

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

**2001**

**West Virginia Department of Education**

**West Virginia Board of Education  
2000-2001**

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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 - 2001 as a document to assist educators and others in understanding and implementing education bills enacted by this year's Legislature.

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

For each of the acts included in this publication, the format is as follows: effective date, date signed by the governor, code reference, topic 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 - 2001 will be of considerable value during the coming school year. Suggestions for improving this document as a service to the Department's clientele are always welcome. This document is also available on-line at <http://wvde.state.wv.us>.

We would not have been able to assemble this document without the assistance of numerous people, including: staff members from House and Senate Education Committees; Howard O'Cull, executive director of the West Virginia School Boards Association; and the law firm of Bowles Rice McDavid Graff and Love.

Please feel free to call or write if you need additional information regarding bills enacted during the 2001 regular session of the West Virginia Legislature.

David Stewart  
State Superintendent of Schools

## Table of Contents

<u>ACT CODE NUMBER</u>	<u>TOPIC</u>	<u>SECTION NUMBER</u>
HB #2080	Retirement credit for CETA work . . . . .	1
HB #2199	Access to a child's records . . . . .	2
HB #2208	Character education integration . . . . .	3
HB #2209	Prohibiting the conversion of annual and sick leave for . . . . . extended insurance coverage upon retirement for public employees hired after a certain date.	4
HB #2225	Auditing and review procedures of county boards . . . . .	5
HB #2595	Home schooling . . . . .	6
HB #2722	County board meetings and compensation . . . . .	7
HB #2897	Providing higher education adult part-time student grants . . . . .	8
HB #2898	Modernization and procurement of equipment for workforce . . . . . development initiative grant programs.	9
HB #2934	Office of Education Performance Audits . . . . .	10
HB #3023	Harassment, bullying; and driver education . . . . .	11
HB #3049	Requiring fingerprinting and criminal records checks . . . . .	12
HB #3238	PROMISE Scholarship . . . . .	13
HB #3245	Establishing the National Institute for Teaching Excellence . . . . .	14

SB #157	Provides definition for social worker . . . . .	15
SB #227	Omnibus Personnel Bill . . . . .	16
SB #439	Suspension from school as punishment for not attending class . . . . .	17
SB #565	Chief Inspector . . . . .	18
SB #586	Infrastructure Construction Project Bids . . . . .	19
SB #647	Commission on Holocaust Education . . . . .	20
SB #676	Disbursing School Building Authority Over Time . . . . .	21
SB #711	Teachers' defined contribution retirement system; reentry . . . . .	22
SB #1002	Supplemental Retirement Benefit . . . . .	23
HCR #37	Study of instructional time . . . . .	24
HCR #73	Counseling study . . . . .	25
SCR #36	Study and evaluate current risks to student athletes in K-12 . . . . . and higher education	26
SCR #41	Study status of public library funding and develop a . . . . . solution to reduce or eliminate the relationship between funding county libraries and local share computation (11 county boards are required to designate a portion of their property tax collection for public libraries)	27

**House Bill #2080**

**Section Number 1**

Effective Date: Passed April 14, 2001; in effect from passage.

Signed by Governor: April 27, 2001.

Code Reference: Amend and Reenact §5-10-14.

Topic: Retirement credit for CETA work.

Major Provisions:

- S Grants a maximum of two years of service credit to active members of the Public Employees Retirement System and the Teachers Retirement System for prior work in CETA (Comprehensive Employment and Training Act), but only if: (1) within 120 days after the CETA employment, the member moved from temporary employment with the participating employer to permanent full time employment with the participating employer, (2) the member applies for the credit by December 31, 2001, and (3) the member pays both the employer and employee contributions, with interest.

1 **ENROLLED**  
 2 **H. B. 2080**

3  
 4 (By Delegate Michael)

5  
 6 [Passed April 14, 2001; in effect from passage.]  
 7  
 8  
 9

10 AN ACT to amend and reenact section fourteen, article ten, chapter five of the code of  
 11 West Virginia, one thousand nine hundred thirty-one, as amended; and to amend  
 12 and reenact section seventeen, article seven-a, chapter eighteen of said code, all  
 13 relating to placing corresponding provisions in the teachers retirement system and  
 14 the public employees retirement system; providing public employee retirement  
 15 system service credit and teachers retirement system service credit for time worked  
 16 in CETA (Comprehensive Employment and Training Act) programs; requirements;  
 17 setting forth maximum attainable service credit; setting forth applicable time period  
 18 to obtain service credit; specifying cost of service credit; granting service credit in  
 19 teachers retirement system for former and present members of the state police  
 20 death, disability and retirement fund in the same manner as is in the public  
 21 employees retirement system; setting forth conditions to be met for credit; and  
 22 setting forth required documentation to substantiate time for the service credit.

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

24 That section fourteen, article ten, chapter five of the code of West Virginia, one  
 25 thousand nine hundred thirty-one, as amended, be amended and reenacted; and that  
 26 section seventeen, article seven-a, chapter eighteen of said code be amended and  
 27 reenacted, all to read as follows:

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

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

33 **§5-10-14. Service credit; retroactive provisions.**

34 (a) The board of trustees shall credit each member with the prior service and  
 35 contributing service to which he or she is entitled based upon such rules as the board of  
 36 trustees shall from time to time adopt and based upon the following:

37 (1) In no event may less than ten days of service rendered by a member in any  
 38 calendar month be credited as a month of service: *Provided*, That for employees of the  
 39 state Legislature whose term of employment is otherwise classified as temporary and who  
 40 are employed to perform services required by the Legislature for its regular sessions or  
 41 during the interim between regular sessions and who have been or are so employed during  
 42 regular sessions or during the interim between regular sessions in seven consecutive

1 calendar years, service credit of one month shall be awarded for each ten days employed  
2 in the interim between regular sessions, which interim days shall be cumulatively calculated  
3 so that any ten days, regardless of calendar month or year, shall be calculated toward any  
4 award of one month of service credit;

5 (2) Except for hourly employees, ten or more months of service credit earned in any  
6 calendar year shall be credited as a year of service: *Provided*, That no more than one year  
7 of service may be credited to any member for all service rendered by him or her in any  
8 calendar year and no days may be carried over by a member from one calendar year to  
9 another calendar year where the member has received a full year credit for that year; and

10 (3) Service may be credited to a member who was employed by a political  
11 subdivision if his or her employment occurred within a period of thirty years immediately  
12 preceding the date the political subdivision became a participating public employer.

13 (b) The board of trustees shall grant service credit to employees of boards of health,  
14 the clerk of the House of Delegates and the clerk of the state Senate, or to any former and  
15 present member of the state teachers retirement system who have been contributing  
16 members for more than three years, for service previously credited by the state teachers  
17 retirement system and shall require the transfer of the member's contributions to the system  
18 and shall also require a deposit, with interest, of any withdrawals of contributions any time  
19 prior to the member's retirement. Repayment of withdrawals shall be as directed by the  
20 board of trustees.

21 (c) Court reporters who are acting in an official capacity, although paid by funds  
22 other than the county commission or state auditor, may receive prior service credit for time  
23 served in that capacity.

24 (d) Active members who previously worked in CETA (Comprehensive Employment  
25 and Training Act) may receive service credit for time served in that capacity: *Provided*,  
26 That in order to receive service credit under the provisions of this subsection the following  
27 conditions must be met: (1) The member must have moved from temporary employment  
28 with the participating employer to permanent full time employment with the participating  
29 employer within one hundred twenty days following the termination of the member's CETA  
30 employment; (2) The board must receive evidence that establishes to a reasonable degree  
31 of certainty as determined by the board that the member previously worked in CETA; and

32 (3) The member shall pay to the board an amount equal to the employer and employee  
33 contribution plus interest at the amount set by the board for the amount of service credit  
34 sought pursuant to this subsection: *Provided, however*, That the maximum service credit  
35 that may be obtained under the provisions of this subsection is two years: *Provided further*,  
36 That a member must apply and pay for the service credit allowed under this subsection and  
37 provide all necessary documentation by the thirty-first day of December, two thousand one.

38 (e) Employees of the state Legislature whose terms of employment are otherwise  
39 classified as temporary and who are employed to perform services required by the  
40 Legislature for its regular sessions or during the interim time between regular sessions  
41 shall receive service credit for the time served in that capacity in accordance with the  
42 following. For purposes of this section the term "regular session" means day one through  
43 day sixty of a sixty-day legislative session or day one through day thirty of a thirty-day



1 legislative session. Employees of the state Legislature whose term of employment is  
2 otherwise classified as temporary and who are employed to perform services required by  
3 the Legislature for its regular sessions or during the interim time between regular sessions  
4 and who have been or are employed during regular sessions or during the interim time  
5 between regular sessions in seven consecutive calendar years, as certified by the clerk of  
6 the houses in which the employee served, shall receive service credit of six months for all  
7 regular sessions served, as certified by the clerk of the houses in which the employee  
8 served, or shall receive service credit of three months for each regular thirty-day session  
9 served prior to one thousand nine hundred seventy-one, as certified by the clerk of the  
10 houses in which the employee served, and shall receive service credit of one month for  
11 each ten days served during the interim between regular sessions, which interim days shall  
12 be cumulatively calculated so that any ten days, regardless of calendar month or year, shall  
13 be calculated toward any award of one month of service credit: *Provided*, That no more  
14 than one year of service may be credited to any temporary legislative employee for all  
15 service rendered by that employee in any calendar year and no days may be carried over  
16 by a temporary legislative employee from one calendar year to another calendar year  
17 where the member has received a full year credit for that year. Service credit awarded for  
18 legislative employment pursuant to this section shall be used for the purpose of calculating  
19 that member's retirement annuity, pursuant to section twenty-two of this article, and  
20 determining eligibility as it relates to credited service, notwithstanding any other provision  
21 of this section. Certification of employment for a complete legislative session and for  
22 interim days shall be determined by the clerk of the houses in which the employee served,  
23 based upon employment records. Service of fifty-five days of a regular session constitutes  
24 an absolute presumption of service for a complete legislative session, and service of  
25 twenty-seven days of a thirty-day regular session occurring prior to one thousand nine  
26 hundred seventy-one constitutes an absolute presumption of service for a complete  
27 legislative session. Once a legislative employee has been employed during regular  
28 sessions for seven consecutive years or has become a full-time employee of the  
29 Legislature, that employee shall receive the service credit provided in this section for all  
30 regular and interim sessions, and interim days worked by that employee, as certified by the  
31 clerk of the houses in which the employee served, regardless of when the session or  
32 interim legislative employment occurred: *Provided, however*, That regular session  
33 legislative employment for seven consecutive years may be served in either or both houses  
34 of the Legislature.

35 Any employee may purchase retroactive service credit for periods of employment  
36 in which contributions were not deducted from the employee's pay. In the purchase of  
37 service credit for employment prior to the year one thousand nine hundred eighty-nine in  
38 any department, including the Legislature, which operated from the general revenue fund  
39 and which was not expressly excluded from budget appropriations in which blanket  
40 appropriations were made for the state's share of public employees' retirement coverage  
41 in the years prior to the year one thousand nine hundred eighty-nine, the employee shall pay  
42 the employee's share. Other employees shall pay the state's share and the employee's  
43 share to purchase retroactive service credit. Where an employee purchases service credit

1 for employment which occurred after the year one thousand nine hundred eighty-eight, that  
 2 employee shall pay for the employee's share and the employer shall pay its share for the  
 3 purchase of retroactive service credit: *Provided*, That no legislative employee and no  
 4 current or former member of the Legislature may be required to pay any interest or penalty  
 5 upon the purchase of retroactive service credit in accordance with the provisions of this  
 6 section where the employee was not eligible to become a member during the years he or  
 7 she is purchasing retroactive credit for or had the employee attempted to contribute to the  
 8 system during the years he or she is purchasing retroactive service credit for and such  
 9 contributions would have been refused by the board: *Provided, however*, That a legislative  
 10 employee purchasing retroactive credit under this section does so within twenty-four  
 11 months of becoming a member of the system or no later than the last day of December, two  
 12 thousand five, whichever occurs last: *Provided further*, That once a legislative employee  
 13 becomes a member of the retirement system, he or she may purchase retroactive service  
 14 credit for any time he or she was employed by the Legislature and did not receive service  
 15 credit. Any service credit purchased shall be credited as six months for each sixty-day  
 16 session worked and three months for each thirty-day session worked, and credit for interim  
 17 employment as provided in this subsection: *And provided further*, That this legislative  
 18 service credit shall also be used for months of service in order to meet the sixty-month  
 19 requirement for the payments of a temporary legislative employee member's retirement  
 20 annuity: *And provided further*, That no legislative employee may be required to pay for any  
 21 service credit beyond the actual time he or she worked regardless of the service credit  
 22 which is credited to him or her pursuant to this section: *And provided further*, That any  
 23 legislative employee may request a recalculation of his or her credited service to comply  
 24 with the provisions of this section at any time.

25 (f) Notwithstanding any provision to the contrary, the seven consecutive calendar  
 26 years requirement and the service credit requirements set forth in this section shall be  
 27 applied retroactively to all periods of legislative employment prior to the passage of this  
 28 section, including any periods of legislative employment occurring before the seven  
 29 consecutive calendar years referenced in this section.

30 (g) The board of trustees shall grant service credit to any former or present member  
 31 of the state police death, disability and retirement fund who has been a contributing  
 32 member of this system for more than three years, for service previously credited by the  
 33 state police death, disability and retirement fund if the member transfers all of his or her  
 34 contributions to the state police death, disability and retirement fund to the system created  
 35 in this article, including repayment of any amounts withdrawn any time from the state police  
 36 death, disability and retirement fund by the member seeking the transfer allowed in this  
 37 subsection: *Provided*, That there shall be added by the member to the amounts transferred  
 38 or repaid under this paragraph an amount which shall be sufficient to equal the contributions  
 39 he or she would have made had the member been under the public employees retirement  
 40 system during the period of his or her membership in the state police death, disability and  
 41 retirement fund plus interest at a rate determined by the board.

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

**ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.****§18-7A-17. Statement and computation of teachers' service; qualified military service.**

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

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

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

1 salary of the member under the retirement system.

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

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

11 (f) No member shall be considered absent from service as a teacher while serving  
12 as an officer with a statewide professional teaching association, or who has served in that  
13 capacity, and no retired teacher, who served in that capacity while a member, shall be  
14 considered to have been absent from service as a teacher by reason of that service:  
15 *Provided*, That the period of service credit granted for that service shall not exceed ten  
16 years: *Provided, however*, That a member or retired teacher who is serving or has served  
17 as an officer of a statewide professional teaching association shall make deposits to the  
18 teachers retirement board, for the time of any absence, in an amount double the amount  
19 which he or she would have contributed in his or her regular assignment for a like period  
20 of time.

21 (g) The teachers retirement board shall grant service credit to any former or present  
22 member of the West Virginia public employees retirement system who has been a  
23 contributing member for more than three years, for service previously credited by the public  
24 employees retirement system and: (1) Shall require the transfer of the member's  
25 contributions to the teachers retirement system; or (2) shall require a repayment of the  
26 amount withdrawn any time prior to the member's retirement: *Provided*, That there shall be  
27 added by the member to the amounts transferred or repaid under this subsection an  
28 amount which shall be sufficient to equal the contributions he or she would have made had  
29 the member been under the teachers retirement system during the period of his or her  
30 membership in the public employees retirement system plus interest at a rate of six percent  
31 compounded annually from the date of withdrawal to the date of payment. The interest paid  
32 shall be deposited in the reserve fund.

33 (h) For service as a teacher in an elementary or secondary parochial school, located  
34 within this state and fully accredited by the West Virginia department of education, the  
35 retirement board shall grant credit to the member: *Provided*, That the member shall pay to  
36 the system double the amount contributed during the first full year of current employment,  
37 times the number of years for which credit is granted, plus interest at a rate to be  
38 determined by the retirement board. The interest shall be deposited in the reserve fund and  
39 service granted at the time of retirement shall not exceed the lesser of ten years or fifty  
40 percent of the member's total service as a teacher in the West Virginia public school  
41 system. Any transfer of parochial school service, as provided in this section, may not be  
42 used to establish eligibility for a retirement allowance and the board shall grant credit for  
43 the transfer as additional service only: *Provided, however*, That a transfer of parochial

1 school service is prohibited if the service is used to obtain a retirement benefit from another  
2 retirement system.

3 (i) Active members who previously worked in CETA (Comprehensive Employment  
4 and Training Act) may receive service credit for time served in that capacity: *Provided,*  
5 That in order to receive service credit under the provisions of this subsection the following  
6 conditions must be met: (1) The member must have moved from temporary employment  
7 with the participating employer to permanent full time employment with the participating  
8 employer within one hundred twenty days following the termination of the member's CETA  
9 employment; (2) The board must receive evidence that establishes to a reasonable degree  
10 of certainty as determined by the board that the member previously worked in CETA; and  
11 (3) The member shall pay to the board an amount equal to the employer and employee  
12 contribution plus interest at the amount set by the board for the amount of service credit  
13 sought pursuant to this subsection: *Provided, however,* That the maximum service credit  
14 that may be obtained under the provisions of this subsection is two years: *Provided further,*  
15 That a member must apply and pay for the service credit allowed under this subsection and  
16 provide all necessary documentation by the thirty-first day of December, two thousand one.

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

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

22 (l) Subject to the provisions of subsections (a) through (l), inclusive, of this section,  
23 the board shall verify as soon as practicable the statements of service submitted. The  
24 retirement board shall issue prior service certificates to all persons eligible for the  
25 certificates under the provisions of this article. The certificates shall state the length of the  
26 prior service credit, but in no case shall the prior service credit exceed forty years.

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

1 salary as well as for determining years of service: *And provided further*, That a member  
2 utilizing the provisions of this subsection is not required to pay interest on any contributions  
3 he or she may decide to make.

**House Bill #2199**

**Section Number 2**

Effective Date: Passed March 22, 2001; in effect from passage.

Signed by Governor: April 4, 2001.

Code Reference: Amend and reenact § 48-9-601.

Topic: Access to a child's records.

Major Provisions:

- S Defines a child's "educational records" to mean any and all school records concerning a child that would otherwise be properly released to the primary custodial parent, including, but not limited to: (1) report cards and progress reports; (2) attendance records; disciplinary reports; (3) standardized test results of the child and the school; (4) curriculum materials of the classes in which the student is enrolled; (5) names of school personnel to contact if problems arise with the child; (6) information about the academic performance standards, proficiencies, and skills the child is expected to accomplish; (7) school rules, attendance policies, dress codes, and procedures for visiting the school; (8) information about any psychological testing involving the child; and, (9) the child's medical records.

**ENROLLED  
COMMITTEE SUBSTITUTE**

for

**H. B. 2199**

(By Delegates Staton, Amores, Mahan, Pino, Wills, Faircloth and Riggs)

[Passed March 22, 2001; in effect from passage.]

**§48-9-601. Access to a child's records.**

(a)(1) Each parent has full and equal access to a child's educational records absent a court order to the contrary. Neither parent may veto the access requested by the other parent. Educational records are academic, attendance and disciplinary records of public and private schools in all grades kindergarten through twelve and any form of alternative school. Educational records are any and all school records concerning the child that would otherwise be properly released to the primary custodial parent, including, but not limited to, report cards and progress reports, attendance records, disciplinary reports, results of the child's performance on standardized tests and statewide tests and information on the performance of the school that the child attends on standardized statewide tests; curriculum materials of the class or classes in which the child is enrolled; names of the appropriate school personnel to contact if problems arise with the child; information concerning the academic performance standards, proficiencies, or skills the child is expected to accomplish; school rules, attendance policies, dress codes and procedures for visiting the school; and information about any psychological testing the school does involving the child.

(2) In addition to the right to receive school records, the nonresidential parent has the right to participate as a member of a parent advisory committee or any other organization comprised of parents of children at the school that the child attends.

(3) The nonresidential parent or noncustodial parent has the right to question anything in the child's record that the parent feels is inaccurate or misleading or is an invasion of privacy and to receive a response from the school.

(4) Each parent has a right to arrange appointments for parent-teacher conferences absent a court order to the contrary. Neither parent can be compelled against their will to exercise this right by attending conferences jointly with the other parent.

(b)(1) Each parent has full and equal access to a child's medical records absent a court order to the contrary. Neither parent may veto the access requested by the other parent. If necessary, either parent is required to authorize medical providers to release to the other parent copies of any and all information concerning medical care provided to the child which would otherwise be properly released to either parent.

(2) If the child is in the actual physical custody of one parent, that parent is required to promptly inform the other parent of any illness of the child which requires medical attention.

(3) Each parent is required to consult with the other parent prior to any elective surgery being performed on the child, and in the event emergency medical procedures are undertaken



for the child which require the parental consent of either parent, if time permits, the other parent shall be consulted, or if time does not permit such consultation, the other parent shall be promptly informed of the emergency medical procedures: *Provided*, That nothing contained herein alters or amends the law of this state as it otherwise pertains to physicians or health care facilities obtaining parental consent prior to providing medical care or performing medical procedures.

(c) Each parent has full and equal access to a child's juvenile court records, process and pleadings, absent a court order to the contrary. Neither parent may veto any access requested by the other parent. Juvenile court records are limited to those records which are normally available to a parent of a child who is a subject of the juvenile justice system.

**§48-9-602. Designation of custody for the purpose of other state and federal statutes.**

Solely for the purposes of all other state and federal statutes which require a designation or determination of custody, a parenting plan shall designate the parent with whom the child is scheduled to reside the majority of the time as the custodian of the child. However, this designation shall not affect either parent's rights and responsibilities under a parenting plan. In the absence of such a designation, the parent with whom the child is scheduled to reside the majority of the time is deemed to be the custodian of the child for the purposes of such federal and state statutes.

**§48-9-603. Effect of enactment; operative dates.**

(a) The enactment of this article, formerly enacted as article eleven of this chapter during the second extraordinary session of the Legislature, one thousand nine hundred ninety-nine, is prospective in operation unless otherwise expressly indicated.

**House Bill #2208**

**Section Number 3**

Effective Date: Passed April 14, 2001; in effect from passage.

Signed by Governor: May 2, 2001.

Code Reference: Amend §18-2.

Topic: Character education integration.

Major Provisions:

- S The state board shall require all public schools to develop and integrate components of character development into their existing curriculum by September 1, 2001.
- S Schools may incorporate such programs as “life skills,” “responsible students,” or any other program encompassing any of the listed 22 components.
- S The state board shall contract with an independent agency to evaluate the results of character education and report the results to LOCEA during the September, 2003 interim meeting period and every two years thereafter.
- S Funding for this initiative shall be derived from the 0313 unclassified account within the state department of education budget.

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**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**  
**H. B. 2208**

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)  
[By Request of the Executive]  
[Passed April 14, 2001; in effect from passage.]

10 AN ACT to amend article two, chapter eighteen of the code of West Virginia, one thousand  
11 nine hundred thirty-one, as amended, by adding thereto a new section, designated  
12 section thirteen, relating to public education; state board of education; integrating  
13 character education into the public school curriculum; evaluation and report; and  
14 funding.

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

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

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

20 **§18-2-13. Character education integration.**

21 (a) The state board shall establish a comprehensive approach to integrate character  
22 education into all aspects of school culture, school functions and existing curriculum.

23 (b) The state board shall require all public schools that operate from preschool to  
24 grade twelve to develop and integrate components of character development into their  
25 existing curriculum. The schools may incorporate such programs as “life skills”,  
26 “responsible students”, or any other program encompassing any of the following  
27 components:

- 28 (1) Honesty;  
29 (2) Caring;  
30 (3) Citizenship;  
31 (4) Justice;  
32 (5) Fairness;  
33 (6) Respect;  
34 (7) Responsibility;  
35 (8) Voting;  
36 (9) Academic achievement;  
37 (10) Completing homework assignments;  
38 (11) Improving daily attendance;  
39 (12) Avoiding and resolving conflicts;  
40 (13) Alternatives to violence;  
41 (14) Contributing to an orderly positive school environment;  
42 (15) Participating in class;  
43 (16) Resisting social peer pressures to smoke, drink and use drugs;  
44 (17) Developing greater self-esteem and self-confidence;

- 1 (18) Effectively coping with social anxiety;
- 2 (19) Increasing knowledge of the immediate consequences of substance abuse;
- 3 (20) Increasing knowledge of the consequences of ones actions;
- 4 (21) The corrupting influence and chance nature of gambling; and
- 5 (22) The value of decent, honest work.

6 (c) Character education shall be integrated into each public school curriculum by the  
7 first day of September, two thousand one.

8 (d) The state board shall assist county boards in developing in-service training  
9 regarding integrated character education as provided in this section.

10 (e) The state board shall contract with an independent agency to evaluate the results  
11 of the character education as defined in this section, and report the results to the legislative  
12 oversight commission on education accountability during the September, two thousand  
13 three interim meeting period, and every two years thereafter.

14 (f) The state department of education is encouraged to utilize any existing moneys  
15 available to the department for existing character development programs, along with any  
16 new funds appropriated for the purposes of this section, to secure the maximum amount  
17 of any federal funding available for which the state department is eligible to receive for  
18 implementing character development in the schools.

19 (g) Funding for this initiative shall be derived from the 0313 unclassified account  
20 within the state department of education budget.

**House Bill #2209**

**Section Number 4**

Effective Date: Passed April 14, 2001; in effect ninety days from passage.

Signed by Governor: April 27, 2001.

Code Reference: Amend and Reenact §18-16-13.

Topic: Prohibiting the conversion of annual and sick leave for extended insurance coverage upon retirement for public employees hired after a certain date.

Major Provisions:

- S Prohibition on conversion of accrued annual and sick leave for extended coverage upon retirement for new employees who elect to participate in the plan after June, two thousand one. Any employee hired on or after the first day of July, two thousand one who elects to participate in the plan may not apply accrued annual or sick leave toward the cost of premiums for extended insurance coverage upon his or her retirement. This prohibition does not apply to the conversion of accrued annual or sick leave for increased retirement benefits, as authorized by this section: *Provided*, That any person who has participated in the plan prior to the first day of July, two thousand one, is not a new employee for purposes of this subsection if he or she becomes re-employed with an employer participating in the plan within two years following his or her separation from employment and he or she elects to participate in the plan upon his or her re-employment.



1 insurance coverage provided under this article shall continue for a period of three months at  
2 no additional cost to the employee and the employer shall continue to contribute the  
3 employer's share of plan premiums for the coverage. An employee discharged for misconduct  
4 shall not be eligible for extended benefits under this section. Coverage may be extended up  
5 to the maximum period of three months, while administrative remedies contesting the charge  
6 of misconduct are pursued. If the discharge for misconduct be upheld, the full cost of the  
7 extended coverage shall be reimbursed by the employee. If the employee is again employed  
8 or recalled to active employment within twelve months of his or her prior termination, he or she  
9 shall not be considered a new enrollee and may not be required to again contribute his or her  
10 share of the premium cost, if he or she had already fully contributed such share during the prior  
11 period of employment.

12 (d) *Conversion of accrued annual and sick leave for extended insurance coverage*  
13 *upon retirement for employees who elected to participate in the plan before July, one*  
14 *thousand nine hundred eighty-eight.* -- Except as otherwise provided in subsection (g) of this  
15 section, when an employee participating in the plan, who elected to participate in the plan  
16 before the first day of July, one thousand nine hundred eighty-eight, is compelled or required  
17 by law to retire before reaching the age of sixty-five, or when a participating employee  
18 voluntarily retires as provided by law, that employee's accrued annual leave and sick leave,  
19 if any, shall be credited toward an extension of the insurance coverage provided by this article,  
20 according to the following formulae: The insurance coverage for a retired employee shall  
21 continue one additional month for every two days of annual leave or sick leave, or both, which  
22 the employee had accrued as of the effective date of his or her retirement. For a retired  
23 employee, his or her spouse and dependents, the insurance coverage shall continue one  
24 additional month for every three days of annual leave or sick leave, or both, which the  
25 employee had accrued as of the effective date of his or her retirement.

26 (e) *Conversion of accrued annual and sick leave for extended insurance coverage*  
27 *upon retirement for employees who elected to participate in the plan after June, one*  
28 *thousand nine hundred eighty-eight.* -- Notwithstanding subsection (d) of this section, and  
29 except as otherwise provided in subsections (g) and (l) of this section when an employee  
30 participating in the plan who elected to participate in the plan on and after the first day of July,  
31 one thousand nine hundred eighty-eight, is compelled or required by law to retire before  
32 reaching the age of sixty-five, or when the participating employee voluntarily retires as  
33 provided by law, that employee's annual leave or sick leave, if any, shall be credited toward  
34 one half of the premium cost of the insurance provided by this article, for periods and scope  
35 of coverage determined according to the following formulae: (1) One additional month of  
36 single retiree coverage for every two days of annual leave or sick leave, or both, which the  
37 employee had accrued as of the effective date of his or her retirement; or (2) one additional  
38 month of coverage for a retiree, his or her spouse and dependents for every three days of  
39 annual leave or sick leave, or both, which the employee had accrued as of the effective date  
40 of his or her retirement. The remaining premium cost shall be borne by the retired employee  
41 if he or she elects the coverage. For purposes of this subsection, an employee who has been  
42 a participant under spouse or dependent coverage and who reenters the plan within twelve  
43 months after termination of his or her prior coverage shall be considered to have elected to  
44 participate in the plan as of the date of commencement of the prior coverage. For purposes  
45 of this subsection, an employee shall not be considered a new employee after returning from

1 extended authorized leave on or after the first day of July, one thousand nine hundred  
2 eighty-eight.

