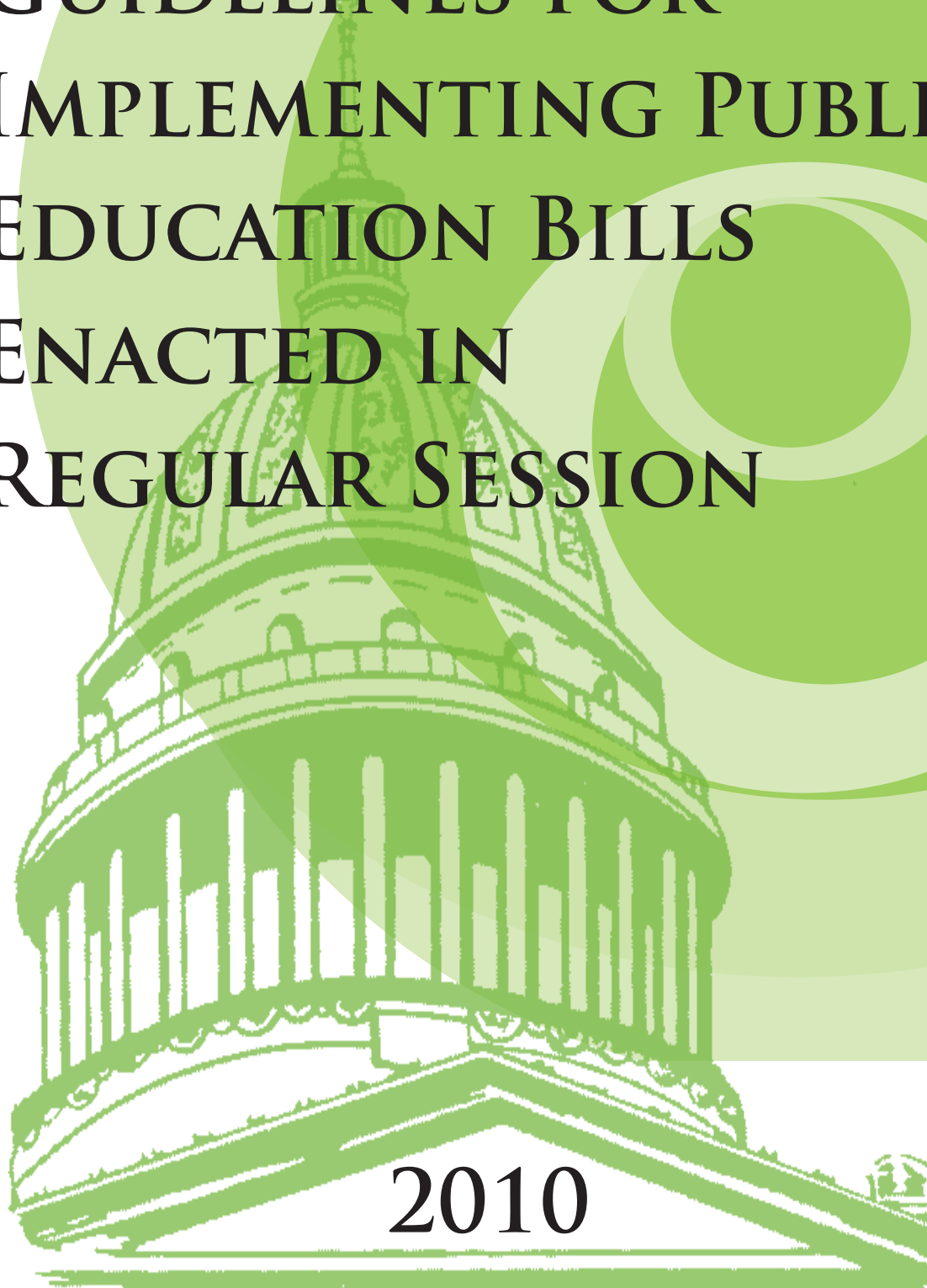


West Virginia Department of Education

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



2010



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2009-2010**

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FOREWORD

The West Virginia Department of Education is pleased to prepare Informal Guidelines for Implementing Public Education Bills Enacted in the Regular Session – 2010 as a document to assist educators and others in understanding and implementing education bills enacted by this year's Legislature.

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

For each of the acts included in this publication, the format is as follows: effective date, date signed by the Governor, code reference, title and major new provisions. As time constraints have not permitted an in-depth analysis of these bills from the regular session, it must be emphasized that the information provided in this document must not be considered as official interpretations of the State Superintendent of Schools. Formal interpretations to specific questions will be provided upon request.

The Informal Guidelines for Implementing Public Education Bills Enacted in the Regular Session – 2010 will be of considerable value during the coming school year. Suggestions for improving this document as a service to the Department's clientele are always welcome. This document is also available online at <http://wvde.state.wv.us/legislature/2010greenbook.pdf>.

Please feel free to call or write if you need additional information regarding bills enacted during the 2010 regular session of the West Virginia Legislature.



Dr. Steven L. Paine
State Superintendent of Schools

CODE CHANGES

NEW CODE			REVISED CODE		
§7-6-2a	§11-3-24b	§11-6K-8	§6-9-7	§18-2A-2	§18-9A-12
§11-3-15a	§11-3-25a	§18-5B-10	§8-13-22a	§18-2A-3	§18-9A-21
§11-3-15b	§11-3-32	§18-8-6	§11-3-1	§18-2A-4	§18-9D-4b
§11-3-15c	§11-3-33	§18-9A-22	§11-3-2a	§18-2A-5	§18-9D-6
§11-3-15d	§11-6K-1	§30-20A-1	§11-3-10	§18-2A-6	§18-9D-8
§11-3-15e	§11-6K-2	§30-20A-2	§11-3-12	§18-2A-7	§18A-4-8
§11-3-15f	§11-6K-3	§30-20A-3	§11-3-15	§18-2A-8	§18A-4-8a
§11-3-15g	§11-6K-4	§30-20A-4	§11-3-19	§18-2A-9	§18A-4-8b
§11-3-15h	§11-6K-5	§30-20A-5	§11-3-24	§18-2E-5	§18A-4-8e
§11-3-15i	§11-6K-6	§30-20A-6	§11-3-24a	§18-5-1a	§21-1C-2
§11-3-23a	§11-6K-7	§30-20A-7	§11-3-25	§18-5-45	§29-12A-16
			§11-8-12	§18-5A-6	§47-21-2
			§11-8-12a	§18-8-1a	§47-21-20
			§12-1-4	§18-8-4	§49-2B-3
			§17C-12-7	§18-9-6	§60A-4-406
			§18-2A-1	§18-9A-8a	§62-15-4

TABLE OF CONTENTS

BILL NUMBER	SUBJECT	PAGE NUMBERS
------------------------	----------------	-------------------------

Regular Session Bills

HB 3152	Relating to athletic trainers; providing definitions; restricting the use of certain titles; setting forth powers and duties of the board; setting forth rulemaking authority; providing for registration of athletic trainers; establishing registration criteria; establishing renewal requirements; and allowing for disciplinary actions.	1
	§30-20A-1 §30-20A-2 §30-20A-3 §30-20A-4 §30-20A-5 §30-20A-6 §30-20A-7	
HB 4031	Relating to the maximum foundation allowance for Regional Education Service Agencies.....	6
	§18-9A-8a	
HB 4040	Eliminating the beginning and ending date for school calendars and requiring county boards to adopt contingency plans designed to guarantee one hundred eighty separate days of instruction for students.....	8
	§18-5-45	
HB 4211	Relating to providing supplemental funding for providing alternative programs for limited English proficient students; and granting the State Board of Education rule-making authority	14
	§18-9A-22	
HB 4223	Relating to increasing the safety of school children that use school buses; increasing the criminal penalties for failure to stop a vehicle before reaching a school bus with flashing warning signal lights; and providing additional circumstances which increase the periods of ineligibility for parole upon sentences for certain felony convictions for the distribution of controlled substances in the proximity of students awaiting, boarding or exiting a school bus.....	16
	§17C-12-7 §60A-4-406	
HB 4359	Requiring local labor for public construction projects.....	20
	§21-1C-2	
HB 4436	Providing discretion to schools that make AYP to use assessments and adopting instructional strategies and programs that promote student learning.....	23
	§18-2E-5 §18-5A-6	
HB 4512	Relating to school bus operators.....	42
	§18A-4-8 §18A-4-8a §18A-4-8b §18A-4-8e	

HB 4593	Relating to high school graduation improvement	59
	§18-8-1 §18-8-1a §18-8-4	
	§18-8-6 §18-9A-21 §62-15-4	
HB 4615	Authorizing political subdivisions to establish risk pools to insure their workers' compensation risks.....	73
	§29-12A-16	
HB 4669	Granting exceptions to certain statutes to innovation zone plans approved by state board	76
	§18-5B-10	
SB 229	Relating to authority of School Building Authority to issue certain outstanding bonds.....	80
	§18-9D-4b §18-9D-6 §18-9D-8	
SB 391	Relating to county board of education members' eligibility	89
	§18-5-1a	
SB 401	Relating to ad valorem property taxes.....	93
	§11-3-1 §11-3-2a §11-3-10	
	§11-3-12 §11-3-15 §11-3-15a	
	§11-3-15b §11-3-15c §11-3-15d	
	§11-3-15e §11-3-15f §11-3-15g	
	§11-3-15h §11-3-15i §11-3-19	
	§11-3-23a §11-3-24 §11-3-24a	
	§11-3-24b §11-3-25 §11-3-25a	
	§11-3-32 §11-3-33 §11-6K-1	
	§11-6K-2 §11-6K-3 §11-63-4	
	§11-6K-5 §11-6K-6 §11-6K-7	
	§11-6K-8 §18-9A-12	
SB 547	Correcting inconsistency in school board levies code.....	120
	§11-8-12 §11-8-12a	
SB 548	Extending time Boone County Board of Education can meet as levying body	123
SB 573	Allowing audits to be published electronically with notice to proper authorities	125
	§6-9-7	
SB 577	Clarifying definition of "raffle".....	130
	§47-21-2 §47-21-20	
SB 610	Extending statutory exemption to certain out-of-school time programs	135
	§49-2B-3	
SB 631	Updating process for adopting textbooks and other instructional material.....	140
	§18-2A-1 §18-2A-2 §18-2A-3	
	§18-2A-4 §18-2A-5 §18-2A-6	
	§18-2A-7 §18-2A-8 §18-2A-9	
SB 633	Depositing public funds into certain federally insured accounts.....	148
	§7-6-2a §8-13-22a §12-1-4	
	§18-9-6	

House Bill 3152

Effective Date: Passed March 13, 2010, in effect ninety days from passage (June 11, 2010)

Signed by Governor: March 31, 2010

Code Reference: Adds §§30-20A-1, 30-20A-2, 30-20A-3, 30-20A-4, 30-20A-5, 30-20A-6, and 30-20A-7

Title: Athletic Trainers

Major Provisions:

- Requires an athletic trainer to register with the Board of Physical Therapy before a person advertises himself or herself as an athletic trainer in this State, or uses the initials “AT”, “registered athletic trainer”, “athletic trainer”, or any other words, abbreviations, titles or insignia which indicate, imply, or represent that the person is an athletic trainer.
- Specifies that to register with the Board of Physical Therapy as an athletic trainer, the individual must:
 1. Submit a current certification from the National Athletic Trainers’ Association Board of Certification or successor organization;
 2. Pay the required fee, as set by legislative rule;
 3. Not be guilty of fraud in the practice of athletic training, or fraud or deceit in the individual’s application for registration;
 4. Not be engaged in practice under a false or assumed name, or impersonating another practitioner of a like or different name;
 5. Not be an alcohol or drug abuser, however, a proviso states that an applicant in an active recovery process may be considered, which in the discretion of the Board, may be evidenced by participation in a twelve-step program or other similar group or process;
 6. Not be guilty of fraudulent, false, or deceptive advertising or for prescribing medicines or drugs, or practicing any licensed profession without legal authority;

7. Not be grossly negligent in the practice of athletic training;
 8. Not be practicing athletic training with a license or other authorization to practice from another state or jurisdiction that has been canceled, revoked, suspended or otherwise restricted;
 9. Not be incapacitated by a physical or mental disability which is determined by a physician to render further practice by the applicant inconsistent with competency and ethic requirements;
or
 10. Not be convicted of sexual abuse or sexual misconduct.
- Specifies that the Board may deny an application for registration if any of the statements set forth in the preceding section are answered in the positive.
 - Allows the Board, in making its determination of denial, to consider:
 1. How recently the conduct occurred;
 2. The nature of the conduct and the context in which it occurred;
 3. Any other relevant conduct of the applicant.
 - Specifies that a registration or a renewal is valid for two years.
 - Specifies that the statute does not prohibit or otherwise limit the use of the term "athletic trainer" in secondary school settings by persons who were practicing athletic training under a West Virginia Board of Education Athletic Certification, provided that the practice is in accordance with Board of Education policy then in effect.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 3152

(By Delegates Caputo, Ashley, White, Kominar and Campbell)

[Passed March 13, 2010; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §30-20A-1, §30-20A-2, §30-20A-3, §30-20A-4, §30-20A-5, §30-20A-6 and §30-20A-7, all relating to athletic trainers; providing definitions; restricting the use of certain titles; setting forth powers and duties of the board; setting forth rulemaking authority; providing for registration of athletic trainers; establishing registration criteria; establishing renewal requirements; and allowing for disciplinary actions.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §30-20A-1, §30-20A-2, §30-20A-3, §30-20A-4, §30-20A-5, §30-20A-6 and §30-20A-7, all to read as follows:

ARTICLE 20A. ATHLETIC TRAINERS.

§30-20A-1. Definitions.

As used in this article:

(1) "Applicant" means any person making application for an original or renewal registration to act as an athletic trainer under the provisions of this article.

(2) "Board" means the West Virginia Board of Physical Therapy established under article twenty of this chapter.

(3) "Registrant" means a person registered as an athletic trainer under the provisions of this article.

(4) "Registration" means a registration issued by the board to practice athletic training.

§30-20A-2. Title protection.

(a) A person may not advertise or represent himself or herself as an athletic trainer in this state and may not use the initials "AT", the words "registered athletic trainer" or "athletic trainer", or any other words, abbreviations, titles or insignia that indicates, implies or represents that he or she is an athletic trainer, unless he or she is registered by the board.

(b) Nothing contained in this article shall be construed as preventing any person, firm, partnership or corporation from practicing athletic training, in any manner desired.

(c) Nothing in this article may be construed to prohibit or otherwise limit the use of the term "athletic trainer" in secondary school settings by persons who were practicing athletic

training under a West Virginia Board of Education Athletic Certification, provided the practice is in accordance with Board of Education policy in effect prior to July 1, 2011.

§30-20A-3. Powers and duties of the board.

The board has the following powers and duties:

- (1) Establish procedures for submitting, approving and denying applications for registration;
- (2) Investigate alleged violations of the provisions of this article;
- (3) Establish a fee schedule;
- (4) Issue, renew, deny, suspend, revoke or reinstate a registration;
- (5) Determine disciplinary action and issue orders;
- (6) Institute appropriate legal action for the enforcement of the provisions of this article; and
- (7) Maintain an accurate registry of the names and addresses of registrants.

§30-20A-4. Rulemaking authority.

The board shall propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty- nine-a of this code, to implement the provisions of this article, including:

- (1) Procedures for the issuance and renewal of a registration;
- (2) A fee schedule;
- (3) Procedures for denying, suspending, revoking, reinstating or limiting the registration of a registrant; and
- (4) Any other rules necessary to effectuate the provisions of this article.

§30-20A-5. Requirements for registration.

(a) To be eligible for registration by the board as an athletic trainer, an applicant shall:

- (1) Submit an application in the form prescribed by the board;
- (2) Submit a current certification from the National Athletic Trainers' Association Board of Certification or successor organization; and
- (3) Pay the required fee.

(b) The board shall issue a registration to an applicant satisfying all the requirements in subsection (a) of this section: *Provided*, That the board may deny an application for registration if the applicant:

- (1) Has been convicted of a felony or other crime involving moral turpitude;
- (2) Is an alcohol or drug abuser as these terms are defined in section eleven, article one-a, chapter twenty-seven of this code: *Provided*, That the board may take into consideration that an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a twelve- step program or other similar group or process;
- (3) Has been convicted of fraudulent, false, misleading or deceptive advertising;
- (4) Has been convicted for wrongfully prescribing medicines or drugs, or practicing any licensed profession without legal authority;
- (5) Has had a registration or other authorization revoked, suspended, restricted or other disciplinary action taken by the proper authorities of another jurisdiction;
- (6) Is incapacitated by a physical or mental disability which is determined by a physician to render further practice by the applicant inconsistent with competency and ethic requirements; or
- (7) Has been convicted of sexual abuse or sexual misconduct.

(c) In determining whether an application should be denied for any of the reasons set forth in subsection (b), the board may consider:

(1) How recently the conduct occurred;

(2) The nature of the conduct and the context in which it occurred; and

(3) Any other relevant conduct of the applicant.

(d) A registration issued by the board is valid for two years from the date it was issued.

§30-20A-6. Renewal requirements.

(a) A registrant may apply to renew his or her registration by submitting an application for renewal in the form prescribed by the board and paying the renewal fee. The renewal application must be signed by the applicant.

(b) A renewal of registration issued by the board is valid for two years from the date it was issued.

(c) The board may deny an application for renewal for any reason which would justify the denial of an original application for a registration.

§30-20A-7. Due process procedures; grounds for disciplinary action.

(a) The board may, after notice and opportunity for hearing, suspend, restrict or revoke a registration of, impose probationary conditions upon or take disciplinary action against, any registrant if the board determines the registrant:

(1) Is grossly negligent in the practice of athletic training;

(2) Obtained a registration by fraud, misrepresentation or concealment of material facts; engaged in the practice of athletic training under a false or assumed name; or impersonated another registrant of a like or different name; or

(3) Has violated any of the provisions of subsection (b), section five of this article.

(b) For purposes of subsection (a) of this section, disciplinary action may include:

(1) Reprimand;

(2) Probation;

(3) Administrative fines;

(4) Practicing under supervision or other restriction;

(5) Requiring the registrant to report to the board for periodic interviews for a specified period of time; or

(6) Other corrective action as determined by the board

House Bill 4031

Effective Date: Passed March 13, 2010, in effect July 1, 2010

Signed by Governor: March 31, 2010

Code Reference: Amends and reenacts §18-9A-8a

Title: Regional Education Service Agencies

Major Provisions:

- Reduces the maximum amount of the foundation allowance under the Public School Support Program for the Regional Education Service Agencies to not more than \$3,990,000.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 4031

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

[By Request of the Executive]

[Passed March 13, 2010; in effect July 1, 2010.]

AN ACT to amend and reenact §18-9A-8a of the Code of West Virginia, 1931, as amended, relating to the maximum foundation allowance for regional education service agencies.

Be it enacted by the Legislature of West Virginia:

That §18-9A-8a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-8a. Foundation allowance for regional education service agencies.

For the fiscal year beginning on July 1, two thousand six, and for each fiscal year thereafter, the foundation allowance for regional education service agencies shall be equal to sixty-three one-hundredths percent of the allocation for professional educators as determined in section four of this article, but not more than ~~four million two hundred thousand~~ three million nine hundred ninety thousand dollars. The allowance shall be distributed to the regional education service agencies in accordance with rules adopted by the state board. The allowance for regional education service agencies shall be excluded from the computation of total basic state aid as provided in section twelve of this article.

House Bill 4040

Effective Date: Passed January 26, 2010, in effect July 1, 2010

Signed by Governor: February 4, 2010

Code Reference: Amends and reenacts §18-5-45

Title: School Calendars

Major Provisions:

- Deletes the statutory prohibitions about starting the instructional term before August 26 or ending the term after June 8 and instead allows county boards to select the beginning and ending dates of the instructional term each year.
- Requires county boards to develop an icy conditions and emergencies plan designed to guarantee an instructional term for students of no less than one hundred eighty separate instructional days.

ENROLLED

H. B. 4040

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

[By Request of the Executive]

[Passed January 26, 2010; in effect July 1, 2010.]

AN ACT to amend and reenact §18-5-45 of the Code of West Virginia, 1931, as amended, relating to requiring county boards to adopt contingency plans designed to guarantee one hundred eighty separate days of instruction for students; authorizing county boards of education to select the beginning date and ending date of the instructional term of the school calendar; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §18-5-45 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-45. School calendar.

(a) As used in this section, the following terms have the following meanings:
(1) "Instructional day" means a day within the instructional term which meets the following criteria:

(A) Instruction is offered to students for at least the minimum amounts of time provided by state board rule;

(B) Instructional time is used for instruction, cocurricular activities and approved extracurricular activities and, pursuant to the provisions of subdivision twelve, subsection (b), section five, article five-a of this chapter, faculty senates; and

(C) Such other criteria as the state board determines appropriate.

(2) "Accrued instructional time" means instructional time accruing during the instructional term from time added to the instructional day beyond the time required by state board rule for an instructional day. Accrued instructional time may be accumulated and used in larger blocks of time during the school year for instructional or noninstructional activities as further defined by the state board.

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

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

(b) *Findings.* –

- (1) The primary purpose of the school system is to provide instruction for students.
 - (2) The school calendar, as defined in this section, is designed to define the school term both for employees and for instruction.
 - (3) The school calendar traditionally has provided for one hundred eighty actual days of instruction but numerous circumstances have combined to cause the actual number of instructional days to be less than one hundred eighty.
 - (4) The quality and amount of instruction offered during the instructional term is affected by the extracurricular and cocurricular activities allowed to occur during scheduled instructional time.
 - (5) Within reasonable guidelines, the school calendar should be designed at least to guarantee that one hundred eighty actual days of instruction are possible.
- (c) The county board shall provide a school term for its schools that contains the following:
- (1) An employment term for teachers of no less than two hundred days, exclusive of Saturdays and Sundays; and
 - (2) Within the employment term, an instructional term for students of no less than one hundred eighty separate instructional days, which shall include an icy conditions and emergencies plan designed to guarantee an instructional term for students of no less than one hundred eighty separate instructional days.
- (d) The instructional term for students shall include one instructional day in each of the months of October, December, February, April and June which is an instructional support and enhancement day scheduled by the board to include both instructional activities for students and professional activities for teachers to improve student instruction. Instructional support and enhancement days are subject to the following provisions
- (1) Two hours of the instructional support and enhancement day shall be used for instructional activities for students. The instructional activities for students are subject to the following provisions:
 - (A) The instructional activities for students require the direct supervision or involvement by teachers;
 - (B) The instructional activities for students shall be limited to two hours;
 - (C) The instructional activities for students shall be determined and scheduled at the local school level;
 - (D) The instructional activities for students may include, but are not limited to, both in-school and outside of school activities such as student mentoring, tutoring, counseling, student research and other projects or activities of an instructional nature, community service, career exploration, parent and teacher conferences, visits to the homes of students, college and financial aid workshops and college visits;
 - (E) To ensure that the students who attend are properly supervised, the instructional activities for students shall be arranged by appointment with the individual school through the principal, a teacher or other professional personnel at the school; and
 - (F) Each school shall establish a policy relating to the use of the two-hour block scheduled for instructional activities for students;
 - (2) The instructional support and enhancement day shall include a two-hour block of time for professional activities for teachers during which the faculty senate shall have the opportunity to meet;

(3) All time remaining in the school day after meeting the requirements of subdivisions (1) and (2) of this subsection, not including the duty-free lunch period, shall be used for other professional activities for teachers to improve student instruction which may include, but are not limited to, professional staff development, curriculum team meetings, individualized education plan meetings and other meetings between teachers, principals, aides and paraprofessionals to improve student instruction as determined and scheduled at the local school level;

(4) Notwithstanding any other provision of law or policy to the contrary, the presence of any specific number of students in attendance at the school for any specific period of time shall not be required on instructional support and enhancement days and the transportation of students to the school shall not be required;

(5) Instructional support and enhancement days are also a scheduled work day for all service personnel and shall be used for training or other tasks related to their job classification if their normal duties are not required; and

(6) Nothing in this section may be construed to require that the instructional activities for students, faculty senate meetings and other professional activities for teachers be scheduled in any certain order.

(e) The instructional term shall commence ~~no earlier than the twenty-sixth day of August~~ on a date selected by the county board and terminate ~~no later than the eighth day of~~ on a date selected by the county board.

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

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

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

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

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

(A) Curriculum development;

(B) Preparation for opening and closing school;

(C) Professional development;

(D) Teacher-pupil-parent conferences;

(E) Professional meetings; and

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

(g) Three of the days described in subdivision (4), subsection (f) of this section shall be scheduled prior to ~~the twenty-sixth day of August~~ the commencement of the instructional term for the purposes of preparing for the opening of school and staff development.

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

(i) At least four of the days described in subdivision (3), subsection (f) of this section shall be scheduled after March 1.

(j) At least two of the days described in subdivision (4), subsection (f) of this section will be scheduled for professional development. The professional development conducted on

these days will be consistent with the goals established by the state board pursuant to the provisions of section twenty-three-a, article two of this chapter.

(k) Subject to the provisions of subsection (h) of this section, all noninstructional days will be scheduled prior to ~~the eighth day of June~~ the termination of the instructional term.

(l) The state board may not schedule the primary statewide assessment program prior to May 15 of the instructional year unless the state board determines that the nature of the test mandates an earlier testing date.

(m) If, on or after March 1, the county board determines that it is not possible to complete one hundred eighty separate days of instruction, the county board shall schedule instruction on any available noninstructional day, regardless of the purpose for which the day originally was scheduled, and the day will be used for instruction, subject to the following:

(1) The noninstructional days scheduled for professional development shall be the last available noninstructional days to be rescheduled as instructional days;

(2) On or after March 1, the county board also may require additional minutes of instruction in the school day to make up for lost instructional days in excess of the days available through rescheduling and, if in its judgment it is reasonable and necessary to improve student performance, to avoid scheduling instruction on noninstructional days previously scheduled for professional development; and

(3) The provisions of this subsection do not apply to:

(1) Holidays; and

(2) Election day.

(n) The following applies to accrued instructional time:

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

(2) Accrued instructional time may not be used to lengthen the time provided in law for faculty senates;

(3) The use of accrued instructional time for extracurricular activities will be limited by the state board;

(4) Accrued instructional time may be used by schools and counties to provide additional time for professional staff development and continuing education as may be needed to improve student performance and meet the requirements of the federal mandates affecting elementary and secondary education. The amount of accrued instructional time used for this purpose may not exceed three instructional days; and

(5) Other requirements or restrictions the state board may provide in the rule required to be promulgated by this section.

(o) The following applies to cocurricular activities:

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

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

(3) Other requirements or restrictions the state board may provide in the rule required to be promulgated by this section.

(p) The following applies to extracurricular activities:

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

(2) The use of accrued instructional time for extracurricular activities will be limited by the

state board; and

(3) The state board shall provide for the attendance by students of certain activities sanctioned by the Secondary School Activities Commission when those activities are related to statewide tournaments or playoffs or are programs required for Secondary School Activities Commission approval.

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

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

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

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

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

(v) Where the employment term overlaps a teacher's or service personnel's participation in a summer institute or institution of higher education for the purpose of advancement or professional growth, the teacher or service personnel may substitute, with the approval of the county superintendent, the participation for up to five of the noninstructional days of the employment term.

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

House Bill 4211

Effective Date: Passed March 11, 2010; effective ninety days from passage (June 9, 2010)

Signed by Governor: March 19, 2010

Code Reference: Adds §18-9A-22

Title: Supplemental Funding for English as a Second Language (ESL) Programs

Major Provisions:

- Includes a provision that provides supplemental funding under the Public School Support Program for programs for Limited English Proficient students where the cost of the program in a particular district exceeds the district's capacity to provide the program with the funds that the district has available.
- The statute does not require any specific amount of funding to be appropriated.
- Any funds so appropriated in any year must be distributed to the various districts in a manner that takes into account the varying proficiency levels of the students and the capacity of the district to deliver the needed programs.
- Districts are required to apply for the funds that are available in accordance with the provisions contained in State Board policy.

ENROLLED

COMMITTEE SUBSTITUTE
FOR

H. B. 4211

(By Delegates Lawrence, M. Poling, Perry, Shaver, Phillips, Stowers, Duke)

[Passed March 11, 2010; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-9A-22, relating to providing supplemental funding for providing alternative programs for limited English proficient students; and granting the State Board of Education rule-making authority.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-9A-22, to read as follows:

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-22. Supplemental funding for the provision of programs required for Limited English Proficient (LEP) students.

Any funds appropriated by the Legislature to the Department of Education for distribution to the county boards of education to supplement programs required for Limited English Proficient students as defined by state board policy in accordance with federal law shall be used to supplement a program when the cost of the program exceeds the capacity of a county board to provide the program with funds available. Any appropriation made pursuant to this section shall be distributed to the county boards in a manner that takes into account the varying proficiency levels of the students and the capacity of the county board to deliver the needed programs. In order to receive the funding, a county board must apply to the state superintendent. The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code that sets forth the manner in which county boards apply for the funding and to implement the other provisions of this section.

House Bill 4223

Effective Date: Passed March 13, 2010; in effect ninety days from passage (June 11, 2010)

Signed by Governor: April 1, 2010

Code Reference: Amends and reenacts §17C-12-7, §60A-4-406

Title: Relating to Increasing the Safety of School Children That Use School Buses

Major Provisions:

- Increases the criminal penalties for failure to stop a vehicle before reaching a school bus with flashing warning signal lights; and provides additional circumstances which increase the periods of ineligibility for parole upon sentences for certain felony convictions for the distribution of controlled substances in the proximity of students awaiting, boarding or exiting a school bus. The penalties include:
 - 1st offense –fine increased from \$50 - \$250 to \$150 - \$500 and drivers license may be suspended for 30 days and prison confinement of 60 days or less.
 - (New) 2nd offense - \$500 fine and/or confinement of not more than 6 months. The license may be suspended for 90 days.
 - (New) 3rd offense - \$500 fine and confinement for 24 hours but not more than 6 months. License may be suspended for 6 months.
 - If a serious bodily injury occurs the driver is guilty of a felony and imprisoned for not less than 1 year nor more than 3 years and fined between \$500 and \$2000.
 - If the violation causes death, the driver is guilty of a felony and imprisoned for 1 to 10 years with a fine between \$1000 and \$3000.
 - If the identity of the driver cannot be ascertained, the owner of the vehicle will be fined \$150 to \$500. For a 2nd offense the fine is \$500.

- Counties are authorized to mount cameras on the stop sign of the bus.
- The sale of controlled substances within 100 feet of a school bus stop faces the same provision as within 1000 feet of a school. (Ineligible for parole for 2 years).

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 4223

(By Delegates Klempa, Hutchins, Schoen, Ferro, Hamilton,
Ennis, Brown, Varner, Ellem, Pethtel and Caputo)

[Passed March 13, 2010; in effect ninety days from passage.]

AN ACT to amend and reenact §17C-12-7 of the Code of West Virginia, 1931, as amended, relating generally to increasing the safety of school children that use school buses; increasing the penalties for overtaking and passing a school bus stopped for the purpose of receiving and discharging children; authorizing the mounting of cameras on school buses; and requesting an educational information campaign on school bus safety.

Be it enacted by the Legislature of West Virginia:

That §17C-12-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12. SPECIAL STOPS REQUIRED.

§17C-12-7. Overtaking and passing school bus; penalties; signs and warning lights upon buses; requirements for sale of buses; mounting of cameras; educational information campaign; limitation on idling.

(a) The driver of a vehicle, upon meeting or overtaking from either direction any school bus which has stopped for the purpose of receiving or discharging any school children, shall stop the vehicle before reaching the school bus when there is in operation on the school bus flashing warning signal lights, as referred to in section eight of this article, and the driver ~~shall~~ may not proceed until the school bus resumes motion, or is signaled by the school bus driver to proceed or the visual signals are no longer actuated. This section applies wherever the school bus is receiving or discharging children including, but not limited to, any street, highway, parking lot, private road or driveway: *Provided*, That the driver of a vehicle upon a controlled access highway need not stop upon meeting or passing a school bus which is on a different roadway or adjacent to the highway and where pedestrians are not permitted to cross the roadway.

(b) Any driver acting in violation of ~~this subsection~~ (a) of this section is guilty of a misdemeanor and, upon conviction ~~for a first offense~~, shall be fined not less than ~~fifty~~ \$150 ~~nor or~~ or more than ~~two hundred dollars~~ \$500, or imprisoned ~~confined~~ in the county jail not more than six months, or both fined and ~~imprisoned~~ confined. ~~If the identity of the driver~~

~~cannot be ascertained, then the owner or lessee of the vehicle in violation of this subsection is guilty of a misdemeanor and, upon conviction, shall be fined not less than twenty-five nor more than one hundred dollars. The conviction shall not subject the owner or lessee to further administrative or other penalties for the offense, notwithstanding other provisions of this code to the contrary.~~ Upon conviction of a second violation of subsection (a), the driver shall be fined \$500, or confined in jail not more than six months, or both fined and confined. Upon conviction of a third or subsequent violation of subsection (a), the driver shall be fined \$500, and confined not less than twenty-four hours in jail but not more than six months.

(c) In addition to the penalties prescribed in subsections (b) of this section, the Commissioner of Motor Vehicles shall, upon conviction, suspend the driver's license of the person so convicted:

(1) Of a first offense under subsection (b) of this section, for a period of thirty days;

(2) Of a second offense under subsection (b) of this section, for a period of ninety days; or

(3) Of a third or subsequent offense under subsection (b) of this section, for a period of one hundred and eighty days.

(d) Any driver of a vehicle who willfully violates the provisions of subsection (a) of this section and the violation causes serious bodily injury to any person other than the driver, is guilty of a felony and, upon conviction, shall be confined in a state correctional facility not less than one year nor more than three years and fined not less than \$500 nor more than \$2,000.

(e) Any driver of a vehicle who willfully violates the provisions of subsection (a) of this section, and the violation causes death, is guilty of a felony and, upon conviction, shall be confined in a state correctional facility not less than one year nor more than ten years and fined not less than \$1,000 nor more than \$3,000.

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

(g) Every county board of education is hereby authorized to mount a camera on any school bus for the purpose of enforcing this section or for any other lawful purpose.

(h) To the extent that state, federal or other funds are available, the State Police shall conduct an information campaign to educate drivers concerning the provisions of this section and the importance of school bus safety.

(e) (i) The State Board of Education shall ~~write a policy~~ promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code governing the idling of school buses.

House Bill 4359

Effective Date: Passed March 11, 2010, in effect ninety days from passage

Signed by Governor: March 19, 2010

Code Reference: Amends and reenacts § 21-1C-2

Title: West Virginia Jobs Act

Major Provisions:

- Changes the definition of the term "construction project" by decreasing the cost of the project from "equal to or greater than one million dollars" to "equal to or greater than \$500,000."
- Changes the definition of the term "local labor market" by decreasing the distance that the counties situated outside West Virginia are to the border of the State from 75 miles of the border to 50 miles of the border.
- The Act continues to require any person, firm or corporation that employs one or more employees on any public improvement construction project to hire at least seventy-five percent of the employees from the local labor market, but now with the change in definitions, the Act applies to construction projects costing \$500,000 or more and the local labor market is defined as any county in West Virginia and any county outside West Virginia, if any portion of that county is within fifty miles of the border of West Virginia.

