (a) The "Prepaid Tuition Trust Fund" is continued within the
45 accounts held by the state treasurer for administration by the
46 board.

47 (b) The prepaid tuition trust fund shall continue to receive
48 all payments from account owners on behalf of beneficiaries of
49 prepaid tuition contracts or from any other source, public or
50 private. Earnings derived from the investment of moneys in the
51 prepaid tuition trust fund shall remain in the prepaid tuition
52 trust fund held in trust in the same manner as payments, except as
53 refunded, applied for purposes of the beneficiaries, and applied

1 for purposes of maintaining and administering the prepaid tuition
2 plan.

3 (c) The corpus, assets and earnings of the prepaid tuition
4 trust fund do not constitute public funds of the state and are
5 available solely for carrying out the purposes of this article.
6 Any contract entered into by or any obligation of the board on
7 behalf of and for the benefit of the prepaid tuition plan does not
8 constitute a debt of the state, but is solely an obligation of the
9 prepaid tuition trust fund. The state has no obligation to any
10 designated beneficiary or any other person as a result of the
11 prepaid tuition plan. All amounts payable from the prepaid tuition
12 trust fund are limited to amounts available in the prepaid tuition
13 trust fund.

14 (d) Nothing in this article or in any prepaid tuition contract
15 is a promise or guarantee of admission to, continued enrollment in,
16 or graduation from an eligible educational institution.

17 (e) The requirements of the provisions of chapter thirty-two
18 of this code do not apply to the sale of a prepaid tuition contract
19 by the board, its employees and agents.

20 (f) The prepaid tuition plan and the prepaid tuition trust
21 fund shall continue in existence until terminated by the
22 Legislature as it determines or by the board upon determining that
23 continued operation is infeasible. Upon termination of the plan
24 and after payment of all fees, charges, expenses and penalties, the
25 assets of the prepaid tuition trust fund are paid to current
26 account owners, to the extent possible, on a pro rata basis as
27 their interests may appear, and any ~~unclaimed assets in the program~~
28 shall revert to the state presumed abandoned are reported and
29 remitted to the unclaimed property administrator in accordance with
30 the uniform unclaimed property act in article eight, chapter
31 thirty-six of this code. Any assets then remaining in the prepaid
32 tuition trust fund shall revert to the state general revenue fund.

33 ~~(g) The board shall have the actuarial soundness of the~~
34 ~~prepaid tuition trust fund evaluated annually to ensure that~~
35 ~~sufficient funds are deposited in the prepaid tuition trust fund to~~
36 ~~meet obligations. If the board finds that additional contributions~~
37 ~~are needed to preserve the actuarial soundness of the prepaid~~
38 ~~tuition trust fund, it may adjust the terms of preexisting and~~
39 ~~subsequent prepaid tuition contracts to ensure the prepaid tuition~~
40 ~~trust fund's soundness: Provided, That any necessary adjustment to~~
41 ~~preexisting contracts are only assessed on future payments and not~~
42 ~~retroactively upon previous payments made by the account owners or~~
43 ~~donors to the prepaid tuition trust fund. Effective the eighth day~~
44 ~~of March, two thousand three, the prepaid tuition plan is closed to~~
45 ~~new contracts until the Legislature authorizes the plan to reopen.~~
46 ~~Closing the plan to new contracts shall not mean the prepaid~~
47 ~~tuition plan is closed and shall not affect any prepaid tuition~~
48 ~~plan contracts in effect on the eighth day of March, two thousand~~
49 ~~three. All contract owners shall continue to pay any amounts due,~~
50 ~~including without limitation monthly installments, penalties and~~
51 ~~fees. Earnings derived from the investment of moneys in the~~
52 ~~prepaid tuition trust fund shall continue to accrue to the fund~~
53 ~~until the fund is closed in accordance with this article.~~

1 (h) The board shall ~~build and maintain in the prepaid tuition~~
2 ~~trust fund an actuarial surplus, at a level recommended by the~~
3 ~~actuaries, to ensure appropriate funding for the trust fund.~~
4 continue to have the actuarial soundness of the prepaid tuition
5 trust fund evaluated annually.

6 (i) (1) On or before the first day of December of each year,
7 two thousand three, and each year thereafter, the chairman of the
8 board shall submit to the governor, the president of the Senate,
9 the speaker of the House of Delegates, joint committee on
10 government and finance and the unclaimed property administrator a
11 report certified by an actuary of the actuarial status of the
12 prepaid tuition trust fund at the end of the fiscal year
13 immediately preceding the date of the report the amount of any
14 deficiency certified by an actuary as needed to meet the current
15 obligations of the prepaid tuition trust fund for the next fiscal
16 year. Notwithstanding any provision of this code to the contrary,
17 the governor, after consultation with the budget section of the
18 finance division of the department of administration, may request
19 an appropriation to the board in the amount of the deficiency, to
20 meet the current obligations of the prepaid tuition trust fund, in
21 the budget presented to the next session of the Legislature for its
22 consideration. The Legislature is not required to make any
23 appropriation pursuant to this subsection, and the amount of the
24 deficiency is not a debt or a liability of the state. As used in
25 this section, "current obligations of the prepaid tuition trust
26 fund" means amounts required for the payment of contract
27 distributions or other obligations of the prepaid tuition trust
28 fund, the maintenance of the fund, and operating expenses for the
29 current fiscal year. Nothing in this subsection creates an
30 obligation of state general revenue funds or requires any level of
31 funding by the Legislature. In the event the report for fiscal
32 year two thousand three states there is a projected unfunded
33 liability in the prepaid tuition trust fund, the report shall also
34 state the amount needed for the next fiscal year to eliminate the
35 projected unfunded liability in equal payments over a period of ten
36 fiscal years, concluding the thirtieth day of June, two thousand
37 thirteen. In the event the projected unfunded liability of the
38 prepaid tuition trust fund increases in subsequent reports, the
39 actuary shall calculate the amount needed, less any amount in the
40 prepaid tuition trust escrow account, to eliminate the projected
41 unfunded liability over a period the actuary determines is fiscally
42 responsible.

43 (2) The prepaid tuition trust escrow account is hereby created
44 in the state treasury to guarantee payment of prepaid tuition plan
45 contracts. The board shall invest the prepaid tuition trust escrow
46 account in accordance with the provisions of this article in fixed
47 income securities, and all earnings of the escrow account shall
48 remain in the escrow account.

49 (3) In the event the actuary determines an unfunded liability
50 exists in the prepaid tuition trust fund, the report shall certify
51 the amount of money needed for the next fiscal year to eliminate
52 the projected unfunded liability pursuant to the provisions of
53 subdivision (1) of this subsection. The certified amount may not

1 exceed five hundred thousand dollars each year. On or before the
2 fifteenth day of December in which the chairman submitted a report
3 stating the amount needed for the next fiscal year to eliminate a
4 projected unfunded liability, the unclaimed property administrator
5 shall transfer the amount requested, not to exceed five hundred
6 thousand dollars each year, from the unclaimed property trust fund
7 to the prepaid tuition trust escrow account.

8 (4) In the event the money in the prepaid tuition trust fund is
9 insufficient to cover the amount of money needed to meet the
10 current obligations of the prepaid tuition trust fund, the board
11 may withdraw from the prepaid tuition trust escrow account the
12 amount of money needed to meet current obligations of the prepaid
13 tuition trust fund.

14 (5) Notwithstanding any provision of this code to the
15 contrary, the governor, after consultation with the budget section
16 of the finance division of the department of administration, may
17 request an appropriation to the board in the amount of the
18 deficiency to meet the current obligations of the prepaid tuition
19 trust fund, in the budget presented to the next session of the
20 Legislature for its consideration. The Legislature is not required
21 to make any appropriation pursuant to this subsection, and the
22 amount of the deficiency is not a debt or a liability of the state.

23 (6) As used in this section, "current obligations of the
24 prepaid tuition trust fund" means amounts required for the payment
25 of contract distributions or other obligations of the prepaid
26 tuition trust fund, the maintenance of the fund, and operating
27 expenses for the current fiscal year.

28 (7) Nothing in this subsection creates an obligation of state
29 general revenue funds or requires any level of funding by the
30 Legislature.

31 (8) After the prepaid tuition trust fund has been closed and
32 all moneys paid in accordance with this section, any moneys
33 remaining in the prepaid tuition trust escrow account shall be
34 transferred to the general revenue fund and the account closed.

35 (j) To fulfill the charitable and public purpose of this
36 article, neither the earnings nor the corpus of the prepaid tuition
37 trust fund is subject to taxation by the state or any of its
38 political subdivisions.

39 (k) Notwithstanding any provision of this code to the
40 contrary, money in the prepaid tuition trust fund is exempt from
41 creditor process and not subject to attachment, garnishment or
42 other process; is not available as security or collateral for any
43 loan, or otherwise subject to alienation, sale, transfer,
44 assignment, pledge, encumbrance or charge; and is not subject to
45 seizure, taking, appropriation or application by any legal or
46 equitable process or operation of law to pay any debt or liability
47 of any account owner, beneficiary or successor in interest.

48 (1) No provision of this section may be construed to interfere
49 with the operation of the savings plan authorized under this
50 article.

51 **CHAPTER 36. ESTATES AND PROPERTY.**

52 **ARTICLE 8. UNIFORM UNCLAIMED PROPERTY ACT.**

53 **§36-8-13. Deposit of funds.**

1 (a) ~~Except as otherwise provided by this section, the~~
2 ~~administrator shall promptly deposit in the general revenue fund of~~
3 ~~this state all funds received under this article, including the~~
4 ~~proceeds from the sale of abandoned property under section twelve~~
5 ~~of this article. The administrator shall retain in a separate trust~~
6 ~~fund at least one hundred thousand dollars from which the~~
7 ~~administrator shall pay claims duly allowed. The administrator~~
8 ~~shall record the name and last known address of each person~~
9 ~~appearing from the holders' reports to be entitled to the property~~
10 ~~and the name and last known address of each insured person or~~
11 ~~annuitant and beneficiary and with respect to each policy or~~
12 ~~annuity listed in the report of an insurance company, its number,~~
13 ~~the name of the company and the amount due.~~

14 (b) ~~Before making a deposit to the credit of the general~~
15 ~~revenue fund, the administrator may deduct: The unclaimed property~~
16 ~~fund is continued. The administrator shall deposit all funds~~
17 ~~received pursuant to this article in the unclaimed property fund,~~
18 ~~including the proceeds from the sale of abandoned property under~~
19 ~~section twelve of this article. In addition to paying claims of~~
20 ~~unclaimed property duly allowed, the administrator may deduct the~~
21 ~~following expenses from the unclaimed property fund:~~

22 (1) Expenses of the sale of abandoned property;

23 (2) ~~Costs of mailing and publication in connection with~~
24 ~~abandoned property~~ Expenses incurred in returning the property to
25 owners, including without limitation the costs of mailing and
26 publication to locate owners;

27 (3) Reasonable service charge; and

28 (4) Expenses incurred in examining records of holders of
29 property and in collecting the property from those holders.

30 (c) The unclaimed property trust fund is continued within the
31 state treasury. After deducting the expenses specified in
32 subsection (b) of this section and maintaining a sum of money from
33 which to pay claims duly allowed, the administrator shall transfer
34 the remaining moneys in the unclaimed property fund to the
35 unclaimed property trust fund.

36 (d) On or before the fifteenth day of December of each year
37 and after receipt of a report from the chairman of the board of
38 trustees of the West Virginia college prepaid tuition and savings
39 program stating the amount certified by an actuary in accordance
40 with the provisions of section six, article thirty, chapter
41 eighteen of this code, notwithstanding any provision of this code
42 to the contrary, the administrator shall transfer the sum of money
43 certified by the actuary from the unclaimed property trust fund to
44 the prepaid tuition trust escrow account, the amount transferred
45 not to exceed five hundred thousand dollars annually.

46 (e) After transferring any money required by subsection (d) of
47 this section, the administrator shall transfer moneys remaining in
48 the unclaimed property trust fund to the general revenue fund.

House Bill 2961

Effective Date: Passed March 8, 2003; in effect ninety days from passage

Signed by Governor: April 1, 2003

Code Reference: Amends and reenacts §17C-12-7

Title: Relating to the idling of school buses

Major Provisions:

- Requires the State Board of Education to write a policy governing the idling of school buses.

1 (b) Every bus used for the transportation of school children
2 shall bear upon the front and rear ~~thereof~~ of the bus a plainly
3 visible sign containing the words "school bus" in letters not less
4 than eight inches in height. When a contract school bus is being
5 operated upon a highway for purposes other than the actual
6 transportation of children either to or from school, all markings
7 ~~thereon~~ on the contract school bus indicating "school bus" shall be
8 covered or concealed. Any school bus sold or transferred to
9 another owner by a county board of education, agency or individual
10 shall have all flashing warning lights disconnected and all
11 lettering removed or permanently obscured, except when sold or
12 transferred for the transportation of school children.

13 (c) The state board of education shall write a policy governing the
14 idling of school buses.

House Bill 2983

Effective Date: Passed March 8, 2003; in effect from passage

Signed by Governor: April 1, 2003

Code Reference: Amends and reenacts sections §18-7A-17 and §18-7A-34

Title: Relating to teachers' retirement system

Major Provisions:

- Provides technical corrections for conflicting language created when federal compliance provisions were previously added.
- Changes the amount of interest earned on contributions to the teachers' retirement system for service credit granted from 6% per year to an amount to be determined by the retirement board.

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ENROLLED
H. B. 2983

(By Delegates Campbell and Craig)
[Passed March 8, 2003; in effect from passage.]

AN ACT to amend and reenact sections seventeen and thirty-four, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the teachers' retirement system; providing technical corrections for conflicting language created when federal compliance provisions were previously added; and placing loan procedures within federal standards.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-17. Statement and computation of teachers' service; qualified military service.

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

(b) For the purpose of this article, the retirement board shall grant prior service credit to new entrants and other members of the retirement system for service in any of the armed forces of the United States in any period of national emergency within which a federal Selective Service Act was in effect. For purposes of this section, "armed forces" includes women's army corps, women's appointed volunteers for emergency service, army nurse corps, spars, women's reserve and other similar units officially parts of the military service of the United States. The military service is considered equivalent to public school teaching, and the salary equivalent for each year of that service is the actual salary of the member as a teacher for his or her first year of teaching after discharge from military service. Prior service credit for military service shall not exceed ten years for any one member, nor shall it exceed twenty-five percent of total service at the time of retirement. Notwithstanding the preceding provisions of this subsection, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code. For purposes of this section, "qualified military service" has the same meaning as in Section 414(u) of the Internal Revenue Code. The retirement board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to

1 the retirement board in section one, article ten-d, chapter five of
2 this code, may promulgate rules relating to contributions, benefits
3 and service credit to comply with Section 414(u) of the Internal
4 Revenue Code.

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

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

33 (e) No members shall be considered absent from service while
34 serving as a member or employee of the Legislature of the state of
35 West Virginia during any duly constituted session of that body or
36 while serving as an elected member of a county commission during
37 any duly constituted session of that body.

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

51 (g) The teachers retirement board shall grant service credit
52 to any former or present member of the West Virginia public
53 employees retirement system who has been a contributing member for

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

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

32 (i) Active members who previously worked in CETA
33 (Comprehensive Employment and Training Act) may receive service
34 credit for time served in that capacity: *Provided*, That in order
35 to receive service credit under the provisions of this subsection
36 the following conditions must be met: (1) The member must have
37 moved from temporary employment with the participating employer to
38 permanent full-time employment with the participating employer
39 within one hundred twenty days following the termination of the
40 member's CETA employment; (2) the board must receive evidence that
41 establishes to a reasonable degree of certainty as determined by
42 the board that the member previously worked in CETA; and (3) the
43 member shall pay to the board an amount equal to the employer and
44 employee contribution plus interest at the amount set by the board
45 for the amount of service credit sought pursuant to this
46 subsection: *Provided, however*, That the maximum service credit
47 that may be obtained under the provisions of this subsection is two
48 years: *Provided further*, That a member must apply and pay for the
49 service credit allowed under this subsection and provide all
50 necessary documentation by the thirty-first day of March, two
51 thousand three: *And provided further*, That the board shall
52 exercise due diligence to notify affected employees of the
53 provisions of this subsection.

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

4 (k) A member who withdrew from membership may regain his or
5 her former membership rights as specified in section thirteen of
6 this article only in case he or she has served two years since his
7 or her last withdrawal.

8 (l) Subject to the provisions of subsections (a) through (l),
9 inclusive, of this section, the board shall verify as soon as
10 practicable the statements of service submitted. The retirement
11 board shall issue prior service certificates to all persons
12 eligible for the certificates under the provisions of this article.
13 The certificates shall state the length of the prior service
14 credit, but in no case shall the prior service credit exceed forty
15 years.

16 (m) Notwithstanding any provision of this article to the
17 contrary, when a member is or has been elected to serve as a member
18 of the Legislature, and the proper discharge of his or her duties
19 of public office require that member to be absent from his or her
20 teaching or administrative duties, the time served in discharge of
21 his or her duties of the legislative office are credited as time
22 served for purposes of computing service credit: *Provided*, That
23 the board may not require any additional contributions from that
24 member in order for the board to credit him or her with the
25 contributing service credit earned while discharging official
26 legislative duties: *Provided, however*, That nothing herein may be
27 construed to relieve the employer from making the employer
28 contribution at the member's regular salary rate or rate of pay
29 from that employer on the contributing service credit earned while
30 the member is discharging his or her official legislative duties.
31 These employer payments shall commence as of the first day of June,
32 two thousand: *Provided further*, That any member to which the
33 provisions of this subsection apply may elect to pay to the board
34 an amount equal to what his or her contribution would have been for
35 those periods of time he or she was serving in the Legislature.
36 The periods of time upon which the member paid his or her
37 contribution shall then be included for purposes of determining his
38 or her final average salary as well as for determining years of
39 service: *And provided further*, That a member utilizing the
40 provisions of this subsection is not required to pay interest on
41 any contributions he or she may decide to make.

42 (n) The teachers retirement board shall grant service credit
43 to any former member of the state police death, disability and
44 retirement system who has been a contributing member for more than
45 three years, for service previously credited by the state police
46 death, disability and retirement system; and: (1) Shall require
47 the transfer of the member's contributions to the teachers
48 retirement system; or (2) shall require a repayment of the amount
49 withdrawn any time prior to the member's retirement: *Provided*,
50 That the member shall add to the amounts transferred or repaid
51 under this paragraph an amount which is sufficient to equal the
52 contributions he or she would have made had the member been under
53 the teachers retirement system during the period of his or her

1 membership in the state police death, disability and retirement
2 system plus interest at a rate of six percent compounded annually
3 from the date of withdrawal to the date of payment. The interest
4 paid shall be deposited in the reserve fund.

5 **§18-7A-34. Loans to members.**

6 A member of the retirement system upon written application may
7 borrow from his or her individual account in the teachers
8 accumulation fund, subject to these restrictions:

9 (1) Loans shall be made in multiples of ten dollars, the
10 minimal loan being one hundred dollars and the maximum being eight
11 thousand dollars: *Provided*, That the maximum amount of any loan
12 when added to the outstanding balance of all other loans shall not
13 exceed the lesser of the following: (a) Fifty thousand dollars
14 reduced by the excess (if any) of the highest outstanding balance
15 of loans during the one-year period ending on the day before the
16 date on which the loan is made, over the outstanding balance of
17 loans to the member on the date on which the loan is made; or (b)
18 fifty percent of the member's contributions to his or her
19 individual account in the teachers accumulations fund: *Provided*,
20 however, That if the total amount of loaned money outstanding
21 exceeds forty million dollars, the maximum shall not exceed three
22 thousand dollars until the retirement board determines that loans
23 outstanding have been reduced to an extent that additional loan
24 amounts are again authorized.

25 (2) Interest charged on the amount of the loan shall be six
26 percent per annum, or a higher rate as set by the retirement board:
27 *Provided*, That interest charged shall be commercially reasonable in
28 accordance with the provisions of section 72(p)(2) of the Internal
29 Revenue Code, and the federal regulations issued thereunder. If
30 repayable in installments, the interest shall not exceed the annual
31 rate so established upon the principal amount of the loan, for the
32 entire period of the loan, and such charge shall be added to the
33 principal amount of the loan. The minimal interest charge shall be
34 for six months.

35 (3) No member shall be eligible for more than one outstanding
36 ~~loan in any one year at any time.~~

37 (4) If a refund is payable to the borrower or his or her
38 beneficiary before he or she repays the loan with interest, the
39 balance due with interest to date shall be deducted from such
40 refund.

41 (5) From his or her monthly salary as a teacher the member
42 shall pay the loan and interest by deductions which will pay the
43 loan and interest in substantially level payments in not more than
44 sixty nor less than six months. Upon notice of loan granted and
45 payment due, the employer shall be responsible for making such
46 salary deductions and reporting them to the retirement board. At
47 the option of the retirement board, loan deductions may be
48 collected as prescribed herein for the collection of members'
49 contribution, or may be collected through issuance of warrant by
50 employer. If the borrower decides to make loan payments while not
51 paid for service as a teacher, the retirement board must accept
52 such payments.

1 (6) The entire unpaid balance of any loan, and interest due
2 thereon, shall, at the option of the retirement board, become due
3 and payable without further notice or demand upon the occurrence
4 with respect to the borrowing member of any of the following events
5 of default: (A) Any payment of principal and accrued interest on
6 a loan remains unpaid after the same becomes due and payable under
7 the terms of the loan or after such grace period as may be
8 established in the discretion of the retirement board; (B) the
9 borrowing member attempts to make an assignment for the benefit of
10 creditors of his or her refund or benefit under the retirement
11 system; or (C) any other event of default set forth in rules
12 promulgated by the retirement board in accordance with the
13 authority granted pursuant to section one, article ten-d, chapter
14 five of this code: *Provided*, That any refund or offset of an
15 unpaid loan balance shall be made only at the time the member is
16 entitled to receive a distribution under the retirement system.

17 (7) Loans shall be evidenced by such form of obligations and
18 shall be made upon such additional terms as to default, prepayment,
19 security, and otherwise as the retirement board may determine.

20 (8) Notwithstanding anything herein to the contrary, the loan
21 program authorized by this section shall comply with the provisions
22 of section 72(p)(2) and section 401 of the Internal Revenue Code,
23 and the federal regulations issued thereunder, and accordingly, the
24 retirement board is authorized to: (a) Apply and construe the
25 provisions of this section and administer the plan loan program in
26 such a manner as to comply with the provisions of section 72(p)(2)
27 and section 401 of the Internal Revenue Code and the federal
28 regulations issued thereunder; (b) adopt plan loan policies or
29 procedures consistent with these federal law provisions; and (c)
30 take such actions as it deems necessary or appropriate to
31 administer the plan loan program created hereunder in accordance
32 with these federal law provisions. The retirement board is further
33 authorized in connection with the plan loan program to take any
34 actions that may at any time be required by the Internal Revenue
35 Service regarding compliance with the requirements of section
36 72(p)(2) or section 401 of the Internal Revenue Code, and the
37 federal regulations issued thereunder, notwithstanding any
38 provision in this article to the contrary.

House Bill 2984

Effective Date: Passed March 8, 2003; in effect from passage

Signed by Governor: March 27, 2003

Code Reference: Amends and reenacts §18-7A-14b

Title: Relating to state teachers retirement system

Major Provisions:

- Extends the number of years that may be purchased by a member of the state teachers retirement system who was absent from work while receiving workers' compensation benefits during the time period January 1, 1988 through December 31, 1998 from four to five years.
- Requires that the purchase of service credit be completed between the time period of July 1, 2003 and ending June 30, 2004.
- States that the years purchased will count as a year of experience for increment purposes.

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ENROLLED
H. B. 2984

(By Delegate H. White)
[Passed March 8, 2003; in effect from passage.]

AN ACT to amend and reenact section fourteen-b, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to state teachers retirement system; increasing the amount of service credit a teacher off work on workers' compensation may purchase; setting forth a window for the purchase and providing that a teacher receive increment credit for each year purchased.

Be it enacted by the Legislature of West Virginia:

That section fourteen-b, 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-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 three and ending the thirtieth day of June, two thousand ~~one-four~~: *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 ~~four-five~~: And provided further, That each year purchased under this section shall count as a year of experience for purposes of the increment set

1 forth in section two, article four, chapter eighteen-a of this
2 code.

Senate Bill 107

Effective Date: Passed march 7, 2003; in effect ninety days from passage

Signed by Governor: March 1, 2003

Code Reference: Amends and reenacts §11-15-9g

Title: Consumer Sales and Service Tax

Major Provisions:

- Relates to consumers sales and service tax and creating exemption for purchases of back-to-school clothing and school supplies by consumers during three-day period in August 2003.
- Specifes eligible tax free purchases in dollar limitations.

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ENROLLED

Senate Bill No. 107

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,
BY REQUEST OF THE EXECUTIVE)

[Passed march 7, 2003; in effect ninety days from passage.]

AN ACT to amend and reenact section nine-g, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to consumers sales and service tax; and creating exemption for purchases of back-to-school clothing and school supplies by consumers during three-day period in August, two thousand three.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9g. Exemption for clothing, footwear and school supplies for limited period in the year two thousand three.

(a) The sale of an article of clothing or footwear designed to be worn on or about the human body and the sale of school supplies, such as pens, pencils, binders, notebooks, reference books, book bags, lunch boxes, computers, computer accessories and calculators, is exempted from the taxes imposed by this article if:

(1) The sales price of the article or school supply, except for a computer or computer accessory, is less than one hundred dollars;

(2) The sales price of a computer ~~or computer accessory~~ is less than ~~one hundred~~ seven hundred fifty dollars after credit for any manufacturer's rebate or computer accessory is less than one hundred dollars after credit for any manufacturer's rebate; and

(3) The sale takes place during a period beginning at 12:01 a.m. eastern daylight time on the first Friday in August, two thousand ~~two~~ three, and ending at 12 midnight eastern daylight time on the following Sunday in August, two thousand ~~two~~ three.

(b) This section does not apply to:

(1) Any special clothing or footwear that is primarily designed for athletic activity or protective use and that is not normally worn except when used for the athletic activity or protective use for which it is designed;

(2) Accessories, including jewelry, handbags, luggage, umbrellas, wallets, watches and similar items carried on or about the human body, without regard to whether worn on the body in a manner characteristic of clothing;

(3) The rental of clothing, footwear or school supplies;

(4) Furniture; and

(5) Tangible personal property for use in a trade or business.

Senate Bill 162

Effective Date: Passed March 8, 2002, in effect ninety days from passage

Signed by Governor: March 27, 2003

Code Preference: Amend and reenact §17B-2-14

Title: Issuance of License, Expiration and Renewal

Major Provisions:

- Driver's license denial information, related to school attendance, should not be released to any third party if the applicant is eighteen years of age or older.

Senate Bill 180

Effective Date: Passed March 8, 2003; in effect from passage

Signed by Governor: April 2, 2003

Code Reference: Amends and reenacts §18-9D-3, §18-9D-6, §18-9D-15, §18-9D-16, §18-9D-19, and §18-10H-6

Title: Relating to School Building Authority

Major Provisions:

- Authorizes the School Building Authority (SBA) to require flood insurance on any facility within the one hundred year flood plain at which SBA funds are expended.
- Authorizes SBA to accept and expend any gift including equipment for the benefit of SBA or other specified purposes.
- Authorizes SBA to encourage any project to provide opportunities for work-based learning experiences.
- SBA may use any remaining funds after debt service requirements have been met to finance the cost of school construction or improvement projects on a cash basis.
- SBA may reserve no more than 5% of certain monies available for multiuse vocational-technical education facilities.
- SBA cannot distribute funds to any county board that does not have an approved comprehensive educational facility plan or to any board not prepared to expend the monies during the fiscal year in which distributed.
- SBA may set aside limited funding, not to exceed \$500,000, in reserve for one additional year to provide a county the opportunity to complete financial planning for a project prior to the allocation of construction funds.
- Comprehensive educational facilities plans must include up-to-date projections of student enrollments.