3 (f) *Increased retirement benefits for retired employees with accrued annual and sick*  
4 *leave.* -- In the alternative to the extension of insurance coverage through premium payment  
5 provided in subsections (d) and (e) of this section, the accrued annual leave and sick leave  
6 of an employee participating in the plan may be applied, on the basis of two days retirement  
7 service credit for each one day of accrued annual and sick leave, toward an increase in the  
8 employee's retirement benefits with those days constituting additional credited service in  
9 computation of the benefits under any state retirement system. However, the additional  
10 credited service shall not be used in meeting initial eligibility for retirement criteria, but only  
11 as additional service credited in excess thereof.

12 (g) *Conversion of accrued annual and sick leave for extended insurance coverage*  
13 *upon retirement for certain higher education employees.* -- Except as otherwise provided  
14 in subsection (l) of this section, when an employee, who is a higher education full-time faculty  
15 member employed on an annual contract basis other than for twelve months, is compelled or  
16 required by law to retire before reaching the age of sixty-five, or when such a participating  
17 employee voluntarily retires as provided by law, that employee's insurance coverage, as  
18 provided by this article, shall be extended according to the following formulae: The insurance  
19 coverage for a retired higher education full-time faculty member, formerly employed on an  
20 annual contract basis other than for twelve months, shall continue beyond the effective date  
21 of his or her retirement one additional year for each three and one-third years of teaching  
22 service, as determined by uniform guidelines established by the university of West Virginia  
23 board of trustees and the board of directors of the state college system, for individual  
24 coverage, or one additional year for each five years of teaching service for "family" coverage.

25 (h) Any employee who retired prior to the twenty-first day of April, one thousand nine  
26 hundred seventy-two, and who also otherwise meets the conditions of the "retired employee"  
27 definition in section two of this article, shall be eligible for insurance coverage under the same  
28 terms and provisions of this article. The retired employee's premium contribution for any such  
29 coverage shall be established by the finance board.

30 (i) *Retiree participation.* -- All retirees under the provisions of this article, including  
31 those defined in section two of this article; those retiring prior to the twenty-first day of April,  
32 one thousand nine hundred seventy-two; and those hereafter retiring are eligible to obtain  
33 health insurance coverage. The retired employee's premium contribution for the coverage  
34 shall be established by the finance board.

35 (j) *Surviving spouse and dependent participation.* -- A surviving spouse and  
36 dependents of a deceased employee, who was either an active or retired employee  
37 participating in the plan just prior to his or her death, are entitled to be included in any group  
38 insurance coverage provided under this article to which the deceased employee was entitled,  
39 and the spouse and dependents shall bear the premium cost of the insurance coverage. The  
40 finance board shall establish the premium cost of the coverage.

41 (k) *Elected officials.* -- In construing the provisions of this section or any other  
42 provisions of this code, the Legislature declares that it is not now nor has it ever been the  
43 Legislature's intent that elected public officials be provided any sick leave, annual leave or  
44 personal leave, and the enactment of this section is based upon the fact and assumption that  
45 no statutory or inherent authority exists extending sick leave, annual leave or personal leave



1 to elected public officials and the very nature of those positions preclude the arising or  
2 accumulation of any leave, so as to be thereafter usable as premium paying credits for which  
3 the officials may claim extended insurance benefits.

4 (l) *Participation of certain former employees.* — An employee, eligible for coverage  
5 under the provisions of this article who has twenty years of service with any agency or entity  
6 participating in the public employees insurance program or who has been covered by the  
7 public employees insurance program for twenty years may, upon leaving employment with a  
8 participating agency or entity, continue to be covered by the program if the employee pays  
9 one hundred and five percent of the cost of retiree coverage: *Provided*, That the employee  
10 shall elect to continue coverage under this subsection within two years of the date the  
11 employment with a participating agency or entity is terminated.

12 (m) *Prohibition on conversion of accrued annual and sick leave for extended*  
13 *coverage upon retirement for new employees who elect to participate in the plan after June,*  
14 *two thousand one.* — Any employee hired on or after the first day of July, two thousand one  
15 who elects to participate in the plan may not apply accrued annual or sick leave toward the  
16 cost of premiums for extended insurance coverage upon his or her retirement. This  
17 prohibition does not apply to the conversion of accrued annual or sick leave for increased  
18 retirement benefits, as authorized by this section: *Provided*, That any person who has  
19 participated in the plan prior to the first day of July, two thousand one, is not a new employee  
20 for purposes of this subsection if he or she becomes re-employed with an employer  
21 participating in the plan within two years following his or her separation from employment and  
22 he or she elects to participate in the plan upon his or her re-employment.

**House Bill #2225**

**Section Number 5**

Effective Date: Passed April 14, 2001; in effect ninety days from passage.

Signed by Governor: May 2, 2001.

Code Reference: Amend and Reenact §6-9-7 and §18-9b-13.

Topic: Auditing and review procedures of county boards.

Major Provisions:

- S Eliminates requirement of audit by office of chief inspector every three years.
- S Requires county boards to be reviewed on yearly basis by a Certified Public Accountant (CPA).

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**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**  
**H. B. 2225**

(By Delegates Ennis, Stemple, Williams,  
Fletcher and Armstead)

[Passed April 14, 2001; in effect ninety days from passage.]

10 AN ACT to amend and reenact section seven, article nine, chapter six of the code of West  
11 Virginia, one thousand nine hundred thirty-one, as amended; and to amend and  
12 reenact section thirteen, article nine-b, chapter eighteen, all relating to examinations  
13 into affairs of local public offices; audit and review procedures of county boards of  
14 education; eliminating requirement of audit by office of chief inspector every three  
15 years; and requiring chief inspector furnish list of local government offices or political  
16 subdivisions to Legislature.

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

18 That section seven, article nine, chapter six of the code of West Virginia, one thousand  
19 nine hundred thirty-one, as amended, be amended and reenacted; and that section thirteen,  
20 article nine-b, chapter eighteen of said code be amended and reenacted, all to read as  
21 follows:

22 **CHAPTER 6. MISCELLANEOUS PROVISIONS.**

23 **ARTICLE 9. SUPERVISION OF LOCAL GOVERNMENT OFFICES.**

24 **§6-9-7. Examinations into affairs of local public offices; penalties.**

25 (a) The chief inspector has the power by himself or herself, or by any person appointed,  
26 designated or approved by the chief inspector to perform the service, to examine into all  
27 financial affairs of every local governmental office or political subdivision and all boards,  
28 commissions, authorities, agencies or other offices created under authority thereof. An  
29 examination shall be made annually, if required, to comply with the Single Audit Act and when  
30 otherwise required by law or contract. When that act does not apply, unless otherwise  
31 required by law or by contract the examination shall be made at least once a year, if  
32 practicable. Furthermore, the chief inspector shall furnish annually to the Legislature a list of  
33 each local government office or political subdivision and all boards, commissions, authorities,  
34 agencies or other offices created under authority thereof and the year of its most recent  
35 completed audit.

36 (b) When required for compliance with regulations for federal funds received or  
37 expended by county boards of education the chief inspector or his or her designee, including  
38 any certified public accountant approved by the chief inspector shall conduct and issue an  
39 audit report within the time specified in controlling federal regulations. Examinations of other  
40 local governments shall be conducted and audit or review reports issued in accordance with  
41 uniform procedures of the chief inspector.

42 (c) A county board of education may elect, by the first day of May of the fiscal year to  
43 be audited, to have its annual examination performed by a certified public accountant  
44 approved by the chief inspector to perform the examinations. When this election is made, a  
45 copy of the order of the county board making the election shall be filed with the chief inspector

1 and the state board of school finance. The county board of education is allowed to contract  
2 with any certified public accountant on the chief inspector's then current list of approved  
3 certified public accountants, unless the state board of school finance or the prosecuting  
4 attorney of the county in which the board is located timely submits to the chief inspector a  
5 written request for the examination to be performed by the chief inspector or a person  
6 appointed by the chief inspector, or the chief inspector determines that a special or unusual  
7 situation exists. The county board shall follow the audit bid procurement procedures  
8 established by the chief inspector in obtaining the audit.

9 (d) The chief inspector shall, at least annually, prepare a list of certified public  
10 accountants approved by the chief inspector to perform examinations of local governments.  
11 Names shall be added to or deleted from that list in accordance with uniform procedures of  
12 the chief inspector. When each list or updated list is issued, the chief inspector shall promptly  
13 file a copy of the list in the state register and send a copy to the state board of education, the  
14 state board of school finance and to local governments who request a copy.

15 (e) A county board of education, when procuring the services of a certified public  
16 accountant on the chief inspector's list, shall follow the procurement standards prescribed by  
17 the grants management common rule, OMB Circular A-102 "Grants and Cooperative  
18 Agreements with State and Local Governments" in effect for the fiscal year being examined,  
19 or in any replacement circular or regulation of the office of management and budget and in  
20 addition shall follow those standards as determined by the office of chief inspector.

21 (f) The approved independent certified public accountant making examinations under  
22 this section shall comply with requirements of this section applicable to examinations  
23 performed by the chief inspector, including applicable requirements of the federal government  
24 and uniform procedures of the chief inspector applicable to examinations of county boards of  
25 education.

26 (1) Upon completion of the certified public accountant's examination and audit or  
27 review report, the certified public accountant shall promptly send two copies of the certified  
28 report to the county board of education who shall file one copy with the federal audit clearing  
29 house. The certified public accountant shall send one copy of the certified report to the state  
30 board of school finance, and one copy to the chief inspector.

31 (2) If any examination discloses misfeasance, malfeasance or nonfeasance in office  
32 on the part of any public officer or employee, the certified public accountant shall submit his  
33 or her recommendation to the chief inspector regarding the legal action the approved certified  
34 public accountant considers appropriate, including, but not limited to, whether criminal  
35 prosecution or civil action to effect restitution is appropriate, and three additional copies of  
36 the certified audit report. After review of the recommendations and the audit report, the chief  
37 inspector shall proceed as provided in subsection (n) of this section. For purposes of this  
38 section and section thirteen, article nine-b, chapter eighteen of this code, a certified audit  
39 report of an approved certified public accountant shall be treated in the same manner as a  
40 report of the chief inspector.

41 (g) On every examination, inquiry shall be made as to the financial conditions and  
42 resources of the agency having jurisdiction over the appropriations and levies disbursed by  
43 the office and whether the requirements of the constitution and statutory laws of the state and  
44 the ordinances and orders of the agency have been properly complied with and also inquire  
45 into the methods and accuracy of the accounts and such other matters of audit and accounting  
46 as the chief inspector may prescribe.

1 (h) A local government office that is subject to separate examination under this section  
2 by the chief inspector may elect to have a review performed to satisfy the annual examination  
3 requirement if it is not subject to a single audit requirement under federal regulations or if it is  
4 not otherwise required by law or contract to undergo an annual audit and its expenditures from  
5 all sources are less than three hundred thousand dollars during the fiscal year for which the  
6 election is made: *Provided*, That an audit must be performed at least once every three years  
7 by the chief inspector and shall be performed whenever during the course of a review the chief  
8 inspector determines that special or unusual circumstances warrant making an audit.

9 (i) When not required to have an audit by then existing federal regulations or by any law  
10 or contract provision and the financial affairs of a local government are not examined annually  
11 but are examined on a biennial or other periodic basis, the chief inspector or his or her  
12 designee may, in his or her discretion, after making an audit of one of the fiscal years, make  
13 a review of the years remaining to be examined.

14 (j) The chief inspector or any authorized assistant may issue subpoenas and  
15 compulsory process, direct the service thereof by any sheriff, compel the attendance of  
16 witnesses and the production of books and papers at any designated time and place,  
17 selected in their respective county, and administer oaths.

18 (k) If any person refuses to appear before the chief inspector or his or her authorized  
19 assistant when required to do so, refuses to testify on any matter or refuses to produce any  
20 books or papers in his or her possession or under his or her control, he or she is guilty of a  
21 misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars  
22 and imprisoned in the county or regional jail not more than six months.

23 (l) A person convicted of willful false swearing in an examination is guilty of a  
24 misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars  
25 and imprisoned in the county or regional jail not more than six months.

26 (m) Except as otherwise provided in this section, a copy of the certified report of each  
27 examination shall be filed in the office of the commissioner, chief inspector with the governing  
28 body of the local government and with other offices as prescribed in uniform procedures of the  
29 chief inspector.

30 (n) If any examination discloses misfeasance, malfeasance or nonfeasance in office  
31 on the part of any public officer or employee, a certified copy of the report shall be filed by the  
32 chief inspector with the proper legal authority of the agency, the prosecuting attorney of the  
33 county wherein the agency is located and with the attorney general for such legal action as is  
34 proper. At the time the certified audit report is filed, the chief inspector shall notify the proper  
35 legal authority of the agency, the prosecuting attorney and the attorney general in writing of his  
36 or her recommendation as to the legal action that the chief inspector considers proper,  
37 whether criminal prosecution or civil action to effect restitution, or both.

38 (o) If the proper legal authority or prosecuting attorney, within nine months of receipt of  
39 the certified audit report and recommendations, refuses, neglects or fails to take efficient legal  
40 action by a civil suit to effect restitution or by prosecuting criminal proceedings to a final  
41 conclusion, in accordance with the recommendations, the chief inspector may institute the  
42 necessary proceedings or participate therein and prosecute the proceedings in any court of  
43 the state to a final conclusion.

44 (p) A local government that is not a county board of education may elect, by the first day  
45 of May of the fiscal year to be audited, to have its annual examination performed by a certified  
46 public accountant approved by the chief inspector to perform the examinations. When this

1 election is made, a copy of the order of the governing body making the election shall be filed  
2 with the chief inspector. An electing local government is allowed to contract with any certified  
3 public accountant on the chief inspector's then current list of approved certified public  
4 accountants, unless the prosecuting attorney of the county in which the local government is  
5 located timely submits to the chief inspector a written request for the examination to be  
6 performed by the chief inspector or a person appointed by the chief inspector, or the chief  
7 inspector determines that a special or unusual situation exists: *Provided*, That no less than  
8 once every three-year period the audit of a local government shall be performed by the office  
9 of chief inspector. The local government shall follow the audit bid procurement procedures  
10 established by the chief inspector in obtaining the audit: *Provided, however*, That the chief  
11 inspector may elect to conduct the audit of a local unit of government with one or more  
12 members of his or her audit staff where, in the opinion of the chief inspector, a special or  
13 unusual situation exists.

14 **CHAPTER 18. EDUCATION.**

15 **ARTICLE 9B. STATE BOARD OF SCHOOL FINANCE.**

16 **§18-9B-13. Inspection and audit of school finance administration.**

17 The board of finance may, through its duly authorized representatives, make  
18 inspections and examinations of the fiscal administration of a county school district. The  
19 inspection and examination may extend to any matter or practice subject to regulation by the  
20 state board. Regular and special examinations may be made by a certified public accountant  
21 approved pursuant to section seven, article nine, chapter six of this code selected by the  
22 county board in accordance with nonemergency regulations submitted by the chief inspector,  
23 or by the chief inspector himself or herself. All examinations shall be made as provided in  
24 section seven, article nine, chapter six of this code. The board may make selective audits to  
25 determine the accuracy of statements and reports made by a county board or superintendent.

26 The report of the examination shall be certified to the county board, which should  
27 include the identification of procedures and practices found to not be in accordance with the  
28 requirements of the state board. The county board shall comply with the instructions forthwith.

29 The state board, through its duly authorized representatives, shall have full access to  
30 all books, records, papers and documents of the county board.

**House Bill #2595**

**Section Number 6**

Effective Date: Passed April 14, 2001; in effect ninety days from passage.

Signed by Governor: May 2, 2001.

Code Reference: Amend and Reenact §18-8-1.

Topic: Home schooling.

Major Provisions:

- S The person or persons providing home instruction shall submit satisfactory evidence of high school diploma or equivalent.
  
- S The requirement of a formal education at least four years higher than the most academically advanced child is waived until July 1, 2003.

**ENROLLED**  
**H. B. 2595**

(By Delegates Harrison, Mathews, Carmichael, Fahey, Overington, L. Smith and Beach)

[Passed April 14, 2001; in effect ninety days from passage.]

AN ACT to amend and reenact section one, article eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to waiving the requirement that persons providing instruction in the home have at least four years more formal education.

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

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

**ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.**

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

Compulsory school attendance shall begin with the school year in which the sixth birthday is reached prior to the first day of September of such year or upon enrolling in a publicly supported kindergarten program and continue to the sixteenth birthday.

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

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

*Exemption B. Instruction in home or other approved place.* -- (a) Such instruction shall be in the home of such child or children or at some other place approved by the county board of education and for a time equal to the school term of the county. If such request for home instruction is denied by the county board of education, good and reasonable justification for such denial must be furnished in writing to the applicant by the county board of education. The instruction in such cases shall be conducted by a person or persons who, in the judgment of the county superintendent and county board of education, are qualified to give instruction in subjects required to be taught in the free elementary schools of the state. It shall be the duty of the person or persons providing the instruction, upon request of the county superintendent, to furnish to the county board of education such information and records as may be required from time to time with respect to attendance, instruction and progress of pupils enrolled between the entrance age and sixteen years receiving such instruction. The state department



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

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

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

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

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

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

(i) Any child receiving home instruction annually takes a standardized test, to be administered at a public school in the county where the child resides, or administered by a licensed psychologist or other person authorized by the publisher of the test, or administered by a person authorized by the county superintendent or county board of education. The child shall be administered a test which has been normed by the test publisher on that child's age or grade group. In no event may the child's parent or legal guardian administer the test. Where a test is administered outside of a public school, the child's parent or legal guardian shall pay the cost of administering the test. The public school or other qualified person shall administer to children of compulsory school age the comprehensive test of basic skills, the California achievement test, the Stanford achievement test or the Iowa tests of basic skills, achievement and proficiency, or an individual standardized achievement test that is nationally normed and provides statistical results which test will be selected by the public school, or other person administering the test, in the subjects of language, reading, social studies, science and mathematics and shall be administered under standardized conditions as set forth by the published instructions of the selected test. No test shall be administered if the publication date is more than ten years from the date of the administration of the test. Each child's test results shall be reported as a national percentile for each of the five subjects tested. Each child's test results shall be made available on or before the thirtieth day of June of the school year in which the test is to be administered to the person or persons providing home instruction, the child's parent or legal guardian and the county superintendent. Upon request of a duly authorized representative of the West Virginia department of education, each

child's test results shall be furnished by the person or persons providing home instruction, or by the child's parent or legal guardian, to the state superintendent of schools. Upon notification that the mean of the child's test results for any single year has fallen below the fortieth percentile, the county board of education shall notify the parents or legal guardian of said child, in writing, of the services available to assist in the assessment of the child's eligibility for special education services: *Provided*, That the identification of a disability shall not preclude the continuation of home schooling.

If the mean of the child's test results for any single year for language, reading, social studies, science and mathematics fall below the fortieth percentile on the selected tests, then the person or persons providing home instruction shall initiate a remedial program to foster achievement above that level and the student shall show improvement. If, after two calendar years, the mean of the child's test results fall below the fortieth percentile level, home instruction shall no longer satisfy the compulsory school attendance requirement exemption; or

(ii) The county superintendent is provided with a written narrative indicating that a portfolio of samples of the child's work has been reviewed and that the child's academic progress for the year is in accordance with the child's abilities. This narrative shall be prepared by a certified teacher or other person mutually agreed upon by the parent or legal guardian and the county superintendent. It shall be submitted on or before the thirtieth day of June of the school year covered by the portfolio. The parent or legal guardian shall be responsible for payment of fees charged for the narrative; or

(iii) Evidence of an alternative academic assessment of the child's proficiency mutually agreed upon by the parent or legal guardian and the county superintendent is submitted to the county superintendent by the thirtieth day of June of the school year being assessed. The parent or legal guardian shall be responsible for payment of fees charged for the assessment.

(c) The superintendent or a designee shall offer such assistance, including textbooks, other teaching materials and available resources, as may assist the person or persons providing home instruction subject to their availability. Any child receiving home instruction may, upon approval of the county board of education, exercise the option to attend any class offered by the county board of education as the person or persons providing home instruction may deem appropriate subject to normal registration and attendance requirements.

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

*Exemption D. Residence more than two miles from school or school bus route.* -- The distance of residence from a school, or school bus route providing free transportation, shall be reckoned by the shortest practicable road or path, which contemplates travel through fields by right of permission from the landholders or their agents. It shall be the duty of the county board of education, subject to written consent of landholders, or their agents, to provide and maintain safe foot bridges across streams off the public highways where such are

required for the safety and welfare of pupils whose mode of travel from home to school or to school bus route must necessarily be other than along the public highway in order for said road or path to be not over two miles from home to school or to school bus providing free transportation;

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

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

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

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

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

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

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

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

**House Bill #2722**

**Section Number 7**

Effective Date: Passed April 13, 2001; in effect from passage.

Signed by Governor: April 30, 2001.

Code Reference: Amend and Reenact §18-5-4.

Topic: County board meetings and compensation.

Major Provisions:

- S Increases county board members' compensation from \$100 per meeting to \$160 per meeting.
- S The number of meetings for which one may receive compensation is capped at 50 meetings per year.
- S Provides county board members who attend multi-county vocational center meetings the \$160 in pay, with compensation for up to 12 meetings annually.

1 **ENROLLED**

2 **H. B. 2722**

3 (By Delegates Morgan, Louisos, Fragale, Dempsey,  
4 Paxton, Hubbard and Canterbury)

5  
6 [Passed April 13, 2001; in effect from passage.]  
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10 AN ACT to amend and reenact section four, article five, chapter eighteen of the code of  
11 West Virginia, one thousand nine hundred thirty-one, as amended, relating to county  
12 boards of education; meetings; increasing compensation for board members;  
13 authorizing compensation of county board members who serve on administrative  
14 councils of multi-county vocational centers for attending council meetings; providing  
15 that such meetings are not counted under the limit of compensable board meeting  
16 per fiscal year; and limiting compensable council meetings.

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

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

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

22 **§18-5-4. Meetings; employment and assignment of teachers; budget hearing;**  
23 **compensation of members; affiliation with state and national associations.**

24 (a) The board shall meet on the first Monday of July, and upon the dates provided by  
25 law for the laying of levies, and at any other times the board fixes upon its records. At any  
26 meeting as authorized in this section and in compliance with the provisions of article four  
27 of this chapter, the board may employ qualified teachers, or those who will qualify by the  
28 time of entering upon their duties, necessary to fill existing or anticipated vacancies for the  
29 current or next ensuing school year. At a meeting of the board, on or before the first  
30 Monday of May, the superintendent shall furnish in writing to the board a list of those  
31 teachers to be considered for transfer and subsequent assignment for the next ensuing  
32 school year; all other teachers not listed are considered as reassigned to the positions held  
33 at the time of this meeting. The list of those recommended for transfer shall be included in  
34 the minute record and the teachers listed shall be notified in writing. The notice shall be  
35 delivered in writing, by certified mail, return receipt requested, to the teachers' last-known  
36 addresses within ten days following the board meeting, of their having been recommended  
37 for transfer and subsequent assignment.

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

40 (c) In addition, a public hearing shall be held concerning the preliminary operating  
41 budget for the next fiscal year not less than ten days after the budget has been made  
42 available to the public for inspection, and within a reasonable time prior to the submission  
43 of the budget to the state board for approval. Reasonable time shall be granted at the

1 hearing to any person who wishes to speak regarding any part of the budget. Notice of the  
2 hearing shall be published as a Class I legal advertisement in compliance with the  
3 provisions of article three, chapter fifty-nine of this code.

4 (d) A majority of the members constitutes the quorum necessary for the transaction of  
5 official business.

6 (e) Board members may receive compensation at a rate not to exceed one hundred  
7 sixty dollars per meeting attended, but they may not receive pay for more than fifty meetings  
8 in any one fiscal year: *Provided*, That board members who serve on an administrative  
9 council of a multi-county vocational center may also receive compensation for attending up  
10 to twelve meetings of the council at the same rate as for meetings of the board. Meetings  
11 of the council are not counted as board meetings for purposes of determining the limit on  
12 compensable board meetings.

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

16 (e) When, by a majority vote of its members, a county board considers it a matter of  
17 public interest, the board may join the West Virginia school board association and the  
18 national school board association, and may pay the dues prescribed by the associations  
19 and approved by action of the respective county boards. Membership dues and actual  
20 traveling expenses of board members for attending meetings of the West Virginia school  
21 board association may be paid by their respective county boards out of funds available to  
22 meet actual expenses of the members, but no allowance may be made except upon sworn  
23 itemized statements.

**House Bill #2897**

**Section Number 8**

Effective Date: Passed April 14, 2001; in effect from passage.

Signed by Governor: May 2, 2001.

Code Reference: Amend and Reenact §18C-5-7.

Topic: Providing higher education adult part-time student grants.

Major Provisions:

- S Providing higher education adult part-time student grants to students enrolled in post-secondary certificate, industry recognized credential and other skill development programs of study in demand occupations.

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**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**  
**H. B. 2897**

(By Delegates Fahey, Hubbard, Morgan, Mathews, Fox, L. Smith  
and Swartzmiller)

[Passed April 14, 2001; in effect from passage.]

10 AN ACT to amend and reenact section seven, article five, chapter eighteen-c of the code of  
11 West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing  
12 higher education adult part-time student grants to students enrolled in post-secondary  
13 certificate, industry recognized credential and other skill development programs of  
14 study in demand occupations; changing out-dated terms and references; clarifying  
15 definition for eligible institutions; adding definitions for eligible programs and courses,  
16 postsecondary certificate program, demand occupation, industry recognized credential  
17 program, and skill development program; modifying definitions, clarifying program  
18 parameters and eligibility requirements to accommodate newly authorized programs;  
19 requiring commission to develop a legislative rule for implementation including  
20 allocation of funds and guidelines for calculating grant amounts; and authorizing  
21 emergency rule.

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

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

26 **ARTICLE 5. HIGHER EDUCATION GRANT PROGRAM.**

27 **§18C-5-7. Higher education adult part-time student grant program.**

28 (a) There is established the higher education adult part-time student grant program,  
29 hereafter referred to as the HEAPS grant program. The grant program established and  
30 authorized by this section is administered by the vice chancellor for administration. Moneys  
31 appropriated or otherwise available for such purpose shall be allocated by line item to an  
32 appropriate account. Any moneys remaining in the fund at the close of a fiscal year shall be  
33 carried forward for use in the next fiscal year.

34 (b) As used in this section, the following terms have the meanings ascribed to them:

35 (1) "Approved distance education" means a course of study offered via electronic  
36 access that has been approved for inclusion in the applicant's program of study by the eligible  
37 institution of higher education at which the applicant is enrolled or has been accepted for  
38 enrollment;

39 (2) "Part-time" means enrollment for not less than six nor more than eleven semester or  
40 term hours: *Provided*, That for no more than two semesters during the recipient's ten years  
41 of eligibility, the recipient may be considered to be enrolled part-time if he or she is enrolled  
42 for three or more semester or term hours: *Provided, however*, That in the case of enrollment  
43 in postsecondary certificate, industry recognized credential and other skill development  
44 programs in demand occupations in this state, "part-time" means enrollment on such basis  
45 as is established for the program in which enrolled.



1 (3) "Satisfactory academic progress" means maintaining a cumulative grade point  
2 average of at least 2.0 on a 4.0 grading scale with a goal of obtaining a certificate, associate  
3 degree or bachelor's degree. In the case of postsecondary certificate, industry recognized  
4 credential and other skill development programs, satisfactory academic progress means  
5 continuous advancement toward completion of the program on the normal schedule  
6 established for the program in which enrolled;

7 (4) "Eligible institution" means:  
8 (A) Any community college; community and technical college; adult technical preparatory  
9 education program or training;  
10 (B) Any state college or university, as those terms are defined in section two, article one,  
11 chapter eighteen-b of this code;  
12 (C) Any approved institution of higher education as that term is defined in section two  
13 of this article; and  
14 (D) Any approved distance education, including world wide web based courses;

15 (5) "Eligible program or programs" or "eligible course or courses" means, in addition  
16 to programs and courses offered by eligible institutions as defined in subdivision (4) of this  
17 subsection:  
18 (A) Programs and courses offered by any nationally accredited degree granting  
19 institution of higher learning permitted pursuant to section five, article three, chapter eighteen-  
20 b of this code and approved by the joint commission for vocational-technical occupational  
21 education; and  
22 (B) Any postsecondary certificate, industry recognized credential and other skill  
23 development programs of study as defined in this section in a demand occupation in this  
24 state;

25 (6) "State resident" means a student who has lived in West Virginia continuously for a  
26 minimum of twelve months immediately preceding the date of application for a HEAPS grant  
27 or renewal of a grant;

28 (7) "Postsecondary certificate program" means an organized program of study,  
29 approved by the joint commission for vocational-technical occupational education, with  
30 defined competencies or skill sets that may be offered for credit or non-credit and which  
31 culminates in the awarding of a certificate: *Provided*, That postsecondary certificate programs  
32 offered by eligible institutions as defined in subdivision (4) of this subsection do not require  
33 the approval of the joint commission for vocational-technical occupational education;

34 (8) "Demand occupation" means any occupation having documented verification from  
35 employers that job opportunities in that occupation are currently available or are projected to  
36 be available within a year within the state or regions of the state. The joint commission for  
37 vocational-technical occupational education shall prepare and update annually a list of  
38 occupations that they determine meet the requirements of this definition;

39 (9) "Industry recognized credential program" means an organized program that meets  
40 nationally recognized standards in a particular industry, is approved by the joint commission  
41 for vocational-technical occupational education and which culminates in the awarding of a  
42 certification or other credential commonly recognized in that industry: *Provided*, That industry  
43 recognized credential programs offered by eligible institutions as defined in subdivision (4)  
44 of this subsection do not require the approval of the joint commission for vocational-technical  
45 occupational education; and

46 (10) "Skill development program" means a structured sequence or set of courses,

1 approved by the joint commission for vocational-technical occupational education, with  
2 defined competencies that are designed to meet the specific skill requirements of an  
3 occupation and which culminates in the awarding of a certificate of completion that specifically  
4 lists the competencies or skills mastered: *Provided*, That skill development programs offered  
5 by eligible institutions as defined in subdivision (4) of this subsection do not require the  
6 approval of the joint commission.