ENROLLED

COMMITTEE SUBSTITUTE

for

H. B. 4359

(By Delegates D. Poling, Klempa, Ferro,

Longstreth, D. Walker, Varner, Morgan, Caputo

[Passed March 11, 2010; in effect ninety days from passage.]

AN ACT to amend and reenact §21-1C-2 of the Code of West Virginia, 1931, as amended, relating to requiring local labor for public construction projects; reducing the dollar amount of the applicable construction project to \$500,000; reducing the amount of miles for the local labor market to fifty miles; and clarifying the definition of local labor market.

Be it enacted by the Legislature of West Virginia:

That §21-1C-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1C. WEST VIRGINIA JOBS ACT.

§21-1C-2. Definitions.

As used in this article:

(1) The term "construction project" means any construction, reconstruction, improvement, enlargement, painting, decorating or repair of any public improvement let to contract in an amount equal to or greater than ~~one million dollars~~ \$500,000. The term "construction project" does not include temporary or emergency repairs;

(2) (A) The term "employee" means any person hired or permitted to perform hourly work for wages by a person, firm or corporation in the construction industry;

(B) The term "employee" does not include:

(i) Bona fide employees of a public authority or individuals engaged in making temporary or emergency repairs;

(ii) Bona fide independent contractors; or

(iii) Salaried supervisory personnel necessary to assure efficient execution of the employee's work;

(3) The term "employer" means any person, firm or corporation employing one or more employees on any public improvement and includes all contractors and subcontractors;

(4) The term "local labor market" means every county in West Virginia and ~~all counties bordering West Virginia that fall within seventy-five~~ any county outside of West Virginia if any portion of that county is within fifty miles of the border of West Virginia;

(5) The term "public authority" means any officer, board, commission or agency of the State of West Virginia and its subdivisions, including counties and municipalities. Further, the economic grant committee, economic development authority, infrastructure and jobs development council and School Building Authority shall be required to comply with the provisions of this article for loans, grants or bonds provided for public improvement construction projects;

(6) The term "public improvement" includes the construction of all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports and all other structures that may be let to contract by a public authority, excluding improvements funded, in whole or in part, by federal funds.

House Bill 4436

Effective Date: Passed March 11, 2010; in effect ninety days from passage (June 9, 2010)

Signed by Governor: March 19, 2010

Code Reference: Amends and reenacts §18-2E-5 and §18-5A-6

Title: Providing Discretion to Schools That Make AYP to Use Assessments and Adopting Instructional Strategies and Programs That Promote Student Learning

Major Provisions:

- The purpose of this bill is to provide schools that make AYP the opportunity to 1) select assessments and 2) instructional strategies and programs that promote student learning with the exceptions of WESTEST2, the Alternative Performance Task Assessment, the Online Writing assessment and the National Assessment of Educational Progress (NAEP). These tests are required as per state code or federal law.

- The school may not be required by any state or county policy to employ any other assessments or specific instructional strategy or program to achieve the standards and objectives for courses required by the state board except upon approval by the school curriculum team with the concurrence of the faculty senate. Also, the failure to use any specific assessment, instructional strategy or program may not be cited as a deficiency in any accreditation review of the school.

ENROLLED

Committee Substitute

for

H. B. 4436

(By Delegates Shaver, M. Poling, Perry, Williams, Ennis, Beach, Lawrence, Romine, Pethtel, Paxton and Cann)

[Passed March 11, 2010; in effect ninety days from passage.]

AN ACT to amend and reenact §18-2E-5 and §18-5A-6 of the Code of West Virginia, 1931, as amended, relating to promoting student achievement; revising accountability finding; clarifying optional usage of certain testing or assessment instruments; publishing and making such instruments available to curriculum teams and teacher collaborations; making exclusions from accreditation and evaluations for failure to use or exercise of discretion in using certain assessments, strategies and programs; adding circumstance to definition of low performing school; providing for state system of support for low performing schools and modifying process and time lines for improvement; requiring schools and school systems to work collaboratively with state system of support in certain circumstances; requiring school curriculum teams to review certain non required tests and assessments and providing it discretion to determine usage; authorizing team to request waiver of state and county requirements to use certain assessments, instructional strategies or programs; updating waivers for instructional resources; providing for optional adoption by schools of process for teacher collaboration to replace or in addition to school curriculum team; and providing for membership, mission and structure.

Be it enacted by the Legislature of West Virginia:

That §18-2E-5 and §18-5A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-5. Process for improving education; education standards; statewide assessment program; accountability measures; Office of Education Performance Audits; school accreditation and school system approval; intervention to correct low performance.

(a) *Legislative findings, purpose and intent.* -- The Legislature makes the following findings with respect to the process for improving education and its purpose and intent in the enactment of this section:

(1) The process for improving education includes four primary elements, these being:
(A) Standards which set forth the knowledge and skills that students should know and be able to do as the result of a thorough and efficient education that prepares them for the

twenty-first century, including measurable criteria to evaluate student performance and progress;

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

(C) A system of accountability for continuous improvement defined by high quality standards for schools and school systems articulated by a rule promulgated by the state board and outlined in subsection (c) of this section that will build capacity in schools and districts to meet rigorous outcomes that assure student performance and progress toward obtaining the knowledge and skills intrinsic to a high quality education rather than monitoring for compliance with specific laws and regulations; and

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

(2) As the Constitutional body charged with the general supervision of schools as provided by general law, the state board has the authority and the responsibility to establish the standards, assess the performance and progress of students against the standards, hold schools and school systems accountable and assist schools and school systems to build capacity and improve efficiency so that the standards are met, including, when necessary, seeking additional resources in consultation with the Legislature and the Governor.

(3) As the Constitutional body charged with providing for a thorough and efficient system of schools, the Legislature has the authority and the responsibility to establish and be engaged constructively in the determination of the knowledge and skills that students should know and be able to do as the result of a thorough and efficient education. This determination is made by using the process for improving education to determine when school improvement is needed, by evaluating the results and the efficiency of the system of schools, by ensuring accountability and by providing for the necessary capacity and its efficient use.

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

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

(b) *Electronic county and school strategic improvement plans.* -- The state board shall promulgate a rule consistent with the provisions of this section and in accordance with article three-b, chapter twenty-nine-a of this code establishing an electronic county strategic improvement plan for each county board and an electronic school strategic improvement plan for each public school in this state. Each respective plan shall be a five-year plan that includes the mission and goals of the school or school system to improve student, school or school system performance and progress, as applicable. The strategic plan shall be revised annually in each area in which the school or system is below the standard on the annual

performance measures. The revised annual plan also shall identify any deficiency which is reported on the check lists identified in paragraph (G), subdivision (5), subsection (I) of this section including any deficit more than a casual deficit by the county board. The plan shall be revised when required pursuant to this section to include each annual performance measure upon which the school or school system fails to meet the standard for performance and progress, the action to be taken to meet each measure, a separate time line and a date certain for meeting each measure, a cost estimate and, when applicable, the assistance to be provided by the department and other education agencies to improve student, school or school system performance and progress to meet the annual performance measure.

The department shall make available to all public schools through its website or the West Virginia Education Information System an electronic school strategic improvement plan boilerplate designed for use by all schools to develop an electronic school strategic improvement plan which incorporates all required aspects and satisfies all improvement plan requirements of the No Child Left Behind Act.

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

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

The standards, as applicable, shall incorporate the state's 21st Century Skills Initiative and shall assure that graduates are prepared for continuing post-secondary education, training and work and that schools and school systems are making progress toward achieving the education goals of the state.

(d) Comprehensive statewide student assessment program. -- The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code establishing a comprehensive statewide student assessment program to assess student performance and progress in grades three through twelve. The state board may require that student proficiencies be measured through the ACT EXPLORE and the ACT PLAN assessments or other comparable assessments, which are approved by the state board and provided by future vendors. The state board may require that student

proficiencies be measured through the West Virginia writing assessment at any of the grade levels four, seven and ten determined by the state board to be appropriate: *Provided*, That, effective July 1, 2008, the state board may require that student proficiencies be measured through the West Virginia writing assessment at any of the grade levels four, seven and eleven determined by the state board to be appropriate. The state board may provide through the statewide assessment program other optional testing or assessment instruments applicable to grade levels kindergarten through grade twelve which may be used by each school to promote student achievement upon approval by the school curriculum team or the process for teacher collaboration to improve instruction and learning established by the faculty senate as provided in section six, article five-a of this chapter. ~~to promote student achievement.~~ The state board shall annually publish and make available, electronically or otherwise, to school curriculum teams and teacher collaborative processes the optional testing and assessment instruments. The failure of a school to use any optional testing and assessment may not be cited as a deficiency in any accreditation review of the school; nor may the exercise of its discretion, as provided in section six, article five-a of this chapter, in using the assessments and implementing the instructional strategies and programs that it determines best to promote student achievement at the school be cited as a deficiency in any accreditation review of the school or in the personnel evaluation of the principal. The use of assessment results are subject to the following:

- (1) The assessment results for grade levels three through eight and eleven are the only assessment results which may be used for determining whether any school or school system has made adequate yearly progress (AYP);
- (2) Only the assessment results in the subject areas of reading/language arts and mathematics may be used for determining whether a school or school system has made adequate yearly progress (AYP);
- (3) The results of the West Virginia writing assessment, the ACT EXPLORE assessments and the ACT PLAN assessments may not be used for determining whether a school or school system has made adequate yearly progress (AYP);
- (4) The results of testing or assessment instruments provided by the state board for optional use by schools and school systems to promote student achievement may not be used for determining whether a school or school system has made adequate yearly progress (AYP); and
- (5) All assessment provisions of the comprehensive statewide student assessment program in effect for the school year 2006-2007 shall remain in effect until replaced by the state board rule.

(e) *Annual performance measures for Public Law 107-110, the Elementary and Secondary Education Act of 1965, as amended (No Child Left Behind Act of 2001).* -- The standards shall include annual measures of student, school and school system performance and progress for the grade levels and the content areas defined by the act. The following annual measures of student, school and school system performance and progress shall be the only measures for determining whether adequately yearly progress under the No Child Left Behind Act has been achieved:

- (1) The acquisition of student proficiencies as indicated by student performance and progress on the required accountability assessments at the grade levels and content areas as required by the act subject to the limitations set forth in subsection (d) of this section.

(2) The student participation rate in the uniform statewide assessment must be at least ninety-five percent or the average of the participation rate for the current and the preceding two years is ninety-five percent for the school, county and state;

(3) Only for schools that do not include grade twelve, the school attendance rate which shall be no less than ninety percent in attendance for the school, county and state. The following absences ~~shall be~~ are excluded:

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

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

(C) Absent students for whom the attendance director has pursued judicial remedies compelling attendance to the extent of his or her authority; and

(4) The high school graduation rate which shall be no less than eighty percent for the school, county and state; or if the high school graduation rate is less than eighty percent, the high school graduation rate shall be higher than the high school graduation rate of the preceding year as determined from information on the West Virginia Education Information System on August 15, .

(f) *State annual performance measures for school and school system accreditation.* -- The state board shall establish a system to assess and weigh annual performance measures for state accreditation of schools and school systems in a manner that gives credit or points such as an index to prevent any one measure alone from causing a school to achieve less than full accreditation status or a school system from achieving less than full approval status: *Provided*, That a school or school system that achieves adequate yearly progress is eligible for no less than full accreditation or approval status, as applicable, and the system established pursuant to this subsection ~~shall only apply~~ applies only to schools and school systems that do not achieve adequate yearly progress.

The following types of measures, as may be appropriate at the various programmatic levels, may be approved by the state board for the school and school system accreditation:

(1) The acquisition of student proficiencies as indicated by student performance and progress on the uniform statewide assessment program at the grade levels as provided in subsection (d) of this section. The state board may approve providing bonus points or credits for students scoring at or above mastery and distinguished levels;

(2) Writing assessment results in grades tested;

(3) School attendance rates;

(4) Percentage of courses taught by highly qualified teachers;

(5) Percentage of students scoring at benchmarks on the currently tested ACT EXPLORE and ACT PLAN assessments or other comparable assessments, which are approved by the state board and provided by future vendors;

(6) Graduation rates;

(7) Job placement rates for vocational programs;

(8) Percent of students passing end-of-course career/technical tests;

(9) Percent of students not requiring college remediation classes; and

(10) Bonus points or credits for subgroup improvement, advanced placement percentages, dual credit completers and international baccalaureate completers.

(g) *Indicators of exemplary performance and progress.* -- The standards shall include indicators of exemplary student, school and school system performance and progress. The

indicators of exemplary student, school and school system performance and progress shall be used only as indicators for determining whether accredited and approved schools and school systems should be granted exemplary status. These indicators shall include, but are not limited to, the following:

- (1) The percentage of graduates who declare their intent to enroll in college and other post-secondary education and training following high school graduation;
- (2) The percentage of graduates who receive additional certification of their skills, competence and readiness for college, other post-secondary education or employment above the level required for graduation; and
- (3) The percentage of students who successfully complete advanced placement, dual credit and honors classes.

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

- (1) Curriculum delivery including, but not limited to, the use of distance learning;
- (2) Transportation;
- (3) Facilities;
- (4) Administrative practices;
- (5) Personnel;
- (6) Use of regional educational service agency programs and services, including programs and services that may be established by their assigned regional educational service agency or other regional services that may be initiated between and among participating county boards; and
- (7) Any other indicators as determined by the state board.

(i) *Assessment and accountability of school and school system performance and processes.* -- In accordance with the provisions of article three-b, chapter twenty-nine-a of this code, the state board shall establish by rule a system of education performance audits which measures the quality of education and the preparation of students based on the annual measures of student, school and school system performance and progress. The system of education performance audits shall provide information to the state board, the Legislature and the Governor, individually and collectively as the Process for Improving Education Council, upon which they may determine whether a thorough and efficient system of schools is being provided. The system of education performance audits shall include:

- (1) The assessment of student, school and school system performance and progress based on the annual measures set forth in subsection (d) of this section;
- (2) The evaluation of records, reports and other information collected by the department upon which the quality of education and compliance with statutes, policies and standards may be determined;
- (3) The review of school and school system electronic strategic improvement plans; and
- (4) The on-site review of the processes in place in schools and school systems to enable school and school system performance and progress and compliance with the standards.

(j) *Uses of school and school system assessment information.* -- The state board and the

Process for Improving Education Council established pursuant to section five-c of this article shall use information from the system of education performance audits to assist them in ensuring that a thorough and efficient system of schools is being provided and to improve student, school and school system performance and progress. Information from the system of education performance audits further shall be used by the state board for these purposes, including, but not limited to, the following:

(1) Determining school accreditation and school system approval status;
(2) Holding schools and school systems accountable for the efficient use of existing resources to meet or exceed the standards; and

(3) Targeting additional resources when necessary to improve performance and progress. The state board shall make accreditation information available to the Legislature, the Governor, the general public and to any individual who requests the information, subject to the provisions of any act or rule restricting the release of information.

(k) *Early detection and intervention programs.* -- Based on the assessment of student, school and school system performance and progress, the state board shall establish early detection and intervention programs using the available resources of the Department of Education, the regional educational service agencies, the Center for Professional Development and the Principals Academy, as appropriate, to assist underachieving schools and school systems to improve performance before conditions become so grave as to warrant more substantive state intervention. Assistance shall include, but is not limited to, providing additional technical assistance and programmatic, professional staff development, providing monetary, staffing and other resources where appropriate, and, if necessary, making appropriate recommendations to the Process for Improving Education Council.

(l) *Office of Education Performance Audits.* –

(1) To assist the state board and the Process for Improving Education Council in the operation of a system of education performance audits, the state board shall establish an Office of Education Performance Audits consistent with the provisions of this section. The Office of Education Performance Audits shall be operated under the direction of the state board independently of the functions and supervision of the State Department of Education and state superintendent. The Office of Education Performance Audits shall report directly to and be responsible to the state board and the Process for Improving Education Council created in section five-c of this article in carrying out its duties under the provisions of this section.

(2) The office shall be headed by a director who shall be appointed by the state board and who shall serve at the will and pleasure of the state board. The annual salary of the director shall be set by the state board and may not exceed eighty percent of the salary cap of the State Superintendent of Schools.

(3) The state board shall organize and sufficiently staff the office to fulfill the duties assigned to it by law and by the state board. Employees of the State Department of Education who are transferred to the Office of Education Performance Audits shall retain their benefits and seniority status with the Department of Education.

(4) Under the direction of the state board, the Office of Education Performance Audits shall receive from the West Virginia education information system staff research and analysis data on the performance and progress of students, schools and school systems, and shall

receive assistance, as determined by the state board, from staff at the State Department of Education, the regional education service agencies, the Center for Professional Development, the Principals Academy and the School Building Authority to carry out the duties assigned to the office.

(5) In addition to other duties which may be assigned to it by the state board or by statute, the Office of Education Performance Audits also shall:

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

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

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

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

(C) Determine, in conjunction with the assessment and accountability processes, what capacity may be needed by schools and school systems to meet the standards established by the state board and recommend to the state board and the Process for Improving Education Council plans to establish those needed capacities;

(D) Determine, in conjunction with the assessment and accountability processes, whether statewide system deficiencies exist in the capacity of schools and school systems to meet the standards established by the state board, including the identification of trends and the need for continuing improvements in education, and report those deficiencies and trends to the state board and the Process for Improving Education Council;

(E) Determine, in conjunction with the assessment and accountability processes, staff development needs of schools and school systems to meet the standards established by the state board and make recommendations to the state board, the Process for Improving Education Council, the Center for Professional Development, the regional educational service agencies, the Higher Education Policy Commission and the county boards;

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

(G) Develop reporting formats, such as check lists, which shall be used by the appropriate administrative personnel in schools and school systems to document compliance with various of the applicable laws, policies and process standards as considered appropriate and approved by the state board, including, but not limited to, the following:

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

(ii) The participation of students in appropriate physical assessments as determined by the state board, which assessment may not be used as a part of the assessment and accountability system;

(iii) The appropriate licensure of school personnel; and

(iv) The school provides multicultural activities.

Information contained in the reporting formats is subject to examination during an on-site review to determine compliance with laws, policies and standards. Intentional and grossly negligent reporting of false information are grounds for dismissal.

(m) *On-site reviews.* –

(1) The system of education performance audits shall include on-site reviews of schools and school systems which shall be conducted only at the specific direction of the state board upon its determination that the performance and progress of the school or school system are persistently below standard or that other circumstances exist that warrant an on-site review. Any discussion by the state board of schools to be subject to an on-site review or dates for which on-site reviews will be conducted may be held in executive session and is not subject to the provisions of article nine-a, chapter six of this code relating to open governmental proceedings. An on-site review shall be conducted by the Office of Education Performance Audits of a school or school system for the purpose of investigating the reasons for performance and progress that are persistently below standard and making recommendations to the school and school system, as appropriate, and to the state board on such measures as it considers necessary to improve performance and progress to meet the standard. The investigation may include, but is not limited to, the following:

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

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

(C) Evaluating the effectiveness and implementation status of school and school system electronic strategic improvement plans;

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

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

(F) Determining and reporting whether required reviews and inspections have been conducted by the appropriate agencies, including, but not limited to, the State Fire Marshal, the Health Department, the School Building Authority and the responsible divisions within the Department of Education, and whether noted deficiencies have been or are in the process of being corrected. The Office of Education Performance Audits may not conduct a duplicate review or inspection of any compliance reviews or inspections conducted by the department or its agents or other duly authorized agencies of the state, nor may it mandate more stringent compliance measures.

(2) The Director of the Office of Education Performance Audits shall notify the county superintendent of schools five school days prior to commencing an on-site review of the county school system and shall notify both the county superintendent and the principal five school days ~~prior to~~ before commencing an on-site review of an individual school: *Provided*, That the state board may direct the Office of Education Performance Audits to conduct an unannounced on-site review of a school or school system if the state board believes circumstances warrant an unannounced on-site review.

(3) The Office of Education Performance Audits shall conduct on-site reviews which are limited in scope to specific areas in which performance and progress are persistently below

standard as determined by the state board unless specifically directed by the state board to conduct a review which covers additional areas.

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

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

(5) The Office of Education Performance Audits shall reimburse a county board for the costs of substitutes required to replace county board employees while they are serving on a review team.

(6) At the conclusion of an on-site review of a school system, the director and team leaders shall hold an exit conference with the superintendent and shall provide an opportunity for principals to be present for at least the portion of the conference pertaining to their respective schools. In the case of an on-site review of a school, the exit conference shall be held with the principal and curriculum team of the school and the superintendent shall be provided the opportunity to be present. The purpose of the exit conference is to review the initial findings of the on-site review, clarify and correct any inaccuracies and allow the opportunity for dialogue between the reviewers and the school or school system to promote a better understanding of the findings.

(7) The Office of Education Performance Audits shall report the findings of an on-site review to the county superintendent and the principals whose schools were reviewed within thirty days following the conclusion of the on-site review. The Office of Education Performance Audits shall report the findings of the on-site review to the state board within forty-five days after the conclusion of the on-site review. A copy of the report shall be provided to the Process for Improving Education Council at its request. A school or county that believes one or more findings of a review are clearly inaccurate, incomplete or misleading, misrepresent or fail to reflect the true quality of education in the school or county or address issues unrelated to the health, safety and welfare of students and the quality of education, may appeal to the state board for removal of the findings. The state board shall establish a process for it to receive, review and act upon the appeals. The state board shall report to the Legislative Oversight Commission on Education Accountability during its July interim meetings, or as soon thereafter as practical, on each appeal during the preceding school year.

(8) The Legislature finds that the accountability and oversight of the following activities and programmatic areas in the public schools is controlled through other mechanisms and that additional accountability and oversight are not only unnecessary but counterproductive in

distracting necessary resources from teaching and learning. Therefore, notwithstanding any other provision of this section to the contrary, the following activities and programmatic areas are not subject to review by the Office of Education Performance Audits:

- (A) Work-based learning;
- (B) Use of advisory councils;
- (C) Program accreditation and student credentials;
- (D) Student transition plans;
- (E) Graduate assessment form;
- (F) Casual deficit;
- (G) Accounting practices;
- (H) Transportation services;
- (I) Special education services;
- (J) Safe, healthy and accessible facilities;
- (K) Health services;
- (L) Attendance director;
- (M) Business/community partnerships;
- (N) Pupil-teacher ratio/split grade classes;
- (O) Local school improvement council, faculty senate, student assistance team and curriculum team;
- (P) Planning and lunch periods;
- (Q) Skill improvement program;
- (R) Certificate of proficiency;
- (S) Training of county board members;
- (T) Excellence in job performance;
- (U) Staff development; and
- (V) Preventive discipline, character education and student and parental involvement.

(n) *School accreditation.* -- The state board annually shall review the information from the system of education performance audits submitted for each school and shall issue to every school one of the following approval levels: Exemplary accreditation status, distinction accreditation status, full accreditation status, temporary accreditation status, conditional accreditation status or low performing accreditation status.

(1) Full accreditation status shall be given to a school when the school's performance and progress meet or exceed the standards adopted by the state board pursuant to subsection (e) or (f), as applicable, of this section and it does not have any deficiencies which would endanger student health or safety or other extraordinary circumstances as defined by the state board. A school that meets or exceeds the performance and progress standards but has the other deficiencies shall remain on full accreditation status for the remainder of the accreditation period and shall have an opportunity to correct those deficiencies, notwithstanding other provisions of this subsection.

(2) Temporary accreditation status shall be given to a school when the school's performance and progress are below the level required for full accreditation status. Whenever a school is given temporary accreditation status, the county board shall ensure that the school's electronic strategic improvement plan is revised in accordance with subsection (b) of this section to increase the performance and progress of the school to a full accreditation status level. The revised plan shall be submitted to the state board for

approval.

(3) Conditional accreditation status shall be given to a school when the school's performance and progress are below the level required for full accreditation, but the school's electronic strategic improvement plan meets the following criteria:

(A) The plan has been revised to improve performance and progress on the standard or standards by a date or dates certain;

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

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

(4) Exemplary accreditation status shall be given to a school when the school's performance and progress substantially exceed the standards adopted by the state board pursuant to subsections (f) and (g) of this section. The state board shall promulgate legislative rules in accordance with the provisions of article three-b, chapter twenty-nine-a of this code designated to establish standards of performance and progress to identify exemplary schools.

(5) Distinction accreditation status shall be given to a school when the school's performance and progress exceed the standards adopted by the state board. The state board shall promulgate legislative rules in accordance with the provisions of article three-b, chapter twenty-nine-a of this code establishing standards of performance and progress to identify schools of distinction.

(6) Low-performing accreditation status shall be given to a school whenever extraordinary circumstances exist as defined by the state board.

(A) These circumstances shall include, but are not limited to, any one or more of the following:

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

(ii) The failure of a school on conditional accreditation status to meet the objectives and time line of its revised electronic school strategic improvement plan; ~~or~~

(iii) The failure of a school to meet a standard by the date specified in the revised plan; and

(iv) The results of the most recent statewide assessment in reading and math or other multiple measures as determined by the state board that identify the school as low performing at its programmatic level in three of the last five years.

(B) Whenever the state board determines that the quality of education in a school is low performing, the state board shall appoint a team of improvement consultants from the West Virginia Department of Education State System of Support to make recommendations ~~within sixty days of appointment~~ for correction of the low performance. ~~When the state board approves the recommendations, they~~ These recommendations shall be communicated to the county board and a process shall be established in conjunction with the State System of Support to correct the identified deficiencies. If progress in correcting the low performance as determined by the state board is not made ~~within six months from the time the county board receives the recommendations~~ one year following the implementation of the measures adopted to correct the identified deficiencies or by a date certain established by the state board after at least one year of implementation, the state board shall place the county board on temporary approval status and provide consultation and assistance to the county board to assist it in the following areas:

- (i) Improving personnel management;
 - (ii) Establishing more efficient financial management practices;
 - (iii) Improving instructional programs and rules; or
 - (iv) Making any other improvements that are necessary to correct the low performance.
- (C) If the low performance is not corrected by a date certain as set by the state board:
- (i) The state board shall appoint a monitor who shall be paid at county expense to cause improvements to be made at the school to bring it to full accreditation status within a reasonable time period as determined by the state board. The monitor's work location shall be at the school and the monitor shall work collaboratively with the principal. The monitor shall, at a minimum, report monthly to the state board on the measures being taken to improve the school's performance and the progress being made. The reports may include requests for additional assistance and recommendations required in the judgment of the monitor to improve the school's performance, including, but not limited to, the need for targeting resources strategically to eliminate deficiencies;
 - (ii) The state board may make a determination, in its sole judgment, that the improvements necessary to provide a thorough and efficient education to the students at the school cannot be made without additional targeted resources, in which case it shall establish a plan in consultation with the county board that includes targeted resources from sources under the control of the state board and the county board to accomplish the needed improvements. Nothing in this subsection shall be construed to allow a change in personnel at the school to improve school performance and progress, except as provided by law;
 - (iii) If the low performance is not corrected within one year after the appointment of a monitor, the state board may make a determination, in its sole judgment, that continuing a monitor arrangement is not sufficient to correct the low performance and may intervene in the operation of the school to cause improvements to be made that will provide assurances that a thorough and efficient system of schools will be provided. This intervention may include, but is not limited to, establishing instructional programs, taking such direct action as may be necessary to correct the low performance, declaring the position of principal is vacant and assigning a principal for the school who shall serve at the will and pleasure of and, under the sole supervision of, the state board: *Provided*, That prior to declaring that the position of the principal is vacant, the state board must make a determination that all other resources needed to correct the low performance are present at the school. If the principal who was removed elects not to remain an employee of the county board, then the principal assigned by the state board shall be paid by the county board. If the principal who was removed elects to remain an employee of the county board, then the following procedure applies:
 - (I) The principal assigned by the state board shall be paid by the state board until the next school term, at which time the principal assigned by the state board shall be paid by the county board;
 - (II) The principal who was removed ~~shall be~~ is eligible for all positions in the county, including teaching positions, for which the principal is certified, by either being placed on the transfer list in accordance with section seven, article two, chapter eighteen-a of this code, or by being placed on the preferred recall list in accordance with section seven-a, article four, chapter eighteen-a of this code; and

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

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

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

(o) *Transfers from low-performing schools.* -- Whenever a school is determined to be low performing and fails to improve its status within one year, following state intervention in the operation of the school to correct the low performance, any student attending the school may transfer once to the nearest fully accredited school in the county, subject to approval of the fully accredited school and at the expense of the school from which the student transferred.

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

(1) Full approval shall be given to a county board whose schools have all been given full, temporary or conditional accreditation status and which does not have any deficiencies which would endanger student health or safety or other extraordinary circumstances as defined by the state board. A fully approved school system in which other deficiencies are discovered shall remain on full accreditation status for the remainder of the approval period and shall have an opportunity to correct those deficiencies, notwithstanding other provisions of this subsection.

(2) Temporary approval shall be given to a county board whose education system is below the level required for full approval. Whenever a county board is given temporary approval status, the county board shall revise its electronic county strategic improvement plan in accordance with subsection (b) of this section to increase the performance and progress of the school system to a full approval status level. The revised plan shall be submitted to the state board for approval.

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

(i) The plan has been revised in accordance with subsection (b) of this section;
(ii) The plan has been approved by the state board; and (iii) The county board is meeting the objectives and time line specified in the revised plan.

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

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

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

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

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

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

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

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

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

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

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

(q) Notwithstanding any other provision of this section, the state board may intervene immediately in the operation of the county school system with all the powers, duties and

responsibilities contained in subsection (p) of this section, if the state board finds the following:

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

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

(r) *Capacity*. -- The process for improving education includes a process for targeting resources strategically to improve the teaching and learning process. Development of electronic school and school system strategic improvement plans, pursuant to subsection (b) of this section, is intended, in part, to provide mechanisms to target resources strategically to the teaching and learning process to improve student, school and school system performance. When deficiencies are detected through the assessment and accountability processes, the revision and approval of school and school system electronic strategic improvement plans shall ensure that schools and school systems are efficiently using existing resources to correct the deficiencies. When the state board determines that schools and school systems do not have the capacity to correct deficiencies, the state board shall work with the county board to develop or secure the resources necessary to increase the capacity of schools and school systems to meet the standards and, when necessary, seek additional resources in consultation with the Legislature and the Governor. The state board shall recommend to the appropriate body including, but not limited to, the Process for Improving Education Council, the Legislature, county boards, schools and communities methods for targeting resources strategically to eliminate deficiencies identified in the assessment and accountability processes. When making determinations on recommendations, the state board shall include, but is not limited to, the following methods:

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

(2) Determining the areas of weakness and of ineffectiveness that appear to have contributed to the substandard performance and progress of students or the deficiencies of the school or school system and requiring the school or school system to work collaboratively with the West Virginia Department of Education State System of Support to correct the deficiencies;

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

(4) Requesting technical assistance from the School Building Authority in assessing or designing comprehensive educational facilities plans;

(5) Recommending priority funding from the School Building Authority based on identified needs;

(6) Requesting special staff development programs from the Center for Professional Development, the Principals Academy, higher education, regional educational service agencies and county boards based on identified needs;

- (7) Submitting requests to the Legislature for appropriations to meet the identified needs for improving education;
- (8) Directing county boards to target their funds strategically toward alleviating deficiencies;
- (9) Ensuring that the need for facilities in counties with increased enrollment are appropriately reflected and recommended for funding;
- (10) Ensuring that the appropriate person or entity is held accountable for eliminating deficiencies; and
- (11) Ensuring that the needed capacity is available from the state and local level to assist the school or school system in achieving the standards and alleviating the deficiencies.

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-6. Establishment of school curriculum teams; process for teacher collaboration to improve learning.

(a) There shall be established at each school in the state a school curriculum team composed of the school principal, the counselor designated to serve that school and no fewer than three teachers representative of the grades taught at the school and chosen by the faculty senate: *Provided*, That for a school curriculum team established at an elementary school or a combination elementary and middle school, when the counselor is not assigned to the school on at least a one-half time basis, the curriculum team may meet on days when the counselor is not at the school and the principal shall consult with the counselor on the issues relevant to the meeting agenda.

The school curriculum team shall establish the programs and methods for implementing a curriculum based on state-approved ~~instructional goals and objectives~~ content standards based on the needs of the individual school with a focus on reading, composition, mathematics, science and technology. The curriculum thus established shall be submitted to the county board for approval or for return to the school for reconsideration.

The school curriculum team shall review the list of other non required testing and assessment instruments provided by the state board through the statewide assessment program as provided in section five, article two-e of this chapter and may select one or more of them that are applicable to the grade levels at the school for use at the school to improve student learning. The school has the discretion to use the assessments and implement the instructional strategies and programs, upon approval by the school curriculum team, that it determines best to promote student achievement at the school. The school curriculum team may apply for a waiver of any state or county policy requiring it to assess students using any specific assessment except the WESTEST2, the Alternative Performance Task Assessment, the Online Writing Assessment, and the National Assessment of Educational Progress (NAEP), or to employ any specific instructional strategy or program to achieve content standards for courses required by the state board. Attainment by the school of at least full accreditation status for the previous year shall be the factor considered for granting the waiver request.

The school curriculum team ~~also may apply through the school's local school improvement council for a waiver from the textbook adoption process established in~~ for a waiver for instructional resources approved and adopted pursuant to article two-a of this chapter if, in the judgment of the team, ~~materials~~ the instructional resources necessary for the implementation of ~~such~~ the instructional strategies and programs best suited to teach the school's curriculum are not available through the normal adoption process.

School curriculum teams may request waivers of non-state mandated tests listed in their county board policies. The determination of whether to grant the request shall be based on the school's accreditation status. Waivers are in effect for one year only. School curriculum teams may resubmit the same or additional waiver requests the following year. The school team may apply for a grant from the state board for the development or implementation, or both, of remedial and accelerated programs to meet the needs of the students at the individual school.

(b) Each faculty senate with approval of the principal may, in addition to or as an alternative to the school curriculum team provided for in subsection (a) of this section, establish a process for teacher collaboration to improve instruction and learning. The mission of the collaboration process is to review student academic performance based on multiple measures, to identify strategies to improve student performance and make recommendations for improvement to be implemented subject to approval of the principal. The collaborative process shall include such members as determined necessary by the faculty senate to address the needed improvements in the academic performance of students at the school and, if applicable, may consist of multiple subject area subcommittees which may meet independently.

House Bill 4512

Effective Date: Passed March 13, 2010; in effect July 1, 2010

Signed by Governor: April 2, 2010

Code Reference: Amends and reenact §18A-4-8, §18A-4-8a, §18A-4-8b and §18A-4-8e

Title: School Service Personnel Positions

Major Provisions:

- Prohibits the exclusive assignment of the duties ascribed to any other class title as defined in WVC §18A-4-8, to any service personnel employed as “director or coordinator of services.”
- Requires that all persons employed for the first time after July 1, 2010 as “Supervisor of Transportation,” or in a multi-classification position that includes this title, to have 5 years of experience working in school transportation of a county board. Experience working in the transportation department shall consist of serving as a bus operator, bus aide, assistant mechanic, mechanic, chief mechanic, or in a clerical position with the transportation department.
- Defines “itinerant status” as a service person who does not have a fixed work site and who may be involuntarily reassigned to another work site.
- Restricts county boards to establishing positions with itinerant status to the aide and autism mentor classification categories only, and then only when the job duties involve exceptional students.
- Allows an itinerant employee to be assigned to a different work site upon written notice ten (10) days prior to the reassignment.
- Restricts the involuntary reassignment of an itinerant service employee to no more than twice during a school year.
- Requires a county board, at the conclusion of each year, to post and fill all positions that have been filled without posting by a service person with itinerant status.
- Requires all service personnel job postings to include the work site and the starting and ending times of the daily shift.