- County boards may include facilities for community and technical college education within the construction of comprehensive vocational facilities at existing high schools.
- For boards who participate in a multi-county vocational center, the board does not have to include plans for the construction of a comprehensive vocational facility when constructing a new high school. If the board elects to include the facility, the multi-county director must be included in planning the programs offered at the facility. Any programs offered cannot replace the programs offered by the center without approval.
- For any county board in which there is an existing comprehensive vocational center, the board may eliminate any vocational offering from a new comprehensive high school if the board meets certain requirements.
- The State Board must include introductory vocational-technical courses in middle school grades as appropriate as part of establishing and operating an effective schools programs for vocational-technical education.

1 reenacted; and that section six, article ten-h of said chapter be
2 amended and reenacted, all to read as follows:

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

4 **§18-9D-3. Powers of authority.**

5 The school building authority has the power:

6 (1) To sue and be sued, plead and be impleaded;

7 (2) To have a seal and alter the same at pleasure;

8 (3) To contract to acquire and to acquire, in the name of the
9 authority, by purchase, lease-purchase not to exceed a term of
10 twenty-five years, or otherwise, real property or rights or
11 easements necessary or convenient for its corporate purposes and to
12 exercise the power of eminent domain to accomplish those purposes;

13 (4) To acquire, hold and dispose of real and personal property
14 for its corporate purposes;

15 (5) To make bylaws for the management and rule of its affairs;

16 (6) To appoint, contract with and employ attorneys, bond
17 counsel, accountants, construction and financial experts,
18 underwriters, financial advisers, trustees, managers, officers and
19 such other employees and agents as may be necessary in the judgment
20 of the authority and to fix their compensation: *Provided*, That
21 contracts entered into by the school building authority in
22 connection with the issuance of bonds under this article to provide
23 professional and technical services, including, without limitation,
24 accounting, actuarial, underwriting, consulting, trustee, bond
25 counsel, legal services and contracts relating to the purchase or
26 sale of bonds are subject to the provisions of article three,
27 chapter five-a of this code: *Provided, however*, That
28 notwithstanding any other provisions of this code, any authority of
29 the attorney general of this state relating to the review of
30 contracts and other documents to effectuate the issuance of bonds
31 under this article shall be exclusively limited to the form of the
32 contract and document: *Provided further*, That the attorney general
33 of this state shall complete all reviews of contracts and documents
34 relating to the issuance of bonds under this article within ten
35 calendar days of receipt of the contract and document for review;

36 (7) To make contracts and to execute all instruments necessary
37 or convenient to effectuate the intent of and to exercise the
38 powers granted to it by this article;

39 (8) To renegotiate all contracts entered into by it whenever,
40 due to a change in situation, it appears to the authority that its
41 interests will be best served;

42 (9) To acquire by purchase, eminent domain or otherwise all
43 real property or interests in the property necessary or convenient
44 to accomplish the purposes of this article;

45 (10) To require proper maintenance and insurance of any
46 project authorized under this section, including flood insurance
47 for any facility within the one hundred year flood plain at which
48 authority funds are expended;

49 (11) To charge rent for the use of all or any part of a
50 project or buildings at any time financed, constructed, acquired or
51 improved, in whole or in part, with the revenues of the authority;

52 (12) To assist any county board of education that chooses to
53 acquire land, buildings and capital improvements to existing school
54 buildings and property for use as public school facilities, by

1 lease from a private or public lessor for a term not to exceed
2 twenty-five years with an option to purchase pursuant to an
3 investment contract with the lessor on such terms and conditions as
4 may be determined to be in the best interests of the authority, the
5 state board of education and the county board of education,
6 consistent with the purposes of this article, by transferring funds
7 to the state board of education as provided in subsection (d),
8 section fifteen of this article for the use of the county board of
9 education;

10 (13) To accept and expend any gift, grant, contribution,
11 bequest or endowment of money and equipment to, or for the benefit
12 of, the authority, or any project under this article, from the
13 state of West Virginia or any other source for any or all of the
14 purposes specified in this article or for any one or more of such
15 purposes as may be specified in connection with the gift, grant,
16 contribution, bequest or endowment;

17 (14) To enter on any lands and premises for the purpose of
18 making surveys, soundings and examinations;

19 (15) To contract for architectural, engineering or other
20 professional services considered necessary or economical by the
21 authority to provide consultative or other services to the
22 authority or to any regional educational service agency or county
23 board requesting professional services offered by the authority, to
24 evaluate any facilities plan or any project encompassed in the
25 plan, to inspect existing facilities or any project that has
26 received or may receive funding from the authority, or to perform
27 any other service considered by the authority to be necessary or
28 economical. Assistance to the region or district may include the
29 development of pre-approved systems, plans, designs, models or
30 documents; advice or oversight on any plan or project; or any other
31 service that may be efficiently provided to regional educational
32 service agencies or county boards by the authority;

33 (16) To provide funds on an emergency basis to repair or
34 replace property damaged by fire, flood, wind, storm, earthquake or
35 other natural occurrence, the funds to be made available in
36 accordance with guidelines of the school building authority;

37 (17) To transfer moneys to custodial accounts maintained by
38 the school building authority with a state financial institution
39 from the school construction fund and the school improvement fund
40 created in the state treasury pursuant to the provisions of section
41 six of this article, as necessary to the performance of any
42 contracts executed by the school building authority in accordance
43 with the provisions of this article;

44 (18) To enter into agreements with county boards and persons,
45 firms or corporations to facilitate the development of county board
46 projects and county board facilities plans. The county board
47 participating in an agreement shall pay at least twenty-five
48 percent of the cost of the agreement. Nothing in this section
49 shall be construed to supersede, limit or impair the authority of
50 county boards to develop and prepare their projects or plans;

51 (19) To encourage any project or part thereof to provide
52 opportunities for students to participate in supervised, unpaid
53 work-based learning experiences related to the student's program of
54 study approved by the county board. The work-based learning

1 experience must be conducted in accordance with a formal training
2 plan approved by the instructor, the employer and the student and
3 which sets forth at a minimum the specific skills to be learned,
4 the required documentation of work-based learning experiences, the
5 conditions of the placement, including duration and safety
6 provisions, and provisions for supervision and liability insurance
7 coverage as applicable. Projects involving the new construction
8 and renovation of vocational-technical and adult education
9 facilities should provide opportunities for students to participate
10 in supervised work-based learning experiences, to the extent
11 practical, which meet the requirements of this subdivision.
12 Nothing in this subdivision may be construed to affect registered
13 youth apprenticeship programs or the provisions governing those
14 programs; and

15 (20) To do all things necessary or convenient to carry out the
16 powers given in this article.

17 **§18-9D-6. School building capital improvements fund in state**
18 **treasury; school construction fund in state treasury; school**
19 **building debt service fund in state treasury; school**
20 **improvement fund in state treasury; collections to be paid**
21 **into special funds; authority to pledge such collections as**
22 **security for refunding revenue bonds; authority to finance**
23 **projects on a cash basis.**

24 (a) There is continued in the state treasury a school building
25 capital improvements fund to be expended by the authority as
26 provided in this article. The school building capital improvements
27 fund shall be an interest-bearing account with interest credited to
28 and deposited in the school building capital improvements fund and
29 expended in accordance with the provisions of this article.

30 The school building authority ~~has authority to~~ may pledge all
31 or ~~such any~~ part of the revenues paid into the school building
32 capital improvements fund ~~as may be~~ that are needed to meet the
33 requirements of any revenue bond issue or issues authorized by this
34 article prior to the twentieth day of July, one thousand nine
35 hundred ninety-three, or revenue bonds issued to refund revenue
36 bonds issued prior to that date, including the payment of principal
37 of, interest and redemption premium, if any, on the revenue bonds
38 and the establishing and maintaining of a reserve fund or funds for
39 the payment of the principal of, interest and redemption premium,
40 if any, on the revenue bond issue or issues when other moneys
41 pledged may be insufficient for the payment of the principal,
42 interest and redemption premium, including ~~such any~~ additional
43 protective pledge of revenues ~~as that~~ the authority in its
44 discretion has provided by resolution authorizing the issuance of
45 the bonds or in any trust agreement made in connection with the
46 bond issue. Additionally, ~~t~~The authority may ~~further~~ provide in
47 the resolution and in the trust agreement for ~~such~~ priorities on
48 the revenues paid into the school building capital improvements
49 fund ~~that as may be~~ are necessary for the protection of the prior
50 rights of the holders of ~~the holders of~~ bonds issued at different
51 times under the provisions of this article.

52 Any balance remaining in the school building capital
53 improvements fund after the authority has issued bonds authorized
54 by this article, and after the requirements of all funds including

1 reserve funds established in connection with the bonds issued prior
2 to the twentieth day of July, one thousand nine hundred
3 ninety-three, pursuant to this article have been satisfied, may be
4 used for the redemption of any of the outstanding bonds issued
5 under this article which by their terms are then redeemable, or for
6 the purchase of the bonds at the market price, but not exceeding
7 the price, if any, at which the bonds are in the same year
8 redeemable, and all bonds redeemed or purchased shall immediately
9 be canceled and shall not again be issued.

10 The school building authority, in its discretion, may use the
11 moneys in the school building capital improvements fund to finance
12 the cost of projects on a cash basis. Any pledge of moneys in the
13 fund for revenue bonds issued prior to the twentieth day of July,
14 one thousand nine hundred ninety-three, is a prior and superior
15 charge on the fund over the use of any of the moneys in the fund to
16 pay for the cost of any project on a cash basis: *Provided*, That any
17 expenditures from the fund, other than for the retirement of
18 revenue bonds, may only be made by the authority in accordance with
19 the provisions of this article.

20 (b) There is ~~hereby~~ continued in the state treasury a special
21 revenue fund named the school building debt service fund into which
22 shall be deposited, ~~on and after the first day of April, one~~
23 ~~thousand nine hundred ninety-four~~, the amounts specified in section
24 eighteen, article twenty-two, chapter twenty-nine of this code.
25 All amounts deposited in the fund shall be pledged to the repayment
26 of the principal, interest and redemption premium, if any, on any
27 revenue bonds or refunding revenue bonds authorized by this
28 article: *Provided*, That deposited moneys may not be pledged to the
29 repayment of any revenue bonds issued prior to the first day of
30 January, one thousand nine hundred ninety-four, or with respect to
31 revenue bonds issued for the purpose of refunding revenue bonds
32 issued prior to the first day of January, one thousand nine hundred
33 ninety-four. Additionally, the authority may further provide in
34 the resolution and in the trust agreement for priorities on the
35 revenues paid into the school building debt service fund as may be
36 that are necessary for the protection of the prior rights of the
37 holders of bonds issued at different times under the provisions of
38 this article. On or prior to the first day of May of each year,
39 ~~commencing the first day of May, one thousand nine hundred ninety-~~
40 ~~four~~, the authority shall certify to the state lottery director the
41 principal and interest and coverage ratio requirements for the
42 following fiscal year on any revenue bonds issued on or after the
43 first day of January, one thousand nine hundred ninety-four, and
44 for which moneys deposited in the school building debt service fund
45 have been pledged, or will be pledged, for repayment pursuant to
46 this section.

47 After the authority has issued bonds authorized by this
48 article, and after the requirements of all funds have been
49 satisfied, including coverage and reserve funds established in
50 connection with the bonds issued pursuant to this article, any
51 balance remaining in the school building debt service fund may be
52 used for the redemption of any of the outstanding bonds issued
53 under this article which, by their terms, are then redeemable or
54 for the purchase of the outstanding bonds at the market price, but

1 not to exceed the price, if any, at which the bonds are redeemable
2 and all bonds redeemed or purchased shall be immediately canceled
3 and shall not again be issued: Provided, That after the authority
4 has issued bonds authorized by this article and after the
5 requirements of debt service and all associated funds have been
6 satisfied for the fiscal year, including coverage and reserve funds
7 established in connection with the bonds issued pursuant to this
8 article, any remaining balance in the school building debt service
9 fund may be transferred to the school construction fund created in
10 subsection (c) of this section and used by the school building
11 authority in its discretion to finance the cost of school
12 construction or improvement projects on a cash basis.

13 (c) There is ~~hereby~~ continued in the state treasury a special
14 revenue fund named the school construction fund into which shall be
15 deposited ~~on and after the first day of July, one thousand nine~~
16 ~~hundred ninety-four,~~ the amounts specified in section thirty,
17 article fifteen, chapter eleven of this code, together with any
18 moneys appropriated ~~thereto~~ to the fund by the Legislature.
19 Expenditures from the school construction fund shall be for the
20 purposes set forth in this article, including lease-purchase
21 payments under agreements made pursuant to subsection (e), section
22 fifteen of this article and section nine, article five of this
23 chapter and are authorized from collections in accordance with the
24 provisions of article three, chapter twelve of this code and from
25 other revenues annually appropriated by the Legislature from
26 lottery revenues as authorized by section eighteen, article
27 twenty-two, chapter twenty-nine of this code pursuant to the
28 provisions set forth in article two, chapter five-a of this code.
29 Amounts collected which are found, from time to time, to exceed the
30 funds needed for purposes set forth in this article may be
31 transferred to other accounts or funds and redesignated for other
32 purposes by appropriation of the Legislature. The school
33 construction fund shall be an interest-bearing account, with the
34 interest credited to and deposited in the school construction fund
35 and expended in accordance with the provisions of this article.
36 Deposits to and expenditures from the school construction fund are
37 subject to the provisions of subsection (i), section fifteen of
38 this article.

39 (d) There is ~~hereby~~ continued in the state treasury a special
40 revenue fund named the school major improvement fund into which
41 shall be deposited ~~on and after the first day of July, one thousand~~
42 ~~nine hundred ninety-four,~~ the amounts specified in section thirty,
43 article fifteen, chapter eleven of this code, together with any
44 moneys appropriated to the fund by the Legislature. Expenditures
45 from the school major improvement fund shall be for the purposes
46 set forth in this article and are authorized from collections in
47 accordance with the provisions of article three, chapter twelve of
48 this code and from other revenues annually appropriated by the
49 Legislature from lottery revenues as authorized by section
50 eighteen, article twenty-two, chapter twenty-nine of this code
51 pursuant to the provisions set forth in article two, chapter five-a
52 of this code. Amounts collected which are found, from time to
53 time, to exceed the funds needed for purposes set forth in this
54 article may be transferred to other accounts or funds and

1 redesignated for other purposes by appropriation of the
2 Legislature. The school major improvement fund shall be an
3 interest-bearing account, with interest being credited to and
4 deposited in the school major improvement fund and expended in
5 accordance with the provisions of this article.

6 (e) The Legislature ~~hereby~~ finds and declares that the supreme
7 court of appeals of West Virginia has held that the issuance of
8 additional revenue bonds authorized under the school building
9 authority act, as enacted in this article prior to the twentieth
10 day of July, one thousand nine hundred ninety-three, constituted an
11 indebtedness of the state in violation of section four, article X
12 of the constitution of West Virginia, but that revenue bonds issued
13 under this article prior to the twentieth day of July, one thousand
14 nine hundred ninety-three, are not invalid. The Legislature
15 further finds and declares that the financial capacity of a county
16 to construct, lease and improve school facilities depends upon the
17 county's bonding capacity (local property wealth), voter
18 willingness to pass bond issues and the county's ability to
19 reallocate other available county funds instead of criteria related
20 to educational needs or upon the ability of the school building
21 authority created in this article to issue bonds that comply with
22 the holding of the West Virginia supreme court of appeals or
23 otherwise assist counties with the financing of facilities
24 construction and improvement. The Legislature ~~hereby~~ further finds
25 and declares that this section, as well as section eighteen,
26 article twenty-two, chapter twenty-nine of this code, have been
27 reenacted during the first extraordinary session of the West
28 Virginia Legislature in the year one thousand nine hundred
29 ninety-four in an attempt to comply with the holding of the supreme
30 court of appeals of West Virginia.

31 The Legislature ~~hereby~~ further finds and declares that it
32 intends, through the reenactment of this section and section
33 eighteen, article twenty-two, chapter twenty-nine of this code, to
34 dedicate a source of state revenues to special revenue funds for
35 the purposes of paying the debt service on bonds and refunding
36 bonds issued subsequent to the first day of January, one thousand
37 nine hundred ninety-four, the proceeds of which will be used for
38 the construction and improvement of school building facilities.
39 The Legislature ~~hereby~~ further finds and declares that it intends,
40 through the reenactment of this section and section thirty, article
41 fifteen, chapter eleven of this code and section eighteen, article
42 twenty-two, chapter twenty-nine of this code, to appropriate
43 revenues to two special revenue funds for the purposes of
44 construction and improvement of school building facilities.
45 Furthermore, the Legislature intends to encourage county boards to
46 maintain existing levels of county funding for construction,
47 improvement and maintenance of school building facilities and to
48 generate additional county funds for ~~such~~ those purposes through
49 bonds and special levies whenever possible. The Legislature
50 further encourages the school building authority, the state board
51 ~~of education~~ and county boards of education to propose uniform
52 project specifications for comparable projects whenever possible to
53 meet county needs at the lowest possible cost.

1 The Legislature ~~hereby~~ further finds and declares that it
2 intends, through the reenactment of this section and section
3 eighteen, article twenty-two, chapter twenty-nine of this code, to
4 comply with the provisions of sections ~~4~~four and ~~6~~six, article X
5 ~~and section 1, article XII~~ of the constitution of West Virginia;
6 and section one, article XII of said constitution.

7 **§18-9D-15. Legislative intent; distribution of money.**

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

19 (b) An amount that is no more than three percent of the sum of
20 moneys that are determined by the authority to be available for
21 distribution during the then current fiscal year from: (1) Moneys
22 paid into the school building capital improvements fund pursuant to
23 section ten, article nine-a of this chapter; (2) the issuance of
24 revenue bonds for which moneys in the school building debt service
25 fund are pledged as security; (3) moneys paid into the school
26 construction fund pursuant to section six of this article; and (4)
27 any other moneys received by the authority, except moneys paid into
28 the school major improvement fund pursuant to section six of this
29 article, may be allocated and may be expended by the authority for
30 projects that service the educational community statewide or, upon
31 application by the state board, for educational programs that are
32 under the jurisdiction of the state board. In addition, upon
33 application by the state board or the administrative council of an
34 area vocational educational center established pursuant to article
35 two-b of this chapter, the authority may allocate and expend under
36 this subsection moneys for school major improvement projects
37 proposed by the state board or an administrative council for school
38 facilities under the direct supervision of the state board or an
39 administrative council, respectively: *Provided*, That the authority
40 may not expend any moneys for a school major improvement project
41 proposed by the state board or the administrative council of an
42 area vocational educational center unless the state board or an
43 administrative council has submitted a ten-year school major
44 improvement plan, to be updated annually, pursuant to section
45 sixteen of this article: *Provided, however*, That the authority
46 shall, before allocating any moneys to the state board or the
47 administrative council of an area vocational educational center for
48 a school improvement project, consider all other funding sources
49 available for the project.

50 (c) An amount that is no more than two percent of the moneys
51 that are determined by the authority to be available for
52 distribution during the current fiscal year from: (1) Moneys paid
53 into the school building capital improvements fund pursuant to
54 section ten, article nine-a of this chapter; (2) the issuance of

1 revenue bonds for which moneys in the school building debt service
2 fund are pledged as security; (3) moneys paid into the school
3 construction fund pursuant to section six of this article; and (4)
4 any other moneys received by the authority, except moneys deposited
5 into the school major improvement fund, shall be set aside by the
6 authority as an emergency fund to be distributed in accordance with
7 the guidelines adopted by the authority.

8 ~~(d) The remaining moneys~~ An amount that is no more than five
9 percent of the moneys that are determined by the authority to be
10 available for distribution during the current fiscal year from: (1)
11 Moneys paid into the school building capital improvements fund
12 pursuant to section ten, article nine-a of this chapter; (2) the
13 issuance of revenue bonds for which moneys in the school building
14 debt service fund are pledged as security; (3) moneys paid into the
15 school construction fund pursuant to section six of this article;
16 and (4) any other moneys received by the authority, except moneys
17 deposited into the school major improvement fund, shall may be
18 allocated and expended on the basis of need and efficient use of
19 resources, the basis to be determined by the authority in
20 accordance with the provisions of section sixteen of this article
21 reserved by the authority for multiuse vocational-technical
22 education facilities that may include post-secondary programs as a
23 first priority use. The authority may allocate and expend under
24 this subsection moneys for any purposes authorized in this article
25 on multiuse vocational-technical education facilities and for
26 equipment and equipment updates at the facilities. If the projects
27 approved under this subsection do not require the full amount of
28 moneys reserved, moneys above the amount required may be allocated
29 and expended in accordance with other provisions of this article.
30 A county board, the state board, an administrative council or the
31 joint administrative board of a vocational-technical education
32 facility which includes post-secondary programs may propose
33 projects for facilities or equipment, or both, which are under the
34 direct supervision of the respective body: *Provided, That the*
35 authority shall, before allocating any moneys for a project under
36 this subsection, consider all other funding sources available for
37 the project.

38 (e) The remaining moneys determined by the authority to be
39 available for distribution during the then current fiscal year
40 from: (1) Moneys paid into the school building capital improvements
41 fund pursuant to section ten, article nine-a of this chapter; (2)
42 the issuance of revenue bonds for which moneys in the school
43 building debt service fund are pledged as security; (3) moneys paid
44 into the school construction fund pursuant to section six of this
45 article; and (4) any other moneys received by the authority, except
46 moneys deposited into the school major improvement fund, shall be
47 allocated and expended on the basis of need and efficient use of
48 resources, the basis to be determined by the authority in
49 accordance with the provisions of section sixteen of this article.

50 (f) If a county board of education proposes to finance a
51 project that is approved pursuant to section sixteen of this
52 article through a lease with an option to purchase leased premises
53 upon the expiration of the total lease period pursuant to an
54 investment contract, the authority may allocate no moneys to the

1 county board in connection with the project: *Provided*, That the
2 authority may transfer moneys to the state board of education
3 which, with the authority, shall lend the amount transferred to the
4 county board to be used only for a one-time payment due at the
5 beginning of the lease term, made for the purpose of reducing
6 annual lease payments under the investment contract, subject to the
7 following conditions:

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

15 (2) The loan agreement shall provide for the state board and
16 the authority to defer the payment of principal and interest upon
17 any loan made to the county board during the term of the investment
18 contract, and annual renewals of the investment contract, among the
19 state board, the authority, the county board and a lessor:
20 *Provided*, That in the event a county board which has received a
21 loan from the authority for a one-time payment at the beginning of
22 the lease term does not renew the subject lease annually until
23 performance of the investment contract in its entirety is
24 completed, the county board is in default and the principal of the
25 loan, together with all unpaid interest accrued to the date of the
26 default, shall, at the option of the authority, in consultation
27 with the state board, become due and payable immediately or subject
28 to renegotiation among the state board, the authority and the
29 county board: *Provided, however*, That if a county board renews the
30 lease annually through the performance of the investment contract
31 in its entirety, the county board shall exercise its option to
32 purchase the leased premises: *Provided further*, That the failure of
33 the county board to make a scheduled payment pursuant to the
34 investment contract constitutes an event of default under the loan
35 agreement: *And provided further*, That upon a default by a county
36 board, the principal of the loan, together with all unpaid interest
37 accrued to the date of the default, shall, at the option of the
38 authority, in consultation with the state board, become due and
39 payable immediately or subject to renegotiation among the state
40 board, the authority and the county board: *And provided further*,
41 That if the loan becomes due and payable immediately, the
42 authority, in consultation with the state board, shall use all
43 means available under the loan agreement and law to collect the
44 outstanding principal balance of the loan, together with all unpaid
45 interest accrued to the date of payment of the outstanding
46 principal balance; and

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

52 ~~(f)~~(g) To encourage county boards to proceed promptly with
53 facilities planning and to prepare for the expenditure of any state
54 moneys derived from the sources described in this subsection, any

1 county board failing to expend money within three years of the
2 allocation to the county board shall forfeit the allocation and
3 thereafter is ineligible for further allocations pursuant to this
4 subsection until the county board is ready to expend funds in
5 accordance with an approved facilities plan: *Provided*, That the
6 authority may authorize an extension beyond the three-year
7 forfeiture period not to exceed an additional two years. Any
8 amount forfeited shall be added to the total funds available in the
9 school construction fund of the authority for future allocation and
10 distribution. Funds may not be distributed to any county board
11 that does not have a comprehensive educational facility plan
12 approved by the state board and the school building authority or to
13 any county board that is not prepared to commence expenditure of
14 the funds during the fiscal year in which the moneys are
15 distributed.

16 ~~(g)~~ (h) The remaining moneys that are determined by the
17 authority to be available for distribution during the then current
18 fiscal year from moneys paid into the school major improvement fund
19 pursuant to section six of this article shall be allocated and
20 distributed on the basis of need and efficient use of resources,
21 the basis to be determined by the authority in accordance with the
22 provisions of section sixteen of this article: *Provided*, That the
23 moneys may not be distributed to any county board that does not
24 have an approved school major improvement plan or to any county
25 board that is not prepared to commence expenditures of the funds
26 during the fiscal year in which the moneys are distributed:
27 *Provided, however*, That any moneys allocated to a county board and
28 not distributed to that county board shall be deposited in an
29 account to the credit of that county board, the principal amount to
30 remain to the credit of and available to the county board for a
31 period of two years. Any moneys which are unexpended after a
32 two-year period shall be redistributed on the basis of need from
33 the school major improvement fund in that fiscal year.

34 ~~(h)~~ (i) No local matching funds may be required under the
35 provisions of this section. However, the responsibilities of the
36 county boards of education to maintain school facilities are not
37 negated by the provisions of this article board's maintenance
38 budget over any three of the previous five years and must have
39 budgeted an amount equal to or greater than the average in the
40 current fiscal year: *Provided*, That the state board of education
41 shall promulgate rules relating to county boards' maintenance
42 budgets, including items which shall be included in the budgets.

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

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

53 Any funds deposited in the school construction fund shall be
54 expended first in accordance with an appropriation by the

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

11 ~~(k)~~ (l) It is the intent of the Legislature to encourage
12 county boards to explore and consider arrangements with other
13 counties that may facilitate the highest and best use of all
14 available funds, which may result in improved transportation
15 arrangements for students, or which otherwise may create
16 efficiencies for county boards and the students. In order to
17 address the intent of the Legislature contained in this subsection,
18 the authority shall grant preference to those projects which
19 involve multicounty arrangements as the authority shall determine
20 reasonable and proper.

21 ~~(l)~~ (m) County boards shall submit all designs for
22 construction of new school buildings to the school building
23 authority for review and approval prior to preparation of final bid
24 documents: *Provided*, That a vendor who has been debarred pursuant
25 to the provisions of sections thirty-three-a through thirty-three-
26 f, inclusive, article three, chapter five-a of this code, may not
27 bid on or be awarded a contract under this section.

28 ~~(m)~~ (n) The authority may elect to disburse funds for approved
29 construction projects over a period of more than one year subject
30 to the following:

31 (1) The authority may not approve the funding of a school
32 construction project for more than three years; and

33 (2) The authority may not approve the use of more than fifty
34 percent of the revenue available for distribution in any given
35 fiscal year for projects that are to be funded over more than one
36 year; and

37 (3) In order to encourage local participation in funding
38 school construction projects, the authority may set aside limited
39 funding, not to exceed five hundred thousand dollars, in reserve
40 for one additional year to provide a county the opportunity to
41 complete financial planning for a project prior to the allocation
42 of construction funds. Any such funding shall be on a reserve
43 basis and converted to a part of the construction grant only after
44 all project budget funds have been secured and all county
45 commitments have been fulfilled. Failure of the county to solidify
46 the project budget and meet its obligations to the state within
47 eighteen months of the date the funding is set aside by the
48 authority will result in expiration of the reserve and the funds
49 shall be reallocated by the authority in the succeeding funding
50 cycle.