7 (c) A person is eligible for consideration for a HEAPS grant if the person:

8 (1) Demonstrates that he or she has applied for, accepted, or both, other student  
9 financial assistance in compliance with federal financial aid rules, including the federal Pell  
10 grant;

11 (2) Qualifies as an independent student according to current federal financial aid  
12 criteria, unless the person is enrolling in a postsecondary certificate, industry recognized  
13 credential or other skill development program in a demand occupation in the state and has  
14 graduated from high school within the past two years;

15 (3) Demonstrates financial need for funds, as defined by legislative rule;

16 (4) Has not been enrolled in a high school diploma program, other than general  
17 education development (GED), for at least the two preceding years, unless the person applies  
18 the grant toward the cost of enrolling in a postsecondary certificate, industry recognized  
19 credential or other skill development program of study in a demand occupation in this state;

20 (5) Is a state resident and may not be considered a resident of any other state;

21 (6) Is a United States citizen or permanent resident thereof;

22 (7) Is not incarcerated in a correctional facility;

23 (8) Is not in default on a higher education loan; and

24 (9) Is enrolled in a program of study at less than the graduate level on a part-time basis  
25 in an eligible institution or program of study and is making satisfactory academic progress at  
26 the time of application: *Provided*, That the requirement that the student be making satisfactory  
27 academic progress may not preclude a HEAPS grant award to a student who has been  
28 accepted for enrollment in an eligible institution or program of study but has not yet been  
29 enrolled.

30 (d) Each HEAPS grant award is eligible for renewal until the course of study is  
31 completed, but not to exceed an additional nine years beyond the first year of the award.

32 (e) The higher education policy commission shall propose a legislative rule pursuant to  
33 article three-a, chapter twenty-nine-a of this code to implement the provisions of this section  
34 which shall be filed with the legislative oversight commission on education accountability by  
35 the first day of September, two thousand one. The Legislature hereby declares that an  
36 emergency situation exists and, therefore, the policy commission may establish, by  
37 emergency rule, under the procedures of article three-a, chapter twenty-nine-a of this code,  
38 a rule to implement the provisions of this section, after approval by the legislative oversight  
39 commission on education accountability.

40 (f) The legislative rule shall provide at least the following:

41 (1) That consideration of financial need, as required by subdivision (3), subsection (c)  
42 of this section, include the following factors:

43 (A) Whether the applicant has dependents as defined by federal law;

44 (B) Whether the applicant has any personal hardship as determined at the discretion  
45 of the vice chancellor for administration; and

46 (C) Whether the applicant will receive any other source of student financial aid during

1 the award period.

2 (2) That an appropriate allocation process be provided for distribution of funds directly  
3 to the eligible institutions or programs based on the part-time enrollment figures of the prior  
4 year;

5 (3) That not less than twenty-five percent of the funds appropriated in any one fiscal year  
6 be used to make grants to students enrolled in postsecondary certificate, industry recognized  
7 credential and other skill development programs of study: *Provided*, That after giving written  
8 notice to the legislative oversight commission on education accountability, the vice chancellor  
9 for administration may allocate less than twenty-five percent of the funds for such grants;

10 (4) That any funds not expended by an eligible institution or program at the end of each  
11 fiscal year shall be returned to the vice chancellor for administration for distribution under the  
12 provisions of this section; and

13 (5) That the amount of each HEAPS grant award be determined using the following  
14 guidelines:

15 (A) The amount of any HEAPS grant awarded to a student per semester, term hour or  
16 program for those students who are enrolled in eligible institutions or programs operated  
17 under the jurisdiction of an agency of the state or a political subdivision thereof shall be based  
18 upon the following:

19 (i) Actual cost of tuition and fees;

20 (ii) The portion of the costs determined to be appropriate by the commission; and

21 (iii) In addition to factors (i) and (ii) above, in determining the amount of the award, the  
22 vice chancellor may consider the demand for the program pursuant to subdivision (8),  
23 subsection (b) of this section; and

24 (B) The amount of any HEAPS grant awarded to a student who is enrolled in any other  
25 eligible institution, program or course shall be no greater than the average amount for  
26 comparable programs or courses as determined pursuant to the provisions of paragraph (A)  
27 above.

28

29 (f) The vice chancellor for administration shall report annually, by the first day of  
30 December, on the status of the HEAPS grant program to the legislative oversight commission  
31 on education accountability.

32 (g) The HEAPS grant program is subject to any provision of this article not inconsistent  
33 with the provisions of this section.

**House Bill #2898**

**Section Number 9**

Effective Date: Passed April 14, 2001; in effect from passage.

Signed by Governor: May 2, 2001.

Code Reference: Amend and Reenact §18b-3d-1,3, 4.

Topic: Modernization and procurement of equipment for workforce development initiative grant programs.

Major Provisions:

- S Maximizing the use of available resources for workforce education and training through partnerships with public vocational, technical and adult education centers and private training providers.
- S Develop partnerships with other public and private providers, including small business development centers and, vocational, technical and adult education centers, and with business and labor, to fulfill the workforce development needs of the service area.
- S Establish cooperative arrangements with the public school system for the seamless progression of students through programs of study that begin at the secondary level and conclude at the community and technical college level, particularly with respect to career and technical education certificates, associate of applied science and selected associate of science degree programs for students seeking immediate employment, individual entrepreneurship skills, occupational development, skill enhancement and career mobility.
- S The plan must be developed in partnership with employers, local vocational centers, and other workforce education providers.
- S A specific plan showing how the community and technical college will collaborate with local post-secondary vocational institutions to maximize the use of existing facilities, personnel and equipment.
- S Applications submitted by community and technical colleges may be awarded funds for programs which meet the requirements of this article that are operated on a collaborative basis at facilities under the jurisdiction of the public schools and utilized by both secondary and post-secondary students.

1 **ENROLLED**  
2 **H. B. 2898**

3  
4 (By Delegates Paxton, Shelton, Dempsey, Perry, Carmichael, Romine and Canterbury)

5  
6 [Passed April 14, 2001; in effect from passage.]  
7  
8

9 AN ACT to amend and reenact sections one, three and four, article three-d, chapter  
10 eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as  
11 amended, relating to including funds to assist with modernization and procurement  
12 of equipment for workforce training programs in grants through the workforce  
13 development initiative grant program; updating obsolete references; requiring prior  
14 approval for sale, disposal or change in use of equipment upgraded or procured  
15 with grant funds; authorizing annual renewal for less than five years; establishing  
16 additional required element in mission of community and technical colleges  
17 accepting grant funds; authorizing required private match to be both cash and in-  
18 kind; requiring plan to collaborate with public schools to maximize use of existing  
19 personnel and equipment; and authorizing award of funds for qualified programs  
20 operated on collaborative basis and utilized by both secondary and post-secondary  
21 students at public school facilities.

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

23 That sections one, three and four, article three-d, chapter eighteen-b of the code of  
24 West Virginia, one thousand nine hundred thirty-one, as amended, be amended and  
25 reenacted to read as follows:

26 **ARTICLE 3D. WORKFORCE DEVELOPMENT INITIATIVE.**

27 **§18B-3D-1. Legislative findings and intent.**

28 (a) The Legislature finds that a recent statewide study of the workforce training needs  
29 of employers throughout the state provided a clear message from the business community:

30 (1) The needs of employers are rapidly changing and training providers must be  
31 more responsive or the state economy will suffer;

32 (2) Information specific to West Virginia, once again emphasizes the critical link  
33 between education and economic development that empowering youth and adults with the  
34 knowledge and skills they need to succeed in the competitive work world also results in a  
35 workforce which enables businesses and communities to prosper;

36 (3) Although employers are generally satisfied with the quality of the West Virginia  
37 workforce and the study provides additional support that the measures adopted in the Jobs  
38 Through Education Act will bring continued improvement, workforce needs are not static,  
39 critical skill shortages currently exist, and the establishment of a workforce development  
40 system that responds more quickly to the evolving skill requirements of employers is  
41 needed.

42 (b) The Legislature further finds that a study of community and technical education in  
43 West Virginia performed by the national center for higher education management systems

1 called attention to problems in providing needed workforce education and found that there  
2 is a need to:

3 (1) Jump-start development of community college and postsecondary workforce  
4 development initiatives;

5 (2) Provide incentives for existing public postsecondary providers to respond jointly  
6 to both short and long-term needs of employers and other clients;

7 (3) Provide funding for explicit incentives for partnerships between employers and  
8 public postsecondary institutions to develop comprehensive community college and  
9 workforce development services; and

10 (4) Allocate funds competitively on the basis of proposals submitted by providers.

11 (c) It is further the intent of the Legislature that the granting of funds under this article  
12 will promote the development of comprehensive community and technical colleges as set  
13 forth in article three-c of this chapter.

14 (d) It is the intent of the Legislature through the grant of funds under this article to  
15 provide limited seed money to address some of the specific areas where improvement is  
16 needed, including:

17 (1) Improving employer awareness and access to services available through the  
18 state's education institutions;

19 (2) Providing designated professionals and resources to support workforce  
20 education through the state's education institutions;

21 (3) Assisting with the modernization and procurement of equipment needed for  
22 workforce training programs: *Provided*, That any equipment purchased or upgraded with  
23 grant funds awarded under the provisions of this article may not be sold, disposed of or  
24 used for purposes other than those specified in the grant without prior approval of the  
25 council;

26 (4) Increasing the capacity of the state's education institutions to respond rapidly to  
27 employer needs for workforce education, and training on an on-going basis through the  
28 development of a client-focused, visible point of contact for program development and  
29 delivery, service referral and needs assessment, such as a workforce development center;  
30 and

31 (5) Maximizing the use of available resources for workforce education and training  
32 through partnerships with public vocational, technical and adult education centers and  
33 private training providers.

34 (e) It is further the intent of the Legislature that consideration and partnering  
35 opportunities be given to small businesses on an equal basis with larger businesses for the  
36 purposes of this article and that the seed money will assist providers in becoming self-  
37 sustaining through partnerships with business and industry which will include cost-sharing  
38 initiatives and fees charged for the use of services.

39 (f) The Legislature intends that grants of funds made under the provisions of this  
40 article will be competitive among applicants who meet all of the criteria established in this  
41 article and such other criteria as may be specified by the council. Subject to the availability  
42 of funds, more than one competition may be held during the same fiscal year and the dollar  
43 range of awards granted in successive competitions shall be prorated based on the

1 number of months remaining in the fiscal year. Subject to annual review and justification,  
2 it is the intent of the Legislature to renew grant awards made under this article each year  
3 for not more than five years following the initial grant award.

4 **§18B-3D-3. Mission of the workforce development initiative program.**

5 (a) The state-wide mission of the workforce development initiative program is to  
6 develop a strategy to strengthen the quality of the state's workforce by linking the existing  
7 postsecondary education capacity to the needs of business, industry and other employers.  
8 Available funding will be used to provide explicit incentives for partnerships between  
9 employers and community and technical colleges to develop comprehensive workforce  
10 development services. Funds will be granted on the basis of proposals developed  
11 according to criteria established by the council.

12 (b) The mission of any community and technical college accepting a workforce  
13 development initiative grant is to:

14 (1) Become client-focused and develop programs that meet documented employer  
15 needs;

16 (2) Involve and collaborate with employers in the development of programs;

17 (3) Develop customized training programs that provide for the changing needs of  
18 employers and that are offered at flexible times and locations to accommodate employer  
19 scheduling;

20 (4) Develop partnerships with other public and private providers, including small  
21 business development centers and, vocational, technical and adult education centers, and  
22 with business and labor, to fulfill the workforce development needs of the service area;

23 (5) Establish cooperative arrangements with the public school system for the  
24 seamless progression of students through programs of study that begin at the secondary  
25 level and conclude at the community and technical college level, particularly with respect  
26 to career and technical education certificates, associate of applied science and selected  
27 associate of science degree programs for students seeking immediate employment,  
28 individual entrepreneurship skills, occupational development, skill enhancement and career  
29 mobility.

30 (6) Assist in the on-going assessment of the workforce development needs of the  
31 service area; and

32 (7) Serve as a visible point of contact and referral for services to meet the workforce  
33 development needs of the service area.

34 **§18B-3D-4. Grant application procedures.**

35 (a) In order to participate in the workforce development initiative grant program, a  
36 community and technical college must meet the following conditions:

37 (1) Establish a consortia committee as required by section seven, article three-c of  
38 this chapter. The consortia committee or a subcommittee thereof shall participate in the  
39 development of and approve applications for funding grants under the provisions of this  
40 article, and shall approve the workforce development initiative budget;

41 (2) Develop a plan to achieve measurable improvements in the quality of the  
42 workforce within its service area over a five-year period. The plan must be developed in  
43 partnership with employers, local vocational schools, and other workforce education

1 providers;

2 (3) Establish a special revolving fund under the jurisdiction of the consortia committee  
3 dedicated solely to workforce development initiatives for the purposes provided in this  
4 article. Any fees or revenues generated from workforce development initiatives funded by  
5 a competitive grant shall be deposited into this fund.

6 (b) To be eligible to receive a workforce development initiative grant, a community  
7 and technical college must provide at least the following information in its application:

8 (1) Identification of the specific business or business sector training needs that will  
9 be met if a workforce development initiative grant is received;

10 (2) A commitment from the private sector to provide a match of one dollar, cash and  
11 in-kind, for each dollar of state grant money received except in cases where the community  
12 and technical college can demonstrate in the grant application that it would be a hardship  
13 for the business being served to provide such a match. In those cases only, the match  
14 required may be reduced to one private dollar, cash and in-kind, for every three dollars of  
15 state grant money provided. In the case of awards for the modernization of procurement  
16 of equipment, the council may establish a separate match requirement of up to one dollar,  
17 cash and in-kind, for each dollar of state grant money received;

18 (3) An agreement to share with other community and technical colleges any curricula  
19 developed using funds from a workforce development initiative grant;

20 (4) A specific plan showing how the community and technical college will collaborate  
21 with local postsecondary vocational institutions to maximize the use of existing facilities,  
22 personnel and equipment;

23 (5) An acknowledgment that acceptance of a grant under the provisions of this article  
24 commits the community and technical college and its consortia committee to such terms,  
25 conditions and deliverables as is specified by the council in the request for applications,  
26 including, but not limited to, the measures by which the performance of the workforce  
27 development initiative will be evaluated.

28 (c) Applications submitted by community and technical colleges may be awarded  
29 funds for programs which meet the requirements of this article that are operated on a  
30 collaborative basis at facilities under the jurisdiction of the public schools and utilized by  
31 both secondary and post-secondary students.



**House Bill #2934**

**Section Number 10**

Effective Date: Passed April 14, 2001; in effect from passage.

Signed by Governor: May 2, 2001.

Code Reference: Amend and Reenact § 18-2c-5,5a,5b.

Topic: Office of Education Performance Audits.

Major Provisions:

- S To require the state board to appoint a monitor at county expense if a seriously impaired school does not correct its impairment by a date certain set by the state board. The monitor will work with the school principal to improve the school's performance and make monthly progress reports that may include requests for additional assistance or the need for targeting resources. If additional resources are needed as determined by the state board, a plan will be established to target local and state resources to accomplish the needed improvements.
  
- S Allows the state board to void any existing employment contract between the county board and the county superintendent when the state board intervenes in the operation of a county school system and declares the office of county superintendent vacant. Future contract of employment between county boards and county superintendents shall include a clause that informs the superintendent that if the state board intervenes in the operation of the county school system that the state board may vacate the office and void the employment contract.
  
- S Requires the state board to conduct a review of the system of education performance audits to assure that 1) measures used to evaluate performance are aligned with education goals; 2) that the measures reflect priority; for student progress and safety; and 3) that the measures are limited in number and easily comparable to national performance indicators. The review must examine the indicators used by various organizations to compare the performance of state education systems. The state board must also consider assigning an accreditation status while correcting any deficiencies in process standards that do not affect student safety. The review must be completed by December 1, 2001.

1 **ENROLLED**

2 **COMMITTEE SUBSTITUTE**

3 **FOR**

4 **H. B. 2934**

5  
6 (By Delegates Mezzatesta, Williams,  
7 Perry, Shaver and Beach)

8 [Passed April 14, 2001; in effect from passage.]

9  
10 AN ACT to amend and reenact section five, article two-e, chapter eighteen of the code of  
11 West Virginia, one thousand nine hundred thirty-one, as amended, and to further  
12 amend said article by adding thereto two new sections, designated sections five-a and  
13 five-b, all relating to the process for improving education; authorizing the state board  
14 to appoint a monitor at county expense to cause improvements at seriously impaired  
15 school; providing process for targeting state board and county board resources to  
16 correct deficiencies; providing effect of intervention in school system on  
17 superintendent's contract; and review of the system of education performance audits.

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

2 That section five, article two-e, chapter eighteen of the code of West Virginia, one  
3 thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said  
4 article be further amended by adding thereto two new sections, designated sections five-a  
5 and five-b, all to read as follows:

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

7 **§18-2E-5. Process for improving education; office of education**

8 **performance audits; education standards; school**

9 **accreditation and school system approval;**

10 **intervention to correct impairments.**

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

16 (b) *State board rules.* -- The state board shall promulgate rules in accordance with  
17 article three-b, chapter twenty-nine-a of this code establishing a unified county improvement  
18 plan for each county board and a unified school improvement plan for each public school in  
19 this state. The state board is not required to promulgate new rules if legislative rules meeting  
20 the requirements of article three-b, chapter twenty-nine-a of this code have been filed with the  
21 office of the secretary of state before the effective date of this section.

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

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

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

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

6           (1) The acquisition of student proficiencies as indicated by student performance by  
7 grade level measured, where possible, by a uniform statewide assessment program;

8           (2) School attendance rates;

9           (3) Student dropout rate;

10          (4) Percent of students promoted to the next grade;

11          (5) Graduation rate;

12          (6) Average class size;

13          (7) Pupil-teacher ratio and number of exceptions to ratio requested by county boards  
14 and the number granted;

15          (8) Number of split-grade classrooms;

16          (9) Percentage of graduates who enrolled in college; the percentage of graduates who  
17 enrolled in other postsecondary education; and the percentage of graduates who become fully  
18 employed within one year of high school graduation all as reported by the graduates on the  
19 assessment form attached to their individualized student transition plan, pursuant to section  
20 eight of this article and the percentage of graduates reporting;

21          (10) Pupil-administrator ratio;

22          (11) Parent involvement;

1 (12) Parent, teacher and student satisfaction;

2 (13) Operating expenditures per pupil;

3 (14) Percentage of graduates who attain the minimum level of performance in the basic  
4 skills recognized by the state board as laying the foundation for further learning and skill  
5 development for success in college, other postsecondary education and gainful employment  
6 and the grade level distribution in which the minimum level of performance was met;

7 (15) Percentage of graduates who received additional certification of their skills,  
8 competence and readiness for college, other postsecondary education or employment above  
9 the minimum foundation level of basic skills; and

10 (16) Percentage of students in secondary and middle schools who are enrolled in  
11 advanced placement or honors classes, respectively.

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

16 (A) Curriculum delivery including, but not limited to, the use of distance learning;

17 (B) Transportation;

18 (C) Facilities;

19 (D) Administrative practices;

20 (E) Personnel;

21 (F) Utilization of regional educational service agency programs and services, including  
22 programs and services that may be established by their assigned regional educational

1 service agency, or other regional services that may be initiated between and among  
2 participating county boards; and

3 (G) Any other indicators as determined by the state board.

4 (f) *Assessment and accountability of school and school system performance and*  
5 *processes.* -- The state board shall establish by rule in accordance with the provisions of  
6 article three-b, chapter twenty-nine-a of this code, a system of education performance audits  
7 which measures the quality of education and the preparation of students based on the  
8 standards and measures of student, school and school system performance and processes,  
9 including, but not limited to, the standards and measures set forth in subsections (c) and (d)  
10 of this section. The system of education performance audits shall assist the state board in  
11 ensuring that the standards and measures established pursuant to this section are, at a  
12 minimum, being met and that a thorough and efficient system of schools is being provided.  
13 The system of education performance audits shall include: (1) The assessment of student,  
14 school and school system performance and the processes in place in schools and school  
15 systems which enable student performance; (2) the review of school and school system unified  
16 improvement plans; and (3) the periodic, random unannounced on-site review of school and  
17 school system performance and compliance with the standards.

18 (g) *Uses of school and school system assessment information.* -- The state board  
19 shall use information from the system of education performance audits to assist it in ensuring  
20 that a thorough and efficient system of schools is being provided and to improve student,  
21 school and school system performance, including, but not limited to, the following: (1)

1 Determining school accreditation and school system approval status; (2) holding schools and  
2 school systems accountable for the efficient use of existing resources to meet or exceed the  
3 standards; and (3) targeting additional resources when necessary to improve performance.  
4 Primary emphasis in determining school accreditation and school system approval status  
5 shall be based on student, school and school system performance on measures selected by  
6 the state board. The state board shall make accreditation information available to the  
7 Legislature; the governor; and to the general public and any individuals who request the  
8 information, subject to the provisions of any act or rule restricting the release of information.  
9 Based on the assessment of student, school and school system performance, the state board  
10 shall establish early detection and intervention programs to assist underachieving schools and  
11 school systems in improving performance before conditions become so grave as to warrant  
12 more substantive state intervention, including, but not limited to, making additional technical  
13 assistance, programmatic, monetary and staffing resources available where appropriate.

14 (h) *Office of education performance audits.* -- To assist the state board in the  
15 operation of the system of education performance audits and in making determinations  
16 regarding the accreditation status of schools and the approval status of school systems, the  
17 state board shall establish an office of education performance audits which shall be operated  
18 under the direction of the state board independently of the functions and supervision of the  
19 state department of education and state superintendent. The office of education performance  
20 audits shall report directly to and be responsible to the state board in carrying out its duties  
21 under the provisions of this section. The office shall be headed by a director who shall be  
22 appointed by the state board and shall serve at the will and pleasure of the state board. The



1 salary of the director shall not exceed the salary of the state superintendent of schools. The  
2 state board shall organize and sufficiently staff the office to fulfill the duties assigned to it by  
3 this section and the state board. Employees of the state department of education who are  
4 transferred to the office of education performance audits shall retain their benefit and seniority  
5 status with the department of education. Under the direction of the state board, the office of  
6 education performance audits shall receive from the West Virginia education information  
7 system staff research and analysis data on the performance of students, schools and school  
8 systems, and shall receive assistance from staff at the state department of education and the  
9 state school building authority to carry out the duties assigned to the office. In addition to other  
10 duties which may be assigned to it by the state board or by statute, the office of education  
11 performance audits also shall:

12 (1) Assure that all statewide assessments of student performance are secure as  
13 required in section one-a of this article;

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

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

22 (4) Determine, in conjunction with the assessment and accountability processes,

1 whether statewide system deficiencies exist in the capacity to establish and maintain a  
2 thorough and efficient system of schools, including the identification of trends and the need  
3 for continuing improvements in education, and report those deficiencies and trends to the  
4 state board;

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

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

17 (i) *On-site reviews*. -- At the direction of the state board or by weighted, random  
18 selection by the office of education performance audits, an unannounced on-site review shall  
19 be conducted by the office of education performance audits of any school or school system  
20 for purposes, including, but not limited to, the following: (1) Verifying data reported by the  
21 school or county board; (2) documenting compliance with policies and laws; (3) evaluating the  
22 effectiveness and implementation status of school and school system unified improvement

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

21 (j) *School accreditation.* — The state board annually shall review the information from  
22 the system of education performance audits submitted for each school and shall issue to every

1 school: Exemplary accreditation status, full accreditation status, temporary accreditation  
2 status, conditional accreditation status, or shall declare the education programs at the school  
3 to be seriously impaired.

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

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

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

21 (4) Exemplary accreditation status shall be given to a school when the school's  
22 performance on the standards adopted by the state board pursuant to subsections (c) and (d)

1 of this section substantially exceeds the minimal level which would be expected when all of the  
2 high quality education standards are being met. The state board shall propose legislative  
3 rules in accordance with the provisions of article three-b, chapter twenty-nine-a, designated  
4 to establish standards of performance to identify exemplary schools.

5 (5) The state board shall establish and adopt standards of performance to identify  
6 seriously impaired schools and the state board may declare a school seriously impaired  
7 whenever extraordinary circumstances exist as defined by the state board.

8 (A) These circumstances shall include, but are not limited to, (i) the failure of a school  
9 on temporary accreditation status to obtain approval of its revised unified school improvement  
10 plan within a reasonable time period as defined by the state board; (ii) the failure of a school  
11 on conditional accreditation status to meet the objectives and time line of its revised unified  
12 school improvement plan; or (iii) the failure to achieve full accreditation by the date specified  
13 in the revised plan.

14 (B) Whenever the state board determines that the quality of education in a school is  
15 seriously impaired, the state board shall appoint a team of improvement consultants to make  
16 recommendations within sixty days of appointment for correction of the impairment. Upon  
17 approval of the recommendations by the state board, the recommendations shall be made to  
18 the county board. If progress in correcting the impairment as determined by the state board  
19 is not made within six months from the time the county board receives the recommendations,  
20 the state board shall place the county board on temporary approval status and provide  
21 consultation and assistance to the county board to: (i) Improve personnel management; (ii)  
22 establish more efficient financial management practices; (iii) improve instructional programs

1 and rules; or (iv) make any other improvements that are necessary to correct the impairment.

2 (C) If the impairment is not corrected by a date certain set by the state board the state  
3 board shall appoint a monitor who shall be paid at county expense to cause improvements to  
4 be made at the school to bring it to full accreditation status within a reasonable time period  
5 as determined by the state board. The monitor's work location shall be at the school and the  
6 monitor shall work collaboratively with the principal. The monitor shall, at a minimum, report  
7 monthly to the state board on the measures being taken to improve the school's performance  
8 and the progress being made. The reports may include requests for additional assistance and  
9 recommendations required in the judgement of the monitor to improve the school's  
10 performance, including, but not limited to, the need for targeting resources strategically to  
11 eliminate deficiencies. If the state board determines that the improvements necessary to  
12 provide a thorough and efficient education to the students at the school can not be made  
13 without additional targeted resources, it shall establish a plan in consultation with the county  
14 board that includes targeted resources from sources under the control of the state board and  
15 the county board to accomplish the needed improvements. Nothing in this section shall be  
16 construed to allow a change in personnel at the school to improve school performance, except  
17 as provided by law.

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

22 (l) *School system approval.* -- The state board annually shall review the information

1 submitted for each school system from the system of education performance audits and issue  
2 one of the following approval levels to each county board: Full approval, temporary approval,  
3 conditional approval, or nonapproval.

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

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

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

20 (4) Nonapproval status shall be given to a county board which fails to submit and gain  
21 approval for its unified county improvement plan or revised unified county improvement plan  
22 within a reasonable time period as defined by the state board or fails to meet the objectives

1 and time line of its revised unified county improvement plan or fails to achieve full approval by  
2 the date specified in the revised plan. The state board shall establish and adopt additional  
3 standards to identify school systems in which the program may be nonapproved and the state  
4 board may issue nonapproval status whenever extraordinary circumstances exist as defined  
5 by the state board. Furthermore, whenever a county board has more than a casual deficit, as  
6 defined in section one, article one of this chapter, the county board shall submit a plan to the  
7 state board specifying the county board's strategy for eliminating the casual deficit. The state  
8 board either shall approve or reject the plan. If the plan is rejected, the state board shall  
9 communicate to the county board the reason or reasons for the rejection of the plan. The  
10 countyboard may resubmit the plan any number of times. However, any county board that fails  
11 to submit a plan and gain approval for the plan from the state board before the end of the fiscal  
12 year after a deficit greater than a casual deficit occurred or any county board which, in the  
13 opinion of the state board, fails to comply with an approved plan may be designated as having  
14 nonapproval status. Whenever nonapproval status is given to a school system, the state  
15 board shall declare a state of emergency in the school system and shall appoint a team of  
16 improvement consultants to make recommendations within sixty days of appointment for  
17 correcting the emergency. Upon approval of the recommendations by the state board, the  
18 recommendations shall be made to the county board. If progress in correcting the emergency,  
19 as determined by the state board, is not made within six months from the time the county  
20 board receives the recommendations, the state board shall intervene in the operation of the  
21 school system to cause improvements to be made that will provide assurances that a thorough  
22 and efficient system of schools will be provided. This intervention may include, but is not



1 limited to, the following: (i) Limiting the authority of the county superintendent and county board  
2 as to the expenditure of funds, the employment and dismissal of personnel, the establishment  
3 and operation of the school calendar, the establishment of instructional programs and rules  
4 and any other areas designated by the state board by rule; (ii) taking any direct action  
5 necessary to correct the emergency; and (iii) declaring that the office of the county  
6 superintendent is vacant.