- Requires all job postings in the aide classification categories to include the program or primary assignment of the position.
- Changes the certification requirement for substitute school bus operators and those on probationary contract to annually.
- Changes the certification requirement for school bus operators with continuing contracts to triennially, and prohibits a county board from requiring certification more frequently.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 4512

(By Delegates Caputo, Paxton, Perry, Fragale and D. Walker)

[Passed March 13, 2010; in effect July 1, 2010.]

AN ACT to amend and reenact §18A-4-8, §18A-4-8b and §18A-4-8e of the Code of West Virginia, 1931, as amended, all relating to school service personnel; limiting assignments of director or coordinator of services; requiring school bus supervisor to be certified to operate a bus or previously certified to operate a bus; requiring supervisor of transportation and multiclassification position that includes this title first employed after certain date to have five years of experience working in transportation department and defining experience; defining itinerant status, assignments, posting, limit on positions, and exclusions; requiring additional content of notice of a job vacancy generally and aide classification category specifically; and modifying test frequency for re-certifying a bus operators.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

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

(a) The purpose of this section is to establish an employment term and class titles for service personnel. The employment term for service personnel may not be less than ten months. A month is defined as twenty employment days. The county board may contract with all or part of these service personnel for a longer term. The beginning and closing dates of the ten-month employment term may not exceed forty-three weeks.

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

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

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

(e) If a service person whose regular work week is scheduled from Monday through Friday agrees to perform any work assignments on a Saturday or Sunday, the service person shall

be paid for at least one-half day of work for each day he or she reports for work. If the service person works more than three and one-half hours on any Saturday or Sunday, he or she shall be paid for at least a full day of work for each day.

(f) A custodian, aide, maintenance, office and school lunch service person required to work a daily work schedule that is interrupted shall be paid additional compensation in accordance with this subsection.

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

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

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

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

(B) Is payable entirely from county board funds.

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

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

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

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

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

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

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

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

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

(7) "Accounts payable supervisor" means a person employed in the county board office who has primary responsibility for the accounts payable function and who either has completed twelve college hours of accounting courses from an accredited institution of

higher education or has at least eight years of experience performing progressively difficult accounting tasks. Responsibilities of this class title may include supervision of other personnel;

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

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

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

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

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

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

(A) Has completed eighteen hours of state board-approved college credit at a regionally accredited institution of higher education, or

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

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

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

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

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

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

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

- (18) "Cabinetmaker" means a person employed to construct cabinets, tables, bookcases and other furniture;
- (19) "Cafeteria manager" means a person employed to direct the operation of a food services program in a school, including assigning duties to employees, approving requisitions for supplies and repairs, keeping inventories, inspecting areas to maintain high standards of sanitation, preparing financial reports and keeping records pertinent to food services of a school;
- (20) "Carpenter I" means a person classified as a carpenter's helper;
- (21) "Carpenter II" means a person classified as a journeyman carpenter;
- (22) "Chief mechanic" means a person employed to be responsible for directing activities which ensure that student transportation or other county board-owned vehicles are properly and safely maintained;
- (23) "Clerk I" means a person employed to perform clerical tasks;
- (24) "Clerk II" means a person employed to perform general clerical tasks, prepare reports and tabulations and operate office machines;
- (25) "Computer operator" means a qualified person employed to operate computers;
- (26) "Cook I" means a person employed as a cook's helper;
- (27) "Cook II" means a person employed to interpret menus and to prepare and serve meals in a food service program of a school. This definition includes a service person who has been employed as a "Cook I" for a period of four years;
- (28) "Cook III" means a person employed to prepare and serve meals, make reports, prepare requisitions for supplies, order equipment and repairs for a food service program of a school system;
- (29) "Crew leader" means a person employed to organize the work for a crew of maintenance employees to carry out assigned projects;
- (30) "Custodian I" means a person employed to keep buildings clean and free of refuse;
- (31) "Custodian II" means a person employed as a watchman or groundsman;
- (32) "Custodian III" means a person employed to keep buildings clean and free of refuse, to operate the heating or cooling systems and to make minor repairs;
- (33) "Custodian IV" means a person employed as head custodians. In addition to providing services as defined in "custodian III," duties may include supervising other custodian personnel;
- (34) "Director or coordinator of services" means an employee of a county board who is assigned to direct a department or division.
- (A) Nothing in this subdivision prohibits a professional person or a professional educator from holding this class title;
- (B) Professional personnel holding this class title may not be defined or classified as service personnel unless the professional person held a service personnel title under this section prior to holding the class title of "director or coordinator of services."
- (C) The director or coordinator of services shall be classified either as a professional person or a service person for state aid formula funding purposes;
- (D) Funding for the position of director or coordinator of services is based upon the employment status of the director or coordinator either as a professional person or a service person; and

(E) A person employed under the class title "director or coordinator of services" may not be exclusively assigned to perform the duties ascribed to any other class title as defined in this subsection: *Provided*, That nothing in this paragraph prohibits a person in this position from being multiclassified;

(35) "Draftsman" means a person employed to plan, design and produce detailed architectural/engineering drawings;

(36) "Electrician I" means a person employed as an apprentice electrician helper or one who holds an electrician helper license issued by the State Fire Marshal;

(37) "Electrician II" means a person employed as an electrician journeyman or one who holds a journeyman electrician license issued by the State Fire Marshal;

(38) "Electronic technician I" means a person employed at the apprentice level to repair and maintain electronic equipment;

(39) "Electronic technician II" means a person employed at the journeyman level to repair and maintain electronic equipment;

(40) "Executive secretary" means a person employed as secretary to the county school superintendent or as a secretary who is assigned to a position characterized by significant administrative duties;

(41) "Food services supervisor" means a qualified person who is not a professional person or professional educator as defined in section one, article one of this chapter. The food services supervisor is employed to manage and supervise a county school system's food service program. The duties include preparing in-service training programs for cooks and food service employees, instructing personnel in the areas of quantity cooking with economy and efficiency and keeping aggregate records and reports;

(42) "Foreman" means a skilled person employed to supervise personnel who work in the areas of repair and maintenance of school property and equipment;

(43) "General maintenance" means a person employed as a helper to skilled maintenance employees and to perform minor repairs to equipment and buildings of a county school system;

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

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

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

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

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

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

- (50) "Heavy equipment operator" means a person employed to operate heavy equipment;
- (51) "Inventory supervisor" means a person employed to supervise or maintain operations in the receipt, storage, inventory and issuance of materials and supplies;
- (52) "Key punch operator" means a qualified person employed to operate key punch machines or verifying machines;
- (53) "Licensed practical nurse" means a nurse, licensed by the West Virginia Board of Examiners for Licensed Practical Nurses, employed to work in a public school under the supervision of a school nurse;
- (54) "Locksmith" means a person employed to repair and maintain locks and safes;
- (55) "Lubrication man" means a person employed to lubricate and service gasoline or diesel-powered equipment of a county school system;
- (56) "Machinist" means a person employed to perform machinist tasks which include the ability to operate a lathe, planer, shaper, threading machine and wheel press. A person holding this class title also should have the ability to work from blueprints and drawings;
- (57) "Mail clerk" means a person employed to receive, sort, dispatch, deliver or otherwise handle letters, parcels and other mail;
- (58) "Maintenance clerk" means a person employed to maintain and control a stocking facility to keep adequate tools and supplies on hand for daily withdrawal for all school maintenance crafts;
- (59) "Mason" means a person employed to perform tasks connected with brick and block laying and carpentry tasks related to these activities;
- (60) "Mechanic" means a person employed to perform skilled duties independently in the maintenance and repair of automobiles, school buses and other mechanical and mobile equipment to use in a county school system;
- (61) "Mechanic assistant" means a person employed as a mechanic apprentice and helper;
- (62) "Multiclassification" means a person employed to perform tasks that involve the combination of two or more class titles in this section. In these instances the minimum salary scale shall be the higher pay grade of the class titles involved;
- (63) "Office equipment repairman I" means a person employed as an office equipment repairman apprentice or helper;
- (64) "Office equipment repairman II" means a person responsible for servicing and repairing all office machines and equipment. A person holding this class title is responsible for the purchase of parts necessary for the proper operation of a program of continuous maintenance and repair;
- (65) "Painter" means a person employed to perform duties painting, finishing and decorating wood, metal and concrete surfaces of buildings, other structures, equipment, machinery and furnishings of a county school system;
- (66) "Paraprofessional" means a person certified pursuant to section two-a, article three of this chapter to perform duties in a support capacity including, but not limited to, facilitating in the instruction and direct or indirect supervision of students under the direction of a principal, a teacher or another designated professional educator.
- (A) A person employed on the effective date of this section in the position of an aide may not be subject to a reduction in force or transferred to create a vacancy for the employment of a paraprofessional;

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

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

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

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

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

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

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

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

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

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

(75) "School bus supervisor" means a qualified person:

(A) Employed to assist in selecting school bus operators and routing and scheduling school buses, operate a bus when needed, relay instructions to bus operators, plan emergency routing of buses and promote good relationships with parents, students, bus operators and other employees; and

(B) Certified to operate a bus or previously certified to operate a bus;

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

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

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

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

(80) "Supervisor of transportation" means a qualified person employed to direct school transportation activities properly and safely, and to supervise the maintenance and repair of vehicles, buses and other mechanical and mobile equipment used by the county school system. After July 1, 2010, all persons employed for the first time in a position with this classification title or in a multi-classification position that includes this title shall have five years of experience working in the transportation department of a county board. Experience working in the transportation department shall consist of serving as a bus operator, bus aide, assistant mechanic, mechanic, chief mechanic or in a clerical position within the transportation department;

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

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

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

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

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

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

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

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

(l) Each county board shall review each service person's job classification annually and shall reclassify all service persons as required by the job classifications. The state superintendent may withhold state funds appropriated pursuant to this article for salaries for service personnel who are improperly classified by the county boards. Further, the state superintendent shall order a county board to correct immediately any improper

classification matter and, with the assistance of the Attorney General, shall take any legal action necessary against any county board to enforce the order.

(m) Without his or her written consent, a service person may not be:

(1) Reclassified by class title; or

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

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

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

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

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

(r) Itinerant status means a service person who does not have a fixed work site and may be involuntarily reassigned to another work site. A service person is considered to hold itinerant status if he or she has bid upon a position posted as itinerant or has agreed to accept this status. A county board may establish positions with itinerant status only within the aide and autism mentor classification categories and only when the job duties involve exceptional students. A service person with itinerant status may be assigned to a different work site upon written notice ten days prior to the reassignment without the consent of the employee and without posting the vacancy. A service person with itinerant status may be involuntarily reassigned no more than twice during the school year. At the conclusion of each school year, the county board shall post and fill, pursuant to section eight-b of this article, all positions that have been filled without posting by a service person with itinerant status. A service person who is assigned to a beginning and ending work site and travels at the expense of the county board to other work sites during the daily schedule, shall not be considered to hold itinerant status.

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

(a) A county board shall make decisions affecting promotions and the filling of any service personnel positions of employment or jobs occurring throughout the school year that are to

be performed by service personnel as provided in section eight of this article, on the basis of seniority, qualifications and evaluation of past service.

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

(1) Regularly employed service personnel who hold a classification title within the classification category of the vacancy;

(2) Service personnel who have held a classification title within the classification category of the vacancy whose employment has been discontinued in accordance with this section;

(3) Regularly employed service personnel who do not hold a classification title within the classification category of vacancy;

(4) Service personnel who have not held a classification title within the classification category of the vacancy and whose employment has been discontinued in accordance with this section;

(5) Substitute service personnel who hold a classification title within the classification category of the vacancy;

(6) Substitute service personnel who do not hold a classification title within the classification category of the vacancy; and

(7) New service personnel.

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

(d) A promotion means any change in employment that the service person considers to improve his or her working circumstance within the classification category of employment.

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

(2) Each class title listed in section eight of this article is considered a separate classification category of employment for service personnel, except for those class titles having Roman numeral designations, which are considered a single classification of employment:

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

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

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

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

(3) The assignment of an aide to a particular position within a school is based on seniority within the aide classification category if the aide is qualified for the position.

(4) Assignment of a custodian to work shifts in a school or work site is based on seniority within the custodian classification category.

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

(f) *Extra-duty assignments.* –

(1) For the purpose of this section, "extra-duty assignment" means an irregular job that occurs periodically or occasionally such as, but not limited to, field trips, athletic events, proms, banquets and band festival trips.

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

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

(B) An alternative procedure for making extra-duty assignments within a particular classification category of employment may be used if the alternative procedure is approved both by the county board and by an affirmative vote of two-thirds of the employees within that classification category of employment.

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

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

(2) Notice of a job vacancy shall include the job description, the period of employment, the work site, the starting and ending time of the daily shift, the amount of pay and any benefits and other information that is helpful to prospective applicants to understand the particulars of the job. The notice of a job vacancy in the aide classification categories shall include the program or primary assignment of the position. Job postings for vacancies made pursuant to this section shall be written to ensure that the largest possible pool of qualified applicants may apply. Job postings may not require criteria which are not necessary for the successful performance of the job and may not be written with the intent to favor a specific applicant.

(3) After the five-day minimum posting period, all vacancies shall be filled within twenty working days from the posting date notice of any job vacancies of existing or newly created positions.

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

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

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

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

(1) The employee with the least amount of seniority within that classification or grades of classification is properly released and employed in a different grade of that classification if there is a job vacancy;

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

(k) After a reduction in force or transfer is approved, but prior to August 1, a county board in its sole and exclusive judgment may determine that the reason for any particular reduction in force or transfer no longer exists.

(1) If the board makes this determination, it shall rescind the reduction in force or transfer and notify the affected employee in writing of the right to be restored to his or her former position of employment.

(2) The affected employee shall notify the county board of his or her intent to return to the former position of employment within five days of being notified or lose the right to be restored to the former position.

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

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

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

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

(n) A service person placed upon the preferred recall list shall be recalled to any position openings by the county board within the classification(s) where he or she had previously been employed, to any lateral position for which the service person is qualified or to a lateral area for which a service person has certification and/or licensure.

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

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

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

(r) A service person released from employment for lack of need as provided in sections six and eight-a, article two of this chapter is accorded preferred recall status on July 1 of the succeeding school year if he or she has not been reemployed as a regular employee.

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

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

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

§18A-4-8e. Competency testing for service personnel; and recertification testing for bus operators.

(a) The State Board of Education shall develop and make available competency tests for all of the classification titles defined in section eight of this article and listed in section eight-a of this article for service personnel. Each classification title defined and listed is considered a separate classification category of employment for service personnel and has a separate competency test, except for those class titles having Roman numeral designations, which are considered a single classification of employment and have a single competency test.

(1) The cafeteria manager class title is included in the same classification category as cooks and has the same competency test.

(2) The executive secretary class title is included in the same classification category as secretaries and has the same competency test.

(3) The classification titles of chief mechanic, mechanic and assistant mechanic are included in one classification title and have the same competency test.

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

(c) The competency test consists of an objective written or performance test, or both. Applicants may take the written test orally if requested. Oral tests are recorded mechanically and kept on file. The oral test is administered by persons who do not know the applicant personally.

(1) The performance test for all classifications and categories other than bus operator is administered by an employee of the county board or an employee of a multicounty vocational school that serves the county at a location designated by the superintendent and approved by the board. The location may be a vocational school that serves the county.

(2) A standard passing score is established by the state Department of Education for each test and is used by county boards.

(3) The subject matter of each competency test is commensurate with the requirements of the definitions of the classification titles as provided in section eight of this article. The subject matter of each competency test is designed in such a manner that achieving a passing grade does not require knowledge and skill in excess of the requirements of the

definitions of the classification titles. Achieving a passing score conclusively demonstrates the qualification of an applicant for a classification title.

(4) Once an employee passes the competency test of a classification title, the applicant is fully qualified to fill vacancies in that classification category of employment as provided in section eight-b of this article and may not be required to take the competency test again.

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

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

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

(g) A minimum of one day of appropriate in-service training is provided to employees to assist them in preparing to take the competency tests.

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

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

(j) The requirements of this section do not alter the definitions of class titles as provided in section eight of this article or the procedure and requirements of section eight-b of this article.

(k) Notwithstanding any other provision of this code to the contrary and notwithstanding any rules of the school board concerning school bus operator certification in effect on the effective date of this section, the re-certification test for a school bus operators shall be required is administered as follows, and school bus operators shall not be required to take the certification test more frequently:

(1) For substitute school bus operators and for a school bus operators with regular employee status who has been employed less than five consecutive years, but on a probationary contract, the certification test is administered biennially and may not be administered more frequently; and shall be administered annually;

(2) For a school bus operators with regular employee status and continuing contract status, who has been employed at least five consecutive years, the certification test is shall be administered every third year and may not be administered more frequently triennially; and

(3) For a substitute school bus operators or for a bus operator with regular employee status, but not a probationary contract, who are retired from a county board and who at the time of retirement had ten years of experience as a regular full-time bus operator, the certification test is shall be administered annually triennially.

The state board shall promulgate in accordance with article three-b, chapter twenty-nine-a

of this code, revised rules in compliance with this subsection.

H.B. 4593

Effective Date: Passed March 13, 2010, in effect July 1, 2010

Signed by Governor: March 26, 2010

Code Reference: Adds §18-8-6, and amends and reenacts
§18-8-1, §18-8-1a, §18-8-4, §18-9A-21, §62-15-4

Title: “High School Graduation Improvement Act” Related to
Compulsory School Attendance Age

Major Provisions:

- Raises compulsory school age to seventeen years old, beginning with the 2011-12 freshmen cohort class of students.
- General credit recovery programs shall be implemented statewide.
- The state board is to continue to improve career-technical education and expand Techademic programs.
- County boards will include in their alternative education program plans a plan to improve student retention and increase graduation rates in the county. This plan is subject to the approval of the state board and will include: increasing the graduation rate for the county, identifying at the earliest age students who are at-risk of dropping out and provide additional options to at-risk students.
- The state superintendent or designee is to pursue designation of WV as a GED Option state by the American Council on Education.
- The state board shall develop and implement a program whereby a student may pursue the GED diploma while remaining in school, ensure that the GED option is offered to students attending the Mountaineer Challenge Academy and provide exceptions for entry in career-technical programs for at-risk students in lower grade levels.
- Requires attendance directors to serve written notice to parents and/or guardians of students who have a total of five unexcused absences within a school year.

ENROLLED

H. B. 4593

(By Delegates Stowers, Perry, M. Poling, Paxton, D. Walker and Duke)

[Passed March 13, 2010; in effect July 1, 2010.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-8-6; to amend and reenact §18-8-1, §18-8-1a and §18-8-4 of said code; to amend and reenact §18-9A-21 of said code; and to amend and reenact §62-15-4 of said code, all relating to improving student participation, success and high school graduation rates; increasing the minimum age for ending compulsory school attendance; reducing the number of days of unexcused absences at which proceedings to enforce attendance begin; establishing the "High School Graduation Improvement Act"; establishing legislative findings and intent; requiring county board of education plan for improving student retention and increasing graduation rate; requiring state board of education to develop, expand and assist certain programs; requiring certain state superintendent reports to Legislative Oversight Commission on Education Accountability; increasing funding for alternative education programs; and authorizing establishment of additional juvenile drug courts.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-8-6; that §18-8-1, §18-8-1a and §18-8-4 of said code be amended and reenacted; that §18-9A-21 of said code be amended and reenacted; and that §62-15-4 of said code be amended and reenacted, all to read as follows:

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-1. ~~Commencement and termination of Compulsory school attendance; exemptions.~~

(a) Exemption from the requirements of compulsory public school attendance established in section one-a of this article shall begin with the school year in which the sixth birthday is reached prior to the first day of September or upon enrolling in a publicly supported kindergarten program and continue to the sixteenth birthday. Exemption from the foregoing requirements of compulsory public school attendance be made on behalf of any child for the causes or conditions set forth in this section. Each cause or condition set forth in this section is subject to confirmation by the attendance authority of the county.

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

in control, upon the request of the county superintendent, to furnish to the county board such information and records as may be required with respect to attendance, instruction and progress of pupils students enrolled ~~between the entrance age and sixteen years.~~

(c) A child ~~shall be~~ is exempt from the compulsory school attendance requirement set forth in section one-a of this ~~section~~ article if the requirements of either subdivision (1) ~~of this subsection~~ or subdivision (2) of this subsection, both relating to home instruction, are met.

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

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

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

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

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

(D) On or before June 30 ~~of each year~~ annually, the person or persons providing home instruction shall obtain an academic assessment of the child for the previous school year and submit the results to the county superintendent. When the academic assessment takes place outside of a public school, the parent or legal guardian shall pay the cost. The requirement of an academic assessment is satisfied in one of the following ways:

(i) The child receiving home instruction takes a nationally normed standardized achievement test to be administered under standardized conditions as set forth by the published instructions of the selected test in the subjects of reading, language, mathematics, science and social studies: ~~*Provided*, That in no event may~~ The child's parent or legal guardian may not administer the test in any event. The publication date of

the chosen test may not be more than ten years from the date of the administration of the test ~~is administered~~. The child ~~shall be~~ is considered to have made acceptable progress when the mean of the child's test results in the required subject areas for any single year meets or exceeds the fiftieth percentile or, if below the fiftieth percentile, shows improvement from the previous year's results;

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

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

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

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

(3) This subdivision applies to both home instruction exemptions set forth in subdivisions (1) and (2) of this subsection. The county superintendent or a designee shall offer such assistance, including textbooks, other teaching materials and available resources, all subject to availability, as may assist the person or persons providing home instruction ~~subject to their availability~~. Any child receiving home instruction may upon approval of the county board exercise the option to attend any class offered by the county board as the person or persons providing home instruction may consider appropriate subject to normal registration and attendance requirements.

(d) A child ~~shall be~~ is exempt from the compulsory school attendance requirement set forth in ~~subsection (a) of this section one-a of this article~~ if the requirements of this subsection, relating to physical or mental incapacity, are met. Physical or mental incapacity consists of incapacity for school attendance and the performance of school work. In all cases of prolonged absence from school due to incapacity of the child to attend, the written

statement of a licensed physician or authorized school nurse ~~shall be~~ is required ~~under the provisions of this article: *Provided, That in all cases,*~~. Incapacity shall be narrowly defined and in ~~no~~ any case shall the provisions of this article may not allow for the exclusion of the mentally, physically, emotionally or behaviorally handicapped child otherwise entitled to a free appropriate education.

(e) A child ~~shall be~~ is exempt from the compulsory school attendance requirement set forth in ~~subsection~~ section one-a of this ~~section~~ article if conditions rendering school attendance impossible or hazardous to the life, health or safety of the child exist.

(f) A child ~~shall be~~ is exempt from the compulsory school attendance requirement set forth in ~~subsection~~ section one-a of this ~~section~~ article upon regular graduation from a standard senior high school or alternate secondary program completion as determined by the state board.

(g) A child ~~shall be~~ is exempt from the compulsory school attendance requirement set forth in ~~subsection~~ section one-a of this ~~section~~ article if the child is granted a work permit pursuant to ~~this~~ the subsection. After due investigation the county superintendent may; ~~after due investigation,~~ grant work permits to youths under ~~sixteen years of the termination age designated in section one-a of this article,~~ subject to state and federal labor laws and regulations: ~~*Provided, That,*~~ A work permit may not be granted on behalf of any youth who has not completed the eighth grade of school.

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

(i) A child ~~shall be~~ is exempt from the compulsory school attendance requirement set forth in ~~subsection~~ section one-a of this ~~section~~ article if the requirements of this subsection, relating to destitution in the home, are met. Exemption based on a condition of extreme destitution in the home may be granted only upon the written recommendation of the county attendance director to the county superintendent following careful investigation of the case. A copy of the report confirming the condition and school exemption shall be placed with the county director of public assistance. This enactment contemplates every reasonable effort that may properly be taken on the part of both school and public assistance authorities for the relief of home conditions officially recognized as being so destitute as to deprive children of the privilege of school attendance. Exemption for this cause ~~shall~~ is not be allowed when the destitution is relieved through public or private means.

(j) A child ~~shall be~~ is exempt from the compulsory school attendance requirement set forth in ~~subsection~~ section one-a of this ~~section~~ article if the requirements of this subsection, relating to church ordinances and observances of regular church ordinances, are met. The county board may approve exemption for religious instruction upon written request of the person having legal or actual charge of a child or children: ~~*Provided, that the,*~~ This exemption shall be is subject to the rules prescribed by the county superintendent and approved by the county board.

(k) A child ~~shall be~~ is exempt from the compulsory school attendance requirement set forth in ~~subsection~~ section one-a of this ~~section~~ article if the requirements of this subsection,

relating to alternative private, parochial, church or religious school instruction, are met. Exemption shall be made for any child attending any private school, parochial school, church school, school operated by a religious order or other nonpublic school which elects to comply with the provisions of article twenty-eight of this chapter.

(l) Completion of the eighth grade ~~shall~~ does not exempt any child under ~~sixteen years of age~~ the compulsory termination age designated in section one-a of this article from the compulsory attendance provision of this article.

§18-8-1a. Commencement and termination of compulsory school attendance; public school entrance requirements; exceptions thereto.

(a) Notwithstanding the provisions of section one of this article, compulsory school attendance ~~shall begin~~ begins with the school year in which the sixth birthday is reached prior to September 1 of such year or upon enrolling in a publicly supported kindergarten program and, subject to subdivision (3) of this subsection, continues to the sixteenth birthday or for as long as the student ~~shall~~ continues to be enrolled in a school system after the sixteenth birthday: ~~Provided, That~~

(1) A child may be removed from such kindergarten program when the principal, teacher and parent or guardian concur that the best interest of the child would not be served by requiring further attendance: *Provided, however,* That the principal shall make the final determination with regard to compulsory school attendance in a publicly supported kindergarten program: ~~Provided further, That,~~

(2) The compulsory school attendance provision of this article shall be enforced against a person eighteen years of age or older for as long as the person continues to be enrolled in a school system, and ~~shall~~ may not be enforced against the parent, guardian, or custodian of ~~such~~ the person.

(3) Beginning with the 2011-2012 high school freshman cohort class of students, and notwithstanding the provisions of section one of this article, compulsory school attendance begins with the school year in which the sixth birthday is reached prior to September 1 of such year or upon enrolling in a publicly supported kindergarten program and continues to the seventeenth birthday or for as long as the student continues to be enrolled in a school system after the seventeenth birthday.

(4) Beginning with the December 2010 interim meeting period, and semiannually thereafter, the state superintendent shall report to the Legislative Oversight Commission on Education Accountability on the impact of the increased age requirement of subdivision (3) of this subsection, and the progress of the state board and the county boards in implementing the requirements of section six of this article.

(b) Attendance at a state-approved or Montessori kindergarten, as provided ~~for~~ in section eighteen, article five of this chapter, ~~shall be~~ is deemed school attendance for purposes of this section. Prior to entrance into the first grade in accordance with section five, article two of this chapter, each child must have either:

(1) Successfully completed such publicly or privately supported, state-approved kindergarten program or Montessori kindergarten program; or

(2) Successfully completed an entrance test of basic readiness skills approved by the county in which the school is located: ~~Provided, That such,~~ The test may be administered in lieu of kindergarten attendance only under extraordinary circumstances to be determined by the county board.

(c) Notwithstanding the provisions of this section and of section five, article two of this chapter and section eighteen, article five of this chapter, a county board may provide for advanced entrance or placement under policies adopted by said board for any child who has demonstrated sufficient mental and physical competency for such entrance or placement. ~~Nothing herein shall~~

(d) ~~This section does not~~ prevent a student from another state from enrolling in the same grade in a public school in West Virginia ~~in such grade~~ as the student was enrolled at the school from which the student transferred.

§18-8-4. Duties of attendance director and assistant directors; complaints, warrants and hearings.

(a) The county attendance director and the assistants shall diligently promote regular school attendance. ~~They~~ The director and assistants shall:

(1) Ascertain reasons for inexcusable absences from school of ~~pupils~~ students of compulsory school age and students who remain enrolled beyond the ~~sixteenth birthday~~ compulsory school age as defined under section one-a of this article; and shall

(2) Take such steps as are, in their discretion, best calculated to correct attitudes of parents and ~~pupils~~ students which result in absences from school even though not clearly in violation of law.

(b) In the case of ~~five consecutive or ten total~~ unexcused absences of a ~~child~~ student during a school year, the attendance director or assistant shall:

(1) Serve written notice to the parent, guardian or custodian of ~~such child~~ the student that the attendance of ~~such child~~ the student at school is required and that within ten days of receipt of the notice the parent, guardian or custodian, accompanied by the ~~child~~ student, shall report in person to the school the ~~child~~ student attends for a conference with the principal or other designated representative of the school in order to discuss and correct the circumstances causing the inexcusable absences of the ~~child~~ student; and if the parent, guardian or custodian does not comply with the provisions of this article, then the attendance director or assistant shall make complaint against the parent, guardian or custodian before a magistrate of the county. If it appears from the complaint that there is probable cause to believe that an offense has been committed and that the accused has committed it, a summons or a warrant for the arrest of the accused shall issue to any officer authorized by law to serve the summons or to arrest persons charged with offenses against the state. More than one parent, guardian or custodian may be charged in a complaint. Initial service of a summons or warrant issued pursuant to the provisions of this section shall be attempted within ten calendar days of receipt of the summons or warrant and subsequent attempts at service shall continue until the summons or warrant is executed or until the end of the school term during which the complaint is made, whichever is later.

(c) The magistrate court clerk, or the clerk of the circuit court performing the duties of the magistrate court as authorized in section eight, article one, chapter fifty of this code, shall assign the case to a magistrate within ten days of execution of the summons or warrant. The hearing shall be held within twenty days of the assignment to the magistrate, subject to lawful continuance. The magistrate shall provide to the accused at least ten days' advance notice of the date, time and place of the hearing.

(d) When any doubt exists as to the age of a ~~child~~ student absent from school, the attendance director shall have has authority to require a properly attested birth certificate or

an affidavit from the parent, guardian or custodian of ~~such child~~ the student, stating age of the ~~child~~ student. ~~In the performance of his or her duties,~~ the county attendance director ~~or~~ assistant ~~shall, in the performance of his or her duties,~~ have has authority to take without warrant any ~~child~~ student absent from school in violation of the provisions of this article and to place ~~such child~~ the student in the school in which ~~such child~~ he or she is or should be enrolled.

(e) The county attendance director shall devote such time as is required by section three of this article to the duties of attendance director in accordance with this section during the instructional term and at such other times as the duties of an attendance director are required. All attendance directors hired for more than two hundred days may be assigned other duties determined by the superintendent during the period in excess of two hundred days. The county attendance director ~~shall be~~ is responsible under direction of the county superintendent for efficiently administering school attendance in the county ~~superintendent for the efficient administration of school attendance in the county.~~

(f) In addition to those duties directly relating to the administration of attendance, the county attendance director and assistant directors also shall ~~also~~ perform the following duties:

(1) Assist in directing the taking of the school census to see that it is taken at the time and in the manner provided by law;

(2) Confer with principals and teachers on the comparison of school census and enrollment for the detection of possible nonenrollees;

(3) Cooperate with existing state and federal agencies charged with enforcing child labor laws;

(4) Prepare a report for submission by the county superintendent to the State Superintendent of Schools on school attendance, at such times and in such detail as may be required. The state board shall promulgate a legislative rule pursuant to article three-b, chapter twenty-nine-a of this code that sets forth student absences that ~~shall be~~ are excluded for accountability purposes. The absences that ~~shall be~~ are excluded by the rule include, but are not be limited to, excused student absences, students not in attendance due to disciplinary measures and absent students for whom the attendance director has pursued judicial remedies to compel attendance to the extent of his or her authority. The attendance director shall file with the county superintendent and county board ~~of education~~ at the close of each month a report showing activities of the school attendance office and the status of attendance in the county at the time;

(5) Promote attendance in the county by ~~the compilation of~~ compiling data for schools and by furnishing suggestions and recommendations for publication through school bulletins and the press, or in such manner as the county superintendent may direct;

(6) Participate in school teachers' conferences with parents and students;

(7) Assist in such other ways as the county superintendent may direct for improving school attendance;

(8) Make home visits of students who have excessive unexcused absences, as provided above, or if requested by the chief administrator, principal or assistant principal; and

(9) Serve as the liaison for homeless children and youth.

§18-8-6. The High School Graduation Improvement Act.

(a) This section is known and may be cited as "The High School Graduation Improvement Act."