51 **§18-9D-16. Facilities and major improvement plans generally;**
52 **need-based eligibility.**

53 (a) To facilitate the goals as stated in section fifteen of
54 this article and to assure the prudent and resourceful expenditure

1 of state funds for construction projects as described in subsection
2 (d) of said section, each county board of education shall submit a
3 countywide comprehensive educational facilities plan that addresses
4 the facilities and major improvement needs of the county and
5 includes up-to-date projections of student enrollments pursuant to
6 such guidelines as shall be adopted by the authority in accordance
7 with this section and in accordance with each county's facilities
8 plan approved by the state board of education. Any project
9 receiving funding must be in furtherance of the approved countywide
10 facilities plan.

11 (1) To assure efficiency and productivity in the project
12 approval process, the countywide facilities plan may be submitted
13 only after a preliminary plan, a plan outline or a proposal for a
14 plan has been submitted to the authority. Selected members of the
15 authority, which selection shall include citizen members, shall
16 then meet promptly with those persons designated by the county
17 board to attend the facilities plan consultation. The purpose of
18 the consultation is to assure understanding of the general goals of
19 the school building authority and the specific goals encompassed in
20 the following criteria and to discuss ways the plan may be
21 structured to meet those goals.

22 (2) The guidelines for the development of a facilities plan
23 must state the manner, timeline and process for submission of any
24 plan to the authority; ~~such project specifications as may be deemed~~
25 ~~considered~~ appropriate by the authority; and those matters which
26 are ~~deemed~~ considered by the authority to be important reflections
27 of how the project will further the overall goals of the authority.

28 (b) To facilitate the goals as stated in section fifteen of
29 this article and to assure the prudent and resourceful expenditure
30 of state funds derived from the school major improvement fund, each
31 county board of education shall submit to the authority a ten-year
32 countywide school major improvement plan that addresses the major
33 improvement needs of each school within the county. If the state
34 board of education or the administrative council of an area
35 vocational educational center chooses to seek funding for a major
36 improvement project from the authority pursuant to subsection (f)
37 of said section, the state board or the administrative council
38 shall submit a ten-year school major improvement plan that
39 addresses the major improvement needs of the school or area
40 vocational educational center for which funding is sought. Each
41 ten-year school major improvement plan must be prepared pursuant to
42 ~~such guidelines as shall be adopted~~ by the authority in accordance
43 with this section and ~~shall~~ must be updated annually to reflect
44 projects completed, current enrollment projections and new or
45 continuing needs. Any school major improvement project funded by
46 the authority must be in furtherance of the approved school major
47 improvement plan.

48 The guidelines for the development and annual updates of a
49 ten-year school major improvement plan ~~shall~~ must state the manner,
50 timeline and process for submission of any plan, including a repair
51 and replacement schedule for school facilities, to the authority;
52 ~~such the~~ the maintenance specifications ~~as may be deemed~~ considered
53 appropriate by the authority; and those matters which are ~~deemed~~
54 considered by the authority to be important reflections of how the

1 major improvement project or projects will further the overall
2 goals of the authority.

3 (c) The guidelines regarding submission of the facilities
4 plans and school major improvement plans ~~shall~~must include
5 requirements for public hearings, comments or other means of
6 providing broad-based input within a reasonable time period as the
7 authority may consider appropriate. The submission of each plan
8 ~~shall~~must be accompanied by a synopsis of all comments received
9 and a formal comment by the county board, the state board or the
10 administrative council of an area vocational educational center
11 submitting the plan.

12 The guidelines regarding project specifications may include
13 such matters as energy efficiency, preferred siting, construction
14 materials, maintenance plan or any other matter related to how the
15 project is to proceed. If a county board of education proposes to
16 finance a construction project through a lease with an option to
17 purchase pursuant to an investment contract as described in
18 subsection (e), section fifteen of this article, the specifications
19 for the project must include the term of the lease, the amount of
20 each lease payment, including the payment due upon exercise of the
21 option to purchase, and the terms and conditions of the proposed
22 investment contract.

23 (d) The guidelines pertaining to quality educational
24 facilities ~~shall~~must require that a facilities plan address how
25 the current facilities do not meet and how the proposed plan and
26 any project thereunder does meet the following goals:

27 (1) Student health and safety;

28 (2) Economies of scale, including compatibility with similar
29 schools that have achieved the most economical organization,
30 facility utilization and pupil-teacher ratios;

31 (3) Reasonable travel time and practical means of addressing
32 other demographic considerations;

33 (4) Multicounty and regional planning to achieve the most
34 effective and efficient instructional delivery system;

35 (5) Curriculum improvement and diversification, including
36 computerization and technology and advanced senior courses in
37 science, mathematics, language arts and social studies;

38 (6) Innovations in education;

39 (7) Adequate space for projected student enrollments; and

40 (8) To the extent constitutionally permissible, each
41 facilities plan ~~shall~~must address the history of efforts taken by
42 the county board to propose or adopt local school bond issues or
43 special levies.

44 If the project is to benefit more than one county in the
45 region, the facilities plan must state the manner in which the cost
46 and funding of the project will be apportioned among the counties.

47 (e) The guidelines pertaining to quality educational
48 facilities ~~shall state~~must require that a school major
49 improvement plan address how the proposed plan and any project
50 thereunder meet the following goals:

51 (1) Student health and safety, including, but not limited to,
52 critical health and safety needs; and

53 (2) Economies of scale, including regularly scheduled
54 preventive maintenance: *Provided*, That each county board's school

1 maintenance plan ~~shall~~must address regularly scheduled maintenance
2 for all facilities within the county.

3 (f) Each county board's facilities plan and school major
4 improvement plan ~~shall~~must prioritize all the construction
5 projects or major improvement projects, respectively, within the
6 county. A school major improvement plan submitted by the state
7 board or the administrative council of an area vocational
8 educational center ~~shall~~must prioritize all the school improvement
9 projects contained in ~~such~~the plan. ~~Such~~The priority list ~~shall~~
10 ~~be~~is one of the criteria to be considered by the authority in
11 determining how available funds must be expended. In prioritizing
12 the projects, the county board, the state board or the
13 administrative council submitting a plan shall make determinations
14 in accordance with the objective criteria formulated by the school
15 building authority.

16 (g) Each facilities plan and school major improvement plan
17 ~~shall~~must include the objective means to be used in evaluating
18 implementation of the overall plan and each project included
19 therein. ~~Such~~The evaluation ~~shall~~must measure each project's
20 furtherance of each applicable goal stated in this section and any
21 guidelines adopted hereunder, as well as the overall success of any
22 project as it relates to the facilities plan or school major
23 improvement plan and the overall goals of the authority.

24 (h) The state department of education shall conduct on-site
25 inspections, at least annually, of all facilities which have been
26 funded wholly or in part by moneys from the authority or state
27 board to ensure compliance with the county board's facilities plan
28 and school major improvement plan as related to the facilities; to
29 preserve the physical integrity of the facilities to the extent
30 possible; and to otherwise extend the useful life of the
31 facilities: *Provided*, That the state board shall submit reports
32 regarding its on-site inspections of facilities to the authority
33 within thirty days of completion of the on-site inspections:
34 *Provided, however*, That the state board shall promulgate rules
35 regarding the on-site inspections and matters relating thereto, in
36 consultation with the authority, as soon as practical and shall
37 submit ~~such~~ proposed rules for legislative review no later than the
38 first day of December, one thousand nine hundred ninety-four.

39 (i) The authority may adopt guidelines for requiring that a
40 county board modify, update, supplement or otherwise submit changes
41 or additions to an approved facilities plan or for requiring that
42 a county board, the state board or the administrative council of an
43 area vocational educational center modify, update, supplement or
44 otherwise submit changes or additions to an approved county board
45 facilities plan or school major improvement plan. The authority
46 shall provide reasonable notification and sufficient time for ~~such~~
47 the change or addition as delineated in guidelines developed by the
48 authority.

49 (j) Based on its on-site inspection or notification by the
50 authority to the state board that the changes or additions to a
51 county's board facilities plan or school major improvement plan
52 required by the authority have not been implemented within the time
53 period prescribed by the authority, the state board shall restrict
54 the use of the necessary funds or otherwise allocate funds from

1 moneys appropriated by the Legislature for those purposes set forth
2 in section nine, article nine-a of this chapter.

3 **§18-9D-19. Comprehensive high schools.**

4 (a) The Legislature finds the following:

5 (1) The decline in student enrollment over the last twenty
6 years has necessitated consolidation of schools in many counties;

7 (2) It is projected that the decline in student enrollment
8 during the period two thousand two through two thousand twelve may
9 be as great as eighteen percent and will continue the necessity to
10 consolidate schools;

11 (3) The new consolidated school buildings now being built
12 across the state provide an opportunity for communities to have
13 comprehensive high schools that include space for
14 vocational-technical courses, community college courses and other
15 workforce-related courses for the students and the public at large;

16 (4) Requiring students to be bused to remote vocational
17 centers has sometimes deterred student participation in vocational
18 courses and has sometimes been considered a stigma upon those
19 students attending vocational courses;

20 (5) Offering vocational, community college and workforce
21 programs in close proximity to each other compliment the high
22 school and the programs; and

23 (6) The change in the season for girls' basketball to coincide
24 with boys' basketball has placed significant pressures on the
25 availability of gymnasium space and often has caused practices to
26 be scheduled late in the evenings and on weekends, interfering with
27 time needed for studying and rest.

28 (b) When planning the construction of a high school which has
29 been approved by the authority and which meets the required
30 authority efficiencies, the authority shall provide funding for
31 comprehensive vocational facilities to be located, when feasible,
32 on the same site as the high school and may, in cooperation with
33 the higher education policy commission, established in section one,
34 article one-b, chapter eighteen-b of this code, provide funding for
35 facilities for community and technical college education. When
36 building in conjunction with the higher education policy
37 commission, an educational specification must be developed for the
38 proposed new facility by the appropriate institutional governing
39 board as defined in section two, article one, ~~chapter eighteen-b~~ of
40 ~~this code~~ said chapter. The county board is the fiscal agent for
41 construction. All planning, design, bidding and construction must
42 be completed with authority guidelines and under the supervision of
43 the authority.

44 (c) When planning the construction of a high school which has
45 been approved by the authority and meets the required authority
46 efficiencies, the authority shall provide funding sufficient for
47 the construction of at least one auxiliary gymnasium. The
48 authority may establish standards for the auxiliary gymnasium.

49 (d) Upon application of a county board to construct
50 comprehensive vocational facilities at an existing high school, the
51 authority will provide technical assistance to the county in
52 developing a plan for construction of the comprehensive vocational
53 facility. The facility may, in cooperation with the higher
54 education policy commission in accordance with the provisions of

1 subsection (b) of this section, include facilities for community
2 and technical college education. Upon development of the plan, the
3 authority shall consider funding based on the following criteria:

4 (1) The distance of any existing vocational facilities from
5 the high schools it serves;

6 (2) The time required to travel to and from the vocational
7 facility to the high schools it serves;

8 (3) The ability of the county board to provide local funds for
9 the construction of new comprehensive vocational facilities;

10 (4) The size of the existing high schools and the demand for
11 vocational technical courses;

12 (5) The age and physical condition of the existing vocational
13 facilities; and

14 (6) Such other criteria as the authority shall consider
15 appropriate.

16 (e) When planning the construction of a high school in a
17 county which is served by a multicounty vocational technical
18 facility, the county may not be required to include the
19 construction of a comprehensive vocational facility in the plan.
20 If the county board elects to construct a comprehensive vocational
21 facility pursuant to this section, the board shall include the
22 multicounty center director and board in planning programs to be
23 offered at the vocational facility which complement the programs
24 offered at the multicounty center and may as part of the plan
25 include facilities for community and technical college education at
26 the multicounty center. The programs offered at the vocational
27 facility may not replace the programs offered at the multicounty
28 vocational technical center without the consent of the center
29 board.

30 (f) Notwithstanding any other provisions of this section to
31 the contrary, the county board in which there is an existing
32 comprehensive vocational center, may eliminate any vocational
33 offering from a new comprehensive high school if the county board:

34 (1) Completes a comprehensive vocational curriculum study, as
35 required by the authority, including an evaluation of both the
36 programmatic and physical facilities of the existing center and
37 coordinates the county's vocational curriculum; and

38 (2) Submits the plan to the authority for review and obtains
39 the authority's approval.

40 **ARTICLE 10H. ALBERT YANNI PROGRAMS OF EXCELLENCE IN VOCATIONAL-**
41 **TECHNICAL EDUCATION.**

42 **§18-10H-6. Effective schools program in vocational-technical**
43 **education.**

44 The state board of education shall establish and operate an
45 effective schools program for vocational-technical education,
46 including introductory vocational-technical courses in middle
47 school grades as appropriate. The purpose of the program is to
48 provide vocational-technical education personnel with resources and
49 staff development for school program improvement based on
50 application of the effective schools research, including components
51 such as instructional leadership, school climate, high student
52 expectations, emphasis on academic and occupational achievement and
53 community and parental involvement. The program shall be
54 coordinated by the bureau of vocational, technical and adult

1 education with the advisement from a committee composed of two
2 vocational administrators, two vocational teachers, one vocational
3 guidance counselor, one educator of vocational teachers, one county
4 school superintendent, one comprehensive high school principal, one
5 academic teacher, two business/industry representatives, one labor
6 representative and one vocational education program completer.

Senate Bill 206

Effective Date: Passed March 8, 2003; in effect ninety days from passage

Signed by Governor: April 2, 2003

Code Reference: Amend and reenact §18-8-1, §18-8-11, §18A-5-8

Title: Compulsory School Attendance; Home School Exemption; and, Authority of Aids to Supervise Students

Major Provisions:

- Relates to compulsory school attendance.
- Amends requirements to qualify for home school exemption.
- Amends assessment requirement for home school exemption students.
- Eliminates exemption relating to residence more than two miles from school or school bus route. Specifies driver's license privilege, conditions for obtaining license, denial and revocation, limitation on reinstatement. Authorize aides to supervise students who are undergoing in-school suspension.

1 **ENROLLED**
2 COMMITTEE SUBSTITUTE
3 FOR

4 **Senate Bill No. 206**

5 (SENATORS CALDWELL AND ROWE, *original sponsors*)

6
7 [Passed March 8, 2003; in effect ninety days from passage.]
8
9

10 AN ACT to amend and reenact section one, article eight, chapter
11 eighteen of the code of West Virginia, one thousand nine
12 hundred thirty-one, as amended; to amend and reenact
13 section eleven of said article; and to amend and reenact
14 section eight, article five, chapter eighteen-a of said
15 code, all relating to compulsory school attendance;
16 technical amendments; home school exemption; amending
17 requirements to qualify for home school exemption;
18 amending assessment requirements of home school
19 exemption; eliminating exemption relating to residence
20 more than two miles from school or school bus route;
21 driver's license privilege; conditions for obtaining
22 license; denial and revocation; limitation on
23 reinstatement; and authorizing aides to supervise
24 students who are undergoing in-school suspension.

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

26 That section one, article eight, chapter eighteen of the
27 code of West Virginia, one thousand nine hundred thirty-one, as
28 amended, be amended and reenacted; that section eleven of said
29 article be amended and reenacted; and that section eight, article
30 five, chapter eighteen-a of said code be amended and reenacted, all
31 to read as follows:

32 **CHAPTER 18. EDUCATION.**

33 **ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.**

34 **§18-8-1. Commencement and termination of compulsory school**
35 **attendance; exemptions.**

36 (a) Compulsory school attendance shall begin with the school
37 year in which the sixth birthday is reached prior to the first day
38 of September ~~of such year or upon enrolling in a publicly supported~~
39 ~~kindergarten program and continue to the sixteenth birthday. or~~
40 upon enrolling in a publicly supported kindergarten program and
41 continue to the sixteenth birthday. Exemption from the foregoing
42 requirements of compulsory public school attendance shall be made
43 on behalf of any child for the causes or conditions set forth in
44 this section. Each cause or condition set forth in this section
45 shall be subject to confirmation by the attendance authority of the
46 county.

47 (b) A child shall be exempt from the compulsory school
48 attendance requirement set forth in subsection (a) of this section
49 if the requirements of this subsection, relating to instruction in
50 a private, parochial or other approved school, are met. The
51 instruction shall be in a school approved by the county board and
52 for a time equal to the instructional term set forth in section
53 forty-five, article five of this chapter. In all private,
54 parochial or other schools approved pursuant to this subsection it

1 shall be the duty of the principal or other person in control, upon
2 the request of the county superintendent, to furnish to the county
3 board such information and records as may be required with respect
4 to attendance, instruction and progress of pupils enrolled between
5 the entrance age and sixteen years.

6 (c) A child shall be exempt from the compulsory school
7 attendance requirement set forth in subsection (a) of this section
8 if the requirements of either subdivision (1) of this subsection or
9 the requirements of subdivision (2) of this subsection, both
10 relating to home instruction, are met.

11 (1) The instruction shall be in the home of the child or
12 children or at some other place approved by the county board and
13 for a time equal to the instructional term set forth in section
14 forty-five, article five of this chapter. If the request for home
15 instruction is denied by the county board, good and reasonable
16 justification for the denial shall be furnished in writing to the
17 applicant by the county board. The instruction shall be conducted
18 by a person or persons who, in the judgment of the county
19 superintendent and county board, are qualified to give instruction
20 in subjects required to be taught in public elementary schools in
21 the state. The person or persons providing the instruction, upon
22 request of the county superintendent, shall furnish to the county
23 board information and records as may be required, from time to
24 time, with respect to attendance, instruction and progress of
25 pupils enrolled between the entrance age and sixteen years
26 receiving the instruction. The state board shall develop
27 guidelines for the home schooling of special education students
28 including alternative assessment measures to assure that
29 satisfactory academic progress is achieved.

30 (2) The child meets the requirements set forth in this
31 subdivision: *Provided*, That the county superintendent may seek from
32 the circuit court of the county an order denying home instruction
33 of the child. The order may be granted upon a showing of clear and
34 convincing evidence that the child will suffer neglect in the
35 child's education or that there are other compelling reasons to
36 deny home instruction.

37 (A) Annually, the person or persons providing home instruction
38 present to the county superintendent or county board a notice of
39 intent to provide home instruction and the name, address, age and
40 grade level of any child of compulsory school age to be instructed:
41 *Provided*, That if a child is enrolled in a public school, notice of
42 intent to provide home instruction shall be given at least two
43 weeks prior to withdrawing such child from public school;

44 (B) The person or persons providing home instruction submit
45 satisfactory evidence of a high school diploma or equivalent;

46 (C) The person or persons providing home instruction outline
47 a plan of instruction for the ensuing school year; and

48 (D) On or before the thirtieth day of June of each year the
49 person or persons providing home instruction shall obtain an
50 academic assessment of the child for the previous school year and
51 submit the results to the county superintendent. When the academic
52 assessment takes place outside of a public school, the parent or
53 legal guardian shall pay the cost. The requirement of an academic
54 assessment shall be satisfied in one of the following ways:

1 (i) The child receiving home instruction takes a nationally
2 normed standardized achievement test to be administered under
3 standardized conditions as set forth by the published instructions
4 of the selected test in the subjects of reading, language,
5 mathematics, science and social studies: *Provided*, That in no event
6 may the child's parent or legal guardian administer the test. The
7 publication date of the chosen test shall not be more than ten
8 years from the date of the administration of the test. The child
9 shall be considered to have made acceptable progress when the mean
10 of the child's test results in the required subject areas for any
11 single year meets or exceeds the fiftieth percentile or, if below
12 the fiftieth percentile, shows improvement from the previous year's
13 results;

14 (ii) The child participates in the testing program currently
15 in use in the state's public schools. The test shall be
16 administered to the child at a public school in the county of
17 residence. Determination of acceptable progress will be based on
18 current guidelines of the state testing program;

19 (iii) The county superintendent is provided with a written
20 narrative indicating that a portfolio of samples of the child's
21 work has been reviewed and that the child's academic progress for
22 the year is in accordance with the child's abilities. If the
23 narrative indicates that the child's academic progress for the year
24 is in accordance with the child's abilities, the child shall be
25 considered to have made acceptable progress. This narrative shall
26 be prepared by a certified teacher whose certification number shall
27 be provided. The narrative shall include a statement about the
28 child's progress in the areas of reading, language, mathematics,
29 science and social studies and shall note any areas which, in the
30 professional opinion of the reviewer, show need for improvement or
31 remediation; or

32 (iv) The child completes an alternative academic assessment of
33 proficiency that is mutually agreed upon by the parent or legal
34 guardian and the county superintendent. Criteria for acceptable
35 progress shall be mutually agreed upon by the same parties; and

36 (E) When the annual assessment fails to show acceptable
37 progress as defined under the appropriate assessment option set
38 forth in paragraph (D) of this subdivision, the person or persons
39 providing home instruction shall initiate a remedial program to
40 foster acceptable progress and the county board shall notify the
41 parents or legal guardian of the child, in writing, of the services
42 available to assist in the assessment of the child's eligibility
43 for special education services: *Provided*, That the identification
44 of a disability shall not preclude the continuation of home
45 schooling. In the event that the child does not achieve acceptable
46 progress as defined under the appropriate assessment option set
47 forth in paragraph (D) of this subdivision for a second consecutive
48 year, the person or persons providing instruction shall submit to
49 the county superintendent additional evidence that appropriate
50 instruction is being provided.

51 (3) This subdivision applies to both home instruction
52 exemptions set forth in subdivisions (1) and (2) of this
53 subsection. The county superintendent or a designee shall offer
54 such assistance, including textbooks, other teaching materials and

1 available resources, as may assist the person or persons providing
2 home instruction subject to their availability. Any child
3 receiving home instruction may upon approval of the county board
4 exercise the option to attend any class offered by the county board
5 as the person or persons providing home instruction may consider
6 appropriate subject to normal registration and attendance
7 requirements.

8 (d) A child shall be exempt from the compulsory school
9 attendance requirement set forth in subsection (a) of this section
10 if the requirements of this subsection, relating to physical or
11 mental incapacity, are met. Physical or mental incapacity consists
12 of incapacity for school attendance and the performance of school
13 work. In all cases of prolonged absence from school due to
14 incapacity of the child to attend, the written statement of a
15 licensed physician or authorized school nurse shall be required
16 under the provisions of this article: *Provided*, That in all cases,
17 incapacity shall be narrowly defined and in no case shall the
18 provisions of this article allow for the exclusion of the mentally,
19 physically, emotionally or behaviorally handicapped child otherwise
20 entitled to a free appropriate education.

21 (e) A child shall be exempt from the compulsory school
22 attendance requirement set forth in subsection (a) of this section
23 if conditions rendering school attendance impossible or hazardous
24 to the life, health or safety of the child exist.

25 (f) A child shall be exempt from the compulsory school
26 attendance requirement set forth in subsection (a) of this section
27 upon regular graduation from a standard senior high school.

28 (g) A child shall be exempt from the compulsory school
29 attendance requirement set forth in subsection (a) of this section
30 if the child is granted a work permit pursuant to this subsection.
31 The county superintendent may, after due investigation, grant work
32 permits to youths under sixteen years of age, subject to state and
33 federal labor laws and regulations: *Provided*, That a work permit
34 may not be granted on behalf of any youth who has not completed the
35 eighth grade of school.

36 (h) A child shall be exempt from the compulsory school
37 attendance requirement set forth in subsection (a) of this section
38 if a serious illness or death in the immediate family of the pupil
39 has occurred. It is expected that the county attendance director
40 will ascertain the facts in all cases of such absences about which
41 information is inadequate and report the facts to the county
42 superintendent.

43 (i) A child shall be exempt from the compulsory school
44 attendance requirement set forth in subsection (a) of this section
45 if the requirements of this subsection, relating to destitution in
46 the home, are met. Exemption based on a condition of extreme
47 destitution in the home may be granted only upon the written
48 recommendation of the county attendance director to the county
49 superintendent following careful investigation of the case. A copy
50 of the report confirming the condition and school exemption shall
51 be placed with the county director of public assistance. This
52 enactment contemplates every reasonable effort that may properly be
53 taken on the part of both school and public assistance authorities
54 for the relief of home conditions officially recognized as being so

1 destitute as to deprive children of the privilege of school
2 attendance. Exemption for this cause shall not be allowed when the
3 destitution is relieved through public or private means.

4 (j) A child shall be exempt from the compulsory school
5 attendance requirement set forth in subsection (a) of this section
6 if the requirements of this subsection, relating to church
7 ordinances and observances of regular church ordinances, are met.
8 The county board may approve exemption for religious instruction
9 upon written request of the person having legal or actual charge of
10 a child or children: *Provided*, That the exemption shall be subject
11 to the rules prescribed by the county superintendent and approved
12 by the county board.

13 (k) A child shall be exempt from the compulsory school
14 attendance requirement set forth in subsection (a) of this section
15 if the requirements of this subsection, relating to alternative
16 private, parochial, church or religious school instruction, are
17 met. Exemption shall be made for any child attending any private
18 school, parochial school, church school, school operated by a
19 religious order or other nonpublic school which elects to comply
20 with the provisions of article twenty-eight of this chapter.

21 (l) The completion of the eighth grade shall not exempt any
22 child under sixteen years of age from the compulsory attendance
23 provision of this article.

24 ~~Exemption from the foregoing requirements of compulsory public~~
25 ~~school attendance shall be made on behalf of any child for the~~
26 ~~following causes or conditions, each such cause or condition being~~
27 ~~subject to confirmation by the attendance authority of the county:~~

28 ~~Exemption A. Instruction in a private, parochial or other~~
29 ~~approved school. -- Such instruction shall be in a school approved~~
30 ~~by the county board of education and for a time equal to the school~~
31 ~~term of the county for the year. In all such schools it shall be~~
32 ~~the duty of the principal or other person in control, upon the~~
33 ~~request of the county superintendent of schools, to furnish to the~~
34 ~~county board of education such information and records as may be~~
35 ~~required with respect to attendance, instruction and progress of~~
36 ~~pupils enrolled between the entrance age and sixteen years.~~

37 ~~Exemption B. Instruction in home or other approved place. --~~

38 ~~(a) Such instruction shall be in the home of such child or children~~
39 ~~or at some other place approved by the county board of education~~
40 ~~and for a time equal to the school term of the county. If such~~
41 ~~request for home instruction is denied by the county board of~~
42 ~~education, good and reasonable justification for such denial must~~
43 ~~be furnished in writing to the applicant by the county board of~~
44 ~~education. The instruction in such cases shall be conducted by a~~
45 ~~person or persons who, in the judgment of the county superintendent~~
46 ~~and county board of education, are qualified to give instruction in~~
47 ~~subjects required to be taught in the free elementary schools of~~
48 ~~the state. It shall be the duty of the person or persons providing~~
49 ~~the instruction, upon request of the county superintendent, to~~
50 ~~furnish to the county board of education such information and~~
51 ~~records as may be required from time to time with respect to~~
52 ~~attendance, instruction and progress of pupils enrolled between the~~
53 ~~entrance age and sixteen years receiving such instruction. The~~

1 state department of education shall develop guidelines for the home
2 schooling of special education students including alternative
3 assessment measures to assure that satisfactory academic progress
4 is achieved.