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

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

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

14 (n) *Capacity*. — The process for improving education includes a process for targeting  
15 resources strategically to improve the teaching and learning process. Development of unified  
16 school and school system improvement plans, pursuant to subsection (b) of this section, is  
17 intended, in part, to provide mechanisms to target resources strategically to the teaching and  
18 learning process to improve student, school and school system performance. When  
19 deficiencies are detected through the assessment and accountability processes, the revision  
20 and approval of school and school system unified improvement plans shall ensure that schools  
21 and school systems are efficiently using existing resources to correct the deficiencies. When  
22 the state board determines that schools and school systems do not have the capacity to

1 correct deficiencies, the state board shall work with the county board to develop or secure the  
2 resources necessary to increase the capacity of schools and school systems to meet the  
3 standards and, when necessary, seek additional resources in consultation with the Legislature  
4 and the governor.

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

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

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

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

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

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

22 (6) Requesting special staff development programs from the center for professional

1 development, higher education, regional educational service agencies and county boards  
2 based on identified needs;

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

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

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

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

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

13 **§18-2E-5a. County superintendent employment contract.**

14 (a) The Legislature previously granted authority to the state board to intervene in the  
15 operation of a county school system in section five, article two-e of this chapter. Part of the  
16 authority given is the authority of the state board to declare that the office of the county  
17 superintendent is vacant. County boards enter into contracts to employ persons as  
18 superintendents for a term of years which creates substantial rights and obligations. Although  
19 the statute provides that the state board may declare the office of the county superintendent  
20 vacant, the statute did not specifically give the state board authority to void the contract of the  
21 county superintendent. The intent of this section is to clarify what contractual obligations  
22 continue after removal.

1 (b) Whenever the state board intervenes in the operation of a school system and the  
2 office of the county superintendent is declared vacant pursuant to section five, article two-e of  
3 this chapter, the state board may, for any intervention which is instituted after the effective date  
4 of this section, void any existing employment contract between the county board and the  
5 county superintendent.

6 (c) Whenever a county board elects a county superintendent and enters into a written  
7 contract of employment with the superintendent, the county board shall include within the  
8 contract a conspicuous clause that informs the superintendent that if the state board  
9 intervenes in the operation of the county school system pursuant to section five, article two-e  
10 of this chapter, the state board may vacate the office and void the employment contract.

11 **§18-2E-5b. Review of system of education performance audits by the state board;**  
12 **reports to legislative oversight commission on education accountability.**

13 (a) The Legislature finds that the system of education performance audits is a valuable  
14 tool for determining the quality of education provided in the public schools of our state and for  
15 holding schools accountable.

16 (b) Essential goals for a system of education performance audits include the following:

17 (1) To assure that the measures used to evaluate performance are clearly aligned with  
18 the education goals and expectations established for student, school and school system  
19 performance, including student success in postsecondary education and work;

20 (2) To assure that the measures used reflect a priority for student progress and safety;

21 and

22 (3) To assure that the measures used are limited in number and easily comparable to

1 national performance indicators.

2 (c) The state board shall conduct a review of the system of education performance  
3 audits with the objective of achieving the goals set forth in subsection (b) of this section and  
4 shall submit progress reports on its work as requested by the legislative oversight commission  
5 on education accountability. The state board shall submit a final report including, but not  
6 limited to, any necessary revisions of its policy on the system of education performance audits  
7 and any recommendations for statutory changes to the legislative oversight commission on  
8 education accountability by the first day of December, two thousand one.

9 (d) In conducting its review, the state board shall examine for potential use in the  
10 system of education performance audits, any indicators used by various organizations to  
11 compare the performance of state education systems.

12 (e) The state board also shall consider methods for assigning accreditation status,  
13 such as weighting the attainment of performance standards, so that high performing schools  
14 and school systems can be fully accredited while correcting deficiencies on the process  
15 standards: *Provided*, That process standards affecting the safety of students are weighted  
16 equally with the performance standards.

**House Bill #3023**

**Section Number 11**

Effective Date: Passed April 14, 2001; in effect from passage.

Signed by Governor: May 2, 2001.

Code Reference: Amend and Reenact §18-6-5.

Topic: Harassment, bullying; and driver education.

Major Provisions:

- S Defines harassment, intimidation or bullying.
- S Each county board shall establish a policy prohibiting harassment, intimidation or bullying by December 1, 2001.
- S To assist county boards the state department of education shall develop a model policy applicable to grades K-12 by September 1, 2001.
- S Any student who is at least 15 years of age and is enrolled in a driver education course may operate a motor vehicle while accompanied by a certified driver education teacher.

1 **ENROLLED**

2 **H. B. 3023**

3 (By Delegates Stemple, Williams, L. Smith, Mathews,  
4 Louisos, Swartzmiller and Fahey)

5  
6 [Passed April 14, 2001; in effect from passage.]  
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10 AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine  
11 hundred thirty-one, as amended, by adding thereto a new article, designated article  
12 two-c; and to amend and reenact section five, article six, chapter eighteen of said  
13 code, all relating to education; county boards of education; legislative findings;  
14 definitions; policy prohibiting harassment, intimidation or bullying; liability; immunity;  
15 policy training, education and task force; driver education; and allowing certain  
16 students to operate a motor vehicle while accompanied by a certified driver  
17 education teacher.

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

19 That chapter eighteen of the code of West Virginia, one thousand nine hundred  
20 thirty-one, as amended, be amended by adding thereto a new article, designated article  
21 two-c; and that section five, article six, chapter eighteen be amended and reenacted, all to  
22 read as follows:

23 **ARTICLE 2C. HARASSMENT, INTIMIDATION OR BULLYING PROHIBITION.**

24 **§18-2C-1. Legislative findings.**

25 The Legislature finds that a safe and civil environment in school is necessary for  
26 students to learn and achieve high academic standards. The Legislature finds that  
27 harassment, intimidation or bullying, like other disruptive or violent behavior, is conduct that  
28 disrupts both a student's ability to learn and a school's ability to educate its students in a  
29 safe, nonthreatening environment.

30 The legislature further finds that students learn by example. The legislature charges  
31 school administrators, faculty, staff and volunteers with demonstrating appropriate  
32 behavior, treating others with civility and respect, and refusing to tolerate harassment,  
33 intimidation or bullying.

34 **§18-2C-2. Definitions.**

35 As used in this article, "harassment, intimidation or bullying" means any intentional  
36 gesture, or any intentional written, verbal or physical act or threat that:

37 (a) A reasonable person under the circumstances should know will have the effect  
38 of:

- 39 (1) Harming a student;  
40 (2) Damaging a student's property;  
41 (3) Placing a student in reasonable fear of harm to his or her person; or  
42 (4) Placing a student in reasonable fear of damage to his or her property; or  
43 (b) Is sufficiently severe, persistent or pervasive that it creates an intimidating,  
44 threatening or abusive educational environment for a student.

1       **§18-2C-3. Policy prohibiting harassment, intimidation or bullying.**

2           (a) Each county board of education shall establish a policy prohibiting harassment,  
3 intimidation or bullying. Each county board has control over the content of its policy as long  
4 as the policy contains, at a minimum, the requirements of subdivision (b) of this section.  
5 The policy shall be adopted through a process that includes representation of parents or  
6 guardians, school employees, school volunteers, students and community members.

7           (b) Each county board policy shall, at a minimum, include the following components:

8           (1) A statement prohibiting harassment, intimidation or bullying of any student on  
9 school property or at school sponsored events;

10          (2) A definition of harassment, intimidation or bullying no less inclusive than that in  
11 section two of this article;

12          (3) A procedure for reporting prohibited incidents;

13          (4) A requirement that school personnel report prohibited incidents of which they are  
14 aware;

15          (5) A requirement that parents or guardians of any student involved in an incident  
16 prohibited pursuant to this article be notified;

17          (6) A procedure for documenting any prohibited incident that is reported;

18          (7) A procedure for responding to and investigating any reported incident;

19          (8) A strategy for protecting a victim from additional harassment, intimidation or  
20 bullying, and from retaliation following a report;

21          (9) A disciplinary procedure for any student guilty of harassment, intimidation or  
22 bullying; and

23          (10) A requirement that any information relating to a reported incident is confidential,  
24 and exempt from disclosure under the provisions of chapter twenty-nine-b of this code.

25          (c) Each county board shall adopt the policy and submit a copy to the state  
26 superintendent of schools by the first day of December, two thousand one.

27          (d) To assist county boards in developing their policies, the West Virginia  
28 department of education shall develop a model policy applicable to grades kindergarten  
29 through twelfth. The model policy shall be issued by the first day of September, two  
30 thousand one.

31          (e) Notice of the county board's policy shall appear in any student handbook, and  
32 in any county board publication that sets forth the comprehensive rules, procedures and  
33 standards of conduct for the school.

34       **§18-2C-4. Immunity.**

35           A school employee, student or volunteer is individually immune from a cause of  
36 action for damages arising from reporting said incident, if that person:

37           (1) In good faith promptly reports an incident of harassment, intimidation or bullying;

38           (2) Makes the report to the appropriate school official as designated by policy; and

39           (3) Makes the report in compliance with the procedures as specified in policy.

40       **§18-2C-5. Policy training and education.**

41           (a) Schools and county boards are encouraged, but not required, to form bullying  
42 prevention task forces, programs and other initiatives involving school staff, students,  
43 teachers, administrators, volunteers, parents, law enforcement and community members.

44           (b) To the extent state or federal funds are appropriated for these purposes, each  
45 school district shall:



1 (1) Provide training on the harassment, intimidation or bullying policy to school  
2 employees and volunteers who have direct contact with students; and

3 (2) Develop a process for educating students on the harassment, intimidation or  
4 bullying policy.

5 (c) Information regarding the county board policy against harassment, intimidation  
6 or bullying shall be incorporated into each school's current employee training program.

7 **§18-2C-6. Liability.**

8 Except as provided in section four of this article, nothing in this article prohibits a  
9 victim from seeking redress under any other provision of civil or criminal law.

10 **ARTICLE 6. DRIVER EDUCATION.**

11 **§18-6-5. Establishment and maintenance of driver education course; who may**  
12 **enroll; exemption from learner's permit requirement; non-permit student**  
13 **drivers.**

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

21 In the case of a pupil who will not reach the age of fifteen years before completion  
22 of the driver education course in which enrolled, instruction shall be limited to the  
23 classroom. Pupils who are fifteen years of age and older shall receive instruction and  
24 practical training in the operation of motor vehicles on the public streets and highways.

25 Notwithstanding section three-a, article two, chapter seventeen-b of this code, any  
26 student who is at least fifteen years of age and is enrolled in a driver education course in  
27 accordance with the provisions of this article and the rules that the state board adopts  
28 pursuant to section four of this article, may operate a motor vehicle on the roadways of  
29 West Virginia while accompanied by a certified driver education teacher.

**House Bill #3049**

**Section Number 12**

Effective Date: Passed April 14, 2001; in effect July 1, 2001.

Signed by Governor: April 30, 2001.

Code Reference: Amend and Reenact §15-2c-1 and §18a-3.

Topic: Requiring fingerprinting and criminal records checks.

Major Provisions:

- S Authorizing the state department of education to request information from the central abuse registry.
- S Beginning January 1, 2002, any applicant for an initial license issued by the state department of education shall be fingerprinted by the West Virginia State Police to determine the applicant's suitability for licensure.
- S The fingerprints shall be analyzed by the state police for a state criminal record check through the central abuse registry and then forwarded to the federal bureau of investigation for a national criminal record check.
- S The applicant for initial certification pays for the cost of obtaining the state police and the federal bureau of investigation record.
- S Upon written consent to the state department of education by the applicant and within ninety days of the state fingerprint analysis, the results of the state analysis may be provided to a county board with which the applicant is applying for employment without further cost to the applicant.

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**ENROLLED  
H. B. 3049**

(By Delegates Stemple, Mezzatesta, Williams,  
Carmichael, Swartzmiller, Louisos and Harrison)

[Passed April 14, 2001; in effect July 1, 2001.]

10 AN ACT to amend and reenact section one, article two-c, chapter fifteen of the code of West  
11 Virginia, one thousand nine hundred thirty-one, as amended; and to amend article  
12 three, chapter eighteen-a of said code by adding thereto a new section, designated  
13 section ten, all relating to public safety; including on the central abuse registry those  
14 persons who have abused, neglected or committed other crimes against persons who  
15 are adults, receiving behavioral health services; authorizing the state department of  
16 education to request information from the central abuse registry; requiring  
17 fingerprinting and criminal record checks of certain applicants with state department  
18 of education; and use and disclosure of information obtained from record checks.

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

20 That section one, article two-c, chapter fifteen of the code of West Virginia, one  
21 thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article  
22 three, chapter eighteen-a of said code be amended by adding thereto a new section,  
23 designated section ten, all to read as follows:

24 **CHAPTER 15. PUBLIC SAFETY.**

25 **ARTICLE 2C. CENTRAL ABUSE REGISTRY.**

26 **§15-2C-1. Definitions.**

27 The following words when used in this article have meanings ascribed to them in this  
28 section, except in those instances where the context clearly indicates a different meaning:

29 (a) "Central abuse registry" or "registry" means the registry created by this article which  
30 shall contain the names of individuals who have been convicted of a felony or a misdemeanor  
31 offense constituting abuse, neglect or misappropriation of the property of a child or an  
32 incapacitated adult or an adult receiving behavioral health services.

33 (b) "Child abuse and neglect" or "child abuse or neglect" means those terms as defined  
34 in section three, article one, chapter forty-nine of this code, and shall include any act with  
35 respect to a child which is a crime against the person pursuant to article two, chapter sixty-one  
36 of this code, any act which is unlawful pursuant to article eight-d of said chapter sixty-one, and  
37 any offense with respect to a child which is enumerated in section three of this article.

38 (c) "Abuse or neglect of an incapacitated adult" means "abuse" "neglect" and  
39 "incapacitated adult" as those terms are defined in section one, article six, chapter nine, and  
40 shall include any act with respect to an incapacitated adult which is a crime against the person  
41 pursuant to article two, chapter sixty-one of this code, and any offense with respect to an  
42 incapacitated adult which is enumerated in section three of this article.

43 (d) "Adult receiving behavioral health services" means a person over the age of eighteen  
44 years who is receiving any behavioral health service from a licensed behavioral health  
45 provider or any behavioral health provider whose services are paid for, in whole or in part, by  
46 medicaid or medicare.

47 (e) "Conviction" of a felony or a misdemeanor means an adjudication of guilt by a court  
48 or jury following a hearing on the merits, or entry of a plea of guilty or nolo contendere.

49 (f) "Residential care facility" means any facility where a child or an incapacitated adult or  
50 an adult receiving behavioral health services resides which is subject to registration, licensure  
51 or certification by the department of health and human resources, and shall include nursing

1 homes, personal care homes, residential board and care homes, adult family care homes,  
2 group homes, legally unlicensed service providers, residential child care facilities, family  
3 based foster care homes, specialized family care homes and intermediate care facilities for  
4 the mentally retarded.

5 (g) "Misappropriation of property" means any act which is a crime against property under  
6 article three, chapter sixty-one of this code with respect to a child in a residential care facility  
7 or an incapacitated adult or an adult receiving behavioral health services in a residential care  
8 facility or a child or an incapacitated adult or an adult receiving behavioral health services who  
9 is a recipient of home care services.

10 (h) "Home care" or "home care services" means services provided to children or  
11 incapacitated adults or adults receiving behavioral health services in the home through a  
12 hospice provider, a community care provider, a home health agency, through the medicaid  
13 waiver program, or through any person when that service is reimbursable under the state  
14 medicaid program.

15 (i) "Requester" means the West Virginia department of education, any residential care  
16 facility, any state licensed day care center, or any provider of home care services or an adult  
17 receiving behavioral health services providing to the central abuse registry the name of an  
18 individual and other information necessary to identify that individual, and either: (1) Certifying  
19 that the individual is being considered for employment by the requester or for a contractual  
20 relationship with the requester wherein the individual will provide services to a child or an  
21 incapacitated adult or an adult receiving behavioral health services for compensation; or (2)  
22 certifying that an allegation of abuse, neglect or misappropriation of property has been made  
23 against the individual.

#### 24 **CHAPTER 18A. SCHOOL PERSONNEL.**

### 25 **ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL** 26 **DEVELOPMENT.**

#### 27 **§18A-3-10. Criminal history check of applicants for licensure by the state** 28 **department of education.**

29 Beginning the first day of January, two thousand two, any applicant for an initial license  
30 issued by the West Virginia department of education shall be fingerprinted by the West  
31 Virginia state police in accordance with state board policy in order to determine the  
32 applicant's suitability for licensure. The fingerprints shall be analyzed by the state police for  
33 a state criminal history record check through the central abuse registry and then forwarded to  
34 the federal bureau of investigation for a national criminal history record check. Information  
35 contained in either the central abuse registry record or the federal bureau of investigation  
36 record may form the basis for the denial of a certificate for just cause. The applicant for initial  
37 certification pays for the cost of obtaining the central abuse registry record and the federal  
38 bureau of investigation record.

39 Upon written consent to the state department by the applicant and within ninety days  
40 of the state fingerprint analysis, the results of a state analysis may be provided to a county  
41 board with which the applicant is applying for employment without further cost to the applicant.

42 Information maintained by the state department or a county board which was obtained  
43 for the purpose of this section is exempt from the disclosure provisions of chapter twenty-nine-  
44 b of this code. Nothing in this section prohibits disclosure or publication of information in a  
45 statistical or other form which does not identify the individuals involved or provide personal  
46 information.

**House Bill #3238**

**Section Number 13**

Effective Date: Passed April 14, 2001; in effect from passage.

Signed by Governor: May 2, 2001.

Code Reference: Amend and Reenact §15-1b-21 and §18c-7-2, 3, 4, 5, 6 7, 8.

Topic: PROMISE Scholarship.

Major Provisions:

- S Appoints a PROMISE scholarship board of control.
- S The minimum requirement for scholarship eligibility is a 3.0 grade point average in core and elective courses.
- S The scholarship's fund will be subject to legislative appropriations

1 **ENROLLED**

2 **H. B. 3238**

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4 (By Delegate Mezzatesta)

5  
6 [Passed April 14, 2001; in effect from passage.]  
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10 AN ACT to amend and reenact section twenty-one, article one-b, chapter fifteen of the code  
11 of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and  
12 reenact sections two, three, four, five, six, seven and eight, article seven, chapter  
13 eighteen-c of said code; and to further amend said article by adding thereto a new  
14 section, designated section nine, all relating to the PROMISE scholarship program;  
15 providing that the adjutant general may, in lieu of the tuition payment, pay an amount  
16 directly to members of the West Virginia National Guard who are participating in the  
17 PROMISE scholarship program; making additional findings with respect to the  
18 PROMISE scholarship program; changing definitions; abolishing the board and  
19 establishing a board of control; specifying certain elements for inclusion in residency  
20 requirements; providing for legislative rules and authorizing emergency rules;  
21 requiring submission federal student aid application/needs analysis form and an  
22 application for the PROMISE scholarship; providing for coordination of aid programs  
23 from all sources; providing that the restriction that the PROMISE scholarship in  
24 combination with aid from all other sources does not apply to members of the West  
25 Virginia National Guard, and recipients of the Underwood-Smith and engineering,  
26 science and technology scholarship programs; clarifying that advanced placement  
27 and dual credit course work are not included in the credit hour categories for  
28 determining eligibility; replacing "B" average with at least a 3.0 grade point average  
29 in required core and electives and other criteria as established by the board;  
30 replacing "B" average with appropriate academic progress toward completion of a  
31 degree as defined by the board at the undergraduate level; requiring determination  
32 and clarification of relationship with other financial aid; allocations to scholarship fund  
33 subject to legislative appropriation; providing that nothing requires specific  
34 appropriations or guarantees or entitles individuals to awards; and providing for  
35 scope and breadth of study of statewide task force on student financial aid to be  
36 expanded.

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

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

43 **CHAPTER 15. PUBLIC SAFETY.**

1 **ARTICLE 1B. NATIONAL GUARD.**

2 **§15-1B-21. Tuition and fees for guard members at institutions of higher education.**

3 (a) Any member of the national guard who is enrolled in a course of undergraduate  
4 study and is attending any accredited college, university, business or trade school located  
5 in West Virginia or is attending any aviation school located in West Virginia for the purpose  
6 of taking college-credit courses, may be entitled to payment of tuitions and fees at that  
7 college, university, business or trade school or aviation school during the period of his or her  
8 service in the national guard: *Provided*, That the adjutant general may prescribe criteria of  
9 eligibility for payment of tuition and fees at the college, university, business or trade school  
10 or aviation school: *Provided, however*, That such payment is contingent upon appropriations  
11 being made by the Legislature for this express purpose.

12 (b) The amount of the payment for members attending a state-supported school shall  
13 be determined by the adjutant general and may not exceed the actual amount of tuition and  
14 fees at the school. The amount of such payment for members attending a private school  
15 shall be determined by the adjutant general, but in no event may exceed the highest amounts  
16 payable at any state-supported school.

17 (c) Any member of the national guard who is enrolled in a course of postgraduate  
18 study and is attending any accredited college or university located in West Virginia, and is  
19 receiving payments under the army continuing education system, may be entitled to payment  
20 of tuition and fees at that college or university during his or her period of service in the  
21 national guard: *Provided*, That the sum of payments received under this subsection and the  
22 army continuing education system may not exceed the actual amount of tuition and fees at  
23 the school and in no event may exceed the highest amounts payable at any state-supported  
24 school. Such payments are contingent upon appropriations being made by the Legislature  
25 for this express purpose.

26 (d) The adjutant general may, in lieu of the tuition payment authorized by this section,  
27 pay an amount equal to the amount of tuition which otherwise would have been paid, directly  
28 to members of the West Virginia National Guard who are participating in the PROMISE  
29 scholarship program provided for in article seven, chapter eighteen-c of this code.

30 (e) The adjutant general shall administer the tuition and fee payments authorized  
31 under this section and shall propose policies to implement the provisions of this section.

32 **CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.**

33 **ARTICLE 7. WEST VIRGINIA PROVIDING REAL OPPORTUNITIES FOR**  
34 **MAXIMIZING IN-STATE STUDENT EXCELLENCE SCHOLARSHIP PROGRAM.**

35 **§18C-7-2. Legislative findings and purpose.**

36 The Legislature hereby finds and declares that:

37 (a) The state's college-going rate does not compare favorably with the member states  
38 of the southern regional education board average, nor with the national average;

39 (b) West Virginia must have an educated work force in order to attract and retain the  
40 high wage, high skill jobs of the next century;

41 (c) A large percentage of West Virginia residents who graduate from the state's  
42 colleges and universities do not work in the state following graduation;

1 (d) The percentage of West Virginia's adult population over the age of twenty-five with  
2 at least a bachelor's degree is only fourteen percent and does not compare favorably with  
3 the member states of the southern regional education board average or with the national  
4 average;

5 (e) Increases in the level of education increases the income earned by an individual  
6 which enhances his or her quality of life;

7 (f) During the year one thousand nine hundred ninety-seven, an individual holding a  
8 bachelor's degree had an average earned income which was one hundred seventy-seven  
9 percent of the average income earned by a high school graduate;

10 (g) Students at all levels should have an incentive to perform at a high academic level;

11 (h) There is a need to provide parents with all tools possible to aid them in helping  
12 their children understand the importance of high achievement in high school and college;

13 (i) There is a financial need for many students who wish to attend state institutions of  
14 higher education within the state;

15 (j) The West Virginia higher education grant program is a vitally important source of  
16 financial assistance for needy residents of the state and should continue to receive strong  
17 financial support; and

18 (k) It is the intent of this article to establish a West Virginia PROMISE scholarship  
19 program to deal effectively with the findings set forth in this section.

20 **§18C-7-3. Definitions.**

21 (a) "Eligible institution" means:

22 (1) A state institution of higher education as is defined in section two, article one,  
23 chapter eighteen-b of this code;

24 (2) Alderson-Broadus College, Appalachian Bible College, Bethany College, the  
25 College of West Virginia, Davis and Elkins College, Ohio Valley College, Salem  
26 International University, the University of Charleston, West Virginia Wesleyan College and  
27 Wheeling Jesuit University, all in West Virginia: *Provided*, That if any institution listed in this  
28 subdivision is not regionally accredited, it shall not be included as an eligible institution; or

29 (3) Any other regionally accredited institution in this state, public or private, approved  
30 by the board.

31 (b) "Board" means the West Virginia PROMISE scholarship board of control of the  
32 West Virginia PROMISE scholarship program as provided for in section four of this article.

33 (c) "Tuition" means the quarter, semester or term charges imposed by a state  
34 institution of higher education and all mandatory fees required as a condition of enrollment  
35 by all students.

36 **§18C-7-4. Appointment of the PROMISE scholarship board of control;  
37 compensation; proceedings generally.**

38 (a) On the effective date of this section, the board of the PROMISE scholarship  
39 program is abolished.

40 As soon as practical after the effective date of this section, the governor shall appoint  
41 the West Virginia PROMISE scholarship board of control comprised of fifteen members as  
42 follows:

43 (1) The chairperson of the higher education policy commission or a designee who is



1 a member of the commission;

2 (2) The chancellor of the higher education policy commission or his or her designee;

3 (3) The state superintendent of schools or his or her designee;

4 (4) The secretary of education and the arts;

5 (5) The state treasurer or his or her designee;

6 (6) Two members appointed by the governor from a list of six persons nominated by  
7 the president of the Senate: *Provided*, That no more than two nominees may be from the  
8 same congressional district;

9 (7) Two members appointed by the governor from a list of six persons nominated by  
10 the speaker of the House of Delegates: *Provided*, That no more than two nominees may  
11 be from the same congressional district; and

12 (8) Six at-large private sector members representative of the state's business and  
13 economic community who have knowledge, skill and experience in an academic, business  
14 or financial field.

15 The ten appointed members shall be residents of the state. The ten appointed  
16 members shall be appointed by the governor with the advice and consent of the Senate. No  
17 more than six of the ten appointed members may be from the same political party. No more  
18 than four of the ten appointed members may be from the same congressional district.

19 (b) Appointed members shall serve a term of four years and may be reappointed at  
20 the expiration of their terms. In the event of a vacancy among appointed members, the  
21 governor shall appoint a person representing the same interests to fill the unexpired term.  
22 A person appointed to fill a vacancy shall be appointed only for the remainder of that term  
23 and is eligible for reappointment. Unless a vacancy occurs due to death, resignation or  
24 removal pursuant to subsection (e) of this section, an appointed member of the board shall  
25 continue to serve until a successor has been appointed and qualified as provided for in  
26 subsection (a) of this section. Of the initial appointments, the governor shall appoint three  
27 members to a one-year term, two members to a two-year term, three members to a three-  
28 year term and two members to a four-year term. Thereafter, all terms shall be for four years.

29 (c) Members of the board shall serve without compensation, but shall be reimbursed  
30 by the office of the secretary of education and the arts for expenses, including travel  
31 expenses, actually incurred by a member in the official conduct of the business of the board  
32 at the same rate as is paid the employees of the state.

33 (d) The secretary of education and the arts is the chairperson and presiding officer of  
34 the board. A majority of the members of the board constitute a quorum for the transaction  
35 of business.

36 (e) The members appointed by the governor may be removed by the governor for  
37 official misconduct, incompetence, neglect of duty or gross immorality, and then only in the  
38 manner prescribed by law for the removal by the governor of the state elective officers in  
39 accordance with section five, article six, chapter six of this code.