(b) The Legislature makes the following findings:

(1) West Virginia has a dire need to implement a comprehensive approach to addressing the high school drop-out crisis, and to develop policies and strategies that successfully assist at-risk students to stay in school, earn a high school diploma, and ultimately become productively contributing members of society;

(2) The current demands for a highly skilled workforce require a high school diploma at the very minimum;

(3) The state has several dynamic programs that are capable of actively engaging students in learning, providing students with a sense of relevancy in academics, and motivating students to succeed in school and ultimately earn a high school diploma;

(4) Raising the compulsory school attendance age alone will neither increase the graduation rate nor decrease the drop-out rate. It is imperative that the state shift the focus from merely compelling students to attend school to instead providing vibrant and engaging programs that allow students to recognize the value of a high school diploma or workforce credential and inspire students to graduate from high school, especially those students who are at risk of dropping out of school;

(5) Investing financially in this focus shift will result in the need for fewer resources to be committed to enforcing compulsory attendance laws and fewer incidents of disruptive student behavior;

(6) Absenteeism is proven to be the highest predictor of course failure. Truant students face low self-confidence in their ability to succeed in school because their absences cause them to fall behind their classmates, and the students find dropping out easier than catching up;

(7) There is a strong relationship between truancy and dropping out of high school. Frequent absences are one of the most common indicators that a student is disengaging from the learning process and likely to drop out of school early. Intervention after fewer absences is likely to have a positive impact on a student's persistence to graduation;

(8) Students cite many reasons for dropping out of school, some of which include engaging in drug culture, lack of positive influence, role model or parental involvement, absence of boundaries and direction, lack of a positive home environment, peer pressure, and poor community expectations;

(9) Dropping out of school has a profound negative impact on an individual's future, resulting in limited job choices, substantially lower wages and less earned over a life-time than high school graduates, and a greater likelihood of depending on public assistance and engaging in criminal activity;

(10) Career-technical education is a dynamic system in West Virginia which offers numerous concentrations that provide students with industry-recognized credentials, while also preparing them for post-secondary education;

(11) All career-technical education students in the state have an opportunity to earn free college credit through the Earn a Degree-Graduate Early (EDGE) program;

(12) The current high school graduation rate for secondary career-technical education completers is significantly higher than the state graduation rate;

- (13) Students involved in career-technical education learn a marketable skill, are likely to find jobs, and become prepared for post-secondary education;
- (14) A significant number of students who could benefit from participating in a career-technical program are denied access due to a number of factors, such as dropping out of high school prior to enrolling in career-technical education, requirements that students repeat academic courses that they have failed, and scheduling conflicts with the high schools;
- (15) There has been a dramatic change over the years from vocational education, which was very basic and lacked high level skills, to the career-technical programs of today which are computer based, require national tests and certification, and often result in jobs with high salaries;
- (16) West Virginia's employers and technical education job placement rates show that the state needs graduates with technical skills to compete in the current and future job markets;
- (17) The job placement rate for students graduating from career-technical programs statewide is greater than ninety-five percent;
- (18) Among the reasons students cite for dropping out of school are feelings of hopelessness when they have failed classes and can not recover credits in order to graduate;
- (19) The state offers full-day programs consisting of credit recovery, hands on experiences in career-technical programs and basic education, which are valuable resources for re-engaging students who have dropped out of school, or have a potential for or are at risk of dropping out;
- (20) A student is significantly more likely to graduate from high school if he or she completes four units of training in technical education;
- (21) Learning is increased and retained at a higher level if the content is taught through a relevant and applied experience, and students who are able to experience academics through real life projects have a higher probability of mastering the appropriate concepts;
- (22) Programs such as "GED Option" and "Techademics" are valuable resources for providing relevant and applied experience for students;
- (23) The Techademics programs administered by the department of education has embedded math competencies in career-technical program curricula whereby students simultaneously earn credit for mastery of math competencies and career-technical courses;
- (24) Students would greatly benefit if West Virginia were designated as a "GED Option" state. Currently a student is ineligible to take the General Educational Development (GED) exam if he or she is enrolled in school, which requires the student to drop out of high school in order to participate in a GED preparation program or take the exam, even if the student desires to remain enrolled;
- (25) A GED Option state designation by the American Council on Education would allow students in this state to remain enrolled in school and continue acquiring academic and career-technical credits while pursuing a GED diploma. The GED Option would be blended with the West Virginia virtual schools or a career-technical education pathway. Upon completion, rather than being a dropout, the student would have a GED diploma and a certification in the chosen career- technical or virtual school pathway;
- (26) The Mountaineer Challenge Academy is a positive option for students at risk of dropping out of school, as it provides students with structure, stability, and a focus on

positive change, all in an environment where negative influences and distractions can be left behind;

(27) Students attending the Mountaineer Challenge Academy would greatly benefit if the GED Option were implemented at the Academy;

(28) The Health Sciences and Technology Academy (HSTA) program prepares rural, minority and economically disadvantaged students for college and careers in the health sciences, and demonstrates tremendous success in its high percentage of students who graduate from high school and participate in post-secondary education.

(29) The West Virginia GEAR UP (Gaining Early Awareness and Readiness for Undergraduate Programs) program is aimed at increasing the academic performance and rigorous preparation of students, increasing the number of high-poverty, at-risk students who are prepared to enter and succeed in post-secondary education, and increasing the high school graduation rate;

(30) The GEAR UP program successfully aids students in planning, applying and paying for education and training beyond high school;

(31) Each dropout involved in drugs or crime or dependent on public assistance creates a huge fiscal burden on society;

(32) The intense treatment and individual monitoring provided through the state's juvenile drug courts have proven to be highly effective in treating drug addictions, and rehabilitating drug addicted youth and improving their educational outcomes;

(33) Services provided by juvenile drug courts include substance abuse treatment, intervention, assessment, juvenile and family counseling, heavy supervision by probation officers including school-based probation officers who provide early intervention and diversion services, and addressing some of the underlying reasons why students are not successful in school;

(34) School participation and attendance are required for students participating in juvenile drug courts, and along with academic progress are closely monitored by the courts;

(35) Juvenile drug courts are an important strategy to improve substance abuse treatment outcomes, and serve to save the state significant cost on incarceration of the juveniles, along with the future costs to society of individuals who remain substance abusers;

(36) Juvenile drug courts produce greater cost benefits than other strategies that address criminal activity related to substance abuse and addiction that bring individuals into the criminal justice system;

(37) Funding for the increased number of students enrolled in school during the 2010-2011 school year due to the compulsory school attendance age increase established by this act will not be reflected in the state aid formula allocation until the 2011-2012 school year, which will require additional funds to be provided to county boards for the 2010-2011 school year to accommodate the increased enrollment;

(38) The state will benefit both fiscally and through improved quality of life if scarce state resources are targeted toward programs that result in providing a competitive advantage as adults for those students who are at risk of dropping out of school;

(39) Funds invested toward education and ensuring that students complete high school pay tremendous dividends through the moneys saved on incarceration, unemployment and underemployment as those students reach adulthood; and

(40) Increasing the compulsory school attendance age will have little effect in aiding students to complete high school if additional resources, both fiscal and programmatic, are not dedicated to supporting student achievement, providing real-life relevancy in curriculum, and engaging students in learning, particularly for those students who have become so disengaged from school and learning that they are at risk of dropping out of school.

(c) The Legislature intends as follows:

(1) The state will continue to explore diverse instructional delivery strategies to accommodate various learning styles and will focus on a state-wide dropout intervention and prevention program to provide support for students having academic difficulty;

(2) A general credit recovery program shall be implemented statewide, including delivery through West Virginia virtual schools;

(3) The state board will continue to improve the way career- technical education is offered, including expansion of the Techademics program;

(4) Up to five additional juvenile drug courts shall be established by January 1, 2012;

(5) The state will invest additional state funds and other resources in strategies and programs that engage disconnected and discouraged students in a positive learning environment as a critical first step to ensuring that students persist and graduate; and

(6) County boards will develop plans to demonstrate how they will use available funds to implement the intent of this section.

(d) Each county board shall include in its alternative education program plan required by section six, article two, of this chapter a plan to improve student retention and increase the graduation rate in the county. The plan is subject to approval of the state board, and shall include strategies the county board will implement to achieve the following goals:

(1) Increasing the graduation rate for the county;

(2) Identifying at the earliest age possible those students who are at risk of dropping out of school prior to graduation; and

(3) Providing additional options for delivering to at-risk students academic credentials and career-technical training if appropriate or desired by the student. The options may include such programs as Techademics, Earn a Degree-Graduate Early (EDGE), Health Sciences and Technology Academy (HSTA), Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP), truancy diversion, early intervention, dropout prevention, prevention resource officers, GED option, credit recovery, alternative learning environments, or any other program or strategy approved by the state board.

(e) As soon as is practicable the state superintendent or his or her designee shall pursue designation of West Virginia as a "GED Option" state by the American Council on Education. If so designated, the state board shall:

(1) Develop and implement a program whereby a student may pursue a GED diploma while remaining enrolled in high school; and

(2) Ensure that the GED Option is offered to students attending the Mountaineer Challenge Academy.

(f) The state board shall continue to expand:

(1) The Techademics program to include each major academic subject and increase the academic credit available through the program to students; and

(2) The Health Sciences and Technology Academy to ensure that the program is available for any school containing any of the grade levels of eligible students.

(g) The state board shall ensure that the dropout information required by section twenty-four, article one-b, chapter fifteen of this code is provided annually to the Mountaineer Challenge Academy.

(h) Some career and technical education programs only except students in certain upper high school grade levels due to lack of capacity to accept the students in the lower high school grade levels. This can be detrimental to efforts to keep students identified as at risk of dropping out of school prior to graduation in school. Therefore, those career and technical education programs that only students in certain upper high school grade levels to enroll may make exceptions for those at risk students and enroll any of those at risk students who are in grades nine and above.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-21. Funding for alternative education programs.

(a) An appropriation may be made to the state department to be distributed to county boards for the operation of alternative education and prevention programs established in accordance with policies and procedures adopted by the state board under section six, article two of this chapter. The appropriation shall be an amount equal to ~~twelve~~ eighteen dollars per student in net enrollment, subject to appropriation by the Legislature. The state board shall distribute ninety- ~~seven~~ eight percent of the total appropriation to the county boards proportionate to each county's net enrollment. The remaining two percent of the appropriation shall be retained by the state department to support the provision of services to the county boards in administering programs established in accordance with policies and procedures adopted by the state board under section six, article two of this chapter: *Provided, That,*

(b) Nothing in this section may be construed to require any specific level of funding by the Legislature.

(c) The increase from \$12 per student in net enrollment to \$18 per student in net enrollment pursuant to the amendment and enactment of this section during the 2010 regular session of the Legislature is not subject to the provisions of section three-a.

ARTICLE 15. DRUG OFFENDER ACCOUNTABILITY AND TREATMENT ACT.

§62-15-4. Court authorization and structure.

(a) Each judicial circuit or two or more adjoining judicial circuits may establish a drug court or regional drug court program under which drug offenders will be processed to address appropriately, the identified substance abuse problem as a condition of pretrial release, probation, incarceration, parole or other release from a correctional facility.

(b) The structure, method, and operation of each drug court program may differ and should be based upon the specific needs of and resources available to the judicial circuit or circuits where the drug court program is located.

(c) A drug court program may be preadjudication or post- adjudication for an adult offender.

(d) Participation in drug court, with the consent of the prosecution and the court, shall be pursuant to a written agreement.

(e) A drug court may grant reasonable incentives under the written agreement if it finds that the drug offender:

- (1) Is performing satisfactorily in drug court;
- (2) Is benefitting from education, treatment and rehabilitation;
- (3) Has not engaged in criminal conduct; or

- (4) Has not violated the terms and conditions of the agreement.
- (f) A drug court may impose reasonable sanctions on the drug offender, including incarceration for the underlying offense or expulsion from the program, pursuant to the written agreement, if it finds that the drug offender:
- (1) Is not performing satisfactorily in drug court;
 - (2) Is not benefitting from education, treatment or rehabilitation;
 - (3) Has engaged in conduct rendering him or her unsuitable for the program;
 - (4) Has otherwise violated the terms and conditions of the agreement; or
 - (5) Is for any reason unable to participate.
- (g) Upon successful completion of drug court, a drug offender's case shall be disposed of by the judge in the manner prescribed by the agreement and by the applicable policies and procedures adopted by the drug court. This may include, but is not limited to, withholding criminal charges, dismissal of charges, probation, deferred sentencing, suspended sentencing, split sentencing, or a reduced period of incarceration.
- (h) Drug court shall include the Ten Key Components and the drug court team shall act to ensure compliance with them.
- (i) Nothing contained in this article shall confer a right or an expectation of a right to participate in a drug court nor does it obligate a drug court to accept every drug offender.
- (j) Neither the establishment of a drug court nor anything herein shall may be construed as limiting the discretion of the jurisdiction's prosecutor to act on any criminal case which he or she deems advisable to prosecute.
- (k) Each drug court judge may establish rules and may make special orders as necessary that do not conflict with rules and orders promulgated by the Supreme Court of Appeals which has administrative authority over the courts. The Supreme Court of Appeals shall provide uniform referral, procedure and order forms that shall be used in all drug courts in this state.
- (l) In addition to the number of juvenile drug courts operating on the effective date of this section, up to five additional juvenile drug courts or regional juvenile drug court programs may be established by January 1, 2012, as determined by the Supreme Court of Appeals.

Senate Bill HB 4615

Effective Date: Passed March 12, 2010, in effect from passage

Signed by Governor: April 1, 2010

Code Reference: Amends and reenacts §29-12A-16

Title: Workers' Compensation Self Insurance Pool

Major Provisions:

- Authorizes any group of two or more political subdivisions, upon approval of the Insurance Commissioner, to establish and maintain a self-insurance pool to insure their workers' compensation risks, provided that the commissioner may disapprove any application to operate such a risk pool until rules regulating the program have been made effective.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 4615

(By Delegate Campbell)

[Passed March 12, 2010; in effect from passage.]

AN ACT to amend and reenact §29-12A-16 of the Code of West Virginia, 1931, as amended, relating to authorizing political subdivisions to establish risk pools to insure their workers' compensation risks; providing that political subdivisions may not make application to the Insurance Commissioner to operate a risk pool until rules promulgated to regulate such programs have been made effective; and authorizing the Insurance Commissioner to promulgate emergency rules.

Be it enacted by the Legislature of West Virginia:

That §29-12A-16 of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 12A. GOVERNMENTAL TORT CLAIMS AND INSURANCE REFORM ACT.

§29-12A-16. Procurement of liability insurance and self-insurance.

(a) A political subdivision may use public funds to secure insurance with respect to its potential liability and that of its employees for damages in civil actions for injury, death or loss to persons or property allegedly caused by an act or omission of the political subdivision or any of its employees, including insurance coverage procured through the State Board of Risk and Insurance Management. The insurance may be at the limits for the circumstances, and subject to the terms and conditions that are determined by the political subdivision in its discretion.

The insurance may be for the period that is set forth in specifications for competitive bids or, when competitive bidding is not required, for the period that is mutually agreed upon by the political subdivision and insurance company. The period does not have to be, but can be, limited to the fiscal cycle under which the political subdivision is funded and operates.

(b)(1) Regardless of whether a political subdivision procures a policy or policies of liability insurance pursuant to subsection (a) of this section or otherwise:

(A) Any political subdivision may establish and maintain a self-insurance program relative to its potential liability and that of its employees for damages in civil actions for injury, death, or loss to persons or property allegedly caused by an act or omission of the political subdivision or any of its employees; or

(B) Any group of two or more political subdivisions may establish and maintain a self-insurance pool relative to their collective potential liability and that of their collective employees for damages in civil actions for injury, death or loss to persons or property allegedly caused by an act or omission of the political subdivision or any of its employees.

(2) Beginning July 1, 2010, any group of two or more political subdivisions may, upon approval of the Insurance Commissioner, establish and maintain a self-insurance pool to insure their workers' compensation risks: *Provided*, That political subdivisions may not make application to the Insurance Commissioner to operate a risk pool until rules promulgated pursuant to subsection (g) of this section regulating such programs have been made effective.

(3) If it so chooses, the political subdivision or group of political subdivisions may contract with any person, any licensed West Virginia insurance agent, other political subdivision, municipal association, county association or regional council of governments for purposes of the administration of the program or pool.

(c) Political subdivisions that have established self-insurance programs relative to their potential liability and that of their employees, as described in ~~subdivision paragraph (A), subsection subdivision (b)(1), of this section~~ subsection (b) of this section, may mutually agree that their self-insurance programs may be jointly administered in a specified manner.

(d) The purchase of liability insurance, or the establishment and maintenance of a self-insurance program, by a political subdivision does not constitute a waiver of any immunity it may have pursuant to this article or any defense of the political subdivision or its employees.

(e) The authorization for political subdivisions to secure insurance and to establish and maintain self-insurance programs and pools, as set out in subsections (a) and (b) in this section, are in addition to any other authority to secure insurance or to establish and maintain self-insurance that is granted pursuant to this code or the Constitution of this state, and they are not in derogation of any other authorization.

(f) An insurance agent licensed in West Virginia is authorized to establish or write policies for a self-insurance program or pool for political subdivisions, pursuant to the provisions of this section.

(g) The Insurance Commissioner of insurance shall propose rules for legislative approval, pursuant to the provisions of chapter twenty-nine-a of this code, setting forth the criteria for establishing and maintaining self-insurance programs and pools for political subdivisions, and may promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code.

H. B. 4669

Effective Date: Passed March 11, 2010, in effect 90 days after passage (June 9, 2010)

Signed by Governor: March 19, 2010

Code Reference: Adds §18-5B-10

Title: Relating to Granting Exceptions to Certain Statutes to Innovation Zone Plans Approved by State Board; Specifying Scope, Limitations and Conditions on Exceptions Granted.

Major Provisions:

- Authorizes Legislature to grant an exception to the statute or statutes indicated for the following schools for the purposes enumerated in their innovation zone plans approved by the state board at its meeting on the date specified.

Does not prohibit a school or schools with an approved innovation zone plan from requesting plan modifications, subject to approval of the state board, and if the modifications change the purposes for which an exception to a statute was granted, the state board shall request an exception to achieve the new purposes in the manner provided in section five of this article for requesting exceptions to a statute.

- If the approved innovation zone plan of a school or schools is withdrawn by the state board, or the innovation zone designation of a school or schools is revoked by the state board, the exception granted to that school or those schools is expressly repealed.
- The following exceptions are granted:
 - Piedmont Elementary School, Kanawha County, is excepted from subsection (3), section fourteen, article four, chapter eighteen-a of this code for the purpose of allowing specialist teachers to take their planning period before and after school totaling one hour, three days per week, and from section eighteen-a, article five of this chapter for the purpose of permitting a number of students in music and physical education classes in excess of the class size limits to provide the time and structure for teams to meet in professional learning communities.

- Putnam County High Schools Consortium comprised of Buffalo High School, Hurricane High School, Poca High School, Winfield High School and Putnam Career & Technical Center, Putnam County, is excepted from section forty-five, article five of this chapter for the purpose of establishing a structured transition program for freshman only one day prior to the beginning of the regular instructional term, and for the purpose of permitting the creation of not more than three hours each month during the school term of structured, regularly scheduled time for all teachers to work in professional learning communities.
- Nellis Elementary School, Boone County, is excepted from subsection (a), section two, article five-a of this chapter, for the purpose of expanding the membership of its local school improvement council.
- Cabell County Secondary School Consortium comprised of Cabell County Career Technical Center, Cabell Midland High School and Huntington High School, Cabell County, is excepted from sections one and one-a, article eight of this chapter for the purpose of raising the compulsory school attendance age to eighteen years old, and from section two-b, article three, chapter eighteen-a of this code for the purpose of providing a customized high quality beginning teacher induction program developed at the county level.

ENROLLED

H. B. 4669

(By Delegates Shaver, D. Walker, Lawrence, Canterbury, Shott, Sumner, Smith, Stowers, Rodighiero, Ireland and Rowan -SPONSOR)

[Passed March 11, 2010; in effect ninety days from passage.]

AN ACT to amend Bill Title the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5B-10, relating to granting exceptions to certain statutes to innovation zone plans approved by state board; specifying scope, limitations and conditions on exceptions granted. Title Language

Be it enacted by the Legislature of West Virginia:

That Enacting Section the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-5B-10, to read as follows:

ARTICLE 5B. SCHOOL INNOVATION ZONES ACT.

§18-5B-10. Exceptions to statutes granted to innovation zones; limitations.

(a) The Legislature hereby grants an exception to the statute or statutes indicated for the following schools pursuant to and for the purposes enumerated in their innovation zone plans approved by the state board at its meeting on the date specified. The grant of an exception to a statute means that the school or schools granted the exception may implement the actions as specifically described in their approved innovation zone plan notwithstanding the provisions of the statute from which they are specifically excepted. These exceptions are limited to the purposes as specifically described in the plan approved on the date indicated and are expressly repealed for any plan modification or plan implementation which changes those purposes. However, nothing in this section prohibits a school or schools with an approved innovation zone plan from requesting plan modifications, subject to approval of the state board, and if the modifications change the purposes for which an exception to a statute was granted, the state board shall request an exception to achieve the new purposes in the manner provided in section five of this article for requesting exceptions to a statute. If the approved innovation zone plan of a school or schools is withdrawn by the state board, or the innovation zone designation of a school or schools is revoked by the state board, the exception granted to that school or those schools is expressly repealed.

(b) The following exceptions are granted:

(1) Piedmont Elementary School, Kanawha County, is excepted from subsection (3), section fourteen, article four, chapter eighteen-a of this code for the purpose of allowing specialist teachers to take their planning period before and after school totaling one hour, three days per week, and from section eighteen-a, article five of this chapter for the purpose of permitting a number of students in music and physical education classes in excess of the class size limits to provide the time and structure for teams to meet in

professional learning communities, which purposes are as more specifically described in the school's innovation zone plan approved by the state board on January 13, 2010;

(2) Putnam County High Schools Consortium comprised of Buffalo High School, Hurricane High School, Poca High School, Winfield High School and Putnam Career & Technical Center, Putnam County, is excepted from section forty-five, article five of this chapter only to the extent necessary for the purpose of establishing a structured transition program for freshman only one day prior to the beginning of the regular instructional term, and for the purpose of permitting the creation of not more than three hours each month during the school term of structured, regularly scheduled time for all teachers to work in professional learning communities, which purposes are as more specifically described in the schools' innovation zone plan approved by the state board on January 13, 2010;

(3) Nellis Elementary School, Boone County, is excepted from subsection (a), section two, article five-a of this chapter, for the purpose of expanding the membership of its local school improvement council, which purpose is as more specifically described in the school's innovation zone plan approved by the state board on January 13, 2010; and

(4) Cabell County Secondary School Consortium comprised of Cabell County Career Technical Center, Cabell Midland High School and Huntington High School, Cabell County, is excepted from sections one and one-a, article eight of this chapter for the purpose of raising the compulsory school attendance age to eighteen years old, and from section two-b, article three, chapter eighteen-a of this code for the purpose of providing a customized high quality beginning teacher induction program developed at the county level, which purposes are as more specifically described in the schools' innovation zone plan approved by the state board on January 13, 2010.

Senate Bill 229

Effective Date: Passed March 13, 2010, in effect from passage

Signed by Governor: March 31, 2010

Code Reference: Amends and reenacts §18-9D-4b, §18-9D-6, and §18-9D-8

Title: School Building Authority

Major Provisions:

- Adds federal subsidies received by the School Building Authority and deposited into the Excess Lottery School Building Debt Service Fund as funds which can be pledged for the issuance of bonds.
- Specifies that if the amount deposited in either the School Building Debt Service Fund or the Excess Lottery School Building Debt Service fund exceed the amount which the authority is authorized to expend, the excess funds are to be set aside in a special surplus fund for the authority.
- Excludes any amount of bonds for which moneys have been deposited into a sinking fund, reserve fund or other fund established to provide payment of principal or interest on the bonds from the calculation of the maximum aggregate amount of bonds outstanding at any time.
- Specifies that copies of any resolution issued by the School Building Authority for the issuance of revenue bonds shall be provided to the Governor, the President of the Senate, and the Speaker of the House of Delegates.
- Changes the officials who must sign revenue from the Governor, and the president or vice president of the authority to the Governor, his or her designee or the vice chair of the authority.

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COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 229

(By Senators Tomblin (Mr. President) and Caruth,

By Request of the Executive)

[Passed March 13, 2010; in effect from passage.]

AN ACT to amend and reenact §18-9D-4b, §18-9D-6 and §18-9D-8 of the Code of West Virginia, 1931, as amended, all relating to authorizing the School Building Authority to issue bonds in the maximum aggregate amount of \$500 million outstanding at any time; authorizing the School Building Authority to receive and expend federal subsidies received with respect to bonds issued by the School Building Authority; authorizing the expenditure of surpluses in certain debt service funds; requiring that copies of resolutions authorizing revenue bonds be provided to the Governor, the President of the Senate and the Speaker of the House of Delegates; changing the persons required to sign the bonds; and removing obsolete provisions.

Be it enacted by the Legislature of West Virginia:

That §18-9D-4b, §18-9D-6 and §18-9D-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-4b. School Building Authority authorized to issue bonds and pay debt service on bonds with funds distributed from State Excess Lottery Fund.

The School Building Authority is expressly authorized to issue bonds and pay debt service on bonds pursuant to the provisions of this article with funds distributed from the State Excess Lottery Fund under section eighteen-a, article twenty-two, chapter twenty-nine of this code and deposited into the Excess Lottery School Building Debt Service Fund and any federal subsidies received by the School Building Authority and deposited into the Excess Lottery School Building Debt Service Fund with respect to bonds authorized by this section.

§18-9D-6. School Building Capital Improvements Fund in State Treasury; School Construction Fund in State Treasury; School Building Debt Service Fund in State Treasury; School Improvement Fund in State Treasury; collections to be paid into special funds; Excess Lottery School Building Debt Service Fund in State Treasury;

authority to pledge the collections as security for refunding revenue bonds; authority to finance projects on a cash basis.

(a) There is continued in the State Treasury a School Building Capital Improvements Fund to be expended by the authority as provided in this article. The School Building Capital Improvements Fund shall be an interest-bearing account with interest credited to and deposited in the School Building Capital Improvements Fund and expended in accordance with the provisions of this article.

The School Building Authority may pledge all or any part of the revenues paid into the School Building Capital Improvements Fund that are needed to meet the requirements of any revenue bond issue or issues authorized by this article prior to the twentieth day of July, one thousand nine hundred ninety-three, or revenue bonds issued to refund revenue bonds issued prior to that date, including the payment of principal of, interest and redemption premium, if any, on the revenue bonds and the establishing and maintaining of a reserve fund or funds for the payment of the principal of, interest and redemption premium, if any, on the revenue bond issue or issues when other moneys pledged may be insufficient for the payment of the principal, interest and redemption premium, including any additional protective pledge of revenues that the authority in its discretion has provided by resolution authorizing the issuance of the bonds or in any trust agreement made in connection with the bond issue. Additionally, the authority may provide in the resolution and in the trust agreement for priorities on the revenues paid into the School Building Capital Improvements Fund that are necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this article. Any balance remaining in the School Building Capital Improvements Fund after the authority has issued bonds authorized by this article and after the requirements of all funds, including reserve funds established in connection with the bonds issued prior to the twentieth day of July, one thousand nine hundred ninety-three, pursuant to this article have been satisfied may be used for the redemption of any of the outstanding bonds issued under this article which by their terms are then redeemable, or for the purchase of the bonds at the market price, but not exceeding the price, if any, at which the bonds are in the same year redeemable and all bonds redeemed or purchased shall immediately be canceled and shall not again be issued.

The School Building Authority, in its discretion, may use the moneys in the School Building Capital Improvements Fund to finance the cost of projects authorized in accordance with the provisions of section sixteen of this article on a cash basis. Any pledge of moneys in the fund for revenue bonds issued prior to the twentieth day of July, one thousand nine hundred ninety-three, is a prior and superior charge on the fund over the use of any of the moneys in the fund to pay for the cost of any project on a cash basis: *Provided*, That any expenditures from the fund, other than for the retirement of revenue bonds, may only be made by the authority in accordance with the provisions of this article.

(b) There is continued in the State Treasury a special revenue fund named the School Building Debt Service Fund into which shall be deposited the amounts specified in section eighteen, article twenty-two, chapter twenty-nine of this code together with any federal subsidies received by the authority with respect to bonds authorized by this article for which moneys deposited in the School Building Debt Service Fund have been pledged. If the amounts deposited in the School Building Debt Service Fund exceed the amount which the

authority is authorized to expend, the excess shall be set aside in a special surplus fund for the authority. Expenditures from this special surplus fund shall be made only in accordance with the procedures established in section eighteen, article two, chapter eleven-b. All amounts deposited in the fund shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds authorized by this article for which moneys deposited in the School Building Debt Service Fund have been pledged by the authority: *Provided*, That deposited moneys may not be pledged to the repayment of any revenue bonds issued prior to the first day of January, one thousand nine hundred ninety-four, or with respect to revenue bonds issued for the purpose of refunding revenue bonds issued prior to the first day of January, one thousand nine hundred ninety-four. Additionally, the authority may provide in the resolution and in the trust agreement for priorities on the revenues paid into the School Building Debt Service Fund that are necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this article. On or prior to the first day of May of each year, the authority shall certify to the State Lottery Director the principal and interest and coverage ratio requirements for the following fiscal year on any revenue bonds issued on or after the first day of January, one thousand nine hundred ninety-four, and for which moneys deposited in the School Building Debt Service Fund have been pledged, or will be pledged, for repayment pursuant to this section.

After the authority has issued bonds authorized by this article for which moneys deposited in the School Building Debt Service Fund have been pledged and after the requirements of all funds have been satisfied, including coverage and reserve funds established in connection with the bonds issued pursuant to this article, any balance remaining in the School Building Debt Service Fund may be used for the redemption of any of the outstanding bonds issued under this article, for which moneys deposited in the School Building Debt Service Fund have been pledged, which, by their terms, are then redeemable or for the purchase of the outstanding bonds at the market price, but not to exceed the price, if any, at which the bonds are redeemable and all bonds redeemed or purchased shall be immediately canceled and shall not again be issued: *Provided*, That after the authority has issued bonds authorized by this article and after the requirements of debt service and all associated funds have been satisfied for the fiscal year for which moneys deposited in the School Building Debt Service Fund have been pledged, including coverage and reserve funds established in connection with the bonds issued pursuant to this article, any remaining balance in the School Building Debt Service Fund may be transferred to the School Construction Fund created in subsection (c) of this section and used by the School Building Authority in its discretion to finance the cost of school construction or improvement projects authorized in accordance with the provisions of section sixteen of this article on a cash basis.

(c) There is continued in the State Treasury a special revenue fund named the School Construction Fund into which shall be deposited the amounts specified in section thirty, article fifteen, chapter eleven of this code, together with any moneys appropriated to the fund by the Legislature. ~~∴ *Provided*, That for the school year beginning the first day of July, two thousand four, only, funds from the excess lottery allocated in section eighteen-a, article twenty-two, chapter twenty-nine of this code shall not be transferred to the School Constructions Fund and, in lieu thereof, made available for legislative appropriation:~~

~~Provided, however, That for the school year beginning the first day of July, two thousand four, only, up to five million dollars of the amounts in the fund may be appropriated by the Legislature for budget shortfalls.~~

Expenditures from the School Construction Fund shall be for the purposes set forth in this article, including lease-purchase payments under agreements made pursuant to subsection (e), section fifteen of this article and section nine, article five of this chapter and are authorized from collections in accordance with the provisions of article three, chapter twelve of this code and from other revenues annually appropriated by the Legislature from lottery revenues as authorized by section eighteen, article twenty-two, chapter twenty-nine of this code pursuant to the provisions set forth in article two, chapter five-a of this code. Amounts collected which are found, from time to time, to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature. The School Construction Fund shall be an interest-bearing account, with the interest credited to and deposited in the School Construction Fund and expended in accordance with the provisions of this article. Deposits to and expenditures from the School Construction Fund are subject to the provisions of subsection (k), section fifteen of this article.

(d) There is continued in the State Treasury a special revenue fund named the School Major Improvement Fund into which shall be deposited the amounts specified in section thirty, article fifteen, chapter eleven of this code, together with any moneys appropriated to the fund by the Legislature. Expenditures from the School Major Improvement Fund shall be for the purposes set forth in this article and are authorized from collections in accordance with the provisions of article three, chapter twelve of this code and from other revenues annually appropriated by the Legislature from lottery revenues as authorized by section eighteen, article twenty-two, chapter twenty-nine of this code pursuant to the provisions set forth in article two, chapter five-a of this code. Amounts collected which are found, from time to time, to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature. The School Major Improvement Fund shall be an interest-bearing account, with interest being credited to and deposited in the School Major Improvement Fund and expended in accordance with the provisions of this article.

(e) There is created in the State Treasury a special revenue fund named the Excess Lottery School Building Debt Service Fund into which shall be deposited the amounts specified in section eighteen-a, article twenty-two, chapter twenty-nine of this code- together with any federal subsidies received by the authority with respect to bonds authorized by section four-b, article nine-d, chapter eighteen of this code. If the amounts deposited in the Excess Lottery School Building Debt Service Fund exceed the amount which the authority is authorized to expend, the excess shall be set aside in a special surplus fund for the authority. Expenditures from this special surplus fund shall be made only in accordance with the procedures established in section eighteen, article two, chapter eleven-b. All amounts deposited in the fund shall be pledged, as designated by the authority, to the repayment of the principal, interest and redemption premium, if any, on revenue bonds or refunding revenue bonds authorized by section four-b of this article. On or prior to the first day of May of each year, the authority shall certify to the State Lottery Director the principal and interest and coverage ratio requirements for the following fiscal year on any revenue

bonds issued for which moneys deposited in the Excess Lottery School Building Debt Service Fund have been pledged, or will be pledged, for repayment pursuant to this section.

After the authority has issued bonds authorized by this article for which moneys deposited in the Excess Lottery School Building Debt Service Fund have been pledged and after the requirements of all funds have been satisfied, including coverage and reserve funds established in connection with the bonds issued pursuant to this article, any balance remaining in the Excess Lottery School Building Debt Service Fund may be used for the redemption of any of the outstanding bonds issued under this article, for which moneys deposited in the Excess Lottery School Building Debt Service Fund have been pledged, which, by their terms, are then redeemable or for the purchase of the outstanding bonds at the market price, but not to exceed the price, if any, at which the bonds are redeemable and all bonds redeemed or purchased shall be immediately canceled and shall not again be issued: *Provided*, That after the authority has issued bonds authorized by this article and after the requirements of debt service and all associated funds have been satisfied for the fiscal year, including coverage and reserve funds established in connection with the bonds issued pursuant to this article for which moneys deposited in the Excess Lottery School Building Debt Service Fund have been pledged, any remaining balance in the Excess Lottery School Building Debt Service Fund may be transferred to the School Construction Fund created in subsection (c) of this section and used by the School Building Authority in its discretion to finance the cost of school construction or improvement projects authorized in accordance with the provisions of section sixteen of this article on a cash basis. (f) The Legislature finds and declares that the Supreme Court of Appeals of West Virginia has held that the issuance of additional revenue bonds authorized under the School Building Authority Act, as enacted in this article prior to the twentieth day of July, one thousand nine hundred ninety-three, constituted an indebtedness of the state in violation of section four, article X of the Constitution of West Virginia, but that revenue bonds issued under this article prior to the twentieth day of July, one thousand nine hundred ninety-three, are not invalid.

The Legislature further finds and declares that the financial capacity of a county to construct, lease and improve school facilities depends upon the county's bonding capacity (local property wealth), voter willingness to pass bond issues and the county's ability to reallocate other available county funds instead of criteria related to educational needs or upon the ability of the School Building Authority created in this article to issue bonds that comply with the holding of the West Virginia Supreme Court of Appeals or otherwise assist counties with the financing of facilities construction and improvement. The Legislature further finds and declares that this section, as well as section eighteen, article twenty-two, chapter twenty-nine of this code, had been reenacted during the first extraordinary session of the West Virginia Legislature in the year one thousand nine hundred ninety-four in an attempt to comply with the holding of the Supreme Court of Appeals of West Virginia. The Legislature further finds and declares that it intends, through the reenactment of this section and section eighteen, article twenty-two, chapter twenty-nine of this code, to dedicate a source of state revenues to special revenue funds for the purposes of paying the debt service on bonds and refunding bonds issued subsequent to the first day of January, one thousand nine hundred ninety-four, the proceeds of which will be used for the

construction and improvement of school building facilities. The Legislature further finds and declares that it intends, through the reenactment of this section and section thirty, article fifteen, chapter eleven of this code and section eighteen, article twenty-two, chapter twenty-nine of this code, to appropriate revenues to two special revenue funds for the purposes of construction and improvement of school building facilities. Furthermore, the Legislature intends to encourage county boards to maintain existing levels of county funding for construction, improvement and maintenance of school building facilities and to generate additional county funds for those purposes through bonds and special levies whenever possible. The Legislature further encourages the School Building Authority, the state board and county boards of education to propose uniform project specifications for comparable projects whenever possible to meet county needs at the lowest possible cost. The Legislature further finds and declares that it intends, through the reenactment of this section and section eighteen, article twenty-two, chapter twenty-nine of this code, to comply with the provisions of sections four and six, article X of the Constitution of West Virginia; and section one, article XII of said constitution.

§18-9D-8. Use of proceeds of bonds; bonds exempt from taxation.