5 ~~—— (b) Notwithstanding the provisions of subsection (a) of this
6 Exemption B, the person or persons providing home instruction meet
7 the requirements for Exemption B when the conditions of this
8 subsection are met: *Provided*, That the county superintendent shall
9 have the right to seek from the circuit court of the county an
10 order denying the home instruction, which order may be granted upon
11 a showing of clear and convincing evidence that the child will
12 suffer educational neglect or that there are other compelling
13 reasons to deny home instruction.~~

14 ~~—— (1) The person or persons providing home instruction present
15 to the county superintendent or county board of education a notice
16 of intent to provide home instruction and the name and address of
17 any child of compulsory school age to be instructed: *Provided*, That
18 if a child is enrolled in a public school, notice of intent to
19 provide home instruction shall be given at least two weeks prior to
20 withdrawing such child from public school;~~

21 ~~—— (2) The person or persons providing home instruction submit
22 satisfactory evidence of: (i) A high school diploma or equivalent;
23 and (ii) formal education at least four years higher than the most
24 academically advanced child for whom the instruction will be
25 provided: *Provided*, That the requirement of a formal education at
26 least four years higher than the most academically advanced child
27 is waived until the first day of July, two thousand three;~~

28 ~~—— (3) The person or persons providing home instruction outline
29 a plan of instruction for the ensuing school year; and~~

30 ~~—— (4) The person or persons providing home instruction shall
31 annually obtain an academic assessment of the child for the
32 previous school year. This shall be satisfied in one of the
33 following ways:~~

34 ~~—— (i) Any child receiving home instruction annually takes a
35 standardized test, to be administered at a public school in the
36 county where the child resides, or administered by a licensed
37 psychologist or other person authorized by the publisher of the
38 test, or administered by a person authorized by the county
39 superintendent or county board of education. The child shall be
40 administered a test which has been normed by the test publisher on
41 that child's age or grade group. In no event may the child's parent
42 or legal guardian administer the test. Where a test is administered
43 outside of a public school, the child's parent or legal guardian
44 shall pay the cost of administering the test. The public school or
45 other qualified person shall administer to children of compulsory
46 school age the comprehensive test of basic skills, the California
47 achievement test, the Stanford achievement test or the Iowa tests
48 of basic skills, achievement and proficiency, or an individual
49 standardized achievement test that is nationally normed and
50 provides statistical results which test will be selected by the
51 public school, or other person administering the test, in the
52 subjects of language, reading, social studies, science and
53 mathematics and shall be administered under standardized conditions
54 as set forth by the published instructions of the selected test. No~~

1 test shall be administered if the publication date is more than ten
2 years from the date of the administration of the test. Each child's
3 test results shall be reported as a national percentile for each of
4 the five subjects tested. Each child's test results shall be made
5 available on or before the thirtieth day of June of the school year
6 in which the test is to be administered to the person or persons
7 providing home instruction, the child's parent or legal guardian
8 and the county superintendent. Upon request of a duly authorized
9 representative of the West Virginia department of education, each
10 child's test results shall be furnished by the person or persons
11 providing home instruction, or by the child's parent or legal
12 guardian, to the state superintendent of schools. Upon notification
13 that the mean of the child's test results for any single year has
14 fallen below the fortieth percentile, the county board of education
15 shall notify the parents or legal guardian of said child, in
16 writing, of the services available to assist in the assessment of
17 the child's eligibility for special education services: *Provided,*
18 *That the identification of a disability shall not preclude the*
19 *continuation of home schooling.*
20 ——— If the mean of the child's test results for any single year
21 for language, reading, social studies, science and mathematics fall
22 below the fortieth percentile on the selected tests, then the
23 person or persons providing home instruction shall initiate a
24 remedial program to foster achievement above that level and the
25 student shall show improvement. If, after two calendar years, the
26 mean of the child's test results fall below the fortieth percentile
27 level, home instruction shall no longer satisfy the compulsory
28 school attendance requirement exemption; or
29 ——— (ii) The county superintendent is provided with a written
30 narrative indicating that a portfolio of samples of the child's
31 work has been reviewed and that the child's academic progress for
32 the year is in accordance with the child's abilities. This
33 narrative shall be prepared by a certified teacher or other person
34 mutually agreed upon by the parent or legal guardian and the county
35 superintendent. It shall be submitted on or before the thirtieth
36 day of June of the school year covered by the portfolio. The parent
37 or legal guardian shall be responsible for payment of fees charged
38 for the narrative; or
39 ——— (iii) Evidence of an alternative academic assessment of the
40 child's proficiency mutually agreed upon by the parent or legal
41 guardian and the county superintendent is submitted to the county
42 superintendent by the thirtieth day of June of the school year
43 being assessed. The parent or legal guardian shall be responsible
44 for payment of fees charged for the assessment.
45 ——— (c) The superintendent or a designee shall offer such
46 assistance, including textbooks, other teaching materials and
47 available resources, as may assist the person or persons providing
48 home instruction subject to their availability. Any child receiving
49 home instruction may, upon approval of the county board of
50 education, exercise the option to attend any class offered by the
51 county board of education as the person or persons providing home
52 instruction may deem appropriate subject to normal registration and
53 attendance requirements.

1 ~~Exemption C. Physical or mental incapacity.~~ -- Physical or
2 mental incapacity shall consist of incapacity for school attendance
3 and the performance of school work. In all cases of prolonged
4 absence from school due to incapacity of the child to attend, the
5 written statement of a licensed physician or authorized school
6 nurse shall be required under the provisions of this article:
7 *Provided*, That in all cases incapacity shall be narrowly defined
8 and in no case shall the provisions of this article allow for the
9 exclusion of the mentally, physically, emotionally or behaviorally
10 handicapped child otherwise entitled to a free appropriate
11 education;

12 ~~Exemption D. Residence more than two miles from school or~~
13 ~~school bus route.~~ -- The distance of residence from a school, or
14 school bus route providing free transportation, shall be reckoned
15 by the shortest practicable road or path, which contemplates travel
16 through fields by right of permission from the landholders or their
17 agents. It shall be the duty of the county board of education,
18 subject to written consent of landholders, or their agents, to
19 provide and maintain safe foot bridges across streams off the
20 public highways where such are required for the safety and welfare
21 of pupils whose mode of travel from home to school or to school bus
22 route must necessarily be other than along the public highway in
23 order for said road or path to be not over two miles from home to
24 school or to school bus providing free transportation;

25 ~~Exemption E. Hazardous conditions.~~ -- Conditions rendering
26 school attendance impossible or hazardous to the life, health or
27 safety of the child;

28 ~~Exemption F. High school graduation.~~ -- Such exemption shall
29 consist of regular graduation from a standard senior high school;

30 ~~Exemption G. Granting work permits.~~ -- The county
31 superintendent may, after due investigation, grant work permits to
32 youths under sixteen years of age, subject to state and federal
33 labor laws and regulations: *Provided*, That a work permit may not be
34 granted on behalf of any youth who has not completed the eighth
35 grade of school;

36 ~~Exemption H. Serious illness or death in the immediate family~~
37 ~~of the pupil.~~ -- It is expected that the county attendance director
38 will ascertain the facts in all cases of such absences about which
39 information is inadequate and report same to the county
40 superintendent of schools;

41 ~~Exemption I. Destitution in the home.~~ -- Exemption based on a
42 condition of extreme destitution in the home may be granted only
43 upon the written recommendation of the county attendance director
44 to the county superintendent following careful investigation of the
45 case. A copy of the report confirming such condition and school
46 exemption shall be placed with the county director of public
47 assistance. This enactment contemplates every reasonable effort
48 that may properly be taken on the part of both school and public
49 assistance authorities for the relief of home conditions officially
50 recognized as being so destitute as to deprive children of the
51 privilege of school attendance. Exemption for this cause shall not
52 be allowed when such destitution is relieved through public or
53 private means;

1 ~~Exemption J. Church ordinances, observances of regular church~~
2 ~~ordinances. -- The county board of education may approve exemption~~
3 ~~for religious instruction upon written request of the person having~~
4 ~~legal or actual charge of a child or children: Provided, That such~~
5 ~~exemption shall be subject to the rules prescribed by the county~~
6 ~~superintendent and approved by the county board of education;~~

7 ~~Exemption K. Alternative private, parochial, church or~~
8 ~~religious school instruction. -- In lieu of the provisions of~~
9 ~~Exemption A herein above, exemption shall be made for any child~~
10 ~~attending any private school, parochial school, church school,~~
11 ~~school operated by a religious order or other nonpublic school~~
12 ~~which elects to comply with the provisions of article twenty-eight,~~
13 ~~chapter eighteen of the code of West Virginia.~~

14 ~~The completion of the eighth grade shall not exempt any child~~
15 ~~under sixteen years of age from the compulsory attendance provision~~
16 ~~of this article: Provided, That there is a public high school or~~
17 ~~other public school of advanced grades or a school bus providing~~
18 ~~free transportation to any such school, the route of which is~~
19 ~~within two miles of the child's home by the shortest practicable~~
20 ~~route or path as hereinbefore specified under Exemption D of this~~
21 ~~section.~~

22 **§18-8-11. School attendance as condition of licensing for**
23 **privilege of operation of motor vehicle.**

24 (a) In accordance with the provisions of sections three and
25 five, article two, chapter seventeen-b of this code, the division
26 of motor vehicles shall deny a license or instruction permit for
27 the operation of a motor vehicle to any person under the age of
28 eighteen who does not at the time of application present a diploma
29 or other certificate of graduation issued to the person from a
30 secondary high school of this state or any other state or
31 documentation that the person: (1) Is enrolled and making
32 satisfactory progress in a course leading to a general educational
33 development certificate (GED) from a state-approved institution or
34 organization, or has obtained ~~such the~~ certificate; (2) is enrolled
35 in a secondary school of this state or any other state; (3) is
36 excused from ~~such the~~ requirement due to circumstances beyond his
37 or her control; or (4) is enrolled in an institution of higher
38 education as a full-time student in this state or any other state.

39 (b) The attendance director or chief administrator shall
40 provide documentation of enrollment status on a form approved by
41 the department of education to any student at least fifteen years
42 ~~of age but less than eighteen years of age or older~~ upon request
43 who is properly enrolled in a school under the jurisdiction of the
44 official for presentation to the division of motor vehicles on
45 application for or reinstatement of an instruction permit or
46 license to operate a motor vehicle. Whenever a student at least
47 ~~fifteen years of age but less than eighteen years of age~~ withdraws
48 from school, except as provided in subsection (d) of this section,
49 the attendance director or chief administrator shall notify the
50 division of motor vehicles of the withdrawal not later than five
51 days from the withdrawal date. Within five days of receipt of the
52 notice, the division of motor vehicles shall send notice to the
53 licensee that the license will be suspended under the provisions of

1 section three, article two, chapter seventeen-b of this code on the
2 thirtieth day following the date the notice was sent unless
3 documentation of compliance with the provisions of this section is
4 received by the division of motor vehicles before that time. If
5 suspended, the division may not reinstate a license before the end
6 of the semester following that in which the withdrawal occurred.

7 (c) For the purposes of this section:

8 (1) ~~w~~Withdrawal shall be is defined as more than ten
9 consecutive or fifteen total days unexcused absences during a
10 school year. ~~For the purposes of this section, suspension or~~
11 ~~expulsion from school or imprisonment in a jail or a penitentiary~~
12 ~~is not a circumstance beyond the control of such person.~~

13 (2) Suspension or expulsion from school or imprisonment in a
14 jail or a West Virginia correctional facility is not a circumstance
15 beyond the control of the person.

16 (d) Whenever the withdrawal from school of the student, or
17 ~~such the~~ student's failure to enroll in a course leading to or to
18 obtain a GED or high school diploma, is beyond the control of ~~such~~
19 the student, or is for the purpose of transfer to another school as
20 confirmed in writing by the student's parent or guardian, no ~~such~~
21 notice shall be sent to the division of motor vehicles to suspend
22 the student's motor vehicle operator's license, and if the student
23 is applying for a license, the attendance director or chief
24 administrator shall provide the student with documentation to
25 present to the division of motor vehicles to excuse the student
26 from the provisions of this section. The school district
27 superintendent (or the appropriate school official of any private
28 secondary school) with the assistance of the county attendance
29 director and any other staff or school personnel shall be the sole
30 judge of whether withdrawal is due to circumstances beyond the
31 control of the person.

32 CHAPTER 18A. SCHOOL PERSONNEL.

33 ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

34 §18A-5-8. Authority of certain aides to exercise control over 35 pupils; compensation; transfers.

36 (a) Within the limitations provided ~~herein in this section,~~
37 any aide who agrees to do so shall stand in the place of the parent
38 or guardian and shall exercise such authority and control over
39 pupils as is required of a teacher as ~~defined and provided in~~
40 section one of this article. The principal shall designate aides
41 in the school who agree to exercise that authority on the basis of
42 seniority as an aide and shall enumerate the instances in which the
43 authority shall be exercised by an aide when requested by the
44 principal, assistant principal or professional employee to whom the
45 aide is assigned. ~~Provided, That the authority does not extend to~~
46 ~~suspending or expelling any pupil, participating in the~~
47 ~~administration of corporal punishment or performing instructional~~
48 ~~duties as a teacher or substitute teacher.~~

49 ~~An aide designated by the principal under this subsection~~
50 ~~shall receive a salary not less than one pay grade above the~~
51 ~~highest pay grade held by the employee under section eight-a,~~
52 ~~article four of this chapter, and any county salary schedule in~~
53 ~~excess of the minimum requirements of this article.~~

1 (b) The authority provided for in subsection (a) of this
2 section may not extend to suspending or expelling any pupil,
3 participating in the administration of corporal punishment or
4 performing instructional duties as a teacher or substitute teacher.
5 However, the authority shall extend to supervising students
6 undergoing in-school suspension if the instructional duties
7 required by the supervision are limited solely to handing out class
8 work and collecting class work. The authority to supervise
9 students undergoing in-school suspension may not include actual
10 instruction.

11 ~~An aide may not be required by the operation of this section~~
12 ~~to perform noninstructional duties for an amount of time which~~
13 ~~exceeds that required under the aide's contract of employment or~~
14 ~~that required of other aides in the same school, unless the~~
15 ~~assignment of such duties is mutually agreed upon by the aide and~~
16 ~~the county superintendent, or the superintendent's designated~~
17 ~~representative, subject to board approval. The terms and conditions~~
18 ~~of the agreement shall be in writing, signed by both parties, and~~
19 ~~may include additional benefits. The agreement shall be uniform as~~
20 ~~to aides assigned similar duties for similar amounts of time within~~
21 ~~the same school. Aides shall have the option of agreeing to~~
22 ~~supervise students and of renewing related assignments annually:~~
23 ~~Provided, That should an aide elect not to renew the previous~~
24 ~~agreement to supervise students, the minimum salary of the aide~~
25 ~~shall revert to the pay grade specified in section eight-a, article~~
26 ~~four of this chapter for the classification title held by the aide~~
27 ~~and any county salary schedule in excess of the minimum~~
28 ~~requirements of this article.~~

29 (c) An aide designated by the principal under subsection (a)
30 of this section shall receive a salary not less than one pay grade
31 above the highest pay grade held by the employee under section
32 eight-a, article four of this chapter and any county salary
33 schedule in excess of the minimum requirements of this article.

34 ~~For the purposes of this section, aide shall mean and include~~
35 ~~any aide class title as defined in section eight, article four of~~
36 ~~this chapter, regardless of numeric classification.~~

37 (d) An aide may not be required by the operation of this
38 section to perform noninstructional duties for an amount of time
39 which exceeds that required under the aide's contract of employment
40 or that required of other aides in the same school unless the
41 assignment of the duties is mutually agreed upon by the aide and
42 the county superintendent, or the superintendent's designated
43 representative, subject to board approval. The terms and
44 conditions of the agreement shall be in writing, signed by both
45 parties, and may include additional benefits. The agreement shall
46 be uniform as to aides assigned similar duties for similar amounts
47 of time within the same school. Aides shall have the option of
48 agreeing to supervise students and of renewing related assignments
49 annually. If an aide elects not to renew the previous agreement to
50 supervise students, the minimum salary of the aide shall revert to
51 the pay grade specified in section eight-a, article four of this
52 chapter for the classification title held by the aide and any

1 county salary schedule in excess of the minimum requirements of
2 this article.

3 ~~An aide may transfer to another position of employment one~~
4 ~~time only during any one half of a school term, unless otherwise~~
5 ~~mutually agreed upon by the aide and the county superintendent, or~~
6 ~~the superintendent's designee, subject to board approval: *Provided,*~~
7 ~~That during the first year of employment as an aide, an aide may~~
8 ~~not transfer to another position of employment during the first~~
9 ~~one-half school term of employment, unless mutually agreed upon by~~
10 ~~the aide and county superintendent, subject to board approval.~~

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

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

21 (f) An aide may transfer to another position of employment one
22 time only during any one half of a school term, unless otherwise
23 mutually agreed upon by the aide and the county superintendent, or
24 the superintendent's designee, subject to board approval: *Provided,*
25 That during the first year of employment as an aide, an aide may
26 not transfer to another position of employment during the first
27 one-half school term of employment, unless mutually agreed upon by
28 the aide and county superintendent, subject to board approval.

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

Senate Bill 364

Effective Date: Passed March 8, 2003; in effect from passage

Signed by Governor: March 20, 2003

Code Reference: Amend and reenact §49-5-7, §49-5-21, §49-5D-3
Enacts New Sections §49-5-16b, §49-5D-3a, and §49-5D-8

Title: Relating to child welfare and juvenile justice multidisciplinary treatment teams

Major Provisions:

- County multidisciplinary treatment teams shall be convened and directed by a child or family's case manager. The treatment team membership must include the child's custodial parent(s), guardian(s), other immediate family members, the attorney(s) representing the parent(s), the guardian ad litem, and any other person or agency representative who may assist in providing recommendations for the particular needs of the child and family. The multidisciplinary treatment team is required to develop and submit an individualized service plan for children who are involved in status offense or delinquency proceedings for review by the court. The court may adopt the multidisciplinary treatment team's recommendations or schedule a hearing and make specific written findings as to why the team's recommended service plan was not adopted. A multidisciplinary treatment team recommendations is not required for temporary out-of-home placement of a child in emergency circumstances or for purposes of assessment.

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 364**

5 (SENATORS PREZIOSO, UNGER, ROWE, KESSLER, HELMICK, CALDWELL, PLYMALE,
6 SHARPE, ROSS, DEMPSEY, LOVE, HUNTER, SPROUSE, MINARD, JENKINS, FANNING,
7 WHITE, MCCABE, BOWMAN, MINEAR AND TOMBLIN, MR. PRESIDENT, *original*
8 *sponsors*)

9 _____
10 [Passed March 8, 2003; in effect from passage.]
11 _____
12

13 AN ACT to amend and reenact sections seven and twenty-one, article
14 five, chapter forty-nine of the code of West Virginia, one
15 thousand nine hundred thirty-one, as amended; to further amend
16 said article by adding thereto a new section, designated
17 section sixteen-b; to amend and reenact section three, article
18 five-d of said chapter; and to further amend said article by
19 adding thereto two new sections, designated sections three-a
20 and eight, all relating to child welfare and juvenile justice
21 generally; requiring notice of certain proceedings to the
22 department of health and human resources and the division of
23 juvenile services for purposes of multidisciplinary hearings;
24 providing for greater involvement of multidisciplinary teams
25 in juvenile and abuse and neglect proceedings; providing that
26 quarterly judicial reviews be continued while child remains in
27 custody; exceptions to meeting requirement; providing for when
28 offenses are committed while in custody; providing for
29 recommended court orders; requiring that recommended service
30 plans be considered; requiring written findings when order
31 deviates from treatment team's recommended plan; and affording
32 multidisciplinary treatment team notice and opportunity to
33 present evidence.

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

35 That sections seven and twenty-one, article five, chapter
36 forty-nine of the code of West Virginia, one thousand nine hundred
37 thirty-one, as amended, be amended and reenacted; that said article
38 be further amended by adding thereto a new section, designated
39 section sixteen-b; that section three, article five-d of said
40 chapter be amended and reenacted; and that said article be further
41 amended by adding thereto two new sections, designated sections
42 three-a and eight, all to read as follows:

43 **ARTICLE 5. JUVENILE PROCEEDINGS.**

44 **§49-5-7. Institution of proceedings by petition; notice to**
45 **juvenile and parents; subpoena.**

46 (a) (1) A petition alleging that a juvenile is a status
47 offender or a juvenile delinquent may be filed by a person who has
48 knowledge of or information concerning the facts alleged. The

1 petition shall be verified by the petitioner, shall set forth the
2 name and address of the juvenile's parents, guardians or
3 custodians, if known to the petitioner, and shall be filed in the
4 circuit court in the county where the alleged status offense or act
5 of delinquency occurred: *Provided*, That any proceeding under this
6 chapter may be removed, for good cause shown, in accordance with
7 the provisions of section one, article nine, chapter fifty-six of
8 this code. The petition shall contain specific allegations of the
9 conduct and facts upon which the petition is based, including the
10 approximate time and place of the alleged conduct; a statement of
11 the right to have counsel appointed and consult with counsel at
12 every stage of the proceedings; and the relief sought.

13 (2) Upon the filing of the petition, the court shall set a
14 time and place for a preliminary hearing as provided in section
15 nine of this article and may appoint counsel. A copy of the
16 petition and summons may be served upon the respondent juvenile by
17 first class mail or personal service of process. If a juvenile
18 does not appear in response to a summons served by mail, no further
19 proceeding may be held until the juvenile is served a copy of the
20 petition and summons by personal service of process. If a juvenile
21 fails to appear in response to a summons served in person upon him
22 or her, an order of arrest may be issued by the court for that
23 reason alone.

24 (b) The parents, guardians or custodians shall be named in the
25 petition as respondents, and shall be served with notice of the
26 proceedings in the same manner as provided in subsection (a) of
27 this section for service upon the juvenile and required to appear
28 with the juvenile at the time and place set for the proceedings
29 unless such respondent cannot be found after diligent search. If
30 any such respondent cannot be found after diligent search, the
31 court may proceed without further requirement of notice: *Provided*,
32 That the court may order service by first class mail to the last
33 known address of such respondent. The respondent shall be afforded
34 fifteen days after the date of mailing to appear or answer.

35 (c) The court or referee may order the issuance of a subpoena
36 against the person having custody and control of the juvenile
37 ordering him or her to bring the juvenile before the court or
38 referee.

39 (d) When any case of a juvenile charged with the commission of
40 a crime is certified or transferred to the circuit court, the court
41 or referee shall forthwith cause the juvenile and his or her
42 parents, guardians or custodians to be served with a petition as
43 provided in subsections (a) and (b) of this section. In the event
44 the juvenile is in custody, the petition shall be served upon the
45 juvenile within ninety-six hours of the time custody began and if
46 the petition is not served within that time, the juvenile shall be
47 released forthwith.

48 (e) The clerk of the court shall promptly notify the local
49 office of the department of health and human resources of all
50 proceedings under this article, which shall then be responsible for
51 convening and directing the multidisciplinary treatment planning

1 process in accordance with the provisions of section three, article
2 five-d of this chapter: *Provided*, That in status offense or
3 delinquency cases where a case manager has not been assigned, the
4 juvenile probation officer shall be responsible for notifying the
5 local office of the department of health and human services which
6 will assign a case manager who will initiate assessment and be
7 responsible for convening and directing the multidisciplinary
8 treatment planning process.

9 **§49-5-16b. Conviction for offense while in custody.**

10 Notwithstanding any other provision of law to the contrary,
11 any person who is eighteen years of age or older who is convicted
12 as an adult of an offense that he or she committed while in the
13 custody of the division of juvenile services and who is therefor
14 sentenced to a regional jail or state correctional facility for
15 said offense may not be returned to the custody of the division
16 upon the completion of his or her adult sentence until a hearing is
17 held before the court which committed the person to the custody of
18 the division of juvenile services at which hearing the division may
19 present any objections it may have to return the person to its
20 custody. If the division does object and the court overrules the
21 division's objections, it shall make specific written findings as
22 to its rationale for overruling the objections: *Provided*, That no
23 person who is eighteen years of age or older who is convicted as an
24 adult of a felony crime of violence against the person while in the
25 custody of the division of juvenile services be returned to the
26 custody of the division of juvenile services upon completion of his
27 or her adult sentence.

28 **§49-5-21. Quarterly judicial review of juvenile proceedings.**

29 For cases under this article in which the provisions of
30 section three, article five-d of this chapter apply, the court
31 wherein the juvenile proceeding is pending shall conduct regular
32 judicial review of the case with the multidisciplinary treatment
33 team and a juvenile probation officer in attendance. Such judicial
34 review may be conducted as often as is considered necessary by the
35 court, but shall be conducted at least once every three calendar
36 months ~~until the case is wholly resolved and finally dismissed from~~
37 ~~the docket of the court as long as the child remains in the legal~~
38 ~~or physical custody of the state.~~

39 In conducting the judicial review required by this section,
40 the court shall address the extent of progress in the case,
41 treatment and service needs, permanent placement planning for the
42 juvenile, any uncontested issues and any other matters that the
43 court considers pertinent. An order reflecting the matters
44 considered, any uncontested rulings and the scheduling of an
45 evidentiary hearing on any contested issue shall be issued by the
46 court within ten judicial days of the judicial review.

47 **ARTICLE 5D. MULTIDISCIPLINARY TEAMS.**

48 **§49-5D-3. Multidisciplinary treatment planning process.**

49 (a) (1) On or before the first day of January, one thousand
50 nine hundred ninety-five, a multidisciplinary treatment planning

1 process shall be established within each county of the state,
2 either separately or in conjunction with a contiguous county by the
3 secretary of the department with advice and assistance from the
4 prosecutor's advisory council as set forth in section four, article
5 four, chapter seven of this code.

6 (2) Treatment teams shall assess, plan and implement a
7 comprehensive, individualized service plan for children who are
8 victims of abuse or neglect and their families when a judicial
9 proceeding has been initiated involving the child or children ~~and~~
10 for juveniles and their families involved in status offense or
11 delinquency proceedings when, in a status offense proceeding, the
12 court refers the juvenile for services pursuant to sections eleven
13 and eleven-a, article five of this chapter, and when, in a
14 delinquency proceeding, the court is considering placing the
15 juvenile in the department's custody ~~and/or~~ placing the juvenile
16 out-of-home at the department's expense, pursuant to the provisions
17 of section thirteen of said article. In any such status offense or
18 delinquency case, the juvenile probation officer shall notify the
19 local office of the department of health and human resources and
20 the division of juvenile services at least five working days before
21 the court proceeding in order to allow the multidisciplinary
22 treatment team to convene and develop a comprehensive
23 individualized service plan for the child: *Provided*, That such
24 notice is not required in cases where the child is already in state
25 custody or there exist exigent circumstances which justify taking
26 the child immediately into custody without a judicial proceeding.

27 (3) Prior to disposition, in each case in which a treatment
28 planning team has been convened, the team shall advise the court as
29 to the types of services the team has determined are needed and the
30 type of placement, if any, which will best serve the needs of the
31 child.

32 (b) Each treatment team shall be convened and directed by the
33 child's or family's case manager. The treatment team shall consist
34 of the child's custodial parent(s) or parents, guardian(s) or
35 guardians, other immediate family members, the attorney(s) or
36 attorneys representing the parent(s) or parents of the child, ~~if~~
37 ~~assigned by a judge of the circuit court, the child, if the child~~
38 ~~is over the age of twelve, and if the child's participation is~~
39 ~~otherwise appropriate, the child, if under the age of twelve when~~
40 ~~the team determines that the child's participation is appropriate,~~
41 the guardian ad litem, if any, the prosecuting attorney or his or
42 her designee and any other person or an agency representative who
43 may assist in providing recommendations for the particular needs of
44 the child and family. The child may participate in
45 multidisciplinary treatment team meetings if such is deemed
46 appropriate by the multidisciplinary treatment team. For purposes
47 of delinquency proceedings, the juvenile probation officer shall be
48 a member of the treatment team.

49 (c) The treatment team shall coordinate ~~their~~ its activities
50 and membership with local family resource networks, and coordinate
51 with other local and regional child and family service planning

1 committees to assure the efficient planning and delivery of child
2 and family services on a local and regional level.

3 (d) State, county and local agencies shall provide the
4 multidisciplinary treatment teams with any information requested in
5 writing by the team as allowable by law or upon receipt of a
6 certified copy of the circuit court's order directing said agencies
7 to release information in its possession relating to the child.
8 The team shall assure that all information received and developed
9 in connection with the provisions of this article remain
10 confidential. For purposes of this section, the term
11 "confidential" shall be construed in accordance with the provisions
12 of section one, article seven of this chapter.