40 **§18C-7-5. Powers of the West Virginia PROMISE scholarship board of control.**

41 In addition to the powers granted by any other provision of this article, the board has  
42 the powers necessary or convenient to carry out the purposes and provisions of this article  
43 including, but not limited to, the following express powers:

- 1 (a) To adopt and amend bylaws;
- 2 (b) To propose legislative rules for promulgation in accordance with the provisions of  
3 article three-a, chapter twenty-nine-a of this code to effectuate the purposes of this article;
- 4 (c) To invest any of its funds at the board's discretion, with the West Virginia  
5 investment management board in accordance with the provisions of article six, chapter  
6 twelve of this code. Any investments made under this article shall be made with the care,  
7 skill, prudence and diligence under the circumstances then prevailing that a prudent person  
8 acting in a like capacity and familiar with such matters would use in the conduct of an  
9 enterprise of a like character and with like aims. Fiduciaries shall diversify plan investments  
10 to the extent permitted by law so as to minimize the risk of large losses, unless under the  
11 circumstances it is clearly prudent not to do so;
- 12 (d) To execute contracts and other necessary instruments;
- 13 (e) To impose reasonable requirements for residency for students applying for the  
14 PROMISE scholarship which shall include that an eligible student must have completed at  
15 least one half of the credits required for high school graduation in a public or private high  
16 school in this state or have been provided instruction in the home or other approved place  
17 under Exemption B, section one, article eight, chapter eighteen of this code for the two years  
18 immediately preceding application. However, nothing in this subdivision may be construed  
19 to establish residency requirements for matriculation or fee payment purposes at state  
20 institutions of higher education;
- 21 (f) To contract for necessary goods and services, to employ necessary personnel and  
22 to engage the services of private persons for administrative and technical assistance in  
23 carrying out the responsibilities of the scholarship program;
- 24 (g) To solicit and accept gifts, including bequests or other testamentary gifts made by  
25 will, trust or other disposition, grants, loans and other aids from any source or to participate  
26 in any other way in any federal, state or local governmental programs in carrying out the  
27 purposes of this article;
- 28 (h) To define the terms and conditions under which scholarships shall be awarded with  
29 the minimum requirements being set forth in section six of this article; and
- 30 (i) To establish other policies, procedures and criteria necessary to implement and  
31 administer the provisions of this article.
- 32 **§18C-7-6. Requirements for rules on PROMISE scholarship program;**  
33 **recommendations by PROMISE scholarship board of control; promulgation**  
34 **by higher education policy commission.**
- 35 (a) The board shall recommend a legislative rule to the higher education policy  
36 commission to implement the provisions of this article. The higher education policy  
37 commission shall promulgate a legislative rule in accordance with the provisions of article  
38 three-a, chapter twenty-nine-a of this code which shall include at least the following  
39 provisions:
- 40 (1) A requirement that a scholarship will not pay an amount that exceeds the cost of  
41 tuition at state institutions of higher education and may include an allowance for books and  
42 supplies;
- 43 (2) A requirement that the student shall first submit the application/needs analysis form

1 used to apply for federal student aid programs along with an application for the PROMISE  
2 scholarship.

3 (3) The amount of the PROMISE scholarship awarded in combination with aid from  
4 all other sources shall not exceed the cost of education at the institution the recipient is  
5 attending: *Provided*, That this restriction does not apply to members of the West Virginia  
6 National Guard, recipients of an Underwood-Smith teacher scholarship, and recipients of  
7 a West Virginia engineering, science and technology scholarship;

8 (4) Minimum requirements for eligibility for the scholarship which include:

9 (A) A provision that a student is only eligible to apply for a scholarship within two years  
10 of the time he or she graduates from high school or, in the case of home school students,  
11 passes the GED examination: *Provided*, That if a student has entered the United States  
12 armed services within two years after he or she graduates from high school, the student is  
13 eligible to apply for a scholarship within seven years of the time he or she enters military  
14 service: *Provided, however*, That once discharged from the military, the student is only  
15 eligible to apply for one year from the date of discharge;

16 (B) For individuals with zero to fifteen credits from an institution of higher education,  
17 excluding credits earned in advanced placement and dual credit courses while the student  
18 is enrolled in high school, that the individual: (i) Maintain at least a 3.0 grade point average  
19 in the required core and elective course work necessary to prepare students for success in  
20 post-secondary education at the two-year and baccalaureate levels as determined by the  
21 board; and (ii) Meet other criteria as established by the board;

22 (C) For individuals with more than fifteen credits from an institution of higher education,  
23 excluding credits earned in advanced placement and dual credit courses while the student  
24 is enrolled in high school, that the individual attain and maintain appropriate academic  
25 progress toward the completion of a degree at the undergraduate education level as defined  
26 by the board; and

27 (D) For all individuals, additional objective standards as the board considers  
28 necessary to promote academic excellence and to maintain the financial stability of the fund;

29 (5) A provision requiring the student to be enrolled in or in the process of enrolling in  
30 an eligible institution as defined in section three of this article;

31 (6) Provisions for making the highest and best use of the PROMISE scholarship  
32 program in conjunction with the West Virginia prepaid tuition trust act set forth in article thirty,  
33 chapter eighteen of this code;

34 (7) A determination of whether to require scholarship recipients to repay the amount  
35 of their scholarship, in whole or in part, if they choose to work outside the state after  
36 graduation;

37 (8) A determination of whether to set aside a portion of the scholarship funds for  
38 targeted scholarships for applicants accepted or enrolled in an engineering program,  
39 science program, technology program or other designated programs;

40 (9) A determination of what other sources of funding for higher education, if any, should  
41 be deducted from the PROMISE scholarship award;

42 (10) A determination and clarification of the relationship of PROMISE scholarship  
43 awards to all other aid a student may receive to provide maximum coordination. The

1 determination shall consider the following:

2 (A) Methods to maximize student eligibility for federal student aid dollars;

3 (B) A requirement that PROMISE scholarship awards not supplant tuition and fee  
4 waivers; and

5 (C) Clarification of the relationship between the PROMISE scholarship program,  
6 tuition savings plans and other state student aid and loan programs;

7 (11) A method for the award of scholarships within the limits of available  
8 appropriations; and

9 (12) A method for applicants to appeal determinations of eligibility and continuation.

10 (b) The Legislature hereby declares that an emergency situation exists and, therefore,  
11 the policy commission may establish by emergency rule, under the procedures of article  
12 three-a, chapter twenty-nine-a of this code, a rule to implement the provisions of this section.  
13 If established, the rules shall be filed with the legislative oversight commission on education  
14 accountability and with the office of the secretary of state on or before the first day of  
15 September, two thousand one.

16 **§18C-7-7. West Virginia PROMISE scholarship fund created.**

17 (a) There is hereby created a special revenue fund in the state treasury which shall be  
18 designated and known as the "PROMISE scholarship fund". The fund shall consist of all  
19 appropriations to the fund from the West Virginia lottery, video lottery, taxes on amusement  
20 devices, and any other legislative appropriations, and all interest earned from investment  
21 of the fund and any gifts, grants or contributions received by the fund. The allocations to the  
22 fund shall be subject to appropriation by the Legislature. Nothing in this article shall require  
23 any specific level of funding by the Legislature nor guarantee or entitle any individual to any  
24 benefit or grant of funds.

25 (b) The board may expend the moneys in the fund to implement the provisions of this  
26 article.

27 **§18C-7-8. PROMISE scholarship supplemental fund recreated, and promulgation  
28 of rules.**

29 (a) The Legislature recognizes that the PROMISE scholarship program may lead to  
30 an increased number of individuals attending the state institutions of higher education, and  
31 therefore, it may contribute to increases in expenses greater than the additional tuition  
32 income generated by increased enrollment. Therefore, there is hereby created a special  
33 revenue fund in the state treasury which shall be designated and known as the "PROMISE  
34 scholarship supplemental fund". The fund shall consist of all appropriations to the fund and  
35 all interest earned from the investment of the fund and any gifts, grants or contributions  
36 received by the fund. The board shall expend the moneys in this fund to implement the  
37 provisions of this article and may only expend the moneys for state institutions of higher  
38 education.

39 (b) The board shall promulgate rules for administering the fund in accordance with  
40 article three-a, chapter twenty-nine-a of this code. The rules shall include the following:

41 (1) Provisions for distributing the moneys from the fund to state institutions of higher  
42 education: *Provided*, That the funds shall be divided among the state institutions of higher  
43 education in a reasonable manner to reflect the actual distribution of PROMISE scholarship

1 students among the institutions; and

2 (2) A procedure for submitting a budget request to the governor: *Provided*, That  
3 nothing in this article shall require any appropriation by the Legislature.

4 **§18C-7-9. Legislative review and determination of the scope and breadth of the**  
5 **charge of the statewide task force on student financial aid; legislative**  
6 **findings.**

7 (a) The Legislature made findings and established goals for post-secondary  
8 education as set forth in section one-a, article one, chapter eighteen-b of this code which  
9 were enacted following an in-depth study of the needs of the state for a strong system of  
10 post-secondary education at the regular session of the Legislature, two thousand. For the  
11 state to realize its considerable potential in the twenty-first century, it must have a system for  
12 the delivery of post-secondary education which is competitive in the changing national and  
13 global environment, is affordable within the fiscal constraints of the state and for the state's  
14 residents to participate and has the capacity to deliver the programs and services  
15 necessary to meet regional and statewide needs. Among the greatest needs identified  
16 were to improve the levels of adult functional literacy, increase degree production, develop  
17 a system of comprehensive community and technical college education, expand access to  
18 graduate education and increase funding for the system of higher education generally so it  
19 has the needed capacity to pursue the state's public policy agenda.

20 (b) The Legislature finds that the many various programs for student financial aid,  
21 state and federal, are vital parts of a system that will enable the state to meet its objectives  
22 to expand and diversify the state's economy, increase the competitiveness of the state's  
23 workforce and the availability of professional expertise, improve the levels of post-secondary  
24 educational attainment of the state's residents and significantly improve the level of adult  
25 functional literacy in the state. Therefore, the Legislature hereby directs the statewide task  
26 force on student financial aid pursuant to section nine, article fourteen, chapter eighteen-b  
27 of this code to amend the scope and breadth of its study to adequately consider issues  
28 relevant to implementation of the PROMISE scholarship program.

**House Bill #3245**

**Section Number 14**

Effective Date: Passed April 14, 2001; in effect from passage.

Signed by Governor: May 2, 2001.

Code Reference: Amend §18b-11.

Topic: Establishing the National Institute for Teaching Excellence.

Major Provisions:

- S Create a permanent institute which will encourage and promote excellence and public awareness of the quality teacher preparation programs in the state of West Virginia.
- S The institute shall be established and implemented by the office of the secretary of education and the arts with assistance of the state superintendent of schools and chancellor of higher education.
- S Establishes a board to develop, oversee, and implement operation of the institute.
- S The board is to solicit, accept and expend any contribution, grant or appropriation from any source and to pursue aggressively any federal or private funding available.

1 **ENROLLED**

2 **H. B. 3245**

3 (By Delegates Mezzatesta, Williams, Stemple, Fahey,  
4 Swartzmiller, Harrison and Carmichael)

5  
6 [Passed April 14, 2001; in effect from passage.]  
7  
8  
9

10 AN ACT to amend article eleven, chapter eighteen-b of the code of West Virginia, one  
11 thousand nine hundred thirty-one, as amended, by adding thereto a new section,  
12 designated section six, relating to education; teacher education programs;  
13 establishing the national institute for teaching excellence; legislative findings and  
14 intent; report to legislative oversight commission on education accountability;  
15 creating the institute board; and board authorities and duties.

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

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

20 **ARTICLE 11. MISCELLANEOUS INSTITUTES AND CENTERS.**

21 **§18B-11-6. National Institute for Teaching Excellence established.**

22 (a) *Findings* -- The Legislature finds that:

23 (1) West Virginia has long been recognized for its high quality teacher preparation  
24 program as a national center for teacher excellence;

25 (2) Teaching education candidates from higher education institutions in this state  
26 have proven to be highly marketable nationwide due to the reputation this state has earned  
27 in producing outstanding teacher education graduates; and

28 (3) West Virginia should utilize its reputation for exceptional achievement in this  
29 area by promoting our program to prospective students in teacher education programs to  
30 attract graduates nationwide for teaching positions in this state.

31 (b) *Intent* -- It is the intent of the Legislature:

32 (1) To create a permanent institute which, as an organized activity and on a  
33 continuous basis, will encourage and promote excellence and public awareness of the  
34 quality teacher preparation programs in our state;

35 (2) To honor excellence in education, recognize exemplary teacher education  
36 graduates throughout the state and the nation, and recruit and supply for our public schools  
37 highly qualified teachers.

38 (c) For the purposes of this section, the following words have the meanings ascribed  
39 to them:

40 (1) "Board" means the board of the institute as established by this section;

41 (2) "Chancellor" means the chief executive officer of the higher education policy  
42 commission;

43 (3) "Institute" means the national institute for teaching excellence established by this  
44 section;

1 (4) "Secretary" means the secretary of the department of education and the arts;  
2 and

3 (5) "Superintendent" means the state superintendent of schools.

4 (d) There is hereby established within the office of the secretary the national institute  
5 for teaching excellence. The institute shall be implemented by the secretary with the  
6 assistance of the superintendent and the chancellor.

7 (e) There is established the board of the institute which has the responsibility for  
8 developing, overseeing and implementing the operations of the institute. The board shall  
9 consist of seven members selected as follows:

10 (1) The secretary or a designee;

11 (2) The superintendent or a designee;

12 (3) The chancellor or a designee;

13 (4) One certified teacher, selected by the state board; and

14 (5) Three members selected by the secretary representing West Virginia higher  
15 education institutions with approved teacher education programs. Of the three members  
16 selected by the secretary, one shall represent a state university, one shall represent a  
17 public college, and one shall represent a private college.

18 (f) Members of the board serve terms of two years each and, at the expiration of  
19 their terms, may continue to serve until their respective successors are appointed. The  
20 secretary shall appoint a chairperson for the board from among the members thereof for  
21 a term of two years. The chairperson may continue to serve until his or her successor is  
22 appointed.

23 (g) The board has the following powers and duties:

24 (1) To design and develop the institute;

25 (2) To select annually a university or college within the state to host the institute;

26 (3) To establish the application process, criteria and qualifications, and annually to  
27 make the final selection of two recent education graduates from each state to attend the  
28 institute academy;

29 (4) To solicit, accept and expend for the purposes of this section any contribution,  
30 grant or appropriation from any source, and to pursue aggressively any federal or private  
31 funding available for these purposes;

32 (5) To perform such other duties as considered necessary to carry out the purposes  
33 of this section;

34 (6) To report by the first day of November, two thousand one, and annually thereafter,  
35 to the legislative oversight commission on education accountability on the progress of the  
36 institute. The initial report shall contain at least the following information:

37 (i) A design for administering a collaborative effort on the part of West Virginia  
38 colleges and universities with an approved teacher education program to provide a week-  
39 long summer academy for recent teacher education graduates nationwide;

40 (ii) Provisions, including appropriate sources of funds, for the institute to main an  
41 office throughout the year for the purpose of publishing materials, pursuing grant moneys,  
42 conducting research and providing data on excellence in teacher education; and

43 (iii) Provision for developing a certificate of recognition to be presented to each  
44 participant upon completion of the academy.  
45



1 (e) Nothing in this section requires any level of funding by the Legislature or requires  
2 the board to implement the provisions of this section unless federal funds and/or private  
3 moneys have been secured for that purpose.

**Senate Bill #157**

**Section Number 15**

Effective Date: Passed April 14, 2001; in effect ninety days from passage.

Signed by Governor: May 2, 2001.

Code Reference: Amend and Reenact §18-1-1.

Topic: Provides definition for social worker.

Major Provisions:

- S “Social Worker” means a non-teaching school employee who, at a minimum, possesses an undergraduate degree in social work from an accredited institution of higher learning and who provides various professional social work services, activities or methods as defined by the state board for the benefit of students.

1 **ENROLLED**  
2 **Senate Bill No. 157**

3 (BY SENATORS HUNTER, MITCHELL, CALDWELL, KESSLER, ROSS, OLIVERIO AND ROWE)

4  
5 [Passed April 14, 2001; in effect ninety days from passage.]  
6  
7

8 AN ACT to amend and reenact section one, article one, chapter eighteen of the code of West  
9 Virginia, one thousand nine hundred thirty-one, as amended, relating to providing a  
10 definition of social worker.

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

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

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

16 **§18-1-1. Definitions.**

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

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

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

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

23 (d) "Board" means the county board of education;

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

25 (f) "Superintendent" means the county superintendent of schools;

26 (g) "Teacher" means teacher, supervisor, principal, superintendent or public school  
27 librarian; registered professional nurse, licensed by the West Virginia board of examiners for  
28 registered professional nurses and employed by a county board of education, who has a  
29 baccalaureate degree; or any other person regularly employed for instructional purposes in  
30 a public school in this state;

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

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

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

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

41 (l) "Work-based learning" means a structured activity that correlates with and is  
42 mutually supportive of the school-based learning of the student and includes specific

1 objectives to be learned by the student as a result of the activity;  
2 (m) "School-age juvenile" means any individual who is entitled to attend or who, if not  
3 placed in a residential facility, would be entitled to attend public schools in accordance with:  
4 (1) Section five, article two of this chapter; (2) sections fifteen and eighteen, article five of this  
5 chapter; or (3) section one, article twenty of this chapter;  
6 (n) "Student with a disability" means an exceptional child, other than gifted, pursuant  
7 to section one, article twenty of this chapter;  
8 (o) "Low density county" means a county whose ratio of student population to square  
9 miles is less than or equal to the state average ratio as computed by the state department of  
10 education;  
11 (p) "High density county" means a county whose ratio of student population to square  
12 miles is greater than the state average ratio as computed by the state department of  
13 education; and  
14 (q) "Casual deficit" means a deficit of not more than 3 percent of the approved levy  
15 estimate or a deficit that is nonrecurring from year to year.

**Senate Bill #227**

**Section Number 16**

Effective Date: Passed April 14, 2001; in effect from passage.

Signed by Governor: May 2, 2001.

Code of Reference: Amend and Reenact § 18-4-2; 18-5a-5; 18-2-1, 2, 3, 7; 18-3; 18-4-7a, 7b, 18b 19.

Topic: Omnibus Personnel Bill.

Major Provisions:

- S County superintendents can be employed on First Class Permits.
- S Faculty senates may interview new prospective professional educators (current law) - but "the process" for such "shall be chaired by the school principal and must permit the timely employment of persons to perform necessary duties."
- S Principals also may make recommendations to the county superintendent regarding personnel to be employed, based on the principal's "right" to interview all applicants.
- S County boards are required to vote on terminations of professional employees on or before the first Monday of April of each year (provision clarifies existing law).
- S Written notification of teachers being considered for dismissal for lack of need shall be limited to only teachers whose consideration for dismissal is based upon known or expected circumstance which required dismissal for lack of need.
- S Classroom teachers who provide written notice (by February 1) of their resignation or retirement from employment with the board at the conclusion of the school year shall be paid \$500 from the "Early Notification of Retirement" line item established for the state department of education.
- S Substitute teachers who are "continuously assigned" to the same classroom for more than one-half of a grading period and whose assignment remains in effect two weeks prior to the end of the grading period are to remain in the assignment until the grading period has ended, unless the principal certifies that the regularly employed teacher has communicated with and assisted the substitute with the preparation of lesson plans and monitoring student progress or has been approved to return to work by his or her physician.

- S Professional employees who receive retirement benefits may accept employment as a substitute teacher for an unlimited number of days each fiscal year without affecting the monthly retirement benefit.
- S For this provision to be effective, certain conditions would have to be met, including county board adoption of a policy. The policy, which illustrates the need to employ such retired substitutes, would have to be renewed annually. The policy also would have to be approved by the State Board of Education. The superintendent of the county must submit to the consolidated public retirement board, an affidavit signed by the superintendent stating the name of the county, the fact that the county has adopted a policy and the name or names of a person or persons to be employed pursuant to the policy.
- S Any person who retires and begins work as a substitute teacher within the same employment period term shall lose those retirement benefits attributed to the annuity reserve.
- S The state board, annually, shall report to the joint committee on government and finance prior to February 1 of each year the effectiveness of this sub-section.
- S Language relating to PEPPs - prospective employable professional personnel is revised to more closely mirror the original house bill passed of last year.
- S The state department of education will establish a statewide job bank. The job bank will have two parts - a listing of the names, qualifications and contact information of all professional personnel who have been RIF's and a listing of professional positions for which the county is seeking applicants. (Employees can opt not to be included on the job bank listings.)
- S Directs the state board and the Secretary of Education and the Arts to undertake a study of policies, programs and statutes relating to the training, certifications and licensing of professional educators. The agencies are to report their findings and recommendations to the legislature in December 2001.
- S The state superintendent and higher education officials are to collaborate with the governor's Workforce Development Office on... potential sources of funds to assist professional educators whose contracts... were not renewed due to a RIF to gain additional certification in areas of critical need and shortage.
- S If, prior to August 1, the reason for RIF or transfer no longer exists, as determined by the county board, the county board is required to rescind the RIF or transfer and shall restore the released employee to his or her position

of employment. If there is another employee on the preferred recall list with proper certification and higher seniority, that person shall be placed in the position restored as a result of the RIF being rescinded. Similar provisions apply to service personnel.

- S The above provisions are subject to several factors, including a provision that allows the person to apply for any posted, vacant positions with the successful applicant assuming the position at the beginning of the next instructional term. Additionally, professional personnel who have been on an approved leave of absence and may fill these vacancies upon their return and the county board may fill a position before the next instructional term when it is determined to be in the best interest of the student.
- S In regard to the last provision, the county superintendent is to notify the state board of each such transfer after the 5<sup>th</sup> day prior to the beginning of the instructional term. It is the interest of the legislature that the filling of positions through transfers of personnel from one professional position to another after the 5<sup>th</sup> day prior to the beginning of the instructional term should be kept to a minimum.
- S Job postings are to be written so as to ensure that the largest possible pool of qualified applicants may apply and job positions 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.
- S County boards are required to compile, update annually (on July 1 of each year) and make available by electronic means to all employees a list of all professional personnel employed by the county, their areas of certification and their seniority.
- S When professional employees whose employment with a county board is terminated either voluntarily or through a RIF, are re-employed by the same county board in a regular full-time position, they are to receive credit for all seniority previously accumulated with the county board at the date when the employee's employment was terminated.
- S Loss of a special levy or a loss in assessed values or events over which a county board has no control (and for which the county has received approval from the state board) prior to making a RIF or elimination of position does not require termination of said employment contracts of all personnel in the system nor shall it be deemed a creation of a new position, nor shall such alterations require the posting of the positions.

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**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**

5

**Senate Bill No. 227**

6 (SENATORS HUNTER, BOWMAN, FACEMYER, HELMICK, CALDWELL, REDD AND MITCHELL,  
7 *original sponsors*)

8 [Passed April 14, 2001; in effect from passage.]  
9  
10  
11  
12

13 AN ACT to amend and reenact section two, article four, chapter eighteen of the code of West  
14 Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact  
15 section five, article five-a of said chapter; to amend and reenact sections one, two,  
16 three and seven, article two, chapter eighteen-a of said code; to further amend said  
17 article by adding thereto a new section, designated section seven-a; to amend article  
18 three of said chapter by adding thereto a new section, designated section one-c; and  
19 to amend and reenact sections seven-a, seven-b, eight-b and nineteen, article four of  
20 said chapter, all relating generally to school personnel laws; first class permits for  
21 superintendents; providing for principals to chair faculty senate process for interviewing  
22 prospective professional and paraprofessional employees; requiring superintendent  
23 to allow principal opportunity to interview and make recommendations on prospective  
24 professional and paraprofessional personnel who may be employed at the school;  
25 requiring county board votes on terminations to be on or before the first Monday of  
26 April; limiting written notification of dismissal to known or expected circumstances;  
27 providing payment for early notice of resignation or retirement at end of school year  
28 subject to legislative appropriation; addressing areas of critical need and shortage of  
29 professional educators; providing for substitutes continuously assigned to the same  
30 classroom for more than one half of a grading period which assignment remains in  
31 effect two weeks prior to the end of the grading period to remain in the assignment until  
32 the end of the grading period; exceptions; defining teacher and substitute teacher as  
33 professional educators for the purposes of the section; providing legislative findings  
34 and compelling state interest to expand use of retired teachers as substitutes;  
35 providing for county policy to permit expanded use; establishing process to permit  
36 retired teacher substitutes to accept employment for unlimited days beginning  
37 immediately upon retirement without affecting monthly retirement annuity; prohibiting  
38 retired substitute eligibility for additional pension, other benefits and seniority; revising  
39 process for employing prospective employable professional personnel; limiting notice  
40 of intended or considered transfers to known or expected circumstances; providing for  
41 statewide job bank for professional personnel terminated because of reduction in force  
42 and for positions for which counties are seeking applicants; providing for county  
43 boards to rescind reductions in force and transfers and restore released employees  
44 with certain conditions; limiting transfers within the instructional term beginning five  
45 days prior to instructional term and providing certain exceptions; requiring



1 superintendent to report such transfers and making certain legislative findings and  
2 intent; requiring postings of openings to be written to ensure largest possible pool of  
3 qualified applicants and not require criteria not necessary for successful performance  
4 of the job or intended to favor a specific applicant; requiring county boards to compile,  
5 update annually and make available a list of professional personnel, areas of  
6 certification and seniority; requiring retention of seniority of professional personnel on  
7 preferred recall list for purpose of seeking reemployment; providing that reduction or  
8 elimination of supplement due to certain circumstances and approved by state board  
9 does not require termination of employment contract; directing study and report by  
10 state board and secretary of education and the arts to legislative oversight commission  
11 on education accountability on policies, programs and statutes relating to the training,  
12 certification and licensing of professional educators, including analysis of certain  
13 relative to new courses required to be offered in public schools by state board policy;  
14 and directing collaboration on funding for additional education and training for  
15 reduction in force teachers to gain certification in areas of critical need and shortage.

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

17 That section two, article four, chapter eighteen of the code of West Virginia, one  
18 thousand nine hundred thirty-one, as amended, be amended and reenacted; that section five,  
19 article five-a of said chapter be amended and reenacted; that sections one, two, three and  
20 seven, article two, chapter eighteen-a of said code be amended and reenacted; that said  
21 article be further amended by adding thereto a new section, designated section seven-a; that  
22 article three of said chapter be amended by adding thereto a new section, designated section  
23 one-c; and that sections seven-a, seven-b, eight-b and nineteen, article four of said chapter  
24 be amended and reenacted, all to read as follows:

25 **CHAPTER 18. EDUCATION.**

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

27 **§18-4-2. Qualifications; health certificate; disability; acting superintendent.**

28 (a) Each superintendent shall hold a professional administrative certificate endorsed  
29 for superintendent, or a first class permit endorsed for superintendent: *Provided*, That a  
30 superintendent who holds a first class permit may be appointed for only one year, and may be  
31 reappointed two times for an additional year each upon an annual evaluation by the board and  
32 a determination of satisfactory performance and reasonable progress toward completion of  
33 the requirements for a professional administrative certificate endorsed for superintendent:  
34 *Provided, however*, That any candidate for superintendent who possesses an earned  
35 doctorate from an accredited institution of higher education, has completed three successful  
36 years of teaching in public education and has the equivalent of three years of experience in  
37 management or supervision, upon employment by the county board of education shall be  
38 granted a permanent administrative certificate and shall be a licensed county superintendent.  
39 Any person employed as assistant superintendent or educational administrator prior to the  
40 twenty-seventh day of June, one thousand nine hundred eighty-eight, and who was previously  
41 employed as superintendent is not required to hold the professional administrative certificate  
42 endorsed for superintendent.

43 (b) Before entering upon the discharge of his or her duties the superintendent shall file  
44 with the president of the board a health certificate from a reputable physician, on a form  
45 prescribed by the state department of education, certifying that he or she is physically fit for

1 the duties of his or her office and that he or she has no infectious or contagious disease; and  
2 if the superintendent, due to accident or illness, becomes incapacitated to an extent that could  
3 lead to a prolonged absence, the board, upon unanimous vote, may enter an order declaring  
4 the incapacity and it shall appoint an acting superintendent until such time as a majority of the  
5 members of the board determine that the incapacity no longer exists. However, an acting  
6 superintendent shall not serve as such for more than one year, or later than the expiration date  
7 of the superintendent's term, whichever is less, without being reappointed by the board of  
8 education.

9 (c) Upon finding that the course work needed by a superintendent who holds a first  
10 class permit endorsed for superintendent is not available or is not scheduled in a manner at  
11 state institutions of higher education which will enable him or her to complete the normal  
12 requirements for a professional administrative certificate endorsed for superintendent within  
13 the three-year period allowed for appointment and reappointment under the permit, the state  
14 board shall adopt a rule in accordance with article three-b, chapter twenty-nine-a of this code,  
15 to enable completion of the requirements, or comparable alternative requirements, for a  
16 professional administrative certificate endorsed for superintendent.

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

18 **§18-5A-5. Public school faculty senates established; election of officers; powers and**  
19 **duties.**

20 (a) There is established at every public school in this state a faculty senate which shall  
21 be comprised of all permanent, full-time professional educators employed at the school who  
22 shall all be voting members. Professional educators as used in this section means  
23 professional educators as defined in chapter eighteen-a of this code. A quorum of more than  
24 one half of the voting members of the faculty shall be present at any meeting of the faculty  
25 senate at which official business is conducted. Prior to the beginning of the instructional term  
26 each year, but within the employment term, the principal shall convene a meeting of the faculty  
27 senate to elect a chair, vice chair and secretary and discuss matters relevant to the beginning  
28 of the school year. The vice chair shall preside at meetings when the chair is absent.  
29 Meetings of the faculty senate shall be held on a regular basis as determined by a schedule  
30 approved by the faculty senate and amended from time to time if needed. Emergency  
31 meetings may be held at the call of the chair or a majority of the voting members by petition  
32 submitted to the chair and vice chair. An agenda of matters to be considered at a scheduled  
33 meeting of the faculty senate shall be available to the members at least two employment days  
34 prior to the meeting and in the case of emergency meetings, as soon as possible prior to the  
35 meeting. The chair of the faculty senate may appoint such committees as may be desirable  
36 to study and submit recommendations to the full faculty senate, but the acts of the faculty  
37 senate shall be voted upon by the full body.