(a) The maximum aggregate ~~face value~~ amount of bonds ~~that may be issued by the authority outstanding at any time~~, for which the moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are to be pledged, is \$500 million; however, any amount of bonds for which moneys have been deposited in a sinking fund, reserve fund or other fund established to provide payment of principal or interest on the bonds shall be excluded from the calculation of the maximum aggregate amount of bonds outstanding at any time. The issuance of revenue bonds under the provisions of this article shall be authorized, from time to time, by resolution or resolutions of the School Building Authority, copies of which shall be provided to the Governor, the President of the Senate and the Speaker of the House of Delegates within five days of their approval, which shall set forth the proposed projects authorized in accordance with the provisions of section sixteen of this article and provide for the issuance of bonds in amounts sufficient, when sold as provided in this section, to provide moneys considered sufficient by the authority to pay the costs, less the amounts of any other funds available for the costs or from any appropriation, grant or gift for the costs: *Provided*, That bond issues from which bond revenues are to be distributed in accordance with section fifteen of this article for projects authorized pursuant to the provisions of section sixteen of this article are not required to set forth the proposed projects in the resolution. The resolution shall prescribe the rights and duties of the bondholders and the School Building Authority and, for that purpose, may prescribe the form of the trust agreement referred to in this section. The bonds may be issued, from time to time, in such amounts; shall be of such series; bear such date or dates; mature at such time or times not exceeding forty years from their respective dates; bear interest at such rate or rates; be in such denominations; be in such form, either coupon or registered, carrying such registration, exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places within or without the state; be subject to such terms of redemption at such prices not exceeding one hundred five percent of the principal amount of the bonds; and be entitled to such priorities on the revenues paid into the fund pledged for repayment of the bonds as may be provided in the resolution authorizing the issuance of the bonds or in any trust agreement made in

connection with the bonds: *Provided, however,* That revenue bonds issued on or after January 1, 1994, and prior to January 1, 2008, which are secured by lottery proceeds from section eighteen, article twenty-two, chapter twenty- nine of this code shall mature at such time or times not exceeding ten years from their respective dates: *Provided further,* That revenue bonds issued on or after January 1, 2008, which are secured by lottery proceeds from section eighteen or eighteen-a, article twenty-two, chapter twenty-nine of this code, shall mature at such time or times not exceeding twenty years from their respective dates.

(b) The bonds shall be signed by the Governor, ~~and by his or her designee or the president~~ or vice president chair of the authority, under the great seal of the state, attested by the Secretary of State, and the coupons attached to the bonds shall bear the facsimile signature of the ~~president~~ Governor, his or her designee or the vice president chair of the authority. In case any of the officers whose signatures appear on the bonds or coupons cease to be officers before the delivery of the bonds, the signatures shall nevertheless be valid and sufficient for all purposes the same as if the officers had remained in office until the delivery. The revenue bonds shall be sold in the manner determined by the authority to be for the best interests of the state.

(c) Any pledge of revenues made by the School Building Authority for revenue bonds issued prior to July 20, 1993, pursuant to this article is valid and binding between the parties from the time the pledge is made; and the revenues pledged shall immediately be subject to the lien of the pledge without any further physical delivery of the revenues pledged or further act. The lien of the pledge is valid and binding against all parties having claims of any kind in tort, contract or otherwise, irrespective of whether the parties have notice of the lien of the pledge and the pledge shall be a prior and superior charge over any other use of the revenues pledged.

(d) The proceeds of any bonds shall be used solely for the purpose or purposes as may be generally or specifically set forth in the resolution authorizing those bonds and shall be disbursed in the manner and with the restrictions, if any, that the authority provides in the resolution authorizing the issuance of the bonds or in the trust agreement referred to in this section securing the bonds. If the proceeds of the bonds, by error in calculations or otherwise, are less than the cost of any projects specifically set forth in the resolution, additional bonds may in like manner be issued to provide the amount of the deficiency; and unless otherwise provided for in the resolution or trust agreement hereinafter mentioned, the additional bonds shall be considered to be of the same issue and are entitled to payment from the same fund, without preference or priority, as the bonds before issued for the projects. If the proceeds of bonds issued for the projects specifically set forth in the resolution authorizing the bonds issued by the authority exceed the cost of the bonds, the surplus may be used for any other projects authorized in accordance with the provisions of section sixteen of this article or in any other manner that the resolution authorizing the bonds provides. Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue temporary bonds with or without coupons, exchangeable for definitive bonds upon the issuance of the definitive bonds. (e) After the issuance of any revenue bonds, the revenues pledged for the revenue bonds shall not be reduced as long as any of the revenue bonds are outstanding and unpaid except under the terms, provisions and conditions that are contained in the resolution, trust agreement or other proceedings under which the revenue bonds were issued. (f) The revenue bonds and the revenue refunding

bonds and bonds issued for combined purposes, together with the interest on the bonds, are exempt from all taxation by the State of West Virginia, or by any county, school district, municipality or political subdivision thereof. (g) To meet the operational costs of the School Building Authority, the School Building Authority may transfer to a special revenue account in the State Treasury interest on any debt service reserve funds created within any resolution authorizing the issue of bonds or any trust agreement made in connection with the bonds for expenditure in accordance with legislative appropriation or allocation of appropriation. (h) Any school construction bonds issued under this section shall be issued on parity with any existing School Building Authority bonds previously issued under this article.

Senate Bill 391

Effective Date: Passed February 22, 2010, in effect from passage

Signed by Governor: March 3, 2010

Code Reference: Amends and reenacts §18-5-1a

Title: Eligibility of County School Board Members

Major Provisions:

- Modifies the eligibility requirements by deleting the requirement that candidates for membership on a county board or members-elect not be employed by the county board on which they seek to serve. The restrictions will now apply only upon becoming a member of the board.

- With this revision, the restrictions against participating in certain political activities, as identified in WVC §18-5-1a, will now apply only to members of county boards of education.

ENROLLED

Senate Bill No. 391

(By Senators Palumbo, Yost and Green)

[Passed February 22, 2010; in effect from passage.]

AN ACT to amend and reenact §18-5-1a of the Code of West Virginia, 1931, as amended, relating to county boards of education; modifying eligibility requirements for a candidate for membership on a board and for a member-elect of a board; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §18-5-1a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-1a. Eligibility of members; training requirements.

(a) A person who is a ~~candidate for membership on~~ member of a county board ~~or who is a member or member-elect of a county board:~~

(1) Shall be a citizen and resident in the county in which he or she serves ~~or seeks to serve~~ on the county board. Also, a person who is a candidate for membership on a county board or who is a member-elect of a county board shall be a citizen and resident in the county in which he or she seeks to serve on the county board;

(2) May not be employed by the county board on which he or she serves ~~or seeks to serve~~, including employment as a teacher or service person;

(3) May not engage in the following political activities:

(A) Become a candidate for or hold any other public office, other than to succeed him or herself as a member of a county board subject to the following:

(i) A candidate for a county board, who is not currently serving on a county board, may hold another public office while a candidate if he or she resigns from the other public office prior to taking the oath of office as a county board member.

(ii) The term "public office" as used in this section does not include service on any other board, elected or appointed, profit or nonprofit, under the following conditions:

(I) The person does not receive compensation; and

(II) The primary scope of the board is not related to public schools.

(B) Become a candidate for, or serve as, an elected member of any political party executive committee;

(C) Become a candidate for, or serve as, a delegate, alternate or proxy to a national political party convention;

(D) Solicit or receive political contributions to support the election of, or to retire the campaign debt of, any candidate for partisan office;

(4) May engage in any or all of the following political activities:

- (A) Make campaign contributions to partisan or bipartisan candidates;
 - (B) Attend political fund raisers for partisan or bipartisan candidates;
 - (C) Serve as an unpaid volunteer on a partisan campaign;
 - (D) Politically endorse any candidate in a partisan or bipartisan election; or
 - (E) Attend a county, state or national political party convention.
- (b) A member or member-elect of a county board, or a person desiring to become a member of a county board, may make a written request to the West Virginia Ethics Commission for an advisory opinion to determine if another elected or appointed position held or sought by the person is an office or public office which would bar service on a county board pursuant to subsection (a) of this section.
- (1) Within thirty days of receipt of the request, the Ethics Commission shall issue a written advisory opinion in response to the request and also shall publish the opinion in a manner which, to the fullest extent possible, does not reveal the identity of the person making the request.
- (2) A county board member who relies in good faith upon an advisory opinion issued by the West Virginia Ethics Commission to the effect that holding a particular office or public office is not a bar from membership on a county board and against whom proceedings are subsequently brought for removal from the county board on the basis of holding that office or offices is entitled to reimbursement by the county board for reasonable attorney's fees and court costs incurred by the member in defending against these proceedings, regardless of the outcome of the proceedings.
- (3) A vote cast by the member at a meeting of the county board may not be invalidated due to a subsequent finding that holding the particular office or public office is a bar to membership on the county board.
- (4) Good faith reliance on a written advisory opinion of the West Virginia Ethics Commission that a particular office or public office is not a bar to membership on a county board is an absolute defense to any civil suit or criminal prosecution arising from any proper action taken within the scope of membership on the county board, becoming a member-elect of the county board or seeking election to the county board.
- (c) To be eligible for election or appointment as a member of a county board ~~on or after~~ ~~May 5, 1992~~, a person shall possess at least a high school diploma or a general educational development (GED) diploma. This provision does not apply to members or members-elect who have taken office prior to May 5, 1992, and who serve continuously from that date forward.
- (d) A person elected to a county board after July 1, 1990, may not assume the duties of county board member unless he or she has first attended and completed a course of orientation relating to boardsmanship and governance effectiveness which shall be given between the date of election and the beginning of the member's term of office under the following conditions:
- (1) A portion or portions of subsequent training such as that offered in orientation may be provided to members after they have commenced their term of office;
 - (2) Attendance at the session of orientation given between the date of election and the beginning of the member's term of office permits the member-elect to assume the duties of county board member, as specified in this section;
 - (3) Members appointed to the county board shall attend and complete the next such

orientation course offered following their appointment; and

(4) The provisions of this subsection relating to orientation do not apply to members who have taken office prior to July 1, 1988, and who serve continuously from that date forward.

(e) Annually, each member of a county board shall receive seven clock hours of training in areas relating to boardsmanship, governance effectiveness, and school performance issues including, but not limited to, pertinent state and federal statutes such as the "Process for Improving Education" set forth in section five, article two-e of this chapter and the "No Child Left Behind Act" and their respective administrative rules.

(1) The orientation and training shall be approved by the state board and conducted by the West Virginia School Board Association or other organization or organizations approved by the state board:

(A) The state board may exclude time spent in training on school performance issues from the requisite seven hours herein required; and

(B) If the state board elects to exclude time spent in training on school performance issues from the requisite seven hours, the state board shall limit the training to a feasible and practicable amount of time.

(2) Failure to attend and complete the approved course of orientation and training relating to boardsmanship and governance effectiveness without good cause as determined by the state board by duly promulgated legislative rules constitutes neglect of duty under section seven, article six, chapter six of this code.

(f) ~~(g)~~ In the final year of any four-year term of office, a member shall satisfy the annual training requirement before January 1. Failure to comply with the training requirements of this section without good cause as defined by the state board by duly promulgated legislative rules constitutes neglect of duty under section seven, article six, chapter six of this code.

(g) ~~(h)~~ The state board shall appoint a committee named the "county board member training standards review committee" whose members shall meet at least annually. Subject to state board approval, the committee shall determine which particular trainings and training organizations shall be approved and whether county board members have satisfied the annual training requirement. Members of the committee serve without compensation, but may be reimbursed by their agencies or employers for all reasonable and necessary expenses actually incurred in the performance of their duties under this subsection.

Senate Bill SB 401

Effective Date: Passed March 13, 2010, in effect ninety days from passage (June 11, 2010)

Signed by Governor: April 2, 2010

Code Reference: Amends and reenacts §§11-3-1, 11-3-2a, 11-3-10, 11-3-12, 11-3-15, 11-3-19, 11-3-24, 11-3-24a, and 11-3-25, adds §11-3-15a, 11-3-15b, 11-3-15c, 11-3-15d, 11-3-15e, 11-3-15f, 11-3-15g, 11-3-15h, 11-3-15i, 11-3-23a, 11-3-24b, 11-3-25a, 11-3-32, 11-3-33, 11-6K-1, 11-6K-2, 11-6K-3, 11-6K-4, 11-6K-5, 11-6K-6, 11-6K-7, 11-6K-8, and amend and reenact §18-9A-12.

Title: Assessment of Real and Personal Property

Major Provisions:

- The purpose of this bill is to reform and modernize procedures and time frames for assessments of real and personal property, notices of assessments, and appeals of assessments and it provides special provisions for assessment of industrial and natural resources property.
- The bill establishes a local board of assessment appeals in each county to meet in the fall of the tax year to which taxpayers may appeal as an alternative to the board of equalization and review which meets in February of the tax year.
- The bill authorizes a circuit court, upon an appeal from a board of equalization and review or a board of assessment appeals, to remand the case back to such board if the court finds the record of the board is inadequate.
- The bill also revises WVC §18-9A-12 to reflect the creation of the board of assessment appeals by adding the final decisions of the board of assessment appeals to the provisions when a county board's local share may be adjusted.
- A summary of revisions include:
 - Eliminates the requirement of obtaining the approval of the Board of Public Works in fixing the compensation of all special assessors.
 - Defines the terms "assessment date," "assessment year," "tax year," and "taxpayer."

- Changes the date by when notices of certain increases on real property are to be given to the person assessed or the person controlling the property from at least fifteen days prior to the first meeting in February at which the county commission meets as the board of equalization and review to January 15 of the tax year, specifies that the notification requirement does not apply to industrial or natural resources property appraised by the Tax Commissioner, and allows for the notification to be provided electronically.
- Adds the following as reasons for denial of any remedy provided by law to correct an assessment made by a county assessor or the Board of Public Works: the willful failure by any person, firm or corporation to furnish a proper list of real estate or personal property; refusal to answer or providing false answers to any question asked by an assessor or the Tax Commissioner; or failure or refusal to deliver any statement required by law.
- Shortens the date by when annual reports are to be filed by corporations, banking institutions and national banking associations to September 1.
- Establishes a process for an informal review and resolution of classification, taxability and valuation with the county assessor.
- States that the county commission is to sit as a board of equalization and review not later than February 1.
- Sets forth procedures for appealing rulings of the board of equalization and the board of assessment appeals.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 401

(Senators McCabe, Wells, Prezioso, K. Facemyer, Boley, Plymale, Fanning,

Minard, Edgell, Jenkins, Chafin and Foster, *original sponsors*)

[Passed March 16, 2010; in effect ninety days from passage.]

AN ACT to amend and reenact §11-3-1, §11-3-2a, §11-3-10, §11-3-12, §11-3-15, §11-3-19, §11-3-24, §11-3-24a and §11-3-25 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto fourteen new sections, designated §11-3-15a, §11-3-15b, §11-3-15c, §11-3-15d, §11-3-15e, §11-3-15f, §11-3-15g, §11-3-15h, §11-3-15i, §11-3-23a, §11-3-24b, §11-3-25a, §11-3-32 and §11-3-33; to amend said code by adding thereto a new article, designated §11-6K-1, §11-6K-2, §11-6K-3, §11-6K-4, §11-6K-5, §11-6K-6, §11-6K-7 and §11-6K-8; and to amend and reenact §18-9A-12 of said code, all relating to taxation of real and personal property for ad valorem property tax purposes; defining and conforming terms used; making technical corrections in certain code sections to conform to prior acts of the Legislature; accelerating date for issuance of notices of increase in assessed value of real property; updating penalties for failure to file required property tax reports and returns; clarifying report and return filing requirements; accelerating due dates for filing reports and returns; assessment of property of limited liability companies; requiring assessors to notify owners of commercial business personal property of increases in assessed values for current assessment year by an established deadline; providing procedures for property owners to protest notices of assessed valuation and obtain appropriate adjustments from county assessors; providing for appeal of protested assessments to county board of equalization and review, board of assessment appeals and circuit court; providing for protest of classification or taxability to Tax Commissioner; specifying effective dates; providing for discovery; authorizing assignment to hearing examiner; providing methods for assessment of industrial property and natural resources property; establishing time and basis for assessments; providing for pertinent definitions; specifying form and manner of making returns; establishing criminal penalties for failure to file; providing for tentative appraisals by Tax Commissioner and notification to taxpayers; providing procedures for informal review of tentative appraisals; making of final appraisals; transmitting final appraisals to assessors; providing for appeals; authorizing reductions of assessments upon instruction of Tax Commissioner in certain circumstances; specifying effective dates; and holding harmless the local share for public school support for reductions in revenues resulting from decisions of a board of assessment appeals.

Be it enacted by the Legislature of West Virginia:

That §11-3-1, §11-3-2a, §11-3-10, §11-3-12, §11-3-15, §11-3-19, §11-3-24, §11-3-24a and §11-3-25 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto fourteen new sections, designated §11-3-15a, §11-3-15b, §11-3-15c, §11-3-15d, §11-3-15e, §11-3-15f, §11-3-15g, §11-3-15h, §11-3-15i, §11-3-23a, §11-3-24b, §11-3-25a, §11-3-32 and §11-3-33; that said code be amended by adding thereto a new article, designated §11-6K-1, §11-6K-2, §11-6K-3, §11-6K-4, §11-6K-5, §11-6K-6, §11-6K-7 and §11-6K-8; and that §18-9A-12 of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 3. PROPERTY TAX ASSESSMENTS GENERALLY.

§11-3-1. Time and basis of assessments; true and actual value; default; reassessment; special assessors; criminal penalty.

(a) All property, except public service businesses assessed pursuant to article six of this chapter, shall be assessed annually as of July 1 at sixty percent of its true and actual value, that is to say, at the price for which ~~such~~ the property would sell if voluntarily offered for sale by the owner thereof, upon ~~such~~ the terms as ~~such~~ the property, the value of which is sought to be ascertained, is usually sold, and not the price which might be realized if ~~such~~ the property were sold at a forced sale, ~~except that.~~

(b) Any conflicting provisions of subsection (a) of this section notwithstanding, the true and actual value of all property owned, used and occupied by the owner thereof exclusively for residential purposes shall be arrived at by also giving ~~primary, but not exclusive,~~ consideration to the fair and reasonable amount of income which the same might be expected to earn, under normal conditions in the locality wherein situated, if rented: *Provided,* That the true and actual value of all farms used, occupied and cultivated by their owners or bona fide tenants shall be arrived at according to the fair and reasonable value of the property for the purpose for which it is actually used regardless of what the value of the property would be if used for some other purpose; and that the true and actual value shall be arrived at by giving consideration to the fair and reasonable income which the same might be expected to earn under normal conditions in the locality wherein situated, if rented: *Provided, however,* That nothing herein shall alter the method of assessment of lands or minerals owned by domestic or foreign corporations.

(c) The taxes upon all property shall be paid by those who are the owners thereof on that day, the assessment date whether it be assessed to them or others.

(d) If at any time after the beginning of the assessment year, it be ascertained by the Tax Commissioner that the assessor, or any of his or her deputies, is not complying with this provision or that ~~he has~~ they have failed, neglected or refused, or is failing, neglecting or refusing after five days' notice to list and assess all property therein at sixty percent of its true and actual value as determined under this chapter, the Tax Commissioner may order and direct a reassessment of any or all of the property in any county, district or municipality, where any assessor, or deputy, fails, neglects or refuses to assess the property in the manner herein provided. And, for the purpose of making ~~such~~ assessment and correction of values, the Tax Commissioner may appoint one or more special assessors, as necessity

may require, to make ~~such~~ assessment in any ~~such~~ county; and any such special assessor or assessors, as the case may be, ~~shall have all~~ has the power and authority now vested by law in assessors, and the work of such special assessor or assessors shall be accepted and treated for all purposes by the county boards of review and equalization and the levying bodies, subject to any revisions of value on appeal, as the true and lawful assessment of that year as to all property valued by him or her or them. The Tax Commissioner shall, ~~with the approval of the board of public works,~~ fix the compensation of all ~~such~~ special assessors ~~as may be designated by him,~~ appointed, which, together with their actual expenses, shall be paid out of the county fund by the county commission of the county in which any such assessment is ordered, upon the receipt of a certificate of the Tax Commissioner filed with the clerk of the county commission showing the amounts due and to whom payable, after such expenses have been audited by the county commission.

(e) Any assessor who knowingly fails, neglects or refuses to assess all the property of his or her county, as herein provided, shall be guilty of malfeasance in office; and, upon conviction thereof, shall be fined not less than \$100 nor more than \$500, or imprisoned ~~in the county jail~~ not less than three nor more than six months, or both, in the discretion of the court, and upon conviction, shall be removed from office.

(f) For purposes of this chapter and chapter eleven-a of this code, the following terms have the meanings ascribed to them in this section unless the context in which the term is used clearly indicates that a different meaning is intended by the Legislature:

(1) "Assessment date" means July 1 of the year preceding the tax year.

(2) "Assessment year" means the twelve-month period that begins on the assessment date.

(3) "Tax year" or "property tax year" means the next calendar year that begins after the assessment date.

(4) "Taxpayer" means the owner and any other person in whose name the taxes on the subject property are lawfully assessed.

§11-3-2a. Notice of increased assessment required for real property; exceptions to notice.

(a) If the assessor determines the assessed valuation of any item of real property appraised by him or her is more than ten percent greater than the valuation assessed for that item in the last tax year, the increase is \$1,000 or more and the increase is entered in the property books as provided in section nineteen of this article, the assessor shall give notice of the increase to the person assessed or the person controlling the property as provided in section two of this article. The notice shall be given ~~at least fifteen days prior to the first meeting in February at which the county commission meets as the board of equalization and review for that~~ on or before January 15 of the tax year and advise the person assessed or the person controlling the property of his or her right to appear and seek an adjustment in the assessment: Provided, That this notification requirement does not apply to industrial or natural resources property appraised by the Tax Commissioner under article six-k of this chapter which is assessed at sixty percent of its true and actual value. The notice shall be made by first-class United States postage mailed to the address of the person assessed or the person controlling the property for payment of tax on the item in the previous year, unless there was a general increase of the entire valuation in ~~any~~ one or more of the tax districts in which case the notice shall be by publication of the notice by a Class II-0 legal advertisement in compliance with the provisions of article three, chapter

fifty-nine of this code. The area for the publication is the county. The requirement of notice under this section is satisfied and waived if personal notice of the increase is shown by:

(1) The taxpayer having signed the assessment form after it had been completed showing the increase;

(2) Notice was given as provided in section three-a of this article; or

(3) The person ~~se~~ assessed executing acknowledgment of the notice of the increase.

(b) During the initial reappraisal of all property under section seven, article one-c of this chapter, the Tax Commissioner and each county assessor shall send every person owning or controlling property appraised by the Tax Commissioner or the county assessor, ~~as the case may be,~~ a pamphlet which explains the reappraisal process and its equalization goal in a detailed yet informal manner. The property valuation training and procedures commission, created under section three, article one-c of this chapter, shall design the pamphlet for use in all counties while allowing individual county information to be included if it determines that the information would improve understanding of the process.

§11-3-10. Failure to list property, etc.; collection of penalties and forfeitures.

(a) If any person, firm or corporation, including public service corporations, whose duty it is by law to list any real estate or personal property for taxation, refuses to furnish a proper list thereof or refuses to list within the time required by law, or if any person, firm or corporation, including public service corporations, refuses to answer or answers falsely any question asked by the assessor or by the Tax Commissioner, or fails or refuses to deliver any statement required by law, ~~he, she or it~~ the person, firm or corporation may forfeit, at the discretion of the assessor or the Tax Commissioner for good cause shown, not less than \$25 nor more than \$100; If any person, firm or corporation willfully fails to furnish a proper list of real estate or personal property for taxation or refuses to answer or falsely answers any question asked by the assessor or by the Tax Commissioner, or fails or refuses to deliver any statement required by law, such person, firm or corporation and shall be denied all remedy provided by law for the correction of any assessment made by the assessor or by the board of public works: Provided, That no person, firm or corporation shall be denied the remedy provided by law to contest any assessment unless the assessor or the Tax Commissioner has notified such person, firm or corporation in writing that this penalty will be asserted and the requested information is not provided within fifteen days of the date of receipt of the notice.

(b) If any person, firm or corporation, including public service corporations, required by law to make return of property for taxation, whether the return is to be made to the assessor, the board of Public Works, or any other assessing officer or body, fails to return a true list of all property which should be assessed in this state, including ~~notes, bonds, bills and accounts receivable, stocks and other tangible personal property~~ the person, firm or corporation, in addition to all other penalties provided by law, shall forfeit one percent of the value of the property not yet returned and not otherwise taxed in this state.

(c) A forfeiture as to all property aforesaid may be enforced for any such default occurring in any year not exceeding five years immediately prior to the time the default is discovered; ~~but no liability to penalty or forfeiture as to notes, bonds, bills and accounts receivable, stocks and other intangible personal property arising prior to the first day of January, one thousand nine hundred thirty three, is enforceable on behalf of the state or any of its subdivisions.~~

(d) Each failure to make a true return as herein required constitutes a separate offense, and a forfeiture shall apply to each of them, but all forfeitures, to which the same person, firm or corporation is liable, shall be enforced in one proceeding against the person, firm or corporation, or against the estate of any deceased person, and may not exceed five percent of the value of the property not returned that is required to be returned for taxation by this chapter.

(e) Forfeitures shall be collected as provided in article two, chapter eleven-a of this code, the same as any tax liability, against the defaulting taxpayer, or in case of a decedent, against his or her personal representative. The sheriff shall apportion such fund among the state, county, district, school district and municipalities which would have been entitled to the taxes upon the property if it had been assessed, in proportion to the rates of taxation for each levying unit for the year in which the judgment was obtained bears to the sum of rates for all.

(f) When the list of property returned by the appraisers of the estate of any deceased person shows an amount greater than the last assessment list of real and tangible personal property of the deceased person next preceding the appraisal of his or her estate, it is prima facie evidence that the deceased person returned an imperfect list of his or her property: *Provided*, That any person liable for the tax, or his or her personal representative, may always be permitted to prove by competent evidence that the discrepancy between the assessment list and the appraisal of the estate is caused by a difference of valuation returned by the assessor and that made by the appraisers of the same property or by property acquired after assessment, or that any property enumerated in the appraisers' list had been otherwise listed for taxation, or that it was not liable for taxation.

(g) Any judgment recovered under this section is a lien, from the time of the service of the notice, upon all real estate and personal property of the defaulting taxpayer, owned at the time or subsequently acquired, in preference to any other lien.

§11-3-12. Assessment of corporate property; reports to assessors by corporations.

(a) Each incorporated company, banking institution and national banking association, foreign or domestic, having its principal office or chief place of business in this state, owning property subject to taxation in this state, except railroad, telegraph and express companies, telephone companies, pipeline, car line companies and other public utility companies, shall annually, between the ~~first day of the assessment year~~ date and ~~The first day of October~~ September 1, make a written report, verified by the oath of the president or chief accounting officer, to the assessor of the county in which its principal office or chief place of business is situated or in which ~~such~~ property subject to taxation in this state is located if ~~such~~ the corporation does not have a principal office or chief place of business in this state, showing the following items: ~~viz:~~ (1) ~~The amount of capital authorized to be employed by it;~~ quantity, location and fair market value of all of its real estate, and tax district or districts in which it is located; and (2) the kinds, quantity and fair market value of all its tangible personal property in each tax district in which it is located. ~~amount of cash capital paid on each share of stock; (3) the amount of credits and investments other than its own capital stock held by it on said date, with their fair market value; (4) the quantity, location and fair market value of all of its real estate, and tax district or districts in which it is located, and (5) the kinds, quantity and fair market value of all its tangible property in each tax district in which it is located.~~

(b) The oath required for this section shall be substantially as follows, viz:

State of West Virginia, County, ss:

I,, president (treasurer or manager) of (here insert name of corporation), do solemnly swear (or affirm) that the foregoing is, to the best of my knowledge and judgment, true in all respects; that it contains a statement of all the real estate and tangible personal property, including credits and investments belonging to said corporation; that the value affixed to such property is, in my opinion, its value, by which I mean the price at which it would sell if voluntarily offered for sale on such terms as are usually employed in selling such property, and not the price which might be realized at a forced or auction sale; and said corporation has not, to my knowledge, during the sixty-day period immediately prior to the first day of the assessment year date converted any of its assets into nontaxable securities or notes or other evidence of indebtedness for the purposes of evading the assessment of taxes thereon; so help me, God

The officer administering the oath shall append thereto the following certificate, viz:

Subscribed and sworn to before me by this the day of, 19 20 ...

~~(c) The amendments to this section enacted in the year one thousand nine hundred ninety-seven shall be effective beginning tax year one thousand nine hundred ninety-eight and thereafter.~~

§11-3-15. Assessment of capital used in trade or business by natural persons or unincorporated businesses.

(a) The value of the capital used by any individual or firm, not incorporated, in any trade or business taxable by law, shall be ascertained in the following manner: The owner, agent or chief accountant of every such trade or business, except the business of agriculture, carried on in any county of the state, shall, annually, ~~between the first day of the assessment year and the first day of November of the current year~~ on or after the assessment date and on or before September 1, make a written report as to the first day of the assessment year, to the assessor, verified by his or her affidavit, showing the following matter and things determined as of the assessment date, viz:

~~(a)~~ (1) The amount, the true and actual value and classification of all tangible personal property used in connection with ~~such~~ the trade or business, ~~otherwise other~~ other than such as is that regularly kept for sale therein, including chattels real and personal;

~~(b)~~ (2) The true and actual value and classification of all goods and property kept for sale and remaining unsold; and

~~(c) the amount in value of all credits arising out of any such business and remaining unpaid on that date, whether due or not, and whether in or out of the state; (d) the amount and true and actual value of all notes, bonds, bills, accounts receivable, stocks and other intangible property made by such person or firm whether in or out of the state, other than those hereinbefore specified; (e)~~ (3) The location, quantity, the true and actual value and classification of all real estate owned by ~~such~~ the individuals or firm and used in ~~such~~ the trade or business.

~~(b)~~ (b) The assessor shall, upon the receipt of such report, properly verified, if ~~he~~ the assessor is satisfied with the correctness thereof, enter the real estate in the land book of the county in the tax district wherein the same is situated, and assess the same with taxes, if not otherwise assessed, to the owner thereof; Provided, That the personal property mentioned in ~~such~~ the report ~~he~~ shall be entered in the personal property book of ~~his~~ the county for

assessment with taxes as follows, viz: Items ~~(a)~~ (1) and ~~(b)~~ (2) shall be entered in the tax districts where they are for the greater part of the year kept or located; and items ~~(c)~~, ~~(d)~~ and ~~(e)~~ (3) shall be entered under their its appropriate headings in the municipality or tax district wherein the principal place of business of such individual or firm is; and property is located.

(c) If the assessor is not satisfied with the correctness of ~~such~~ the report, he the assessor may proceed to ascertain a correct list of the property on which ~~such~~ the individual or firm is liable to be assessed with taxes, and to value the same as in other cases.

(d) The person making ~~such~~ the report shall take and subscribe an oath in substantially the following form:

I,, do solemnly swear (or affirm) that the foregoing list is true and correct to the best of my knowledge; that the value affixed to the property therein listed I believe to be the true and actual value thereof; that none of the assets belonging to (here state the name of individual or firm) and used in the business of (here describe the business) have to my knowledge, since the ~~first day of the assessment year~~ assessment date, been converted into nontaxable securities for the purpose of evading the assessment of taxes thereon; so help me, God.

The officer administering ~~said~~ the oath shall append thereto the following certificate, viz: Subscribed and sworn to before me by (here insert affiant's name) this day of, 19 20

§11-3-15a. Assessment of property of limited liability companies.

Limited liability companies that elect to be treated as a corporation for federal income tax purposes shall make and file the report required of corporations in section twelve of this article. Limited liability companies treated as a partnership for federal income tax purposes shall make and file the report required in section fifteen of this article. A limited liability company that elects to be treated as a disregarded entity for federal income tax purposes shall be treated as a disregarded entity under this article and its owner shall make and file the report required by section twelve or section fifteen of this article depending upon whether the owner is a corporation, a firm or an individual.

§11-3-15b. Notice of increase in assessed value of business personal property.

(a) On or before January 15 of the tax year, the assessor shall mail a notice of assessed value to any corporation, partnership, limited partnership, limited liability company, firm, association, company or other form of organization engaging in business activity in the county showing the aggregated assessed value of taxpayer's tangible personal property situated in the county on the assessment date, if known, that is not appraised by the Tax Commissioner: *Provided*, That notice is only required if:

(1) The aggregated assessed value of taxpayer's tangible personal property used in business activity is more than ten percent greater than the aggregated assessed value of the property in the prior tax year; and

(2) The aggregated assessed value of property has increased by more than \$100,000 since the prior tax year.

However, this notification requirement does not apply to industrial or natural resources personal property that is appraised by the Tax Commissioner under article six-k of this chapter which is assessed at sixty percent of its true and actual value.

(b) The assessor shall include in the assessment notice:

(1) The assessed value of the property for the preceding assessment year;
(2) The proposed assessed value of the property for the current assessment year;
(3) The classification of the property pursuant to section one, Article X of the Constitution of this state;

(4) The mailing date of the notice; and

(5) The last date on which the taxpayer may file a petition for review with the assessor from the valuation or classification assigned to the property.

(c) The notice required by this section shall be: (1) In writing, in the form prescribed by the Tax Commissioner, and mailed to the taxpayer's last known mailing address; or (2) by electronic notification.

(d) No later than the sixteenth day of the tax year, the assessor shall certify to the county commission and to the Tax Commissioner the date on which all notices under this section were mailed.

(e) After the mailing date of the notice any person who owns, claims, possesses or controls property that is valued by the assessor may inquire of and be advised by the assessor as to the valuation of the property determined by the assessor.

(f) The owner or person in possession of the tangible personal property may petition the assessor for review as provided in section fifteen-d of this article.

§11-3-15c. Petition for assessor review of improper valuation of real property.

(a) A taxpayer who is of the opinion that his or her real property has been valued too high or otherwise improperly valued or listed in the notice given as provided in section two-a of this article may, but is not required to, file a petition for review with the assessor on a written form prescribed by the Tax Commissioner. This section shall not apply to industrial and natural resource property appraised by the Tax Commissioner.

(b) The petition shall state the taxpayer's opinion of the true and actual value of the property and substantial information that justifies that opinion of value for the assessor to consider for purposes of basing a change in classification or correction of the valuation. For purposes of this subsection, the taxpayer provides substantial information to justify the opinion of value by stating the method or methods of valuation on which the opinion is based:

(1) Under the income approach, including the information required in section fifteen-e of this article;

(2) Under the market approach, including the true and actual value of at least three comparable properties in the same geographic area or the sale of the subject property; or

(3) Under the cost approach, including the replacement cost or the cost to build or rebuild the property, plus the true and actual value of the land.

(c) The petition may include more than one parcel of property if they are part of the same economic unit according to the Tax Commissioner's guidelines or if they are owned by the same owner, have the same use, are appealed on the same basis and are located in the same tax district or in contiguous tax districts of the county, and are in a form prescribed by the Tax Commissioner.