13 **§49-5D-3a. Recommendation of team to the court; hearing**
14 **requirement; required findings.**

15 In any case in which a multidisciplinary treatment team
16 develops an individualized service plan for a child pursuant to the
17 provisions of section three of this article, the court shall review
18 the proposed service plan to determine if implementation of the
19 plan is in the child's best interests. If the court determines not
20 to adopt the team's recommendations, it shall, sua sponte, schedule
21 and hold within ten days of such determination, and prior to the
22 entry of an order placing the child in the custody of the
23 department or in an out-of-home setting, a hearing to consider
24 evidence from the team as to its rationale for the proposed service
25 plan. If, after a hearing held pursuant to the provisions of this
26 section, the court does not adopt the teams's recommended service
27 plan, it shall make specific written findings as to why the team's
28 recommended service plan was not adopted.

29 **§49-5D-8. Exemption from multidisciplinary team review for**
30 **emergency out-of-home placements.**

31 Notwithstanding any provisions of this article to the
32 contrary, a multidisciplinary team recommendation shall not be
33 required for temporary out-of-home placement of a child in an
34 emergency circumstance or for purposes of assessment as provided
35 for by the provisions of this article.

36

Senate Bill 455

Effective Date: Passed March 7, 2003; in effect from passage

Signed by Governor: April 1, 2003

Code Reference: Enacts a New Section §5-10-15b

Title: Relating to credit for public employment in another state

Major Provisions:

- Entitles any member of the retirement system who has previously been employed in public service in another state to receive credited service for that time, not to exceed five years. The service credit from another state, however, cannot be used to meet West Virginia's requirements for retirement or vesting.

- Employees entitled to the service credit are required to make additional contributions to the retirement system equal to the actuarial equivalent of what would have been contributed, including earnings, by the employee and employer.

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 455**

5 (SENATORS MINARD AND UNGER, *original sponsors*)

6 _____
7 [Passed March 7, 2003; in effect from passage.]
8 _____
9

10 AN ACT to amend article ten, chapter five of the code of West
11 Virginia, one thousand nine hundred thirty-one, as amended, by
12 adding thereto a new section, designated section fifteen-b,
13 relating to authorizing service credit toward retirement to
14 public employees for public employment in another state.

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

16 That article ten, chapter five of the code of West Virginia,
17 one thousand nine hundred thirty-one, as amended, be amended by
18 adding thereto a new section, designated section fifteen-b, to read
19 as follows:

20 **ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.**

21 **§5-10-15b. Credit for public employment in another state.**

22 (a) Any member of the retirement system who has previously
23 been employed in public employment in any other state of the United
24 States is entitled to receive credited service for the time of
25 public employment in that state, not to exceed five years, if the
26 member substantiates by appropriate documentation or evidence his
27 or her public employment in another state and makes contributions
28 as required: *Provided*, That the employee is not entitled to receive
29 the credited service if the employee is vested or entitled to be
30 vested in a retirement system of the state in which the employment
31 credit was earned and the employee is entitled to service credit in
32 that retirement system for the employment period for which the
33 applicant seeks credited service in West Virginia: *Provided*,
34 however, That the service credit from the other state may not be
35 used to meet West Virginia's eligibility requirements for
36 retirement or vesting.

37 Employees entitled to out-of-state service credit under the
38 provisions of this section shall make additional contribution to
39 the retirement system equal to the actuarial equivalent of the
40 amount which would have been contributed, together with earnings
41 thereon, by the employee and the employer, had the employee been
42 covered during the period of the retroactive service credit.

43 (b) In any case of doubt as to the period of service to be
44 credited a member under the provisions of this section, the board
45 of trustees has the final power to determine this period.

Senate Bill 510

Effective Date: Passed March 7, 2003; in effect ninety days from passage

Signed by Governor: April 1, 2003

Code Reference: Amend and reenact §5-28-2, §5-28-3

Title: Commission on Holocaust Education

Major Provisions:

- This bill adds section (f) which states that members of the commission are not entitled to compensation for services performed as members but may be reimbursed for expenses incurred for each day engaged in the performance of their official commission duties in a manner consistent with the guidelines of the travel management office of the department of administration.

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 510**

5 (SENATORS HUNTER, OLIVERIO, PREZIOSO, McCABE,
6 ROWE, CALDWELL, UNGER AND ROSS, *original sponsors*)

7 _____
8 [Passed March 7, 2003; in effect ninety days from passage.]
9 _____

10
11 AN ACT to amend and reenact sections two and three, article twenty-
12 eight, chapter five of the code of West Virginia, one thousand
13 nine hundred thirty-one, as amended, all relating to the West
14 Virginia commission on holocaust education; providing for
15 reimbursement of actual and necessary expenses; and
16 authorizing the commission to accept gifts, donations and
17 state funds as appropriated by the Legislature.

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

19 That sections two and three, article twenty-eight, chapter
20 five of the code of West Virginia, one thousand nine hundred
21 thirty-one, as amended, be amended and reenacted, all to read as
22 follows:

23 **ARTICLE 28. COMMISSION ON HOLOCAUST EDUCATION.**

24 **§5-28-2. Commission on holocaust education; compensation**

25 (a) Effective the first day of July, two thousand one, there
26 is created the West Virginia commission on holocaust education.

27 (b) The commission is composed of eleven members: Two members
28 currently serving on the state board of education, selected by the
29 board; the state superintendent of schools or his or her designee;
30 the director of the division of veterans' affairs; one attorney
31 from the attorney general's office, civil rights division; one
32 teacher who has completed professional development related to
33 holocaust education teaching at the high-school level and one
34 teacher who has completed professional development related to
35 holocaust education teaching at the junior-high or middle-school
36 level, each appointed by the governor with the advice and consent
37 of the Senate; and four state residents, appointed by the governor,
38 with the advice and consent of the Senate, who shall be:
39 Individuals who are holocaust scholars or individuals experienced
40 in the field of holocaust education or survivors, second
41 generation, eye-witness/liberators or individuals recommended by
42 the chair of the present holocaust education commission, created by
43 executive order, who, by virtue of their interest, education or
44 long-term involvement in human rights, prejudice reduction and
45 holocaust education have demonstrated, through their past
46 commitment and cooperation with the existing holocaust commission
47 on education, their willingness to work for holocaust awareness and
48 education in West Virginia.

1 (c) Members of the commission shall be appointed for terms of
2 three years or until their prospective successors are appointed and
3 qualified. Members are eligible for reappointment. Any member of
4 the commission who fails to attend more than two consecutive
5 meetings without an excuse approved by the commission may be
6 removed from the commission. All vacancies shall be filled by
7 appointment in the same manner as the original appointment, and the
8 individual appointed to fill the vacancy serves for the remainder
9 of the unexpired term.

10 (d) The governor shall appoint a chairperson for the
11 commission for a term of three years and until his or her successor
12 is appointed and qualified.

13 (e) The speaker of the House of Delegates shall appoint a
14 member of the House of Delegates and the president of the Senate
15 shall appoint a member of the Senate to serve as advisors to the
16 commission.

17 (f) Members of the commission are not entitled to compensation
18 for services performed as members but may be reimbursed for actual
19 and necessary expenses incurred for each day engaged in the
20 performance of their official commission duties in a manner
21 consistent with the guidelines of the travel management office of
22 the department of administration.

23 **§5-28-3. Commission powers and duties.**

24 (a) The commission shall:

25 (1) Provide, based upon the collective knowledge and
26 experience of its members, assistance and advice to public and
27 private schools, colleges and universities with respect to the
28 implementation of holocaust education and awareness programs;

29 (2) Meet with appropriate education officials and other
30 interested public and private organizations, including service
31 organizations, for the purpose of providing information, planning,
32 coordination or modification of courses of study or programs
33 dealing with the subject of the holocaust;

34 (3) Compile a roster of individual volunteers who are willing
35 to share their verifiable knowledge and experiences in classrooms,
36 seminars and workshops on the subject of the holocaust. The
37 volunteers may be survivors of the holocaust, liberators of
38 concentration camps, scholars, members of the clergy, community
39 relations professionals or other persons who, by virtue of their
40 experience, education or interest, have experience with the
41 holocaust;

42 (4) Coordinate events memorializing the holocaust and seek
43 volunteers who are willing and able to participate in commemorative
44 events that will enhance public awareness of the significance of
45 the holocaust; and

46 (5) Prepare annual reports for the governor and the
47 Legislature regarding its findings and recommendations to
48 facilitate the inclusion of holocaust studies and special programs
49 memorializing the holocaust in educational systems in this state.

1 (b) The commission may accept and use for the benefit of the
2 people of West Virginia any gift or devise of any property or thing
3 which is lawfully given and is authorized to accept state funds as
4 the same may be appropriated by the Legislature.

5 ~~Members of the commission are not entitled to compensation for~~
6 ~~services performed as members and are not entitled to reimbursement~~
7 ~~for expenses.~~

Senate Bill 522

Effective Date: Passed March 16, 2003; to take effect July 1, 2003

Signed by Governor: April 2, 2003

Code Reference: Amends §§18-1-1, 18-2-4, 18-2E-7, 18-3-1, 18-4-1, 18-4-2, 18-4-10, 18-4-11, 18-5-1a, 18-5-1c, 18-5-4, 18-5-7, 18-5-13, 18-5-14, 18-5-25, 18-5-45, 18-5A-2, 18-5A-5, and 18-8-4
Enacts New Sections §18-2-5g and §18-4-6

Title: Omnibus Education Bill

Major Provisions:

School Calendar:

- Reduces the number of faculty senate meetings to six, one to be scheduled on the day designated for the opening of school prior to the beginning of the instructional term.
- The remaining five faculty senate meetings are to be scheduled on five newly created instructional support and enhancement days during the months of October, December, February, April and June.
- Each of the five instructional support and enhancement days must include a two-hour block for instructional activities, a two-hour block for a faculty senate meeting and the remainder of the day for professional activities.
- Allows the primary statewide assessment program to be scheduled as early as April 15th for the 2003-04 year only; cannot be earlier than May 15th in future years.
- Clarifies that Continuing Professional Development (CE) days are to be the last non-instructional days used to reschedule canceled instructional days if 180 days of separate instruction are not met.

- Authorizes county boards to increase the length of an instructional day to make-up lost instructional days in excess of the available non-instructional days and to avoid using the CE day as a rescheduled instructional day.

- Deletes the requirement that a minimum percentage of students, as defined by the State Board, be present in order for the day to be counted as an instructional day.

State Board and Superintendent:

- Provides state board president may serve an unlimited number of terms, but no more than two consecutively.

- Clarifies that superintendent serves at will and pleasure of state board.

- Requires annual evaluation of state superintendent.

- Rewrites the provision that allows the state board to address cases where a county superintendent who holds a first class permit cannot complete the requirement for an administrative certificate within three years because the courses are not available.

- Requires the state board to establish rules to exclude certain student absences for accountability purposes, such as excused absences, absences due to disciplinary actions, and absent students for whom judicial remedies have been sought.

County Board:

- Modifies the restriction that county board members may not serve in any public office to allow service on boards where the individual does not receive compensation and whose primary scope is not related to the public schools.

- Allows a county board member or prospective member to request an opinion from the Ethics Commission on whether serving on the board would conflict with serving in another elected or appointed position.
- Requires county board members to receive training on school performance issues.
- Authorizes county boards to lease school property no longer needed for school purposes.
- Modifies residence requirement to allow county superintendent to be a resident of the county or of a contiguous county in the state.
- Modifies health requirements for county superintendents to be similar to the requirements for teachers.
- Requires annual evaluation of county superintendents.
- Requires county superintendent to report promptly to the county board when schools fail to meet the standards for improving education and any other issues affecting schools, programs and initiatives.
- Requires county boards to file policies to promote school board effectiveness with the state board, and requires county boards to review those policies annually.
- Requires county boards to perform annual self-assessments.
- Allows county boards to conduct meetings in facilities within the county other than the county board office.
- Adds specific authority that county boards may contract with or engage outside legal counsel.

Appropriations for Basic Skills and Success:

- Modifies the restriction that the funds appropriated for Basic Skills and Success programs be expended directly to allow, with State Board approval, for the

expenditure of the funds for the installation, set-up, internet hook-up and wiring to be made through contractual agreements with county boards and RESAs.

Job Sharing:

- Authorizes service personnel to participate in job sharing arrangements.
- Requires that any job-sharing agreement must be in writing that include specific arrangements such as assignment of benefits.

Local School Improvement Councils:

- Requires local school improvement councils, with quorum of members present, to meet annually with county boards to address any matters requested by the county board.
- Training for local school improvement council members must meet the guidelines established by the State Board.
- Prohibits more than one parent who is employed by a school from being a member of the local school improvement council.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 522

(SENATORS OLIVERIO, PREZIOSO, PLYMALE, EDGELL, HUNTER, GUILLS, BOWMAN, ROWE
AND LOVE, *original sponsors*)

[Passed March 16, 2003; to take effect July 1, 2003.]

AN ACT to amend and reenact section one, article one, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section four, article two of said chapter; to further amend said article by adding thereto a new section, designated section

1 five-g; to amend and reenact section seven, article two-e of
2 said chapter; to amend and reenact section one, article three
3 of said chapter; to amend and reenact sections one and two,
4 article four of said chapter; to further amend said article by
5 adding thereto a new section, designated section six; to amend
6 and reenact sections ten and eleven of said article; to amend
7 and reenact sections one-a, one-c, four, seven, thirteen,
8 fourteen, twenty-five and forty-five, article five of said
9 chapter; to amend and reenact sections two and five, article
10 five-a of said chapter; and to amend and reenact section four,
11 article eight of said chapter, all relating to public
12 education generally; definitions; allowing state board
13 president to serve an unlimited number of terms, but no more
14 than two consecutive terms; requiring county boards to provide
15 certain policies, summaries of any modifications to those
16 policies and copies of annual reports to state board;
17 requiring state board to submit copies of summaries and annual
18 reports to the legislative oversight commission on education
19 accountability; allowing, with state board approval, certain
20 appropriations to be expended directly or through contractual
21 agreements with county boards and regional education service
22 agencies for materials and other costs associated with
23 installation, set-up, internet hook-up and wiring of the
24 computer hardware and software; clarifying that state
25 superintendent serves at the will and pleasure of the state
26 board; requiring the state board to annually evaluate the
27 performance of the state superintendent and publicly announce
28 the results of the evaluation; clarifying appointment of
29 county superintendents; modifying authorization for county
30 superintendent to transfer to a teaching position at the end
31 of his or her term; extending the date before which the county
32 superintendent is required to be appointed; requiring county
33 superintendent to be a resident of the county, or of a
34 contiguous county in this state, in which he or she serves;
35 modifying requirements for permanent administrative
36 certificate and county superintendent license; requiring state
37 board to define three years of experience in management or
38 supervision in rule; modifying health-related conditions of
39 employment for county superintendents; providing for
40 discontinuing or suspending employment of county
41 superintendent under certain circumstances; requiring that
42 county superintendents be evaluated at least annually;
43 providing criteria for evaluation; providing for evaluation to
44 take place in executive session; directing county board to
45 release general statement to the public and provide additional
46 information only by mutual consent of county board and county
47 superintendent; delineating authorized uses of evaluation
48 results; allowing contract or written agreement to delineate
49 a county superintendent acting as chief executive officer;
50 removing county superintendent duty to organize and attend
51 district institutes and organize and direct reading circles
52 and boys' and girls' clubs; requiring county superintendent to
53 report promptly to the county board whenever any school in the
54 district appears to be failing to meet the standards for
55 improving education; requiring county superintendent to keep

1 county board apprised of certain issues in the district;
2 removing requirement for county superintendent to direct the
3 taking of school census; allowing county board members to
4 serve on certain boards; allowing request of ethics commission
5 for an advisory opinion; requiring ethics commission to issue
6 advisory opinion within thirty days; entitling county board
7 member who relies on opinion to reimbursement for attorney's
8 fees and court costs incurred in certain proceedings;
9 prohibiting vote cast from being invalidated due to subsequent
10 finding that holding particular office or committee is a bar
11 to membership on the board; providing that good faith reliance
12 on a written advisory opinion is an absolute defense to
13 certain civil suits or criminal prosecutions; requiring county
14 board member training to include school performance issues;
15 allowing feasible and practicable extension of training time;
16 requiring annual county board self-assessment; specifying
17 focus of evaluation instrument; requiring summary of
18 evaluation to be made public; allowing county boards to meet
19 in facilities within the county other than the county board
20 office; authorizing lease of school property subject to
21 certain requirements; clarifying county board authority to
22 employ, contract with or otherwise engage legal counsel;
23 including service personnel in job sharing arrangements;
24 adding requirements for job sharing; limiting cost to
25 retirement system; requiring filing of policies and summaries
26 of policies that promote school board effectiveness; requiring
27 annual meeting with a quorum of members from each local school
28 improvement council; providing for meeting with less than a
29 quorum under certain circumstances; allowing county board to
30 schedule additional meeting for any low performing school in
31 the district; requiring county board to develop agenda for
32 required annual meeting with local school improvement council;
33 requiring certain items to be addressed; requiring county
34 boards to make written requests for information from local
35 school improvement councils throughout the year or hold
36 community forums to receive input from the affected community
37 as the county board considers necessary; modifying time
38 requirements for reporting to state board on meetings with
39 local school improvement councils; authorizing county board to
40 request assistance from local school improvement council
41 members to facilitate development of report; requiring county
42 boards to review the policies to promote school board
43 effectiveness each year; eliminating duty of county
44 superintendent to make a tabular report to the county board
45 annually; eliminating requirement that certain percentage of
46 students be in attendance for a day to be considered
47 instructional; including five instructional support and
48 enhancement days within the instructional term that include
49 instructional activities, professional activities and time for
50 faculty senate meetings; requiring instructional activities
51 for students to be scheduled by appointment; requiring school
52 policy relating to use of time designated for instructional
53 activities; providing that the presence of any certain number
54 of students and the transportation of students is not required
55 on instructional support and enhancement days; declaring

1 instructional support and enhancement days a regular work day
2 for all service personnel; providing that for one school year
3 only, statewide assessment may not be prior to the fifteenth
4 day of April; requiring professional development days to be
5 used last when making up instructional days; allowing use of
6 additional minutes of instruction each day for making up lost
7 instructional days under certain circumstances; prohibiting
8 more than one parent member of a local school improvement
9 council from being employed at the school; requiring chair to
10 appoint replacement of elected member of local school
11 improvement council if position becomes vacant; requiring
12 principal to appoint replacement if appointed position becomes
13 vacant; requiring principal to provide certain information at
14 the organizational meeting of the local school improvement
15 council; requiring local school improvement council chair, or
16 designee, to be prepared to address certain matters at annual
17 meeting and in writing; allowing state board to enter into
18 contracts to provide orientation training for local school
19 improvement council members; requiring that any training meet
20 guidelines established by the state board; requiring emergency
21 meetings of faculty senates to be held during noninstructional
22 time; requiring a two-hour block of time be scheduled for a
23 faculty senate meeting on a day scheduled for the opening of
24 school prior to the beginning of the instructional term;
25 requiring that a two-hour block of time be scheduled for a
26 faculty senate meeting on each instructional support and
27 enhancement day; and requiring state board rule excluding
28 certain absences for accountability purposes.

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

30 That section one, article one, chapter eighteen of the code of
31 West Virginia, one thousand nine hundred thirty-one, as amended, be
32 amended and reenacted; that section four, article two of said
33 chapter be amended and reenacted; that said article be further
34 amended by adding thereto a new section, designated section five-g;
35 that section seven, article two-e of said chapter be amended and
36 reenacted; that section one, article three of said chapter be
37 amended and reenacted; that sections one and two, article four of
38 said chapter be amended and reenacted; that said article be further
39 amended by adding thereto a new section, designated section six;
40 that sections ten and eleven of said article be amended and
41 reenacted; that sections one-a, one-c, four, seven, thirteen,
42 fourteen, twenty-five and forty-five, article five of said chapter
43 be amended and reenacted; that sections two and five, article five-
44 a of said chapter be amended and reenacted; and that section four,
45 article eight of said chapter be amended and reenacted all to read
46 as follows:

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

49 **§18-1-1. Definitions.**

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

1 (a) "School" means the pupils and teacher or teachers
2 assembled in one or more buildings, organized as a unit;

3 (b) "District" means county school district;

4 (c) "State board" means the West Virginia board of education;

5 (d) "County board" or "board" means the county board of
6 education;

7 (e) "State superintendent" means the state superintendent of
8 free schools;

9 (f) "County superintendent" or "superintendent" means the
10 county superintendent of schools;

11 (g) "Teacher" means teacher, supervisor, principal,
12 superintendent or public school librarian; registered professional
13 nurse, licensed by the West Virginia board of examiners for
14 registered professional nurses and employed by a county board of
15 education, who has a baccalaureate degree; or any other person
16 regularly employed for instructional purposes in a public school in
17 this state;

18 (h) "Service personnel" means all nonteaching school employees
19 not included in the above definition of "teacher";

20 (i) "Social worker" means a nonteaching school employee who,
21 at a minimum, possesses an undergraduate degree in social work from
22 an accredited institution of higher learning and who provides
23 various professional social work services, activities or methods as
24 defined by the state board for the benefit of students;

25 (j) "Regular full-time employee" means any person employed by
26 a county board of education who has a regular position or job
27 throughout his or her employment term, without regard to hours or
28 method of pay;

29 (k) "Career clusters" means broad groupings of related
30 occupations;

31 (l) "Work-based learning" means a structured activity that
32 correlates with and is mutually supportive of the school-based
33 learning of the student and includes specific objectives to be
34 learned by the student as a result of the activity;

35 (m) "School-age juvenile" means any individual who is entitled
36 to attend or who, if not placed in a residential facility, would be
37 entitled to attend public schools in accordance with: (1) Section
38 five, article two of this chapter; (2) sections fifteen and
39 eighteen, article five of this chapter; or (3) section one, article
40 twenty of this chapter;

41 (n) "Student with a disability" means an exceptional child,
42 other than gifted, pursuant to section one, article twenty of this
43 chapter;

44 (o) "Low-density county" means a county whose ratio of student
45 population to square miles is less than or equal to the state
46 average ratio as computed by the state department of education;

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

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

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

8 **§18-2-4. Organization; appointment, compensation and duties of**
9 **secretary.**

10 At its first regular meeting in every year, the state board
11 shall elect one of its members as president, who ~~shall not succeed~~
12 ~~himself as president, may serve an unlimited number of terms, but~~
13 no more than two consecutive terms, and one as vice president of
14 the board. The state superintendent shall be the chief executive
15 officer of the state board, and, subject to its direction, shall
16 execute its policies.

17 The state board shall appoint a secretary and fix ~~his~~ the
18 secretary's salary, to be paid out of the general school fund upon
19 warrants drawn by the state superintendent. The secretary shall
20 keep a record of the proceedings of the state board and shall
21 perform such other duties as it may prescribe.

22 **§18-2-5g. Duty to receive and submit summary of policy**
23 **modifications and annual reports.**

24 In addition to filing each policy as required by section
25 fourteen, article five of this chapter, the state board shall
26 require each county board to provide a summary of any modifications
27 to the policies and copies of annual reports developed pursuant to
28 section fourteen, article five of this chapter. The state board
29 shall submit copies of these summaries of modifications to the
30 policies and annual reports, together with any comments and
31 recommendations, to the legislative oversight commission on
32 education accountability, no later than the thirty-first day of
33 December of each year.

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

35 **§18-2E-7. Providing for high quality basic skills development and**
36 **remediation in all public schools.**

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

1 This plan must provide for standardization of computer
2 hardware and software, and for technology upgrade and replacement,
3 for the purposes of achieving economies of scale, facilitating
4 teacher training, permitting the comparison of achievement of
5 students in schools and counties utilizing the hardware and
6 software, and facilitating the repair of equipment and ensuring
7 appropriate utilization of the hardware and software purchased for
8 remediation and basic skills development.

9 The state board shall determine the computer hardware and
10 software specifications after input from practicing teachers at the
11 appropriate grade levels and with the assistance of education
12 computer experts and the curriculum technology resource center.

13 Computer hardware and software shall be purchased either
14 directly or through a lease-purchase arrangement pursuant to the
15 provisions of article three, chapter five-a of this code in the
16 amount equal to anticipated revenues being appropriated: Provided,
17 That, with the approval of the state board, the revenues
18 appropriated may be expended directly or through contractual
19 agreements with county boards and regional education service
20 agencies for materials and other costs associated with
21 installation, set-up, internet hook-up and wiring of the computer
22 hardware and software: Provided, however, That nothing in this
23 section shall be construed to require any specific level of funding
24 by the Legislature.

25 The state board shall ~~determine~~ develop and provide through
26 the state curriculum technology resource center a program to ensure
27 adequate teacher training, continuous teacher support and updates.

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

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

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

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

49 (3) Applying academic knowledge in real life situations
50 through simulated workplace programs;

1 (4) Understanding the modern workplace environment,
2 particularly in remote areas of the state, by bringing the
3 workplace to the school;

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

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

8 (7) Obtaining information and assistance about college and
9 other post-secondary education opportunities and financial aid; and

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

13 Therefore, the state board shall extend the plan as set forth
14 in subsection (a) of this section, and consistent with the terms
15 and conditions in said subsection, to address the findings of this
16 subsection regarding the continued implementation of computer
17 hardware and software, and technical planning support in the middle
18 schools, junior high schools and high schools of the state.

19 **ARTICLE 3. STATE SUPERINTENDENT OF SCHOOLS.**

20 **§18-3-1. Appointment; qualifications; compensation; traveling**
21 **expenses; office and residence; evaluation.**

22 There shall be appointed by the state board a state
23 superintendent of schools who shall serve at the will and pleasure
24 of the state board. He or she shall be a person of good moral
25 character, of recognized ability as a school administrator, holding
26 at least a master's degree in educational administration, and shall
27 have had not less than five years of experience in public school
28 work. He or she shall receive an annual salary set by the state
29 board, to be paid monthly: *Provided*, That the annual salary may not
30 exceed one hundred forty-six thousand one hundred dollars. The
31 state superintendent also shall receive necessary traveling
32 expenses incident to the performance of his or her duties, ~~the~~
33 ~~traveling expenses~~ to be paid out of the general school fund upon
34 warrants of the state auditor. The state superintendent shall have
35 his or her office at the state capitol. The state board shall
36 report to the legislative oversight commission on education
37 accountability upon request concerning its progress during any
38 hiring process for a state superintendent.

39 The state board annually shall evaluate the performance of the
40 state superintendent and publicly announce the results of the
41 evaluation.

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

43 **§18-4-1. Election and term; interim superintendent.**

44 (a) The county superintendent shall be ~~elected~~ appointed by
45 the board ~~to serve upon a majority vote of the members thereof~~ to
46 serve for a term of not less than one, nor more than four years.
47 At the expiration of the term or terms for which he or she shall
48 have been ~~elected~~ appointed, each county superintendent shall be
49 eligible for ~~reelection~~ reappointment for additional terms of not
50 less than one, nor more than four years: *Provided*, That at the

1 expiration of his or her term or terms of service ~~he shall be given~~
2 ~~the status of teacher in the system~~ the county superintendent may
3 transfer to any teaching position in the county for which he or she
4 is qualified and has seniority, unless dismissed for statutory
5 reasons. The appointment of the county superintendent shall be made
6 on or before the first day of June for a term beginning on the
7 first day of July following the appointment.

8 (b) A county superintendent who fills a vacancy caused by an
9 incomplete term shall be appointed to serve until the following
10 first day of July: *Provided, however,* That the board may appoint an
11 interim county superintendent to serve for a period not to exceed
12 one hundred twenty days from the occurrence of the vacancy.(c) The
13 president of the county board, immediately upon the appointment of
14 the county superintendent, or the appointment of an interim county
15 superintendent, shall certify the appointment to the state
16 superintendent.

17 (d) During his or her term of appointment, the county
18 superintendent shall be a resident of the county, or of a
19 contiguous county in this state, which he or she serves. The
20 county superintendent in office on the effective date of this
21 section shall continue in office until the expiration of his or her
22 term.