38 (b) In addition to any other powers and duties conferred by law, or authorized by  
39 policies adopted by the state or county board of education or bylaws which may be adopted  
40 by the faculty senate not inconsistent with law, the powers and duties listed in this subsection  
41 are specifically reserved for the faculty senate. The intent of these provisions is neither to  
42 restrict nor to require the activities of every faculty senate to the enumerated items except as  
43 otherwise stated. Each faculty senate shall organize its activities as it deems most effective  
44 and efficient based on school size, departmental structure and other relevant factors.

45 (1) Each faculty senate shall control funds allocated to the school from legislative

1 appropriations pursuant to section nine, article nine-a of this chapter. From such funds, each  
2 classroom teacher and librarian shall be allotted fifty dollars for expenditure during the  
3 instructional year for academic materials, supplies or equipment which, in the judgment of the  
4 teacher or librarian, will assist him or her in providing instruction in his or her assigned  
5 academic subjects or shall be returned to the faculty senate: *Provided*, That nothing contained  
6 herein shall prohibit such funds from being used for programs and materials that, in the  
7 opinion of the teacher, enhance student behavior, increase academic achievement, improve  
8 self-esteem and address the problems of students at-risk. The remainder of funds shall be  
9 expended for academic materials, supplies or equipment in accordance with a budget  
10 approved by the faculty senate. Notwithstanding any other provisions of the law to the  
11 contrary, funds not expended in one school year shall be available for expenditure in the next  
12 school year: *Provided, however*, That the amount of county funds budgeted in a fiscal year  
13 shall not be reduced throughout the year as a result of the faculty appropriations in the same  
14 fiscal year for such materials, supplies and equipment. Accounts shall be maintained of the  
15 allocations and expenditures of such funds for the purpose of financial audit. Academic  
16 materials, supplies or equipment shall be interpreted broadly, but shall not include materials,  
17 supplies or equipment which will be used in or connected with interscholastic athletic events.

18 (2) A faculty senate may establish a process for faculty members to interview new  
19 prospective professional educators and paraprofessional employees at the school and submit  
20 recommendations regarding employment to the principal, who may also make independent  
21 recommendations, for submission to the county superintendent: *Provided*, That such process  
22 shall be chaired by the school principal and must permit the timely employment of persons to  
23 perform necessary duties.

24 (3) A faculty senate may nominate teachers for recognition as outstanding teachers  
25 under state and local teacher recognition programs and other personnel at the school,  
26 including parents, for recognition under other appropriate recognition programs and may  
27 establish such programs for operation at the school.

28 (4) A faculty senate may submit recommendations to the principal regarding the  
29 assignment scheduling of secretaries, clerks, aides and paraprofessionals at the school.

30 (5) A faculty senate may submit recommendations to the principal regarding  
31 establishment of the master curriculum schedule for the next ensuing school year.

32 (6) A faculty senate may establish a process for the review and comment on sabbatical  
33 leave requests submitted by employees at the school pursuant to section eleven, article two  
34 of this chapter.

35 (7) Each faculty senate shall elect three faculty representatives to the local school  
36 improvement council established pursuant to section two of this article.

37 (8) Each faculty senate may nominate a member for election to the county staff  
38 development council pursuant to section eight, article three, chapter eighteen-a of this code.

39 (9) Each faculty senate shall have an opportunity to make recommendations on the  
40 selection of faculty to serve as mentors for beginning teachers under beginning teacher  
41 internship programs at the school.

42 (10) A faculty senate may solicit, accept and expend any grants, gifts, bequests,  
43 donations and any other funds made available to the faculty senate: *Provided*, That the faculty  
44 senate shall select a member who shall have the duty of maintaining a record of all funds  
45 received and expended by the faculty senate, which record shall be kept in the school office

1 and shall be subject to normal auditing procedures.

2 (11) On or after the first day of January, one thousand nine hundred ninety-two, any  
3 faculty senate may review the evaluation procedure as conducted in their school to ascertain  
4 whether such evaluations were conducted in accordance with the written system required  
5 pursuant to section twelve, article two, chapter eighteen-a of this code and the general intent  
6 of this Legislature regarding meaningful performance evaluations of school personnel. If a  
7 majority of members of the faculty senate determine that such evaluations were not so  
8 conducted, they shall submit a report in writing to the state board of education: *Provided*, That  
9 nothing herein shall create any new right of access to or review of any individual's evaluations.

10 (12) Each faculty senate shall be provided by its local board of education at least a  
11 two-hour per month block of noninstructional time within the school day: *Provided*, That any  
12 such designated day shall constitute a full instructional day. This time may be utilized and  
13 determined at the local school level and shall include, but not be limited to, faculty senate  
14 meetings.

15 (13) Each faculty senate shall develop a strategic plan to manage the integration of  
16 special needs students into the regular classroom at their respective schools and submit said  
17 strategic plan to the superintendent of the county board of education by the thirtieth day of  
18 June, one thousand nine hundred ninety-five, and periodically thereafter pursuant to guidelines  
19 developed by the state department of education. Each faculty senate shall encourage the  
20 participation of local school improvement councils, parents and the community at large in the  
21 development of the strategic plan for each school.

22 Each strategic plan developed by the faculty senate shall include at least: (A) A  
23 mission statement; (B) goals; (C) needs; (D) objectives and activities to implement plans  
24 relating to each goal; (E) work in progress to implement the strategic plan; (F) guidelines for  
25 the placement of additional staff into integrated classrooms to meet the needs of exceptional  
26 needs students without diminishing the services rendered to the other students in integrated  
27 classrooms; (G) guidelines for implementation of collaborative planning and instruction; and  
28 (H) training for all regular classroom teachers who serve students with exceptional needs in  
29 integrated classrooms.

## 30 **CHAPTER 18A. SCHOOL PERSONNEL.**

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

#### 32 **§18A-2-1. Employment in general.**

33 The employment of professional personnel shall be made by the board only upon  
34 nomination and recommendation of the superintendent: *Provided*, That the superintendent  
35 shall provide the principal at the school at which the professional educator or paraprofessional  
36 employee is to be employed an opportunity to interview all qualified applicants and make  
37 recommendations to the county superintendent regarding their employment: *Provided*,  
38 *however*, That nothing shall prohibit the timely employment of persons to perform necessary  
39 duties. In case the board refuses to employ any or all of the persons nominated, the  
40 superintendent shall nominate others and submit the same to the board at such time as the  
41 board may direct. All personnel so nominated and recommended for employment and for  
42 subsequent assignment shall meet the certification, licensing, training and other eligibility  
43 classifications as may be required by provisions of this chapter and by state board regulation.  
44 In addition to any other information required, the application for any certification or licensing  
45 shall include the applicant's social security number. Professional personnel employed as

1 deputy, associate or assistant superintendents by the board in offices, departments or  
2 divisions at locations other than a school and who are directly answerable to the  
3 superintendent shall serve at the will and pleasure of the superintendent and may be removed  
4 by the superintendent upon approval of the board. Such professional personnel shall retain  
5 seniority rights only in the area or areas in which they hold valid certification or licensure.

6 **§18A-2-2. Employment of teachers; contracts; continuing contract status; how**  
7 **terminated; dismissal for lack of need; released time; failure of teacher to**  
8 **perform contract or violation thereof.**

9 (a) Before entering upon their duties, all teachers shall execute a contract with their  
10 boards of education, which contract shall state the salary to be paid and shall be in the form  
11 prescribed by the state superintendent of schools. Every such contract shall be signed by the  
12 teacher and by the president and secretary of the board of education and when so signed  
13 shall be filed, together with the certificate of the teacher, by the secretary of the office of the  
14 board.

15 (b) A teacher's contract, under this section, shall be for a term of not less than one nor  
16 more than three years, one of which shall be for completion of a beginning teacher internship  
17 pursuant to the provisions of section two-b, article three of this chapter, if applicable; and if,  
18 after three years of such employment, the teacher who holds a professional certificate, based  
19 on at least a bachelor's degree, has met the qualifications for the same and the board of  
20 education enter into a new contract of employment, it shall be a continuing contract: *Provided,*  
21 That any teacher holding a valid certificate with less than a bachelor's degree who is  
22 employed in a county beyond the said three-year probationary period shall upon qualifying for  
23 said professional certificate based upon a bachelor's degree, if reemployed, be granted  
24 continuing contract status: *Provided, however,* That a teacher holding continuing contract  
25 status with one county shall be granted continuing contract status with any other county upon  
26 completion of one year of acceptable employment if such employment is during the next  
27 succeeding school year or immediately following an approved leave of absence extending no  
28 more than one year.

29 (c) The continuing contract of any teacher shall remain in full force and effect except as  
30 modified by mutual consent of the school board and the teacher, unless and until terminated:  
31 (1) By a majority vote of the full membership of the board on or before the first Monday of April  
32 of the then current year, after written notice, served upon the teacher, return receipt requested,  
33 stating cause or causes and an opportunity to be heard at a meeting of the board prior to the  
34 board's action thereon; or (2) by written resignation of the teacher before that date, to initiate  
35 termination of a continuing contract. Such termination shall take effect at the close of the  
36 school year in which the contract is so terminated: *Provided,* That the contract may be  
37 terminated at any time by mutual consent of the school board and the teacher and that this  
38 section shall not affect the powers of the school board to suspend or dismiss a principal or  
39 teacher pursuant to section eight of this article: *Provided, however,* That a continuing contract  
40 for any teacher holding a certificate valid for more than one year and in full force and effect  
41 during the school year one thousand nine hundred eighty-four and one thousand nine hundred  
42 eighty-five shall remain in full force and effect: *Provided further,* That a continuing contract shall  
43 not operate to prevent a teacher's dismissal based upon the lack of need for the teacher's  
44 services pursuant to the provisions of law relating to the allocation to teachers and pupil-  
45 teacher ratios. The written notification of teachers being considered for dismissal for lack of

1 need shall be limited to only those teachers whose consideration for dismissal is based upon  
2 known or expected circumstances which will require dismissal for lack of need. An employee  
3 who was not provided notice and an opportunity for a hearing pursuant to subsection (a) of this  
4 section may not be included on the list. In case of such dismissal, the teachers so dismissed  
5 shall be placed upon a preferred list in the order of their length of service with that board, and  
6 no teacher shall be employed by the board until each qualified teacher upon the preferred list,  
7 in order, shall have been offered the opportunity for reemployment in a position for which they  
8 are qualified: *And provided further*, That he or she has not accepted a teaching position  
9 elsewhere. Such reemployment shall be upon a teacher's preexisting continuing contract and  
10 shall have the same effect as though the contract had been suspended during the time the  
11 teacher was not employed.

12 (d) In the assignment of position or duties of a teacher under said continuing contract,  
13 the board shall have authority to provide for released time of a teacher for any special  
14 professional or governmental assignment without jeopardizing the contractual rights of such  
15 teacher or any other rights, privileges or benefits under the provisions of this chapter.

16 (e) Any teacher who fails to fulfill his contract with the board, unless prevented from so  
17 doing by personal illness or other just cause or unless released from such contract by the  
18 board, or who violates any lawful provision thereof, shall be disqualified to teach in any other  
19 public school in the state for a period of the next ensuing school year and the state department  
20 of education or board may hold all papers and credentials of such teacher on file for a period  
21 of one year for such violation: *Provided*, That marriage of a teacher shall not be considered  
22 a failure to fulfill, or violation of, the contract.

23 (f) Any classroom teacher, as defined in section one, article one of this chapter, who  
24 desires to resign employment with a board of education or request a leave of absence, such  
25 resignation or leave of absence to become effective on or before the fifteenth day of July of  
26 the same year and after completion of the employment term, may do so at any time during the  
27 school year by written notification thereof and any such notification received by a board of  
28 education shall automatically extend such teacher's public employee insurance coverage until  
29 the thirty-first day of August of the same year.

30 (g) Any classroom teacher who gives written notice to the county board of education  
31 on or before the first day of February of the school year of their resignation or retirement from  
32 employment with the board at the conclusion of the school year shall be paid five hundred  
33 dollars from the "Early Notification of Retirement" line item established for the department of  
34 education for this purpose, subject to appropriation by the Legislature. If the appropriations  
35 to the department of education for this purpose are insufficient to compensate all applicable  
36 teachers, the department of education shall request a supplemental appropriation in an  
37 amount sufficient to compensate all such teachers. Additionally, if funds are still insufficient  
38 to compensate all applicable teachers, the priority of payment is for teachers who give written  
39 notice the earliest. This payment shall not be counted as part of the final average salary for  
40 the purpose of calculating retirement.

41 **§18A-2-3. Employment of substitute teachers and retired teachers as substitutes in**  
42 **areas of critical need and shortage; employment of prospective employable**  
43 **professional personnel.**

44 (a) The county superintendent, subject to approval of the county board, may employ and  
45 assign substitute teachers to any of the following duties: (a) To fill the temporary absence of

1 any teacher or an unexpired school term made vacant by resignation, death, suspension or  
2 dismissal; (b) to fill a teaching position of a regular teacher on leave of absence; and (c) to  
3 perform the instructional services of any teacher who is authorized by law to be absent from  
4 class without loss of pay, providing the absence is approved by the board of education in  
5 accordance with the law. The substitute shall be a duly certified teacher.

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

15 (c) (1) The Legislature hereby finds and declares that due to a shortage of qualified  
16 substitute teachers, a compelling state interest exists in expanding the use of retired teachers  
17 to provide service as substitute teachers. The Legislature further finds that diverse  
18 circumstances exist among the counties for the expanded use of retired teachers as  
19 substitutes.

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

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

27 (B) The policy provides for the employment of retired teachers as substitute teachers  
28 during the school year on an expanded basis as provided in this subsection;

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

31 (D) The state board approves the policy and the use of retired teachers as substitute  
32 teachers on an expanded basis as provided in this subsection; and

33 (E) Prior to employment of such substitute teacher beyond the post-retirement  
34 employment limitations established by the consolidated public retirement board, the  
35 superintendent of the affected county submits to the consolidated public retirement board, in  
36 a form approved by the retirement board, an affidavit signed by the superintendent stating the  
37 name of the county, the fact that the county has adopted a policy to employ retired teachers  
38 as substitutes to address areas of critical need and shortage and the name or names of the  
39 person or persons to be employed pursuant to the policy.

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

44 (4) With respect to the expanded substitute service provided in this subsection, retired  
45 teachers employed as such substitutes are considered day-to-day, temporary, part-time  
46 employees. The substitutes are not eligible for additional pension or other benefits paid to

1 regularly employed employees and shall not accrue seniority.

2 (5) Until this subsection is expired pursuant to subdivision (6) of this subsection, the  
3 state board, annually, shall report to the joint committee on government and finance prior to  
4 the first day of February of each year. Additionally, a copy shall be provided to the legislative  
5 oversight commission on education accountability. The report shall contain information  
6 indicating the effectiveness of the provisions of this subsection on expanding the use of retired  
7 substitute teachers to address areas of critical need and shortage.

8 (6) The provisions of this subsection shall expire on the thirtieth day of June, two  
9 thousand three.

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

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

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

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

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

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

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

31 (5) Regular employment status for prospective employable professional personnel may  
32 be obtained only in accordance with the provisions of section seven-a, article four of this  
33 chapter.

34  
35  
36 The state board annually shall review the status of employing personnel under the provisions of  
37 subsection (d) of this section and annually shall report to the legislative oversight commission  
38 on education accountability on or before the first day of November of each year. The report  
39 shall include, but not be limited to, the following:

40 (A) The counties that participated in the program;

41 (B) The number of personnel hired;

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

43 (D) The venue from which personnel were employed;

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

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



1 **§18A-2-7. Assignment, transfer, promotion, demotion, suspension and**  
2 **recommendation of dismissal of school personnel by superintendent;**  
3 **preliminary notice of transfer; hearing on the transfer; proof required.**

4 (a) The superintendent, subject only to approval of the board, shall have authority to  
5 assign, transfer, promote, demote or suspend school personnel and to recommend their  
6 dismissal pursuant to provisions of this chapter. However, an employee shall be notified in  
7 writing by the superintendent on or before the first Monday in April if he is being considered  
8 for transfer or to be transferred. Only those employees whose consideration for transfer or  
9 intended transfer is based upon known or expected circumstances which will require the  
10 transfer of employees shall be considered for transfer or intended for transfer and the  
11 notification shall be limited to only those employees. Any teacher or employee who desires  
12 to protest such proposed transfer may request in writing a statement of the reasons for the  
13 proposed transfer. Such statement of reasons shall be delivered to the teacher or employee  
14 within ten days of the receipt of the request. Within ten days of the receipt of the statement of  
15 the reasons, the teacher or employee may make written demand upon the superintendent for  
16 a hearing on the proposed transfer before the county board of education. The hearing on the  
17 proposed transfer shall be held on or before the first Monday in May. At the hearing, the  
18 reasons for the proposed transfer must be shown.

19 (b) The superintendent at a meeting of the board on or before the first Monday in May  
20 shall furnish in writing to the board a list of teachers and other employees to be considered  
21 for transfer and subsequent assignment for the next ensuing school year. An employee who  
22 was not provided notice and an opportunity for a hearing pursuant to subsection (a) of this  
23 section may not be included on the list. All other teachers and employees not so listed shall  
24 be considered as reassigned to the positions or jobs held at the time of this meeting. The list  
25 of those recommended for transfer shall be included in the minute record of such meeting and  
26 all those so listed shall be notified in writing, which notice shall be delivered in writing, by  
27 certified mail, return receipt requested, to such persons' last known addresses within ten days  
28 following said board meeting, of their having been so recommended for transfer and  
29 subsequent assignment and the reasons therefor.

30 (c) The superintendent's authority to suspend school personnel shall be temporary only  
31 pending a hearing upon charges filed by the superintendent with the board of education and  
32 such period of suspension shall not exceed thirty days unless extended by order of the board.

33 (d) The provisions of this section respecting hearing upon notice of transfer shall not  
34 be applicable in emergency situations where the school building becomes damaged or  
35 destroyed through an unforeseeable act and which act necessitates a transfer of such school  
36 personnel because of the aforementioned condition of the building.

37 **§18A-2-7a. Statewide job bank.**

38 The state board shall establish and maintain a statewide job bank to assist the  
39 recruitment and reemployment of experienced professional personnel whose employment with  
40 county boards has been terminated because of a reduction in force. The job bank shall  
41 consist of two parts for each county: (1) A list of the names, qualifications and contact  
42 information of all professional personnel who have been terminated because of a reduction  
43 in force, except personnel who have requested in writing that they not be listed in the job bank;  
44 and (2) a list of professional positions for which the county is seeking applicants. The job  
45 bank shall be accessible electronically to each county and to individuals on a read only basis,

1 except that each county shall have the capability of editing information for the county and shall  
2 be responsible for maintaining current information on the county lists.

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

5 **§18A-3-1c. Study of training, certification and licensing; report to legislative oversight**  
6 **commission on education accountability at December 2001 interim meetings;**  
7 **collaboration on sources of funding for education and training for reduction in**  
8 **force teacher to gain additional certification in areas of critical need and**  
9 **shortage.**

10 (a) The legislature finds that the training, certification and licensing of professional  
11 educators is not well coordinated with the employment laws of the state particularly with  
12 respect to the middle school grade levels. The Legislature further finds that the statutes place  
13 responsibility for the training, certification and licensing of professional educators with the  
14 state board of education after consultation with the secretary of education and the arts.  
15 Therefore, the Legislature hereby directs the state board and the secretary of education and  
16 the arts to undertake a study of the policies, programs and statutes relating to the training,  
17 certification and licensing of professional educators and to report their findings, conclusions  
18 and recommendations along with any necessary legislation for improving the coordination of  
19 the programs, policies and statutes with the needs of the public schools of this state to the  
20 legislative oversight commission on education accountability at it December, two thousand  
21 one, interim meeting. The study and recommendations shall also include an analysis of the  
22 cost and availability of certified teachers, along with recommended solutions, for any new  
23 courses required by state board policy to be offered in the public schools.

24 (b) The legislature finds that there is a need to address areas of critical need and  
25 shortage for professional educators and that an expeditious approach for doing so is through  
26 the upgrading of the education and training of fully certified teachers who because of declining  
27 enrollment can no longer be employed in their area of certification and licensure. Therefore,  
28 the state superintendent, the vice chancellor for administration, the chancellor of the higher  
29 education policy commission shall collaborate with the governor's workforce development  
30 office on other potential sources of funds to assist professional educators whose contract of  
31 employment with a county board of education were not renewed due to a reduction in force  
32 to gain additional certification in areas of critical need and shortage.

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

34 **§18A-4-7a. Employment, promotion and transfer of professional personnel;**  
35 **seniority.**

36 (a) A county board of education shall make decisions affecting the hiring of  
37 professional personnel other than classroom teachers on the basis of the applicant with the  
38 highest qualifications.

39 (b) The county board shall make decisions affecting the hiring of new classroom  
40 teachers on the basis of the applicant with the highest qualifications.

41 (c) In judging qualifications for hiring employees pursuant to subsections (a) and (b) of  
42 this section, consideration shall be given to each of the following:

43 (1) Appropriate certification and/or licensure;

44 (2) Amount of experience relevant to the position; or, in the case of a classroom  
45 teaching position, the amount of teaching experience in the subject area;

1 (3) The amount of course work and/or degree level in the relevant field and degree level  
2 generally;

3 (4) Academic achievement;

4 (5) Relevant specialized training;

5 (6) Past performance evaluations conducted pursuant to section twelve, article two of  
6 this chapter; and

7 (7) Other measures or indicators upon which the relative qualifications of the applicant  
8 may fairly be judged.

9 (d) If one or more permanently employed instructional personnel apply for a classroom  
10 teaching position and meet the standards set forth in the job posting, the county board of  
11 education shall make decisions affecting the filling of such positions on the basis of the  
12 following criteria:

13 (1) Appropriate certification and/or licensure;

14 (2) Total amount of teaching experience;

15 (3) The existence of teaching experience in the required certification area;

16 (4) Degree level in the required certification area;

17 (5) Specialized training directly related to the performance of the job as stated in the  
18 job description;

19 (6) Receiving an overall rating of satisfactory in evaluations over the previous two  
20 years; and

21 (7) Seniority.

22 (e) In filling positions pursuant to subsection (d) of this section, consideration shall be  
23 given to each criterion with each criterion being given equal weight. If the applicant with the  
24 most seniority is not selected for the position, upon the request of the applicant a written  
25 statement of reasons shall be given to the applicant with suggestions for improving the  
26 applicant's qualifications.

27 (f) The seniority of classroom teachers, as defined in section one, article one of this  
28 chapter, with the exception of guidance counselors, shall be determined on the basis of the  
29 length of time the employee has been employed as a regular full-time certified and/or licensed  
30 professional educator by the county board of education and shall be granted in all areas that  
31 the employee is certified and/or licensed.

32 (g) Upon completion of one hundred thirty-three days of employment in any one school  
33 year, substitute teachers, except retired teachers and other retired professional educators  
34 employed as substitutes, shall accrue seniority exclusively for the purpose of applying for  
35 employment as a permanent, full-time professional employee. One hundred thirty-three days  
36 or more of said employment shall be prorated and shall vest as a fraction of the school year  
37 worked by the permanent, full-time teacher.

38 (h) Guidance counselors and all other professional employees, as defined in section  
39 one, article one of this chapter, except classroom teachers, shall gain seniority in their  
40 nonteaching area of professional employment on the basis of the length of time the employee  
41 has been employed by the county board of education in that area: *Provided*, That if an  
42 employee is certified as a classroom teacher, the employee accrues classroom teaching  
43 seniority for the time that that employee is employed in another professional area. For the  
44 purposes of accruing seniority under this paragraph, employment as principal, supervisor or  
45 central office administrator, as defined in section one, article one of this chapter, shall be

1 considered one area of employment.

2 (i) Employment for a full employment term shall equal one year of seniority, but no  
3 employee may accrue more than one year of seniority during any given fiscal year.  
4 Employment for less than the full employment term shall be prorated. A random selection  
5 system established by the employees and approved by the board shall be used to determine  
6 the priority if two or more employees accumulate identical seniority: *Provided*, That when two  
7 or more principals have accumulated identical seniority, decisions on reductions in force shall  
8 be based on qualifications.

9 (j) Whenever a county board is required to reduce the number of professional  
10 personnel in its employment, the employee with the least amount of seniority shall be properly  
11 notified and released from employment pursuant to the provisions of section two, article two  
12 of this chapter. The provisions of this subsection are subject to the following:

13 (1) All persons employed in a certification area to be reduced who are employed under  
14 a temporary permit shall be properly notified and released before a fully certified employee  
15 in such a position is subject to release;

16 (2) An employee subject to release shall be employed in any other professional  
17 position where such employee is certified and was previously employed or to any lateral area  
18 for which such employee is certified and/or licensed, if such employee's seniority is greater  
19 than the seniority of any other employee in that area of certification and/or licensure;

20 (3) If an employee subject to release holds certification and/or licensure in more than  
21 one lateral area and if such employee's seniority is greater than the seniority of any other  
22 employee in one or more of those areas of certification and/or licensure, the employee subject  
23 to release shall be employed in the professional position held by the employee with the least  
24 seniority in any of those areas of certification and/or licensure; and

25 (4) If, prior to the first day of August of the year a reduction in force or transfer is  
26 approved, the reason for any particular reduction in force or transfer no longer exists as  
27 determined by the county board in its sole and exclusive judgment, the board shall rescind the  
28 reduction in force or transfer and shall restore the released employee to his or her position of  
29 employment: *Provided*, That if there is another employee on the preferred recall list with  
30 proper certification and higher seniority, that person shall be placed in the position restored  
31 as a result of the reduction in force being rescinded.

32 (k) For the purpose of this article, all positions which meet the definition of classroom  
33 teacher as defined in section one, article one of this chapter shall be lateral positions. For all  
34 other professional positions the county board of education shall adopt a policy by the thirty-first  
35 day of October, one thousand nine hundred ninety-three, and may modify said policy thereafter  
36 as necessary, which defines which positions shall be lateral positions. The board shall submit  
37 a copy of its policy to the state board within thirty days of adoption or any modification, and  
38 the state board shall compile a report and submit same to the legislative oversight  
39 commission on education accountability by the thirty-first day of December, one thousand nine  
40 hundred ninety-three, and by such date in any succeeding year in which any county board  
41 submits a modification of its policy relating to lateral positions. In adopting such a policy, the  
42 board shall give consideration to the rank of each position in terms of title, nature of  
43 responsibilities, salary level, certification and/or licensure and days in the period of  
44 employment.

45 (l) After the fifth day prior to the beginning of the instructional term, no person employed

1 and assigned to a professional position may transfer to another professional position in the  
2 county during that instructional term unless the person holding that position does not have valid  
3 certification. The provisions of this subsection are subject to the following:

4 (1) The person may apply for any posted, vacant positions with the successful applicant  
5 assuming the position at the beginning of the next instructional term;

6 (2) Professional personnel who have been on an approved leave of absence may fill  
7 these vacancies upon their return from the approved leave of absence; and

8 (3) The county board, upon recommendation of the superintendent may fill a position  
9 before the next instructional term when it is determined to be in the best interest of the  
10 students: *Provided*, That the county superintendent shall notify the state board of each transfer  
11 of a person employed in a professional position to another professional position after the fifth  
12 day prior to the beginning of the instructional term. The Legislature finds that it is not in the  
13 best interest of the students particularly in the elementary grades to have multiple teachers for  
14 any one grade level or course during the instructional term. It is the intent of the Legislature  
15 that the filling of positions through transfers of personnel from one professional position to  
16 another after the fifth day prior to the beginning of the instructional term should be kept to a  
17 minimum.

18 (m) All professional personnel whose seniority with the county board is insufficient to  
19 allow their retention by the county board during a reduction in work force shall be placed upon  
20 a preferred recall list. As to any professional position opening within the area where they had  
21 previously been employed or to any lateral area for which they have certification and/or  
22 licensure, the employee shall be recalled on the basis of seniority if no regular, full-time  
23 professional personnel, or those returning from leaves of absence with greater seniority, are  
24 qualified, apply for and accept such position.

25 (n) Before position openings that are known or expected to extend for twenty  
26 consecutive employment days or longer for professional personnel may be filled by the board,  
27 the board shall be required to notify all qualified professional personnel on the preferred list  
28 and give them an opportunity to apply, but failure to apply shall not cause the employee to  
29 forfeit any right to recall. The notice shall be sent by certified mail to the last known address  
30 of the employee, and it shall be the duty of each professional personnel to notify the board of  
31 continued availability annually, of any change in address or of any change in certification  
32 and/or licensure.

33 (o) Openings in established, existing or newly created positions shall be processed as  
34 follows:

35 (1) Boards shall be required to post and date notices which shall be subject to the  
36 following:

37 (A) The notices shall be posted in conspicuous working places for all professional  
38 personnel to observe for at least five working days;

39 (B) The notice shall be posted within twenty working days of the position openings and  
40 shall include the job description;

41 (C) Any special criteria or skills that are required by the position shall be specifically  
42 stated in the job description and directly related to the performance of the job;

43 (D) Postings for vacancies made pursuant to this section shall be written so as to  
44 ensure that the largest possible pool of qualified applicants may apply; and

45 (E) Job postings may not require criteria which are not necessary for the successful

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

2 (2) No vacancy shall be filled until after the five-day minimum posting period;

3 (3) If one or more applicants meets the qualifications listed in the job posting, the  
4 successful applicant to fill the vacancy shall be selected by the board within thirty working days  
5 of the end of the posting period;

6 (4) A position held by a certified and/or licensed teacher who has been issued a permit  
7 for full-time employment and is working toward certification in the permit area shall not be  
8 subject to posting if the certificate is awarded within five years; and

9 (5) Nothing provided herein shall prevent the county board of education from  
10 eliminating a position due to lack of need.