(d) The petition shall be filed within five days after the date the taxpayer receives the notice of increased assessment under section two-a of this article or the notice of increased value was published as a Class II-0 legal advertisement as provided in that section.

§11-3-15d. Administrative review of tangible personal property valuation by assessor.

(a) The owner of business tangible personal property that is valued by the assessor or the person in whose possession it is found on the assessment date may appeal to the assessor within five days after the date the notice of increased assessment required by section fifteen-b of this article was received by filing a petition with the assessor on a form prescribed by the Tax Commissioner. The petition shall set forth in writing:

(1) The taxpayer's opinion of the value of the tangible personal property; and
(2) Substantial information that justifies the opinion of value in order for the assessor to consider the information for the purpose of basing a change in the valuation.

(b) The assessor shall rule on each petition no later than February 10 of the tax year.

(c) The notice of the assessor's ruling provided under this section shall be given in the same manner as prescribed in section fifteen-h of this article.

(d) If the request of the petitioner is denied, in whole or in part, the notice required by subsection (c) of this section shall include the grounds for refusing to grant the request contained in the petition

(e) This section shall not apply to tangible personal property appraised by the Tax Commissioner as part of an industrial or natural resource property appraisal.

§11-3-15e. Contents of petition based on income approach to value of real property.

(a) A petition that is filed with the assessor under section fifteen-c or fifteen-d of this article based on the income approach to value shall include income and expense data relating to the property for the three most recent consecutive fiscal years of the petitioner ending on or before June 30 preceding the then current assessment year. If the income and expense data is not available to the petitioner, the petitioner shall file with the petition such income and expense data as is available. The Tax Commissioner, by rule, may establish additional information to be filed if the required income and expense data are not available.

(b) If a petitioner under this article uses the income approach to determine valuation, the petitioner, an officer of a corporate petitioner, a general partner or a designated agent shall file a sworn affidavit under penalty of perjury that the information contained in the petition is true and correct to the best of the petitioner's knowledge.

§11-3-15f. Rejection of petition for failure to include substantial information; amended petition; appeal.

If the assessor rejects a petition filed pursuant to section fifteen-c, fifteen-d or fifteen-e of this article, the petitioner may appeal to the county board of equalization and review as provided in section twenty-four of this article.

§11-3-15g. Meeting between assessor and petitioner.

(a) At the petitioner's written request, the assessor or a member of his or her staff shall meet with the petitioner and the petitioner's representative, if any, at a time and place designated at least three working days in advance by the assessor after the petition is filed.

(b) If the petitioner is unable to appear and meet with the assessor at the time and place set by the assessor, the petitioner may submit written evidence to support the petition if it is submitted before the date of the meeting.

§11-3-15h. Ruling on petition.

(a) In all cases the assessor shall consider the petition and shall rule on each petition filed pursuant to section fifteen-c, fifteen-d or fifteen-e of this article by February 10 of the

assessment year. Written notice shall be served by regular mail on the person who filed the petition.

(b) In considering a petition filed pursuant to section fifteen-c, fifteen-d or fifteen-e of this article, the assessor shall consider the valuation fixed by the assessor on other similar property that is similarly situated.

§11-3-15i. Petitioner's right to appeal.

(a) If the assessor grants the requested relief, the petitioner may not appeal the ruling of the assessor

(b) If the petitioner and the assessor reach an agreement within five business days after the conclusion of the meeting held as provided in section fifteen-g of this article, both parties shall sign the agreement and both parties waive the right to further appeal.

(c) If all or part of the petitioner's request under section fifteen-c, fifteen-d or fifteen-e of this article is denied, the assessor shall mail, on the date of the ruling, to the petitioner at the address shown on the petition notice of the grounds of the refusal to make the change or changes requested in the petition. A petitioner whose request is denied, in whole or in part, or a petitioner who does not receive a response from the assessor by February 10, as provided in section fifteen-h of this article, may file a protest with the county commission sitting as a board of equalization and review, as provided in section twenty-four of this article.

§11-3-19. Property books; time for completing; extension of levies; copies.

The assessor shall complete the assessment and make up his the assessor's official copy of the land and personal property books in time to submit the same to the board of equalization and review not later than February 1 of the assessment tax year. The assessor shall, as soon as practicable after the levy is laid, extend the levies on the land and personal property books, and shall forthwith make three copies of the land books and two copies of the personal property books with the levies extended; One of such the copies of the land books ~~he shall be delivered~~ to the sheriff not later than June 7; one copy he shall be delivered to the clerk of the county ~~court~~ commission not later than July 1; and one copy ~~he shall send be sent~~ to the State Auditor not later than July 1, ~~and~~ One of such the copies of the personal property books ~~he shall be delivered~~ to the sheriff and one copy shall be delivered to the clerk of the county ~~court~~ commission on or before the same date fixed above for the delivery of the land books ~~and such~~. The copies shall be official records of the respective officers. ~~He~~ The assessor may require the written receipt of each of ~~such the~~ the officers for ~~such the~~ the copy. Before delivering any of ~~such the~~ the copies the assessor shall make and subscribe the following oath at the foot of each of them: I,, assessor of the county of, do solemnly swear, (or affirm) that in making the foregoing assessment I have to the best of my knowledge and ability pursued the law prescribing the duties of assessors and that I have not been influenced in making the same by fear, favor or partiality; so help me, God.

.....
assessor.

The officer administering the foregoing oath shall append thereto a certificate in substantially the following form:

Subscribed and sworn to before me, a for the County of and State of West Virginia, by, assessor for said county, this the day of, 19 20

§11-3-23a. Informal review and resolution of classification, taxability and valuation issues.

(a) General. -- Anytime after real or tangible personal property is returned for taxation, the taxpayer may apply to the assessor of the county in which the property was situated on the assessment date for information about the classification, taxability or valuation of the property for property tax purposes for the tax year following the July 1 assessment date. A taxpayer who is not satisfied with the response of the assessor and wants to further pursue the matter must follow the procedures set forth in this section.

(b) Classification or taxability. -- A taxpayer who wants to contest the classification or taxability of property must follow the procedures set forth in section twenty-four-a of this article.

(c) Valuation issues - property appraised and assessed by county assessor. --

(1) A taxpayer who is dissatisfied with the response of the assessor on a question of valuation and who receives a notice of increase in the assessed value of real property as provided in section two-a of this article, or a notice of increase in the assessed value of business personal property as provided in section fifteen-b of this article, who disagrees with the assessed value stated in the notice, may utilize the informal review process specified in this article if the taxpayer decides to challenge the assessed value.

(2) A taxpayer may apply for relief to the county commission sitting as a board of equalization and review pursuant to section twenty-four of this article not later than February 20 of the tax year by filing a written protest with the clerk of the county commission that identifies the amount of the assessed value the taxpayer believes to be in controversy and states generally the taxpayer's reason or reasons for filing the protest. The board shall then set a date and time to hear the taxpayer's protest: *Provided*, That in the written protest or in a separate notice filed with the board on or before the day of the hearing, the taxpayer or taxpayer's representative may notify the board of the taxpayer's election to have the matter heard when the county commission convenes as a board of assessment appeals in the fall of the tax year as provided in section twenty-four-b of this article. A copy of this election shall be served on the assessor, and the Tax Commissioner in the case of industrial property or natural resources property, by personal service or by certified mail. The notice of election shall include an acknowledgment by the taxpayer that the taxpayer will timely pay first and second half installment payments of taxes levied for the current tax year on or before they become due and that any reduction in assessed value that is administratively or judicially determined in a decision that becomes final will result in a credit being established against taxes that become due for a tax year subsequent to the tax year in which the decision becomes final, except as otherwise stated in the decision or as otherwise provided in this article. In the event the board adjourns sine die before February 20 of the tax year, a taxpayer may still file its written protest and the acknowledgment described in this subdivision with the county clerk on or before February 20 of the tax year, and the petition shall be heard when the county commission meets as a board of assessment appeals, as provided in section twenty-four-b of this article. If a taxpayer fails to provide its written protest on or before February 20, and the board

unilaterally increases the assessed value subsequent to that date, the taxpayer may still file a written protest and the acknowledgment described in this subdivision with the county clerk, and the petition shall be heard when the county commission meets as a board of assessment appeals as provided in section twenty-four-b of this article.
(d) Valuation issues - property appraised by Tax Commissioner and assessed by county assessor. –

(1) A taxpayer who receives a notice of tentative appraised value of natural resource property or industrial property from the Tax Commissioner pursuant to article six-k of this chapter, who disagrees with the value stated in the notice may utilize the informal review process specified in this article and article six-k of this chapter.

(2) A taxpayer may apply for relief to the county commission sitting as a board of equalization and review pursuant to section twenty-four of this article no later than February 20 of the tax year by filing a written protest with the clerk of the county commission that identifies the amount of the assessed value the taxpayer believes to be in controversy and states generally the taxpayer's reason or reasons for filing the protest. The board shall then set a date and time to hear the taxpayer's protest: *Provided*, That in the written protest or in a separate notice filed with the board on or before the day of the hearing, the taxpayer or taxpayer's representative may notify the board of the taxpayer's election to have the matter heard when the county commission convenes as a board of assessment appeals in the fall of the tax year as provided in section twenty-four-b of this article. A copy of this election shall be served on the assessor, and the Tax Commissioner in the case of industrial property or natural resources property, by personal service or by certified mail. The notice of election shall include an acknowledgment by the taxpayer that taxpayer will timely pay first and second half installment payments of taxes levied for the current tax year on or before they become due and that any reduction in assessed value that is administratively or judicially determined in a decision that becomes final will result in a credit being established against taxes that become due for a tax year subsequent to the tax year in which the decision becomes final, except as otherwise stated in the decision or as otherwise provided in this article. In the event the board adjourns sine die before February 20 of the tax year, a taxpayer may still file its written protest and the acknowledgment described in this subdivision with the county clerk on or before February 20 of the tax year, and the petition shall be heard when county commission meets as a board of assessment appeals, as provided in section twenty-four-b of this article. If a taxpayer fails to provide its written protest on or before February 20, and the board unilaterally increases the assessed value subsequent to that date, the taxpayer may still file a written protest and the acknowledgment described in this subdivision with the county clerk, and the petition shall be heard when the county commission meets as a board of assessment appeals as provided in section twenty-four-b of this article.

§11-3-24. Review and equalization by county commission.

(a) The county commission shall annually, not later than February 1 of the tax year, meet as a board of equalization and review for the purpose of reviewing and equalizing the assessment made by the assessor. ‡ The board shall not adjourn for longer than three business days at a time, not including a Saturday, Sunday or legal holiday in this state, until this work is completed, and shall not remain in session for a longer period than twenty-eight days and shall not. The board may adjourn sine die before the anytime after

February 15 of the tax year and shall adjourn sine die not later than the last day of February of the tax year.

(b) At the first meeting of the board, the assessor shall submit the property books for the current year, which shall be complete in every particular, except that the levies shall not be extended. The assessor and his the assessor's assistants shall attend and render every assistance possible in connection with the value of property assessed by them.

(c) The ~~commission~~ board shall proceed to examine and review the property books, and shall add on the books the names of persons, the value of personal property and the description and value of real estate liable to assessment which was omitted by the assessor. They The board shall correct all errors in the names of persons, in the description and valuation of property, and they shall cause to be done whatever else may be is necessary to make the assessed valuations comply with the provisions of this chapter. But in no case shall any question of classification or taxability be considered or reviewed by the board.

(d) If the ~~commission~~ board determines that any property or interest is assessed at more or less than sixty percent of its true and actual value as determined under this chapter, it shall fix it at the sixty percent of its true and actual value: *Provided, That* But no assessment shall be increased without giving the property owner taxpayer at least five days' notice, in writing, and signed by the president of the commission, of the intention to make the increase and no assessment shall be greater than sixty percent of the true and actual value of the property.

(e) Service of notice of the increase upon the property owner taxpayer shall be sufficient, or upon his or her agent or attorney, if served in person, or if sent by registered or certified mail to such the property owner, his or her agent, or attorney, at the last known place of abode mailing address of the person as shown in the records of the assessor or the tax records of the county sheriff. If he be not such person cannot be found and have has no last known place of abode mailing address, then notice shall be given by publication thereof as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. The date of the publication shall be at least five days, not including a Saturday, Sunday or legal holiday in this state, prior to the day the board acts on the increase. When it is desired the board intends to increase the entire valuation in any one tax district by a general increase, notice shall be given by publication thereof as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. The date of the last publication shall be at least five days, not including a Saturday, Sunday or legal holiday in this state, prior to the meeting at which the increase in valuation is acted on by the board. When an increase is made, the same valuation shall not again be changed unless notice is again given as heretofore provided.

The clerk of the county commission shall publish notice of the time, place and general purpose of the meeting as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county involved. The expense of publication shall be paid out of the county treasury.

(f) Any person who receives notice as provided in subsection (e) of this section may appear

before the board at the time and place specified in the notice to object to the proposed increase in the valuation of taxpayer's property. After hearing the board's reason or reasons for the proposed increase, the taxpayer may present his or her objection or objections to the increase and the reason or reasons for the objections and may either orally or in writing advise the board that the taxpayer elects for the matter to be heard in the fall of the tax year when the county commission meets as a board of assessment appeals as provided in section twenty-four-b of this article: *Provided*, That taxpayer's election shall not stay a decision by the board to increase the assessed value of the property for the current tax year.

(g) The board may approve an agreement signed by the taxpayer or taxpayer's representative and the assessor, and by a representative of the Tax Commissioner when the property is industrial property or natural resources property, that resolves a valuation matter while the land and personal property books are before the board for equalization and review.

(h) If any person fails to apply for relief at this meeting, he or she shall have waived his the right to ask for correction in his the assessment list for the current year, and shall not thereafter be permitted to question the correctness of his the list as finally fixed by the county commission board, except on appeal to the circuit court or as otherwise provided in this article.

(i) After the county commission board completes the review and equalization of the property books, a majority of the commission board shall sign a statement that it is the completed assessment of the county for the tax year;. Then the property books shall be delivered to the assessor and the levies extended as provided by law.

(j) A taxpayer who elects to have a hearing before the board of equalization and review may appeal the board's order as provided in section twenty-five of this article. A taxpayer who elects to have a hearing before the board of assessment appeals may only appeal the assessed value as provided in section twenty-four-b of this article.

§11-3-24a. Protest of classification or taxability to assessor; appeal to circuit court Tax Commissioner.

(a) At any time after property is returned for taxation, and up to and including the time the property books are before the county court for commission sitting as a board of equalization and review, any taxpayer may apply to the assessor for information regarding the classification and taxability of his the taxpayer's property. In case the taxpayer is dissatisfied with the classification of property assessed for him to the taxpayer or believes that such the property is exempt or otherwise not subject to taxation, he the taxpayer shall file his objections in writing with the assessor. The assessor shall decide the question by either sustaining the protest and making proper corrections, or by stating, in writing if requested, the reasons for his refusal to grant the protest.

(b) The assessor may, and if the taxpayer requests, the assessor shall, certify the question to the State Tax Commissioner in a statement sworn to by both parties, or if the parties are unable to agree, in separate sworn statements, giving a full description of the property and any other information which the Tax Commissioner may requires. The Tax Commissioner shall prescribe forms on which the aforesaid question shall be certified and the Tax Commissioner shall have the authority to pursue any inquiry and procure any information necessary for the disposition of the issue.

(c) The Tax Commissioner shall, as soon as possible on receipt of the question, but in no case later than February 28 of the assessment year, instruct the assessor as to how the property shall be treated. The instructions issued and forwarded by mail to the assessor shall be binding upon ~~him~~ the assessor, but either the assessor or the taxpayer may apply to the circuit court of the county within thirty days after receiving written notice of the Tax Commissioner's ruling, for the review of the question of classification or taxability in the same fashion as is provided for appeals from the county ~~court~~ commission sitting as a board of equalization and review in section twenty-five of this article. ~~The tax commissioner shall prescribe forms on which the aforesaid questions shall be certified and he shall have the authority to pursue any inquiry and procure any information which may be necessary for the disposition of the issue.~~

(d) The amendments to this section enacted in the year 2010 shall apply to classification and taxability rulings issued for taxes levied after December 31, 2011.

§11-3-24b. Board of Assessment Appeals.

(a) The county commission shall meet as a board of assessment appeals no sooner than October 1 of the tax year, unless that day is a Saturday, Sunday or legal holiday in this state, in which event the board shall begin meeting on the next day that is not a Saturday, Sunday or legal holiday.

(b) The board shall set a date and time for hearing each protest filed on or before February 20 of the tax year, as provided in section twenty-three-a of this article, and for which the taxpayer elected to have the matter heard by the board of assessment appeals: *Provided*, That the commission may, before, on or after October 1, begin developing a hearing schedule for hearings to commence on or after October 1. The board may in its discretion grant one or more continuances of the hearing date. The board shall grant a continuance when the continuance is agreed to by the assessor and the taxpayer. When the hearing involves industrial property or natural resources property appraised by the Tax Commissioner, the board shall grant continuances of hearing dates and otherwise work with the Tax Commissioner to develop a hearing schedule that recognizes the limitations of state resources and the fact that the Tax Commissioner is responsible for appraising industrial properties and natural resource properties in all fifty-five counties.

(c) Upon the timely request of any party, the board may, before, on or after October 1, develop a discovery schedule for the exchange of information between the taxpayer and the assessor and, in matters involving industrial property or natural resources property, the Tax Commissioner. Any objections to discovery may be made to the board which shall rule on such objections. Any willful failure to provide the information requested through the discovery process and required by the board may be grounds for dismissal of the appeal by the board: *Provided*, That the board shall provide written justification for dismissal to all parties, and: *Provided further*, That any dismissal may be appealed to the circuit court as provided in section twenty-five of this article.

(d) The board may assign the appeal to a hearing examiner for the taking of evidence if the hearing examiner is mutually agreed to by the parties to the appeal. The hearing examiner shall have the same authority as the board to schedule hearings and schedule and compel discovery: *Provided*, That, in the case of a willful failure to provide information, an appeal may be dismissed only by the board as provided in subsection (c) of this section. Hearings before a hearing examiner shall be recorded electronically. Upon the conclusion of

discovery and hearings on an appeal, the hearing examiner shall make a written report of findings of fact and conclusions of law and provide the same to the board and all parties to the appeal. The board shall issue its order consistent with the report of the hearing examiner without the taking of additional evidence. The cost and expenses of the hearing examiner shall be paid by the board.

(e) The board may approve an agreement signed by the taxpayer or taxpayer's representative and the assessor, and by a representative of the Tax Commissioner when the property is industrial property or natural resource property, that resolves a valuation matter that arose while the land and personal property books were before the board of equalization and review.

(f) The board shall issue its order within a reasonable time after the record for the hearing is closed and all required briefs have been submitted.

(g) Any party to the hearing may appeal the order of the board in the manner provided in section twenty-five of this article for appealing an order of the board of equalization and review.

(h) In the event the board reduces an assessed value in an order that becomes final, the county clerk shall certify copies of the order to the Auditor, sheriff and assessor, and to the Tax Commissioner if the property is industrial property or natural resources property. The taxpayer shall be entitled to a credit voucher to be applied against future taxes as provided in this article. When endorsed by the taxpayer, the voucher shall be sufficient to entitle the sheriff to a credit for so much of his or her settlement which he or she is required to make.

(i) The board of assessment appeals shall meet as often as necessary until the work of the board is completed: *Provided*, That the board shall adjourn sine die not later than October 31 of the tax year unless the board, by majority vote, agrees to extend the term if necessary to afford the parties due process and to complete its work, after which it shall adjourn sine die.

§11-3-25. Relief in circuit court against erroneous assessment.

(a) Any person claiming to be aggrieved by any assessment in any land or personal property book of any county who shall have appeared and contested the valuation as provided in section twenty-four or twenty-four-a of this article, or whose assessment has been raised by the county court ~~commission sitting as a board of equalization and review~~ above the assessment fixed by the assessor ~~or who contested the classification or taxability of his property~~ may, at any time up to thirty days after the adjournment of the ~~county court board sitting as a board of equalization and review,~~ or at anytime up to thirty days after the order of the board of assessment appeals is served on the parties, apply for relief to the circuit court of the county in which ~~such~~ the property books are made out; but ~~he~~ any person applying for relief in circuit court shall, before any ~~such~~ application is heard, give ten days' notice to the prosecuting attorney of the county, whose duty it shall be to attend to the interests of the state, county and district in the matter, and the prosecuting attorney shall give at least five days' notice of ~~such~~ hearing to the Tax Commissioner.

(b) The right of appeal from any assessment by the ~~county court,~~ as hereinbefore provided, ~~board of equalization and review or order of the board of assessment appeals as provided in this section,~~ may be taken either by the applicant or by the state, and in case the applicant, by his or her agent or attorney, or the state, by its prosecuting attorney or Tax Commissioner, desires to take an appeal from the decision of the ~~county court~~ either board,

the party desiring to take ~~such~~ an appeal shall have the evidence taken at the hearing of the application before ~~the county court~~ either board, including a transcript of all testimony and all papers, motions, documents, evidence and records as were before the board, certified by the county clerk and transmitted to the circuit court as provided in section four, article three, chapter fifty-eight of this code, except that, any other provision of this code notwithstanding, the evidence shall be certified and transmitted within thirty days after the petition for appeal is filed with the court or judge, in vacation.

(c) If there was an appearance by or on behalf of the ~~owner taxpayer~~ before ~~the county court~~ either board, or if actual notice, certified by ~~such court~~ the board, was given to the ~~owner taxpayer~~, the appeal, when allowed by the court or judge, in vacation, shall be determined by the court from the evidence record as so certified: Provided, That in cases where the court determines that the record made before the board is inadequate as a result of the parties having had insufficient time to present evidence at the hearing before the board to make a proper record, as a result of the parties having received insufficient notice of changes in the assessed value of the property and the reason or reasons for the changes to make a proper record at the hearing before the board, as a result of irregularities in the procedures followed at the hearing before the board, or for any other reason not involving the negligence of the party alleging that the record is inadequate, the court may remand the appeal back to the county commission of the county in which the property is located, even after the county commission has adjourned sine die as a board of equalization and review or a board of assessment appeals for the tax year in which the appeal arose, for the purpose of developing an adequate record upon which the appeal can be decided. The county commission shall schedule a hearing for the purpose of taking additional evidence at any time within ninety days of the remand order that is convenient for the county commission and for the parties to the appeal. If, however, there was no actual notice to ~~such owner~~ the taxpayer, and no appearance by or on behalf of the ~~owner taxpayer~~ before the ~~county court~~ board, or if a question of classification or taxability is presented, the matter shall be heard de novo by the circuit court.

(d) If, upon the hearing of ~~such~~ appeal, it is determined that any property has been ~~valued~~ assessed at more than sixty percent of its true and actual value, ~~or illegally classified or assessed~~ determined as provided in this chapter, the circuit court shall, by an order entered of record, correct the assessment, and fix the assessed value of the property at sixty percent of its true and actual value. A copy of ~~such~~ the order or orders entered by the circuit court reducing the valuation shall be certified to the Auditor, if the order or orders pertain to real property, by the clerk within twenty days after the entering of the same, and every order or judgment shall show that the prosecuting attorney or Tax Commissioner was present and defended the interest of the state, county and district. If it be ascertained that any property has been valued too high, and that the ~~owner taxpayer~~ has paid the excess tax, it shall be refunded or credited to him the taxpayer in accordance with the provisions of section twenty-five-a of this article, and if not paid, he or she shall be relieved from the payment thereof. If it is ascertained that any property is valued too low, the circuit court shall, by an order entered of record, correct the valuation and fix it at sixty percent of its true and actual value. A copy of any order entered by any circuit court increasing the valuation of property shall be certified within twenty days, if the order pertains to real property, to the Auditor, the county clerk and the sheriff. However, if the order pertains only

to personal property, then the copy shall be certified within twenty days to the county clerk and to the sheriff and it shall be the duty of the Auditor, the county clerk and the sheriff to charge the taxpayer affected with the increase of taxes occasioned by the increase of valuation by applying the rate of levies for every purpose in the district where such the property is situated for the current year. The order shall also be filed in the office of the Auditor and clerk of the county court commission. Any order disposing of a question of classification or taxability shall be similarly prepared, certified and filed, and the increase or decrease of taxes resulting shall be treated as provided above for changes in valuation. The circuit court shall review the record submitted from the board. If the court determines that the record is adequate, it shall establish a briefing and argument schedule that will result in the appeal being submitted to the court for decision within a reasonable time, but not to exceed eight months after the appeal is filed. All final decisions or orders of the circuit court shall be issued within a reasonable time, not to exceed ninety days, from the date the last brief is filed and the case is submitted to the court for decision. The state or the aggrieved taxpayer may appeal a question of valuation to the Supreme Court of Appeals, if the assessed value of the property is \$50,000 or more, and either party may appeal a question of classification or taxability.

(e) All persons applying for relief to the circuit court under this section shall be governed by the same presumptions, burdens and standards of proof as established by law for taxpayers applying for such relief.

(f) Effective date. -- The amendments to this section enacted in 2010 shall apply to tax years beginning after December 31, 2011.

§11-3-25a. Payment of taxes that become due while appeal is pending.

(a) All taxes levied and assessed against the property for the year on which a protest or an appeal has been filed by the taxpayer as provided in section twenty-four or twenty-four-b of this article shall be paid before they become delinquent. If the taxes are not paid before becoming delinquent, the circuit court, having jurisdiction of the appeal, as appropriate, shall dismiss the appeal unless the delinquent taxes and interest due are paid in full within thirty days after taxes for the second half of the tax year become delinquent.

(b) In the event the order of a court becomes final and the order results in an overpayment of taxes levied for the tax year that have been paid to the sheriff, the amount of the overpayment shall be refunded to the taxpayer if the overpayment is \$25,000 or less within thirty days after the time for appealing the decision or order expires or, if the decision or order is appealed, within thirty days of the date the appeals court turns down the appeal: *Provided*, That, if the taxpayer's protest before the county commission below was heard pursuant to the provisions of section twenty-four-b of this article, the refund shall be paid pursuant to the provisions of that section. If the overpayment is more than \$25,000, a credit in the amount of the overpayment shall be established by the county sheriff and allowed as a credit against taxes owed up to the following two tax years: *Provided*, That the county commission may elect to refund the amount of overpayment rather than having a credit established as provided in this section: *Provided however*, That if any portion of the overpayment remains unused after the date on which taxes payable for the second half of the second tax year following the tax year of the overpayment become delinquent, that portion shall be refunded to taxpayer by the county sheriff no later than thirty days after that date or thirty days from the date that the circuit court order becomes final, whichever date

occurs later. Whenever an overpayment is refunded or credited under this section, the county shall pay interest at the rate established in section seventeen and seventeen-a, article ten of this chapter for overpayments of taxes collected by the Tax Commissioner, which interest shall be computed from the date the overpayment was received by the sheriff to the date of the refund check or the date the credit is actually taken against taxes that become due after the order of the court becomes final.

§11-3-32. Effective date of amendments.

Unless specified otherwise in this article, all amendments to this article adopted in the year 2010 shall apply to the assessment years beginning on or after July 1, 2011.

§11-3-33. Rules.

The Tax Commissioner is hereby authorized to promulgate emergency rules and other rules in accordance with the provisions of article three, chapter twenty nine-a of this code as necessary or convenient for administration and interpretation of this article.

ARTICLE 6K. ASSESSMENT OF INDUSTRIAL PROPERTY AND NATURAL RESOURCES PROPERTY.

§11-6K-1. Time and basis of assessments; true and actual value; and returns of property to Tax Commissioner.

(a) All industrial property and natural resources property shall be assessed annually as of the assessment date at sixty percent of its true and actual value.

(b) If required by the Tax Commissioner, all owners or operators of natural resources property, except oil-producing property, natural gas-producing property and managed timberland, shall, on or before May 1 preceding the July 1 assessment date, make a return to the Tax Commissioner and, if requested in writing by the assessor of the county where situated, to the county assessor, at a time and in the form specified by the Tax Commissioner, of all applicable natural resources property owned by them. Tax returns required to be filed pursuant to this section may be filed electronically in the discretion of the Tax Commissioner. The Tax Commissioner may require the filing of all information which would be useful in valuing the property covered by the returns. Upon written application by the taxpayer filed prior to the due date of any return required to be filed by this section, the Tax Commissioner may for reasonable cause shown grant an extension of no more than one month in the due date of any return.

(c) If required by the Tax Commissioner, all owners or operators of industrial property, oil-producing property and natural gas-producing property, shall, on or before August 1 of the assessment year, make a return to the Tax Commissioner and, if requested in writing by the assessor of the county where situated, to the county assessor, at a time and in the form specified by the Tax Commissioner, of all industrial property, oil-producing property and natural gas-producing property, owned by them. Tax returns required to be filed pursuant to this section may be filed electronically in the discretion of the Tax Commissioner. The Tax Commissioner may require the filing of all information which would be useful in valuing the property covered by the returns. Upon written application by the taxpayer filed prior to the due date of any return required to be filed by this section, the Tax Commissioner may for reasonable cause shown grant an extension of no more than one month in the due date of any return.

§11-6K-2. Definitions.

As used in this article:

(1) "Active coal mining property" means a mineable bed of coal on a property or portion of a property involved in a permitted mining operation. Each and every bed of coal being mined in a permitted mining operation is a separate active mining property.

(2) "Industrial property" means the real and personal property integrated as a functioning unit intended for the assembling, processing and manufacturing of finished or partially finished products.

(3) "Managed timberland" means surface real property, except farm woodlots, of not less than ten contiguous acres which is devoted primarily to forest use and which, in consideration of its size, has sufficient numbers of commercially valuable species of trees to constitute at least forty percent normal stocking of forest trees which are well distributed over the growing site, and that is certified as managed timberland by the Division of Forestry.

(4) "Natural gas-producing property" means the property from which natural gas has been produced or extracted at any time during the calendar year preceding the assessment date. Natural gas producing-property includes the property interest or interests underlying an area of up to one hundred twenty-five acres of surface per well for property with active wells on the parcel.

(5) "Natural resources property" means any of the following: Active coal mining property, reserve coal property, natural gas-producing property, oil-producing property, managed timberland or other natural resources property.

(6) "Oil-producing property" means property from which oil has been produced or extracted at any time during the calendar year preceding the assessment date. Oil-producing property includes the interest or interests underlying an area of up to forty acres of surface per well with one or more active wells on the parcel.

(7) "Operator" means an individual, limited liability company, partnership, corporation, joint venture or other enterprise which proposes to or does locate, drill, produce, manage or abandon any oil and/or natural gas well or which is engaged in actively obtaining or preparing to obtain coal and/or its by-products from the earth's crust on an active coal mining property.

(8) "Reserve coal property" means any property for which coal rights are part of the owned estate and which is not part of an active coal mining property.

§11-6K-3. Form and manner of making return; failure to timely make return; penalties.

(a) All returns required to be made to the Tax Commissioner under this article shall be made in conformity with any reasonable requirements of the Tax Commissioner of which the person making the return shall have had notice, and shall be made upon forms prescribed by the Tax Commissioner who is invested with full power and authority to prescribe the forms required from any owner, operator or producer that may be of use to the Tax Commissioner in determining the true and actual value of the properties of the owners, operators or producers.

(b) All returns shall be signed and sworn to by the owner, operator or producer if a natural person, or, if the owner, operator or producer shall be a limited liability company, corporation, partnership, joint venture or other enterprise, shall be signed and sworn to by its president, vice president, secretary or other individual authorized to act on behalf of the taxpayer.

(c) If any owner, operator or producer fails to make a return within the time required by section one of this article, it shall be the duty of the Tax Commissioner to take steps as necessary to compel compliance and to enforce any and all penalties imposed by law for failure to do so.

(d) Any owner, operator or producer, whether a natural person, limited liability company, corporation, partnership, joint venture or other enterprise, willfully failing to make a return within thirty days from the day it is herein required shall be guilty of a misdemeanor and, upon conviction thereof, fined \$100 for each month the failure continues. In addition, any penalties provided in this chapter or elsewhere in this code relating to failure to list any property or to file any return or report for ad valorem taxation purposes may be applied to any owner of property required to make a return pursuant to this section.

§11-6K-4. Review of returns; procuring information for tentative appraisals; tentative appraisals by Tax Commissioner; and notification to taxpayers.

(a) All returns delivered to the Tax Commissioner shall be examined by him or her, and if found insufficient in form or in any respect defective, imperfect or not in compliance with law, he or she shall compel the person delivering the return to make it in proper and sufficient form in all respects as required by law.

(b) If any owner, operator or producer fails to make a required return, the Tax Commissioner shall proceed to obtain the facts and information required to be furnished by the returns.

(c) For the purposes of ascertaining the correctness of any return filed pursuant to this article or of valuing the property of any industrial taxpayer or natural resources property owner or operator, the Tax Commissioner may exercise all of the powers and authority granted to him or her by sections five-a, five-b and five-c, article ten of this chapter.

(d) Using information provided on the returns and all other pertinent evidence, information and data he or she has been able to procure, the Tax Commissioner shall annually value and make tentative appraisals of all industrial property and natural resources property as provided in section ten, article one-c of this chapter.

(e) On or before October 15 of the assessment year, the Tax Commissioner shall complete the preparation of tentative appraisals of all industrial property and natural resources property and shall notify the owner or operator affected thereby of the amount of the tentative appraisals: *Provided*, That in the case of oil-producing property, natural gas-producing property and managed timberland, the Tax Commissioner shall complete the preparation of tentative appraisals and notify the affected owner or operator by December 1 of the assessment year, and: *Provided further*, That no notification shall be required where the total increase in the aggregate amount of the tentative appraisals to the owner or operator affected thereby does not exceed \$1,000 and the total tentative appraisals did not increase by more than ten percent from the prior year's appraisals. Notification may, at the reasonable discretion of the Tax Commissioner, be: (1) By written notice deposited in the United States mail, addressed to the owner or operator at the principal office or place of business of the owner or operator; (2) by electronic notification; or (3) by any other means designed to communicate the tentative appraisal information to the owner or operator in a timely and efficient manner and in a convenient useable form. Any notice required to be provided under this section to an owner or operator shall also be provided by the Tax Commissioner to the assessor of the county in which the property is located. The Tax

Commissioner shall retain in his or her office true copies of tentative appraisals and of the underlying work sheets used to compute the tentative appraisals, all of which shall be available for inspection by any owner or operator or his or her duly authorized representative.

§11-6K-5. Informal petition to Tax Commissioner for review of tentative appraisals.

(a) A taxpayer who is of the opinion that the tentative appraisal of its industrial property or natural resources property, except oil-producing property, natural gas-producing property and managed timberland, does not reflect the true and actual value of the property or is otherwise improperly valued may, after receiving its tentative appraisal and on or before November 15 of the assessment year, informally petition the Tax Commissioner requesting a review of the tentative appraisal. Likewise, an assessor who is of the opinion that the tentative appraisal of any industrial property or natural resources property, except oil-producing property, natural gas-producing property and managed timberland, located in the county does not reflect the true and actual value of the property or is otherwise improperly valued may, after receiving the tentative appraisal and on or before November 15 of the assessment year, informally petition the Tax Commissioner requesting a review of the tentative appraisal. The Tax Commissioner may require the petition be made on a written form prescribed by the Tax Commissioner. At the time a petition is filed by a taxpayer with the Tax Commissioner, the petitioner shall provide a copy of the petition to the assessor of the county in which the property is located. At the time a petition is filed by an assessor with the Tax Commissioner, the petitioner shall provide a copy of the petition to the taxpayer involved.