23 ~~Such election shall be held on or before the first day of May~~
24 ~~and the persons so elected shall take office on the first day of~~
25 ~~July following. A superintendent who fills a vacancy caused by an~~
26 ~~incomplete term shall be appointed to serve until the following~~
27 ~~first day of July: **Provided, however,** That the board may appoint an~~
28 ~~interim superintendent to serve for a period not to exceed one~~
29 ~~hundred twenty days from the occurrence of the vacancy. The~~
30 ~~president of the board, immediately upon the election of the~~
31 ~~superintendent, or the appointment of an interim superintendent,~~
32 ~~shall certify the election or appointment to the state~~
33 ~~superintendent of schools.~~

34 **§18-4-2. Qualifications; health certificate; disability; acting**
35 **superintendent.**

36 (a) Each county superintendent shall hold a professional
37 administrative certificate endorsed for superintendent, or a first
38 class permit endorsed for superintendent, ~~*Provided,* That a~~
39 ~~superintendent who holds a first class permit may be appointed for~~
40 ~~only one year, and may be reappointed two times for an additional~~
41 ~~year each upon an annual evaluation by the board and a~~
42 ~~determination of satisfactory performance and reasonable progress~~
43 ~~toward completion of the requirements for a professional~~
44 ~~administrative certificate endorsed for superintendent: *Provided,*~~
45 ~~*however,* That any candidate for superintendent who possesses an~~
46 ~~earned doctorate from an accredited institution of higher~~
47 ~~education, has completed three successful years of teaching in~~
48 ~~public education and has the equivalent of three years of~~
49 ~~experience in management or supervision, upon employment by the~~
50 ~~county board of education, shall be granted a permanent~~
51 ~~administrative certificate and shall be a licensed county~~
52 ~~superintendent. Any person employed as assistant superintendent or~~
53 ~~educational administrator prior to the twenty-seventh day of June,~~

1 ~~one thousand nine hundred eighty-eight, and who was previously~~
2 ~~employed as superintendent is not required to hold the professional~~
3 ~~administrative certificate endorsed for superintendent. subject to~~
4 ~~the following:~~

5 ~~_____ (b) Before entering upon the discharge of his or her duties~~
6 ~~the superintendent shall file with the president of the board a~~
7 ~~health certificate from a reputable physician, on a form prescribed~~
8 ~~by the state department of education, certifying that he or she is~~
9 ~~physically fit for the duties of his or her office and that he or~~
10 ~~she has no infectious or contagious disease; and if the~~
11 ~~superintendent, due to accident or illness, becomes incapacitated~~
12 ~~to an extent that could lead to a prolonged absence, the board,~~
13 ~~upon unanimous vote, may enter an order declaring the incapacity~~
14 ~~and it shall appoint an acting superintendent until such time as a~~
15 ~~majority of the members of the board determine that the incapacity~~
16 ~~no longer exists. However, an acting superintendent shall not serve~~
17 ~~as such for more than one year, or later than the expiration date~~
18 ~~of the superintendent's term, whichever is less, without being~~
19 ~~reappointed by the board of education.~~

20 ~~(c) Upon finding that the course work needed by a~~
21 ~~superintendent who holds a first class permit endorsed for~~
22 ~~superintendent is not available or is not scheduled in a manner at~~
23 ~~state institutions of higher education which will enable him or her~~
24 ~~to complete the normal requirements for a professional~~
25 ~~administrative certificate endorsed for superintendent within the~~
26 ~~three-year period allowed for appointment and reappointment under~~
27 ~~the permit, the state board shall adopt a rule in accordance with~~
28 ~~article three-b, chapter twenty-nine-a of this code, to enable~~
29 ~~completion of the requirements, or comparable alternative~~
30 ~~requirements, for a professional administrative certificate~~
31 ~~endorsed for superintendent.~~

32 (1) A superintendent who holds a first class permit may be
33 appointed for one year only, and may be reappointed two times for
34 an additional year each upon an annual evaluation by the county
35 board and a determination of satisfactory performance and
36 reasonable progress toward completion of the requirements for a
37 professional administrative certificate endorsed for
38 superintendent;

39 (2) Any candidate for superintendent who possesses an earned
40 doctorate from an accredited institution of higher education and
41 either has completed three successful years of teaching in public
42 education or has the equivalent of three years of experience in
43 management or supervision as defined by state board rule, after
44 employment by the county board shall be granted a permanent
45 administrative certificate and shall be a licensed county
46 superintendent;

47 (3) The state board shall promulgate a legislative rule in
48 accordance with article three-b, chapter twenty-nine-a of this
49 code, to address those cases where a county board finds that course
50 work needed by the county superintendent who holds a first class
51 permit is not available or is not scheduled at state institutions
52 of higher education in a manner which will enable the county

1 superintendent to complete normal requirements for a professional
2 administrative certificate within the three-year period allowed
3 under the permit; and

4 (4) Any person employed as assistant superintendent or
5 educational administrator prior to the twenty-seventh day of June,
6 one thousand nine hundred eighty-eight, and who was previously
7 employed as superintendent is not required to hold the professional
8 administrative certificate endorsed for superintendent.

9 (b) In addition to other requirements set forth in this
10 section, a county superintendent shall meet the following health-
11 related conditions of employment:

12 (1) Before entering upon the discharge of his or her duties,
13 file with the president of the county board a certificate from a
14 licensed physician certifying the following:

15 (A) A tuberculin skin test, of the type Mantoux test (PPD skin
16 test), approved by the director of the department of health, has
17 been made within four months prior to the beginning of the term of
18 the county superintendent; and

19 (B) The county superintendent does not have tuberculosis in a
20 communicable state based upon the test results and any further
21 study;

22 (2) After completion of the initial test, the county
23 superintendent shall have an approved tuberculin skin test once
24 every two years or more frequently if medically indicated.
25 Positive reactors to the skin test are to be referred immediately
26 to a physician for evaluation and indicated treatment or further
27 studies;

28 (3) A county superintendent who is certified by a licensed
29 physician to have tuberculosis in a communicable stage shall have
30 his or her employment discontinued or suspended until the disease
31 has been arrested and is no longer communicable; and

32 (4) A county superintendent who fails to complete required
33 follow-up examinations as set forth in this subsection shall be
34 suspended from employment until a report of examination is
35 confirmed.

36 **§18-4-6. Evaluation of county superintendent.**

37 (a) At least annually, the county board shall evaluate the
38 performance of the county superintendent. The evaluation process
39 to be used shall be one authorized by the state board. The West
40 Virginia school board association shall maintain a catalog of
41 evaluation instruments which comply with this section and shall
42 make them available to county boards.

43 (b) At a minimum, the evaluation process shall require the
44 county superintendent and county board to establish written goals
45 or objectives for the county superintendent to accomplish within a
46 given period of time. Additionally, the county board shall
47 evaluate the county superintendent on his or her success in
48 improving student achievement generally across the county and
49 specifically as it relates to the management and administration of
50 low performing schools.

1 (c) The evaluation also may cover the performance of a county
2 superintendent in the areas of community relations, school finance,
3 personnel relations, curricular standards and programs and overall
4 leadership of the school district as indicated primarily by
5 improvements in student achievement, testing and assessment.

6 (d) The evaluation of a county superintendent shall occur in
7 executive session. At the conclusion of the evaluation, the county
8 board shall make available to the public a general statement about
9 the evaluation process and the overall result. Additional
10 information about the evaluation may be released only by mutual
11 consent of the county superintendent and the county board. The
12 county board may use the evaluation results to determine:

13 (1) Whether to extend the contract of the county
14 superintendent;

15 (2) Whether to offer the county superintendent a new contract;
16 and

17 (3) The level of compensation or benefits to offer the county
18 superintendent in any new or extended contract.

19 **§18-4-10. Duties of county superintendent.**

20 The county superintendent shall:

21 (1) Act as the chief executive officer of the county board, as
22 may be delineated in his or her contract or other written agreement
23 with the county board, and, under the direction of the state board,
24 and execute under the direction of the state board all its
25 education policies;

26 (2) Nominate all personnel to be employed; in case the county
27 board of education refuses to employ any or all of the persons
28 nominated, the county superintendent shall nominate others and
29 submit the same to the county board of education at such a time as
30 the county board may direct, but, ~~n~~ No such person or persons shall
31 be employed except on the nomination of the county superintendent;

32 (3) Assign, transfer, suspend or promote teachers and all
33 other school employees of the district, subject only to the
34 approval of the county board, and to recommend to the county board
35 their dismissal pursuant to the provisions of this chapter;

36 (4) Report promptly to the county board in such manner as it
37 directs whenever any school in the district appears to be failing
38 to meet the standards for improving education established pursuant
39 to section five, article two-e of this chapter;

40 (5) Close a school temporarily when conditions are detrimental
41 to the health, safety or welfare of the pupils;

42 (6) Certify all expenditures and monthly payrolls of teachers
43 and employees;

44 (7) Serve as the secretary of the county board and attend all
45 meetings of the county board or its committees, except when the
46 tenure, salary or administration of the county superintendent is
47 under consideration;

1 (8) Administer oaths and examine witnesses under oath in any
2 proceedings pertaining to the schools of the district, and have the
3 testimony reduced to writing;

4 (9) Keep the county board apprised continuously of any issues
5 that affect the county board or its schools, programs and
6 initiatives. The county superintendent shall report to the county
7 board on these issues using any appropriate means agreeable to both
8 parties. When practicable, the reports shall be fashioned to
9 include a broad array of data and information that the county board
10 may consult to aid in making decisions;

11 (10) Exercise all other authority granted by this chapter or
12 required by the county board or state board; and

13 (11) In case of emergency, act as the best interests of the
14 school demand. An emergency, as contemplated in this section, is
15 limited to an unforeseeable, catastrophic event including natural
16 disaster or act of war and nothing in this section may be construed
17 as granting the county superintendent authority to override any
18 statutory or constitutional provision in the exercise of his or her
19 emergency power except where such authority is specifically granted
20 in the particular code section.

21 **§18-4-11. Other powers and duties.**

22 The county superintendent shall:

23 (1) Visit the schools as often as practicable; observe and
24 make suggestions concerning the instruction and classroom
25 management of the schools and their sanitary conditions;

26 (2) Report to the county board cases of incompetence, neglect
27 of duty, immorality or misconduct in office of any teacher or
28 employee;

29 (3) Recommend for condemnation buildings unfit for school use;

30 ~~(4) Direct the taking of the school census;~~ (5) Call, at his or
31 her discretion, conferences of principals and teachers to discuss
32 the work of the schools of the district;

33 ~~(5) (6)~~ Report to the county board the progress and general
34 condition of the schools;

35 ~~(6) (7)~~ Make reports as ~~are~~ required by the state
36 superintendent. In case the county superintendent fails to report
37 as required, the state superintendent may direct that the
38 ~~superintendent's~~ salary of the county superintendent be withheld
39 until an acceptable report is received; and

40 ~~(7) (8)~~ Perform all other duties prescribed in this chapter or
41 required by the county board or the state board.

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

43 **§18-5-1a. Eligibility of Members; training requirements.**

44 (a) No person shall be eligible for membership on any county
45 board who is not a citizen, resident in such county, or who accepts
46 a position as teacher or service personnel in the school district
47 in which he or she is a resident or who is an elected or an

1 appointed member of any political party executive committee, or who
2 becomes a candidate for any other office than to succeed oneself.

3 (b) No member or member-elect of any board shall be eligible
4 for nomination, election or appointment to any public office, other
5 than to succeed oneself, or for election or appointment as a member
6 of any political party executive committee, unless and until after
7 that membership on the board, or his status as member-elect to the
8 board, has been terminated at or before the time of his filing for
9 such nomination for, or appointment to, such public office or
10 committee: *Provided*, That "office" or "committee", as used in this
11 subsection and subsection (a) of this section, does not include
12 service on any board, elected or appointed, profit or non profit,
13 for which the person does not receive compensation and whose primary
14 scope is not related to the public schools.

15 (c) A member or member elect of a county board, or a person
16 desiring to become a member of a county board, may make a written
17 request to the West Virginia ethics commission for an advisory
18 opinion on whether another elected or appointed position held or
19 sought by the person is an office or public office which would bar
20 servng on the board pursuant to subsections (a) and (b) of this
21 section. Within thirty days of receipt of the request, the ethics
22 commission shall issue a written advisory opinion in response to the
23 request and shall also publish such opinion in a manner which to the
24 fullest extent possible does not reveal the identity of the person
25 making the request. Any county board member who relied in good
26 faith upon an advisory opinion issued by the West Virginia ethics
27 commission that holding a particular office or public office is not
28 a bar from membership on a county board of education and against
29 whom proceedings are subsequently brought for removal from the
30 county board on the basis of holding such office or offices shall
31 be entitled to reimbursement by the county board for reasonable
32 attorney's fees and court costs incurred by the member in defending
33 against such proceedings, regardless of the outcome the proceedings.
34 Further, no vote cast by the member at a meeting of the board shall
35 be invalidated due to a subsequent finding that holding the
36 particular office or public is a bar to membership on the county
37 board. Good faith reliance on a written advisory opinion of the
38 West Virginia ethics commission that a particular office or public
39 office is not a bar to membership on a county board of education is
40 an absolute defense to any civil suit or criminal prosecution
41 arising from any proper action taken within the scope of membership
42 on the board, becoming a member elect of the board or seeking
43 election to the board.

44 (d) Any person who is elected or appointed to a county board
45 on or after the fifth day of May, one thousand nine hundred ninety-
46 two, shall possess at least a high school diploma or a general
47 educational development (GED) diploma: *Provided*, That this provision
48 shall not apply to members or members-elect who have taken office
49 prior to the fifth day of May, one thousand nine hundred ninety-two,
50 and who serve continuously therefrom.

51 (e) No person elected to a county board after the first day of
52 July, one thousand nine hundred ninety, shall assume the duties of
53 board member unless he or she has first attended and completed a

1 course of orientation relating to boardmanship and governance
2 effectiveness which shall be given between the date of election and
3 the beginning of the member's term of office: *Provided*, That a
4 portion or portions of subsequent training such as that offered in
5 orientation may be provided to members after they have commenced
6 their term of office: *Provided, however*, That attendance at the
7 session of orientation given between the date of election and the
8 beginning of the member's term of office shall permit such member
9 or members to assume the duties of board member, as specified in
10 this section. Members appointed to the board shall attend and
11 complete the next such course offered following their appointment:
12 *Provided further*, That the provisions of this section relating to
13 orientation shall not apply to members who have taken office prior
14 to the first day of July, one thousand nine hundred eighty-eight,
15 and who serve continuously therefrom.

16 (f) Commencing on the effective date of this section, members
17 shall annually receive seven clock hours of training in areas
18 relating to boardmanship, governance effectiveness, and school
19 performance issues including, but not limited to, pertinent state
20 and federal statutes such as the "Process for Improving Education"
21 set forth in section five, article two-e of this chapter and the "No
22 Child Left Behind Act" and their respective administrative rules.
23 Such orientation and training shall be approved by the state board
24 and conducted by the West Virginia school board association or other
25 organization or organizations approved by the state board: *Provided*,
26 That the state board may exclude time spent in training on school
27 performance issues from the requisite seven hours herein required:
28 *Provided, however*, That if the state board elects to exclude time
29 spent in training on school performance issues from the requisite
30 seven hours, such training shall be limited by the state board to
31 a feasible and practicable amount of time. Failure to attend and
32 complete such an approved course of orientation and training
33 relating to boardmanship and governance effectiveness without good
34 cause as determined by legislative rules of the state board shall
35 constitute neglect of duty.

36 (g) In the final year of any four-year term of office, a member
37 shall satisfy the annual training requirement before the first day
38 of January. The state board shall petition the circuit court of
39 Kanawha County to remove any county board member who has failed to
40 or who refuses to attend and complete the approved course of
41 orientation and training. If the county board member fails to show
42 good cause for not attending the approved course of orientation and
43 training, the court shall remove the member from office.

44 **§18-5-1c. Organization of board; evaluation.**

45 (a) On the first Monday of ~~July~~ January, following each
46 biennial primary election, each respective county board shall
47 organize and shall ~~organize and elect for a two-year term,~~
48 a president from its own membership for a two-year term. The county
49 board shall report promptly to the state superintendent the name of
50 the member elected as county board president. ~~and report same~~
51 ~~promptly to the state superintendent of schools: *Provided*, That on~~
52 ~~the first Monday of January, one thousand nine hundred eighty-one,~~
53 ~~each respective board of education shall elect a president for a~~

1 ~~term to expire the thirtieth day of June, one thousand nine hundred~~
2 ~~eighty-two: **Provided, however,** That on the first Monday of July,~~
3 ~~following the primary election in the year one thousand nine hundred~~
4 ~~eighty-two and each biennial primary election thereafter, each~~
5 ~~respective board of education shall organize and elect for a two-~~
6 ~~year term, a president from its own membership and report same~~
7 ~~promptly to the state superintendent of schools.~~

8 (b) Annually, each county board shall assess its own
9 performance using an instrument approved by the state board. In
10 developing or making determinations on approving evaluation
11 instruments, the state board may consult with the West Virginia
12 school board association or other appropriate organizations. The
13 evaluation instrument selected shall focus on the effectiveness of
14 the county board in the following areas:

15 (1) Dealing with its various constituency groups and with the
16 general public;

17 (2) Providing a proper framework and the governance strategies
18 necessary to monitor and approve student achievement on a continuing
19 basis; and

20 (3) Enhancing the effective utilization of the policy approach
21 to governance.

22 At the conclusion of the evaluation, the county board shall
23 make available to the public a summary of the evaluation, including
24 areas in which the board concludes improvement is warranted.

25 **§18-5-4. Meetings; employment and assignment of teachers; budget**
26 **hearing; compensation of members; affiliation with**
27 **state and national associations.**

28 (a) The county board shall meet on the first Monday in July,
29 and upon the dates provided by law for the laying of levies, and at
30 any other times the county board fixes upon its records. Subject
31 to adequate public notice, nothing herein shall prohibit the county
32 board from conducting regular meetings in facilities within the
33 county other than the county board office. At any meeting as
34 authorized in this section and in compliance with the provisions of
35 article four of this chapter, the county board may employ qualified
36 teachers, or those who will qualify by the time ~~of they~~ entering
37 upon their duties, necessary to fill existing or anticipated
38 vacancies for the current or next ensuing school year. At a meeting
39 of the county board, on or before the first Monday in May, the
40 county superintendent shall furnish in writing to the county board
41 a list of those teachers to be considered for transfer and
42 subsequent assignment for the next ensuing school year. ~~if a~~ All other
43 teachers not listed are considered as reassigned to the positions
44 held at the time of this meeting. The list of those recommended for
45 transfer shall be included in the minute record and the teachers
46 listed shall be notified in writing. The notice shall be delivered
47 in writing, by certified mail, return receipt requested, to the
48 teachers' last-known addresses within ten days following the board
49 meeting, of their having been recommended for transfer and
50 subsequent assignment.

1 (b) Special meetings may be called by the president or any
2 three members, but no business may be transacted other than that
3 designated in the call.

4 (c) In addition, a public hearing shall be held concerning the
5 preliminary operating budget for the next fiscal year not ~~less~~ fewer
6 than ten days after the budget has been made available to the public
7 for inspection, and within a reasonable time prior to the submission
8 of the budget to the state board for approval. Reasonable time
9 shall be granted at the hearing to any person who wishes to speak
10 regarding any part of the budget. Notice of the hearing shall be
11 published as a Class I legal advertisement in compliance with the
12 provisions of article three, chapter fifty-nine of this code.

13 (d) A majority of the members ~~constitutes~~ of the county board
14 constitutes the quorum necessary for the transaction of official
15 business.

16 (e) Board members may receive compensation at a rate not to
17 exceed one hundred sixty dollars per meeting attended, but they may
18 not receive pay for more than fifty meetings in any one fiscal year
19 ~~Provided, That board members who serve on an administrative council~~
20 ~~of a multi-county vocational center may also receive compensation~~
21 ~~for attending up to twelve meetings of the council at the same rate~~
22 ~~as for meetings of the board.~~ Board members who serve on an
23 administrative council of a multicounty vocational center also may
24 receive compensation for attending up to twelve meetings of the
25 council at the same rate as for meetings of the county board.
26 Meetings of the council are not counted as board meetings for
27 purposes of determining the limit on compensable board meetings.

28 (f) Members also shall be paid, upon the presentation of an
29 itemized sworn statement, for all necessary traveling expenses,
30 including all authorized meetings, incurred on official business,
31 at the order of the county board.

32 (g) When, by a majority vote of its members, a county board
33 considers it a matter of public interest, the county board may join
34 the West Virginia school board association and the national school
35 board association, and may pay the dues prescribed by the
36 associations and approved by action of the respective county boards.
37 Membership dues and actual traveling expenses ~~incurred by~~ of board
38 members for attending meetings of the West Virginia school board
39 association may be paid by their respective county boards out of
40 funds available to meet actual expenses of the members, but no
41 allowance may be made except upon sworn itemized statements.

42 **§18-5-7. Sale of school property at public auction; rights of**
43 **grantor of lands in rural communities; oil and gas leases;**
44 **disposition of proceeds; lease of school property.**

45 (a) Except as set forth in subsection (b) of this section, if at
46 any time the a county shall board ascertain determines that any
47 building or any land is no longer shall be needed for school
48 purposes, the county board may sell, dismantle, remove or relocate
49 the any such buildings and sell the land on which it is they are
50 located, at public auction, after proper notice, and on such terms
51 as it orders, to the highest responsible bidder. But (b)
52 Notwithstanding the provisions of subsection (a) of this section,

1 in rural communities, the grantor of the lands, ~~or his or her~~ heirs
2 or assigns, ~~has shall have~~ the right to purchase at the sale, the
3 land, exclusive of the buildings ~~thereon,~~ on the land and the
4 mineral rights, at the same price for which it was originally sold:
5 *Provided*, That the sale to the board was not a voluntary arms length
6 transaction for valuable consideration approximating the fair market
7 value of the property at the time of the sale to the board:
8 *Provided, however*, That the provisions of this section shall may not
9 operate to invalidate any provision of the deed to the contrary.

10 (c) The county board, by the same method prescribed set forth in
11 subsection (a) of this section for the sale of school buildings and
12 lands, may, in lieu of offering the property for sale, enter into
13 also a lease for oil or gas or other minerals any lands or school
14 sites owned in fee by it. The proceeds of the such sales and
15 rentals shall be placed to the credit of the such fund or funds of
16 the district as the county board may direct **Provided further**, That
17 ~~the provisions of this section concerning sale at public auction~~
18 ~~shall not apply to boards of education selling or disposing of its~~
19 ~~property for a public use to the state of West Virginia, or its~~
20 ~~political subdivisions, including county commissions or divisions~~
21 ~~thereof, for an adequate consideration without considering alone the~~
22 ~~present commercial or market value of the property: **And provided**~~
23 ~~**further**, That the board may make any sale of property subject to the~~
24 ~~provisions that all liability for hazards associated with the~~
25 ~~premises are to be assumed by the purchaser, and any sale of~~
26 ~~improved property in which the actual consideration is less than ten~~
27 ~~thousand dollars or in any sale of unimproved property in which the~~
28 ~~actual consideration is less than one thousand dollars the board~~
29 ~~shall make any sale of property subject to the provisions that all~~
30 ~~liability for hazards associated with the premises are to be assumed~~
31 ~~by the purchaser. The board shall inform any prospective purchaser~~
32 ~~of known or suspected hazards associated with the property.~~

33 (d) The county board may make any sale of property subject to
34 the provision that all liability for hazards associated with the
35 premises are to be assumed by the purchaser. In any sale by the
36 county board of improved property in which the actual consideration
37 is less than ten thousand dollars or in any sale of unimproved
38 property in which the actual consideration is less than one thousand
39 dollars, the county board shall make any sale of property subject
40 to the provision that all liability for hazards associated with the
41 premises are to be assumed by the purchaser. The county board shall
42 inform any prospective purchaser of known or suspected hazards
43 associated with the property.

44 (e) Except as provided by the provisions of subsection (b) of
45 this section, where a county board determines that any school
46 property is no longer needed for school purposes, the county board
47 may, upon determining that it will serve the best interests of the
48 school system and the community, offer the property for lease. The
49 procedure set forth in subsection (a) of this section relating to
50 sale of school buildings and lands shall apply to leasing the school
51 property. Any lease authorized by the provisions of this subsection
52 shall be in writing. The writing shall include a recitation of all
53 known or reasonably suspected hazards associated with the property,

1 an assumption by the lessee of all liability related to all hazards,
2 whether disclosed or not, and provisions wherein the lessee assumes
3 all liability for any actions arising from the property during the
4 term of the lease.

5 (f) Notwithstanding any provision of this section to the
6 contrary, the provisions of this section concerning sale or lease
7 at public auction may not apply to a county board selling, leasing
8 or otherwise disposing of its property for a public use to the state
9 of West Virginia, or its political subdivisions, including county
10 commissions, for an adequate consideration without considering alone
11 the present commercial or market value of the property.