11 (p) Notwithstanding any other provision of the code to the contrary, where the total  
12 number of classroom teaching positions in an elementary school does not increase from one  
13 school year to the next, but there exists in that school a need to realign the number of teachers  
14 in one or more grade levels, kindergarten through six, teachers at the school may be  
15 reassigned to grade levels for which they are certified without that position being posted:  
16 *Provided*, That the employee and the county board of education mutually agree to the  
17 reassignment.

18 (q) Reductions in classroom teaching positions in elementary schools shall be  
19 processed as follows:

20 (1) When the total number of classroom teaching positions in an elementary school  
21 needs to be reduced, the reduction shall be made on the basis of seniority with the least  
22 senior classroom teacher being recommended for transfer; and

23 (2) When a specified grade level needs to be reduced and the least senior employee  
24 in the school is not in that grade level, the least senior classroom teacher in the grade level  
25 that needs to be reduced shall be reassigned to the position made vacant by the transfer of  
26 the least senior classroom teacher in the school without that position being posted: *Provided*,  
27 That the employee is certified and/or licensed and agrees to the reassignment.

28 (r) Any board failing to comply with the provisions of this article may be compelled to  
29 do so by mandamus and shall be liable to any party prevailing against the board for court  
30 costs and reasonable attorney fees as determined and established by the court. Further,  
31 employees denied promotion or employment in violation of this section shall be awarded the  
32 job, pay and any applicable benefits retroactive to the date of the violation and payable entirely  
33 from local funds. Further, the board shall be liable to any party prevailing against the board  
34 for any court reporter costs including copies of transcripts.

35 (s) The county board shall compile, update annually on the first day of July and make  
36 available by electronic or other means to all employees a list of all professional personnel  
37 employed by the county, their areas of certification and their seniority.

38 **§18A-4-7b. Calculation of seniority for professional personnel.**

39 Notwithstanding any other provision of this code to the contrary, seniority for  
40 professional personnel as defined in section one, article one, chapter eighteen-a of this code  
41 shall be calculated pursuant to the provisions of section seven-a of this article as well as the  
42 following: *Provided*, That any recalculation of seniority of a professional personnel employee  
43 that may be required in order to remain consistent with the provisions contained herein shall  
44 be calculated retroactively, but shall not be utilized for the purposes of reversing any decision  
45 that has been made or grievance that has been filed prior to the effective date of this section:

1 (a) A professional employee shall begin to accrue seniority upon commencement of  
2 the employee's duties.

3 (b) An employee shall receive seniority credit for each day the employee is  
4 professionally employed regardless of whether the employee receives pay for that day:  
5 *Provided*, That no employee shall receive seniority credit for any day the employee is  
6 suspended without pay pursuant to section eight, article two of this chapter: *Provided*,  
7 *however*, That an employee who is on an approved leave of absence shall accrue seniority  
8 during the period of time that the employee is on the approved leave of absence.

9 (c) Any professional employee whose employment with a county board of education  
10 is terminated either voluntarily or through a reduction-in-force shall, upon reemployment with  
11 the same board of education in a regular full-time position, receive credit for all seniority  
12 previously accumulated with the board of education at the date the employee's employment  
13 was terminated.

14 (d) Any professional employee whose employment has been terminated through  
15 reduction in force and whose name is on the preferred recall list shall retain all accumulated  
16 seniority for the purpose of seeking reemployment with the county from which he or she was  
17 terminated and nothing in this section may be construed to the contrary.

18 (e) Any professional employee employed for a full employment term but in a part-time  
19 position shall receive seniority credit for each day of employment prorated to the proportion  
20 of a full employment day the employee is required to work: *Provided*, That nothing herein  
21 allows a regular full-time employee to be credited with less than a full day of seniority credit  
22 for each day the employee is employed by the board: *Provided, however*, That this calculation  
23 of seniority for part-time professional personnel is prospective and does not reduce any  
24 seniority credit accumulated by any employee prior to the effective date of this section:  
25 *Provided further*, That for the purposes of this section a part-time employee shall be defined  
26 as an employee who is employed less than three and one-half hours per day.

27 **§18A-4-8b. Seniority rights for school service personnel.**

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

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

39 (1) Regularly employed service personnel;

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

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

45 (4) Substitute service personnel; and

1 (5) New service personnel.

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

5 (d) A promotion shall be defined as any change in his employment that the employee  
6 deems to improve his working circumstance within his classification category of employment  
7 and shall include a transfer to another classification category or place of employment if the  
8 position is not filled by an employee who holds a title within that classification category of  
9 employment. Each class title listed in section eight of this article shall be considered a  
10 separate classification category of employment for service personnel, except for those class  
11 titles having Roman numeral designations, which shall be considered a single classification  
12 of employment. The cafeteria manager class title shall be included in the same classification  
13 category as cooks. The executive secretary class title shall be included in the same  
14 classification category as secretaries. Paraprofessional, autism mentor and braille or sign  
15 language specialist class titles shall be included in the same classification category as aides.

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

18 (f) Notwithstanding any other provisions of this chapter to the contrary, decisions  
19 affecting service personnel with respect to extra-duty assignments shall be made in the  
20 following manner: An employee with the greatest length of service time in a particular  
21 category of employment shall be given priority in accepting extra duty assignments, followed  
22 by other fellow employees on a rotating basis according to the length of their service time until  
23 all such employees have had an opportunity to perform similar assignments. The cycle then  
24 shall be repeated: *Provided*, That an alternative procedure for making extra-duty assignments  
25 within a particular classification category of employment may be utilized if the alternative  
26 procedure is approved both by the county board and by an affirmative vote of two thirds of the  
27 employees within that classification category of employment. For the purpose of this section,  
28 "extra-duty assignments" are defined as irregular jobs that occur periodically or occasionally  
29 such as, but not limited to, field trips, athletic events, proms, banquets and band festival trips.

30 (g) Boards shall be required to post and date notices of all job vacancies of  
31 established existing or newly created positions in conspicuous working places for all school  
32 service employees to observe for at least five working days. The notice of the job vacancies  
33 shall include the job description, the period of employment, the amount of pay and any benefits  
34 and other information that is helpful to the employees to understand the particulars of the job.  
35 After the five-day minimum posting period all vacancies shall be filled within twenty working  
36 days from the posting date notice of any job vacancies of established existing or newly  
37 created positions. Job postings for vacancies made pursuant to this section shall be written  
38 so as to ensure that the largest possible pool of qualified applicants may apply. Job postings  
39 may not require criteria which are not necessary for the successful performance of the job and  
40 may not be written with the intent to favor a specific applicant.

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

43 (i) The seniority of any service personnel shall be determined on the basis of the length  
44 of time the employee has been employed by the county board within a particular job  
45 classification. For the purpose of establishing seniority for a preferred recall list as provided



1 in this section, when an employee has been employed in one or more classifications, the  
2 seniority accrued in each previous classification shall be retained by the employee.

3 (j) If a county board is required to reduce the number of employees within a particular  
4 job classification, the employee with the least amount of seniority within that classification or  
5 grades of classification shall be properly released and employed in a different grade of that  
6 classification if there is a job vacancy: *Provided*, That if there is no job vacancy for  
7 employment within the classification or grades of classification, he or she shall be employed  
8 in any other job classification which he or she previously held with the county board if there is  
9 a vacancy and shall retain any seniority accrued in the job classification or grade of  
10 classification.

11 (k) If, prior to the first day of August after a reduction in force or transfer is approved,  
12 the reason for any particular reduction in force or transfer no longer exists as determined by  
13 the county board in its sole and exclusive judgment, the board shall rescind the reduction in  
14 force or transfer and shall notify the affected employee in writing of his or her right to be  
15 restored to his or her former position of employment. Within five days of being so notified, the  
16 affected employee shall notify the board of his or her intent to return to his or her former  
17 position of employment or the right of restoration to the former position shall terminate:  
18 *Provided*, That the board shall not rescind the reduction in force of an employee until all  
19 employees with more seniority in the classification category on the preferred recall list have  
20 been offered the opportunity for recall to regular employment as provided in this section. If  
21 there are insufficient vacant positions to permit reemployment of all more senior employees  
22 on the preferred recall list within the classification category of the employ who was subject to  
23 reduction in force, the position of the released employee shall be posted and filled in  
24 accordance with this section.

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

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

31 (n) Employees placed upon the preferred list shall be recalled to any position openings  
32 by the county board within the classification(s), where they had previously been employed, or  
33 to any lateral position for which the employee is qualified or to a lateral area for which an  
34 employee has certification and/or licensure.

35 (o) Employees on the preferred recall list shall not forfeit their right to recall by the  
36 county board if compelling reasons require an employee to refuse an offer of reemployment  
37 by the county board.

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

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

45 (r) An employee released from employment for lack of need as provided in sections

1 eight-a or six, article two of this chapter shall be accorded preferred recall status on the first  
2 day of July of the succeeding school year if the employee has not been reemployed as a  
3 regular employee.

4 (s) Any board failing to comply with the provisions of this article may be compelled to  
5 do so by mandamus and is liable to any party prevailing against the board for court costs and  
6 the prevailing party's reasonable attorney fee, as determined and established by the court.  
7 Further, employees denied promotion or employment in violation of this section shall be  
8 awarded the job, pay and any applicable benefits retroactively to the date of the violation and  
9 shall be paid entirely from local funds. Further, the board is liable to any party prevailing  
10 against the board for any court reporter costs including copies of transcripts.

11 **§18A-4-19. Alteration of contract.**

12 (a) Notwithstanding the provisions of section seven-a of this article relating to  
13 professional personnel or any other section of this code to the contrary, any alteration of an  
14 employment contract of a professional educator who is employed for more than two hundred  
15 days, which alteration changes the number of days in the employment term, shall not be  
16 deemed a creation of a new position, nor shall such alteration require the posting of the  
17 position.

18 Notwithstanding the provisions of section seven-a of this article relating to professional  
19 personnel or any other section of this code to the contrary, any alteration of an employment  
20 contract of a professional educator which reduces or eliminates the local salary supplement  
21 or the benefits provided to such employee due to a defeat of a special levy, or a loss in  
22 assessed values or events over which it has no control and for which the county board has  
23 received approval from the state board prior to making such reduction or elimination in  
24 accordance with section five-a of this article, shall not require termination of said employment  
25 contract as set forth in sections two and eight-a, article two of this chapter, nor shall it be  
26 deemed a creation of a new position, nor shall such alteration require the posting of the  
27 position.

28 (b) Notwithstanding the provisions of section eight-b of this article relating to school  
29 service personnel or any other section of this code to the contrary, any alteration of an  
30 employment contract of a service personnel employee who is employed for more than two  
31 hundred days, which alteration changes the number of days in the employment term, shall not  
32 be deemed a creation of a new position, nor shall such alteration require the posting of the  
33 position.

34 Notwithstanding the provisions of section eight-b of this article relating to school  
35 service personnel or any other section of this code to the contrary, any alteration of an  
36 employment contract of a service personnel employee which reduces or eliminates the local  
37 salary supplement or the benefits provided to such employee due to a defeat of a special levy,  
38 or a loss in assessed values or events over which it has no control and for which the county  
39 board has received approval from the state board prior to making such reduction or  
40 elimination in accordance with section five-b of this article, shall not require termination of said  
41 employment contract as set forth in sections six and eight-a, article two of this chapter, nor  
42 shall it be deemed a creation of a new position, nor shall such alteration require the posting  
43 of the position.  
44

**Senate Bill #439**

**Section Number 17**

Effective Date: Passed April 13, 2001; in effect ninety days from passage.

Signed by Governor: May 2, 2001.

Code Reference: Amend and Reenact §18a-5-1.

Topic: Suspension from school as punishment for not attending class.

Major Provisions:

- S No pupil may be suspended from school solely for not attending class.
- S Other methods of discipline may be used for the pupil include, but are not limited to, detention, extra class time or alternative class settings.



1 all reasonable methods of classroom discipline provided in the school discipline plan, the  
2 pupil may be readmitted to the teacher's classroom only after the principal, teacher and, if  
3 possible, the parent(s), guardian(s) or custodian(s) of the pupil have held a conference to  
4 discuss the pupil's disruptive behavior patterns, and the teacher and the principal agree on  
5 a course of discipline for the pupil and inform the parent(s), guardian(s) or custodian(s) of the  
6 course of action. Thereafter, if the pupil's disruptive behavior persists, upon the teacher's  
7 request, the principal may, to the extent feasible, transfer the pupil to another setting.

8 (d) The Legislature finds that suspension from school is not appropriate solely for a  
9 pupil's failure to attend class. Therefore, no pupil may be suspended from school solely for not  
10 attending class. Other methods of discipline may be used for the pupil which may include, but  
11 are not limited to, detention, extra class time or alternative class settings.

12 (e) Corporal punishment of any pupil by a school employee is prohibited.

13 (f) The West Virginia board of education and county boards of education shall adopt  
14 policies consistent with the provisions of this section encouraging the use of alternatives to  
15 corporal punishment, providing for the training of school personnel in alternatives to corporal  
16 punishment and for the involvement of parent(s), guardian(s) or custodian(s) in the  
17 maintenance of school discipline. The county boards of education shall provide for the  
18 immediate incorporation and implementation in the schools of a preventive discipline program  
19 which may include the responsible student program and a student involvement program which  
20 may include the peer mediation program, devised by the West Virginia board of education.  
21 Each board may modify such programs to meet the particular needs of the county. The county  
22 boards shall provide in-service training for teachers and principals relating to assertive  
23 discipline procedures and conflict resolution. The county boards of education may also  
24 establish cooperatives with private entities to provide middle educational programs which  
25 may include programs focusing on developing individual coping skills, conflict resolution,  
26 anger control, self-esteem issues, stress management and decision making for students and  
27 any other program related to preventive discipline.

28 (g) For the purpose of this section: (1) "Pupil or student" shall include any child, youth  
29 or adult who is enrolled in any instructional program or activity conducted under board  
30 authorization and within the facilities of or in connection with any program under public school  
31 direction: *Provided, That*, in the case of adults, the pupil-teacher relationship shall terminate  
32 when the pupil leaves the school or other place of instruction or activity; and (2) "teacher" shall  
33 mean all professional educators as defined in section one, article one of this chapter and shall  
34 include the driver of a school bus or other mode of transportation.

35 (h) Teachers shall exercise such other authority and perform such other duties as may  
36 be prescribed for them by law or by the rules of the state board of education not inconsistent  
37 with the provisions of this chapter and chapter eighteen of this code.

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**Senate Bill #565**

**Section Number 18**

Effective Date: Passed April 14, 2001; in effect ninety days from passage.

Signed by Governor: May 1, 2001.

Code of Reference: Amend and Reenact §6-9-2.

Topic: Chief Inspector.

Major Provisions:

- S Requires that all reports and audits of county boards of education by the state's chief inspector shall be issued in a timely manner which complies with any federal audit and bonded indebtedness requirements. Requires that the state's chief inspector provide an advance written quote for the cost of all services required by law to be performed for county boards of education.

1 **ENROLLED**  
2 **Senate Bill No. 565**  
3 **(BY SENATOR CHAFIN)**

4  
5 [Passed April 14, 2001; in effect ninety days from passage.]  
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10 AN ACT to amend and reenact sections two and eight, article nine, chapter six of the code of  
11 West Virginia, one thousand nine hundred thirty-one, as amended; and to further  
12 amend said article by adding thereto a new section, designated section twelve, all  
13 relating to the supervision of local government offices; ensuring that chief inspector  
14 issues all reports and audits timely and requirements are abided by; providing cost of  
15 services provided by the chief inspector to be charged if a municipality undergoes a  
16 single audit related to a federal grant; allowing raising the cap on the cost of services  
17 provided to certain utility or park systems; interest earned on costs collected for  
18 services of the chief inspector to go into the revolving fund; and providing for the  
19 development of an intern program for students pursuing a graduate degree in  
20 business.

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

22 That sections two and eight, article nine, chapter six of the code of West Virginia, one  
23 thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said  
24 article be further amended by adding thereto a new section, designated section twelve, all to  
25 read as follows:

26 **ARTICLE 9. SUPERVISION OF LOCAL GOVERNMENT OFFICES.**

27 **§6-9-2. Uniform system of accounting and reporting for local**  
28 **governmental offices and agencies; form and uniform**  
29 **system for receipts; additional power and authority.**

30 The chief inspector shall formulate, prescribe and install a system of accounting and  
31 reporting in conformity with the provisions of this article, which shall be uniform for all local  
32 governmental offices and agencies and for all public accounts of the same class and which  
33 shall exhibit true accounts and detailed statements for all public funds collected, received and  
34 expended for any purpose by all local governmental officers, employees or other persons. The  
35 accounts shall show the receipt, use and disposition of all public property under the control of  
36 local governmental officers, employees or other persons and any income derived therefrom  
37 and of all sources of public income, the amounts due and received from each source, all  
38 receipts, vouchers and other documents kept or required to be kept and necessary to identify  
39 and prove the validity of every transaction, all statements and reports made or required to be  
40 made for the internal administration of the office to which they pertain and all reports published  
41 or required to be published for the information of the people regarding any and all details of  
42 the financial administration of public affairs. The chief inspector shall prescribe receipt forms  
43 for all local governmental offices and agencies and shall formulate, prescribe and install a

1 uniform system with respect to the utilization, processing and disposition of receipts given as  
2 evidence of moneys or property collected or received by local governmental offices and  
3 agencies. The chief inspector shall also formulate, prescribe and install a system of  
4 accounting for the civil accounts of the offices of the magistrates, which shall exhibit true  
5 accounts and detailed statements of the services rendered, the name and address of the  
6 persons for whom rendered, the charges made and collected therefor and other information  
7 as may be necessary to identify the transaction.

8 The chief inspector is vested and charged with the duties of administering and  
9 enforcing the provisions of this article and is authorized to promulgate and to enforce such  
10 rules as may be necessary to implement the administration and enforcement. The chief  
11 inspector shall use due diligence to ensure that all reports and audits are issued in a timely  
12 manner and to comply with all federal audit and bonded indebtedness requirements so as not  
13 to jeopardize the entity's funding. The power and authority herein granted shall be in addition  
14 to all other power and authority vested by law in the state tax commissioner as chief inspector  
15 or otherwise.

16 **§6-9-8. Payment of cost of services of chief inspector; revolving**  
17 **fund.**

18 The cost of any service or act performed by the chief inspector under the provisions of  
19 this article as to any county or district office, officer or institution shall be paid by the county  
20 commission of the county; the cost thereof as to any board of education shall be paid by the  
21 board; the cost thereof as to any municipal corporation shall be paid by the authorities thereof:  
22 *Provided*, That in municipalities in which the total revenue from all taxes does not exceed the  
23 sum of two thousand dollars annually, the cost including the per diem and all actual costs and  
24 expenses of the services shall not exceed the sum of sixty dollars. The cost of this service  
25 shall be the actual cost and expense of the service performed, including transportation, hotel,  
26 meals, materials, per diem compensation of deputies, assistants, clerical help and the other  
27 costs as may be necessary to enable them to perform the services required, but the costs  
28 shall not exceed the sum of two thousand dollars for services rendered to a Class III or a Class  
29 IV municipality: *Provided, however*, That the chief inspector may charge up to an additional  
30 two thousand dollars for costs incurred for each service or act performed for a utility or park  
31 system owned by a Class III or Class IV municipality: *Provided further*, That if a municipality  
32 is required to undergo a single audit by the federal agency or agencies making a grant, the  
33 foregoing cost limitations do not apply: *And provided further*, That the chief inspector shall  
34 provide a written quote for all costs in advance for all services required by this article. The  
35 chief inspector shall render to the agency liable for the cost a statement thereof as soon after  
36 the same was incurred as practicable and it shall be the duty of the agency to allow the same  
37 and cause it to be paid promptly in the manner that other claims and accounts are allowed and  
38 paid and the total amount shall constitute a debt against the local agency due the state.  
39 Whenever there is in the state treasury a sum of money due any county commission, board  
40 of education or municipality from any source, upon the application of the chief inspector, the  
41 same shall be at once applied on the debt aforesaid against the county commission, board  
42 of education or municipality and the fact of the application of the fund shall be reported by the  
43 auditor to the county commission, board of education or municipality, which report shall be a  
44 receipt for the amount therein named. All money received by the chief inspector from this



1 source shall be paid into the state treasury, shall be deposited to the credit of an account to  
2 be known as chief inspector's fund and shall be expended only for the purpose of covering the  
3 cost of the services, unless otherwise directed by the Legislature. The cost of any  
4 examination, service or act by the chief inspector made necessary, or the part thereof as was  
5 made necessary, by the willful fault of any officer or employee, may be recovered by the chief  
6 inspector from that person, on motion, on ten days' notice in any court having jurisdiction.

7 For the purpose of permitting payments to be made at definite periods to deputy  
8 inspectors and assistants for per diem compensation and expenses, there is hereby created  
9 a revolving fund for the chief inspector's office. The fund shall be accumulated and  
10 administered as follows:

11 (1) There shall be appropriated from the state fund general revenue the sum of twenty-  
12 five thousand dollars to be transferred to this fund to create a revolving fund which, together  
13 with other payments into this fund as provided in this article, shall constitute a fund to defray  
14 the cost of this service.

15 (2) Payments received for the cost of services of the chief inspector's office and  
16 interest earned on the invested balance of the chief inspector's revolving fund shall be  
17 deposited into this revolving fund, which shall be known as the chief inspector's fund.

18 (3) Any appropriations made to this fund may not be considered to have expired at the  
19 end of any fiscal period.

20 **§6-9-12. Business intern program.**

21 Beginning the first day of July, two thousand two, the chief inspector shall develop in  
22 conjunction with the graduate business programs at West Virginia university and Marshall  
23 university an intern program which utilizes students pursuing a graduate degree in business,  
24 economics or accounting to assist in the auditing function of the office of the chief inspector.  
25 This program shall provide that those students who satisfactorily complete the program shall  
26 receive up to two hours credit toward their degree.

**Senate Bill #586**

**Section Number 19**

Effective Date: Passed April 14, 2001; in effect ninety days from passage.

Signed by Governor: May 1, 2001.

Code of Reference: Amend and Reenact §31-15A-15.

Topic: Infrastructure Construction Project Bids.

Major Provisions:

- S Raises from \$25,000 to \$50,000 the total value of work which may be performed on a county board of education's construction or repair projects by public employees without having to let the work for competitive bids at the prevailing wage rates. Prohibits the expenditure under the exemption of more than \$50,000 on an individual project in a single location. Retains the exemptions for: (1) using vocational students in the construction or repair projects as part of their training; (2) certain emergency repairs to building components and systems; (3) agreements under which the county board of education supplies construction or repair materials and/or professional services and volunteers provide labor at no charge; and, (4) privately owned projects constructed on private lands.

1 **ENROLLED**  
2 **Senate Bill No. 586**

3 (BY SENATOR TOMBLIN, MR. PRESIDENT)

4  
5 [Passed April 14, 2001; in effect ninety days from passage.]  
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9 AN ACT to amend and reenact section fifteen, article fifteen-a, chapter thirty-one of the code  
10 of West Virginia, one thousand nine hundred thirty-one, as amended, relating to  
11 competitive bids; and raising the threshold for bids on infrastructure construction  
12 projects.

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

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

17 **ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT**  
18 **COUNCIL.**

19 **§31-15A-15. Projects not to be considered public improvements; competitive bid**  
20 **requirements.**

21 (a) No project or infrastructure project acquired, constructed, maintained or financed,  
22 in whole or in part, by the water development authority shall be considered to be a "public  
23 improvement" within the meaning of the provisions of article five-a, chapter twenty-one of this  
24 code as a result of the financing.

25 (b) The state and its subdivisions shall, except as provided in subsection (c) of this  
26 section, solicit competitive bids and require the payment of prevailing wage rates as provided  
27 in article five-a, chapter twenty-one of this code for every project or infrastructure project  
28 funded pursuant to this article exceeding twenty-five thousand dollars in total cost.

29 Following the solicitation of the bids, the construction contract shall be awarded to the  
30 lowest qualified responsible bidder, who shall furnish a sufficient performance and payment  
31 bond: *Provided*, That the state and its subdivisions may reject all bids and solicit new bids  
32 on the project.

33 (c) This section does not:

34 (1) Apply to work performed on construction or repair projects not exceeding a total  
35 cost of fifty thousand dollars by regular full-time employees of the state or its subdivisions:  
36 *Provided*, That no more than fifty thousand dollars shall be expended on an individual project  
37 in a single location in a twelve-month period;

38 (2) Prevent students enrolled in vocational educational schools from being used in the  
39 construction or repair projects when such use is a part of the students' training program;

40 (3) Apply to emergency repairs to building components and systems: *Provided*, That  
41 the term "emergency repairs" means repairs that, if not made immediately, will seriously  
42 impair the use of the building components and systems or cause danger to those persons  
43 using the building components and systems; or

1           (4) Apply to any situation where the state or a subdivision of the state comes to an  
2 agreement with volunteers, or a volunteer group, by which the governmental body will provide  
3 construction or repair materials, architectural, engineering, technical or any other professional  
4 services and the volunteers will provide the necessary labor without charge to, or liability upon,  
5 the governmental body: *Provided*, That the total cost of the construction or repair projects  
6 does not exceed fifty thousand dollars.

7           (d) The provisions of subsection (b) of this section does not apply to privately owned  
8 projects or infrastructure projects constructed on lands not owned by the state or a subdivision  
9 of the state.

**Senate Bill #647**

**Section Number 20**

Effective Date: Passed April 13, 2001; in effect ninety days from passage.

Signed by Governor: May 2, 2001.

Code of Reference: Amend §5-28-2.

Topic: Commission on Holocaust Education.

Major Provisions:

- S It is the intent of the legislature to create a permanent state commission which, as an organized body and on a continuous basis, will survey, design, encourage and promote implementation of holocaust education.
  
- S The commission is composed of eleven members:
  - Two members of the state board of education.
  - The state superintendent of schools or his or her designee.
  - The director of the division of veterans' affairs.
  - One attorney from the attorney general's office.
  - Two teachers who have completed professional development related to holocaust education teaching at the high school level and at the junior high or middle school level.
  - Four state residents.

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**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**

**Senate Bill No. 647**

(SENATORS HUNTER, MITCHELL, REDD, OLIVERIO, UNGER, EDGELL, MCCABE, ROWE,  
BURNETTE, CALDWELL, PREZIOSO AND FANNING, *original sponsors*)

[Passed April 13, 2001; in effect ninety days from passage.]

14 AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-  
15 one, as amended, by adding thereto a new article, designated article twenty-eight,  
16 relating to creating a commission on holocaust education.

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

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

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

22 **§5-28-1. Legislative findings.**

23 The Legislature finds and declares:

24 (1) That the holocaust perpetrated by the Nazis during the period between one  
25 thousand nine hundred thirty-three and one thousand nine hundred forty-five resulted in the  
26 genocide of six million Jews and millions of non-Jews as part of a carefully orchestrated  
27 central government program;

28 (2) That the holocaust stands as a grim reminder and warning to all generations of  
29 genocidal crimes and atrocities committed by man based on ignorance and fear and that all  
30 people should rededicate themselves to the principles of human rights and equal protection  
31 under the laws of a democratic society;

32 (3) That education can ensure that citizens are knowledgeable about the events leading  
33 up to the holocaust and about the organizations and facilities that were created and used  
34 purposefully for the systematic destruction of human beings and that the lessons of holistic  
35 trust and respect for peoples of various cultures are important for the citizens of West Virginia  
36 as they enter the global marketplace and economy;

37 (4) That programs, workshops, institutes, seminars, exhibits and other teacher training  
38 and public awareness activities for the study of the holocaust have taken place during recent  
39 years, but a central resource for schools, churches and communities studying the holocaust  
40 is needed;

41 (5) That, toward that end, the governor, by executive order No. 2-98, dated the sixteenth  
42 day of April, one thousand nine hundred ninety-eight, created and established the West  
43 Virginia holocaust commission on education; and

44 (6) That, in furtherance of the intent and purposes of the aforesaid executive order, it  
45 is the intent of the Legislature to create a permanent state commission which, as an organized

1 body and on a continuous basis, will survey, design, encourage and promote implementation  
2 of holocaust education and awareness programs in West Virginia and will be responsible for  
3 organizing and promoting the memorialization of the holocaust on a regular basis throughout  
4 the state.