(b) At the petitioner's request, the Tax Commissioner or his or her representative shall meet with the petitioner or the petitioner's representative to discuss the petition at a time and place designated at least five working days in advance by the Tax Commissioner after the petition is filed. If the petitioner is unable to appear and meet with the Tax Commissioner at the time and place set by the Tax Commissioner, the petitioner may submit written evidence to support the petition if it is submitted before the date of the meeting.

(c) The Tax Commissioner shall consider and rule on each informal petition filed under this section on or before January 15 of the tax year. If the Tax Commissioner agrees with the petition he or she shall modify the tentative appraisal accordingly. The Tax Commissioner shall then notify the petitioner and assessor of the county in which the property is located in writing of his or her decision and shall include supporting data that the assessor might need to evaluate the appraisal.

§11-6K-6. Final appraisal of industrial property and natural resources property by Tax Commissioner; appraisals sent to assessors; appeals of Tax Commissioner's appraisals.

(a) The Tax Commissioner shall finalize the tentative appraisals made pursuant to section four of this article and make his or her final appraisals of industrial property and natural resources property on or before December 15 of the assessment year.

(b) On or before December 15 of the assessment year, the Tax Commissioner shall forward each industrial property and natural resources property appraisal to the county assessor of the county in which that property is located. In so doing, The Tax Commissioner shall identify those appraisals that may still be under review under section five of this article. The assessor shall then multiply each appraisal by sixty percent and

include the resulting assessed value in the land book or the personal property book, as appropriate for each tax year. The Tax Commissioner shall supply supporting data that the assessor might need to evaluate the appraisal.

(c) Any taxpayer claiming to be aggrieved by any assessment made pursuant to this article may appeal the assessment as provided under the provisions of article three of this chapter: *Provided*, That if the assessment exceeds sixty percent of the final appraisal by the Tax Commissioner, the taxpayer may notify the Tax Commissioner in writing of this error, whereupon he or she shall, if the error is confirmed, instruct the assessor in writing to lower the assessment to sixty percent of the final appraisal. The assessor shall, upon receipt of instruction from the Tax Commissioner, lower the assessment as required.

§11-6K-7. Effective date.

The provisions of this article enacted in the year 2010 shall be effective for the assessment years and the tax years beginning on or after July 1, 2011.

§11-6K-8. Rules.

The Tax Commissioner is hereby authorized to promulgate emergency rules and other rules in accordance with the provisions of article three, chapter twenty nine-a of this code as necessary or convenient for administration and interpretation of this article.

CHAPTER 18. EDUCATION.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-12. County basic foundation; total basic state aid allowance.

(a) The basic foundation program for each county for the fiscal year shall be the sum of the amounts computed in accordance with the provisions of sections four, five, six, seven, eight, nine and ten of this article. On the first working day of July in each year, the State Board shall determine the basic foundation program for each county for that fiscal year. Data used in the computations relating to net and adjusted enrollment, and the number of professional educators, shall be for the second month of the prior school term. Transportation expenditures used in these computations shall be for the most recent year in which data are available. The allocated state aid share of the county's basic foundation program shall be the difference between the cost of its basic foundation program and the county's local share as determined in section eleven of this article except as provided in subsection (b) of this section.

(b) The allocated state aid share shall be adjusted in the following circumstances in the following manner: *Provided*, That prior to such adjustment, the State Tax Commissioner shall provide the State Board, by January 15 of each year, a certified listing of those counties in which such adjustment shall be made pursuant to this subsection, together with the amount of revenue which will not be available to each county board in the ensuing fiscal year as a result of the circumstance:

(1) In those instances where the local share as computed under section eleven of this article is not reflective of local funds available because the county is under a final court order, or a final decision of a board of assessment appeals under section twenty-four-b, article three, chapter eleven of this code, to refund or credit property taxes paid in prior years, the allocated state aid share shall be the county's basic foundation program, minus the local share as computed under section eleven of this article, plus the amount of property tax the county is unable to collect or must refund due to the final court order or final decision of a board of assessment appeals: *Provided*, That said adjustment shall not

be made or shall only be made proportionately when the Legislature fails to fund or funds only in part the public school basic foundation support plan state share at a level sufficient to cover the reduction in state share: *Provided, however,* That nothing herein provided shall be construed to require or mandate any level of funding by the Legislature.

(2) In those instances where the local share as computed under section eleven of this article is not reflective of local funds available because the county is collecting tax based upon an assessed value which is less than that determined by the Tax Commissioner in the most recent published survey of property valuations in the state due to an error in the published survey, which error is certified to by the Tax Commissioner, the allocated state aid share shall be the county's basic foundation program, minus the local share as computed under section eleven of this article, plus the amount of property tax the county is unable to collect based on differences in the assessed valuation between those in the most recent published survey of valuation and the corrected assessed value actually levied upon by the county: *Provided,* That said adjustment shall not be made or shall only be made proportionately when the Legislature fails to fund or funds only in part the public school basic foundation support plan state share at a level sufficient to cover the reduction in state share: *Provided, however,* That nothing herein provided shall be construed to require or mandate any level of funding by the Legislature.

(3) In instances where a county is unable to collect property taxes from a taxpayer during the pendency of any court proceeding, the allocated state aid share shall be the county's basic foundation program minus the local share as computed under section eleven of this article, plus the amount the county is unable to collect as a result of the pending court proceedings as certified by the Tax Commissioner: *Provided,* That the county is required to reimburse the amount of allocated state aid share attributable to the amount of property tax it later receives upon completion of court proceedings, which shall be paid into the General Revenue Fund of the state: *Provided, however,* That said adjustment shall not be made or shall only be made proportionately when the Legislature fails to fund or funds only in part the public school basic foundation support plan state share at a level sufficient to cover the reduction in state share: *Provided further,* That nothing herein provided shall be construed to require or mandate any level of funding by the Legislature.

(c) The allocated state aid share shall be adjusted in any county receiving payments or contributions in lieu of property taxes. In instances where a county receives payments or contributions in lieu of property taxes, the allocated state aid share shall be the county's basic foundation program minus the local share as computed under section eleven of this article, plus any amounts added pursuant to subsection (b) of this section minus the payments or contributions in lieu of property taxes which are distributed by the sheriff to the county board of education. In determining the amount of such contribution or payment in lieu of taxes, each county commission shall provide to the State Tax Commissioner, by January 1 of each year, the total amount of such payments or contributions paid to the county and the proportion of the total amount that has been or will be distributed to the county board of education. The State Tax Commissioner then shall provide the State Board, by January 15 of each year, a certified listing of those counties in which an adjustment pursuant to this section shall be made, together with the amount of revenue which will be available to each county board in the ensuing fiscal year as a result of contribution or payment in lieu of taxes.

(d) Total basic state aid to the county shall be the computed state share of basic foundation support. After such computation is completed, the State Board shall immediately certify to each county board the amount of state aid allocated to the county for that fiscal year, subject to any qualifying provisions of this article.

Senate Bill 547

Effective Date: Passed March 13, 2010, in effect from passage

Signed by Governor: April 2, 2010

Code Reference: Amends and reenacts §11-8-12 and §11-8-12a

Title: Meeting of County Board to Enter the Levy Order

Major Provisions:

- Extends the time for levying bodies to reconvene its March meeting in order to enter its levy order for the upcoming year from the third Tuesday in April until June 1, if the levying body has placed a levy election on the ballot for consideration during a primary election. This makes the provision in this Code section consistent with the same provision provided in WVC §11-8-9.
- Specifies that no provision of this section or WVC §11-8-9 may be construed to abrogate any requirement imposed on the board of education by WVC §18-9B-1 et seq.

ENROLLED

Senate Bill No. 547

(By Senators Tomblin (Mr. President) and Stollings)

[Passed March 13, 2010; in effect from passage.]

AN ACT to amend and reenact §11-8-12 and §11-8-12a of the Code of West Virginia, 1931, as amended, all relating to the dates of certain meetings of county boards of education related to levies.

Be it enacted by the Legislature of West Virginia:

That §11-8-12 and §11-8-12a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 8. LEVIES.

§11-8-12. Levy estimate by board of education; certification and publication.

Each board of education shall, at the session provided for in section nine of this article, if the laying of a levy has been authorized by the voters of the district under article nine, chapter eighteen of the code, ascertain the condition of the fiscal affairs of the district, and make a statement setting forth:

- (1) The amount due, and the amount that will become due and collectible during the current fiscal year except from the levy of taxes to be made for the year;
- (2) The interest, sinking fund and amortization requirements for the fiscal year of bonded indebtedness legally incurred upon a vote of the people, as provided by law, by any school district existing prior to May 22, 1933, before the adoption of the Tax Limitation Amendment;
- (3) Other contractual indebtedness not bonded, legally incurred by any such school district existing prior to May 22, 1933, before the adoption of the Tax Limitation Amendment, owing by such district;
- (4) The amount to be levied for the permanent improvement fund;
- (5) The total of all other expenditures to be paid out of the receipts for the current fiscal year, with proper allowance for delinquent taxes, exonerations and contingencies;
- (6) The amount of such total to be raised by the levy of taxes for the current fiscal year;
- (7) The proposed rate of levy in cents on each \$100 assessed valuation of each class of property;
- (8) The separate and aggregate amounts of the assessed valuation of real, personal and public utility property within each class.

The secretary of the board shall forward immediately a certified copy of the statement to the ~~tax commissioner~~ Auditor and shall publish the statement ~~forthwith~~ immediately. The session shall then stand adjourned until the third Tuesday in April, at which time it shall reconvene: except where otherwise permitted by section nine of this article: *Provided, That no provision of this section or section nine of this article may be construed to abrogate any*

requirement imposed on the board of education by article nine-b, chapter eighteen of this code.

§11-8-12a. Adjourned session of board of education to hear objections to proposed levies; approval of estimate and levy by Tax Commissioner; first levy for bonded and other indebtedness and indebtedness not bonded, second for Permanent Improvement Fund, then for current expenses.

Each board of education, when it reconvenes ~~on the third Tuesday in April~~ as provided by section twelve of this article, shall proceed in a manner similar in all respects to that provided for in section ten-a of this article. The board shall ~~shall~~ may not finally enter any levy until it has been approved in writing by the ~~tax commissioner~~ Auditor. After receiving the approval, the board shall enter the statement as approved in its record of proceedings, together with the written approval: ~~Provided, That for the fiscal year one thousand nine hundred ninety three only, each board of education may delay its final entry of the levy until no later than the first Thursday in May, by which time each board shall have entered the statement as approved in its record of proceedings, together with the written approval: Provided, however, That any delay by a county board of education in the entry of its final levy pursuant to the provisions of this section in the fiscal year one thousand nine hundred ninety three and any action taken prior to the effective date of this section that is not inconsistent with the provisions of this section or other applicable levy rate sections of this code are hereby ratified and confirmed as having full force and effect.~~

The board shall levy as many cents per \$100 assessed valuation on each class of property in the county or in the area of a preexisting school district, as the case may be, as will produce the amounts, according to the last assessment, shown to be necessary by the statement in the following order:

First, for the bonded debt and for the contractual debt not bonded, if any, of any school district of the county existing before May 22, 1933, and incurred ~~prior to~~ before the adoption of the Tax Limitation Amendment;

Second, for the Permanent Improvement Fund;

Third, for general current expenses.

The rates of levy for each purpose shall ~~shall~~ may not exceed the amounts fixed by section six-c unless another rate is authorized by the Tax Commissioner or set by the Legislature in accordance with this article. When less than the maximum levies are imposed, the levies on each class of property shall be in the same proportions as the maximums authorized.

Senate Bill 548

Effective Date: Passed February 26, 2010, in effect from passage.

Signed by Governor: March 08, 2010

Code Reference: Enacts a Special Act

Title: Boone County Excess Levy

Major Provisions:

- Extends the time for the Boone County Board of Education to meet as a levying body for the purpose of presenting to the voters of the county during the Primary Election a ballot to consider the renewal of its existing excess levy from the third Tuesday in April until the last day of May.

ENROLLED

Senate Bill No. 548

(By Senators Tomblin (Mr. President), Stollings and Plymale)

[Passed February 26, 2010; in effect from passage.]

AN ACT to extend the time for the governing body of the Board of Education of Boone County, West Virginia, to meet as a levying body for the purpose of presenting to the voters of that county an election to consider a renewal of an existing excess levy for schools, from the third Tuesday of April until the last day in May, 2010 that is not a Saturday, Sunday or legal holiday.

Be it enacted by the Legislature of West Virginia:

§1. Extending the time for the Board of Education of Boone County to meet as levying body for election to consider an excess levy amendment.

Notwithstanding the provisions of article eight, chapter eleven of the Code of West Virginia, 1931, as amended, to the contrary, the Board of Education of Boone County, West Virginia, is authorized to extend the time for its meeting as a levying body, setting the levying rate and certifying its actions to the Auditor from the third Tuesday in April until the last day in May, 2010 that is not a Saturday, Sunday or legal holiday, for the purpose of submitting to the voters of Boone County, West Virginia, a renewal of an existing excess levy, said excess levy scheduled to expire on June 30, 2010, so as to extend the excess levy until the end of the fiscal year commencing on July 1, 2014.

Senate Bill 573

Effective Date: Passed March 13, 2010, in effect ninety days from passage (June 11, 2010)

Signed by Governor: March 31, 2010

Code Reference: Amends and reenacts § 6-9-7

Title: Audit Reports

Major Provisions:

- Allows the publication of the annual audit reports of all local governmental entities to be made electronically with written notice provided to the proper legal authorities.

ENROLLED

Senate Bill No. 573

(By Senators Minard, Yost, Snyder, White,
Edgell, Boley, Chafin and Stollings)

[Passed March 13, 2010; in effect ninety days from passage.]

AN ACT to amend and reenact §6-9-7 of the Code of West Virginia, 1931, as amended, relating to allowing audits to be published electronically with notice to the proper authorities.

Be it enacted by the Legislature of West Virginia:

That §6-9-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. SUPERVISION OF LOCAL GOVERNMENT OFFICES.

§6-9-7. Examinations into affairs of local public offices; penalties.

(a) The chief inspector has the power by himself or herself, or by any person appointed, designated or approved by the chief inspector to perform the service, to examine into all financial affairs of every local governmental office or political subdivision and all boards, commissions, authorities, agencies or other offices created under authority thereof. An examination shall be made annually, if required, to comply with the Single Audit Act and when otherwise required by law or contract. When that act does not apply, unless otherwise required by law or by contract, the examination shall be made at least once a year, if practicable. Furthermore, the chief inspector shall furnish annually to the Legislature a list of each local government office or political subdivision and all boards, commissions, authorities, agencies or other offices created under authority thereof and the year of its most recent completed audit.

(b) When required for compliance with regulations for federal funds received or expended by county boards of education the chief inspector or his or her designee, including any certified public accountant approved by the chief inspector shall conduct and issue an audit report within the time specified in controlling federal regulations. Examinations of other local governments shall be conducted and audit or review reports issued in accordance with uniform procedures of the chief inspector.

(c) A county board of education may elect, by May 1 of the fiscal year to be audited, to have its annual examination performed by a certified public accountant approved by the chief inspector to perform the examinations. When this election is made, a copy of the order of the county board making the election shall be filed with the chief inspector and the State Board of School Finance. The county board of education is allowed to contract with any certified public accountant on the chief inspector's then current list of approved certified public accountants, unless the State Board of School Finance or the prosecuting attorney of the county in which the board is located timely submits to the chief inspector a written

request for the examination to be performed by the chief inspector or a person appointed by the chief inspector, or the chief inspector determines that a special or unusual situation exists. The county board shall follow the audit bid procurement procedures established by the chief inspector in obtaining the audit.

(d) The chief inspector shall, at least annually, prepare a list of certified public accountants approved by the chief inspector to perform examinations of local governments. Names shall be added to or deleted from that list in accordance with uniform procedures of the chief inspector. When each list or updated list is issued, the chief inspector shall promptly file a copy of the list in the State Register and send a copy to the State Board of Education, the State Board of School Finance and to local governments who request a copy.

(e) A county board of education, when procuring the services of a certified public accountant on the chief inspector's list, shall follow the procurement standards prescribed by the grants management common rule, OMB Circular A-102 "Grants and Cooperative Agreements with State and Local Governments" in effect for the fiscal year being examined, or in any replacement circular or regulation of the office of management and budget and in addition shall follow those standards as determined by the office of chief inspector.

(f) The approved independent certified public accountant making examinations under this section shall comply with requirements of this section applicable to examinations performed by the chief inspector, including applicable requirements of the federal government and uniform procedures of the chief inspector applicable to examinations of county boards of education.

(1) Upon completion of the certified public accountant's examination and audit or review report, the certified public accountant shall promptly send two copies of the certified report to the county board of education who shall file one copy with the Federal Audit Clearing House. The certified public accountant shall send one copy of the certified report to the State Board of School Finance, and one copy to the chief inspector.

(2) If any examination discloses misfeasance, malfeasance or nonfeasance in office on the part of any public officer or employee, the certified public accountant shall submit his or her recommendation to the chief inspector regarding the legal action the approved certified public accountant considers appropriate, including, but not limited to, whether criminal prosecution or civil action to effect restitution is appropriate, and three additional copies of the certified audit report. After review of the recommendations and the audit report, the chief inspector shall proceed as provided in subsection (n) of this section. For purposes of this section and section thirteen, article nine-b, chapter eighteen of this code, a certified audit report of an approved certified public accountant shall be treated in the same manner as a report of the chief inspector.

(g) On every examination, inquiry shall be made as to the financial conditions and resources of the agency having jurisdiction over the appropriations and levies disbursed by the office and whether the requirements of the Constitution and statutory laws of the state and the ordinances and orders of the agency have been properly complied with and also inquire into the methods and accuracy of the accounts and such other matters of audit and accounting as the chief inspector may prescribe.

(h) If a local government office is not subject to a single audit requirement under federal regulations or if it is not otherwise required by law or contract to undergo an annual audit

and its expenditures from all sources are less than \$300,000 during the fiscal year the chief inspector may choose to perform either a review or audit on the local government office and may in his or her discretion determine the frequency of such review or audit.

(i) The chief inspector or any authorized assistant may issue subpoenas and compulsory process, direct the service thereof by any sheriff, compel the attendance of witnesses and the production of books and papers at any designated time and place, selected in their respective county, and administer oaths.

(j) If any person refuses to appear before the chief inspector or his or her authorized assistant when required to do so, refuses to testify on any matter or refuses to produce any books or papers in his or her possession or under his or her control, he or she is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$100 and imprisoned in ~~the county or regional~~ jail not more than six months.

(k) A person convicted of willful false swearing in an examination is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$100 and imprisoned in ~~the county or regional~~ jail not more than six months.

(l) Except as otherwise provided in this section, a copy of the certified report of each examination shall be filed in the office of the commissioner, chief inspector with the governing body of the local government and with other offices as prescribed in uniform procedures of the chief inspector.

(m) If any examination discloses misfeasance, malfeasance or nonfeasance in office on the part of any public officer or employee, a certified copy of the report shall be ~~filed~~ published electronically by the chief inspector with notice of the publishing sent in writing to the proper legal authority of the agency, the prosecuting attorney of the county wherein the agency is located and with the Attorney General for such legal action as is proper. At the time the certified audit report is ~~filed~~ published, the chief inspector shall notify the proper legal authority of the agency, the prosecuting attorney and the Attorney General in writing of his or her recommendation as to the legal action that the chief inspector considers proper, whether criminal prosecution or civil action to effect restitution, or both.

(n) If the proper legal authority or prosecuting attorney, within nine months of receipt of the certified audit report and recommendations, refuses, neglects or fails to take efficient legal action by a civil suit to effect restitution or by prosecuting criminal proceedings to a final conclusion, in accordance with the recommendations, the chief inspector may institute the necessary proceedings or participate therein and prosecute the proceedings in any court of the state to a final conclusion.

(o) A local government that is not a county board of education may elect, by May 1 of the fiscal year to be audited, to have its annual examination performed by a certified public accountant approved by the chief inspector to perform the examinations. When this election is made, a copy of the order of the governing body making the election shall be filed with the chief inspector. An electing local government is allowed to contract with any certified public accountant on the chief inspector's then current list of approved certified public accountants, unless the prosecuting attorney of the county in which the local government is located timely submits to the chief inspector a written request for the examination to be performed by the chief inspector or a person appointed by the chief inspector, or the chief inspector determines that a special or unusual situation exists: *Provided*, That the audit of a local government may be performed by the chief inspector at his or her discretion. The local

government shall follow the audit bid procurement procedures established by the chief inspector in obtaining the audit: *Provided, however,* That the chief inspector may elect to conduct the audit of a local unit of government with one or more members of his or her audit staff where, in the opinion of the chief inspector, a special or unusual situation exists.

Senate Bill 577

Effective Date: Passed March 13, 2010, in effect from passage

Signed by Governor: April 2, 2010

Code Reference: Amends and reenacts §47-21-2 and §47-21-20

Title: Raffles

Major Provisions:

- Changes the definition of “raffle” to mean a game involving the selling of paper tickets not enhanced or aided by the use of any electronic or mechanical raffle ticket dispenser, raffle ticket reader or other electronic or mechanical devise of whatever design or function entitling the holder or holders to participate in a raffle game for a chance on a prize.
- Imposes the penalties that any person licensed to operate a raffle or any person who operates a raffle without a license and who is in the possession of any electronic or mechanical raffle ticket dispenser, raffle ticket reader, or other electronic or mechanical devise that is used as part of a licensed raffle is guilty of a felony, and upon conviction, shall be imprisoned in a state correctional institution for a term of not less than one year nor more than three years, and fined not less than \$50,000 nor more than \$100,000 for each electronic or mechanical raffle ticket dispenser or reader.
- Specifies that a licensee may also have his or her license suspended or revoked for failure to comply with the statutory requirements.
- Also specifies that in addition to any other penalty provided by law, any person who violates any provisions of the law regarding raffles is subject to a civil penalty as may be determined by the Tax Commissioner in an amount not to exceed \$10,000.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 577

(Senator Kessler, *original sponsor*)

[Passed March 13, 2010; in effect from passage.]

A BILL to amend and reenact §47-21-2 and §47-21-20 of the Code of West Virginia, 1931, as amended, all relating to raffles; revising the definition of "raffle"; providing for criminal and civil penalties, license suspension and revocation; and authorizing forfeiture and destruction of property.

Be it enacted by the Legislature of West Virginia:

That §47-21-2 and §47-21-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 21. CHARITABLE RAFFLES.

§47-21-2. Definitions.

For purposes of this article, unless specified otherwise:

(a) "Charitable or public service activity or endeavor" means any bona fide activity or endeavor which directly benefits a number of people by:

- (1) Contributing to educational or religious purposes; or
- (2) Relieving them from disease, distress, suffering, constraint or the effects of poverty; or
- (3) Increasing their comprehension of and devotion to the principles upon which this nation was founded and to the principles of good citizenship; or
- (4) Making them aware of or educating them about issues of public concern so long as the activity or endeavor is not aimed at supporting or participating in the campaign of any candidate for public office; or
- (5) By lessening the burdens borne by government or voluntarily supporting, augmenting or supplementing services which government would normally render to the people; or
- (6) Providing or supporting nonprofit community activities for youth, senior citizens or the disabled; or
- (7) Providing or supporting nonprofit cultural or artistic activities; or
- (8) Providing or supporting any political party executive committee.

(b) "Charitable or public service organization" means a bona fide, not for profit, tax-exempt, benevolent, educational, philanthropic, humane, patriotic, civic, religious, fraternal or eleemosynary incorporated or unincorporated association or organization; or a volunteer fire department, rescue unit or other similar volunteer community service organization or association; but does not include any nonprofit association or organization, whether

incorporated or not, which is organized primarily for the purposes of influencing legislation or supporting or promoting the campaign of any single candidate for public office.

(c) "Commissioner" means the State Tax Commissioner.

(d) "Concession" means any stand, booth, cart, counter or other facility, whether stationary or movable, where beverages, both alcoholic and nonalcoholic, food, snacks, cigarettes or other tobacco products, newspapers, souvenirs or any other items are sold to patrons by an individual operating the facility. Notwithstanding anything contained in subdivision (2), subsection (a), section twelve, article seven, chapter sixty of this code to the contrary, "concession" includes beverages which are regulated by and shall be subject to the provisions of chapter sixty of this code.

(e) "Conduct" means to direct the actual holding of a raffle by activities including, but not limited to, handing out tickets, collecting money, drawing the winning numbers or names, announcing the winning numbers or names, posting the winning numbers or names, verifying winners and awarding prizes.

(f) "Expend net proceeds for charitable or public service purposes" means to devote the net proceeds of a raffle occasion or occasions to a qualified recipient organization or as otherwise provided by this article and approved by the commissioner pursuant to section fifteen of this article.

(g) "Gross proceeds" means all moneys collected or received from the conduct of a raffle or raffles at all raffle occasions held by a licensee during a license period; this term shall not be deemed to include any moneys collected or received from the sale of concessions at raffle occasions.

(h) "Joint raffle occasion" means a single gathering or session at which a series of one or more successive raffles is conducted by two or more licensees.

(i) "Licensee" means any organization or association granted an annual or limited occasion license pursuant to the provisions of this article.

(j) "Net proceeds" means all moneys collected or received from the conduct of raffle or raffles at occasions held by a licensee during a license period after payment of the raffle expenses authorized by sections eleven, thirteen and fifteen of this article; this term shall not be deemed to include moneys collected or received from the sale of concessions at raffle occasions.

(k) "Person" means any individual, association, society, incorporated or unincorporated organization, firm, partnership or other nongovernmental entity or institution.

(l) "Patron" means any individual who attends a raffle occasion other than an individual who is participating in the conduct of the occasion or in the operation of any concession, whether or not the individual is charged an entrance fee or participates in any raffle.

(m) "Qualified recipient organization" means any bona fide, not for profit, tax-exempt, as defined in subdivision (p) of this section, incorporated or unincorporated association or organization which is organized and functions exclusively to directly benefit a number of people as provided in subparagraphs (1) through (7), subdivision (a) of this section. "Qualified recipient organization" includes, without limitation, any licensee which is organized and functions exclusively as provided in this subdivision.

(n) "Raffle" means a game involving the selling or distribution of paper tickets, not enhanced or aided by the use of any electronic or mechanical raffle ticket dispenser, raffle ticket reader or other electronic or mechanical device of whatever design or function,

entitling the holder or holders to participate in such a raffle game entitling the holder or holders to for a chance on a prize or prizes. This subsection shall not be interpreted to prevent the use of:

(1) Hand cranked or motorized drum mixers which randomly mix tickets or other indicia together for the purpose of allowing the hand drawing of a ticket or winning indicia.

(2) A cash register for handling proceeds of sales and other ordinary cash handling and record keeping functions of a raffle licensee.

(3) Accounting and recordkeeping software for the purpose of maintaining accounting and reporting records of the licensee, and the computer for running those applications, not used in the play of any game.

(o) "Raffle occasion" or "occasion" means a single gathering or session at which a series of one or more successive raffles is conducted by a single licensee.

(p) "Tax-exempt association or organization" means an association or organization which is, and has received from the "Internal Revenue Service" a determination letter that is currently in effect stating that the organization is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19) or 501(d) of the Internal Revenue Code of 1986, as amended; or is exempt from income taxes under subsection 527(a) of said code.

§47-21-20. Violation of provisions; crime; civil penalties; additional grounds for suspension or revocation.

(a) Any person who knowingly violates any provisions of this article, other than the provisions of sections eighteen or nineteen, or subsection (b) of this section, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000; and, upon a second or subsequent conviction thereof, shall be fined not less than \$100 nor more than \$100,000 or imprisoned confined in jail not more than one year or both fined and imprisoned confined.

(b) On and after July 1, 2010, any person licensed under this article, or any person who operates a raffle without a license under section three of this article, who is in possession of any electronic or mechanical raffle ticket dispenser, raffle ticket reader or other electronic or mechanical device of whatever design or function, other than those machines and apparatus allowed under subsection (n) of section two of this article, that is used or designed to be used as part of a licensed raffle is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a term of not less than one year nor more than three years, and fined not less than \$50,000 nor more than \$100,000, for each electronic or mechanical raffle ticket dispenser, raffle ticket reader or other electronic or mechanical device of whatever design or function, other than those machines and apparatus allowed under subsection (n) of section two of this article, in the person's actual or constructive possession in this state. For a person other than an individual, upon conviction, the fine may not be less than \$100,000 nor more than \$500,000 for each video electronic or mechanical raffle ticket dispenser, raffle ticket reader or other electronic or mechanical device of whatever design or function in the person's actual or constructive possession in this state.

(c) A licensee may also have his or her license suspended or revoked for failure to comply with this article and may be required to forfeit the machines or devices to the Tax Commissioner for destruction.

(d) In addition to any other penalty provided by law, any person, licensed or unlicensed under this article, who violates any provisions of this article, or who fails to perform any of the duties or obligations created and imposed upon them by the provisions of this article, other than the provisions of sections eighteen or nineteen of this article, or subsection (b) of this section, is subject to a civil penalty as may be determined by the Tax Commissioner in an amount not to exceed \$10,000.

Senate Bill 610

Effective Date: Passed March 13, 2010, in effect ninety days from passage (June 11, 2010)

Signed by Governor: April 2, 2010

Code Reference: Amends and reenacts §49-2B-3

Title: Out-of-School Time Programs

Major Provisions:

- Extends the statutory exemption of obtaining a license from the Department of Health and Human Resources to operate an out-of-school time program that has been awarded a grant by the West Virginia Department of Education to provide out-of-school time programs to kindergarten through twelfth grade students when the program is monitored by the Department of Education.
- Also extends the statutory exemption of obtaining a license from the Department of Health and Human Resources to operate an out-of-school time program serving children six years of age or older that meets all of the following requirements:
 - The program is located in a facility that meets all fire and health codes;
 - The program performs background checks on all volunteers and staff;
 - The program's primary source of funding is not from fees for service; and,
 - The program has a formalized monitoring system in place.
- Requires that all facilities or programs that provide out-of-school time care register with the Department of Health and Human Resources upon commencement of operations and on an annual basis thereafter.
- Requires the Department of Health and Human Resources to obtain information such as the name of the facility or program, the description of the services provided and any other information relevant to the determination by the department as to whether the facility or program meets the criteria for exemption under the statute.

ENROLLED

Senate Bill No. 610

(By Senators Helmick, McCabe, Bowman, Edgell,
D. Facemire, Fanning, Green, Prezioso, Unger,
Wells, White, Boley, K. Facemyer, Guills and Sypolt)

[Passed March 13, 2010; in effect ninety days from passage.]

AN ACT to amend and reenact §49-2B-3 of the Code of West Virginia, 1931, as amended, relating to child care services; providing requirements for out-of-school time programs; exempting certain programs; requiring registration of certain programs; requiring licensed or registered child care centers to have an annually updated written plan for evacuation in the event of an emergency; providing for plan requirements; providing for plan distribution and availability requirements; and making the evacuation plan a point of investigation before a new license is received."

Be it enacted by the Legislature of West Virginia:

That §49-2B-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2B. DUTIES OF SECRETARY OF HEALTH AND HUMAN RESOURCES FOR CHILD WELFARE.

§49-2B-3. Licensure, certification, approval and registration requirements.

(a) Any person, corporation or child welfare agency, other than a state agency, which operates a residential child care facility, ~~a child placing agency or a day care center~~ shall obtain a license from the department.

(b) Any residential child care facility, day care center or any child-placing agency operated by the state shall obtain approval of its operations from the secretary: *Provided*, That this requirement does not apply to any juvenile detention facility or juvenile correctional facility operated by or under contract with the Division of Juvenile Services, created pursuant to section two, article five-e of this chapter, for the secure housing or holding of juveniles committed to its custody. The facilities and placing agencies shall maintain the same standards of care applicable to licensed facilities, centers or placing agencies of the same category.

(c) Any family day care facility which operates in this state, including family day care facilities approved by the department for receipt of funding, shall obtain a statement of certification from the department.

(d) Every family day care home which operates in this state, including family day care homes approved by the department for receipt of funding, shall obtain a certificate of registration from the department.

(e) This section does not apply to:

(1) A kindergarten, preschool or school education program which is operated by a public

school or which is accredited by the state Department of Education, or any other kindergarten, preschool or school programs which operate with sessions not exceeding four hours per day for any child;

(2) An individual or facility which offers occasional care of children for brief periods while parents are shopping, engaging in recreational activities, attending religious services or engaging in other business or personal affairs;

(3) Summer recreation camps operated for children attending sessions for periods not exceeding thirty days;

(4) Hospitals or other medical facilities which are primarily used for temporary residential care of children for treatment, convalescence or testing;

(5) Persons providing family day care solely for children related to them; or

(6) Any juvenile detention facility or juvenile correctional facility operated by or under contract with the Division of Juvenile Services, created pursuant to section two, article five-e of this chapter, for the secure housing or holding of juveniles committed to its custody.

(7) Any out-of-school time program that has been awarded a grant by the West Virginia Department of Education to provide out-of-school time programs to kindergarten through twelfth grade students when the program is monitored by the West Virginia Department of Education; or

(8) Any out-of-school time program serving children six years of age or older and meets all of the following requirements, or is an out-of-school time program that is affiliated and in good standing with a national Congressionally chartered organization and meets all of the following requirements:

(i) The program is located in a facility that meets all fire and health codes;

(ii) The program performs background checks on all volunteers and staff;

(iii) The program's primary source of funding is not from fees for service; and,

(iv) The program has a formalized monitoring system in place.

(f) The secretary is hereby authorized to issue an emergency rule relating to conducting a survey of existing facilities in this state in which children reside on a temporary basis in order to ascertain whether they should be subject to licensing under this article or applicable licensing provisions relating to behavioral health treatment providers.

(g) Any informal family child care home or relative family child care home may voluntarily register and obtain a certificate of registration from the department.

(h) All facilities or programs that provide out-of-school time care shall register with the department upon commencement of operations and on an annual basis thereafter. The department shall obtain information such as the name of the facility or program, the description of the services provided and any other information relevant to the determination by the department as to whether the facility or program meets the criteria for exemption under this section.

(i) Any child care service that is licensed or receives a certificate of registration shall have a written plan for evacuation in the event of fire, natural disaster or other threatening situation that may pose a health or safety hazard to the children in the child care service.

(1) The plan shall include, but not be limited to:

(A) A designated relocation site and evacuation;

(B) Procedures for notifying parents of the relocation and ensuring family reunification;

(C) Procedures to address the needs of individual children including children with special

needs;

(D) Instructions relating to the training of staff or the reassignment of staff duties, as appropriate;

(E) Coordination with local emergency management officials; and

(F) A program to ensure that appropriate staff are familiar with the components of the plan.

(2) A child care service shall update the evacuation plan by December 31, of each year. If a child care service fails to update the plan, no action shall be taken against the child care service's license or registration until notice is provided and the child care service is given thirty days after the receipt of notice to provide an updated plan.