12 **§18-5-13. Authority of boards generally.**

13 Each county ~~The boards,~~ subject to the provisions of this
14 chapter and the rules of the state board, ~~has the~~ ~~have~~ authority:

15 (a) To control and manage all of the schools and school
16 interests for all school activities and upon all school property,
17 whether owned or leased by the county, including the authority to
18 require that records be kept of all receipts and disbursements of
19 all funds collected or received by any principal, teacher, student
20 or other person in connection with the schools and school interests,
21 any programs, activities or other endeavors of any nature operated
22 or carried on by or in the name of the school, or any organization
23 or body directly connected with the school, to audit the records and
24 to conserve the funds, which shall be considered quasipublic moneys,
25 including securing surety bonds by expenditure of board moneys;

26 (b) To establish schools, from preschool through high school,
27 inclusive of vocational schools; and to establish schools, programs
28 or both, for post-high school instruction, subject to approval of
29 the state board of education;

30 (c) To close any school which is unnecessary and to assign the
31 pupils of the school to other schools. *Provided,* That the closing
32 shall be officially acted upon, and teachers and service personnel
33 involved notified on or before the first Monday in April, in the
34 same manner as provided in section four of this article, except in
35 an emergency, subject to the approval of the state superintendent,
36 or under subdivision (e) of this section;

37 (d) To consolidate schools;

38 (e) To close any elementary school whose average daily
39 attendance falls below twenty pupils for two months in succession
40 and send the pupils to other schools in the district or to schools
41 in adjoining districts. If the teachers in the closed school are
42 not transferred or reassigned to other schools, they shall receive
43 one month's salary;

44 (f) (1) To provide at public expense adequate means of
45 transportation, including transportation across county lines for
46 students whose transfer from one district to another is agreed to
47 by both county boards as reflected in the minutes of their
48 respective meetings, for all children of school age who live more
49 than two miles distance from school by the nearest available road;
50 to provide at public expense, according to such rules as the board
51 may establish, adequate means of transportation for school children

1 participating in county board-approved curricular and
2 extracurricular activities; ~~and to provide in addition thereto at~~
3 public expense, by rules and within the available revenues,
4 transportation for those within two miles distance; and to provide
5 ~~in addition thereto~~, at no cost to the county board and according
6 to rules established by the board, transportation for participants
7 in projects operated, financed, sponsored or approved by the
8 commission on aging, all subject to the following: ~~Provided, That~~

9 (A) All costs and expenses incident in any way to
10 transportation for projects connected with the commission on aging
11 shall be borne by the commission, or the local or county chapter of
12 the commission;

13 (B) ~~Provided, however, That~~ In all cases, the school buses
14 owned by the county board shall be driven or operated only by
15 drivers regularly employed by the county board of education:
16 ~~Provided further, That~~

17 (C) The county board may provide, under rules established by
18 the state board, for the certification of professional employees as
19 drivers of county board-owned vehicles with a seating capacity of
20 less than ten passengers used for the transportation of pupils for
21 school-sponsored activities other than transporting students between
22 school and home: ~~And provided further, That~~ The use of the vehicles
23 shall be limited to one for each school-sponsored activity; ~~And~~

24 (D) ~~provided further That~~ Buses shall be used for
25 extracurricular activities as provided in this section only when the
26 insurance provided for by this section is in effect;

27 (2) To enter into agreements with one another as reflected in
28 the minutes of their respective meetings to provide, on a
29 cooperative basis, adequate means of transportation across county
30 lines for children of school age subject to the conditions and
31 restrictions of this ~~subdivision and subdivision (h)~~ subsection and
32 subsection (h) of this section;

33 (g) (1) To lease school buses operated only by drivers
34 regularly employed by the county board to public and private
35 nonprofit organizations or private corporations to transport school-
36 age children to and from camps or educational activities in
37 accordance with rules established by the county board. All costs
38 and expenses incurred by or incidental to the transportation of the
39 children shall be borne by the lessee;

40 (2) To contract with any college or university or officially
41 recognized campus organizations to provide transportation for
42 college or university students, faculty or staff to and from the
43 college or university; ~~Provided, That.~~ Only college and university
44 students, faculty and staff may be transported, pursuant to this
45 section. The contract shall include consideration and compensation
46 for bus operators, repairs and other costs of service, insurance and
47 any rules concerning student behavior;

48 (h) To provide at public expense for insurance against the
49 negligence of the drivers of school buses, trucks or other vehicles
50 operated by the board; and if the transportation of pupils is
51 contracted, then the contract for the transportation shall provide

1 that the contractor shall carry insurance against negligence in an
2 amount specified by the board;

3 (i) To provide solely from county board funds for all regular
4 full-time employees of the county board all or any part of the cost
5 of a group plan or plans of insurance coverage not provided or
6 available under the West Virginia public employees insurance act;

7 (j) To employ teacher aides, to provide in-service training for
8 teacher aides, the training to be in accordance with rules of the
9 state board and, in the case of service personnel assuming duties
10 as teacher aides in exceptional children programs, to provide a
11 four-clock-hour program of training prior to the assignment which
12 shall, in accordance with rules of the state board, consist of
13 training in areas specifically related to the education of
14 exceptional children;

15 (k) To establish and conduct a self-supporting dormitory for
16 the accommodation of the pupils attending a high school or
17 participating in a post high school program and of persons employed
18 to teach in the high school or post high school program;

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

24 (m) To provide appropriate uniforms for school service
25 personnel;

26 (n) To provide at public expense and under rules as established
27 by any county board for the payment of traveling expenses incurred
28 by any person invited to appear to be interviewed concerning
29 possible employment by the county board;

30 (o) To allow or disallow their designated employees to use
31 publicly provided carriage to travel from their residences to their
32 workplace and return: *Provided*, That the usage is subject to the
33 supervision of the county board and is directly connected with and
34 required by the nature and in the performance of the employee's
35 duties and responsibilities;

36 (p) To provide, at public expense, adequate public liability
37 insurance, including professional liability insurance for county
38 board employees;

39 (q) To enter into agreements with one another to provide, on
40 a cooperative basis, improvements to the instructional needs of each
41 district county. The cooperative agreements may be used to employ
42 specialists in a field of academic study or support functions or
43 services, for the academic study. The agreements are subject to
44 approval by the state board;

45 (r) To provide information about vocational or higher education
46 opportunities to students with handicapping conditions. The county
47 board shall provide in writing to the students and their parents or
48 guardians information relating to programs of vocational education
49 and to programs available at state funded institutions of higher
50 education. The information may include sources of available

1 funding, including grants, mentorships and loans for students who
2 wish to attend classes at institutions of higher education;

3 (s) To enter into agreements with one another, with the
4 approval of the state board, for the transfer and receipt of any and
5 all funds determined to be fair when students are permitted or
6 required to attend school in a district other than the district of
7 their residence; and

8 (t) To enter into job-sharing arrangements, as defined in
9 section one, article one, chapter eighteen-a of this code, with its
10 ~~professional~~ employees, subject to the following
11 ~~provisions: Provided, That a~~

12 (1) A job-sharing arrangement shall meet all the requirements
13 relating to posting, qualifications and seniority, as provided for
14 in article four, chapter eighteen-a of this code; ~~Provided, however,~~
15 That, i

16 (2) ~~n~~Notwithstanding any provisions of this code or legislative
17 rule and specifically the provisions of article sixteen, chapter
18 five of this code to the contrary, a county board which enters into
19 a job-sharing arrangement in which two or more professional
20 employees voluntarily share an authorized full-time position shall
21 provide the mutually agreed upon employee coverage but shall not
22 offer insurance coverage to more than one of the job-sharing
23 employees, including any group plan or group plans available under
24 the state public employees insurance act; ~~Provided further, That all~~
25 employees involved in the job-sharing agreement meet the
26 requirements of subdivision (4), section two, article sixteen,
27 chapter five of this code.

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

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

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

45 "Quasipublic funds" as used in this section means any money
46 received by any principal, teacher, student or other person for the
47 benefit of the school system as a result of curricular or
48 noncurricular activities.

49 ~~The~~ Each county board of each county shall expend under rules
50 it establishes for each child an amount not to exceed the proportion
51 of all school funds of the district that each child would be

1 entitled to receive if all the funds were distributed equally among
2 all the children of school age in the district upon a per capita
3 basis.

4 **§18-5-14. Policies to promote school board effectiveness.**

5 (a) No later than ~~Prior to~~ the first day of August, two
6 thousand three one thousand nine hundred ninety-four, each county
7 board in this state shall adopt, and file and may thereafter as
8 necessary, with the state board copies of policies and summaries of
9 policies that promote school board effectiveness. These policies
10 may be modified by the county board as necessary, but shall be
11 refiled with the state board following each modification. The
12 policies shall address the following objectives:

13 (a)-(1) Establishing direct links between the county board and
14 its local school improvement councils, and between the county board
15 and its faculty senates, for the purpose of enabling the county
16 board to receive information, comments and suggestions directly from
17 the councils and faculty senates regarding the broad guidelines for
18 oversight procedures, standards of accountability and planning for
19 future needs as required by this section; and, ~~To~~ further
20 development of these linkages, each county board shall:

21 (A) Meet at least annually with the full membership of a
22 quorum of members from each of their schools' local school
23 improvement councils, in the district, at a time and in a manner to
24 be determined by the county board, except, in order to facilitate
25 scheduling, the county board may adopt an alternate procedure
26 allowing it to conduct the required annual meeting with each council
27 in the absence of a quorum of council members if the alternate
28 procedure has received prior approval from the state board and if
29 the school district serves more than twenty thousand students or has
30 more than twelve public schools. For purposes of this provision,
31 full membership is defined as at least a quorum o the members of
32 each of the school improvement councils.

33 At the conclusion of the school year, each board shall report
34 to the state board details concerning such meeting or meetings held
35 with local school improvement councils, as specified herein, and
36 such information shall become an indicator in the performance
37 accreditation process for each county.

38 Nothing herein in this section prohibits a county boards from
39 meeting with representatives of a local school improvement councils;
40 Provided, That but at least one annual meeting is shall be held, as
41 specified in this section herein.

42 At any time and with reasonable advance notice, county boards
43 may schedule additional meetings with the council for any low
44 performing school in the district;

45 (B) At least thirty days before an annual meeting with each
46 local school improvement council, develop and submit to the council
47 an agenda for the annual meeting which requires the council chair
48 or a member designated by the chair, to address items designated by
49 the county board from the report created pursuant to this section,
50 and one or more of the following issues:

51 (i) School performance;

1 (ii) Curriculum;

2 (iii) Status of the school in meeting the unified school
3 improvement plan established pursuant to section five, article two-e
4 of this chapter; and

5 (iv) Status of the school in meeting the county plan
6 established pursuant to section five, article two-e of this chapter;

7 (C) Make written requests for information from the local school
8 improvement council throughout the year or hold community forums to
9 receive input from the affected community as the county board
10 considers necessary; and

11 (D) Report details to the state board concerning the meeting
12 or meetings held with councils, as specified in this section. The
13 information shall be provided to the state board at the conclusion
14 of the school year, but no later than the first day of September of
15 each year, and shall become an indicator in the performance
16 accreditation process for each county. In order to facilitate
17 development of this report, a county board may consult with and
18 request assistance from members of the councils.

19 ~~(b)(2) Provide~~ Providing for the development of direct links
20 between the county board and the community at large~~+~~ allowing for
21 community involvement at regular county board meetings~~+~~ and
22 specifying how the county board will communicate regularly
23 ~~communicate~~ with the public regarding important issues;

24 ~~(c)(3) Provide~~ Providing for the periodic review of personnel
25 policies of the district in order to determine their effectiveness;

26 ~~(d)(4) Setting~~ broad guidelines for the school district,
27 including the establishment of specific oversight procedures,
28 development and implementation of standards of accountability, and
29 development of long-range plans to meet future needs as required by
30 this section; and

31 ~~(5) Use~~ Using school-based accreditation and performance data
32 provided by the state board and other available data in county board
33 decisionmaking ~~decision making~~ to meet the education goals of the
34 state and other goals as the county board may establish.

35 (b) On or before the first day of August of each year, county
36 school boards shall review the policies listed in subsection (a) of
37 this section and may modify these policies as necessary.

38 **§18-5-25. Duties of superintendent as secretary of board.**

39 The county superintendent as secretary of the board shall:

40 (1) Take the oath prescribed in the constitution before
41 performing any of the duties of his office;

42 (2) Attend all board meetings and record its official
43 proceedings in a book kept for that purpose;

44 (3) Record the number of each order issued, the name of the
45 payee, the purpose for which the order was issued, and the amount
46 thereof. Every order shall be signed by the secretary and the
47 president of the board;

1 (4) Care for and keep all papers belonging to the board,
2 including evidences of title, contracts and obligations. They shall
3 be kept in the secretary's office, accessibly arranged for
4 reference;

5 (5) Record and keep on file all papers and documents pertaining
6 to the business of the board;

7 (6) Keep the accounts and certify the reports required by law
8 or requested by the board;

9 ~~(6) Make a tabular report to the board on or before the~~
10 ~~twentieth day of July, annually, showing all the statistics and~~
11 ~~facts required by the blanks furnished by the state superintendent.~~
12 ~~He may collect his material from the annual report of the sheriff,~~
13 ~~the teachers' register and such other sources as he thinks~~
14 ~~desirable, and he may accompany his report with such explanation and~~
15 ~~comment as he deems pertinent;~~

16 ~~(7) Keep the accounts and certify the reports required by law~~
17 ~~or requested by the board;~~

18 (7) Administer oaths to school officers, teachers and others
19 making reports;

20 (8) Deliver in proper condition to his successor all records
21 and property pertaining to his office; and

22 ~~(8) Administer oaths to school officers, teachers, and others~~
23 ~~making reports;~~

24 (9) Exercise such other duties as are prescribed by law.

25 ~~(9) Deliver in proper condition to his successor all records~~
26 ~~and property pertaining to his office;~~

27 ~~(10) Exercise such other duties as are prescribed by law.~~

28 **§18-5-45. School calendar.**

29 (a) As used in this section, the following terms have the
30 following meanings:

31 (1) "Instructional day" means a day within the instructional
32 term which meets the following criteria:

33 (A) Instruction is offered to students for the amounts of time
34 provided by state board rule;

35 (B) Instructional time is used for instruction, cocurricular
36 activities and approved extracurricular activities and pursuant to
37 the provisions of subdivision (12), subsection (b), section five,
38 article five-a of this chapter, faculty senates; and A minimum
39 percentage of students, as defined by state board rule, is present
40 in the county schools

41 (C) Such other criteria as the state board determines
42 appropriate. Instructional time is used for instruction,
43 cocurricular activities and approved extracurricular activities, and
44 pursuant to the provisions of subdivision (12), subsection (b),
45 section five, article five-a of this chapter, faculty senates;

46 ~~(D) Such other criteria as the state board determines~~
47 ~~appropriate.~~

1 (2) "Bank time" means time added beyond the required
2 instructional day which may be accumulated and used in larger blocks
3 of time during the school year for instructional or noninstructional
4 activities, as further defined by the state board.

5 (3) "Extracurricular activities" are activities under the
6 supervision of the school such as athletics, noninstructional
7 assemblies, social programs, entertainment and other similar
8 activities, as further defined by the state board.

9 (4) "Cocurricular activities" are activities that are closely
10 related to identifiable academic programs or areas of study that
11 serve to complement academic curricula as further defined by the
12 state board.

13 (b) *Findings.* -

14 (1) The primary purpose of the school system is to provide
15 instruction for students.

16 (2) The school calendar, as defined in this section, is
17 designed to define the school term both for employees and for
18 instruction.

19 (3) The school calendar traditionally has provided for one
20 hundred eighty actual days of instruction but numerous circumstances
21 have combined to cause the actual number of instructional days to
22 be less than one hundred eighty.

23 (4) The quality and amount of instruction offered during the
24 instructional term is affected by the extracurricular and
25 cocurricular activities allowed to occur during scheduled
26 instructional time.

27 (5) Within reasonable guidelines, the school calendar should
28 be designed at least to guarantee that one hundred eighty actual
29 days of instruction are possible.

30 (c) The county board shall provide a school term for its
31 schools that contains the following:

32 (1) An employment term for teachers of no less than two hundred
33 days, exclusive of Saturdays and Sundays; and

34 (2) Within the employment term, an instructional term for
35 students of no less than one hundred eighty separate instructional
36 days.

37 (d) The instructional term for students shall ~~commence no~~
38 ~~earlier than the twenty-sixth day of August and terminate no later~~
39 ~~than the eighth day of June.~~ include, one instructional day in each
40 of the months of October, December, February, April and June which
41 is an instructional support and enhancement day scheduled by the
42 board to include both instructional activities for students and
43 professional activities for teachers to improve student instruction.
44 The instructional activities for students may include, but are not
45 limited to, both in-school and outside of school activities such as
46 student mentoring, tutoring, counseling, student research and other
47 projects or activities of an instructional nature, community
48 service, career exploration, parent and teacher conferences, visits
49 to the homes of students, college and financial aid workshops and
50 college visits. The instructional activities for students shall be

1 determined and scheduled at the local school level. The first two
2 hours of the instructional day shall be used for instructional
3 activities for students which require the direct supervision or
4 involvement by teachers, and such activities shall be limited to two
5 hours. To ensure that the students who attend are properly
6 supervised, the instructional activities for students shall be
7 arranged by appointment with the individual school through the
8 principal, a teacher or other professional personnel at the school.
9 The school shall establish a policy relating to the use of the two-
10 hour block scheduled for instructional activities for students. The
11 professional activities for teachers shall include a two-hour block
12 of time immediately following the first two hours of instructional
13 activities for students during which the faculty senate shall have
14 the opportunity to meet. Any time not used by the faculty senate
15 and the remainder of the school day, not including the duty free
16 lunch period, shall be used for other professional activities for
17 teachers to improve student instruction which may include, but are
18 not limited to, professional staff development, curriculum team
19 meetings, individualized education plan meetings and other meetings
20 between teachers, principals, aides and paraprofessionals to improve
21 student instruction as determined and scheduled at the local school
22 level. Notwithstanding any other provision of law or policy to the
23 contrary, the presence of any specific number of students in
24 attendance at the school for any specific period of time shall not
25 be required on instructional support and enhancement days and the
26 transportation of students to the school shall not be required.
27 Instructional support and enhancement days are also a scheduled work
28 day for all service personnel and shall be used for training or
29 other tasks related to their job classification if their normal
30 duties are not required.

31 (e) ~~Noninstructional days~~ The instructional term shall commence
32 no earlier than the twenty-sixth day of August and terminate no
33 later than the eighth day of June.

34 (f) Noninstructional days shall total twenty and shall be
35 comprised of the following:

36 (1) Seven holidays as specified in section two, article five,
37 chapter eighteen-a of this code;

38 (2) Election day as specified in section two, article five,
39 chapter eighteen-a of this code;

40 (3) Six days to be designated by the county board to be used
41 by the employees outside the school environment; and

42 (4) Six days to be designated by the county board for any of
43 the following purposes:

44 (A) Curriculum development;

45 (B) Preparation for opening and closing school;

46 (C) Professional development;

47 (D) Teacher-pupil-parent conferences;

48 (E) Professional meetings; and

49 (F) Making up days when instruction was scheduled but not
50 conducted.

1 (g) ~~(f)~~ Three of the days described in subdivision (4),
2 subsection ~~(e)~~ (f) of this section shall be scheduled prior to the
3 twenty-sixth day of August ~~eightth day of June~~ for the purposes of
4 preparing for the opening of school ~~closing day of school~~ and staff
5 development. ~~If one hundred eighty separate instruction days occur~~
6 ~~prior to the eighth day of June, this day may be scheduled on or~~
7 ~~before the eighth day of June.~~

8 (h) ~~(g)~~ At least one of the days described in subdivision (4),
9 subsection ~~(e)~~ (f) of this section shall be scheduled after the
10 eighth day of June for the purpose of preparing for the closing of
11 school. If one hundred eighty separate instruction days occur prior
12 to the eighth day of June, this day may be scheduled on or before
13 the eighth day of June.

14 (i) ~~(h)~~ At least ~~two~~ four of the days described in subdivision
15 (3), subsection ~~(e)~~ (f) of this section shall be scheduled after the
16 first day of March.

17 (j) At least two of the days described in subdivision (4),
18 subsection (f) of this section, will be scheduled for professional
19 development. The professional development conducted on these days
20 will be consistent with the goals established by the state board
21 pursuant to the provisions of section twenty-three-a, article two,
22 chapter eighteen of this code.

23 (k) ~~(i)~~ Subject to the provisions of subsection (h) ~~(g)~~ of this
24 section, all noninstructional days will be scheduled prior to the
25 eighth day of June.

26 ~~(k) The state board may not schedule the primary statewide~~
27 ~~assessment program prior to the fifteenth day of May of the~~
28 ~~instructional year unless the state board determines that the nature~~
29 ~~of the test mandates an earlier testing date.~~

30 (l) Except as otherwise provided in this subsection, the state
31 board may not schedule the primary statewide assessment program
32 prior to the fifteenth day of May of the instructional year, unless
33 the state board determines that the nature of the test mandates an
34 earlier testing date. For the school year beginning two thousand
35 three only, the state board may not schedule the primary statewide
36 assessment program prior to the fifteenth day of April of the
37 instructional year.

38 (m) ~~(l)~~ If, on or after the first day of March, the county
39 board determines that it is not possible to complete one hundred
40 eighty separate days of instruction, the county board shall schedule
41 instruction on any available noninstructional day, regardless of the
42 purpose for which the day originally was scheduled, and the day will
43 be used for instruction: Provided, That the noninstructional days
44 scheduled for professional development shall be the last available
45 noninstructional days to be rescheduled as instructional days:
46 Provided, however, That on or after the first day in March, the
47 county board also may require additional minutes of instruction in
48 the school day to make up for lost instructional days in excess of
49 the days available through rescheduling and, if in its judgment it
50 is reasonable and necessary to improve student performance, to avoid
51 scheduling instruction on noninstructional days previously scheduled

1 for professional development. The provisions of this subsection do
2 not apply to: (1) Holidays; and (2) election day.

3 (n) ~~(m)~~The following applies to bank time:

4 (1) Except as provided in subsection (m) of this section, bBank
5 time may not be used to avoid one hundred eighty separate days of
6 instruction;

7 (2) Bank time may not be used to lengthen the time provided in
8 law for faculty senates;

9 (3) The use of bank time for extracurricular activities will
10 be limited by the state board; and

11 (4) Such other requirements or restrictions as the state board
12 may provide in the rule required to be promulgated by this section.

13 (o) ~~(n)~~The following applies to cocurricular activities:

14 (1) The state board shall determine what activities may be
15 considered cocurricular;

16 (2) The state board shall determine the amount of instructional
17 time that may be consumed by cocurricular activities; and

18 (3) Such other requirements or restrictions as the state board
19 may provide in the rule required to be promulgated by this section.

20 (p) The following applies to extracurricular activities:

21 (1) Except as provided by subdivision (3) of this subsection,
22 extracurricular activities may not be scheduled during instructional
23 time;

24 (2) The use of bank time for extracurricular activities will
25 be limited by the state board; and

26 (3) The state board shall provide for the attendance by
27 students of certain activities sanctioned by the secondary schools
28 activities commission when those activities are related to statewide
29 tournaments or playoffs or are programs required for secondary
30 schools activities commission approval.

31 (q) ~~(p)~~Noninstructional interruptions to the instructional day
32 shall be minimized to allow the classroom teacher to teach.

33 (r) ~~(q)~~ Nothing in this section prohibits establishing year-
34 round schools in accordance with rules to be established by the
35 state board.

36 (s) ~~(r)~~Prior to implementing the school calendar, the county
37 board shall secure approval of its proposed calendar from the state
38 board or, if so designated by the state board, from the state
39 superintendent.

40 (t) ~~(s)~~The county board may contract with all or part of the
41 personnel for a longer term.

42 (u) ~~(t)~~The minimum instructional term may be decreased by
43 order of the state superintendent in any county declared a federal
44 disaster area and where the event causing the declaration is
45 substantially related to a reduction of instructional days.

46 (v) ~~(u)~~Where the employment term overlaps a teacher's or
47 service personnel's participation in a summer institute or

1 institution of higher education for the purpose of advancement or
2 professional growth, the teacher or service personnel may
3 substitute, with the approval of the county superintendent, the
4 participation for up to five of the noninstructional days of the
5 employment term.

6 (w) ~~(v)~~—The state board shall promulgate a rule in accordance
7 with the provisions of article three-b, chapter twenty-nine-a of
8 this code for the purpose of implementing the provisions of this
9 section.

10 **ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.**

11 **§18-5A-2. Local school improvement councils; election.**

12 (a) A local school improvement council shall be established at
13 every school consisting of the following:

14 (1) The principal, who shall serve as an ex officio member of
15 the council and be entitled to vote;

16 (2) Three teachers elected by the faculty senate of the school;

17 (3) Two school service personnel elected by the school service
18 personnel employed at the school;

19 (4) Three parent(s), guardian(s) or custodian(s) of students
20 enrolled at the school elected by the parent(s), guardian(s) or
21 custodian(s) members of the school's parent teacher organization:
22 *Provided*, That if there is no parent teacher organization, the
23 parent(s), guardian(s) or custodian(s) members shall be elected by
24 the parent(s), guardian(s) or custodian(s) of students enrolled at
25 the school in such manner as may be determined by the principal;

26 (5) Two at-large members appointed by the principal, one of
27 whom resides in the school's attendance area and one of whom
28 represents business or industry, neither of whom is eligible for
29 membership under any of the other elected classes of members;

30 (6) In the case of vocational-technical schools, the vocational
31 director: *Provided*, That if there is no vocational director, then
32 the principal may appoint no more than two additional
33 representatives, one of whom represents business and one of whom
34 represents industry;

35 (7) In the case of a school with students in grade seven or
36 higher, the student body president or other student in grade seven
37 or higher elected by the student body in those grades.

38 (b) Under no circumstances may more than one parent member of
39 the council be then employed at that school in any capacity.

40 (c) ~~(b)~~—The principal shall arrange for such elections to be
41 held prior to the fifteenth day of September of each school year to
42 elect a council and shall give notice of the elections at least one
43 week prior to the elections being held. To the extent practicable,
44 all elections to select council members shall be held within the
45 same week.

46 (d) Parent(s), guardian(s) or custodian(s), teachers and
47 service personnel elected to the council shall serve a two-year
48 term, and elections shall be arranged in such a manner that no more
49 than two teachers, no more than two parent(s), guardian(s) or

1 custodian(s); and no more than one service person are elected in a
2 given year. All other non-ex officio members shall serve one-year
3 terms.

4 (e) Council members may only be replaced upon death,
5 resignation, failure to appear at three consecutive meetings of the
6 council for which notice was given, or a change in personal
7 circumstances so that the person is no longer representative of the
8 class of members from which appointed. In the case ~~replacement,~~ of
9 a vacancy in an elected membership, the chair of the council shall
10 appoint another qualified person to serve the unexpired term of the
11 person being replaced or, in the case of an appointed member of the
12 council, the principal shall appoint a replacement as soon as
13 practicable an election shall be held to elect another qualified
14 person to serve the unexpired term of the person being replaced.

15 (f) ~~(c)~~ As soon as practicable after the election of council
16 members, and no later than the first day of October of each school
17 year, the principal shall convene an organizational meeting of the
18 school improvement council. The principal shall notify each member
19 in writing at least two employment days in advance of the
20 organizational meeting. At this meeting, the principal shall
21 provide each member with the following:

22 (1) A ~~a~~ copy of the current applicable sections of this code;
23 and

24 (2) ~~A any~~ state board rule or regulation promulgated pursuant
25 to the operation of these councils; and

26 (3) ~~Any~~ information as may be developed by the department of
27 education on the operation and powers of local school improvement
28 councils and their important role in improving student and school
29 performance and progress.

30 (g) The council shall elect from its membership a chair and two
31 members to assist the chair in setting the agenda for each council
32 meeting. The chair shall serve a term of one year and no person may
33 serve as chair for more than two consecutive terms. If the chair's
34 position becomes vacant for any reason, the principal shall call a
35 meeting of the council to elect another qualified person to serve
36 the unexpired term. ~~(d)~~ Once elected, the chair is responsible for
37 notifying each member of the school improvement council in writing
38 two employment days in advance of any council meeting.

39 (h) School improvement councils shall meet at least once every
40 nine weeks or equivalent grading period at the call of the chair or
41 by three fourths of its members.

42 (i) The local school improvement council shall meet at least
43 annually with the county board, in accordance with the provisions
44 in section fourteen, article five of this chapter. At this annual
45 meeting, the local school improvement council chair, or another
46 member designated by the chair, shall be prepared to address any
47 matters as may be requested by the county board as specified in the
48 meeting agenda provided to the council and may further provide any
49 other information, comments or suggestions the local school
50 improvement council wishes to bring to the county board's attention.

1 Anything presented under this subsection shall be submitted to the
2 county board in writing.

3 ~~(j) (e)~~ School improvement councils shall be considered for the
4 receipt of school of excellence awards under section three of this
5 article and competitive grant awards under section twenty-nine,
6 article two of this chapter, and may receive and expend such grants
7 for the purposes provided in such section. In any and all matters
8 which may fall within the scope of both the school improvement
9 councils and the school curriculum teams authorized in section five
10 of this article, the school curriculum teams shall be deemed to have
11 jurisdiction. In order to promote innovations and improvements in
12 the environment for teaching and learning at the school, a school
13 improvement council shall receive cooperation from the school in
14 implementing policies and programs it may adopt to:

15 (1) Encourage the involvement of parent(s), guardian(s) or
16 custodian(s) in their child's educational process and in the school;

17 (2) Encourage businesses to provide time for their employees
18 who are parent(s), guardian(s) or custodian(s) to meet with teachers
19 concerning their child's education;

20 (3) Encourage advice and suggestions from the business
21 community;

22 (4) Encourage school volunteer programs and mentorship
23 programs; and

24 (5) Foster utilization of the school facilities and grounds for
25 public community activities.

26 ~~(k) (f)~~ On or before the eighth day of June, one thousand nine
27 hundred ninety-five, each local school improvement council shall
28 develop and deliver a report to the countywide ~~county-wide~~ council
29 on productive and safe schools. The report shall include guidelines
30 for the instruction and rehabilitation of pupils who have been
31 excluded from the classroom, suspended from the school or expelled
32 from the school, the description and recommendation of in-school
33 suspension programs, a description of possible alternative settings,
34 schedules for instruction and alternative education programs and an
35 implementation schedule for such guidelines. The guidelines shall
36 include the following:

37 (1) A system to provide for effective communication and
38 coordination between school and local emergency services agencies;

39 (2) A preventive discipline program which may include the
40 responsible students program devised by the West Virginia board of
41 education as adopted by the county board of education, pursuant to
42 the provisions of subsection (e), section one, article five, chapter
43 eighteen-a of this code; and

44 (3) A student involvement program, which may include the peer
45 mediation program or programs devised by the West Virginia board of
46 education as adopted by the county board of education, pursuant to
47 the provisions of subsection (e), section one, article five, chapter
48 eighteen-a of this code.

49 ~~(l) (g)~~ The council may include in its report to the county-
50 wide council on productive and safe schools provisions of the state

1 board of education policy 4373, ~~§~~student ~~code~~ of ~~conduct~~, or any
2 expansion of such policy which increases the safety of students in
3 schools in this state and is consistent with the policies and other
4 laws of this state.