5 **§5-28-2. Commission on holocaust education.**

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

8 (b) The commission is composed of eleven members: Two members currently serving  
9 on the state board of education, selected by the board; the state superintendent of schools or  
10 his or her designee; the director of the division of veterans' affairs; one attorney from the  
11 attorney general's office, civil rights division; one teacher who has completed professional  
12 development related to holocaust education teaching at the high school level and one teacher  
13 who has completed professional development related to holocaust education teaching at the  
14 junior high or middle school level, each appointed by the governor with the advice and consent  
15 of the Senate; four state residents, appointed by the governor, with the advice and consent of  
16 the Senate, who shall be: Individuals who are holocaust scholars or individuals experienced  
17 in the field of holocaust education or survivors, second generation, eye-witness/liberators or  
18 individuals recommended by the chair of the present holocaust education commission,  
19 created by executive order, who, by virtue of their interest, education or long-term involvement  
20 in human rights, prejudice reduction and holocaust education have demonstrated, through their  
21 past commitment and cooperation with the existing holocaust commission on education, their  
22 willingness to work for holocaust awareness and education in West Virginia.

23 (c) Members of the commission shall be appointed for terms of three years or until their  
24 prospective successors are appointed and qualified. Members are eligible for  
25 reappointment. Any member of the commission who fails to attend more than two consecutive  
26 meetings without an excuse approved by the commission may be removed from the  
27 commission. All vacancies shall be filled by appointment in the same manner as the original  
28 appointment, and the individual appointed to fill the vacancy serves for the remainder of the  
29 unexpired term.

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

32 (e) The speaker of the House of Delegates shall appoint a member of the House of  
33 Delegates and the president of the Senate shall appoint a member of the Senate to serve as  
34 advisors to the commission.

35 **§5-28-3. Commission duties; compensation.**

36 (a) The commission shall:

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

40 (2) Meet with appropriate education officials and other interested public and private  
41 organizations, including service organizations, for the purpose of providing information,  
42 planning, coordination or modification of courses of study or programs dealing with the subject  
43 of the holocaust;

44 (3) Compile a roster of individual volunteers who are willing to share their verifiable  
45 knowledge and experiences in classrooms, seminars and workshops on the subject of the  
46 holocaust. The volunteers may be survivors of the holocaust, liberators of concentration

1 camps, scholars, members of the clergy, community relations professionals or other persons  
2 who, by virtue of their experience, education or interest, have experience with the holocaust;

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

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

9 (b) Members of the commission are not entitled to compensation for services  
10 performed as members and are not entitled to reimbursement for expenses.

11 **§5-28-4. Continuation of the commission.**

12 Pursuant to the provisions of article ten, chapter four of this code, the West Virginia  
13 holocaust commission on education shall continue to exist until the first day of July, two  
14 thousand three, unless sooner terminated, continued or reestablished by act of the  
15 Legislature.



**Senate Bill #676**

**Section Number 21**

Effective Date: Passed April 14, 2001; to take effect July 1, 2001.

Signed by Governor: April 30, 2001.

Code Reference: Amend and Reenact §18-9D-15.

Topic: Disbursing School Building Authority Funds Over Time.

Major Provisions:

- S Authorizes the School Building Authority (SBS) to distribute money for approved construction projects over a period of more than one year, as long as the SBA does not approve the funding of a project for more than three years. Prohibits the SBA from using more than 50 percent of the revenue for projects to be funded over more than one year.

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**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**

**Senate Bill No. 676**

(SENATORS UNGER AND SNYDER, *original sponsors*)

[Passed April 14, 2001; to take effect July 1, 2001.]

12 AN ACT to amend and reenact section fifteen, article nine-d, chapter eighteen of the code of  
13 West Virginia, one thousand nine hundred thirty-one, as amended, relating to the  
14 school building authority; and authorizing distribution of money for building or  
15 improvement projects over a period of time or years as the work progresses.

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

17 That section fifteen, article nine-d, chapter eighteen of the code of West Virginia, one  
18 thousand nine hundred thirty-one, as amended, be amended and reenacted to read as  
19 follows:

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

21 **§18-9D-15. Legislative intent; distribution of money.**

22 (a) It is the intent of the Legislature to empower the school building authority to facilitate  
23 and provide state funds and to administer all federal funds provided for the construction and  
24 major improvement of school facilities so as to meet the educational needs of the people of  
25 this state in an efficient and economical manner. The authority shall make funding  
26 determinations in accordance with the provisions of this article and shall assess existing  
27 school facilities and each facility's school major improvement plan in relation to the needs of  
28 the individual student, the general school population, the communities served by the facilities  
29 and facility needs statewide.

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

1 the administrative council of an area vocational educational center unless the state board or  
2 an administrative council has submitted a ten-year school major improvement plan, to be  
3 updated annually, pursuant to section sixteen of this article: *Provided, however,* That the  
4 authority shall, before allocating any moneys to the state board or the administrative council  
5 of an area vocational educational center for a school improvement project, consider all other  
6 funding sources available for the project.

7 (c) An amount that is no more than two percent of the moneys that are determined by  
8 the authority to be available for distribution during the current fiscal year from: (1) Moneys paid  
9 into the school building capital improvements fund pursuant to section ten, article nine-a of this  
10 chapter; (2) the issuance of revenue bonds for which moneys in the school building debt  
11 service fund are pledged as security; (3) moneys paid into the school construction fund  
12 pursuant to section six of this article; and (4) any other moneys received by the authority,  
13 except moneys deposited into the school major improvement fund, shall be set aside by the  
14 authority as an emergency fund to be distributed in accordance with the guidelines adopted  
15 by the authority.

16 (d) The remaining moneys determined by the authority to be available for distribution  
17 during the then current fiscal year from: (1) Moneys paid into the school building capital  
18 improvements fund pursuant to section ten, article nine-a of this chapter; (2) the issuance of  
19 revenue bonds for which moneys in the school building debt service fund are pledged as  
20 security; (3) moneys paid into the school construction fund pursuant to section six of this  
21 article; and (4) any other moneys received by the authority, except moneys deposited into the  
22 school major improvement fund, shall be allocated and expended on the basis of need and  
23 efficient use of resources, the basis to be determined by the authority in accordance with the  
24 provisions of section sixteen of this article.

25 (e) If a county board of education proposes to finance a project that is approved  
26 pursuant to section sixteen of this article through a lease with an option to purchase leased  
27 premises upon the expiration of the total lease period pursuant to an investment contract, the  
28 authority may allocate no moneys to the county board in connection with the project: *Provided,*  
29 That the authority may transfer moneys to the state board of education which, with the  
30 authority, shall lend the amount transferred to the county board to be used only for a one-time  
31 payment due at the beginning of the lease term, made for the purpose of reducing annual  
32 lease payments under the investment contract, subject to the following conditions:

33 (1) The loan shall be secured in the manner required by the authority, in consultation  
34 with the state board, and shall be repaid in a period and bear interest at a rate as determined  
35 by the state board and the authority and shall have such terms and conditions as are required  
36 by the authority, all of which shall be set forth in a loan agreement among the authority, the  
37 state board and the county board;

38 (2) The loan agreement shall provide (2) for the state board and the authority to defer the  
39 payment of principal and interest upon any loan made to the county board during the term of  
40 the investment contract, and annual renewals of the investment contract, among the state  
41 board, the authority, the county board and a lessor: *Provided,* That in the event a county board  
42 which has received a loan from the authority for a one-time payment at the beginning of the  
43 lease term does not renew the subject lease annually until performance of the investment  
44 contract in its entirety is completed, the county board is in default and the principal of the loan,  
45 together with all unpaid interest accrued to the date of the default, shall, at the option of the

1 authority, in consultation with the state board, become due and payable immediately or subject  
2 to renegotiation among the state board, the authority and the county board: *Provided,*  
3 *however,* That if a county board renews the lease annually through the performance of the  
4 investment contract in its entirety, the county board shall exercise its option to purchase the  
5 leased premises: *Provided further,* That the failure of the county board to make a scheduled  
6 payment pursuant to the investment contract constitutes an event of default under the loan  
7 agreement: *And provided further,* That upon a default by a county board, the principal of the  
8 loan, together with all unpaid interest accrued to the date of the default, shall, at the option of  
9 the authority, in consultation with the state board, become due and payable immediately or  
10 subject to renegotiation among the state board, the authority and the county board: *And*  
11 *provided further,* That if the loan becomes due and payable immediately, the authority, in  
12 consultation with the state board, shall use all means available under the loan agreement and  
13 law to collect the outstanding principal balance of the loan, together with all unpaid interest  
14 accrued to the date of payment of the outstanding principal balance; and

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

18 (f) To encourage county boards to proceed promptly with facilities planning and to  
19 prepare for the expenditure of any state moneys derived from the sources described in this  
20 subsection, any county board failing to expend money within three years of the allocation to  
21 the county board shall forfeit the allocation and thereafter is ineligible for further allocations  
22 pursuant to this subsection until the county board is ready to expend funds in accordance with  
23 an approved facilities plan: *Provided,* That the authority may authorize an extension beyond  
24 the three-year forfeiture period not to exceed an additional two years. Any amount forfeited  
25 shall be added to the total funds available in the school construction fund of the authority for  
26 future allocation and distribution.

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

40 (h) No local matching funds may be required under the provisions of this section.  
41 However, the responsibilities of the county boards of education to maintain school facilities  
42 are not negated by the provisions of this article. To be eligible to receive an allocation of  
43 school major improvement funds from the authority, a county board must have expended in the  
44 previous fiscal year an amount of county moneys equal to or exceeding the lowest average  
45 amount of money included in the county board's maintenance budget over any three of the

1 previous five years and must have budgeted an amount equal to or greater than the average  
2 in the current fiscal year: *Provided*, That the state board of education shall promulgate rules  
3 relating to county boards' maintenance budgets, including items which shall be included in the  
4 budgets.

5 (i) Any county board may use moneys provided by the authority under this article in  
6 conjunction with local funds derived from bonding, special levy or other sources. Distribution  
7 to a county board, or to the state board or the administrative council of an area vocational  
8 educational center pursuant to subsection (b) of this section, may be in a lump sum or in  
9 accordance with a schedule of payments adopted by the authority pursuant to guidelines  
10 adopted by the authority.

11 (j) Funds in the school construction fund shall first be transferred and expended as  
12 follows:

13 Any funds deposited in the school construction fund shall be expended first in  
14 accordance with an appropriation by the Legislature. To the extent that funds are available  
15 in the school construction fund in excess of that amount appropriated in any fiscal year, the  
16 excess funds may be expended in accordance with the provisions of this article. Any projects  
17 which the authority identified and announced for funding on or before the first day of August,  
18 one thousand nine hundred ninety-five, or identified and announced for funding on or before  
19 the thirty-first day of December, one thousand nine hundred ninety-five, shall be funded by the  
20 authority in an amount which is not less than the amount specified when the project was  
21 identified and announced.

22 (k) It is the intent of the Legislature to encourage county boards to explore and consider  
23 arrangements with other counties that may facilitate the highest and best use of all available  
24 funds, which may result in improved transportation arrangements for students, or which  
25 otherwise may create efficiencies for county boards and the students. In order to address the  
26 intent of the Legislature contained in this subsection, the authority shall grant preference to  
27 those projects which involve multicounty arrangements as the authority shall determine  
28 reasonable and proper.

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

34 (m) The authority may elect to disperse funds for approved construction projects over  
35 a period of more than one year subject to the following:

36 (1) The authority may not approve the funding of a project for more than three years;  
37 and

38 (2) The authority may not approve the use of more than fifty percent of the revenue for  
39 projects to be funded over more than one year.

**Senate Bill #711**

**Section Number 22**

Effective Date: Passed April 12, 2001; in effect ninety days from passage.

Signed by Governor: April 23, 2001.

Code Reference: Amend and Reenact §18-7b-7.

Topic: Teachers' defined contribution retirement system; reentry.

Major Provisions:

- S Members of the existing teachers retirement system whose employment continues beyond the first day of July, one thousand nine hundred ninety-one, and those whose employment was terminated after the thirtieth day of June, one thousand nine hundred ninety-one, under a reduction in force are not affected by subsection (a) of this section and shall continue to contribute to and participate in the existing teachers retirement system without a change in plan provisions or benefits.

1 **ENROLLED**  
2 **Senate Bill No. 711**

3 (BY SENATORS PLYMALE, FANNING, JACKSON, PREZIOSO,  
4 EDGELL, MCCABE AND SPROUSE)

5  
6 [Passed April 12, 2001; in effect from passage.]  
7  
8

9 AN ACT to amend and reenact section seven, article seven-b, chapter eighteen of the code  
10 of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the  
11 rights of members who left employment under the teachers retirement system before  
12 the effective date of the teachers' defined contribution plan; and providing an option  
13 for such members to irrevocably reenter the teachers retirement system upon  
14 reemployment.

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

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

19 **ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.**

20 **§18-7B-7. Participation in teachers' defined contribution retirement system; limiting**  
21 **participation in existing teachers retirement system.**

22 (a) Beginning the first day of July, one thousand nine hundred ninety-one, and except  
23 as provided for in this section, the teachers' defined contribution system shall be the single  
24 retirement program for all new employees whose employment commences on or after that  
25 date. No additional new employees except as may be provided for in this section may be  
26 admitted to the existing teachers retirement system.

27 (b) Members of the existing teachers retirement system whose employment continues  
28 beyond the first day of July, one thousand nine hundred ninety-one, and those whose  
29 employment was terminated after the thirtieth day of June, one thousand nine hundred ninety-  
30 one, under a reduction in force are not affected by subsection (a) of this section and shall  
31 continue to contribute to and participate in the existing teachers retirement system without a  
32 change in plan provisions or benefits.

33 (c) Any person who was previously a member of the teachers retirement system and  
34 who left participating employment before the creation of the defined contribution system on  
35 the first day of July, one thousand nine hundred ninety-one, and who later returned to  
36 participating employment after the effective date of this section has the right to elect to return  
37 to the existing teachers retirement system or to elect to participate in the defined contribution  
38 system. The election shall be made at the time of his or her reemployment, is irrevocable and  
39 shall be made upon forms approved by and filed with the West Virginia consolidated public  
40 retirement board.

41 (d) Any person who was, prior to the first day of July, one thousand nine hundred ninety-  
42 one, a member of the existing teachers retirement system who left participating employment  
43 before the creation of the teachers' defined contribution system on the first day of July, one

1 thousand nine hundred ninety-one, and who later returned to participating employment after  
2 that date and who was precluded from returning to the existing teachers retirement system as  
3 a result of prior provisions of this section, may elect, pursuant to the provisions of this section,  
4 readmission to the existing teachers retirement system: *Provided*, That persons who are  
5 eligible to, and who make the election to, terminate their participation in the defined  
6 contribution system and to return to participation in the existing teachers retirement system  
7 as provided for in this section shall make the election, on a form approved by and filed with  
8 the West Virginia consolidated public retirement board on or before the thirtieth day of June,  
9 two thousand two: *Provided, however*, That as a condition of the right of readmission to the  
10 existing teachers retirement system, persons making the election provided for in this section  
11 whose defined contribution account had not, prior to such election, been divided by a qualified  
12 domestic relations order, shall pay an additional contribution to the existing teachers  
13 retirement system equal to one and one-half percent of his or her annual gross compensation  
14 earned for each year during which he or she participated in the defined contribution system  
15 and shall consent and agree to the transfer of his or her total account balance in the defined  
16 contribution system as of the most recent plan valuation immediately preceding his or her  
17 transfer to the existing teachers retirement system. For persons making the election provided  
18 for in this section whose defined contribution account had, prior to such election, previously  
19 been divided by a qualified domestic relations order, the cost to such person to transfer to the  
20 existing teachers retirement system shall be actuarially determined by the consolidated public  
21 retirement board. Upon verification of that person's eligibility to return to participation in the  
22 existing teachers retirement system and the tender and transfer of funds as provided for in this  
23 subsection, persons making this election shall receive service credit for the time the member  
24 participated in the defined contribution system as if his or her participation had been in the  
25 existing teachers retirement system: *Provided further*, That the right to terminate participation  
26 in the defined contribution system and to resume participation in the existing teachers  
27 retirement system as provided for in this section is irrevocable and shall not apply to any  
28 person who, while members of the teachers retirement system, voluntarily elected to terminate  
29 his or her membership in the teachers retirement system and to become a participant in the  
30 defined contribution system pursuant to section eight of this article.

31 (e) Any employee whose employment with an employer was suspended or terminated  
32 while he or she served as an officer with a statewide professional teaching association is  
33 eligible for readmission to the existing retirement system in which he or she was a member.

34 (f) An employee whose employment with an employer or an existing employer is  
35 suspended as a result of an approved leave of absence, approved maternity or paternity  
36 break in service or any other approved break in service authorized by the board is eligible for  
37 readmission to the existing retirement system in which he or she was a member.

38 (g) In all cases in which a question exists as to the right of an employee to readmission  
39 to membership in the existing teachers retirement system, the consolidated public retirement  
40 board shall decide the question.

41 (h) Any individual who is not a "member" or "employee" as defined by section two of  
42 this article and any individual who is a leased employee is not eligible to participate in the  
43 teachers' defined contribution system. For purposes of this section, a "leased" employee



1 means any individual who performs services as an independent contractor or pursuant to an  
2 agreement with an employee leasing organization or other similar organization. In all cases  
3 in which a question exists as to whether an individual is eligible for membership in this system,  
4 the consolidated public retirement board shall decide the question.

**Senate Bill #1002**

**Section Number 23**

Effective Date: Passed April 23, 2001; in effect from passage.

Signed by Governor: April 27, 2001.

Code of Reference: Amend and Reenact §18-7A-26s.

Topic: Supplemental Retirement Benefit.

Major Provisions:

- S Provides a one-time supplement to the retirement benefit of Teachers Retirement System annuitants who either: (1) retired no later than the effective date of the legislation, or (2) if applicable, (2) were receiving benefits under the Teachers Retirement System on or before the effective date of the legislation. The supplement is a percentage of the annuitant's annuity benefit. Retirees who, as of July 1, 2001, are at least 65 years old and have been annuitants for at least five consecutive years, will receive a five percent supplement. Retirees who retired under the early retirement incentive and who, as of July 1, 2001, are at least 65 years old, will receive a three percent supplement; early retirees do not qualify for either the five percent or the three percent supplement.

1 **ENROLLED**  
2 **Senate Bill No. 1002**

3 (BY SENATORS TOMBLIN, MR. PRESIDENT, CRAIGO, PLYMALE, JACKSON, PREZIOSO, UNGER,  
4 SNYDER, MCCABE, ANDERSON, HELMICK, WOOTON, CHAFIN, BAILEY, FANNING, EDGELL,  
5 KESSLER, MINARD, SHARPE, ROSS, MITCHELL, HUNTER, ROWE, LOVE, CALDWELL, OLIVERIO,  
6 MCKENZIE, REDD, BURNETTE, BOLEY, DEEM, MINEAR AND FACEMYER)

7  
8 [Passed April 23, 2001; in effect from passage.]  
9  
10

11 AN ACT to amend article seven-a, chapter eighteen of the code of West Virginia, one  
12 thousand nine hundred thirty-one, as amended, by adding thereto a new section,  
13 designated section twenty-six-s, relating to the teachers retirement system; providing  
14 a one-time supplement to the retirement benefit of certain annuitants; and specifying  
15 eligibility criteria therefor.

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

17 That article seven-a, chapter eighteen of the code of West Virginia, one thousand nine  
18 hundred thirty-one, as amended, be amended by adding thereto a new section, designated  
19 section twenty-six-s, to read as follows:

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

21 **§18-7A-26s. One-time supplement for certain annuitants effective July 1, 2001.**

22 (a) A one-time supplement to retirement benefits shall be provided to retirees of this system  
23 who have: (i) Reached the specified age threshold; and (ii) have been in retirement status for  
24 the specified number of years, as follows:

25 (1) For retirees who, as of the first day of July, two thousand one, are at least sixty-five  
26 years of age and who have been an annuitant for at least five consecutive years, this one-time  
27 supplement shall equal five percent of his or her annuity benefit as of the effective date of this  
28 section;

29 (2) For retirees who, as of the first day of July, two thousand one, are at least seventy  
30 years of age and who have been an annuitant for at least five consecutive years, this one-time  
31 supplement shall equal ten percent of his or her annuity benefit as of the effective date of this  
32 section; and

33 (3) For any person who, as of the first day of July, two thousand one, is at least sixty-five  
34 years of age and who retired under the early retirement incentive provided in section thirty-five-  
35 b of this article, this one-time supplement shall equal three percent of his or her annuity benefit  
36 as of the effective date of this section and subdivisions (1) and (2) of this subsection do not  
37 apply.

38 (b) The one-time supplement provided for in this section applies only to members who  
39 have retired prior to or as of the effective date of this section or, if applicable, to beneficiaries  
40 receiving benefits under the retirement system prior to or as of the effective date of this  
41 section: *Provided*, That the supplement provided herein is subject to any applicable  
42 limitations thereon under Section 415 of the Internal Revenue Code of 1986, as amended.

**HOUSE CONCURRENT RESOLUTION 37**

(By Delegates Paxton, Fahey, Romine, Susman,  
Canterbury and Overington)

(Originating in the Committee on Education)

[March 28, 2001]

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9  
10 Requesting the joint committee on government and finance to make a study on instructional  
11 time in the public schools of the state.

12 WHEREAS, The West Virginia Constitution requires the Legislature to provide for a  
13 thorough and efficient system of free schools and the general laws of the state determine  
14 how such a system is provided; and

15 WHEREAS, The general laws establish parameters for the days and times within  
16 which students are to receive the instruction that will enable them to become thoroughly  
17 educated; and

18 WHEREAS, The laws, policies and practices effected within schools and school  
19 systems also affect the days and times of instruction given to students and the efficiency  
20 of instructional delivery; therefore, be it

21 *Resolved by the Legislature of West Virginia:*

22 That the joint committee on government and finance is hereby requested to review,  
23 examine and study the laws, policies and practices affecting instructional time in the public  
24 schools of the state; and be it

25 *Further Resolved,* That the said joint committee on government and finance shall  
26 charge a committee of nineteen persons comprised as follows to conduct the study and  
27 prepare a report of its findings, conclusions and recommendations together with drafts of  
28 any legislation necessary to effectuate its recommendations. Three members of the  
29 Senate, appointed by the President, one of whom shall be appointed as co-chair; three  
30 members of the House of Delegates, appointed by the Speaker, one of whom shall be  
31 appointed as co-chair; three classroom teachers, one each from the elementary, middle  
32 and high school levels, appointed by the President and Speaker; three school principals,  
33 one each from the elementary, middle and high school levels, appointed by the President  
34 and Speaker; one person to represent county school boards, appointed by the President  
35 and Speaker; one person to represent county superintendents, appointed by the President  
36 and Speaker; one person to represent the state board, appointed by the President and  
37 Speaker; one person to represent higher education in the area of continuing education,  
38 appointed by the President and Speaker; one person to represent school nurses relative  
39 to providing care for special needs students, appointed by the President and Speaker; one  
40 person to represent parents of students enrolled in the public schools, appointed by the  
41 President and Speaker; and a high school student, appointed by the President and  
42 Speaker; and be it

43 *Further Resolved,* That relevant factors affecting the thorough and efficient delivery

## Section Number 24

1 of instruction which shall be considered by the committee include, but are not limited to:

2 (1) Statutes affecting the school calendar, such as holidays, outside the school  
3 environment days, delays and cancellations for hazardous weather conditions and the  
4 beginning and ending dates for the school term and how the statutes are implemented in  
5 the counties;

6 (2) Statutes affecting the use of instructional days and times for non-instructional  
7 purposes;

8 (3) School activities such as athletic events, rallies, assemblies, fund-raising, non-  
9 instructional field trips, and outside of the school activities that are not part of the curriculum  
10 or related to the students program of study;

11 (4) Disruptions of instructional time caused by discipline problems, programs  
12 related to improving student behavior, announcements, and caring for health issues and  
13 exceptional student needs;

14 (5) Time used for student test preparation and testing; and

15 (6) Any other factors affecting the days and times required to provide for a thorough  
16 and efficient education as the committee deems appropriate.

17 The committee shall also investigate the issue of "banked time" and shall establish  
18 a definition for "instructional time"; and be it

19 *Further Resolved*, That the joint committee on government and finance report to the  
20 regular session of the Legislature, 2002, on its findings, conclusions and  
21 recommendations, together with drafts of any legislation necessary to effectuate its  
22 recommendations; and be it

23 *Further Resolved*, That the expenses necessary to conduct this study, to prepare  
24 a report and draft necessary legislation be paid from legislative appropriations to the joint  
25 committee on government and finance.

1                                   **HOUSE CONCURRENT RESOLUTION NO. 73**

2                                    (By Delegates Hubbard and Paxton)

3                                   (Originating in the Committee on Education)

4                                   [Introduced April 6, 2001; referred to the  
5                                   Committee on Rules.]

6  
7 Directing the joint committee on government and finance to make a study on counseling  
8       in the public schools of the state.

9       Whereas, High quality school counseling services should help students to achieve  
10 optimal personal growth, acquire positive social skills and values, set appropriate career  
11 goals and realize full academic potential to become productive, contributing members of  
12 the world community; and

13       Whereas, Parents, teachers and society expect school counselors to work directly  
14 with children, helping them cope with the complex issues affecting them in today's world;  
15 and

16       Whereas, School counselors have great potential to impact the learning and lives  
17 of a wide population of children through academic development, career development and  
18 personal/social development, if they are permitted to do their intended work; therefore, be  
19 it

20                   *Resolved by the Legislature of West Virginia:*

21       That the joint committee on government and finance is hereby directed to review,  
22 examine and study the laws, policies and practices in the public school that affect school  
23 counseling, the ability of school counselors to do their intended work and the recognition  
24 of national standards for school counseling; and be it

25                   *Further Resolved,* That the said joint committee on government and finance shall  
26 conduct the study and prepare a report of its findings, conclusions and recommendations  
27 together with drafts of any legislation necessary to effectuate its recommendations; and be  
28 it

29                   *Further Resolved,* That the joint committee on government and finance report to the  
30 regular session of the Legislature, 2002, on its findings, conclusions and  
31 recommendations, together with drafts of any legislation necessary to effectuate its  
32 recommendations; and be it

33                   *Further Resolved,* That the expenses necessary to conduct this study, to prepare  
34 a report and draft necessary legislation be paid from legislative appropriations to the joint  
35 committee on government and finance.

SENATE CONCURRENT RESOLUTION NO. 36

(By Senators Bailey, Unger, Kessler, Fanning, Ross, Oliverio, Sprouse, McKenzie, Wooton, Bowman, Plymale, Snyder, McCabe, Anderson, Helmick, Edgell, Minard, Sharpe, Mitchell, Caldwell, Rowe, Redd, Facemyer, Hunter and Tomblin, Mr. President)

Requesting the Joint Committee on Government and Finance study the adequacy of current law in protecting the health and safety of West Virginia’s secondary school and post-secondary student athletes participating in athletic programs and the utilization of athletic trainers and other professionals and paraprofessionals in connection with sports programs in West Virginia.

Whereas, The Legislature is charged with protecting the public interest, promoting student health and safety and safeguarding professional practices; and

Whereas, The state has an interest in the control, supervision and regulation of middle and junior high school, secondary and post-secondary school athletic events, as well as in regulating and monitoring the practice of professions through licensing boards, which are, in turn, responsible for ensuring the certification of those professionals practicing in the profession being regulated; and

Whereas, There is increasing awareness that student athletes in competitive individual and team sports in which participation may result in injury are at greater risk of serious injury or death when athletic trainers and other professionals and paraprofessionals are not present at practices and games; and

Whereas, It is the desire of the Legislature to determine the specific risks to, and the needs of, West Virginia’s student athletes and the appropriate use and qualifications for athletic trainers and other professionals and paraprofessionals to minimize risk and address those needs; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is requested to study and evaluate the current risks to our participating student athletes; the experience of our public schools; colleges’ and universities’ management of these risks and protection of student health and safety; current best practices with respect to utilizing athletic trainers and other professionals and paraprofessionals at practices and athletic events; the desirability of promulgating training and certification standards for athletic trainers and other professionals and paraprofessionals; and such other related issues as may arise in the course of the study; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2002, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

*Further Resolved,* That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint

1 Committee on Government and Finance.



**SENATE CONCURRENT RESOLUTION NO. 41**  
(Originating in the Committee on Finance)

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8 Requesting the Joint Committee on Government and Finance study the funding of county  
9 public libraries in and for the State of West Virginia.

10 Whereas, Public libraries are an integral part of educating the citizens of this state; and

11 Whereas, Eleven county boards of education are required to designate a portion of  
12 their property tax collections for public libraries: Nine from regular levy collections and two  
13 from excess levies; and

14 Whereas, Computation of local share includes the portion of moneys levied by these  
15 eleven county boards of education for support of public libraries; therefore, be it

16 *Resolved by the Legislature of West Virginia:*

17 That the Joint Committee on Government and Finance is requested to review, examine  
18 and study the status of funding of county public libraries in this state, the development of a  
19 solution to reduce or eliminate the relationship between the funding of county libraries and the  
20 local share computation and to make recommendations to the Legislature regarding the  
21 same; and, be it

22 *Further Resolved,* That the Joint Committee on Government and Finance report to the  
23 regular session of the Legislature, 2002, on its findings, conclusions and recommendations,  
24 together with drafts of any legislation necessary to effectuate its recommendations; and, be  
25 it

26 *Further Resolved,* That the expenses necessary to conduct this study, to prepare a  
27 report and to draft necessary legislation be paid from legislative appropriations to the Joint  
28 Committee on Government and Finance.