(3) A child care service shall retain an updated copy of the plan for evacuation and shall provide notice of the plan and notification that a copy of the plan will be provided upon request to any parent, custodian or guardian of each child at the time of the child's enrollment in the child care service and when the plan is updated.

(4) All child care centers and family child care facilities shall provide the plan and each updated copy of the plan to the Director of the Office of Emergency Services in the county where the center or facility is located.

Senate Bill 631

Effective Date: Passed March 8, 2010; effective July 1, 2010

Signed by Governor: March 16, 2010

Code Reference: Amends and reenacts §18-2A-1, §18-2A-2, §18-2A-3, §18-2A-4, §18-2A-5, §18-2A-6, §18-2A-7, §18-2A-8, and §18-2A-9

Title: Adoption of Instructional Materials

Major Provisions:

- Replaces outdated terminology with language that addresses both print and electronic instructional resources.
- Authorizes the WV State Board of Education (WVBE) to establish a method by which new programs are reviewed and included on the Official Multiple Listing of Instructional Resources between adoption cycles.
- Authorizes the WVBE to establish guidelines and procedures for updating content and operating systems of electronic resources.
- Authorizes the WVBE to collect review fees from publishers participating in the state instructional resources approval and adoption process.
- Authorizes the establishment of Regional Education Service Agency (RESA) instructional resources selection teams to avoid duplication and maximize resources, with the agreement of all county superintendents within the RESA.
- Requires that districts adopting electronic instructional resources ensure equity of access for all students at school and have a plan to provide equity of access at home, including, but not limited to, print, software, and hardware support.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 631

(Senators Plymale, Wells and Browning, *original sponsors*)

[Passed March 8, 2010; to take effect July 1, 2010.]

A BILL to amend and reenact §18-2A-1, §18-2A-2, §18-2A-3, §18-2A-4, §18-2A-5, §18-2A-6, §18-2A-7, §18-2A-8 and §18-2A-9 of the Code of West Virginia, 1931, as amended, all relating generally to instructional resources; process for approval and adoption of instructional resources in public schools; replacing the terms "textbooks", "instructional materials" and "learning technologies" with "instructional resources" and modifying affected code provisions accordingly; modifying limit on adoption cycles; providing for listing of instructional resources on the state multiple list; requiring a method for review and adding new and substantially revised resources to the multiple list; providing for county waivers of adoption cycles; providing method for counties to select new or different resource before end of a contract period; providing a method for vendor update of resources; revising the bidding, selection and approval process; permitting the multiple list to be published in an electronic format; requiring contracts to be filed pursuant to the state board process; providing for review of electronic instructional resources; providing for regional education service agency level selection teams; and ensuring equity of access to electronic instructional resources for all students.

Be it enacted by the Legislature of West Virginia:

That §18-2A-1, §18-2A-2, §18-2A-3, §18-2A-4, §18-2A-5, §18-2A-6, §18-2A-7, §18-2A-8 and §18-2A-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2A. ADOPTION OF INSTRUCTIONAL RESOURCES.

§18-2A-1. Definition; adoption groups; adoption schedule.

~~"Textbooks" includes books, instructional materials and learning technologies. "Instructional materials" means and includes systems of instructional materials, or combinations of books and supplementary materials which convey information to the pupil. "Learning technologies" include, but are not limited to, applications using computer software, computer assisted instruction, interactive videodisc; other computer courseware and magnetic media. (a) "Instructional Resources" include print materials, electronic resources and systems, or combinations of such instructional resources which convey information to the pupil.~~

~~Textbooks adopted~~ (b) Instructional resources approved for adoption and listed on the state multiple list must shall substantially cover the required content and skills for the subject as approved by the state board of Education. Adopted materials. The instructional resources must shall be current and the information shall be presented accurately. The instructional resources may consist of a single resource, print or electronic, or a compilation of resources, print or electronic, that together cover the required criteria established for approval as a primary instructional resource. The resources may be updated or otherwise changed and improved on an ongoing basis to ensure that they are current and accurate.

~~(c) On or before July 1 of each year, one thousand nine hundred ninety two;~~ (c) On or before July 1 of each year, one thousand nine hundred ninety two; the state board of Education shall classify the elementary and secondary school subjects required to be taught in the schools of our state into adoption groups by related subject fields as nearly as possible. A schedule for the periods of adoption, not to exceed six years, shall be determined by the state board. ~~of Education: Provided, That~~ However, during the school year beginning on July 1, 2010, the state board shall develop a method by which newly developed and substantially revised instructional materials submitted by vendors or available as open resources may be reviewed for compliance with established criteria. When an instructional resource is found to be in compliance with established criteria, it may be added to the official multiple list and thereafter be available for adoption by a county board. County board instructional resources adoption committees may request a waiver of the adoption cycles from the state board. Software, print and electronic magazines, print and electronic newspapers and other print and electronic periodicals and other licensed or subscription-based instructional resources may be purchased by a county board of education for classroom use to supplement those items adopted on the state multiple list without having to comply with the adoption procedures provided in this article. Provided, however, That

~~(d) Software, print and electronic magazines, print and electronic newspapers and print and electronic periodicals are considered to be textbooks instructional resources for purposes of special excess levies subject to the provisions of section sixteen, article eight, chapter eleven of this code when the described purpose under that section is for textbooks or instructional resources. The state adoption cycle as to science and health textbooks shall not exceed six years and the adoption cycle as to all other textbooks shall not exceed eight years: Provided further, That the county textbook adoption committees may request a waiver of the maximum adoption cycles from the state Board of Education: And provided further, That during the school year beginning on July 1, one thousand nine hundred ninety-three, the state Board of Education shall make additional adoptions only in the subject of science, and if the county boards of education make additional adoptions and purchases, then those county boards may make purchases only in the subjects of science and health.~~

(e) A county board that selects an electronic instructional resource may, subject to the approval by the state board of its request to do so, choose not to renew that option before the end of the established contract period and select a new or different instructional resource from the official multiple listing before the end of the established contract period.

(f) The vendor of an adopted electronic resource, after notice of explanation to the state board, may offer an update to the navigational features or management system, or both, related to the learning technology and may update the content of the learning technology as needed to accurately reflect current knowledge or information without charge. Vendor

changes to the electronic resources may not require the purchase of a new operating system during the established contract period. Vendors shall continue to provide support for the version adopted.

(g) The state board shall adopt guidelines and procedures for updates and changes to electronic instructional resources submitted by vendors.

§18-2A-2. Request for samples and bids; deposit by bidder; selection, approval and publication of multiple list.

(a) Prior to each adoption year, and not later than August 1, the state board by written request or otherwise shall ask the various vendors of textbooks, instructional materials resources, print or electronic, learning technologies or any combination thereof, to submit samples and prices on items deemed considered appropriate by the state board of Education to teach the curriculum in the public elementary and secondary schools of the state for the current adoption period. The state board also shall accept for consideration newly developed and substantially revised instructional resources for content areas not in the current adoption cycle.

(b) All bids or proposals shall be under seal, and each bidder shall deposit in the State Treasury such sum of money as the state board may designate, such deposit to be not less than \$1,000, and not more than \$3,000 and such deposit shall be forfeited to the general school fund if such bidder shall fail or refuse to make and execute such contract and bond as are herein required in case of acceptance of all or part of the vendor's bid, and otherwise shall be returned to such bidder after the contract has been made. The state board of Education reserves the right to set the sum of money a vendor is required to deposit in the State Treasury upon submitting a bid: *Provided*, That the vendor has a previous history of failure or refusal to execute contracts or bonds with the State of West Virginia. The state board may set and collect review fees from publishers and vendors participating in the state instructional resources approval and adoption process.

(c) All bids shall be opened by the state board, or its designee, in public session. After considering the subject matter, product quality, general suitability, and prices of items submitted, the state board shall, prior to March 1 of each year in which approvals for adoption are made by the state Board of Education it, establish a committee of teachers and other educational specialists, including a sufficient number with experience with electronic instructional resources, and with the aid of said the committee, shall on or before December 1, prior to county adoptions, select, approve and publish a list of items in each subject and grade in the elementary and secondary subjects required to be taught by said the state board. The committee of teachers and other educational specialists shall report their recommendations to the state board on or before November 15, of the year preceding the adoption by the county board. The state board may create a standing committee of teachers and other education specialists, including a sufficient number with experience with electronic instructional resources, for each subject and grade level to review all new or revised instructional resources submitted after the initial approvals for adoption.

§18-2A-3. Disposition of and requests for samples.

Sample (a) Items to be reviewed in excess of the official sample submitted to the state board for examination shall remain the property of the vendor submitting them if claimed within thirty days after state board adoption of the multiple list. If not claimed within that period, the items may be sold by the state board and the money credited to the general

~~school fund~~ Department of Education Instructional Resources Fund or items may be distributed to state ~~operated~~ educational agencies.

(b) Sample items submitted to county boards of education or regional education service agency selection teams remain the property of the vendor submitting them if claimed within thirty days after the county board of education has formally adopted its items instructional materials have been formally adopted. Unclaimed items may be distributed free of charge by the respective ~~Board of Education~~ county board or regional educational service agency to any school, library or individual who may have need for the sample items.

(c) Vendors claiming samples within the thirty-day period shall notify the respective board of education or regional education service agency at the time samples are submitted for study of their intent to recall the samples. All costs shall be borne by the vendors.

(d) No county or regional education service agency adoption committee is entitled to request or receive more than eight free samples of any multigrade program being considered for adoption. Any single grade level subject area items used above grade six shall be limited to five free samples per county selection committee. Any individual requesting samples in excess of these limits shall be billed by the vendor at the lowest wholesale price plus shipping. In the case of electronic instructional resources, it is sufficient for vendors to provide access for the purpose of reviewing the resources via a user name and password to a web-based resource or through on-line file transfer or download.

§18-2A-4. Execution of contracts; bond.

(a) When the selection and approval of the multiple list have been properly made, it shall be is the duty of the state board to furnish contracts for the selected items with the vendors within thirty days of the approval and adoption of the multiple list, prepare a list of the adopted items resources on the multiple list and publish same, and send a copy to each county superintendent and vendors who submitted bids for particular adoption group not later than January fifteenth of the year of the county adoption it in electronic format and make the list available through a page on the West Virginia Department of Education web page. Such The contract for adoption shall run for a period of time as designated by the state board of Education.

(b) Each vendor awarded a contract by the state West Virginia Department of Education shall enter into a bond payable to the State of West Virginia in the penal sum of not less than \$2,000 and not more than \$10,000 to be approved by the state board of public works. The bond shall such bond to be executed as surety by some a responsible surety company authorized to carry on its business in West Virginia. Such The contract shall be prepared by the Attorney General in accordance with the terms and provisions of this article. Such The contract shall be executed in triplicate, one copy to be held by the vendor, one by the state board of Education and one attached to the bond filed with the board of public works.

(c) Bonds required of successful vendors shall provide that:

(a) (1) The vendor will furnish any of the items instructional resources on the multiple list under vendors contract for the period of the adoption, from the date of the bond, to any county school unit, a dealer appointed by the county, or any state board approved depository or depositories as defined in section seven of this article, at the lowest wholesale price contained in the bids or contracts made to any other county school unit, dealer, county, school or depository in any other state, like conditions prevailing. The state

board shall determine, from time to time, the terms of the bids and contracts and may require the vendor to bear the costs of shipping, mail or transportation or offer any other financial benefit available in the highest amount paid by a vendor to any other county school unit, dealer, county or depository in any other state: *Provided*, That the state board of ~~Education~~ shall decide whether from time to time bids and contracts for ~~textbooks, instructional materials and learning technologies or any combination thereof~~ instructional resources are to be for the delivery directly to each county school unit, dealer appointed by the county, county or to each depository or depositories, or any combination thereof, under this section.

~~(b)~~ (2) The vendor will automatically reduce such the prices in West Virginia when prices are reduced anywhere in the United States, so that no such item or items shall at any time be sold in West Virginia at a higher wholesale price than received for items elsewhere in the United States, like conditions prevailing.

~~(c)~~ (3) All items sold in West Virginia will be identical with the official samples ~~filed with~~ submitted to the state board of ~~Education~~ as regards quality standards, specifications, subject matter, and other particulars which may affect the value of the items. The state board of ~~Education~~ may, however, during the period of the contract approve revised editions of adopted items, which will authorize a vendor to furnish such revisions. All contracts and bonds shall be filed in accordance with the board of public works appropriate state board process prior to July 1.

§18-2A-5. Selection by county boards; school curriculum teams.

(a) Vendors, upon requests of county superintendents, shall furnish to county boards of ~~education~~ the requested sample copies of ~~items~~ resources that were selected and placed on the state multiple list by the state board of ~~Education~~ in accordance with the provisions of section three of this article. In the case of electronic instructional resources, it is sufficient for vendors to provide access for the purpose of reviewing the resources via a web-hosted online format.

(b) School curriculum teams shall make their curriculum and instructional needs known to the county superintendent and selection committees prior to the consideration of any adopted grouping in accordance with the provisions of section three of this article. The county board of ~~education~~ shall, upon recommendation of the county superintendent with the aid of a committee of teachers and not later than May 1 of the year following that in which the multiple list for the group was made and approved, select from the state multiple list one or more ~~items~~ resources to deliver instruction for a period as provided for elsewhere in this article. Counties are authorized to include nonvoting advisors from the general public in the adoption process, but shall require advisors to provide their assessment of the ~~items~~ resources appropriate for the subject before the voting committee commences the selection process.

(c) In order to avoid duplication and to maximize resources, with agreement of all county superintendents within a regional education service agency area and subsequent regional education service agency actions, a regional education service agency instructional resources selection team may be established to conduct a review of selected resources placed on the state multiple list by the state board. The membership of the selection team will be established through agreement of the county superintendents with representation of all counties, including any nonvoting advisors from the general public. The resource

selection team will provide recommendations to each county superintendent for consideration, review and adoption by each county board.

(d) County boards adopting electronic instructional resources shall ensure equity of access for all students at school and shall have a plan to provide equity of access at home if necessary through alternate avenues including, but not limited to, print, software, and hardware support.

§18-2A-6. Retail prices; limitation on profit; violation; penalty.

It shall be the duty of the state board of ~~Education~~ to fix prices at which the various ~~books~~ instructional resources on the state multiple list shall be sold to patrons, the excess of which above contract price shall represent the profit to the retailer; but in no case shall such profit exceed twenty percent of the contract price. The state board of ~~Education~~ shall notify each county superintendent of the ~~list of books adopted~~ instructional resources on the state multiple list and the prices at which they are to be sold, and any person selling such ~~books~~ resources at a higher price than that fixed by the state board of ~~Education~~ shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$10 nor more than \$50.

§18-2A-7. Exchange privilege; use of supplementary items; state- approved depositories authorized.

Contractors shall arrange for the exchange of items, allowing pupils or boards of education an exchange price as liberal as granted on the same items to any city, county, or state in the United States, like conditions prevailing. The exchange privilege shall extend through one entire school year. Nothing in this article ~~is to be construed as preventing~~ prevents the use of supplementary ~~books, instructional materials, or learning technologies~~ instructional resources, print or electronic, provided they do not displace the adopted ~~items~~ instructional resources, nor the use of more advanced items in such schools as may be ready for the same. ~~On or before July 1, 1994 and thereafter,~~ The state Board of Education is authorized to approve any depository or depositories, either public or private, to serve any county or several counties, whose purpose includes, but is not limited to, offering the savings and services generally associated with local distribution of ~~textbooks, instructional materials, or learning technologies~~ instructional resources or electronic instructional resources that are not web-based, or any combination thereof, to counties and schools.

§18-2A-8. Instructional resources must be approved and listed; when changes may be effected; rules.

(a) No ~~textbook, instructional materials, or learning technologies~~ shall instructional resource, print or electronic, may be used in any public elementary or secondary school in West Virginia as the primary source to deliver the instructional goals and objectives for state required courses unless it has been approved and listed on the state multiple list by the state board, except as otherwise provided in this section. Any changes of items made by the state board of ~~Education~~ shall become effective upon approval. The state board of ~~education~~ may upon request by a county board and upon justification of that request, and subsequent to the adoption by a county board approve the adoption of additional items to meet the needs of specific children which were not provided for in the original adoption, or waive the requirement to adopt and ~~utilize~~ use items resources in a particular school as provided for in section six, article five-a of this chapter. Nothing in this section shall apply to the supplementary items that are needed from time to time.

(b) The state board of ~~Education is authorized to~~ may grant permission to county boards of ~~education~~ for the continued use of previously adopted ~~items~~ resources that are listed on the most recently expired multiple list appropriate for the subject category under consideration. The continued use shall not exceed a period as designated by the state board of ~~Education~~. The state board may make such rules ~~and regulations~~ as it may deem necessary and expedient to carry out the provisions of this article.

§18-2A-9. Gifts and bribes to influence adoption of instructional resources a felony; penalty.

Any member of the state board of ~~Education~~, any county superintendent, any member of a county board of ~~education~~ or any other person who shall receive, solicit, or accept any gift, present, or thing of value to influence that individual in the vote for the adoption of ~~books, instructional materials or learning technologies~~ instructional resources, print or electronic, or any combination thereof, or any person who shall either directly or indirectly give or offer to give any such gift, present, or thing of value to any person to influence that individual in voting for the adoption of ~~books, instructional materials or learning technologies~~ instructional resources, print or electronic, or any combination thereof, shall be guilty of a felony and, upon conviction thereof, shall be ~~punished by confinement in the penitentiary~~ confined in a correctional facility for not less than one year nor more than three years.

Senate Bill 633

Effective Date: Passed March 13, 2010, in effect ninety days from passage (June 11, 2010)

Signed by Governor: March 31, 2010

Code Reference: Adds §7-6-2a and amends and reenacts §8-13-22a, §12-1-4, and §18-9-6

Title: Investment Accounts

Major Provisions:

- The bill enables county governments, municipalities, the State and county boards of education to deposit public funds into deposit accounts that are swept periodically into multiple federally insured deposit accounts through a deposit placement program, without providing a bond.

- Provides that a banking institution is not required to provide a bond or security in lieu of bond if the deposits of county boards of education are placed in a designated state depository that is selected and authorized by the county board to arrange for the redeposit of the funds through a deposit placement program that meets the following conditions:
 - On or after the date that the funds are received, the selected depository: (i) arranges for the redeposit of the funds into deposit accounts in one or more federally insured banks or savings and loan associations that are located in the United States; and (ii) serves as custodian for the county with respect to the money redeposited into such accounts;

 - The funds deposited in a selected depository in accordance with the statute and held at the close of business in the selected depository in excess of the amount insured by the Federal Deposit Insurance Corporation shall be secured in accordance with WVC §7-6-2;

- The full amount of the funds of the county board of education redeposited by the selected depository into deposit accounts in banks or savings and loan associations pursuant to WVC §12-1-4 (plus accrued interest, if any) shall be insured by the Federal Deposit Insurance Corporation; and,
- On the same date that the funds of the county board of education are redeposited pursuant to the statute, the selected depository receives an amount of deposits from customers of other financial institutions through the deposit placement programs that are equal to the amount of the county board of education funds redeposited by the selected depository.

ENROLLED

Senate Bill No. 633

(By Senators Fanning and Chafin)

[Passed March 13, 2010; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-6-2a; to amend and reenact §8-13-22a of said code; to amend and reenact §12-1-4 of said code; and to amend and reenact §18-9-6 of said code, all relating to enabling counties, municipalities, the state and county boards of education to deposit public funds into deposit accounts that are swept periodically into multiple federally fully insured deposit accounts through a deposit placement program with full federal insurance in lieu of a bond or other collateral required of the depository institution.

Be it enacted by the Legislature of West Virginia;

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §7-6-2a; that §8-13-22a of said code be amended and reenacted; that §12-1-4 of said code be amended and reenacted; and that §18-9-6 of said code be amended and reenacted, all to read as follows:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 6. COUNTY DEPOSITORIES.

§7-6-2a. Further exception to bond requirement; fully insured cash sweep accounts.

A banking institution is not required to provide a bond or security in lieu of bond pursuant to section two of this article if the deposit is placed in a designated state depository that is selected and authorized by the county to arrange for the redeposit of the funds through a deposit placement program that meets the following conditions:

(a) On or after the date that the county funds are received the selected depository: (i) Arranges for the redeposit of the funds into deposit accounts in one or more federally insured banks or savings and loan associations that are located in the United States; and (ii) serves as custodian for the county with respect to the funds redeposited into such accounts.

(b) County funds deposited in a selected depository in accordance with this section and held at the close of business in the selected depository in excess of the amount insured by the Federal Deposit Insurance Corporation shall be secured in accordance with section two of this article.

(c) The full amount of the funds of the county redeposited by the selected depository into deposit accounts in banks or savings and loan associations pursuant to this section (plus accrued interest, if any) shall be insured by the Federal Deposit Insurance Corporation.

(d) On the same date that the funds of the county are redeposited pursuant to this section, the selected depository receives an amount of deposits from customers of other financial

institutions through the deposit placement program that are equal to the amount of the county money redeposited by the selected depository.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 1. PURPOSE AND SHORT TITLE; DEFINITIONS; GENERAL PROVISIONS; CONSTRUCTION.

§8-13-22a. Investment of municipal funds.

All municipal funds, the investment of which is not governed by other provisions of this code and not required for the payment of current obligations and not otherwise prohibited, may be invested and reinvested in:

- (1) Any direct obligation of, or obligation guaranteed as to the payment of both principal and interest by, the United States of America;
- (2) Any evidence of indebtedness issued by any United States government agency guaranteed as to the payment of both principal and interest, directly or indirectly, by the United States of America including, but not limited to, the following: Government National Mortgage Association, federal land banks, federal home loan banks, federal intermediate credit banks, banks for cooperatives, Tennessee Valley Authority, United States postal service, farmers home administration, export-import bank, federal financing bank, federal home loan mortgage corporation, student loan marketing association and federal farm credit banks;
- (3) Any evidence of indebtedness issued by the Federal National Mortgage Association to the extent such indebtedness is guaranteed by the government National Mortgage Association;
- (4) Any evidence of indebtedness that is secured by a first lien deed of trust or mortgage upon real property situate within this state, if the payment thereof is substantially insured or guaranteed by the United States of America or any agency thereof;
- (5) Direct and general obligations of this state;
- (6) Any undivided interest in a trust, the corpus of which is restricted to mortgages on real property and, unless all of such property is situate within the state and insured, the trust at the time of the acquisition of the undivided interest, is rated in one of the three highest rating grades by an agency which is nationally known in the field of rating pooled mortgage trusts;
- (7) Any bond, note, debenture, commercial paper or other evidence of indebtedness of any private corporation or association: *Provided*, That any such security is, at the time of its acquisition, rated in one of the three highest rating grades by an agency which is nationally known in the field of rating corporate securities: *Provided, however*, That if any commercial paper or any such security will mature within one year from the date of its issuance, it shall, at the time of its acquisition, be rated in one of the two highest rating grades by any such nationally known agency and commercial paper or other evidence of indebtedness of any private corporation or association shall be purchased only upon the written recommendation from an investment advisor that has over \$300 million in other funds under its management;
- (8) Negotiable certificates of deposit issued by any bank, trust company, national banking association or savings institution which mature in less than one year and are fully collateralized;

(9) Interest earning deposits including certificates of deposit, with any duly designated state depository, which deposits are fully secured by a collaterally secured bond as provided in section four, article one, chapter twelve of this code: *Provided*, That a banking institution is not required to provide this collaterally secured bond, or other security in lieu of bond, if the deposits accepted are placed in certificates of deposit meeting the following requirements: (A) The funds are invested through a designated state depository selected by the municipality; (B) the selected depository arranges for the deposit of the funds in certificates of deposit in one or more banks or savings and loan associations wherever located in the United States, for the account of the municipality; (C) the full amount of principal and accrued interest of each certificate of deposit is insured by the Federal Deposit Insurance Corporation; (D) the selected depository acts as custodian for the municipality with respect to such certificates of deposit issued for the municipality's account; and (E) at the same time that the municipality's funds are deposited and the certificates of deposit are issued, the selected depository receives an amount of deposits from customers of other financial institutions wherever located in the United States equal to or greater than the amount of the funds invested by the municipality through the selected depository; ~~and~~

(10) Mutual funds registered with the Securities and Exchange Commission which have assets in excess of \$300 million; and

(11) Deposits with any duly designated state depository that is selected and authorized by the municipality to arrange for the redeposit of the funds through a deposit placement program that meets the following conditions:

(a) On or after the date that the municipal funds are received the selected depository:

(i) Arranges for the redeposit of the funds into deposit accounts in one or more federally insured banks or savings and loan associations that are located in the United States; and

(ii) serves as custodian for the municipality with respect to the funds deposited into such accounts.

(b) Municipal funds deposited in a selected depository in accordance with this section and held at the close of business in the selected depository in excess of the amount insured by the Federal Deposit Insurance Corporation shall be secured in accordance with section four, article one, chapter twelve of this code.

(c) The full amount of the funds of the municipality redeposited by the selected depository into deposit accounts in banks or savings and loan associations pursuant to this subsection (plus accrued interest, if any) shall be insured by the Federal Deposit Insurance Corporation.

(d) On the same date that the funds of the municipality are redeposited pursuant to this subsection, the selected depository receives an amount of deposits from customers of other financial institutions through the direct placement program that are equal to the amount of the municipality's funds redeposited by the selected depository.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 1. STATE DEPOSITORIES.

§12-1-4. Bonds to be given by depositories.

(a) Before allowing any money to be deposited with any eligible depository in excess of the amount insured by an agency of the federal government or insured by a deposit guaranty bond issued by a valid bankers surety company acceptable to the treasurer, the State Treasurer shall require the depository to give a collaterally secured bond, in the amount of

not less than \$10,000, payable to the State of West Virginia, conditioned upon the prompt payment, whenever lawfully required, of any state money, or part thereof, that may be deposited with that depository, or of any accrued interest on deposits. The bond shall be a continuous bond but may be increased or decreased in amount or replaced by a new bond with the approval of the State Treasurer. The collateral security for the bond shall consist of bonds of the United States, or bonds or letters of credit of the federal land banks, of the federal home loan banks, or bonds of the State of West Virginia or of any county, district or municipality of this state, or other bonds, letters of credit, or securities approved by the treasurer. All bonds so secured are here designated as collaterally secured bonds. Withdrawal or substitution of any collateral pledged as security for the performance of the conditions of the bond may be permitted with the approval in writing of the treasurer. All depository bonds shall be recorded by the treasurer in a book kept in his or her office for the purpose, and a copy of the record, certified by the treasurer, shall be prima facie evidence of the execution and contents of the bond in any suit or legal proceeding. All collateral securities shall be delivered to or deposited for the account of the treasurer of the State of West Virginia and in the event said securities are delivered to the treasurer, he or she shall furnish a receipt therefor to the owner thereof. The treasurer and his or her bondsmen shall be liable to any person for any loss by reason of the embezzlement or misapplication of the securities by the treasurer or any of his or her employees, and for the loss thereof due to his or her negligence or the negligence of his or her employees; and the securities shall be delivered to the owner thereof when liability under the bond which they are pledged to secure has terminated. The treasurer may permit the deposit under proper receipt of the securities with one or more banking institutions within or outside the State of West Virginia and may contract with any institution for safekeeping and exchange of any collateral securities and may prescribe the rules for handling and protecting the collateral securities.

(b) A banking institution is not required to provide a bond or security in lieu of bond if the deposits accepted are placed in certificates of deposit meeting the following requirements: (1) The funds are invested through a designated state depository selected by the treasurer; (2) the selected depository arranges for the deposit of the funds in certificates of deposit in one or more banks or savings and loan associations wherever located in the United States, for the account of the state; (3) the full amount of principal and accrued interest of each certificate of deposit is insured by the Federal Deposit Insurance Corporation; (4) the selected depository acts as custodian for the state with respect to such certificates of deposit issued for the state's account; and (5) at the same time that the state's funds are deposited and the certificates of deposit are issued, the selected depository receives an amount of deposits from customers of other financial institutions wherever located in the United States equal to or greater than the amount of the funds invested by the state through the selected depository.

(c) A banking institution is not required to provide a bond or security in lieu of bond pursuant to this section if the deposits accepted are placed in a designated state depository that is selected and authorized by the state to arrange for the redeposit of the funds through a deposit placement program that meets the following conditions: (1) On or after the date that the funds are received the selected depository: (i) Arranges for the redeposit of the funds into deposit accounts in one or more federally insured banks or

savings and loan associations that are located in the United States; and (ii) serves as custodian for the state with respect to the funds redeposited into such accounts.

(2) State funds deposited in a selected depository in accordance with this section and held at the close of business in the selected depository in excess of the amount insured by the Federal Deposit Insurance Corporation shall be secured in accordance with section two, article six, chapter seven of this code.

(3) The full amount of the funds of the state redeposited by the selected depository into deposit accounts in banks or savings and loan associations pursuant to this section (plus accrued interest, if any) shall be insured by the Federal Deposit Insurance Corporation.

(4) On the same date that the funds of the state are redeposited pursuant to this section, the selected depository receives an amount of deposits from customers of other financial institutions through the deposit placement program that are equal to the amount of the state funds redeposited by the selected depository.

CHAPTER 18. EDUCATION.

ARTICLE 9. SCHOOL FINANCES.

§18-9-6. Transfer of moneys; appointment of treasurer; bonding of treasurer; approval of bank accounts; authority to invest; security for funds invested.

The sheriff of each county shall remit to the board of education all moneys in his or her possession held on behalf of the county board of education, whether or not deposited in a bank or depository, unless the sheriff has been designated treasurer of the board of education as provided in this section. The transfer of funds shall be made as of the balances on hand on June 30 of the year in which the board of education appoints a treasurer other than the sheriff, and shall be completed no later than August 1 of that year. The transfer shall be adjudged complete and final upon the approval of the sheriff's official settlement for the fiscal year ending on June 30 of the year in which the board of education appoints a treasurer other than the sheriff, and any minor adjustment made necessary by the actually known figures shall also be made at that time. All balances in all county school funds at the end of each month after June 30 of the year in which the board of Education appoints a treasurer other than the sheriff shall be transferred by the sheriff to the county board of education not later than the tenth day of the following month. On or before the first Monday in May each county board of education shall upon recommendation of the county superintendent appoint a treasurer for the board. The treasurer is the fiscal officer of the board, or an employee commonly designated as the person in charge of the financial affairs of the county board, or the county sheriff: *Provided*, That once a board of education has appointed a treasurer other than the sheriff, the sheriff may not be named treasurer of the board in a subsequent year. Upon appointment this person shall be titled and referred to as treasurer of the board of education. For the faithful performance of this duty, the treasurer shall execute a bond, to be approved by the board of education, in the penalty to be fixed by the board of education, not to exceed the amount of school funds which it is estimated the treasurer will handle within any period of two months. The premium on the bond shall be paid by the board of education. The board of education may open a bank account, or accounts, as required to adequately and properly transact the business of the district in a depository, or banks, within the county. The depositories, or banks, shall provide bond to cover the maximum amount to be deposited at any one time. However, the county board of education may, in lieu of such

bond, accept as security for money deposited letters of credit from a federal home loan bank, securities of the United States, or of a state, county, district or municipal corporation, or federal agency securities: *Provided*, That a banking institution is not required to provide a bond or security in lieu of bond if the deposits accepted are placed in certificates of deposit meeting the following requirements: (1) The funds are invested through a designated state depository selected by the county board of education; (2) the selected depository arranges for the deposit of the funds in certificates of deposit in one or more banks or savings and loan associations wherever located in the United States, for the account of the county board of education; (3) the full amount of principal and accrued interest of each certificate of deposit is insured by the Federal Deposit Insurance Corporation; (4) the selected depository acts as custodian for the county board of education with respect to such certificates of deposit issued for the county's account; and (5) at the same time that the county board of education's funds are deposited and the certificates of deposit are issued, the selected depository receives an amount of deposits from customers of other financial institutions wherever located in the United States equal to or greater than the amount of the funds invested by the county board of education through the selected depository: *Provided, however, That a banking institution is not required to provide a bond or security in lieu of bond if the deposits accepted are placed in a designated state depository that is selected and authorized by the county board of education to arrange for the redeposit of the funds through a deposit placement program that meets the following conditions: (1) On or after the date that the county board of education funds are received the selected depository: (i) Arranges for the redeposit of the funds into deposit accounts in one or more federally insured banks or savings and loan associations that are located in the United States; and (ii) serves as custodian for the county with respect to the money redeposited into such accounts. (2) County board of education funds deposited in a selected depository in accordance with this section and held at the close of business in the selected depository in excess of the amount insured by the Federal Deposit Insurance Corporation shall be secured in accordance with the second and third sentences of this paragraph. (3) The full amount of the funds of the county board of education redeposited by the selected depository into deposit accounts in banks or savings and loan associations pursuant to this section (plus accrued interest, if any) shall be insured by the Federal Deposit Insurance Corporation. (4) On the same date that the funds of the county board of education are redeposited pursuant to this section, the selected depository receives an amount of deposits from customers of other financial institutions through the deposit placement program that are equal to the amount of the county board of education funds redeposited by the selected depository.*

One hundred ten percent of the face or par value of the securities may not be less than the sum hereinbefore specified as the amount to be named in the bond in lieu of which the securities are accepted, or the county board of education may accept the securities as partial security to the extent of their face value for the money so deposited and require bond for the remainder of the full amount hereinbefore specified, to be named in the bond, and, in the bond so required, the acceptance of securities as partial security and the extent thereof shall be set forth. The hypothecation of the securities shall be by proper legal transfer as collateral security to protect and indemnify by trust any and all loss in case of any default on the part of the banking institution in its capacity as depository as aforesaid.

All such securities shall be delivered to or deposited for the account of the county board of education, and withdrawal or substitution thereof may be permitted from time to time upon approval by the county board of education by order of record, but the collateral security shall be released only by order of record of the county board of education when satisfied that full and faithful accounting and payment of all the moneys has been made under the provisions hereof. ~~In the event~~ If actual possession of the hypothecated securities is delivered to the county board of education, it shall make ample provision for the safekeeping thereof, and the interest thereon when paid shall be turned over to the banking institution, so long as it is not in default as aforesaid. The county board of education may permit the deposit under proper receipt of such securities with one or more banking institutions within the State of West Virginia and may contract with any such institution for safekeeping and exchange of any such hypothecated securities, and may prescribe the rules for handling and protecting the same.

On and after July 1, 1973, all levies and any other school moneys received by the sheriff and paid to the treasurer of the county board of education shall be deposited in these accounts, and all proper payments from such funds shall be made by the designated depository or bank upon order or draft presented for payment and signed by the duly authorized signatories of the Board of Education: *Provided*, That in determining the depository for Board of Education funds a board member who has a pecuniary interest in a bank within the county shall not participate in the determination of the depository for such funds.

If it is considered that sufficient funds are on hand in any account at any one time which may be more than are normally required for the payment of incurred expenses, the funds in the amount so considered available may be invested by the treasurer of the county board with the West Virginia Municipal Bond Commission, or in guaranteed certificates of deposit issued by the depository or bank, or other guaranteed investments such as treasury bills, treasury notes or certificates of deposit issued by either the United States government or a banking institution in which federal or state guarantees are applicable. Interest earned in such investments is to be credited to the fund from which the moneys were originally available.

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