5 ~~(m) (h)~~Councils may adopt their own guidelines established
6 under this section. In addition, the councils may adopt all or any
7 part of the guidelines proposed by other local school improvement
8 councils, as developed under this section, which are not
9 inconsistent with the laws of this state, the policies of West
10 Virginia board of education or the policies of the county board of
11 education.

12 ~~(n) (i)~~The state board of education shall provide assistance
13 to a local school improvement council upon receipt of a reasonable
14 request for that assistance. The state board also may solicit
15 proposals from other parties or entities to provide orientation
16 training for local school improvement council members and may enter
17 into contracts or agreements for that purpose. Any training for
18 members shall meet the guidelines established by the state board.

19 **§18-5A-5. Public school faculty senates established; election of**
20 **officers; powers and duties.**

21 (a) There is established at every public school in this state
22 a faculty senate which is comprised of all permanent, full-time
23 professional educators employed at the school who shall all be
24 voting members. Professional educators, as used in this section,
25 means professional educators as defined in chapter eighteen-a of
26 this code. A quorum of more than one half of the voting members of
27 the faculty shall be present at any meeting of the faculty senate
28 at which official business is conducted. Prior to the beginning of
29 the instructional term each year, but within the employment term,
30 the principal shall convene a meeting of the faculty senate to elect
31 a chair, vice chair and secretary and discuss matters relevant to
32 the beginning of the school year. The vice chair shall preside at
33 meetings when the chair is absent. Meetings of the faculty senate
34 shall be held ~~on a regular basis as determined by a schedule~~
35 ~~approved during the times provided in accordance with subdivision~~
36 ~~(12), subsection (b) of this section as determined by the faculty~~
37 ~~senate and amended periodically if needed.~~ Emergency meetings may
38 be held during noninstructional time at the call of the chair or a
39 majority of the voting members by petition submitted at the call of
40 ~~the chair or a majority of the voting members by petition submitted~~
41 to the chair and vice chair. An agenda of matters to be considered
42 at a scheduled meeting of the faculty senate shall be available to
43 the members at least two employment days prior to the meeting. For
44 emergency meetings the agenda shall be available as soon as possible
45 prior to the meeting. The chair of the faculty senate may appoint
46 such committees as may be desirable to study and submit
47 recommendations to the full faculty senate, but the acts of the
48 faculty senate shall be voted upon by the full body.

49 (b) In addition to any other powers and duties conferred by
50 law, or authorized by policies adopted by the state or county board
51 of education or bylaws which may be adopted by the faculty senate
52 not inconsistent with law, the powers and duties listed in this

1 subsection are specifically reserved for the faculty senate. The
2 intent of these provisions is neither to restrict nor to require the
3 activities of every faculty senate to the enumerated items except
4 as otherwise stated. Each faculty senate shall organize its
5 activities as it deems most effective and efficient based on school
6 size, departmental structure and other relevant factors.

7 (1) Each faculty senate shall control funds allocated to the
8 school from legislative appropriations pursuant to section nine,
9 article nine-a of this chapter. From such funds, each classroom
10 teacher and librarian shall be allotted fifty dollars for
11 expenditure during the instructional year for academic materials,
12 supplies or equipment which, in the judgment of the teacher or
13 librarian, will assist him or her in providing instruction in his
14 or her assigned academic subjects or shall be returned to the
15 faculty senate: *Provided*, That nothing contained herein prohibits
16 the funds from being used for programs and materials that, in the
17 opinion of the teacher, enhance student behavior, increase academic
18 achievement, improve self-esteem and address the problems of
19 students at-risk. The remainder of funds shall be expended for
20 academic materials, supplies or equipment in accordance with a
21 budget approved by the faculty senate. Notwithstanding any other
22 provisions of the law to the contrary, funds not expended in one
23 school year are available for expenditure in the next school year:
24 *Provided, however*, That the amount of county funds budgeted in a
25 fiscal year may not be reduced throughout the year as a result of
26 the faculty appropriations in the same fiscal year for such
27 materials, supplies and equipment. Accounts shall be maintained of
28 the allocations and expenditures of such funds for the purpose of
29 financial audit. Academic materials, supplies or equipment shall
30 be interpreted broadly, but does not include materials, supplies or
31 equipment which will be used in or connected with interscholastic
32 athletic events.

33 (2) A faculty senate may establish a process for faculty
34 members to interview new prospective professional educators and
35 paraprofessional employees at the school and submit recommendations
36 regarding employment to the principal, who may also make independent
37 recommendations, for submission to the county superintendent:
38 *Provided*, That such process shall be chaired by the school principal
39 and must permit the timely employment of persons to perform
40 necessary duties.

41 (3) A faculty senate may nominate teachers for recognition as
42 outstanding teachers under state and local teacher recognition
43 programs and other personnel at the school, including parents, for
44 recognition under other appropriate recognition programs and may
45 establish such programs for operation at the school.

46 (4) A faculty senate may submit recommendations to the
47 principal regarding the assignment scheduling of secretaries,
48 clerks, aides and paraprofessionals at the school.

49 (5) A faculty senate may submit recommendations to the
50 principal regarding establishment of the master curriculum schedule
51 for the next ensuing school year.

1 (6) A faculty senate may establish a process for the review and
2 comment on sabbatical leave requests submitted by employees at the
3 school pursuant to section eleven, article two of this chapter.

4 (7) Each faculty senate shall elect three faculty
5 representatives to the local school improvement council established
6 pursuant to section two of this article.

7 (8) Each faculty senate may nominate a member for election to
8 the county staff development council pursuant to section eight,
9 article three, chapter eighteen-a of this code.

10 (9) Each faculty senate shall have an opportunity to make
11 recommendations on the selection of faculty to serve as mentors for
12 beginning teachers under beginning teacher internship programs at
13 the school.

14 (10) A faculty senate may solicit, accept and expend any
15 grants, gifts, bequests, donations and any other funds made
16 available to the faculty senate: *Provided*, That the faculty senate
17 shall select a member who has the duty of maintaining a record of
18 all funds received and expended by the faculty senate, which record
19 shall be kept in the school office and is subject to normal auditing
20 procedures.

21 (11) Any faculty senate may review the evaluation procedure as
22 conducted in their school to ascertain whether the evaluations were
23 conducted in accordance with the written system required pursuant
24 to section twelve, article two, chapter eighteen-a of this code and
25 the general intent of this Legislature regarding meaningful
26 performance evaluations of school personnel. If a majority of
27 members of the faculty senate determine that such evaluations were
28 not so conducted, they shall submit a report in writing to the state
29 board of education: *Provided*, That nothing herein creates any new
30 right of access to or review of any individual's evaluations.

31 (12) A local board shall provide to each faculty senate ~~either:~~
32 ~~(A) a two-hour per month block of instructional time within the~~
33 ~~instructional day; for a faculty senate meeting on a day scheduled~~
34 ~~for the opening of school prior to the beginning of the~~
35 ~~instructional term, and a two-hour block of time on each~~
36 ~~instructional support and enhancement day scheduled by the board for~~
37 ~~instructional activities for students and professional activities~~
38 ~~for teachers pursuant to section forty-five, article five of this~~
39 ~~chapter. A faculty senate may meet for; or (B) an unlimited block~~
40 ~~of time per month during noninstructional days: to discuss and plan~~
41 ~~strategies to improve student instruction and to conduct other~~
42 ~~faculty senate business.~~ A faculty senate meeting scheduled on a
43 noninstructional day shall be considered as part of the purpose for
44 which the noninstructional day is scheduled. This time may be
45 utilized and determined at the local school level and includes, but
46 is not limited to, faculty senate meetings.

47 (13) Each faculty senate shall develop a strategic plan to
48 manage the integration of special needs students into the regular
49 classroom at their respective schools and submit the strategic plan
50 to the superintendent of the county board of education periodically
51 pursuant to guidelines developed by the state department of
52 education. Each faculty senate shall encourage the participation

1 of local school improvement councils, parents and the community at
2 large in developing the strategic plan for each school.

3 Each strategic plan developed by the faculty senate shall
4 include at least: (A) A mission statement; (B) goals; (C) needs; (D)
5 objectives and activities to implement plans relating to each goal;
6 (E) work in progress to implement the strategic plan; (F) guidelines
7 for placing additional staff into integrated classrooms to meet the
8 needs of exceptional needs students without diminishing the services
9 rendered to the other students in integrated classrooms; (G)
10 guidelines for implementation of collaborative planning and
11 instruction; and (H) training for all regular classroom teachers who
12 serve students with exceptional needs in integrated classrooms.

13 **ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.**

14 **§18-8-4. Duties of attendance director and assistant directors;**
15 **complaints, warrants and hearings.**

16 (a) The county attendance director and the assistants shall
17 diligently promote regular school attendance. They shall ascertain
18 reasons for inexcusable absences from school of pupils of compulsory
19 school age and students who remain enrolled beyond the sixteenth
20 birthday as defined under this article and shall take such steps as
21 are, in their discretion, best calculated to correct attitudes of
22 parents and pupils which results in absences from school even though
23 not clearly in violation of law.

24 (b) In the case of five consecutive or ten total unexcused
25 absences of a child during a school year, the attendance director
26 or assistant shall serve written notice to the parent, guardian or
27 custodian of such child that the attendance of such child at school
28 is required and that within ten days of receipt of the notice the
29 parent, guardian or custodian, accompanied by the child, shall
30 report in person to the school the child attends for a conference
31 with the principal or other designated representative of the school
32 in order to discuss and correct the circumstances causing the
33 inexcusable absences of the child; and if the parent, guardian or
34 custodian does not comply with the provisions of this article, then
35 the attendance director or assistant shall make complaint against
36 the parent, guardian or custodian before a magistrate of the county.
37 If it appears from the complaint that there is probable cause to
38 believe that an offense has been committed and that the accused has
39 committed it, a summons or a warrant for the arrest of the accused
40 shall issue to any officer authorized by law to serve the summons
41 or to arrest persons charged with offenses against the state. More
42 than one summons or warrant may be issued on the same complaint.
43 The summons or warrant shall be executed within ten days of its
44 issuance.

45 (c) The magistrate court clerk, or the clerk of the circuit
46 court performing the duties of the magistrate court as authorized
47 in section eight, article one, chapter fifty of this code, shall
48 assign the case to a magistrate within ten days of execution of the
49 summons or warrant. The hearing shall be held within twenty days
50 of the assignment to the magistrate, subject to lawful continuance.
51 The magistrate shall provide to the accused at least ten days'
52 advance notice of the date, time and place of the hearing.

1 (d) When any doubt exists as to the age of a child absent from
2 school, the attendance director shall have authority to require a
3 properly attested birth certificate or an affidavit from the parent,
4 guardian or custodian of such child, stating age of the child. The
5 county attendance director or assistant shall, in the performance
6 of his or her duties, have authority to take without warrant any
7 child absent from school in violation of the provisions of this
8 article and to place such child in the school in which such child
9 is or should be enrolled.

10 (e) The county attendance director shall devote such time as
11 is required by section three of this article to the duties of
12 attendance director in accordance with this section during the
13 instructional term and at such other times as the duties of an
14 attendance director are required. All attendance directors hired
15 for more than two hundred days may be assigned other duties
16 determined by the superintendent during the period in excess of two
17 hundred days. The county attendance director shall be responsible
18 under direction of the county superintendent for the efficient
19 administration of school attendance in the county.

20 (f) In addition to those duties directly relating to the
21 administration of attendance, the county attendance director and
22 assistant directors shall also perform the following duties:

23 (1) ~~(a)~~ Assist in directing the taking of the school census to
24 see that it is taken at the time and in the manner provided by law;

25 (2) ~~(b)~~ Confer with principals and teachers on the comparison
26 of school census and enrollment for the detection of possible
27 nonenrollees;

28 (3) ~~(c)~~ Cooperate with existing state and federal agencies
29 charged with enforcement of child labor laws;

30 (4) ~~(d)~~ Prepare a report for submission by the county
31 superintendent to the state superintendent of schools on school
32 attendance, at such times and in such detail as may be required;
33 ~~also, file with the county superintendent and county board of~~
34 ~~education at the close of each month a report showing activities of~~
35 ~~the school attendance office and the status of attendance in the~~
36 ~~county at the time;.~~ The state board shall promulgate a legislative
37 rule pursuant to article three-b, chapter twenty-nine-a of this code
38 that sets forth student absences that shall be excluded for
39 accountability purposes. The absences that shall be excluded by the
40 rule shall include, but not be limited to, excused student absences,
41 students not in attendance due to disciplinary measures and absent
42 students for whom the attendance director has pursued judicial
43 remedies to compel attendance to the extent of his or her authority.
44 The attendance director shall file with the county superintendent
45 and county board of education at the close of each month a report
46 showing activities of the school attendance office and the status
47 of attendance in the county at the time;

48 (5) ~~(e)~~ Promote attendance in the county by the compilation of
49 data for schools and by furnishing suggestions and recommendations
50 for publication through school bulletins and the press, or in such
51 manner as the county superintendent may direct;

1 ~~(6) (f)~~ Participate in school teachers' conferences with
2 parents and students;

3 ~~(7) (g)~~ Assist in such other ways as the county superintendent
4 may direct for improving school attendance;

5 ~~(8) (h)~~ Make home visits of students who have excessive
6 unexcused absences, as provided above, or if requested by the chief
7 administrator, principal or assistant principal; and

8 ~~(9) (i) The attendance director shall s~~ Serve as the liaison for
9 homeless children and youth.

Senate Bill 651

Effective Date: Passed March 8, 2003; in effect ninety days from passage.

Signed by Governor: April 1, 2003

Code Reference: Amend and reenact §§5B-2C-1 through 3
Enacts New Sections §§5B-2C-4 through 7

Title: Creates an academy of science and technology.

Major Provisions:

- Creates a nine-member academy council to promote and foster the educational and economic development of the state by assisting in the transfer of technological innovations and discoveries to public and private enterprises, and by facilitating the commercialization of intellectual property. The council may seek and accept public and private funds in furtherance of its mission and programs. The academy council is to meet at least once each quarter and will prepare and produce an annual report on the state of science and technology in West Virginia. The academy will exist until July 1, 2006, unless sooner terminated.

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 651**

5 (SENATORS PREZIOSO, UNGER, BOLEY, EDGELL, ROSS,
6 ROWE, SHARPE, SMITH AND WEEKS, *original sponsors*)

7 _____
8 [Passed March 8, 2003; in effect ninety days from passage.]
9 _____

10
11 AN ACT to repeal article one-c, chapter five of the code of West
12 Virginia, one thousand nine hundred thirty-one, as amended; and to
13 amend chapter five-b of said code by adding thereto a new article,
14 designated article two-c, relating to creation of the West Virginia
15 academy of science and technology; declaring legislative purpose;
16 establishing the academy council; defining the qualifications and
17 selection of members; establishing terms of members; providing that
18 members shall not be entitled to compensation; executive director
19 of the council; duties of the council and the executive director;
20 nomination of fellows of the academy and their participation in
21 working groups of the academy; requiring periodic reports;
22 continuation; and providing for confidentiality of trade secrets.

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

24 That article one-c, chapter five of the code of West Virginia, one
25 thousand nine hundred thirty-one, as amended, be repealed; and that
26 chapter five-b of said code be amended by adding thereto a new
27 article, designated article two-c, to read as follows:

28 **ARTICLE 2C. WEST VIRGINIA ACADEMY OF SCIENCE AND TECHNOLOGY.**

29 **§5B-2C-1. Legislative purpose.**

30 (a) The Legislature hereby finds that educational and economic
31 development require an integrated program of support for research
32 and development, assistance in the transfer of technological
33 innovations and discoveries to public and private enterprises and
34 facilitation of the commercialization of intellectual property. To
35 that end, the state recognizes the need for:

36 (1) Informed analysis of the status of science and technology
37 research, development and commercialization capabilities,
38 infrastructure and activities within West Virginia and the
39 development of innovative options that build upon and expand them
40 with the goal of increasing the gross state product;

41 (2) Coordination of efforts to attract private and federal
42 assistance for research, development and commercialization in those
43 fields most likely to maximize the gross state product;

44 (3) Increased collaboration between all of the federal, state
45 and private research and development and technology
46 commercialization organizations in the state;

1 (4) Strengthening the leadership and support of the West
2 Virginia experimental program to stimulate competitive research; and

3 (5) Leadership in science and technology policy.

4 (b) The Legislature therefore declares that creation of a West
5 Virginia academy of science and technology will promote and foster
6 the educational and economic development of the state.

7 **§5B-2C-2. West Virginia academy of science and technology;**
8 **composition; creation of council, appointment and**
9 **terms; expenses; selection of chairperson; quorum;**
10 **meetings.**

11 (a) There is hereby created, within the West Virginia
12 development office, a West Virginia academy of science and
13 technology. The academy consists of a standing council of nine
14 members and such ad hoc working groups as may be necessary to review
15 a particular field of study. A working group may include both
16 members of the council and also such individuals having expertise
17 within their profession or discipline who can be appointed fellows
18 of the academy.

19 (b) Members of the academy council shall be selected for their
20 demonstrated ability in innovative thinking, management skills,
21 broad technical knowledge and a record of working to improve the
22 science and technology base of the state. The objective of the
23 process of selection shall be to create a council that, in its
24 composition, represents a broad cross-section of those involved
25 throughout the state's science and technology enterprises. Members
26 of the council shall be selected and appointed as follows:

27 (1)The governor shall appoint to the council, with the advice
28 and consent of the Senate, three members experienced with, or
29 servng in, federal agencies that promote and utilize research,
30 development and commercialization, from a list of six persons
31 recommended by a nominating committee. The nominating committee will
32 be organized and lead by a representative from the national energy
33 technology laboratory and may consist of representatives of United
34 States government agencies, including, but not limited to, the
35 federal departments of energy, transportation, agriculture, defense
36 and homeland security, the national science foundation and the
37 national aeronautics and space administration;

38 (2) The governor shall appoint to the council, with the advice
39 and consent of the Senate, three members with experience and
40 expertise in private enterprise, research and development and
41 commercialization from a list of six persons recommended by a
42 nominating committee. The nominating committee will be organized
43 and lead by a representative from the council for community and
44 economic development and may consist of representatives from labor
45 and industry, including, but not limited to, the economic
46 development authority, the infrastructure council, the West Virginia
47 high technology consortium and the West Virginia American federation
48 of labor - congress of industrial organizations; and

49 (3) The governor shall appoint to the council, with the advice
50 and consent of the Senate, three members with experience and
51 expertise in stimulating competitive research and development from

1 a list of six persons recommended by a nominating committee. The
2 nominating committee shall be organized and lead by a representative
3 of the higher education policy commission and may consist of
4 representatives from the state institutions of higher education.

5 (c) The terms of the council members taking office on or after
6 the effective date of this legislation shall expire as designated
7 by the governor at the time of their appointment, with one term in
8 each of the three categories in subsection (b) of this section
9 expiring at the end of the second year, one term in each category
10 expiring at the end of the fourth year and one term in each category
11 expiring at the end of the sixth year. As the original appointments
12 expire, each subsequent appointment will be for a full six-year
13 term. Any member whose term has expired may serve until a successor
14 has been duly appointed and qualified. For any vacancy in the
15 office of a member occurring prior to the expiration of that term,
16 the vacancy may be filled by the governor from a list of three
17 qualified persons recommended by the remaining members of the
18 council. Any person appointed to fill a vacancy shall serve for only
19 the unexpired term unless reappointed by the governor for an
20 additional term. Any member may be appointed to successive terms
21 not to exceed two full terms.

22 (d) Members of the council are not entitled to compensation for
23 service on the council but may be reimbursed by the West Virginia
24 development office for all reasonable and necessary expenses
25 actually incurred in the performance of their duties in a manner
26 consistent with guidelines of the travel management office of the
27 department of administration or its successor.

28 (e) The governor will select and appoint a member of the
29 council to serve as chairperson for a term of two years to run
30 concurrently with the term of office of the member designated as
31 chair.

32 (f) A majority of members constitutes a quorum for the purpose
33 of conducting business.

34 (g) The council shall meet at least once each quarter of the
35 year and shall conduct all meetings in accordance with the open
36 governmental meetings proceedings act pursuant to article nine-a,
37 chapter six of this code.

38 **§5B-2C-3. Executive director; powers and duties; compensation;**
39 **expenses.**

40 (a) The governor is authorized and directed to request and
41 negotiate the loan of a federal executive employee, pursuant to the
42 provisions of the federal intergovernmental personnel act, to serve
43 as the initial executive director of the council. This person is
44 expected to serve as executive director of the academy for a period
45 of not less than one year. He or she must have training and
46 experience in science, technology research, development and
47 commercialization and demonstrable skills in managing new programs.
48 The executive director shall serve at the will and pleasure of the
49 academy council and is not entitled to compensation but may be
50 reimbursed by the West Virginia development office for all
51 reasonable and necessary expenses actually incurred in the
52 performance of his or her duties in a manner consistent with

1 guidelines of the travel management office of the department of
2 administration or its successor.

3 (b) Subsequent executive directors may be selected by the
4 council in consultation with the director of the West Virginia
5 development office.

6 (c) In addition to assisting the council and its working groups
7 in the exercise of their duties, the executive director shall:

8 (1) Facilitate and oversee the process for the initial
9 nomination and appointment of council members;

10 (2) Provide and obtain scientific, technical, economic,
11 programmatically information and market research to support the work of
12 the academy;

13 (3) Foster and maintain relationships between agencies of this
14 state, other states, the federal government, educational
15 institutions, nonprofit organization and private enterprises for the
16 advancement of research, development and commercialization;

17 (4) Organize, prepare and lead presentations on science,
18 technology research and development and commercialization for
19 business executives, state legislative leaders and committees, and
20 federal agencies; and

21 (5) Develop yearly work plans for the academy.

22 (d) The executive director will be available to the governor,
23 the speaker of the House of Delegates and the president of the
24 Senate to analyze and comment upon proposed legislation and rules
25 that relate to or materially affect state scientific, technical and
26 commercialization issues.

27 **§5B-2C-4. Powers and duties of the council of the academy of**
28 **science and technology.**

29 (a) The council may seek and accept public and private research
30 grants and contracts, matching funds and procurement arrangements
31 from the state and federal government, private industry and other
32 agencies, in furtherance of and consistent with its mission and
33 programs: *Provided*, That members of the council may not violate the
34 West Virginia ethics act, pursuant to the provisions of chapter six-
35 b of this code.

36 (b) The council may, through the West Virginia development
37 office, receive and accept gifts or grants from private foundations,
38 corporations, individuals, devises and bequests or from other lawful
39 sources. All moneys collected shall be deposited in a special
40 account in the state treasury to be known as the "West Virginia
41 academy of science and technology fund". Expenditures from the fund
42 shall be made by the West Virginia development office on the request
43 of the council for the purposes set forth in this article and are
44 not authorized from collections but are to be made only in
45 accordance with appropriation by the Legislature and in accordance
46 with the provisions of article three, chapter twelve of this code
47 and upon fulfillment of the provisions of article two, chapter five-
48 a of this code: *Provided*, That for the fiscal year ending the
49 thirtieth day of June, two thousand four, expenditures are

1 authorized from collections rather than pursuant to appropriation
2 by the Legislature.

3 (c) The council may select and appoint fellows of the council
4 pursuant to the provision of section five of this article.

5 (d) The council may make recommendations to the governor, the
6 speaker of the House of Delegates, the president of the Senate and
7 the joint commission on economic development concerning strategic
8 and specific policies to foster research and development within this
9 state.

10 (e) The council may recommend legislation to facilitate
11 improved coordination between state agencies, educational
12 institutions, industries and research laboratories.

13 (f) The council may develop and produce written or electronic
14 information to assist researchers in educational institutions or
15 private enterprise in identifying, applying for and obtaining
16 grants, stipends or other financial support for research,
17 development, technology transfer or commercialization of
18 intellectual property.

19 (g) The council may convene public meetings to gather
20 information or receive public comments regarding the administration
21 and coordination of research and development efforts within this
22 state.

23 (h) The council may, through the West Virginia development
24 office, enter into contracts or joint venture agreements with
25 federal and state agencies, corporations, partnerships and other
26 organizations that conduct research, make grants, improve
27 educational programs and work for the scientific, educational or
28 economic development of this state. The director of the West
29 Virginia development office and the council must, by majority vote,
30 approve all contracts and joint venture agreements.

31 (i) The council may enter into contractual agreements for
32 consideration with entities that are funded from sources other than
33 the state: *Provided*, That members of the council may not violate the
34 West Virginia ethics act pursuant to the provisions of chapter six-b
35 of this code.

36 (j) Members of the academy may be appointed to serve on boards
37 of directors of any contracting private nonprofit corporation,
38 foundation or firm: *Provided*, That members of the council may not
39 violate the West Virginia ethics act pursuant to the provisions of
40 chapter six-b of this code.

41 **§5B-2C-5. Fellows of the academy of science and technology.**

42 (a) In order to address the specific opportunities and needs
43 of any particular field of science and technology, the council may
44 establish working groups composed of a member or members of the
45 council with expertise in that field or discipline and additional
46 individuals, to be known as fellows of the academy of science and
47 technology. Any working group so created may conduct business,
48 research and meetings by telephone, electronic mail or in person and
49 shall not require a quorum to conduct its business. The committee
50 or working group shall submit a report or reports of its findings

1 and recommendations to the council for incorporation in policy
2 recommendations and the annual report of the academy.

3 (b) Selection of a fellow of the academy will be made on the
4 basis of the designated individual's experience and expertise in the
5 field to be addressed by the working group and must be by a majority
6 vote of the council. The term of a fellow of the academy is one
7 year and a term may be renewed by the council as needed.

8 **§5B-2C-6. Periodic reports.**

9 (a) The academy will prepare and produce an annual report on
10 the state of science and technology in West Virginia and submit it
11 to the governor, the speaker of the House of Delegates, the
12 president of the Senate and the joint commission on economic
13 development or before the first day of July of each year. The
14 report shall address all aspects of research, development, and
15 commercialization that the academy council deems material,
16 including, but not limited to:

17 (1) Strengths, weaknesses, opportunities and threats to West
18 Virginia's research, development and commercialization environment
19 and establishments;

20 (2) Options for actions by the Legislature and the governor to
21 maximize the ability of the state to attract investment, grants and
22 infrastructure development to support growth of science and
23 technology research, development and commercialization in the state;

24 (3) The status of, and options to improve, scientific and
25 technological entrepreneurship in West Virginia; and

26 (4) The status of, and options to improve, the collaboration
27 of institutions of higher education in obtaining competitive
28 research awards and grants;

29 (b) In preparing its annual report, the council may utilize the
30 technical support available to it through the West Virginia
31 development office, the West Virginia department for education and
32 arts, the West Virginia experimental program to stimulate
33 competitive research (EPSCoR), the West Virginia higher education
34 system, federal and state agencies and other entities that have an
35 interest in fostering science and technology research, development
36 and commercialization in this state.

37 (c) Each month, an academy representative shall meet with
38 legislative and executive leaders to provide updates and information
39 concerning opportunities, issues and progress of science, technology
40 and commercialization in the state.

41 **§5B-2C-7. Confidentiality of contributed material.**

42 Any documentary material, data or other writing made or
43 received by the West Virginia academy of science and technology for
44 the purpose of developing state summaries or policy options
45 concerning the capabilities, performance or plans of individual
46 businesses or organizations is deemed to be confidential trade
47 secrets which are exempt from disclosure under the provisions of
48 section four, article one, chapter twenty-nine-b of this code, and
49 the provisions of section one, article two of this chapter.

50 **§5B-2C-8. Continuation of the academy.**

1 The academy of science and technology hereby created shall
2 continue to exist, pursuant to article ten, chapter four of this
3 code until the first day of July, two thousand six, unless sooner
4 terminated, continued or reestablished pursuant to the provisions
5 of that article.

David Stewart
State Superintendent of Schools
West Virginia Department of Schools